

22-7484

No. 2012-CT-01574-SCT

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAR 31 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In Re Richard Chapman PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Richard Chapman
(Your Name)

P.O. Box 88550 Pearl, MS
(Address)

Pearl, Mississippi 39208
(City, State, Zip Code)

601-932-2580
(Phone Number)

1942

1942

1942

1942

1942

1942

1942

1942

1942

1942

1942

1942

QUESTIONS PRESENTED

1. Whether THE TRIAL COURT Abused its Authority When it Departed From The Appellate Court MAndate in Chapman 167 So 3d 1170?
2. Whether THE Appellate Court Abused its Authority when it Reexamined its own decision, when Nothing Changed in The Remedy of Chapman 167 So 3d 1170?
3. Whether The Appellate Court decision WAS Binding in the prior Appeal, And must Be Followed in the case?
4. Whether CHAPMAN is BARED under Mis Code Ann 99-39-5(2)?
5. Whether An unsigned Letter Found WAS enough evidence to contradict Chapman Claims?
6. Whether Chapman WAS entitled to An evidentiary hearing-to have his Claims Considered on The merits Based on The Located Record transcript?
7. Whether Chapman have been Deprived OF his Fundamental Constitutional Rights?
8. Whether Chapman is entitled to A new trial due TO The Incomplete Record-transcript?

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:

RELATED CASES

Pellener vs. Zweifel 987 F.2d 716
Lucky vs. Miller 929 F.2d
Plambina vs. Bailey 757 F.2d
Litman 825 F.2d at 1511
Robinson 690 F.2d 869 United State
Robinson vs. Parrish 720 F.2d 1548
Dorsey vs. Continental 730 F.2d 675
Casualty Co. 730 F.2d 675, 678
Conway vs. Chemical 644 F.2d 11059
West Books vs. Zant 743 F.2d 764
Heathcote vs. Potts 905 F.2d 367
Barber 841 F.2d 1067
United States vs. Williams 728 F.2d 1402
Baumer vs. United States 685 F.2d 1318
Wheeler 746 F.2d 1437
U.S. vs. Selva 559 F.2d 1303

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Clark vs. Fowler	61 Wash 2d, 211
Kennett vs. Yates	45 Wash 2d 35 272 p2d 122
Adarmson vs. Traylor	66 Wash Dec. 2d 328 402 p2d 499
STATE vs. VORI	129 Win 2d 416, 918 2d 905
Crury vs. Field	10 N.M 257 (1900)
Pellener vs. STATE	Zweifel 987 F. 2d 716
West Books vs. Zant	743 F. 2d 764
Luckey vs. Miller	929 F. 2d
Plambina vs. Bailey	757 F. 2d
Robinson vs. state	690 F. 2d 869
Litman vs. state	825 F. 2d at 1511
Rowland vs. state	42 So 3d 503, 507
U.S. vs. Silva	559 F 2d 1303
STATUTES AND RULES	Case LAW doctrine
	WASH Dec. 2d 328, 402 p. 2d 499
	Miss Code Ann 99-39-5(2)
	Court Reporter Act 28 U.S.C 753
	Fed R. App P. 10(e)

OTHER

United States vs. Alfonso	552 F. 2d 608
United States vs. Long	419 F. 2d 91
Addison vs. United State	317 F. 2d 808
Strauss vs. United State	311 F. 2d 926

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Suprem court order/12/10/2012
APPENDIX B	The unsigned court letter
APPENDIX C	District court order OCT 19 2016
APPENDIX D	Supreme court order AUGUST 09 2018
APPENDIX E	The DeFective Indictment T-94
APPENDIX F	

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

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 A to the petition and is

- ☒ reported at NO. 2012-CT-01574-SCT; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Hinds County District court appears at Appendix B to the petition and is

- ☒ reported at 25CIL: 12 CV-00297; 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 _____.

☐ 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 July 2, 2015.
A copy of that decision appears at Appendix A.

☐ 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 Fifth Amendment of The Constitution:

The state have Deprived Chapman of Life-liberty-
without due process of Law.

The state have subjected him to double Jeopardy.
his Indictment is Fatally defective.

The 14th Amendment of The Constitution

have been Violated by The State of Mississippi

Miss Code Ann 9-7-128 Are involved, Chapman

Records-transcript was destroyed in violation

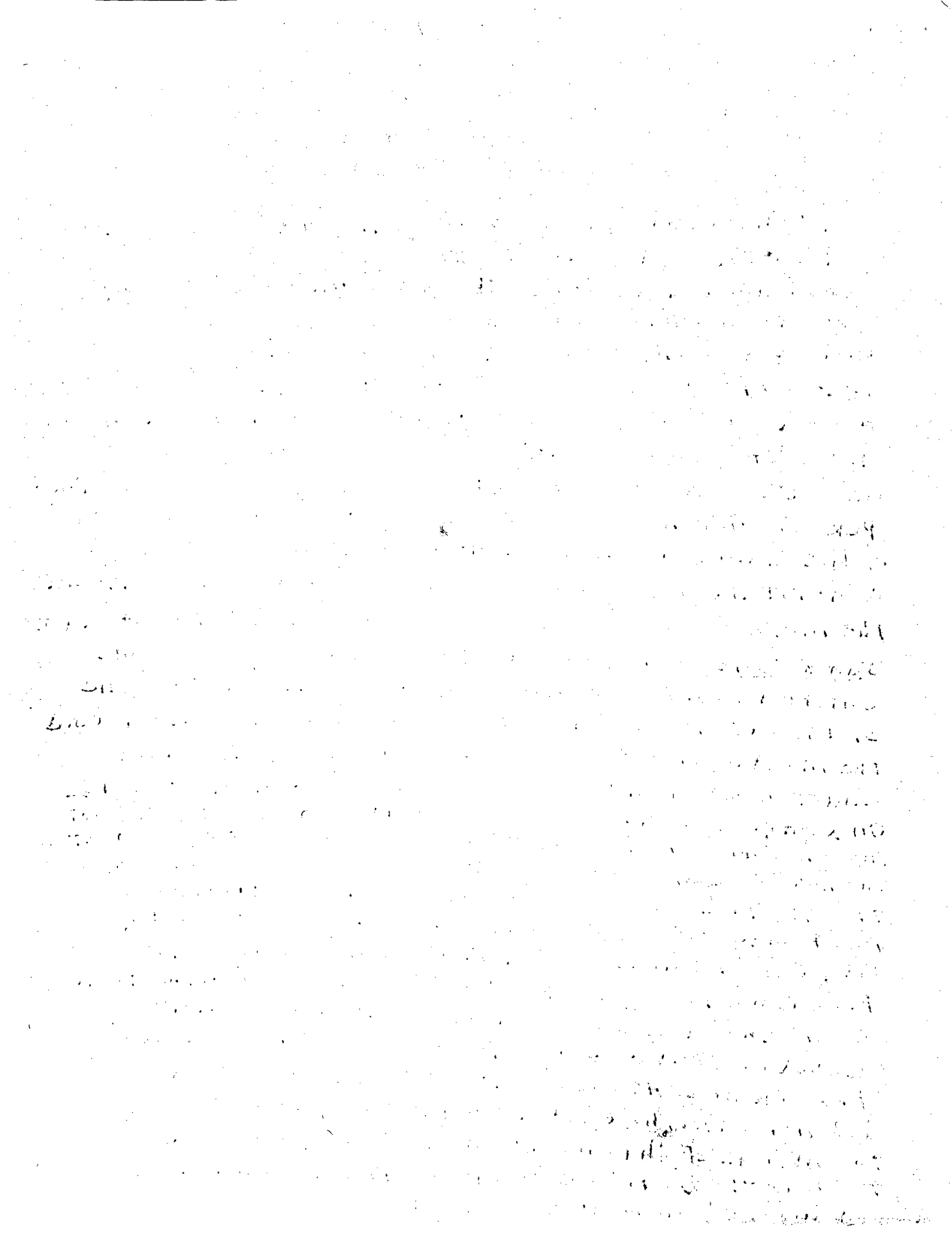
The state improperly destroyed all physical evidence
2 two years After his conviction

6th Amendment to The Constitution Are involved

Chapman was tried Sentenced by An all white
Jury in violation of Batson vs. Kentucky 476 U.S.

STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT

Richard Chapman AT The Tender Age OF (16) WAS tryed And convicted-Sentenced to Life imprisonment on or about MARCH (1982) He had An all white JURY The Victim WAS A white Female (27) years OF Age, Richard Chapman is A Black male. Richard Chapman is STILL incurrected From That conviction. He has never had A Direct Appeal through no apparent Fault OF his own. And his trial Record allegedly has been Destroyed while Chapman has Filed multiple motions For post conviction (PCR) no Appellate court has ever Addressed The merits OF his claims, despite potential violations OF his Constitutional Rights, Under These peculiar Circumstance, The mississippi Supreme court Found on writ OF CERTIORARI Jan 8, 2015 That in the intrest OF Justice Chapman WAS entitled to An evidentiary hearing, So That he And the STATE have An opportunity to Reconstruct his trial record. The mandate WAS ISSUED to The Hinds county District Court To Carry out The Supreme court ORDER Jan 8, 2015 On Remand The Supreme court Directed The District court That Chapman WAS intitled to An Evidentiary hearing, And at The hearing consistent with The Supreme court Opinion That the trial court should determine IF the trial Record And transcript EXIST, And IF NOT, whether An adequate equivalent can be reconstructed, And That IF, The trial court Locate The Record-transcript-Then The trial court should hear The merits OF Chapman Claims based on That Record. parts OF Chapman Record-transcript WAS Located, But The District court did not have The evidentiary hearing OR Consider The merits OF Chapman Claims Based on That Record Instead, The District court Found That An evidentiary hearing would be useless, And dismissed Chapman's



(2)

STATEMENT OF THE FACT OF THE
Case continue.

Claims AS Moot. But granted in part AN OUT OF TIME Appeal to Chapman. Thereafter, the Mississippi Supreme Court on the granted Appeal FOR OUT OF TIME, determined that Chapman WAS NOT entitled to AN OUT OF TIME Appeal. However, the issue is, the case WAS NOT whether Chapman should be granted AN OUT OF TIME Appeal IF the trial court located the Record-transcript, But ~~Chapman~~ on Remand by the Appellate Court, it told the District Court what it shall do, IF the Record-transcript WAS Located; "Chapman was entitled to An evidentiary hearing and to consider his claims on the merits Based on that Record." And That IF, the trial court determined that the Record-transcript does not exist OR An adequate equivalent can not be reconstructed, "Chapman should be given leave to File a motion For A new trial." See Chapman vs. State 167 So.3d 1170 (2015) Appendix A The mandate, Holding in Chapman is the LAW of the case, And no where in the order did the Appellate Court indicate that Chapman should be granted AN OUT OF TIME Appeal, And to dismiss the Rest of his claims AS moot. See Hinds county District Court ORDER At Appendix B trial court decision, "Chapman's trial Attorney is dead, And it would be useless to conduct An evidentiary hearing, And I find it Appropriate to grant him AN OUT OF TIME Appeal, And dismiss the Rest of his claims AS Moot."

Continued statement of the
case page (3)

The LAW OF the case: An Appellate decision binds all subsequent proceeding in the same case not only as to explicit ruling but also, as to issue decided necessarily by implication on the prior appeal. Accordingly a District Court when acting under an Appellate court mandate can not vary it or examine it for any other purpose than execution of the mandate. The settled circuit LAW obligates a District Court to follow the mandate: Citing Pellener v. S. Zweifel 987 F.2d 716. When the District Court granted Chapman the out of time appeal it was not free to deviate from the Appellate court mandate, which constitute abuse of discretion and deprives Chapman of due process. The District Court contravened the Holding in Chapman 167 So.3d 1170 of prior opinion of the Appellate court, and failed to follow the LAW OF the case, thus, "once a case has been decided on appeal, the rule adopted is to be applied, right or wrong absent exceptional circumstance". Nothing changed in Chapman 167 So.3d and the case LAW doctrine generally operates to preclude a reexamination of issues decided upon appeal, either by district court on remand or by Appellate court itself upon subsequent appeal. Citing Westbrook v. Zant 743 F.2d 764

THE
OFFICE OF THE
SHERIFF
COUNTY OF
SHERBORN
MASSACHUSETTS
IN SENATE
JANUARY 1891
REPORT
OF THE
SHERIFF
FOR THE
YEAR
1890
AND
FOR THE
FIRST
THREE
MONTHS
OF
1891
BY
J. W. BROWN
SHERIFF
OF THE
COUNTY
OF
SHERBORN
MASSACHUSETTS
PUBLISHED
BY
THE
SHERIFF
AT
SHERBORN
MASSACHUSETTS
1891

(41)

The doctrine purpose is to bring an end to litigation, also to protect against the agitation of settled issues and assures obedience of lower courts to the decision of appellate courts. With these principles in mind the court concluded that the district court exceeded its authority on remand since its opinion was inconsistent and disregards the law of the case established. It goes without saying, on remand a district court is not free to deviate from the appellate court's mandate, as it did in Chapman 167 So 3d 1170 and not to assert jurisdiction over matters outside the scope of a limited mandate which constitutes abuse of discretion. Citing Pellener vs. Zweifel 987 F.2d 716; Luckey vs. Miller 929 F.2d; Plambina vs. Bailey 757 F.2d; Litman 825 F.2d at 1511. Plaintiff asserts that when the district court circumvented the law of the case and exceeded the mandate in Chapman 167 So 3d 1170 the United States court in Robinson 690 F.2d 869 the court stated, under the law of the case doctrine, both the district court and the appellate court generally are bound by finding of fact and conclusion of law made by the court of appeal of the same case. Forget not, that nothing changed in Chapman case on remand.

(5)

Except That The District Court WAS Able to Locate parts OF The Record-transcript, And WAS ordered to have An evidentiary hearing, And to hear Chapman Claims based on That Record, And it did not Follow the mandate; decided to grant Chapman An out OF Time Appeal something That The Appellate Court now says That Chapman is not entitled to, But The Appellate Court went on to hear Chapman Claims, stating, "we have enough OF The Record-transcript to hear Chapman Claims." Contrary to its own decision In Chapman 167 So.3d In This Regards, The Appellate Court is in error And Abused its Authority because:

1. Substantially there WAS no new trial proceeding OF different evidence.
2. Controlling Authority has not made a contrary decision OF The LAW Applicable to The issue.
3. The prior decision in Chapman 167 So.3d 1176 WAS not Clearly erroneous, And could not have worked A manifest in Justice.

Thus, The Mississippi Supreme Court had Already Ruled in Chapman on writ OF CERITORIAL saying, He has never had A direct Appeal through no Apparent Fault OF his own, And That no Appellate Court has ever Addressed The merits OF his claims, despite potential Violation OF his constitutional Rights, under these

(6)

peculiar Circumstance, "We Find that, in the Interests of Justice, Chapman is entitled to An evidentiary hearing". It goes on to say, IF Chapman or The state can Locate The Record-transcript then The Judge shall Fairly consider his Claims based on That Record. A transcript-Record WAS located, But no evidentiary hearing Conducted, Chapman Claims WAS not heard on The merits-Based on That Record.

Among Chapman issue, Chapman alleges That his Attorney WAS ineffective at trial For Failing to call An alibi ~~was~~ witness, That there WAS a Batson Violation, That his Indictment WAS Faulty, That The state improperly destroyed all physical evidence after his conviction That his sentence is ILLEGAL, And That the verdict WAS against the Sufficiency And weight OF The evidence, Chapman Claimed the STATE Failed to establish any link between him And the physical evidence OF The crime Specifically semen And hair taken From The victim. Chapman Claims his Jury WAS An all white jury That the state committed A Batson Violation, But the state dose not have A Record OF the jury OR OF Whom the jury Were, NOR The sentencing Record By the court. And The District court WAS In error to pass on the merits without Following the mandate.

(7) It should be pointed out to this court, that no where in the Supreme Court order did it say that Chapman should be granted An out of Time Appeal, But Rather the District Judge ER decision.

Now see Appendix D, en banc Beam J. held:

(1) That, "defendant WAS not entitled to out of time Appeal." But this court went on to hear the claims And Ruled on the merits, citing MISS code Ann 99-39-5(2). But this court had Already considered in it prior decision in Chapman 167 So 3d 1170 See page (7)

Line (13) Additional in Rowland vs. STATE, this court held "errors affecting Fundamental Constitutional Rights are excepted From the procedural bars of the uniform post-conviction Relief Act (UPCRA) And courts have no discretion in this regards", Rowland vs. State 42 So 3d 503, 507 miss 2010, Accordingly, we take, And Find The ~~trial~~ Court erred in affirming the trial Courts Judgment we Find the trial Court erred in Ruling Chapman's current PCR motion procedurally Barred, Chapman raise credible allegation affecting Fundamental Constitutional rights, which are excepted From the PCR statutory bars, including The statute of limitations Found in (UPCRA) Rowland 42 So 3d at 506-07 "we take this opportunity to hold unequivocally. That errors affecting Fundamental rights are excepted From the procedural bars of the (UPCRA) including the statutes time bars", See Also, Bevill vs. State 669 So 2d 14, 17 (miss 1996)

(8)

Now see Appendix C - Judge Jeff Wells decision, Chapman claims,

"would have been most appropriately raised on direct appeal, such as a Batson violation.

Faulty indictment and ineffective assistance of counsel. Among others, Chapman also

makes an implicit request for an out of time appeal, citing within his amended

motion, "that his trial counsel stated in open court at the sentencing hearing

that he intended to appeal this conviction, but failed to do so." (However, this issue

was already considered by the Supreme Court.) See Appendix C. His county court response.

See page no(3): The Mississippi Supreme Court has further held that an evidentially

hearing is necessary when a record contains no indication that an attorney responded

to his clients request to appeal. However, a hearing is not necessary, the judge say,

where the record contains letters from trial counsel that provides documentally

evidence sufficient to contradict an Affidavit submitted by one who seeks

post conviction relief. Here there is no letter from the attorney. next

the judge says, additionally, the only document the undersigned could locate

in the court files that contains any reference to an appeal is unsigned

(9)

Copy of A letter to Chapman From The Honorable William F. Coleman, which states that, ⁶⁶ "The Court Administrator check with Mr. Johnson, your Attorney, And (He) Advised that it was part of The plea bargaining Agreement on the Robbery charged that you would not Appeal the rape charge", "I have no way of knowing if this is correct or not." See Exhibit (B) The Letter, not by The Attorney. But Rather hearsay, no evidence.

The Judge goes on to say, ⁶⁶ "Therefore, in the case sub Judice, The record does not contain Adequate evidence to contradict Chapman's Claims. However, The undersigned Finds that An evidentiary hearing would be useless" As Chapman's trial counsel is deceased.

⁶⁶ "Accordingly, The undersigned Finds it appropriate to grant Chapman's request For An out of time Appeal, made within his original And supplemental motion For post conviction, And by granting The out of time Appeal, The undersigned dismisses The remaining claims made within The instant motion AS Moot." Depriving Chapman OF Due-process, Departing From The mandate order in Chapman 167 So.3d 1170

REASONS FOR GRANTING THE PETITION

1. The District court have made A decision that is Contrary TO The decision OF An Appellate court on Remend in Away that Deprives petitioners OF his Due-process. The state courts have decided An Important question OF Federal Law in Away that Conflicts with relevant decision OF this court.
2. The Appellate Court have Departed From Its Own decision When nothing Changed In the case, And the LAW OF the case doctrine percludes A Reexamination OF The issues Which WAS decided on Appeal, And that Chapman is not Bared by the courts.
3. Chapman Vs. State 167 So 3d. 1170 is The LAW OF the case, And Must be Followed
4. A Manifest inJustice have been Imposed On Chapman, He have been Deprived OF Fundamental Constitutional Rights In Away that Conflicts With the interest OF Justice - Equal protection OF the LAWS.
5. This court is called upon to CORRECT The Constitutional Violations That has taken place on Chapman by the error decisions From The MISSISSIPPI State Courts, When the error consists OF ERRONEOUS Factual Finding.

Continued page For Granting
The Writ

Most compelling in this case is that on the
ERR granted out of time Appeal Chapman
new trial Attorney was not able to bring
up his argument where constitutionality of
jury pools was at issue, specifically the
Record contains no transcript of the jury
which found Chapman guilty. Citing the
Court Reporters Act 28 U.S.C. 753, and Chapman
is prejudiced because his new trial Attorney
does not have the opportunity to examine
a transcript, neither does the District Court
or the Appellate Court, and nothing had been
made to supplement the missing Record, this
ERR in itself, constitute a new trial see Fed
R. App P. 10(c), Before passing on the merits
of an Appeal while retaining jurisdiction
the Appellate Court remanded this case to the
District Court for the limited purpose of
locating Chapman Record-transcript of the
proceedings, and to grant him an evidentiary
hearing, and to consider his claims based on
that Record if such was found; if not, to
grant Chapman a new trial. Chapman 167 So 3d 1170
Failure of the District Court to follow this
mandate prejudice Chapman, and deprived him
of due-process - visits a hardship upon him and
his Appeal. Citing United States vs. Alfonso 552 F.2d
605, United States vs. Long 419 F.2d 91;
Addison vs. United State 317 F.2d 808
Strauss vs. United States 311 F.2d 926

Reason For not making
Further Application to The
district court of The district
in which petitioner is held:

(1) my court appointed Attorney phoned me
Five (5) Months Later of The Supreme Court
Ruling stating, "MR. Chapman, I Attempted
to File your out of Time Appeal, But sad
to inform you that the court have decided
to dismiss your case, And they have the
power to do that, And that your case is
Barred, And there is nothing more I can
do." The petition Attorney misinformed
him about the case, did not tell petitioner
that he could seek other remedy, such as
Habeas Corpus - extraordinary writs or that
I had a right to do so. And Attorney Abandonment.

Exceptional Circumstance
Warrant the exercise of this
court's discretionary powers

(2)

Your petitioner constitutional Rights
have been violated. The District have decided
the Appellate Court Mandate contrary to the case
Law, And the Supreme Court is in error and have
abused its powers by deciding its own decision
far closing legal doors on petitioner.

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Richard Chapman

Date: April 24, 2023

William C. Brown
1891