

No. 22-7710

ORIGINAL

Supreme Court, U.S. FILED FEB 09 2023 OFFICE OF THE CLERK
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IN THE  
SUPREME COURT OF THE UNITED STATES

Michael Walker — PETITIONER  
(Your Name)

vs.

Supt, Benner, Etal — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURTS OF APPEALS FOR THE THIRD CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Walker  
(Your Name)

P.O. Box 33028 301 institution Drive.  
(Address)

Bellefonte PA 16823  
(City, State, Zip Code)

N/A  
(Phone Number)

- 1) THE SUPREME COURT STATED THAT THE PETITIONER MUST "SUPPORT HIS CLAIMS OF CONSTITUTIONAL ERROR WITH NEW RELIABLE EVIDENCE."
- 2) ~~IF~~ PETITIONER, HAD SUBMITTED A UNTIMELY PETITION, OF NEW RELIABLE EVIDENCE <sup>WHICH</sup> SHOULD BE EXCUSED ONLY IF PETITIONER MAKES A CREDIBLE SHOWING? SEE. REEVES V. FAYETTE SC1, 897 F.3d 154, 164 (3d CIR 2018).

Number  
(2)

## 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:

All parties

## RELATED CASES

Reeves v. Coleman, No. 3-14-CV-01500, U.S. District Court  
For The middle District of PA.

Reeves v. Fayette SCI, 897 F.3d 154; 2018 U.S. APP. LEXIS  
20364 vacated by Reeves v. SCI, 2018 U.S. APP. LEXIS 21600  
(3d cir. PA, July 25, 2018)

Satterfield v. Dist. Atty Phila., 872 F.3d 152, (3d cir 2017)

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

(3)

Holland v. Florida, 560 U.S. 631, 649  
(2010), see also McQuiggin v. Perkins, 569 U.S. 383,  
392-398 (2013); (See also) Reeves v. Fayette SC I, 897  
F.3d 154, 164 (3d Cir. 2018). (Pabon v. Mahaney, 654 F.3d  
385, 392 (3d Cir. 2011) (Slack v. McDaniel, 529 U.S. At  
478) See also Slack v. McDaniel 529 U.S. 473, 484 (2000)  
See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)

### STATUTES AND RULES

28 U.S.C. § 2254, 28 U.S.C. § 2244(d)(1)(2),  
28 U.S.C. § 2244(d)(1)(B)-(D), 28 U.S.C. § 2244  
(d)(1)(A), ("5 Id. At 392-93) Rule 60(b)(6)

### OTHER

Schlup, 513 U.S. at 324, 10 indeed, "the  
conviction of an innocent person is perhaps the most  
grievous mistake our judicial system can commit," and  
thus, the contours of the actual innocence gateway must be  
determined with consideration for correcting "such an affront to liberty."

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 ~~(3012)~~ <sup>(NO. 12)</sup> to the petition and is ~~22-2693~~ <sup>Documents</sup> ~~22-2693~~  
[ ☒ reported at (DOC. NO. 12) / (DOC. NO. 14) ]; 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 NO. 12 to the petition and is  
[ ☒ reported at NO. 22-2693 (3rd Cir) / (DOC. NO. 12) / (NO. 14) ]; 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 ~~19-2832~~ <sup>19-2832</sup> to the petition and is ~~19-2832~~ <sup>Documents (NO. 30)</sup>  
[ ☒ reported at E.D. PA, CIV. NO. 5-19-CV-02832 ]; or, <sup>(NO. 31)</sup>  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

E.D. P.A. CIV. NO. 5-19-CV-02832 (NO. 26) (NO. 28)  
~~SUPREME COURT~~ <sup>Documents (NO. 30) (NO. 31)</sup>  
The opinion of the ~~Supreme Court~~ <sup>court</sup> appears at Appendix ~~19-2832~~ <sup>19-2832</sup> to the petition and is ~~Documents~~  
[ ☒ reported at (NO. 28) / (NO. 18, P-7-16) / (NO. 19) / (NO. 24) ]; 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 JANUARY 04, 2023.

☐ 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: 01/31/23/NO. 14, and a copy of the order denying rehearing appears at Appendix NO. 14.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

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

28 U.S.C. § 2254, 28 U.S.C. § 2244(d)(1)-(2), 28 U.S.C. § 2244(d)(1)(B)-(D),

☒ For cases from state courts:

The date on which the highest state court decided my case was (NO. 33/NO. 37). A copy of that decision appears at Appendix NO. 39.

☒ A timely petition for rehearing was thereafter denied on the following date: 01/31/23 ~~indicated DO (NO. 31)~~, and a copy of the order denying rehearing appears at Appendix NO. 39. 01/31/23 Page 1 of 1  
NO. 39

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

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

Discretionary Review was Denied on July 7, 2016

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Reeves v. Fayette, SCt, 897 F.3d 154, 164 (3d Cir. 2018)

Pabon v. Mahanoy, 654 F.3d 385, 392 (3d Cir. 2011)

Slack v. McDaniel, 529 U.S. At 478) See also Slack v.

McDaniel 529 U.S. 473, 484 (2000) See Miller-

El v. Cockrell, 537 U.S. 322, 327 (2003) McQuiggin v.

Perkins, 569 U.S. 383, 392, 398 (2013)

28 U.S.C. § 2254, 28 U.S.C. § 2244 (d)

(1) - (2), 28 U.S.C. § 2244 (d) (1) (B) - (D),

28 U.S.C. § 2244 (d) (1) (A), Rule 60(b) 6

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APPENDIX B	Decision of State Trial Court July 2, 2018 Denied Review
APPENDIX C	Decision of the U.S. District Court (Doc. 30) indication of Date in (Doc NO. 31)
APPENDIX D	(01/31/23 DOC NO. 39) (8-22-22)
APPENDIX E	Decision of the U.S. District Court (Doc. 18 P. 7-16) (Doc. 19) (Doc. 28) (NO. 30) (NO. 31)
APPENDIX F	Newly Discovered Evidence For the Following Reason To Determine the Merits of the Petition, in accordance to (Doc. 28) Should be granted on the grounds of the merits of the Claims, <del>the</del> Petitioner, believes that he made a credible Showing although the Petition is untimely, AN, the limitations period should be Equitably tolled and Excused based on Actual innocence.



## STATEMENT OF THE CASE

- 1) IN Effective assistance OF Trial Counsel, Failure To call LPN, Susan E. MECHLING to testify At Petitioner's pre-trial Hearing and At His trial, AS The introduction OF The medical Records violated Petitioner's Sixth Amendment OF Right To confrontation. (Exhibit A.)
- 2) IN Effective assistance OF trial Counsel, IN Effectiveness OF trial counsel, FOR providing ERRONEOUS Advice concerning Petitioner's Right to testify.
- 3) IN Effectiveness OF Trial Counsel Failure To challenge Simpskins, Credibility At Petitioner's trial, To Attack Simpskins on his inconsistencies OF statements as impeachment Evidence.
- 4) IN Effective assistance OF trial Counsel who Refused To investigate And Present Evidence OF A Letter (Exhibit 85), Written By the Co-Defendant Mark Ellis And Furnished To His Son Brandon Simpskins.
- 5) IN Effectiveness OF Trial Counsel Failure To challenge The DNA Evidence (Exhibit 84) From Mark ELLIS Trial.
- 6) IN Effectiveness OF Trial Counsel Failed To Attack The credibility At Petitioner's trial, impeachment Evidence OF Simpskins, AN Ellis, Corroborated Statements OF testimony that they were to kill A second person, the Petitioner.
- 7) IN Effective assistance OF Trial Counsel an, PCRA Counsel Failing To Raise these issues on Direct Appeal.
- 8) Provided constitutionally IN Effective assistance OF Appellate Counsel by Refusing To Raise the courts Plain ERROR. OF entering and order OF Conviction without Subject-matter Jurisdiction, IN Mr. Walkers Direct Appeal. 2254 COURT, District Attorney John T. Adams OF Berks County, U.S. COURT OF appeals refused to Determine the merits OF the claim,

## REASONS FOR GRANTING THE PETITION

See *PAbon v. MAHANAY*, 654 F.3d 385, 392 (3rd Cir 2011) (When A District Court Denies A habeas Petition on procedural grounds without reaching the merits of the underlying Constitutional claim, as here, A COA MAY issue only if the Petitioner shows that, (1) Jurists of Reason would Find it Debatable whether the District court was correct in its procedural ruling; and (2) Jurists of Reason would Find it Debatable whether the Petition States A valid claim of the Denial of A Constitutional Right.) (Citing *Slack v. McDaniels*, 529 U.S. At 478). See also *Slack v. McDaniels* 529 U.S. 473, 484 (2000) (Where the District Court has Denied Federal habeas Relief on the merits, a C.O.A. will Not issue unless the Petitioner can Demonstrate that "reasonable Jurists would Find the District court's assessment of the Constitutional Debatable or wrong"). See *Miller-El v. Cockrell* 537 U.S. 322, 327 (2003) (Citing *Slack v. McDaniels*, 529 U.S. At 484) (this Standard can be Satisfied where "Jurists of Reason could Disagree with the District Court's Resolution of his Constitutional claims or that Jurists could conclude the issues Presented Are adequate to Deserve Encouragement to Proceed Further").

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Walker

Date: 5-08-23