No. 23-5155



**IN THE**
**SUPREME COURT OF THE UNITED STATES**

JEREMIAH LYLE VAN TASSEL — PETITIONER

VS.

SUPERINTENDENT ALBION— RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

**JEREMIAH L. VAN TASSEL NL 0329**
**ALBION SCI 10745 ROUTE 18**
**ALBION, PA. 16475**

**N/A**
(Phone Number)

## QUESTION(S) PRESENTED

**Does fraud upon the court trigger equitable tolling?**

**Would jurists of reason all agree that Petitioner procedurally defaulted in re the time limits under AEDPA?**

**Was the Petitioner deprived of due process by prosecutorial vouching?**

## LIST OF PARTIES

[X ] 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

**N/A**

## TABLE OF CONTENTS



## INDEX TO APPENDICES



## TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

## 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 A** to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or, [**X** ] is unpublished.

The opinion of the United States district court appears at **Appendix B** 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[ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.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 ___ 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[ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.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 _____ court appears ___ to the petition and is at Appendix _____; or,
[ ] reported at
[ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

## 1.
## JURISDICTION

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

The date on which the United States Court of Appeals decided my case was **May 9, 2023**

[X ] 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 rehe~~aring 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 _____ .
A copy of that decision appears at Appendix _____ .

[ ] 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

**Fifth Amendment Due Process of Law**

**28 U.S.C. § 2254**

**(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.**

**(b)**

**(1) *An application for a writ of habeas corpus on behalf of a person in custody* pursuant to the judgment of a State court shall not be granted unless it appears that—**

**(A) the applicant has exhausted the remedies available in the courts of the State; or**

**(B)**

**(i)there is an absence of available State corrective process; or**

**(ii)circumstances exist that render such process ineffective to protect the rights of the applicant.**

**(2) *An application for a writ of habeas corpus may be denied on the merits,* notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.**

**(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.**

**(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.**

**(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—**

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2)If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A)the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

**(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.**

**(i) *The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.***

## STATEMENT OF THE CASE

**Petitioner was the victim of an avalanche of prosecutorial vouching for her main**

**witness. That vouching took place as follows:**

**IN THE UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF PENNSYLVANIA**

**Affidavit of Jeremiah Van Tassel**

**I, Defendant Jeremiah Van Tassel, do affirm that the facts in this statement is true and correct to the best of my knowledge and belief. Petitioner has not submitted the trial transcript that this affidavit refers as the transcript is several hundred pages long but will do so willingly if given an evidentiary hearing.**

**That Ass't D.A. Ms. Elizabeth Hirz (hereinafter Hirz) vouched for the State's witness numerous times as reflected in the transcript..**

**Day Three, page 44, lines 15- 25. Hirz is clear that this is a matter of who the Jury believes. No evidence is necessary.**

**Page 45, line one. Hirz seems to immediately start vouching for the witness. Line 5- 6, Hirz does this in no uncertain terms. On lines 13, and 15- 18, Hirz speaks on what makes someone "credible". On lines 20- 25, Hirz restates witness testimony and, in so doing, vouches for three separate circumstances of the witness' testimony.**

**Page 46, line 3. Hirz seeks to discredit Defendant with her opinion. On lines 7- 14, three more circumstances are restated. Line 15 has Hirz clearly vouching for her witness. Lines 17- 24 has Hirz restating three more circumstances and seeking to discredit Defendant with her opinion of what did or did not happen.**

**Page 47, lines 1- 3, Hirz restates witness testimony. Line 4 is vouching for witness and lines 5- 8 is more restating. Lines 9-13 Hirz vouches twice more. Lines 14-16 more restating. Line 17, vouching. Line 20, seeking to mislead the Jury as I do not recall ever calling prosecution witness Tayla "naïve". In fact, the very opposite is true. Line 22- 23 and 25 has more vouching.**

**Page 48 is nothing but vouching, vouching by restating testimony and adding the opinion of Hirz.**

**Page 49, lines 1- 8. These are Hirz opinions, not facts. Lines 19- 25 misleads the Jury as to what Tayla knew could happen,**

**Page 50, lines 2- 14, 18 & 21- 22 are merely Hirz' opinions.**

**Page 51, lines 1, Here Hirz changes the testimony of Jean Vanallsburg to mislead. Lines 5- 6 is more vouching. Lines 13- 16 is Hirz offering her opinion as if it was Tayla's Testimony, in another attempt to mislead the jury.**

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**Day Three (3)**

**Pg 45, line 1, 5-6, 13, 15- 18, 20-25**

**Pg 46, line 3, 7-9, 10- 14, 15, 17- 24**

**Pg 47, lines 1- 3, 4, 5-8, 9- 13, 14- 16, 17, 20, 22-23, 25**

**Pg 48: The entire page**

**Pg 49, lines 1- 8 are opinions, 19- 25 misleading as to what Tayla knew**

**Pg 50, lines 2- 14, 18, 21- 22**

**Pg 51, line 1, 5- 6, 13- 16**

**Pg 53, lines 100- 11**

**Pg 54, Lines 2- 3, 12, 15**

**Pg 55, lines 11- 12, 18-19**

**Pg 60, lines 2- 3, 7, 13-14, 21, 24**

**Pg 61, lines 3- 7, 11-14**

**Pg 63, line 9**

**Pg 64, lines 6- 7**

**Pg 65, Line 5**

**Pg 67, lines 24- 25**

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**Pg 53, lines 10- 11, clear vouching**

**Pg 54, lines 2- 3, 12, 15, more vouching**

**Pg 55, lines 11- 12, 18-19**

**Pg 60, Lines 2- 3, 7, 13- 14, 21, 24 Hirz seeking to enflame and mislead while calling me a liar**

**Pg 61, lines 3- 7, 11- 14 Inflammatory comments**

**Pg 63, line 9 Changing testimony to enflame the jury**

**Pg 64, lines 6- 7, more vouching**

**Pg 66, line 5, more inflammatory comments**

**Pg 67, Hirz' opinion, not what Tayla said.**

**Hirz' closing argument is filled with vouching for her witness, Hirz' opinions inflammatory comments about the Defendant and stating things Hirz knew did not happen or where said to mislead the Jury.**

**/s/ Jeremiah Van Tassel**

**Sworn to under penalty of perjury 28 U.S.C. § 1746**

**The lower courts then held that Petitioner "procedurally defaulted" under AEDPA. See Appendix B..**

**The Pennsylvania state courts simply 'swept him under the rug'.**

Certificate of Appealability

Jurists of reason would not find it debatable?

ju·rist

/jʊ̈ə əst/

*noun*

1. an expert in or writer on law.

a lawyer or a judge.

https://www.google.com/search?q=jurist+definition&oq=jurist+definition&aqs=chrome.0.69i59j0i512j0i22i30l2j0i15i22i30l6.4971j1j15&sourceid=chrome&ie=UTF-8

Apparently someone in the Erie County District Attorney's Office is not a jurist of reason. Page two, paragraph three, Magistrate's Report and Recommendation.

## REASONS FOR GRANTING THE PETITION

**Justice Sotomayor spelled it out quite clearly.**

**Unless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down. A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction. See *Buck*, 580 U. S., at ——, 137 S.Ct., at 773; *Miller-El*, 537 U.S. at 336–337, 123 S.Ct. 1029. A district court might fail to recognize that reasonable minds could differ. Or, worse, the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp, especially for *pro se* litigants. We have periodically had to remind lower courts not to unduly restrict this pathway to appellate review. See, *e.g.*, *Tharpe* v. *Sellers*, 583 U. S. ——, 138 S.Ct. 545, 199 L.Ed.2d 424 (2018) (*per curiam*); *Buck*, 580 U. S. ——, 137 S.Ct. 759, 197 L.Ed.2d 1; *Tennard v. Dretke*, 542 U.S. 274, 124 S.Ct. 2562, 159 L.Ed.2d 384 (2004).**

**This case provides an illustration of what can be lost when COA review becomes hasty. It is not without complications: There may be good arguments, yet unexplored, why McGee's claim may fall short of meeting AEDPA's strict requirements. See § 2254(d). And of course, even a finding that McGee's constitutional rights clearly were violated would not necessarily imply that he is innocent of the serious crimes of which he was convicted; McGee could be reconvicted after a fairer proceeding. See *Kyles*, 514 U.S. at 434–435, 115 S.Ct. 1555. But the weighty question whether McGee is "in custody in violation of the Constitution," § 2254(a), appears to have gotten short shrift here. With a lifetime of lost liberty hanging in the balance, this claim was ill suited to snap judgment.**

***McGee v. McFadden*, 139 S. Ct. 2608, 2611-12 (2019)**

**As did a member of the deciding panel in a Third Circuit case.**

**Given the nature and frequency of the transgressions that occurred during this trial I am concerned that one reading the majority opinion may conclude that we simply put on blinders, ignored the dictates of fundamental fairness and the Supreme Court's pronouncements in Young, got out a rubber stamp, and stamped this conviction and the denial of Werts' petition, "affirmed." Moreover, I fear that if Werts is not entitled to habeas relief, there is precious little left of the "Great Writ." Our failure to grant relief in the face of this record licenses the very kind of misconduct that we continually purport to condemn. We are vindicating the misconduct by allowing this verdict to stand. Although Werts may not be able to establish that a denial of due process resulted from any one of the asserted grounds for error, the aggregate of what happened in context with the government's evidence is what we must consider.**

**"Our review of a prosecutor's conduct in a state trial on application for a writ of habeas corpus is limited to determining whether the prosecution's conduct so infect[ed] the trial with unfairness as to make the resulting conviction a denial of due process." Ramseur, 983 F.2d at 1239 (citing Greer v. Miller, 483 U.S. 756, 765) (internal quotations omitted). The district court clearly erred in denying Werts' petition without even addressing his due process claim, and we are placing the final nail in that error by affirming the district court's judgment. This case clearly establishes a violation of the fundamental fairness that is the bedrock of the due process of law that ought to be afforded everyone in a criminal trial, Brecht v. Abrahamson, 507 U.S. 619, 633 (1993). Accordingly, I must forcefully, but respectfully, dissent.**

***Werts v. Vaughn*, 228 F.3d 178, 224 (3d Cir. 2000)**

**That 'rubberstamp' was applied in this case.**

**The request for a certificate of appealability is denied. *See Slack v. McDaniel*, 529 U.S. 473, 478 (2000). For substantially the reasons stated by the District Court, VanTassel has failed to show that jurists of reason would debate that his 28 U.S.C. § 2254 petition was untimely filed. *See* 28 U.S.C. § 2244(d)(1)–(2). VanTassel has not shown that he qualifies for equitable tolling, *see Holland v. Florida*, 560 U.S. 631, 649 (2010), or relief under the innocence exception to the statute of limitations, *see McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).**

**It appears that this was a 'form letter' denial of Petitioner's grievance, used in hundreds if not thousands of other cases. Note especially "jurists of reason":**

**Certificate of Appealability**

**Jurists of reason would not find it debatable?**

**ju·rist**

**/jo͝orist**

***noun***

1. **an expert in or writer on law.**
    - **NORTH AMERICAN**

**a lawyer or a judge.**

**https://www.google.com/search?q=jurist+definition&oq=jurist+definition&aqs=chrome.0.69i59j0i512j0i22i30l2j0i15i22i30l6.4971j1j15&sourceid=chrome&ie=UTF-8**

**Apparently someone in the Erie County District Attorney's Office is not a jurist of reason. Page two, paragraph three, Magistrate's Report and Recommendation.**

**This Court should also consider docket entries in 1:21-cv-172, Petitioner's objection to District Attorney's response, attached hereto.**

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeremiah Van Tassel
ND 0329
Institution
P.O. Box 33028
Saint Petersburg. Fla.
33733

Date: June 30, 2023