23-5431

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN K. BROWN—PETITIONER

VS.

RON NEAL (WARDEN) et al.—RESPONDENT(S)

ON PETITON FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

BRYAN K. BROWN #941740

ISP A449

ONE PARK ROW

MICHIGAN CITY, IN. 46360

QUESTION(S) PRESENTED

I. The Court of Appeals opinion substantially departs from law and practice by finding that the Defendant's actions, which the court deemed "negligent", did not satisfy the bar to constitute a violation of Brown's Constitution right to access to the prison law library, causing Brown to miss his deadline for writ of certiorari to the United States Supreme Court on habeas review.

II. The Court of Appeals decision, that Brown's "***Strickland claim***", did not satisfy "***Knight's***" "***potentially meritorious claim***" test, was contrary to the previous "***Knight***" court. Should the United States Supreme Court have been allowed to answer Brown's question of rather Brown should be charged with Felony Murder, ***U.S.C.S. § 1111***, when the January 6 rioters were not?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

Ron Neal (Warden)

Todd Marsh (Case Manager/ Counselor)

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STATUTES AND RULES

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

[X] 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[X] is unpublished.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

[X] reported at 3:22-CV-646-DRL-MGG; 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[ ] is unpublished.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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was August 1, 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 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 _____. 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).

CASE NO.

BRYAN K. BROWN,) APPEAL from the UNITED STATES COURT DISTRICT for

Petitioner,) the NORTHERN DISRTRICT of INDIANA, SOUTH BEND DIV

V.) Ca No. 3:22-cv-646-DRL-MGG

RON NEAL (WARDEN) et al.,

Defendants.)

) Damon R. Leichty

) CHIEF JUDGE

APPELLANT'S PETITION TO TRANSFER

STATEMENT OF THE CASE

On August 9, 2022 Bryan K. Brown filed pro se Prisoner compliant against Todd Marsh (Case Manager/Counselor) and Ron Neal (Warden) alleging they diminished Brown's access to the prison law library to the point of being non-existing, causing him to miss his filing deadline for writ of certiorari to the United States Supreme Court. (Doc.1)

On November 21, 2022 the Court dismissed Brown's suit, but granted him permission to amend. (Doc.8)

On December 18, 2022, Brown, filed pro se Corrected Prisoner Complaint alleging that defendant's Ron Neal, Warden at the Indiana State Prison, and Todd Marsh, Case

Manager/Counselor over A-Cell House during the time in question, and presently, "diminished" Brown's access to the prison law library to the point of being "non-existing". Brown asserted that the lack of law library access adversely affected his attempt to "challenge his conviction". (Doc.10)

On January 3, 2023 the court dismissed Brown's suit alleging he did not present a case to move forward on. Citing "***Humphrey***" to say Brown was arguing a wrongful conviction suit in his complaint. (Doc.11)

On January 13, 2023 Brown filed a pro se motion to alter or amend judgement pursuant to appellate rule 59(E). Explaining to the Court that he was only showing how the issues he was presenting on Certiorari to the United States Supreme Court were not frivolous or without merit. (Doc.15)

On April 25, 2023 the court denied Brown's motion to reconsider. (Doc.16)

On May 16, the court docket Brown's notice of appeal. (Doc.19)

On May 23, the court docket Brown's Motion for Leave to Appeal in forma pauperis. (Doc.23)

On May 30, the court denied Brown's Motion for Leave to Appeal in forma pauperis and Certificate of Appealability. (Doc.25)

REASONS FOR GRANTING THE PETITION

Rights to use the Courts is a First, Fifth, and Fourteenth Amendment right allowing individuals an opportunity to redress of grievance. ***Ex parte Hull,* 312 U.S. 546 (1941), *Johnson v Avery,* 383 U.S. 483 (1969)** and ***Bounds v Smith,* 430 U.S. 817 (1977).**

A claim of right to access the Court will be denied unless he shows an "actual injury". ***Myers v Hundley,* 101 F.3d 542 (8th Cir.1996) missed filing deadline. See "impairment" *Cody***

***v Webster,* 256 F.3d 764 (8th Cir. 2001). *Lewis v. Casey,* 518 U.S. 343, 351, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996)**

Access to the court claims hinges on whether there was prejudice to a non-frivolous legal claim. ***Marshall v Knight,* 445 F.3d 965, 969 (7th Cir. 2006).** In other words, "only if the defendant's conduct prejudiced a potentially meritorious [claim] has the right been infringed." Id. To state a claim the inmate is required to "spell out" the connection between the denial of access to the courts and the resulting prejudice to a "potentially meritorious claim". Id.

The Court alleged Brown is not entitled to relief because he has not proven his case in Court citing ***Humphrey.*** (see ***Heck v Humphrey,* 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed 2d 383 (1977) citing *Howard v Reddy,* 175 F.3d 531, 532-33 (7th Cir. 1999)** and ***Nance v Vieregge,* 147 F.3d 589, 591 (7th Cir. 1998).** Citing that Brown is arguing a wrongful conviction suit without the court overturning the conviction first, which is a completely wrong. Brown must demonstrate he has a non-frivolous claim to satisfy ***Knight.***

Brown presented a plausible claim on its face. ***Bell Atlantic Corp v Twombly,* 550 U.S 544, 570, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (2007).**

"A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." ***Ashcroft v Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)** "Because Brown is proceeding without counsel, the court must give his allegations liberal construction." ***Ericson v Pardus,* 551 U.S. 89, 94, 127 S.Ct. 2197, L.Ed 2d 1081 (2005)**

Defendant's Negligent Conduct toward Brown's Deadline

Brown was denied access to the law library between October 2020 and July 2021, causing him to miss the deadline for filing his petition for writ of certiorari with the Supreme Court. The public record indicate that in 2018 Brown sought federal habeas relief in the district court challenging his criminal conviction. (see ***Brown v Superintendent*, 3:18-CV-487-JD-MGG ((N.D. Ind. Closed June 4, 2019))** The court denied his petition in June 2019 and also denied his motion to alter or amend judgement. Brown sought review in the Seventh Circuit, but in October 2020 that court denied his request for a certificate of appealability. Id. To seek review in the Supreme Court he was required to file a petition for writ of certiorari by March 15, 2021.

From October to late November 2020 the prison was placed in quarantine lockdown for 30 days. (Ex. A, B, C) Once the lockdown was lifted, because of the Covid-19 pandemic, and social distancing, only so many inmates at a time could attend each law library session. That had to be rotated to fit everyone in. Due to the bottleneck the quarantine lockdown caused, space was also limited during the holiday months of November to January, when there are more days the law library is closed than open. Then in January 2021, the prison unsuspectedly went on an extended lockdown due to the murder of a prison guard, which continued until July 2021. Inmates could not go to the law library during the lockdown. (Ex. D)

Although some inmates do have tablets in their cells, all inmates do not. Brown had turned his tablet in to be fixed during this time and had not received it back yet. (see Ex. E, F)

Brown informed Case Manager/Counselor Todd Marsh of his deadline and that he had no tablet was the reason the complaint was so urgent that he get to the law library. (see Ex. B)

Having no tablet, made it next to impossible to even research the word "certiorari" without physically being in the law library. Brown is acting in a pro se manner on his appeal of his conviction and being at the Supreme Court of the United States with his appeal never having attended any law school, Brown deserves to have his issues heard, especially when he's asserting "actual innocence". Everyday Brown, a lay individual, missed out the law library during his deadline was critical, being that he had no tablet. The lockdown ended July 26, 2021. (Ex. B) August 30, 2021 Brown's motion for enlargement of time in which to file petition for writ of certiorari, along with his completed brief and appendice was filed with the court. Id. (Ex. G, H) On September 7, 2021, the request for enlargement of time to file was denied. Id. On October 25, 2021 Brown filed motion to reconsider. Id. On April 18, 2021 Brown's motion to reconsider was denied and the court refused to hear Brown's issues. Id. (Brown v Neal, 142 S.Ct. 1665) Showing, that the days Brown complains of were critical to his appeal. Not being able to research, there is no way for Brown to know what is and is not permitted when filing a petition for writ of certiorari.

It is Case Manager/Counselor, Todd Marsh's job in A-Cell House to process request slips and legal mail when we are on lockdowns. I filed a preliminary injunction with the court on January 3, 2023 to reserve the camera evidence in A-Cell House during the time in question. (Doc.15) That evidence will show Brown at Marsh's office speaking with Todd Marsh concerning his deadline. It will also show that Todd Marsh never walked ranges to pick up or pass out request slips or legal mail.[1]

When Brown did not receive a response or any help from Case Manager/Counselor, Todd Marsh, on February 1, 2021, Brown wrote to Warden, Ron Neal, with his complaint. (see

[1] During the Covid lockdown inmates could not physically go to the law library. Camera evidence will support. The bottleneck was created once the lockdown ended in November.

Ex. N Copy 2 of 2). When Brown did not hear a response from Warden, Ron Neal, on March, 15, 2021, he filed an informal grievance to Ron Neal. (see Ex. O copy 2 of 2)

Although Brown did everything he possibly could to get the proper help he needed, he was denied that help, and subsequently, he was unable to investigate like he needed, because the defendant's Ron Neal, Warden, and Todd Marsh, Case Manager/Counselor acted with deliberate indifference, or negligent as the court called it, to the importance of Brown's deadline.

Brown's Non-Frivolous Legal Claim Presented on Certiorari to the United States Supreme Court

Brown presented two questions pertaining to his conviction to the Supreme Court:

1.) Rather or not the prosecutor withholding from the jury a second shooter in a felony murder case, where the defendant's alleged co-perpetrator was killed during a felony attempt "***18 U.S.C.S § 1111***", has any bearing on a defendant's trial. (Ex. H) A question that should be settled by the Supreme Court. (More formally: Brown was tried in the state court on the theory that Brown and his friend Lawrence Duff forced their way into an apartment and attempted to rob Eric Johnson and his girlfriend Sonia Rivera when Johnson shot and killed Duff, and this was why Brown was charged with felony murder.) During the trial it came out that Rivera shot Brown and Duff first. After both sides had rested, the trial court considering jury instructions/self-defense instructions[23];

The Court: I know
Mr. Veen: --I was anticipating—
The Court: One of them would testify
Mr. Veen: There's no—
The Court: Well we have this letter

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[2] Mr. Veen was the trial prosecutor. His anticipation should show that even the prosecutor was worried about Mr. Brown's testimony.
[3] Steve Poore was Brown's trial lawyer.

Mr. Baldwin: Yeah

Mr. S. Poore: That's my argument, Judge

The Court: Bryan Brown said that –

Mr. S. Poore: I think there's evidence—

The Court: --a confrontation ensued between Lawrence and Eric. Lawrence drew a gun. Mr. Brown said he pursued the gun also, then he says that sweet lady shot him, that poor innocent girlfriend who happen to be there at the wrong place at the wrong time.

Mr. J. Baldwin: The boys and girlfriends are the only ones who could put slug #20 in the wall here (indiscernable).[4]

The Court: Now you all think the girlfriend was shooting?

Mr. S. Poore: I must say that (indiscerable) Id. (Tr.pg. 523-524)

Explaining to the court how Brown was shot when the Indiana Court of Appeals could not. (No. 49A04-0311-CR-560 see Ex. I)

2.) Whether Brown received a fair trial and the effective assistance of trial counsel in the context of ***"18 U.S.C.S § 1111"***, when Brown's trial lawyer failed to investigate Brown's claim that Sonia Rivera shot them first? (More Formally: Brown wrote letters to the trial judge, the prosecutor, and informed his trial lawyer, telling them all that Rivera shot them first. Id. (Ex. J (a)(b), K(a)(b), M). Brown's argument that during the trial the judge, while answering the question of rather or not Brown deserved self-defense instructions, after sitting through the evidence at trial, in doing so, her rationale was, the only way that she could give Brown self-defense instructions was, if Rivera was also shooting. She continued to ask the lawyers if they now, after hearing the evidence in real time, also think that Rivera was also shooting, and they had to agree that they did think that now. Id. (Tr.pg. 523-524) Brown argued that it was at this point his trial lawyer's failure to investigate cost [him] the chance for a mistrial, for prosecutor misconduct, for keeping the fact, that Rivera shot Brown and Duff prior to Duff being killed by Johnson, from the jury. Had the trial

[4] Brown's DNA is on this bullet. Slug #20

lawyer investigated Brown's claims, at this point, he could have motion the court to order a mistrial, since both sides had already rested, and the case hadn't gone to the jury yet.

Sonia Rivera's shooting in Brown's case is of major importance in a couple of ways; Brown did not actually shoot or kill anyone. The state alleged that Brown and Duff forced their way into the apartment and attempted to rob Eric Johnson and Sonia Rivera and that Johnson killed Duff in defense of the felony attempted robbery. Id.

Brown's defense was that this was no robbery attempt, but a business dispute. There was almost 60 grams of crack cocaine, three scales, and baggies with the corners pulled found. Id. Eric Johnson was initially arrested for dealing and possession of cocaine. Id. The charges were dropped in exchange for his testimony against Brown, who was out on bond for a Class A felony dealing in cocaine, a Class C felony possession of cocaine and two Class D felony dealing and possession of marijuana, with a prior conviction in 1995 for dealing in cocaine a Class B felony. Id. Brown wanted to testify, (Ex. L(a)(b), M) and had he testified to being a drug dealer and dealing drugs at the time, there is a reasonable probability, with all this evidence, that the jury could have believed it.

According to Jury instruction #4;

Brown was charged with felony murder **Indiana Code (I.C.) 35-42-1-1**, in the commission of an attempted robbery.

The way Brown was charged and the jury was instructed:

If the jury felt Brown was guilty of attempted robbery then the jury could convict of felony murder, but if the jury felt that this was not an attempted robbery, then they were instructed to find Brown not guilty of felony murder. Id. (see Preliminary Jury Instruction #4)

Due Process Clause;

Although there are multiple felonies underlying felony murder, each underlying felony has its own elements that must be proven to a jury beyond a reasonable doubt in each case. (Due Process Clause, requires that each element of a crime be proven to a jury beyond a reasonable doubt. ***Alleyne v United States*, 570 U.S.(2013)(slip op. ,3))**

In Brown's trial his was attempted robbery.

If the jury did feel that Brown was a drug dealer and dealing drugs, because drug dealing and robbing have different elements to prove their actions the jury had no choice, but to find Brown not guilty of attempting to rob, essentially acquitting Brown of felony murder in the commission of.

BROWN'S INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM FOR FAILING TO GET THE TRIAL COURT TO ADDRESS THE PROSECUTOR'S FAILURE TO CORRECT THE FALSE EVIDENCE HE PRESENTED AND THE PREJUDICE THAT FOLLOWED.

Brown's trial lawyer failed to investigate Brown's claim that Sonia Rivera shot him first. Brown wrote letters to the prosecutor, the trial judge, and informed his trial lawyer, telling them all that Rivera shot them first. Id. (Ex. J (a)(b), K(a)(b), M). Brown's argument that during the trial the judge, while answering the question of rather or not Brown deserved self-defense instructions, after sitting through the evidence at trial, in doing so, her rationale was, the only way that she could give Brown self-defense instructions was, if Rivera was also shooting. She continued to ask the lawyers if they now, after hearing the evidence in real time, also think that Rivera was also shooting, and they had to agree that they did think that now. Id. (Tr.pg. 523-524) Brown argued

that it was at this point his trial lawyer's failure to investigate cost [him] the chance for a mistrial, for prosecutor misconduct, for keeping the fact that Rivera was also shooting from the jury. Had the trial lawyer investigated Brown's claims, at this point, he could have motion the court to order a mistrial, since both sides had already rested, and the case hadn't gone to the jury yet.

Sonia Rivera's shooting is so critical in Brown's case. Brown and Duff were trapped at the front door trying to get out when Johnson took the gun from Rivera and started shooting again. The state was able to charge Brown with murder, based on him acting in concert with Duff in attempting to commit the felony of robbery. Id. **18 U.S.C.S § 1111** With Johnson being the only shooter **"18 U.S.C.S § 1111"** applies, but there were two shooters. When Rivera stopped shooting the .45 revolver there were three shots fired. Brown hit twice, through and through, and Duff hit once, through and through. Brown and Duff ran to the front door to exit the apartment, but were trapped by the jammed lock. Id. (Tr.pg.58-59, 225, September 15, 2015 Evidentiary Hearing Transcripts (Eh.Tr.) pg. 35-36) But for the door being jammed, whatever the state wishes to allege started this situation, by this point, was over. Rather these guys were aggressors or not, they were, at this point, retreating. Unarmed. No one was deceased at this point. Johnson took the gun from Rivera with two shots remaining. Starting his own episode. One shot missed and went into the apartment across the hall. Id. (slug #16) The second shot catching Duff as he was exiting the apartment. Id. (Sept. 15, 2015 Eh.Tr.pg.35-36, Ex. J (a), K (a), M) Johnson and Rivera had to step over Duff's body to get out. Id. (Tr.pg. 230) Johnson's actions were his own. The state could have alleged attempted robbery, but the death of Duff didn't happen in the commission of, that ended when Rivera stopped shooting, Duff died at the hands of Johnson in retaliation of, not enough to support felony murder in the context of **"18 U.S.C.S § 1111"**. (See Ex. H)

The reason Brown's appeal is still living headed into the United States Supreme Court is because none of the lower courts of appeal ever wanted to touch the issue of rather or not they even recognize the fact that Sonia Rivera was also shooting, especially with Brown the victim testifying to the fact. Realizing that if they do, to even consider whether Rivera was shooting, in and of itself, puts the prosecutor's case in question, because it was evidence not given to the jury, for no other reasonable explanation, but for the reasons just laid out for this court.

To not allow the United States Supreme Court to weigh in on rather or not the prosecutor should have told the jury how Sonia Rivera shot Brown and his best friend, is essentially leaving Brown as the only person in the history of the United States that has been shot, told the authorities who shot him, and nothing has been done. Not even question her about it, but allow her to lie at the trial. Id.;

Sonia Rivera testified:

Q- So Eric starts fighting with the shorter guy?
A- Yeah. And they had fallen back on the bed. And the way that they fell, there was—I believe it was Eric that had fallen on the bed. And his head was like in the small of my back. And they was fightin' and I was catchin' some of the hits in my hip. And so I scooted up in the bed. And shortly after that a shot went off.
Q- All right. Did you see anybody fire the shot?
A- No. (Tr.pg.56-57). Id.
Q- All right. What happen when the shot went off?
A- For a moment everything stopped.
Q- And do you know where the shot went off?
A- What do you mean?
Q- Did the shot go off in the same room with you? Did the shot go off someplace else entirely?
A- In the bedroom with me.
Q- And the shot went off in the bedroom that you are in?
A- Yes.
Q- The bedroom that Eric and the shorter guy with braids are fighting in?
A- Yes. (Tr.pg.57-58). Id.

Officer J. Meyer testified that he got slug #20 out of the wall of the bedroom (Tr.pg.345). Id. Fired by Eric Johnson's .45 revolver (Tr.pg.395). Id.[5]

Evidence showed that Eric Johnson could not have fired the shot inside the bedroom. Johnson testified that he grabbed his .45 revolver from the dresser, stepped into the hallway and "started" shooting. Id. (tr.pg.216) When referencing the shot that was fired inside the bedroom; Johnson attempted to blame the shot on the .45 semiautomatic, a gun that was never fired.

Eric Johnson testified:

> **Q**- Do you recall bein' asked the question on August 10, 2002 when did you start firing. And answering after I heard them shoot? (Indicating that someone else besides himself was shooting)
> **A**- I don't remember that but if I did say that it was probably when we was wrestling over the gun (.45 semiautomatic) and the gun went off. That's the only thing I can think of. Id. (tr.pg.257)

David Brundage (Forensic Expert for the State) testified that the .45 semiautomatic that Johnson referred to that went off during the wrestling match, was never fired. Id. That all the spent rounds recovered were fired from Johnson's .45 revolver. Id. (Tr.pg.385, pg.386, pg.388)

Eric Johnson also testified:

> **Q**- Okay. When you refer to withdrawing a statement, are you also withdrawing the part about them shooting at you?
> **A**- When it happen it was quick. I didn't know what gun went off... Id. (Tr.pg.270)

Since all the spent rounds recovered came from Johnson's .45 revolver and Johnson testifying, when it happen it was quick that he didn't know what gun went off, shows his .45

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[5] This is the first shot, the shot Brown contends Sonia Rivera shot him with. If Brown's attorney would have had DNA testing done on slug #20 found in the wall of the bedroom behind the dresser, Brown's DNA would show that Brown was shot in the bedroom where Rivera testified she was the whole time (Tr.pg.103). Adding substantial weight to Brown's claim.

revolver was at least fired one time without Johnson shooting it. It also shows that Johnson did not start the shooting.

Although forensics was not asked to do trajectories (Tr.pg.395), evidence showed that Rivera was the only other person that could have put slug #20 in the wall. Id. (Tr.pg.523-524, Ex. J (a)(b), K (a)(b), M)

This evidence of Sonia Rivera shooting Brown twice and Duff once, prior to Duff being killed by Eric Johnson, was withheld from the jury by the prosecution and denied Brown a fundamental right to a fair trial based on "all" the material evidence. ***Giglio v U.S.* 150, 154, 92 S.Ct. 763, 31 984 N.E.2d 1270 L.ed.2d 104 (1972)** Being that the jury never heard this fact from the prosecution, is newly available evidence, ***Brady v Maryland,* 373 U.S. 83, S.Ct. 1154, 10 L.ed.2d 215 (1963), *Strickler v Greer,* 740 N.E.2d 1255, 1299 (Ind.Ct.App 2000) trans.denied.)** and since this evidence has the potential of impacting the difference from getting 60 years for felony murder or 0 years for self-defense (Tr.pg. 523-524), the State has a duty, an obligation, to correct this evidence.[6]

Felony Murder 18 U.S.C.S. § 1111 and the January 6 Rioters

Furthermore Brown also wanted to put his conviction into context for the Supreme Court, which is Felony Murder. Which says that Brown and Lawrence Duff forced their way into an apartment and attempted to commit a felony when Duff was killed, and so Brown got the murder and has served 21 years on the case so far. **18 U.S.C.S. § 1111** Well on January 6, 2021,700 people forced their way into the capital building, with intent to commit a felony, where at least two people

[6] Felony murder has no self-defense, but since dealing and possession of cocaine at the time of Brown's trial was not one of the underlying felonies for felony murder, Brown's defense permitted the use of the instructions. **(I.C. § 25-4-1-1 eff. July 1, 2014)**

died, and not one of them was charged with felony murder. Brown is challenging, that if they don't deserve to be charged with murder then how was Brown? Again a question that should be answered by the Supreme Court.

The riots at the State Capital building happen January 6, 2020, Brown's appeal was already being considered, no time to alter, but since the Court would be considering felony murder anyway the question should be considered under "actual innocence".

Todd Marsh is the head Case Manager/Counselor for A-Cell House at the Indiana State Prison and has been throughout this time in question and presently. Being that inmates were locked in cells during the lockdowns in question and could not go to the law library during the covid lockdown, or the extended lockdown for the officer being killed, Todd Marsh was who all offenders in A Cell House's problems were addressed to. Marsh distributes the request to proper personnel, even the law library, but lockdown means, inmates are restricted to their cells with no movement period[7] , and lockdowns is a non grievable issue, so all inmates could do is address their problem to the Case Manager/Counselor and Todd Marsh was the Case Manager/Counselor for A-Cell House. Brown talked to Marsh, and when Marsh did not respond, Brown then went to the Warden, Ron Neal, with his complaint. Both acted with deliberate indifference to Brown's complaints and nothing was done. Due to the Defendant's actions, Brown was denied proper access to the prison law library, causing him to miss his March 15, 2021 filing deadline for writ of certiorari to the United States Supreme Court, violating Brown's First, Fifth, Eight, and Fourteenth Amendment rights.

[7] Camera evidence will show that during the times of lockdown inmates were restricted to their cells.

CONCLUSION

WHEREFORE, based upon the forgoing point's and authorities, the Petitioner respectfully request this Honorable Court to grant the within and reverse the judgement of the lower court and for all other relief deem necessary in the premise.

Respectfully submitted,

Bryan K. Brown pro se

Dated: August 15, 2023

APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT