No. 23-5280

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT A. GRIFFIN - PETITIONER

vs.

WARDEN-KIRKPATRICK - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

(NAME OF COURT THAT LAST RULE ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert A. Griffin

(Your Name)

354 Hunter Street

(Address)

Ossining, New York, 10562

(City, State, Zip Code)

914-941-0108

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1) WHETHER MR. GRIFFIN IS ENTITLED TO A COA BECAUSE JURISTS OF REASON WOULD FIND THE DISTRICT COURT'S RULING ON MR. GRIFFIN'S FEDERAL RULE 60(b)(6) MOTION DEBATABLE OR WRONG TO NOT REOPEN HABEAS CORPUS, AFTER 10 YEARS, UNDER THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT(AEDPA), AND, IF SO, WHETHER THE DISTRICT COURT PROPERLY DENIED PETITIONER'S CONTENTIONS THAT HE'S ENTITLED TO EQUITABLE TOLLING AGAINST AN UNTIMELY PETITION AND PROCEDURAL BAR RULINGS BASED ON UNIQUELY EXTRAORDINARY CIRCUMSTANCES AND EXTREME HARDSHIP IN PURSUING RIGHTS DILIGENTLY, ALBEIT IN THE WRONG FORUM, REDRESS INITIAL JUDICIAL ERRORS ON HABEAS CORPUS AJUDICATION, RESOLVE A CONFLICT OF INTEREST OF TRIAL COUNSEL, INEFFECTIVE ASSISTANCE OF BOTH TRIAL & APPELLATE COUNSELS, AND THE EXTREME & OUTRAGEUS GOVERNMENT MISCONDUCT OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN PROMOTIONG INFORMANTS, THROUGHOUT ENTIRE TIME OF PETITIONER'S INCARCERATION, BY DOCCS EMPLOYEES, ON ISSUANCE OF CERTIFICATE OF APPEALIBILITY TO REVIEW MERITS?

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

PEOPLE V. GRIFFIN, 41 A.D. 3D 1285 (4TH DEPT. 2007)("history of (28)")

GRIFFIN V. KIRKPATRICK, WENDE CORRECTIONAL FACILITY, RESPONDENT, 2010 WL 5185420, DOCKET #08-CV-0886T, DEC. 14, 2010

GRIFFIN V. KIRKPATRICK, WENDE CORRECTIONAL FACILITY, RESPONDENT, 2022 WL 2758003

GRIFFIN V. KIRKPATRICK, WENDE CORRECTIONAL FACILITY, RESPONDENT, 2022 WL 2207178

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTORARI

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 & B** 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 **C & D** to the petition and is

[**X**] reported at Griffin v. Kirkpatrick, 2022 WL 2758003 & WL 2207178; 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 at Appendix __ to the petition and is

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[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was January 6th, 2023

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 27th, 2023 and a copy of the order denying rehearing appears at Appendix **A**.

[ ] 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

This case involves a state criminal defendant's constitutional right under Sixth, Eighth, and Fourteenth Amendments.

The ***Sixth Amendment*** provides in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of counsel for his defense."

The ***Eighth Amendm***ent Provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The ***Fourteenth Amendment*** provides in relevant part:

"[N]or shall any State...deny to any person within its jurisdiction the equal protection of the laws."

This case also involves the application of ***28 U.S.C. § 2253(c),*** which states:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from...

(A) The final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;...

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Without any responsive pleadings, the allegations of the Rule 60(b) must be accepted as true for purposes of this appeal. The Second Circuit agreed with United States Magistrate Judge Michael J. Roemer Report, Recommendation, & District Judge Lawrence J. Vilardo Order denying Petitioner's Rule 60(b)(6) contentions for equitably tolling. The District Court opinioned that 10 years is not a reasonable time, and the Rule 60(b)(6) motion lacks merit. Mr. Griffin's case has extraordinary circumstance and extreme hardships. The gravamen of Mr. Griffin's Rule 60(b)(6) motion is a time-bar of 10 years after entry of judgment December 15, 2010. Albeit in the wrong forum, from 2010 to 2019, petitioner contended that his trial Counsel, James D. Stevenson, had worked under an actual conflict of interest when he supposedly was discussing a settlement of petitioner's case, by participated in meetings, at the Monroe County District Attorney's Office on a facade of pleading out defendant's criminal case for 42 years. In these meetings, someone, trial judge Frank P. Geraci, Jr., or the District Attorney Michael Green, is related by consanguinity to one of the victims in this criminal case. Out of these named individuals, they offered Attorney Stevenson a new job to work as law clerk to Honor Nancy Smith of the Appellate Division Fourth Department on contingency in not defending or raising police/correctional misconduct as a defense. Specifically, as bases for suppression, Mr. Griffin was compelled in handcuffs & leg restrains over and beyond ordinary prison confinement, by three (3) New York State Correctional Officers, into a closed prison visitation room so that Rochester police could obtain his saliva (DNA) and obtain a confession without

probable cause [CPL§ 245.40(e)]. Under a façade of a violation of appellate counsel and acting under divided loyalty, counsel had misapplied these facts of police/correctional misconduct as a defense out of an actual conflict of interest. Counsel had purposely sabotaged petitioner's one full & fair opportunity to litigate this 4th Amendment. Between securing the jury's verdict & before sentencing, James D. Stevenson had quit the Monroe County Public Defender's Office, and he later rose, in 2005, as appellate clerk to Honor Nancy Smith; naturally continuing his conflict of interest into petitioner's direct appeal. Unknown to petitioner, Attorney Stevenson's performance was actually affected by this job offer while representing him through the Monroe County Public Defender's Office. These same allegations were equally against appellate counsel in Error Coram Nobis petitions. The U.S. District Judge of the Western District of New York, Frank P. Geraci, was the trial judge who denied half of petitioner's collateral appeals, from 2004 to 2010, presented in the wrong forum. In presenting these collateral claims, the Monroe County District Attorney's office alerted the New York State Department of Corrections & Community Supervision, and they acted in concert by gathering inmate informants and implementing infliction of emotional distress (*e.g., correctional staff telling inmates to stab, kill, compel to solitary confinement, P.C., I.P.C., or transfer*), at every correctional facility petitioner resided, to eliminate any criminal redress. Being under official duress, petitioner had filed Affidavits against informants dating back from 2007 to present, with both the Monroe County District Attorney's Office and outside authorities on complaints of correctional misconduct.

On or about June 2018, Tony Harris disclosed to petitioner Federal Rule 60(b) relief.

On May 3rd, 2021, more than ten years after the judgment, petitioner filed a Federal Rule 60(b)(6) motion seeking relief from Judge Telesca's December 14, 2010, Decision & Order denying federal habeas relief. Petitioner further requested the District Court to appoint counsel and order an evidentiary hearing.

On June 11, 2021, the case was referred to United States Magistrate Judge Michael J. Roemer regarding all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B), by District Judge Lawrence J. Vilardo.

On March 25, 2022, Judge Roemer issued a Report, Recommendation, and Order recommending Mr. Griffin's Rule 60(b)(6) motion be denied as time barred and it lacked merit. In addition, Judge Roemer also recommended denying Griffin's request for the appointment of counsel and an evidentiary hearing.

On April 21, 2022, Griffin objected to the Magistrate Judge's RR & O.

On May 18, 2002, the Monroe County District Attorney's Office responded on behalf of Kirkpatrick to these objections.

On June 21, 2022, the District Court Lawrence J. Vilardo, agreeing with Judge Roemer that petitioner was time barred. Also, the District Court certified under 28 U.S.C.§ 2253(c)(2) that because the issues raised here are not the type of issues that a court could resolve in a different manner, issues were not debatable among jurists of reason, and petitioner has failed to make a substantial showing of the denial of a constitutional right. In addition, the District Court denied a certificate of appealability.

Within 30 days, petitioner, Robert A. Griffin, submitted a leave application in the Second Circuit Court of Appeals to obtain a certificate of appealability.

On January 6th, 2023, the Second Circuit Court of Appeals affirmed the denial of a certification of appealability.

District Court denied a certificate of appealability.

Within 30 days, petitioner, Robert A. Griffin, submitted a leave application in the Second Circuit Court of Appeals to obtain a certificate of appealability.

On January 6th, 2023, the Second Circuit Court of Appeals affirmed the denial of a certification of appealability.

On January 16, 2023, petitioner submitted a request for reconsideration En Banc towards issuance of a COA.

On March 27, 2023, the Court of Appeals for the Second Circuit denied reconsideration En Banc.

On June 16th, 2023, Mr. Griffin sought a petition for Writ of Certiorari before expiration of June 25, 2023.

REASONS FOR GRANTING THE PETITION

As this Court has stressed, a COA is required so long as a petitioner makes a "threshold" showing that the District Court's decision was "debatable amongst jurists of reason." ***Miller-E v. Cockrell***, 537 U.S. 322, at 336 (2003) Thus, "[a] court of appeals should not decline the application for a COA merely because it believes that applicant will not demonstrate an entitlement to relief." Id. at 337. Instead, "a prisoner seeking a COA need only demonstrate 'a substantial showing' "that the district court erred in denying relief. I.d. at 327 (quoting ***Slack v. McDaniel***, 529 U.S. 473, 474, 484 (2000) and 28 U.S. C.§ 2253(c)(2)). That standard is satisfied when reasonable jurists could either disagree with the district court's denial of relief, or determine that "the issues presented ...deserve encouragement to proceed further." ***Miller-El***, 537

U.S. at 327, 336.

Thus, Mr. Griffin is entitled to a COA so long as the District Court's decision denying his Rule 60(b) motion was at least debatable among reasonable jurists. Id. at 342; see also id. at 3428 (Scalia, J., concurring)(a COA must be granted if resolution of the petitioner's claims is "undebatable"). Mr. Griffin unquestionable meets that standard with respect to both the procedural issue of whether extraordinary circumstance or extreme hardship exist and the underlying constitutional issue of whether his counsels were ineffective, an actual conflict of interest, or improper government misconduct existed. See ***Slack***, 529 U.S. at 484-85 (when a petition is dismissed on procedural grounds, determining whether a COA should issue requires consideration of whether reasonable jurists could debate both the underlying constitutional and the district court's procedural ruling). Because the facts supporting the underlying constitutional claim inform the extraordinary circumstances analysis in this case, Mr. Griffin begins with requirements for relief for relief under Rule 60(b)(6).

A. REQUIREMENTS FOR RELIEF UNDER RULE 60(B)(6)

Rule 60(b) allows a party to seek relief "from a final judgment, order, or proceeding" and request reopening of a case for "any other reason that justifies relief. Fed. R. Civ. P. 60(6). ***Klapprott v. United States***, 335 U.S. 601, 615 (1949) Court's have inherent and discretionary power to set a judgment whose enforcement would work inequity. ***Plant v. Spendthrift Farm, Inc.,*** 514 U.S. 211, 233-34 (1995)(quoting ***Hazel-Atlas Glass Co. v.***

Hartfor-Empire Co., 322 U.S. 238, 244 (1944). Further, a Rule 60(b) motion that asserts that "a previous ruling, which precluded a merits determination was in error-for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitation"- is proper. ***Gonzalez***, 545 U.S. at 532 n.4.

B. HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY

Mr. Griffin is entitled to equitable tolling of the statute of limitations because, albeit in the wrong forum, he showed that he passed with reasonable diligence through the periods in which he sought to have tolled, from 2010 to 2021, because, as a layman, he pursued his rights, six C.P.L. § 440.10 motions and Six writ of Error Coram Nobis petitions, in the only forum knowledgeable to him; until Federal Rule 60(b) motion was not disclosed to him. See: ***Johnson v. Nyack Hosp***. 86 F.3d 8, 12-13 (1996) In addition, even if the wrong forum wasn't established, the government engaged in egregious affirmative misconduct remained operative, but undisclosed, entitling equitable tolling to be applied. See: ***State of N.Y. v. Sullivan***, 906 F. 2d 910, at 917 (2 Cir. 1990) At a minimum, these issues are debatable, requiring the issuance of a COA.

C. WHETHER HE SHOWED THAT SOME EXTRAORDINARY CIRCUMSTANCE STOOD IN HIS WAY AND PREVENTED TIMELY FILING JUSTIFYING REOPENING FINAL JUDGMENT

In evaluating extraordinariness, "it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's

confidence in the judicial process." ***Gonzalez***, 545 U.S at 535 (quoting ***Ackermann v. United States***, 340 U.S. 193, 199 (1950); ***Liljeberg v. Health Servs. Acquisition Corp***. 486 U.S. 847, 866 (1988) This fact-intensive inquiry also involves an assessment of the applicant's diligence, the probable merit of the underlying claims, the interest in finality, and other equitable considerations. See: **11 C. Wright A. Miller, & M. Kane, Federal Practice and Procedure § 2857** (2n ed. 1995 and Supp. 2004); ***Gonzalez***, 545 U.S at 540 (Stevens, J., dissenting)(collecting relevant factors).

The facts and circumstances proffered by Mr. Griffin in his Rule 60(b) motion are precisely the type of equitable factors this Court has found to justify the reopening of a judgment. Specifically, the contends of a conflict of interest, ineffective assistance of both trial and appellate counsel, the lack of an evidentiary hearing, the initial bias in deciding habeas relief, and the mental anguished and fear surrounding infliction of emotional distress seasoned with informants. Mr. Griffin has demonstrated that leaving the prior judgment against him intact risks a profound injustice in his case and undermines public confidence in the rule of law, that he has pursued his claims diligently; that his underlying constitutional claim has probable merit; and that the State's ordinary interest in the finality of a criminal judgment lacks force.

1. The Risk of Injustice to Mr. Griffin

Mr. Griffin received inadequate representation and actual conflict of interest at every stage of the proceedings. See: ***Cuyler v. Sullivan,*** 446 U.S. 335 (1980). The risk of injustice was compounded by both trial and appellate counsel's ineffective assistance of counsel. ***Strickland v. Washington***, 466 U.S. 668

(1984). It is hard to conceive of a set of circumstances more likely to produce an unjust outcome. Mr. Griffin's trial counsel turned the role of defense counsel on its head by sabotaging the suppression defense out of a conflict of interest, and the unconstitutional evidence strongly supported the prosecution's case. As a result, no state court reviewed the merits of the IAC or conflict of interest claims, and the federal habeas court that considered Mr. Griffin's habeas petition in 2010 denied relief on procedural grounds. With impunity, such disparate treatment is extraordinarily unjust because the governments willful and wanton conduct in exhibiting a reckless disregard for Mr. Griffin's safety behind prison walls. This is where "injustice has otherwise resulted." See: ***Singleton v. Wulff***, 428 U.S. 106, at 121 (1976)

2. The Risk Of Undermining Public Confidence In The Justice System And The Risk Of Injustice In Other Cases

The payment of trial counsel contingent upon obtaining the conviction and the impermissible risk of actual bias when judge or prosecutor had significant, personal involvement in critical decision regarding defendant's case in itself violates due process. ***U.S. v. Rey***, 811 F.2d 1453 (11 Cir. 1987); ***Williams v. Pennsylvania***, 579 U.S. 1 (2016)) Quite clearly, the very integrity of the courts are put in jeopardy, and in the best way justice must satisfy the appearance of justice. ***Liljeberg***, 486 U.S. at 864 (quoting ***In re Murchison***, 349 U.S. 133, 136 (1955)

3. The Probable Merit Of Mr. Griffin's Ineffectiveness Claim

First, the judicial error occurred in Petitioner's collateral appeals denials where the State Courts did not appoint counsel in the initial-review of ineffective assistance of

trial counsel where state waived any retroactivity defense by expressly choosing not to rely on it, and the intervening development in the law removing CPL sections 440.10 (2) [b & c] procedural bars, is cause for equitable tolling, along with cause for default and prejudice. See: ***Martinez v. Ryan***, 132 S. Ct. 1309 (2012).

Second, the judicial error occurred on petitioner's claim that appellate counsel's failure to argue Ineffective Assistance of Trial Counsel, on direct appeal, was overlooked as cause and prejudice test. ***Coleman v. Thompson***, 501 U.S. 722 (1991) These errors were compounded where procedural default grounds weren't based on independent and adequate state grounds with respect to collateral appeals, because sufficient facts did not appear on the record to permit adequate review upon direct appeal, and the ineffective assistance of counsel claim was not record-based to conclude adequate CPL §§ 440.10(2) (b & c) bars, which is to say that petitioner claim has some merit. See: ***Schriro v. Landrigan,*** 550 U.S. 465, at 474 (2007)

Third, a judicial error occurred where *Stone* didn't extend to bar federal habeas consideration of the Sixth Amendment ineffective assistance of counsel claim. ***Kimmelman v. Morrison***, 477 U.S. 365, 373 (1986).

Fourth, a judicial error occurred when failing to appoint counsel and order evidentiary hearing to consider an incomplete record of dehors facts of Police/Correctional misconduct for cause and prejudice test to rebut presumption of correctness which is not conclusory or wholly speculative. See: ***Schriro v. Landrigan,*** 550 U.S. 465, at 474 (2007)

Fifth, the judicial error occurred where petitioner additional submissions were not considered extraordinary circumstances or extreme hardship in seeking help from New York State agencies (e.g., *Department of Corrections and* not considered extraordinary circumstances or extreme hardship in seeking help

not considered extraordinary circumstances or extreme hardship in seeking help from New York State agencies (e.g., *Department of Corrections and Community Supervision Office of Special Investigations, and Letitia James Attorney General Of NYS*) surrounding Sing Sing staff misconduct in acting in concert, with the Monroe County District Attorney's Office, to ensure duress in promoting informants, creating incidents of threatens, asking prisoners to stab petitioner, promoting fights to have petitioner transferred or sanctioned to SHU confinement, verbally spreading petitioner as "Rape-O" or pedophile, creating incidents of oppression, ostracizing petitioner legally/socially, planting informants who try to befriend on contingency of a time cut. See: ***Immigration and Naturalization Service v. Jong Ha Wang***, 450 U.S. 139, at 143-146 (1981)

Sixth, this is extraordinary circumstance presented where ineffective assistance of trial counsel and ineffective assistance of Appellate counsels denied total representation. ***Buck v. Davis***, 580 U.S. 100 (2017); ***Coleman v. Thompson***, 501 U.S. 722, at 755-756 (1991)

Seventh, the extraordinary circumstances presented where petitioner sought protection, from such informants, by providing Monroe County District Attorney's Office with affidavits against informants dating back to 2007 to the present, and such documentation is under their care, custody, and control. See: ***Massisah v. United States,*** 377 U.S. 201 (1964)

Eight, there is extraordinary circumstances presented where Monroe County District Attorney's Office has discovery, which is peculiarly within the knowledge of the opposing part, on hundreds of informants seeking time cuts

warranting equitable tolling. See: ***Roviaro v. U.S.***, 353 U.S. 53, at 60 (1957)

Nine, the extraordinary circumstances presented where Monroe County District Attorney's Office or Judge Frank P. Geraci's Jr.'s Judicial misconduct in intentionally and maliciously pursuing petitioner's death, physical harm, and promoting informants, within all New York State Correctional Facilities, as Intentional Infliction of Emotional Distress out of consanguinity in deterring any appeal of conviction. See: ***Holland v. Florida***, 560 U.S. 631 (2010)

Ten, the extraordinary circumstances presented on the severity of government misconduct on the part of the Monroe County District Attorney's Office or Frank P. Gerici, Jr. or Michael Green in promoting trial counsel's actual conflict of interest is so great that deference to judgment is inappropriate. See: ***State of N.Y. v. Sullivan***, 476 U.S. 467, at 480-82480(1986) At a minimum, these issues are debatable, requiring the issuance of a COA.

4. New York's Interest In Finality

First, judicial review of ineffective assistance of trial counsel claim is essential to the integrity of the criminal justice system because "[t]he right to the effective assistance of counsel [at trial] is...the foundation for our adversary system." ***Martinez v. Ryan***, 132 S. Ct. 1309, at 1317 (2012). Thus, this Court has held that equity allows federal habeas courts to overcome the State's interest in enforcing a procedural default if "the initial-review collateral proceeding...with ineffective counsel or State did not appoint an attorney to assist the prisoner [ ] may not have been sufficient to ensure that proper consideration [is] given to a substantial claim." ***Id.*** at 1317-18. Because these are precisely the circumstances presented by Mr. Griffin, New York's interest in the finality of the District Court's pre-Trevino denial of Rule 60(b)(6) relief is significantly diminished. See also: ***Murray v. Carrier***, 411 U.S. 478, at 490 (1986)

5. Mr. Griffin's Diligence

Federal rule 60(b) was disclosed to petitioner on June 2018, by inmate Tony Harris, and the delay in filing of 2 years, 11 months, and three (3) days was due to petitioner's Error Coram Nobis Petitions exhaustion and research on rule 60(b)(6) in addition to raising issues in the wrong forum ***PRC Harris, Inc. v. Boeing Co***, 700 F.2d 894 (2 Cir. 1983).

6. Conclusion

For all the foregoing reasons, Mr. Griffin's case presents exactly the kind of rare, unique and extraordinary circumstances for which Rule 60(b)(6) relief was intended. The Monroe County District Attorney's Office are aided by the New York State Department of Corrections and Community Supervision employees, in gathering prison informants, *inter alia*, to impede Mr. Griffin's compliance with limitations period by their intentional infliction of emotional distress throughout petitioner's incarceration.

Clearly, the Second Circuit's conclusions that Mr. Griffin had failed to demonstrate that his case presents extraordinary circumstances rested in large measure on its failure to consider & merit allegations of judicial errors, Conflict of Interest of trial counsel, lack of an evidentiary hearing, and Monroe County District Attorney's Office intentional infliction of emotional distress through DOCCS employees. After a thorough study of the allegations, it is concluded that, if the highly convincing facts are as Griffin allege them to be, Rule 60(b)(6) relief would be appropriate because there are extraordinary circumstances presented to equitably toll 10 years.

Petitioner contends that the Second Circuit abused its discretion, erred in law

or clearly erroneous factual findings, and it cannot be found within the range of permissible decisions where Mr. Griffin's motion established extraordinary circumstances justifying equitably tolling to bring his motion within a reasonable time. Mr. Griffin is entitled to a COA because Jurists of Reason would find the Second Circuit's ruling on his 60(b)(6) motion debatable.

CONCLUSION

The petition for a writ of certiorari should be granted; or alternative, the case remanded to the District Court for an evidentiary hearing.

Respectfully submitted,

Robert A Griffin

Date: June 16th, 2023