

PROVIDED TO (15)
MARTIN CORRECTIONAL INSTITUTION
ON 6/22/23
FOR MAILING 

UNITED STATES SUPREME COURT

NO. 22-7212

IN RE SOLOMON ROBERTS ,PETITIONER

**MOTION FOR LEAVE TO FILE
PETITION FOR REHEARING**

Pursuant to Rule 44 Petitioner an indigent State inmate moves this High Court for Leave to file Petition for Rehearing to prevent [or] correct a fundamental miscarriage of justice.

Although the remedy of Mandamus is a drastic one, it is properly invoked only in extraordinary circumstance. See: Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33 (1980); Cheney v. U.S. Dist. Court, 542 U.S. 367 at 380 (2004).

This case involves exceptional circumstances resulting in usurpation of Judicial Power and a clear abuse of discretion that justify the invocation of the Writ of Mandamus against the inferior U.S. District Court. Id. at 380 citing Will v. United States, 389 U.S. 90 at 95 (1967).

This review involves a State inmate who filed Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus asserting “Actual Innocence” PRE-AEDPA which presents two distinct issues for review.

The First is whether District Court could properly take Judicial Notice of State Court Transcripts of Revocation of Probation under FRE § 201(6).

The Second is whether it was error to dismiss Mr. Roberts Petition as Successive without considering the “Ends of Justice” exception and without ordering Florida Attorney General to respond. See: 28 U.S.C. § 2252.

It thus presents a question of whether under this circumstances a District Court may on its own initiative refuse to prosecute § 2254 Petition [App. A] because Petitioner as a State inmate could not pay the \$5.00 dollar filing fee. See: **William v. Bryant**, 157 Fed. Appx. 241. Accord **Bound v. Smith**, 430 U.S. 817 at 822 and n.3.

And on its own initiative and without hearing from Florida Attorney General, Ashley Moody, decided that the Statutes of limitation bars the Petition. See: **Day v. McDonald**, 547 U.S. 198 at 202.

USURPATION

Here, District Court lacked authority under its Local Rule to dismiss § 2254 Petition for failing to pay the filing Fee. [157 Fed. Appx. 241] First because the 'PLRA' of 1995 28 U.S.C.A. § 1915 (a)(1) applies to Civil cases and not Habeas Corpus proceedings. Second District Court decision is contrary to the established principle laid down by this Court in **Bounds v. Smith**, 430 U.S. 817 at 822 and n.3 that "indigent inmates must be allowed to file Appeals and Habeas Corpus Petitions without payment of docket fees" citing **Burns v. Ohio**, 360 U.S. 252, 257 (1959).

Thus, to deny Petitioner (indigent inmate) to proceed in forma pauperis is conscience shocking due to its functional equivalence of denying him the right to be heard according to law, because of his financially destituted status. Followed by dismissal of Mandamus is a fundamental miscarriage of justice because of [the] truly persuasive showing of factual innocence under **Carrier**, actual innocence standard.

ABUSE OF DISCRETION

Here, District Court lacked the Liberty to act contrary to relevant Supreme Court philosophy of Law. In this circumstance the "Ends of Justice" required consideration [App B] of Section 2254 successive

Petition. See: **Herrera v. Collins**, 506 U.S. 390, 404 (1993)(citing **Kuhlmann v. Wilson**, 477 U.S. 436 at 443-44).

This case concerns the “Actual Innocence” gateway to Federal Review applied in **Schlup v. Delo**, 513 U.S. 298 (1995), and further discussed in **House v. Bell**, 547 U.S. 518 (2006).

Justice Ginsburg in **McQuiggin** [185 L.Ed.2d 1019] delivered the opinion of the Court:

“We hold that actual Innocence, if proved serves as a gateway through which a Petitioner may pass for consideration of the merits of their constitutional claims.”
Id. at 1027.

In an unrelated matter Justice O’Connor delivered in **Dretke v. Haley**, 541 U.S. 386 at 388 n.2 that:

“We have recognized a narrow exception to the General Rule when Habeas Applicant can satisfy **Carrier**, Actual Innocence Standard.” As Petitioner have demonstrated subjudice.

Federal Rules of Evidence §201(b)(2) concerns undisputed facts in which District Court could properly judicially notice State Court [App. B] attachment Revocation Transcripts which entitled Petitioner to have all his procedural defaults excused as a matter of course under the fundamental miscarriage of Justice exception. Where this Article III Supreme Court have

applied the miscarriage of justice exception to overcome various procedural defaults. Id. 185 L.Ed.2d 1019 at 1031 and n.6.

The State Court fact finds favorable to the Petitioner during Revocation of Probation is entitled to the same presumption of correctness due findings favoring the State. See: **Burden v. Zant**, 498 U.S. 433 at 437 [fN3] (1991).


Petitioner as did **House** [547 U.S. 518 at 522] has made the stringent showing required by the fundamental miscarriage of justice exception threshold for obtaining Federal Review, to wit; An Evidentiary hearing on the defaulted constitutional claims and be relieved of any and all defaults [or] hurdles including in forma pauperis. Advisory Mandamus if nothing more must issue to ensure Federal hearing imperative to the correcting of a fundamentally unjust incarceration obtain through Prosecutorial misconduct of the worst sort where a constitutional violation has resulted in a conviction of one who is factual innocent. In which this **Carrier** Court were confident that such victims will meet the cause and prejudice standard. 477 U.S. 478 at 495-96 and n.9. There can be no retreat from that principle here.


There is no room for doubt that State Asst. Prosecutor [“William J. Suroweic”] [App B attach] knowingly used false evidence to obtain State criminal conviction. Something the Fourteenth Amendment cannot and will

not tolerate. See: **Miller v. Pate**, 386 U.S. 1 at 7 and n.2 (1967). There has been no deviation from this established principle since **Napus**, **Pyle**, and **Alcorta** precedents. There can be no retreat from that principle here and now.

It would work a fundamental miscarriage of justice if this High Court fail to intervene and compel the District Court to reinstate Habeas Corpus proceeding, proceed to try and adjudicate on the merits. Which would serve the ends of justice See: **McCellan v. Carland**, 217 U.S. 268 at 280 (1910); **McQuiggin v. Perkins**, 185 L.Ed.2d 1019 at 1033 n. 10.

Presented in Good faith and not for delay.

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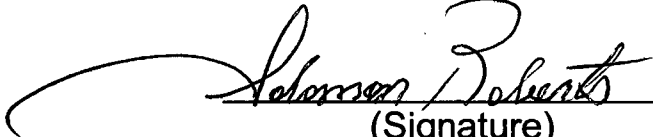
IN THE
SUPREME COURT OF THE UNITED STATES

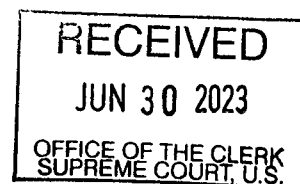
IN RE SOLOMON ROBERTS ,PETITIONER

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner asks leave to file the attached petition for Rehearing without prepayment of cost and to proceed in forma pauperis under the authority of **Bound v. Smith**, 430 U.S. 817 at 822.

Petitioner's Affidavit or declaration in support of this Motion is attached hereto; including six months Bank Statement from FDOC.


(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Salomon Roberts, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ N/A	\$ 0	\$ N/A
Self-employment	\$ 0	\$ /	\$ 0	\$ /
Income from real property (such as rental income)	\$ 0	\$ /	\$ 0	\$ /
Interest and dividends	\$ 0	\$ N/A	\$ 0	\$ N/A
Gifts	\$ 0	\$ /	\$ 0	\$ /
Alimony	\$ 0	\$ /	\$ 0	\$ /
Child Support	\$ 0	\$ /	\$ 0	\$ /
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ /	\$ 0	\$ /
Disability (such as social security, insurance payments)	\$ 0	\$ N/A	\$ 0	\$ N/A
Unemployment payments	\$ 0	\$ /	\$ 0	\$ /
Public-assistance (such as welfare)	\$ 0	\$ /	\$ 0	\$ /
Other (specify): _____	\$ 0	\$ /	\$ 0	\$ /
Total monthly income:	\$ 0	\$ /	\$ 0	\$ /

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A

4. How much cash do you and your spouse have? \$ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
N/A	N/A	\$ N/A	\$ N/A

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value N/A

☐ Motor Vehicle #2
Year, make & model N/A
Value N/A

☐ Other assets
Description N/A
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

Amount owed to you

Amount owed to your spouse

N/A

\$ N/A

\$ N/A

7. State the persons who rely on you or your spouse for support.

Name

Relationship

Age

N/A

N/A

N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 0

\$ N/A

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ 0

\$ N/A

Home maintenance (repairs and upkeep)

\$ 0

\$

Food

\$ 0

\$

Clothing

\$ 0

\$

Laundry and dry-cleaning

\$ 0

\$

Medical and dental expenses

\$ 0

\$

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>N/A</u>
Life	\$ <u>0</u>	\$ <u> </u>
Health	\$ <u>0</u>	\$ <u> </u>
Motor Vehicle	\$ <u>0</u>	\$ <u> </u>
Other: <u>N/A</u>	\$ <u>0</u>	\$ <u> </u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>0</u>	\$ <u> </u>
Department store(s)	\$ <u>0</u>	\$ <u> </u>
Other: <u>N/A</u>	\$ <u>0</u>	\$ <u> </u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u> </u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): <u>N/A</u>	\$ <u>0</u>	\$ <u> </u>
Total monthly expenses:	\$ <u>0</u>	\$ <u> </u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? 0

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? 0

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

state inmate have outstanding liens And do not
earn wages but gain time see Attach

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 6/22, 2023

Solomon Roberts
(Signature)

IBSR140 (74)

ACCT NAME: ROBERTS, SOLOMON D.
BED: B3113U
PO BOX:

FLORIDA DEPARTMENT OF CORRECTIONS
TRUST FUND ACCOUNT STATEMENT
FOR: 01/01/2023 - 06/01/2023
ACCT#: 066691
TYPE: INMATE TRUST

06/16/23
12:26:54
PAGE 2

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/ -	AMOUNT	BALANCE
05/08/23	188	LEGAL POSTAGE	2023050202	000				
05/26/23	112	LIEN CREATED	- 05/08/2023	2023050202			\$0.00	\$0.00
		LIEN PAYMENT	01122294010	000				
		FED PRISON LITI	- 09/30/2021	121CV20123JE		-	\$5.00	\$5.00

LIEN DATE	TYPE OF LIEN	LIEN FAC	AMOUNT OF LIEN	AMOUNT STILL OWED	ENDING BALANCE 06/01/23
	SUMMARY				\$5.00
	SUMMARY		\$825.00	\$825.00	
	SUMMARY		\$738.88	\$173.17	
	SUMMARY		\$58.33	\$7.50	
	SUMMARY		\$99.00	\$5.00	
	SUMMARY		\$1,155.00	\$27.64	
01/08/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/09/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/09/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/20/23	LEGAL POSTAGE	000	\$12.75	\$0.57	
01/20/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/20/23	LEGAL POSTAGE	000	\$3.60	\$3.60	
01/20/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/20/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/25/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/25/23	LEGAL POSTAGE	000	\$0.57	\$0.57	
01/25/23	LEGAL POSTAGE	000	\$2.88	\$0.57	
01/31/23	LEGAL POSTAGE	000	\$2.88	\$2.88	
02/15/23	LEGAL POSTAGE	000	\$0.57	\$2.88	
02/15/23	LEGAL POSTAGE	000	\$0.57	\$2.88	
02/15/23	LEGAL POSTAGE	000	\$1.08	\$3.84	
04/06/23	LEGAL POSTAGE	000	\$0.57	\$1.08	
04/17/23	LEGAL POSTAGE	000	\$12.45	\$0.57	
04/17/23	LEGAL POSTAGE	000	\$0.60	\$0.60	
04/25/23	LEGAL POSTAGE	000	\$0.60	\$0.60	
04/25/23	LEGAL POSTAGE	000	\$0.60	\$0.60	
05/08/23	LEGAL POSTAGE	000	\$0.60	\$0.60	
05/08/23	LEGAL POSTAGE	000	\$0.60	\$0.60	
05/26/23	FEDERAL PRISON LITIGATION	430	\$505.00	\$505.00	

Receipt
 MART-4-Martin Correctional #4
 Operator: 888533/WILLIAMS, CHRISTOPHER
 Inmate: 066691/ROBERTS, SOLOMON D.
 06/17/2023 15:03
 Receipt #: 321596
 Begin Canteen Balance: 5.00

Item	Qty	Unit	Pro	\$ Tax
54618 NEXT 1, Antibacterial Bar Soap	2	EA	1.22	2.44 Y
54858 Coffee, Single Serve, KEEFE	17	EA	0.14	2.38 N
Sub-Total				4.82
Sales Tax				0.16
Total				4.98
Remain Canteen Balance				0.02