22-6737

No. 22377

89CRS22354

Supreme Court, U.S.
FILED
JAN 30 2023
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, DC 20543

John Edward Butler — PETITIONER
(Your Name)

vs.

North Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

North Carolina State Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Edward Butler
(Your Name)

Bertie Corr. INSt.
(Address)

Windsor, N.C. 27983
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

I. Was it a violation of the Petitioner Civil rights
Pursant Pursuant to 42 U.S.C. §1983, as well as Eighth
and Fourteenth Amendment, contain Due Process clause
also, the North Carolina Const. Art and sec. and the
Amendment and Due Process, However a violation, to
Pursuant to 28 U.S.C. §1915, for the General Assembly
of North Carolina, Parole Commission, The North Carolina De-
partment OF Public Safety and the Governor Mike Easley,
to change the law 1981 Fair Sentencing Act, murder First
Degree one come up for Parole, one year come up for
Parole, to every three years? On 10/1/2008 Governor Easley
Signed into law House Bill 1624. This bill limited the frequency
of parole reviews for offenders who were convicted of first
degree murder or second-degree murder. Because of
House Bill 1624 those offenders who are convicted of
murder will be reviewed for parole every three years.
You became eligible for parole on 7/21/2071 and due to
House Bill 1624, your case is reviewed for parole every
three years?

Was it a violation of the U.S. Constitution of petitioner
Sixth Amendment right to confronted with the witnesses
against him, to have compulsory process for obtaining witnesses
in his favor, and to have the assistance of counsel for his defense;

Was it a violation of defendant or petitioner fourteenth
Amendment right of the U.S. Constitution Due Process for
State to destroyed DNA from crime scene pertinent DNA
evidence?

Was it a violation of the petitioner civil rights, pursuant to 42
U.S.C. §1983, as well as Eighth and Fourteenth Amendment,
Contain Due Process Clause also, N.C. Const. Art and Sec. For

QUESTION(S) PRESENTED

V. Was it a Violation of the Defendant U.S. Constitution rights, Fourth, Fifth, Eight and the fourthteen Amendment and Due Process Clause, ? for Not getting relief base on 1) Quorum and Interchange General Assembly of North Carolina Session 2007-House DRH30369-LH(214 312), §143B-268, Mutual Agreement Parole Program SECTION 17.27-20% of all Program eligible felons in the Program by May 1, 2006, I'm being interchange by people (offenders) that not eligible for this program. The parole Commission have been sending offenders home just to meet their 20% to the Senate and House of Representatives Appropriations Subcommittees, 2) 20% rule - subrogation after 25 years, Senate Bill 402? 3) NC Division of Adult Correction Assessment Results (see attached) Prison Work jobs and Education?

VI. Was it a violation Violation of the Petitioner U.S. Constitution Bigt rights? Fourth, Fifth, Sixth, Eighth and the Fourthteen Amendment and Due Process Clauses, for Petitioner to Not be Allowed to be at his Parole Hearing? The Petitioner had very importantent important documents and Certificates and some important letters and talk about becoming abiding citizen in to my community, to present to the Parole Commissioners?

VII. Was it a Violation of the Petitioner U.S. Constitution rights and Due Process Clause, Fourth, Fifth, SIXth, Eight

continued

QUESTION(S) PRESENTED

and Fourteen Amendments? What State and law you are Govern, By and how is your sentence reduce to be Eligible for parole, The State of North Carolina, I am govern by the Fair Sentencing ACT I had to do 20-years on the life sentence, before been Eligible for Parole, the State give me no game time, No good time, or nothing to reduce the life sentence. The State illegal too all of my good time. Plus, the Fair Sentence ACt govern other wise eligible for community Service Parole or Emergency Powers ACt Parole (270day Parole. Now, the Depart-OF Public Safety Rules and Policies book, say that and inmates with a life sentence are supposed to get game time, good time, Earned Time, merit, merit time, Meritorious Time and Good behavior time to reduce the life sentence. Also, was it illegal denied the Petitioner, his good which is about 10-years built up over the years. The DPS denied me of all my good time?

VIII. Was it a Violation of the Petitioner U.S. Constitut Right Fourth, Fifth, Sixth, Eighth, and Fourteen Amendments as well as Due Process, for on 10/1/08 the Governor signed into law (Session Law 2008-133, Senate Bill 1624) a change in the next scheduled parole review date from one-year reviews to every three years review for offenders. This law is illegal, because I am under Fair Sentence ACT. Also, the Petitioner Supposed to come up for a MAPP and Parole once a year. 1994 Structure Sentencing ACT?

CONTINUED

QUESTION (S) PRESENTED

IX. Was it a violation of the Petitioner U.S. Constitution rights, fourth, Fifth, Sixth, Eighth and Fourthteenth Add- Amendment, as well as Due Process Law, for MAPP is an agreement which is established jointly by the Division of Prisons and the Post-Release Supervision and Parole Commission. Each time the commission reviews Petitioner case for Parole, they also review Petitioner case for possible Placement on MAPP/Parole every three years. Also, I have been eligible for Parole since 7/21/2011? The Parole Commissioners illegal denied the Petitioner from 7/21/2011 unto 06/11/2020? However, the Parole Commissioners Kepted mail the Petitioners bogus letters and denied?

XII. Was it a violation of the Petitioner U.S. Constitution Rights, fourth, Fifth, Sixth, Eighth, Fourthteen Amendments, As well as Due Process? for there is a substantial Risk that you will not conform to reasonable conditions of Parole, how-ever there is a substantial risk that you would engage in Further Criminal Conduct. Your case is scheduled to be reviewed for Parole purpose again on or about 06/01/2023? The Post Release Supervision and Parole Commission Reached this Decision Because of the following Reasons above?

XIII. Was it a violation of the Petitioner U.S. Constitution rights, Fourth, Fifth, Sixth, Eighth, and Fourthteen ~~Am~~ Amend-ment, as well as Due Process Clauses? The Petitioner met all of the Mutual Agreement Parole Program, I was

Continued

QUESTION (S) PRESENTED

Eligibility, met all criterions, in minimum custody and infraction free within 90days. Mr. Brett Bartholomew. When the parole Commission considers you for Parole, there is always the possible for Parole by MAPP or regular parole. Below is some information and criterions about the MAPP Program.

(1) The inmate is considered for the MAPP during their first scheduled parole review date and earch each?

(2) The inmate is in either either medium or minimum custody;

(3) The inmate is not subject to a detainer or pending court action which may result in further confinement

(4) The inmate has not had an infraction within 90days; Also, I was eligibitity eligibility, infraction free and met all criterions, and tooked all of these classes, are Thinking For A change class, Life Skill Class, Anger management class, Father Class Program, NA Program, Substance Abuse Program, Bible Stud Class, 4-Risk Assessessments Classes, from doctors 2-Risk Assessessment Program, I am a minimum Risk of coming back to prison, Church Program, Revivual Church and Prisons Program talk class, G.E.D, High School Program, working jobs inside the Prisons, Hi-set Class, HBD Class, multiple Spiritual classes, Computer Class, electrician Class, A.A Program Class, Yoke-Fellow, orderly Class and other Classes and Programs Classes. I was denied Parole and a MAPP.

XIV. Was it a violation of the Petitioner U.S. Constitution rights, Fourth, Fifth, Sixth, Eeighth and Fourthteenth and

Continue

1). Was it a violation of Petitioner civil rights pursuant to § 1983, also pursuant to § 48 U.S.C 1915, due process rights under the Fourteeth Amendment, as well as violations of N.C. Const, Art and Sections, for petitioner to be denied ineffective assistance of counsel, in State Courts, also federal Court, in a Certirari and Habeas Corpus?

2). Wash it a violation of petitioner civil rights pursuant to § 1983 also pursuant to § U.S.C. 1915 48 pursuant to 48 USC § 1915, as well as N.C. Const. Art. and Sec. for State and federal Courts, States Courts, to denied the petitioner a psychiatric examination or hearing to determine competency to stand trial, for the first degree murder charge and three assaulted charges, in Lumberton, N.C. State Superior Court? on March 08, 1981? the petition was and is a Writ of Certirari. Now, the petitioner was not competent to stand trial, for that murder and three assaulted charges.

(3). Was it a violation of petitioner civil rights pursuant to § 1983 and U.S.C., as well as a violation N.C. Const. Art. and Sec., for the N.C. General Assembly, Session 207 House DRH 30369-LH-214 (3/27) Short Title Balance Fair Sentencing / Structured Sentencing. Section 1. Chapter 143B of the General Statutes is amended by adding a new section to read?

QUESTION(S) PRESENTED

XV. Was it a violation of the Petitioner U.S. Constitution Rights, Fifth, Sixth, Fourth, Eighth and Fourthteenth, as well as Due Process Rights, ? for The Petitioner believe that the current system, in which the commission Provides only a cursory review of each candidate, leads to arbitrary decisions that violate the Petitioner Due Process rights, Because the Petitioner believe the current system is inadequate? Also, Was it a violation of the Petitioner, Parole Hearing was obtained in violation of due process of law (U.S. Const. Am 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 23), as well as other provisions of the United States and North Carolina Constitutions G.S. 15A-1415 (b)(3)? The Petitioner parole hearing, was it a violation?

The jurisdiction of this court is invoked under 28 U.S.C. §1257(a), 28 U.S.C. 1254 and 1257, Your case must first be reviewed by a United States Court of appeals, However, the Petitioner did that?

Continue

Question Present Page-1

the 1981 Fair Sentencing Act combine with the, with the, 1994 Structure Sentencing Act: The Courts gave the Department of Correction authority to run sentences concurrent from Class B Felon and below, but its up to their discrection, Some sentences was put concurrent with Class A Felons. Now, the Petitioner John E. Butler has a class A Felons, under the 1981 Fair sentencing Act, Some sentences was put concurrent with Class A Felons, which is are unlawful to do?

Was it a violation of Petitioner Civil rights pursuant to U.S.C. § 1983, also the U.S.C. rights violation pursuant to 28 U.S.C. § 1915, as well as violation of the petitioner North Carolina, Const. Art. I. Sec. 19, 20 conviction obtained by use of evidence gained in an unconstitutional search and seizure. U.S. Const. AM. 4, 14; N.C. Const. Art. I, sec. 19, 20.

Was it a violation of the petitioner Civil rights, pursuant to § 1983, as well as, pursuant to 28 U.S.C. § 1915, also violation of N.C. Const., for The North Carolina Department of Public Safety, Commissioner's Mr. Willis J. Fowler, Mr. Graham H. Atkinson and James, to L. Forte Mr., to denied parole eligibility date and each year they are eligible for parole and a MAPP?

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:

John Edward Butler
Mr. ERIC Hook, Secretary, OF North Carolina Department OF Public Safety, Josh Stein, Attorney General
Mr. James L. Forte, Parole Commissioner, Mr. Graham H. ATKINSON, Parole Commissioners, Mr. Danny G. Moody, Mr. Willis J. Fowler, Ms. Angela R. Bryant and Mr. Eric A. Montgomery,

RELATED CASES

AKE V. Oklahoma, 470 U.S. 68, Artuz V. Bennett, 531 U.S. Artuz V. Bennett, 531 U.S. 4 (2001, Anti-Fascist Comm. V. McGrath, 341 U.S. 123 (1951), Bank of American V. India, 48 Kan. App. 2d 658 (2013) Bell V. Todd, 2005, Tenn. App. 206 S.W. 86, Blackmon V. Money, 553 U.S. 723 (2008), on remand, 27 Fed. Appx. 546 (6th Cir. 2001) Boumediene V. Bush, 553 U.S. 723 (2008), Bryant V. Schriro, 499 F.3d 1056 (9th Cir. 2007) Campbell V. State, 34 Kan. App. 2d 83 (2005) Carson V. Eberth, 3 Kan. App. 2d 183 (1979), Commonwealth V. Salzinger, 406 Pa. 268 (1962), Emerson V. Johnson, 243 F.3d 931 (5th Cir. 2001) Green V. Johnson, 515 F.3d 290 (4th Cir. 2008) Benitez V. Wolff 907 F.2d 1293 Cir. 1993) Morrissey V. Brewer, 408 U.S. 471, 481 (1972). Blackledge V. Allison, 431 U.S. 63 (1977) Hawthorne V. Swinson 955 F.2d 35 25th Cir. 1992, Delaware V. Prouse (1979 U.S. 114. 32 L. Ed. 95. Ct. 231 (1889) 1391, In re Winship, 397 U.S. 358 (1970) North Carolina V. Alford, 400 U.S. 25 (1970)

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Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)
Tippens v. Walker, 77 F.3d 682, (2Nd Cir. 1996)
United States v. Appel, 97 F.3d 1074 (8th Cir. 1996),
United States v. Castro, 972 F.2d 1107 (9th Cir. 1992)
United States v. Dudden, 65 F.3d 1461 (9th Cir. 1995)
United States v. Glover, 97 F.3d 1345 (10th Cir. 1996)
United States v. Kussmaul, 987 F.2d 345 (6th Cir. 1993)
United State v. McMullen, 98 F.3d 1155 (9th Cir. 1996)

STATUTES AND RULES

21 U.S.C. § 861, § 821, 21 U.S.C § 826, 28 U.S.C. § 1254 (1)
28 U.S.C. 2101 (c), 28 U.S.C. § 2101 (c)
United States sentencing guidelines § 2BL.1 Amendment 518, pursuant to Rule 20.4(A) and 28 U.S.C. 2242, 2244 (b) grants for filing second of successive Petition under 28 U.S.C. § 1254 (1) pursuant ~~to~~ 28 U.S.C § 2101(c), 28 U.S.C. § 2255, of 21 U.S.C. § 841 (a) (1), A statue rule or regulation creates property, The juridiction of this court is invoked under 28 U.S.C. § 1257 (a). The jurisdiction of this court is invoked under 28 U.S.C. § 1954 (1).

OTHER

They now apply to the states because they are considered to be incorporated in the Fourteenth Amendment's Due Process clause, which does apply to the states see Duncan v. Louisiana, 39, U.S. 145, 147-48, 885 (+ see Bell v. Wolfish 441 U.S. 520, 995 (1861) 1979 see also ch+ 1800 (1974), Duprocess class

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Article 1, Section 9 of The United States Constitution

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28 U.S.C 2242
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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 ______ 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 ______ 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 F to the petition and is

[✓] reported at order dismissed 24th Nov. 2022; or,
[✓] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the ~~order dismissed 2nd Nov 2022~~ 22 July, 2022 court appears at Appendix D to the petition and is

[✓] reported at Entered on this the 22 day July 2022; 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 NONE.

[ ] 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: NONE, and a copy of the order denying rehearing appears at Appendix NONE.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including NONE (date) on NONE (date) in Application No. __A NONE.

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

The U.S. Supreme Court has jurisdiction

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 2nd Nov. 2022. A copy of that decision appears at Appendix F.

[ ] A timely petition for rehearing was thereafter denied on the following date: NONE, and a copy of the order denying rehearing appears at Appendix NONE.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including NONE (date) on NONE (date) in Application No. __A NONE.

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

The jurisdiction is ~~not informed~~ed of this Court, U.S. Supreme Court of The united States

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Turner v. Safety 482 U.S. 78 (1987, Pell v. Procunier 417 U.S. 819 (1974), Riverside v. Mclaug (1991) Strickland v. Washington, 466 U.S. 668 (1984) Savino v. Murray, 82 F.2d 593, 599 th Cir.) 518 U.S. 103 (1996) Strickland, 466 U.S. at 694 (emphasis added), Hill v. Lockhart, 474 U.S. 52 (1985) Duncan v. Louisiana, 391 U.S. 145 (1968), Pointer v. Texas 380 U.S. 400 (1965) Washington v. Texas, 388 U.S. 14 (1967) Molloy v. Hogan, 378 U.S. 1 1964) In re Winship, 397 U.S. 358 (1970), Tollett v. Henderson, 411 U.S. 258 (1973); Blackledge v. Allison, 431 U.S. 63 (1977), North Carolina v. Alford, 400 U.S. 25 (1970), see generally 22 C.J.S. Criminal law §521. Dent v. West Virginia, 129 U.S. 114, 123 (1889) Morrissey v. Brewer 408 U.S. 471, 481 (1972) Washington v. Harper, 494 U.S. 210 (1990) Kramer v. Union Free School District, 395 U.S. 621, 627, (1889) Shapiro v. Thompson, 394 U.S. 618, 634 (1969 Sherbert v. Verner, 374 U.S. 398, 406 (1995), Griswold v. Connecticut, 381 U.S. at 485; Aptheker v. Secretary ~~State~~, 378 U.S. 500, 508 (1964) Cantwell v. Connecticut, 310 U.S. 296, 307-308 1940); [410 U.S. 113, 156] Eisenstadt v. Baird, 405 U.S. at 460, 463-464 White, J. concurring in result), Wolff v. Mc Donnell, 418 U.S. 539 (1974), Burt v. Carlson, 752 F. Supp. 346 (C. D. Cal. 1990). Henthorn v. Swinson, 955 F.2d 352 (5th Cir. 1992), under 42 U.S.C. §1983, violated the Fourteenth Amendment, Due Process Clause. Hewitt v. Helms, 459 U.S. 460 (1983) Sandin v. Conner, 575 U.S. 472 (1995) O'Lone v. ~~Estate~~ of Shabazz, 482 U.S. 342 (1987), and Turner v. Safley, 482 U.S. 78, 89 (1987) Thornburgh v. Abbott, 490 U.S. 401 (1989) Procunier v. Martinez, 416 U.S. S. 396 (1974), Riverside v. McLaughlin (1991) 500 U.S. 44, 11 LEd 2d 49, 1991 U.S. 396 (1974) ILL Pell v. Procunier, 417 U.S. 819 (1974), Riverside v. Mclaug (1991 and Turner v. Safety 482 U.S. 78 (1987)

STATEMENT OF THE CASE

Statement of the case, In March of 1991, a jury convicted Petitioner of first degree murder, an assault 2 years and an assault, Plus 15-years, life sentence for murder and 2-17 years for the two assaults charges, from State superior Court, Lumberton, North Carolina, county Robeson.

However, the state of North Carolina, did puts the Petitioner in Prison, on insufficiently evidence, cases No. 89CRS18633, 89CRS22354, 89CRS22377. This is the Petitioner first felon. The petitioner did not gets a fair trial in state Court. The Honor Judge Joe Freeman Britt and District Attorney Oxendine and Johnson Luther Britt, did misconduct.

The state four eyewitnesses, that was at the crime scene in Lumberton, N.C., August 18, 1989, Dennis Love, Michielle Locklear, Kenneth Early Smith and Darnell Single-tary, they told and wrote statements, to Lumberton City Police Department, Detective John Moore, Mickey Biggs and other Law enforcement, that some one else did that crime in Lumberton, N.C. Now, I had never been convicted in a Felon crime before. I was not in and out of jail. I had a Job. I work every day as a truck driver. I did pay taxes and other federal taxes as well as state. Also, I hope out with my family and my community.

The petitioner has been in prison for 39-years and my Birth day is April 18, 2022, the petitioner will be 69-years old. If, release the petitioner will get a job and work very hard.

Now, the petitioner did request to his two state attorneys for DNA, on the state Physical Evidence and the pertinent DNA crime scene blood, fingers print, clothes a hat, skin, and discovery, plastic bag of evidence and autopsy blood clothes, but denied.

The Honor Judges Joe Freeman Britt, each superior court Judge Robert F. Floyd, DA Johnson Britt, Oxendine, James Bell, Dexter Brooks, Kenneth Sealey's sheriff, Lieutenant Vernon Johnson of Lumber Police Department and superior court destroyed all DNA Evidence.

REASONS FOR GRANTING THE PETITION

The primary reason for granting the writ, is that John E. Butler is actually innocent of the charged crime. Frist, Petitioner Presented a Claim of actual innocence as a gateway to Procedural bar of untimeleness, that otherwise prohibits reaching the merits of his substantive certiorari and Habeas Corpus Claims. Petitioner claims are entitled to consideration of the merits of the motion certiorari if the claim meets the standard outlined in Murry v. Carrier, 477 U.S. 478 (1986); Schlup v. Delo, 513 U.S. 298 (1995). When an inmates 2254 Petition is untimely, a court must consider whether the inmate is entitled to an equitable tolling of the AEDPA limitation Period. Sigala v. Bravo, 656 F.3d 1125 (10th Cir. 2011). this case is aprime example where a state court with justification, refused to rule on a constitutional claim presented to it and grant relwated on the merits. One of Butler actual innocence claims is based on an underlying constitutional violation of ineffective assis- lance of counsel, which is a violation of the Sixth Amendment Butler's claim of innocence would not provide a basic for re- lief in and of itself. Relief would be dependent upon his later ability to demonstrate the merits of his substantive claim under Strickland v. Washington, 466 U.S. 668 (1984) (setting stand- ard for relief for ineffective assistance of counsel; also see House v. Bell, 547 U.S. 518, 534 (2006) (acknowledging that ineffec- tive assistance of counsel in an initial trial is considered a con- stitutional error).

In support of this ineffective assistance of counsel claim, Butler presented "Newly discovered" evidence in the form of two outstanding request, to his attorneys and the court for or order a psychiatric and psychological evaluations. (App. B, Exh l,J). (see) Griff v. Johnson, 350 F.3d 956 (9th Cir. Because the Petitioner, did suffered from a mental disease or defect, was left unfulfilled and remains outstanding.

Continue ... page 7

Reason For Granting The Petition

The petitioner filed a certiorari with claim of ineffective assistance of counsel, confrontation issue, multiplicity and abuse of discretion at sentencing.

Petitioner contends that the state's failure to appoint Butler certiorari and Habeas appellant counsel in violation of state Law, constitutes a state created impediment under 2244(d)(1)(B). The count in Green v. Johnson, 515 F. 3d 290, 304-05 (4th Cir. 2008) (found impediment" when state failed to replace allegedly ineffective counsel). Certainly the total denial of counsel constitutes an impediment that prevents an inmate from filing.

Furthermore, the state court's failure to enter an appealable order constitutes an impediment in violation of the U.S. Constitution, statutory violation (K.S.A. 60-2103 (a), but a constitutional violation. See Logan v. Zimmerman brush Co., 455 U.S. 422, 433, 102 S. Ct. 1148 (1982) (A state courts failure to rule on motion due process rights under the fourteenth Amendment); Simmons v. Schriro 187 Fed. Appx. 753 (2006) Head Note #3.

The above coupled together or separately consitutes an insurmountable state created impediment under AEDPA's 2244(d)(1)(B), that kept Butler from exhausting state remedies and prevented him from filing timely Federal certiorari and habeas relief. Cf.

Continued on Page [illegible]

Reason For Granting The Petition

Critchley v. Thaler, 586 F.3d 318 (5th Cir. 2008) (Holding that the state court's failure to file a prisoner's state Certiorari and State Habeas petition constituted a state created impediment under AEDPA). AEDPA's limitation period - with it's accompanying tolling provisions - ensures the achievement of the goal of exhaustion of state remedies. These impediments have yet to be removed.

The court found that the psychiatric evidence was "newly presented" rather than newly discovered" evidence, but could be raised as a basis for actual innocence); Power v. Florida, 464 So. 2d 1319 (1985). recognizing that a failure to raise a defendant's competency can be ground for ineffective assistance of counsel; Saunders v. Florida 704 So. 2d 224 (1998) (reversing a defendant's conviction due to absence of record refuting claim that counsel was ineffective for failure to investigate defendants competency); O'Callaghan v. State, 461 So. 2d 1354, counsel's motion for psychiatric examination was granted, but never conducted); Wiggins v. Smith, 539 U.S. 510, 534 (2003) (determining that an attorneys failure to investigate and present mitigating evidence constituted ineffective assistance of counsel); Williams v. Taylor, 529 U.S. 362, 390 (2000) (Same). AKE v. Oklahoma, is binding precedent and requires the State

Reason For Granting The Petition

to

to provid the defense with access to a competent psychiatrist who will conduct an appropriate, (1) examination and assist in (2) evaluation, (3) preparation, and (4) presentation of defense (Quoting AKE, 470 U.S. 68, 83).

Butler's right to a fair trial were violated in this instance by the total lack of a psychiatric examination or hearing to determine competency to stand trial. Cf. Sanders v. State, 950 3d, 1132, 1136 (Miss. Sup. Ct 2009) (The court found error where a trial court failed to conduct a competency hearing, after ording a defendant to undergo a psychiatric exam, while never making an on-the record finding that the defendant to under go a psychiatric exam exam, while never making an on-the record finding that the defendant was competent); Jay v. State, 25 So.3d 257 (Miss 2009) (Same) This violation can only be corrected at this time by a new trial. Hansford v. U.S. 365 F.2d 920 (D.C. Cir. 1966). Alford was precluded from adducing psychiatric evidence of his inability to form the specific intent nessary to commit first degree murder. Cf. Hughes Mathews, 576 F.2d 1250 (7th Cir. 1998) (The court also held that the exclusion of psychiatric evidence violated petitioner's U.S. Constitution Amendment VI, and XIV rights, as it was

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Reason For Granting The Petition

relevant and competent, and its exclusion was unjustifiable). The due process clause requires the state to provide a criminal defendant with "a reasonable opportunity to demonstrate that he is not competent to stand trial. (quoting) Medina, 505 U.S. at 451.

The ends of justice demand consideration of merits of claim on successive petition where there is colorable showing of factual innocence; second Habeas petition should be remanded for consideration of whether the ends of justice consideration on the merits. Procedural default is excused under actual innocence exception where petitioners claim, if true, rendered conviction void and could not be legal cause of imprisonment. Gonzalez v. Abbott, 967 F. 2d 1499, 1504 (11th Cir. 1992); Moore v. Kemp, 824 F. 2d 847 (11th Cir 1987), Cert granted 485 U.S. 1005. The State Court's Failure to enter an appealable order on petitioner Certiorari, also the state court's denial of counsel violation of state law.

The State could not prove beyond a shadow of doubt, that I committed this crime. My state lawyers did not represent me to the fullest. My attorneys did not get fingerprint analysis of me, or DNA Evidence done for me. My lawyer was negligent in representing me against these charges. The DA Britt and DA Oxendine, tooked warrants out on two of the

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State witnesses, Dannell Singletary and Kenneth Early Smith, who was at the crime scene August 18, 1989. Also, the district attorneys lock both of them up in jail and coerce them to come to court and testify against me with un-truths. The witnesses were put under-duress and coerce by the DA's to testify against me untruths. My lawyers never once asked for a dismissal due to aggrivating factors created by the prosecution. All of the state evidence was tainted and circumstantial against me.

However, the petitioner did request for DNA evidence, testing on all the state crime scene pertinent, DNA evidence, as well as physical evidence, but was denied. Now, if DNA testing is done it will free John Butler, of this crime. The North Carolina Innocence Inquiry Commission, Raleigh, N.C., also N.C. Center on Actual Innocence, Shannon Plaza Station, Durham, N.C. Wake Forest University School of law, N.C. Chapel Hill Law School, Duke Law School, and Prisoner Legal Services will do DNA Testing on all all the State DNA Evidence, if the State turn over all the state evidence. The state, Honorables Judges Joe Freeman Britt, Dexter Brooks, DA's Johnson Britt, Oxendine, Superior Court and Clerks and Sheriff destroyed evidence.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Edward Butler

Date: 4, 12, 2022