

PROVIDED TO
MARTIN CORRECTIONAL INSTITUTION
ON 10/22/23
FOR MAILING *SL*

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.

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

DR NO. 22-7212

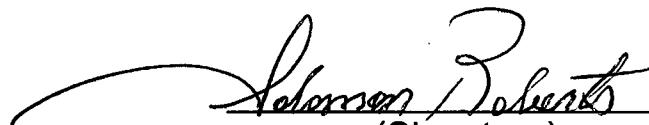
IN THE
SUPREME COURT OF THE UNITED STATES

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, Solomon 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	\$ 0	\$ 0
Income from real property (such as rental income)	\$ 0	\$ 0	\$ 0	\$ 0
Interest and dividends	\$ 0	\$ N/A	\$ 0	\$ N/A
Gifts	\$ 0	\$ 0	\$ 0	\$ 0
Alimony	\$ 0	\$ 0	\$ 0	\$ 0
Child Support	\$ 0	\$ 0	\$ 0	\$ 0
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ 0	\$ 0	\$ 0
Disability (such as social security, insurance payments)	\$ 0	\$ N/A	\$ 0	\$ N/A
Unemployment payments	\$ 0	\$ 0	\$ 0	\$ 0
Public-assistance (such as welfare)	\$ 0	\$ 0	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0	\$ 0	\$ 0
Total monthly income:	\$ 0	\$ 0	\$ 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

N/A

Amount owed to you

\$ N/A
\$ N/A
\$ N/A

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

N/A

Relationship

N/A

Age

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

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

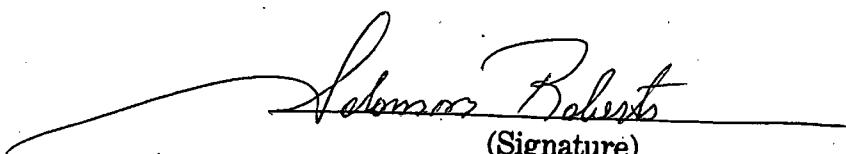
If yes, state the person's name, address, and telephone number:

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

State inmate have out standing 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


(Signature)

ACCT# 066691
NAME: FORTUNIS, SOLOMON D.
R.F.C. 30113U
PERIODACCT# 066691
TYPE: INMATE TRUST
FLORIDA DEPARTMENT OF CORRECTIONS
TRUST FUND ACCOUNT STATEMENT
FOR: 01/01/2023 - 06/01/202305/15/23
13:26:55
PAGE 1

POSTED DATE	NR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAVEE	+/-	AMOUNT	BALANCE
01/05/23	144	LEGAL POSTAGE W	2022122001	000			\$0.00	\$0.00
01/06/23	122	LEGAL POSTAGE W	2022122701	000			\$0.00	\$0.00
01/06/23	122	LIEN CREATED	- 01/06/2023	2022122701			\$0.00	\$0.00
01/09/23	185	LEGAL POSTAGE W	2023010401	000			\$0.00	\$0.00
01/20/23	161	LIEN CREATED	- 01/09/2023	2023010401			\$0.00	\$0.00
01/20/23	161	LIEN CREATED	- 01/20/2023	2023011001			\$0.00	\$0.00
01/20/23	161	LEGAL POSTAGE W	2023011002	000			\$0.00	\$0.00
01/20/23	161	LIEN CREATED	- 01/20/2023	2023011002			\$0.00	\$0.00
01/20/23	161	LEGAL POSTAGE W	2023011003	000			\$0.00	\$0.00
01/20/23	161	LIEN CREATED	- 01/20/2023	2023011003			\$0.00	\$0.00
01/20/23	161	LEGAL POSTAGE W	2023011004	000			\$0.00	\$0.00
01/20/23	161	LEGAL POSTAGE W	2023011004	000			\$0.00	\$0.00
01/25/23	281	LIEN CREATED	- 01/20/2023	2023011301			\$0.00	\$0.00
01/25/23	281	LEGAL POSTAGE W	2023012001	000			\$0.00	\$0.00
01/25/23	281	LIEN CREATED	- 01/25/2023	2023012001			\$0.00	\$0.00
01/25/23	281	LEGAL POSTAGE W	2023012002	000			\$0.00	\$0.00
01/25/23	281	LIEN CREATED	- 01/25/2023	2023012002			\$0.00	\$0.00
01/31/23	217	LIEN CREATED	- 01/25/2023	2023012003			\$0.00	\$0.00
02/15/23	140	LEGAL POSTAGE W	2023012601	000			\$0.00	\$0.00
02/15/23	140	LIEN CREATED	- 02/15/2023	2023012601			\$0.00	\$0.00
02/15/23	154	LEGAL POSTAGE W	2023020101	000			\$0.00	\$0.00
02/15/23	140	LEGAL POSTAGE W	2023020601	000			\$0.00	\$0.00
02/15/23	140	LIEN CREATED	- 02/15/2023	2023020601			\$0.00	\$0.00
04/06/23	154	LEGAL POSTAGE W	2023041301	000			\$0.00	\$0.00
04/17/23	219	LEGAL POSTAGE W	2023041201	000			\$0.00	\$0.00
04/17/23	219	LIEN CREATED	- 04/17/2023	2023041201			\$0.00	\$0.00
04/25/23	274	LEGAL POSTAGE W	2023042001	000			\$0.00	\$0.00
04/25/23	274	LEGAL POSTAGE W	2023042002	000			\$0.00	\$0.00
05/08/23	183	LIEN CREATED	- 04/25/2023	2023042002			\$0.00	\$0.00
05/08/23	183	LEGAL POSTAGE W	2023050201	000			\$0.00	\$0.00
		LIEN CREATED	- 05/08/2023	2023050201			\$0.00	\$0.00

ACCT NAME: ROBERTS, SOLOMON D.
B#D: 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	FA C	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
05/08/23	188	LEGAL POSTAGE W	2023050202	000		-		
05/26/23	112	LIEN CREATED	- 05/08/2023	2023050202			\$0.00	\$0.00
		LIEN PAYMENT	011122294010	000				
		FED PRISON LITI	- 09/30/2021	121CV20123JF		- (\$5.00)	\$5.00

DATE	LIEN	TYPE OF LIEN	LIEN FACT	AMOUNT OF LIEN	AMOUNT STILL OWED	ENDING BALANCE
SUMMARY	STATE PRISON LITIGATION	LEGAL POSTAGE		\$825.00	\$825.00	\$825.00
SUMMARY	FEDERAL PRISON LITIGATION	MEDICAL CO-PAYMENT		\$738.88	\$173.17	\$173.17
01/03/23	LEGAL POSTAGE			\$58.33	\$7.50	\$7.50
01/03/23	LEGAL POSTAGE			\$99.00	\$5.00	\$5.00
01/05/23	LEGAL POSTAGE			000	\$27.64	\$27.64
01/05/23	LEGAL POSTAGE			000	\$0.57	\$0.57
01/05/23	LEGAL POSTAGE			000	\$0.57	\$0.57
01/20/23	LEGAL POSTAGE			000	\$12.75	\$12.75
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
01/25/23	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	\$2.88
01/31/23	LEGAL POSTAGE			000	\$2.88	\$2.88
02/15/23	LEGAL POSTAGE			000	\$0.57	\$0.57
02/15/23	LEGAL POSTAGE			000	\$3.84	\$3.84
02/15/23	LEGAL POSTAGE			000	\$1.08	\$1.08
04/06/23	LEGAL POSTAGE			000	\$0.57	\$0.57
04/17/23	LEGAL POSTAGE			000	\$12.45	\$12.45
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: 888553/WILLIAMS, CHRISTOPHER
Inmate: 066691/ROBERTS, SOLOMON D.
06/17/2023 15:03

Begin Canteen Balance: 5.00
Receipt #: 321596

Item	Qty	Unit	Prc	\$	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		