No. 22-6528

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Charles Jordan — PETITIONER
(Your Name)

vs.

State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles Jordan
(Your Name)

P.O. Box 1057
(Address)

Parchman, MS 38738
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.) Should the State be allowed to assert procedural default rules to preclude federal habeas review where their efforts of misconduct and IAC caused constitutional errors to be ignored at trial?

2.) Does the accused not have a right to subsequently attack constitutional errors that occured during his jury trial that occured prior to the post-trial plea?

3.) Should not a defendant who has gone through a full jury trial expect to obtain Brady material (including false testimony) for use in a post-trial decision to plea?

4.) Does constitutional errors of the State in a jury trial affect the consensual nature of a subsequent plea, thereby impairing its validity?

5.) How can a constitutional right that has been fully excercised, such as Speedy Trial, be waived by a post-trial plea?

6.) Does the practice of circumventing MCA 99-17-1 conform to the fundamental principle of justice?

7.) Is counsel being inert concerning perjury known to him, a due process vidation of 14th Amend., against client's request and interest considered an actual conflict of interests and prejudice?

8.) Can the impact of a conflict be measured in a post-trial plea?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Trina Davidson Brooks, Sixteenth District Judicial Assistant District Attn.
2. Burl Cain, Commissioner, Mississippi Department of Corrections
3. Jennolyn M. Owens, Special Assistant Attorney General, State of Miss.

RELATED CASES

- Charles Jordan v. State of Mississippi, No. 2020-CP-01327-COA, The Court of Appeals of the State of Mississippi. Judgment entered June 3, 2021
- Charles Jordan v. Trina Davidson Brooks, No. 1:21-CV-32-DMB-DAS, The United States District Court for the Northern District of Mississippi Aberdeen Division. Judgment entered January 5, 2022
- Charles Jordan v. Trina Davidson Brooks; Burl Cain, No. 22-60070, United States Court of Appeals for the Fifth Circuit. Judgment entered September 30, 2022.
- Charles Jordan v. State of Mississippi, No. 2022-TS-00874-COA, The Court of Appeals of the State of Mississippi. Judgment entered November 3, 2022.
- In re Charles Jordan, No. 22-60478, United States Court of Appeals for the Fifth Circuit. Judgment entered November 2, 2022

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[✓] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was September 30, 2022.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts:**

The date on which the highest state court decided my case was Nov. 3, 2022. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- the constitutional guarantee of "a meaningful opportunity to present a complete defense, rooted in the Due Process Clause of the Fourteenth Amendment or the Compulsory Process or Confrontation clause of the Sixth Amendment.

- The right to counsel under the Sixth Amendment that includes a correlative right to representation that is free from conflicts.

- The duty to inquire imposed upon a trial court by the Sixth Amendment.

- The Due Process Clause of the Fourteenth Amendment that obligates the prosecutor to disclose exculpatory information.

- The Due Process and Equal Protection Clauses of the Fourteenth Amendment that assure a poor person adequate appellate review.

- The Fourteenth Amendment right that forbids fundamental unfairness in the use of evidence whether true or false.

- the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

- The Sixth Amendment right to a speedy trial, and Fourteenth Amendment.

- The Fifth Amendment Due Process Clause that prohibits apprehension of vindictiveness.

- The accused right to trial before 270 days, assured by MCA 99-17-1

STATEMENT OF THE CASE

I. Procedural History

On January 5, 2018, I was indicted on one count of MCA 97-5-27 and one count of MCA 97-5-33(6) aforesaid to transpired on or about or between the 5th day of February, 2017, and 10th day of March, 2017. I was arraigned on February 2, 2018 and trial was set for April 30, 2018, but a continuance was sought due to incomplete discovery. From the arraignment to the January 27, 2020 trial date, the case was continued seven times with no discussion of plea or an increase in charges. The continuances were due to an unresolved discovery issue.

On February 3, 2020, after choosing to not plea guilty to MCA 97-5-33(6), I invoked my jury trial right. Defense counsel and the State committed to trial on MCA 97-5-33(6) in Cause # 2018-0041-CRK for February 4, 2022. The case was continued for April 2020 term due to the State not resolving the inculpatory evidence issue until after the January 27, 2020 trial date and the witness list on February 3, 2020. On February 4, 2020, MCA 97-5-27 was quashed due to it stemming from another felony on same incident date. I was also ruled that evidence from /julisa.spencer.5 up to March 10, 2017 would be admissible during trial.

On February 5, 2020, myself and defense counsel discussed the fact that

the /julisa.spencer.5 facebook page had been deactivated, hindering us from gathering evidence that was ruled to be admissible. Although the alleged victim was not present in the hearing on February 4, 2020, the page was ironically deactivated only hours after the ruling concerning the social media evidence. Counsel disclosed in email that if I did not plea guilty by February 7, 2020, the ADA would have one count of MCA 97-5-33(7) added and trial would be on two counts of MCA 97-5-33.

But, on March 6, 2020, contrary to any discussion or negotiation between the State and defense counsel, Marty Haug, an entire 762 days after my February 2, 2018 arraignment on MCA 97-5-33(6), the State returned a five count superceding indictment. The indictment consisted of four counts of MCA 97-5-33 (7) and one count of MCA 97-5-33(6), which was identical in wording to the original indictment of MCA 97-5-33(6) that was never dismissed, still active and committed to trial on April 2020 term. After invoking my right to a jury trial, I went from facing up to 25 years at trial to facing up to 200.

On July 28, 2020, 938 days after original indictment, and 902 days after original February 2, 2018 arraignment, I was brought to trial. I was arraigned on the exact same charge in simultaneous indictments for reasons tainted with impropriety and no "societal interest." The motive for the superceding

indictment was solely because I insisted on a jury trial. Proven by the February 5, 2020 email from Haug that informed me of only a possibility of one count of MCA 97-5-33 (7). Is that not upping the ante and apprehension of vindictiveness? (Blackledge v. Perry, 417 U.S. 21, 30, 94 S. Ct. 2098 (1974)

During trial, several constitutional errors occured, such as perjury, IAC, prosecutorial misconduct, abuse of discretion, and conflict of interest. A guilty verdict was rendered on July 31, 2020 for all five counts of MCA 97-5-33, and I was immediately imprisoned. Sentencing was set for August 18, 2020. On August 18, 2020, following the guilty verdict, a post-trial plea was entered in the Oktibbeha County Circuit Court. I was sentenced to twelve years in custody of the MDOC, with five years suspended on MCA 97-5-33 (6).

II. Federal Habeas Petition

On November 23, 2020, I filed a notice of appeal from the trial judge rulings in PCR Motions. I also filed a handwritten petition for a writ of habeas corpus challenging my conviction on or about February 3, 2021. After receiving the record from the MS Court of Appeal, I immediately contacted them seeking to have my amended motion and speedy trial hearing a part of the record. Prior to the court sending a response to my motion, I was transferred to another facility. Upon arrival, as soon as I could get

some writing material, I wrote the court inquiring about my letter and seeking a extension to file brief. The motion was mailed around March 17, 2021. I was placed in solitary confinement immediately upon arrival to CMCF and remained there 119 days, pending protective custody.

I received correspondence concerning my motions to supplement the record an· an extension on about April 2. I was requesting assistance from ILAP, but was not obtaining the adequate tools needed to prepare my brief. The deadline was April 22, 2021, and COA sent a deficiency notice on April 27, 2021. I explained I should not be sanctioned. I expressed how I was placed in lockdown pending protective custody. I explained that I did not have adequate writing supplies or proper assistance to complete my state court appeal brief. I even disclosed the inhumane treatment I was experiencing in lockdown. (Montenegro, 248 F. 3d at 592)

I did not have adequate supplies. ILAP research and supplies for legal work are cell delivered. The reps will not send more than 10 sheets of paper in one week. A pen could only be requested the first week of each month. The only way to see a representative in person is if you are mailing documents. I was confined in a cell that did not have an table nor chair in it, and the requested research was delivered through

a dilapitated mailing service at CMCF. I had no direct legal assistance. It is clearly established that "in general, physical access to the law library is required." (Green v. Ferrell, 801 F. 2d 765, 722 (5th Cir. 1986) The access I had is clearly not of at least equal caliber to direct access, (Abdul-Akbar v. Watson, 775 F. Supp. 735, 748 (1991) and must remain undiminished. MDOC does not provide adequate access to the courts as required by the SCOTUS in Bounds. Sending requested research hand mail and only coming to mail documents is not direct access. Yet, my claim of being impeded by the ILAP system and in solitary confinement has been disregarded.

I disclosed sworn statements from other inmates at CMCF disclosing the issues with mail delivery and ILAP. As I asked the District Court in my July 13, 2021 response, "How much control over receiving supplies needed does a man who is locked inside of a cell 24/7 and dependant upon a short staff prison to properly assist and give out mail have?" My state court appeal was dismissed for failure to file opening a brief. But, as I disclosed to the state court, district court, and Court of Appeals 5th Circuit, I did not have adequate supplies, which includes a chair and table to prepare a brief in solitary confinement.

In habeas petition, I raised the claims of: (1.) Speedy Trial Violation,

(2) IAC, (3) Prosecutorial and Judicial Misconduct, (4) Violation of a Fundamentally Fair Trial, and (5) Prosecutorial Vindictiveness. The District Court claimed I failed to establish cause for failure to exhaust. On January 5, 2022, the court ruled the claims procedurally defaulted and dismissed my habeas corpus with prejudice. My motions to dismiss were only denied.

On January 27, 2022, I filed a notice seeking COA with the United States Court of Appeals, Fifth Circuit. The questions raised in the motion were: (1) Should a petitioner claims be considered not cognizable for federal habeas review when his post-trial plea was affected, induced, and substantially infected by constitutional violations in a full jury trial? (page 4 and 5), (2) Is it constitutional to consider a guilty plea valid and a waiver of the right to allege a speedy trial violation in a case where the petitoner has gone through an entire jury trial prior to the plea that has been induced by the State's illegalities? (page 5), (3) Has a petitioner intelligently given up constitutional rights when he has not been informed that he cannot be punished for invoking his jury trial right and be convicted in violation of perjury? (page 5)

(4) The fundamental miscarriage of justice exception is inadequate and ineffective in protecting the accused in the instant case. (page 5) (5) Does a plea waive a subsequent Brady-based challenge? (page 17) (6) How is upping the ante from 5-40 years at trial to 25-200 years fair in accordance with due process assured by the 5th and 14th Amendment? (pg. 21) (7) What reasonable minded petitioner would think he would need to file a notice of appeal on the amended motion? How do you overlook deliberate deception of a court and jurors by the State of known false testimony? (pg. 21) My claim of inadequate court access due to not having direct access and being in solitary confinement was also argued and I disclosed sworn statements from other inmates about the dilapitated mail room and inadequacy of the weekly ILAP form, which falls below Bounds.

On September 30, 2022, the Fifth Circuit denied COA, claiming that I failed to make the requisite showing. As such, I was denied a COA on unresolved claims that the importance is supposed to be correcting a fundamentally unjust incarceration, not the form of procedures. Due to counsel not confirming his knowledge of perjury and divergance in interest concerning perjury until on May 23, 2022, I was unable

to discover the conflict of interest and its affect until nearly two years later. The divergence of interests also gave light to the undivided loyalty caused by Haug being a justice court judge in Oktibbeha, making he and the trial judge fellow city employees. Haug's governmental position was not disclosed to me or known until after my conviction and PCR motion was filed. I also sought to claim trial judge failure to inquire and for the Brady violation to reviewed from the actual innocent claim of Murray and Schlup standard.

Despite me disclosing emails and affidavits that clearly shows Haug's interest diverged with mine on the course of action pertaining to the constitutional violation of perjury and the Court never inquired concerning the potential conflict of interest of Haug being justice court judge in the city of Starkville, the Court of Appeals disregarded Holloway and Sullivan by not granting an evidentiary hearing, claiming a prima facie showing was not made. Moreover, the Court erroneously claimed trial judge failure to inquire was made in my initial § 2254 application, which is was not. Lastly, the Fifth Circuit failed to apply the Schlup and Carrier standard concerning Brady violation and IAC that caused my evidence of actual innocence to be excluded, depriving

me of a meaningful opportunity to present a complete defense. I also was not afforded the full panoply of constitutional protections of our constitution. Moreover, why should the State be allowed to assert procedural default rules to preclude review of constitutional errors that their misconduct and IAC caused the errors to be ignored at trial?

The claims of conflict of interest, failure to inquire, and actual innocence have not be granted a full and fair hearing. Despite me being declared indigent in January 2021 by the Oktibbeha County Circuit Court, Appendix C shows that Cause # 2022-TS-00874-COA was dismissed for failure to pay costs of appeal, which is a denial of equal protection of the law, as I was not afforded adequate appellate review due to me being a poor person. (Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585 (1956) There has not been the semblance of a full and fair hearing as the State court did not reach and decide the issues of fact tendered. (Townsend v. Sain, 372 U.S. 293, 83 S. CT. 745 (1963) The denials by the Fifth Circuit and dismissal by the state court has led to this writ of certiorari.

III. Brady Violation (Actual Innocence)

The Fourteenth Amendment violation of due process by the State clearly affected the consensual nature of my August 18, 2020 post-trial plea

that was entered 18 days after a full jury trial that Brady v. Maryland line of cases holds the State legally obligated to disclose exculpatory and impeaching evidence prior to trial. As noted in Matthew v. Johnson, 201 F. 3d 353 (CA 5 2000) "The SCOTUS has not as yet ruled on whether a prosecutor's failure to disclose material exculpatory information prior to entry of a guilty plea violate the U.S. Constitution." The time has come for such an important question to be answered with the instant case. Was the State not responsible for the disclosure of perjured testimony and social media evidence at my trial on July 28, 2020 that transpired prior to the plea? Is it not a due process violation?

Despite every reasonable effort, the trial judge, state, or defense counsel has provided me with the discovery, including Jencks material (18 U.S.C. 3500) I have requested. The claim of perjury was never addressed by the State and was not confirmed in writing by counsel until on May 23, 2022, nearly two years after trial. Isn't it safe to say that the State should not be granted the privilege of asserting procedural default rules to preclude review where their own misconduct and failure to abide by a legal obligation caused error to be ignored at trial? The Schlup and Carrier standard has not be assessed.

On July 29, 2020, during the trial, the alleged victim testified falsely testified that the /julisa.spencer.5 facebook was fake, created by a jealous ex of her baby's daddy. Affidavits from witnesses of this statement was provided to the Fifth Circuit. That same day when the perjury occured I discussed with my counsel that I wanted him to attack the perjury and inform the Court. Emails from July 29, 2020 that I sent to Haug, which I also disclosed to the Fifth Circuit, shows I provided counsel with information concerning the perjury that he agreed to disclose.

Yet, when trial continued on July 30 to the July 31 guilty verdict, counsel and the State did not tangentially attempt to make the constitutional violation of perjury known to the court or jurors.

On July 30, 2020 when I was testifying, the trial judge ruled my social media evidence gathered from /julisa.spencer.5 inadmissible based solely on the false testimony, erroneous pursuant to Fed. R. Evid. 901 and Chambers, 410 U.S. at 295-97, 93 S. Ct. 1038). The social media evidence was my line of defense, as it showed the alleged victim portrayed herself to be 19, understanding "age" is an essential element in MCA 97-5-33(6). The July 31 verdict was

contrived with false testimony. (Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173 (1959) The neglect of the State to disclose Brady material in the form of social media evidence from /julisa.spencer.5 and perjured suppressed critical evidence and testimony I relied on to prove my innocence. Excluding the social media evidence based on false testimony was due process violation. (Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142)

Evidence to establish innocence, as the alleged victim pretended to be 19, was never disclosed to be considered by the jury. The jury also was not made aware of the perjury committed, against my request and interest, leaving the case inadequately presented. (Brady v. Betts, 316 U.S. 455, 476, 62 S. Ct. 1252, 1263) Affidavits also show that the alleged victim confirmed that she never disclosed to me that she was only 16. Pursuant to Carrier and Schlup, all of the social media evidence that was excluded, the newly discovered social media evidence, disclosure of perjury, and extortion scheme testimony is "new" and must be considered. (Schlup v. Delo, 513 U.S. at 324, 115 S. Ct. 851 (1995) The circumstance of counsel being inert pertaining to the constitutional violation in divergence with his client's interests must also be considered. (Cuyler v. Sullivan, 446 U.S. at 356 n. 3, 100 S. Ct. at

1722) The very premise of the IAC is that Haug knew of the perjury and that the social media evidence was admissible, yet he failed to disclose the constitutional violation of perjury and oppose strenously the erroneous ruling of trial judge concerning the social media evidence that proves my innocence. The must be a yield to the imperative of correcting a fundamentally unjust incarceration. (Engle, 456 U.S. at 135, 102 S. Ct. at 1576) A reasonable juror considering fairly all of the evidence presented would not have voted to find me guilty, understanding that the line between innocence and guilt is drawn with reference to a reasonable doubt.

Based on the State's failure to correct perjury, the trial judge interfered with counsel's performance and denied me any meaningful opportunity to present a complete defense by excluding probative admissible evidence and testimony about /julisa.spencer.5 and extortion. (Walberg v. Israel, 766 F. 2d 1071 (CA 7 1985) Counsel's own inaction caused me to be deprived of a fundamentally fair trial and a meaningful opportunity to confront my accuser. Evidence collected after trial has also been disclosed that shows the page is still active, the date of birth was changed from July 14, 1997 to July 14, 2000

after my conviction, she communicates with immediate family on /julisa.spencer.5, and posted about her newborn, the child she was pregnant with when she committed perjury during trial. Such evidence is also new and probative. (Schlup, 513 U.S. at 324, 115 S. Ct. 851) Defense counsel admits that the false testimony clearly happened. As such, I was unable to present exculpatory evidence and testimony to prove my innocence, as I was tricked by the alleged victim. The conviction must be reversed as the asserted trial error occured. (Chapman v. California, 386 U.S. 18, 43, 87 S. Ct. 824, 837 (1967)

Can it be tangentially argued that the constitutional errors and IAC in the jury trial did not affect the consensual nature of my post-trial plea? Should the State be permitted to claim procedural default when their misconduct and IAC suppressed the error at trial? The Court did not consider fairly all of the relevant circumstances surrounding the post-trial plea. (Haynes v. Washington, 373 U.S. 503, 513, 83 S. Ct. 1336, 1343 (1963) (1) perjury was committed pertaining to a material matter. (2) Defense counsel failed to fulfill his promise of disclosing the constitutional violation. (3) A guilty verdict was rendered. (4) I was stripped

of my liberty, as I was immediately imprisoned on July 31, 2020 after the guilty verdict. I was imprisoned on a guilty verdict where my jury trial right was commensurately abridged, I was halad to court on the five count superceding indictment due to apprehension of vindictiveness, the State and defense counsel misconduct caused the constitutional errors to be ignored at trial, defense counsel would not carry out the course of action of disclosing the perjury as agreed upon, counsel would not consider appealing the case unless he was paid in full, and I was away from my family. The law cannot measure the force of the influence used, or decide upon its effect upon my mind. (Hopt v. Utah, 110 U.S. 574, 4 S. Ct. 202) It has been a paradigmatic abuse of discretion for the court to base its judgment on an erroneous view of Brady, Schlup, and Strickland, and Cronic. (Cooter v. Hartmarx Corp., 496 U.S. 384, 405, 110 S. Ct. 2447, 2400-2461 (1990)

Lastly, the cause of the default pertaining to Jencks material and the Brady violation is clearly attributed to the actions of the State suppessing Brady material and Haug's actions and decisions that flowed from his divided loyalties. The cause of those actions and decisions are all external and directly contrary to the defense of my case.

This satisfies both the standard in Murray v. Carrier, 477 U.S. 478, 485, 106 S. Ct. 2639, 2644 (1986) and Reed v. Ross, 468 U.S. 1, at 14, 104 S. Ct at 2909 as they arose from an external source and did not promote my interests nor protect my constitutional right to due process of the 14th Amendment.

IV. Conflict of Interest and Trial Judge Failure to Inquire

The Fifth Circuit used wrong view of law in denying my motion for authorization. The claim of trial judge failing to "inquire" was never tangentially raised in my initial § 2254 application. This is proven by a review of Appendix A. Only five claims were raised in my initial application. Moreover, the Court ignored the possibility that Haug's divided loyalties influenced his decisions. The Court's claim in Appendix B is a paradigmatic abuse of discretion. It is also contrary to the ~~Eighth~~ Eighth Circuit view on the same matter. Jamison v. Lockhart, 975 F. 2d 1377 (1992)

During trial, after discussion with Haug, he agreed and assured me to oppose the constitutional violation of perjury. Like in Jamison, counsel failed to carry out the course of action agreed upon. The decision to be inert was in divergence with my interest and adversely affected Haug's performance and my liberty, as he ceased to be my agent. (Coleman, 501

U.S. 722, 111 S. Ct. 2546, at 2567 (1991) There has not been a full and fair hearing on the claim. (Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963) Moreover, three factual elements have not been considered:

- All the relevant circumstances surrounding my post-trial plea. As already mentioned, I was imprisoned under a conviction contrived with false testimony, counsel would not disclose violation as agreed, counsel would not appeal case unless paid in full, and the State failed its legal obligation to disclose perjury.

1. Perjury transpired on July 29, 2020. Counsel admits the witness clearly committed perjury and we discussed the legal issue and course of action agreed to. On that same exact day, I emailed Haug twice with probative admissible evidence to be used to carry out the agreed course of action. When trial continued on July 30, 2020 counsel was silent in divergence of course of action agreed to. (Exhibits 1 & 2,5) As a direct result, on July 30, probative admissible evidence from /julisa.spencer.5 was ruled inadmissible based solely on false testimony. The guilty verdict was rendered on July 31. Prior to August 18 sentencing, counsel met with my wife and I individually and agreed to attacking the constitutional violation. An affidavit supports

this. (Exhibit 3) He also disclosed that the partial payments were not sufficient enough to have him appeal my case, he would need to be paid in full before an appeal would be considered. (Hopt v. Utah, 110 U.S. 574, 4 S. Ct. 202)

• The second significant factual consideration is the nature of the conflict. Haug was an active justice court judge in Oktibbeha, a fact unknown to me until after my conviction. Three of the witnesses against me were officers from Starkville Police Dept. and detective from Oktibbeha County Sheriff's Dept. The trial judge is the Circuit Court judge in Oktibbeha, whom was even referred to as his friend on February 4, 2020 during hearing. The Court ignored the influence Haug's position played on his loyalty being divided. He failed to disclose perjury he admits to knowing of in divergence of my request. He would not oppose his fellow city employee's erroneous ruling to exclude social media evidence from /julisa.spencer.5, my primary line of defense, based solely on the perjury he was aware of. He did not interview the alleged victim or witnesses prior to trial. He did not object to or oppose prosecutor misconduct of her using the word "victim." He used the arguably prejudice word that

can interfere with the guarantee of a presumption of innocence himself. (Taconi v. State, 912 So. 2d 154, 156-157 (Miss. 2005) He disregarded over 12 emails I sent pertaining to the case. He would not consider appealing case unless paid in full. He did not oppose State saying, "If the victim was lieing, she would have come to us by now and said you know what I was young back then so I just want to drop the charges," along with other prejudice comments. Affidavits were disclosed to confirm this. I relied on counsel's agreement to attack the perjury and defend my case zealously, yet he took no action or steps to effect the constitutional violation of perjury that he admits to knowing clearly transpired, in divergence of my interests. S. Ct. establishes that this is actual conflict of interests. (Cuyler v. Sullivan, 446 U.S. at 356 n. 3, 100 S. Ct. at 1722)

• The third significant factor is that Haug did not disclose a divergence in an interest concerning the course of action to be taken against the due process violation of perjury until May 23, 2022, nearly two years after he agreed to represent my interests pertaining to the legal issue. He even admitted that the perjury clearly transpired and that he had disregarded every reasonable effort I made to obtain a sworn

statement concerning the perjury, erroneous trial court rulings, and other constitutional claims. My continued reliance on Haug, whose loyalties was divided prevented me from having confirmation of the claim of conflict of interest until after his May 23, 2022 response to my complaint filed with the Mississippi Bar Asst. Counsel deciding not to carry out a course of action agreed upon without consulting his client is conflict of interest of the most basic sort.

An inquiry into the prejudice experienced by the egregious and inert action of counsel during critical stage of proceedings is unjustified. (Strickland, 466 U.S. at 692, 104 S. Ct. 2052; Cronic, 466 U.S. at 654 n. 11, 104 S. Ct. at 2044 n.11) Evidence exists to show the asserted trial errors of conflict of interest and perjury occured, reversal is required. (Chapman, 386 U.S. 18, 43, 87 S. Ct. 824, 837 (1967) Is this not actual conflict of interests and prejudice? Can its impact on the post-trial plea be measured? (Holloway v. Arkansas, 435 U.S. 475, at 490-491, 98 S. Ct. 1173 (1978)

Trial counsel made no effort to inquire of the potential conflict, nor did he even inform me that counsel was a government actor in Oktibbeha, making them fellow city employees. No waiver of a non-

conflicted attorney was obtained. (Wheat, 486 U.S. 153, 161, 108 S. Ct. 108 S. Ct. 1692, 1698 (1988); United States v. Marrera, 475 U.S. 1020, 106 S. Ct. 1209 (1986) This also satisfies the Murray v. Carrier and Reed v. Ross "cause" and prejudice standard.

V. Speedy Trial Violation, Prosecutorial ~~Misconduct~~ Vindictiveness, and Circumvention

How can my right to a speedy trial be considered waived? Was it not fully excercised when trial transpired on July 28, 2020- July 31, 2020? As I asked the Fifth Circuit on page 5 of my motion seeking COA, " Is it constitutional to consider a guilty plea valid and a waiver of the right to a speedy trial in a case where the petitioner has gone through an entire jury trial? If the violation transpired prior to August 18, 2020, due process was already violated. As explained in Procedural history, I was indicted on January 5, 2018 and brought to trial on July 28, 2020, an 938 day delay of time.

Contrary to the principle of justice concerning additional charges does not reset speedy trial clock and a ~~d~~ charge that has never been dismissed does not toll clock, the State circumvented the MCA 99-17-1 law, which does not conform to principle of justice. (Cooper, 517 U.S. 348, 363-65, 116 S. Ct. 1373 (1996); United States v. Handa, 892 F. 3d 95, 106-07; MacDonald, 456

U.S. 1, 8, 102 S. Ct. 1497) For reasons tainted with impropriety, the State sought a superceding indictment that consisted of a re-indictment and additional charges, an entire 762 days after arraignment. As such, I was charged with the exact same incident in simultaneous indictments and had four charges of MCA 97-5-33(7) added solely because I insisted on a jury trial. The superceding indictment was not sought until after I invoked my jury trial right and was solely because I would not plea. (Blackledge v. Perry, 417 U.S. 21, 30 (1974); Goodwin, 457 U.S. 368, 372, 102 S. Ct. 2485 (1982) A full and fair hearing was never granted concerning vindictiveness. No objective evidence in the record has been disclosed to justify the superceding indictment that caused me to go from facing 5-40 years at trial to 25-200 years after I invoked jury trial right. (North Carolina v. Pearce, 395 U.S. at 726, 89 S. Ct at 2081)

I was haled into court on charges that denied me of due process, and those charges were used by the State to induce a post-trial plea. Was not the actions of the State not only vindictive, but also a deliberate tactic to gain advantage and deprive me of my ability to defend myself? Does not Barker v. Wingo,

clearly state that counsel's ineffectiveness should be considered? (Barker v. Wingo, 407 U.S. at 532, 536, 92 S. Ct. 2182 (1972) The State was over 270 days in the MCA 99-17-1 law, but was granted a new 270 days to prosecute me on MCA 97-5-33(6), although the original indictment was never dismissed. The additional charges were vindictive, not tangentially for any sort of claim of "societal interests." (Rinaldi v. U.S. 434 at 30, 98 S. Ct. at 85-86; Blackledge, 417 U.S. 21, 30, 94 S. Ct. 2098 (1974) Counsel's failure to oppose the re-indictment and circumvention of MCA 99-17-1 was not reasonable nor any sound trial strategy. (Strickland v. Washington) The State was in violation of speedy trial guarantee, apprehended me vindictively, and circumvented MCA 99-17-1 to bring me to trial on 97-5-33(6) 902 days after the original arraignment, even though it was statutorily time barred.

VI. Invalid Plea

An accurate review of all the circumstances, including me being imprisoned, IAC, and prosecutor misconduct, the plea was clearly not voluntary. (Haynes v. Washington, 373 U.S. 503, 573, 83 S. Ct. 1336, 1343; Hopt. v. Utah, 110 U.S. 574, 4 Sup. Ct. 202) Did counsel not deprive me of "the guiding hand of counsel?" Knowing of all the circumstances in the case, can it be said that counsel adequately presented my case?

Counsel's silence and divergence concerning the violation of perjury and erroneous evidence rulings were detrimental to my defense. The validity of the plea was tainted by misrepresentation and State misconduct, regardless of how remote. (Shelton v. U.S, 246 F. 2d 571, 571 n. 2 (CA 5 1957); Bram v. U.S, 168 U.S. 532, at 542-543, 18 S. Ct. at 187)

Prior to the verdict and sentencing, I requested Haug to disclose perjury and present the evidence disclosed to the jury and judge. Haug agreed, but did not pursue the constitutional violation of perjury. Haug assured that he would pursue the legal issue even after sentencing. He assured me that the violation would help me attack my conviction whether I appealed or pled guilty. He stated it would be referred to AG. Haug took no action in representing my interests of making good on agreed course of action to disclose perjury. A course of action that played a significant role in me pleading, being I was assured even if I pled guilty, I would still be able to attack my conviction, and he assured to help me do so. The unfulfilled promise was conflict of interest and misrepresentation, voiding the post-trial plea. As such, it was not voluntary.

REASONS FOR GRANTING THE PETITION

This petition should be granted because our Constitution assures that a U.S. citizen shall not be deprived of life, liberty, or land without due process. A claim of procedural default rule to preclude review of misconduct that the State and defense counsel suppressed at trial is not justice. Also, after numerous of decided cases, this Court has yet resolved a critical question concerning if the prosecutor is constitutional responsible for disclosing Brady material prior to a plea? The instant case presents a unique inquiry, as a jury trial transpired in this case 18 days prior to the post trial plea.

The petition must also be granted because I have not been granted a full and fair hearing on conflict of interest that has never been addressed by proper law, and I have not been granted an opportunity to disclose the preponderance of admissible evidence and testimony to support my innocence due to State misconduct, IAC, and trial judge abuse of discretion pertaining to rules of evidence. The law of Townsend v. Sain affords me that review. Lastly, this Court must uphold the fact that your decision must yield to the importance of correcting fundamentally unjust incarceration. (Engle, 456 U.S. at 135)

It is of national importance of this Court to decide does permitting the State the privilege of invoking procedural default rules fair when their own misconduct and IAC is the very reason that a clear constitutional error was ignored at trial? Such privilege does not yield to the importance of correcting fundamentally unjust incarceration. Claims that have merit and entitle the accused to relief are suppressed when the Court dismisses them without any consideration.

Is it fair to claim a post-trial plea has waived an accused's constitutional rights that he fully excercised prior to the plea? The accused across our country deserves to know if it's fundamentally fair for counsel to not represent his interest? Is it fundamentally fair for the prosecutor to withhold critical evidence and testimony prior to an accused's decision to plea? Does the errors in the prior proceedings affect the consensual nature of a post-trial plea? Countless tactics are used daily to induce the accused to plea guilty without them being informed of illegalities that affect his decisions. Unfulfilled promises have a direct affect on a plea, and lower courts are erroneous in not considering their impact and circumstances

indirectly and directly used to induce a plea. Moreover, the instant case is not some regular plea that was entered prior to the excercise of constitutional rights. This case is important to others similarly situated that have excercised constitutional rights yet not allowed to argue those claims after they have already been excercised. The violation of any constitutional error prior to a plea clearly deprives the accused of due process. The accused deserves a full and fair opportunity to be heard on fundamental constitutional rights, not have them swept under the rug by claims of procedural default that will not serve to bring about correcting an unjust incarceration. (Engle, 456 U.S. at 135, 102 S. Ct. at 1576) It is important to know that the S. CT. still places justice as top priority, as official misconduct breeds disrespect for law, as well as for those charged with its enforcement. This case involves questions that are imperative to public importance and involves issues of constitutional rights and errors beyond the particular facts and parties involved. The reality of the prison system must be adequately assessed for inmates in lockdown with no direct acess of legal assistance. (Montenegro, 248 F. 3d at 592)

Of dire importance is the fact that I along with every accused has a constitutional right to the assistance of counsel at every "critical stage" of the proceedings against him, or whenever his "substantial rights may be affected." (Mempa v. Rhay, 389 U.S. 128, 134, 88 S. Ct. 254, 257 (1967) The perjury committed that was known to Haug affected a substantial right (due process) and he has admittedly been silent of it in divergence of my interest. Every accused deserves a full and fair hearing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles Jordan

Date: December 8, 2022