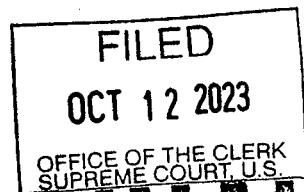


No. 23-5864

IN THE  
SUPREME COURT OF THE UNITED STATES



ALFRED W. STARLING-Petitioner

vs.

WARDEN - Respondent

**ORIGINAL**

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Alfred W. Starling GDC# 858543  
Pro se  
Wilcox State Prison  
P.O. Box  
Abbeville, Ga. 31001

## **QUESTIONS PRESENTED**

1. Whether the lower courts erred in holding that reasonable jurists would not debate whether Petitioner's First Federal Habeas Corpus petition was untimely, applying AEDPA Statute of Limitations, with an Actual Innocence gateway claim presented?
2. Whether the lower courts applied the wrong standard of review, holding that reasonable jurists would not debate whether the miscarriage of justice exception applies to Petitioner's case when he raised a gateway actual innocence claim due to insufficient evidence, and the admission of inadmissible evidence to which denied him a fair trial?
3. Whether the lower courts erred in holding that reasonable jurists would not debate whether the Petitioner was entitled to equitable tolling when he raised an actual innocence gateway claim supported with constitutional violations?

## **LIST OF PARTIES**

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 subject of this petition is as follow: Attorney General, Christopher Carr

## **RELATED CASES**

Alfred Starling v. Warden, No. 22-13849

Alfred Starling v. Warden, No. 4:22-CV-30-CDL-MSH

Alfred Starling v. Warden, No. 18-V-166

Alfred Starling v. Joe C. Bishop et al. No. 2019-SU-CV-7

Alfred Starling v. Joe C. Bishop et al. No. A20A0659

Alfred Starling v. State, A17A1359

State v. Alfred Starling, 2008-CR-177.

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	1-2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLED.....	2-3
STATEMENT OF THE CASE.....	3-9
REASONS FOR GRANTING THE WRIT .....	9-15
CONCLUSION.....	16

## INDEX TO APPENDICES

APPENDIX A1. The Eleventh Circuit Court of Appeals order denying a Certificate of Appealability,

A2. The Eleventh Circuit Court of Appeals order denying motion for reconsideration

APPENDIX B1. The District Court order adopting the Magistrate Judge Report and Recommendations denying Habeas relief,

B2. Magistrate Judge Report and Recommendations

APPENDIX C1. State Habeas Court order denying Habeas relief

APPENDIX D1. Georgia Court of Appeals order affirming Mr. Starling's conviction.

APPENDIX E1. Indictment

APPENDIX F1. Arrest warrant

APPENDIX G1. Derricks Smith's Statement

## TABLE OF AUTHORITIES CITED

<u>Berecht v. Abrahamson</u> ,	
507 U.S. 619, 113 S.Ct. 1710, 123 L. Ed. 2d 353 (1993).....	12
<u>Burton, United States v.</u> ,	
324 F.3d 768, 770 (5th Cir. 2003).....	11,15
<u>Cathey, United States v.</u> ,	
259 F.3d 365, 368 (5th Cir. 2001).....	11,15
<u>Chapman v. California</u> ,	
386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L. Ed. 2d 705 (1967).....	12
<u>Gates, United States v.</u> ,	
727 Fed. Appx. 347 (2020).....	11,15
<u>Henry v. United States</u> ,	
361 U.S. 98 (1959).....	12
<u>Herrera v. Collins</u> ,	
506 U.S. 390, 404, 113 S.Ct. 853, 122 L. Ed. 2d 203.....	14
<u>Holland v. Florida</u> ,	
560 U.S. 631 (2010).....	14
<u>In re Winship</u> ,	
397 U.S. 358, 90 S.Ct. 1068, 25 L. Ed. 368.....	11
<u>Jackson v. Virginia</u> ,	
443 U.S. 307, 61 L. Ed. 2d 560, 99 S.Ct. 2781 (U.S. Va. 1979).....	10,15
<u>Knotteakos v. United States</u> ,	
328 U.S. 750, 776, 66 S.Ct. 1239, 1253, 90 L. Ed. 1557 (1946).....	12
<u>McIntosh, United States v.</u> ,	
280 F.3d 479, 483 (5th Cir. 2002).....	11,15
<u>McQuiggin v. Perkins</u> ,	
569 U.S. 383 (2013).....	9,13
<u>Schlup v. Delo</u> ,	
513 U.S. 298.....	11
<u>Valenzuela v. Newsome</u> ,	
253 Ga. 793 (1985).....	11

## **CONSTITUTIONAL PROVISION**

U.S. Const. amend. 5.....	12
U.S. Const. amend. 6.....	12
U.S. Const. amend. 14.....	2,11

## **STATUTES**

28 U.S.C. § 2244.....	2
28 U.S.C. § 2254.....	14,15
28 U.S.C. § 1257.....	2

**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

The Petitioner, Alfred Starling, Pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case which affirmed the judgment of the District Court on May 10, 2023, and denied motion for reconsideration on July 19, 2023.

I.

**OPINION BELOW**

The opinion of the United States court of appeals appears at Appendix A1&2 to the petition attached hereto.

The opinion of the District Court, and the Magistrate Judge report and recommendations appears at Appendix B1&2 attached hereto.

The opinion of the State Habeas Court appears at Appendix C1attached hereto.

The opinion of the Georgia Court of Appeals affirming the trial courts ruling appears at Appendix D1 attached hereto.

II.

**JURISDICTION**

The original opinion of the Eleventh Circuit Court of Appeals was entered May 10, 2023. A timely motion to that court for rehearing was overruled on July 19, 2023.

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

III.

**CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

1. The Fifth Amendment of the United States Constitution provides:

"No person...shall be compelled in any criminal case to be a witness against himself..."

2. The Sixth Amendment of the United States Constitution provides:

"In all criminal prosecution, the accused shall enjoy the right...to be confronted with the witnesses against him..."

3. The Fourteenth Amendment of the United States Constitution provides:

"...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. The statute involved and under review are 28 U.S.C. 2244 (d)(1)(D)(2) which states in pertinent part:

2244. Finality of determination.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

5. The statute under which Petitioner sought habeas corpus relief was 28 U.S.C. 2254 which states in pertinent part:

2254. State custody; remedies in Federal courts

(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.

(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.

#### IV.

#### STATEMENT OF THE CASE

On January 31, 2008, Mr. Starling was arrested, from an arrest warrant, issued, by the Magistrate Judge, on one count of armed robbery without any showing of probable cause (App.F1). On May 13, 2008, a Randolph County grand jury, allegedly, indicted Mr. Starling on one count of armed robbery. Said indictment lacks, certification, a stamp file from the Clerk of Court alone with her signature (App. E1). On June 9, 2008, a motion to suppress was filed in an attempt to suppress Mr. Starlings custodial

statement, but a hearing was never held. On July 22, 2008, a Jury found Mr. Starling guilty on one count of armed robbery, and he was sentenced to serve 20 years in prison. Mr. Starling appealed enumerating as error that trial counsel rendered ineffective assistance in failing to exclude the hearsay and speculative testimony of State's witnesses Phyllimenia Tamplin and Ginger Goodson. On October 4, 2017, the Georgia Court of appeals issued an order affirming Mr. Starling's conviction (App. D1). The Court of Appeals held the following finding of material facts in support of the jury's verdict.

At trial the State claimed that On January 25, 2008, just before 11:00 p.m., a man entered the Country Corner convenience store in Cuthbert Georgia, pointed a gun at the manager, and demanded money. The gunman took money that the manager dropped on the floor and left on foot. The manager did not identity Mr. Starling as the robber.

The State presented testimony from Phyllimenia Tamplin who stated that on the evening of January 25, 2008, she was standing outside Willie Johnson's house with Ginger Goodson. Al Starling, the Petitioner, and Derrics Smith drove up and invited the women to go riding with them. The women got in the car. Starling showed Tamplin a gun that he had between the seats and said, "This is what I do," Tamplin speculated that Mr. Starling was referring to robbery. Afraid of what was to happen, Tamplin asked to be taken back to Johnson's house. Tamplin also speculated that Mr Starling drove by the Country Corner because he wanted to see who was working there. He drove past the store, parked on a nearby street, and got out the car. Smith told Tamplin to drive him back to his aunt's house, where they stayed briefly and then returned to pick up Starling. After Starling got back in the car, they drove back to Cannon's house, where Starling began counting money.

Tamplin testified that she and Goodson then walked back to Johnson's house. The prosecutor asked, "What did you do when you got to [Johnson's] house?" Tamplin responded, "We got there and [Goodson] told him that [Starling] had robbed

a store." Starling's trial counsel objected on the basis of hearsay and moved for a mistrial. Tamplin repeated that "[Goodson] told [Johnson] that [Starling] had robbed a store." Defense counsel again objected; the trial court overruled the objection based on the State's assurance that Goodson was going to testify.

Goodson testified next. She testified that on the evening of January 25, 2008, she was at Johnson's house with Tamplin. Starling and Smith arrived, and Smith invited the women to go riding with them. At one point, Starling parked and got out of the car, and Smith, Tamplin, and Goodson left. They returned to pick up Starling, and then they drove to Cannon's house. Goodson testified that she heard Smith say, "That n\_\_\_\_\_ done robbed that store." Goodson testified that she knocked on the door, told Cannon that something bad had happened, and then returned to Johnson's house. Barbara Cannon testified that Smith, Goodson, and some other young people came to her house on the evening of January 25, 2008. She testified that Goodson knocked on her door and told her, "The police is coming because Al just robbed the store."

Smith testified that he went riding around with Mr. Starling on the evening of January 25, 2008. They went to Johnson's house and picked up Tamplin and Goodson. After driving around for a while, they stopped and Starling got out. Later, Smith was driving the women home when Starling flagged him down and got back in the car. They went to Cannon's house. Smith denied telling anyone that Starling robbed the store. (See App. D1, *Alfred Starling v. State*, No. A17A1359).

Smith also testified that the District Attorney, and the G.B.I. Agents tried to coerce him into changing his statement after he advised them that Mr. Starling did not rob the store. Smith's trial testimony have been altered and does not show what was actually said by him in Mr. Starling's trial. Smith also wrote a statement on behalf of Mr. Starling, admitting how the D.A. and the G.B.I. Agents tried to coerce him into changing his statement. (App. G1). At Mr. Starling's State Habeas hearing, held on February 19, 2019, he objected to the admission of the trial transcript.

On January 30, 2008, Mr. Starling was ordered to report to his Probationer's Officer office. Upon arrival, Mr. Starling was meet by his probation officer, Mr. Scott Taylor, who ordered him to speak with G.B.I. Agent, Brian Vessels. Agent Vessels questioned Mr. Starling about his whereabouts on the night of the robbery without providing any Miranda Warnings, or a wavier for his rights. Agent Vessels testified to the statement's that he obtained from Mr. Starling's custodial questioning. Mr. Starling's trial counsel objected and moved for a mistrial on the admission of Mr. Starlings custodial statement's.

Around June 20, 2018, Mr. Starling received his case file from his Appellate Counsel. Mr. Starling discovered the G.B.I. Investigative Summary, Case No. 15-0117-12-08, to which contained statement's from Derrics Smith, and Brain Marshall, that was not presented at Mr. Starling's trial. Smith stated, in an interview, conducted by G.B.I. Agent, Brian Vessels that "we found out that night that he (Al Starling) did it." Smith stated "they went outside because his aunt was trippin because her son, Brian Marshall, had called the house and told her that Starling had robbed the Country Corner Store." In Marshall's interview he stated that he saw Mr. Starling sitting in a car by his self. Marshall did not testify at Mr. Starling's trial, and Smith did not testify to the statement that Marshall called and said Mr. Starling had robbed the store.

On October 2, 2018, Mr. Starling filed an application for a Writ of Habeas Corpus in the Superior Court of Mitchell County. Alfred Starling v. Warden, Case No. 18-V-166. A hearing was held on February 19, 2019. At the end of said hearing the court advised Mr. Starling that he would be receiving the States Record, and he will have 60 days to submit a brief and make any proposed order. Around March 25, 2019, Mr. Starling received the State's Record and noticed that the G.B.I. Investigative Summary had been omitted from the State's Record. Mr. Starling submitted his brief within 60 days and made reference to the G.B.I, Investigative Summary. On June 10, 2019, another hearing was held where the Respondent requested for the record to be reopen for further evidence, and the Court granted the request. At said hearing, Mr.

Starling move to admit the G.B.I. Investigative Summary into evidence, to which was used for the the determination of probable cause in the trial court, Respondent objected on the ground of authentication, and the Court withheld its ruling. On February 18, 2020, another hearing was held where the Habeas Court denied the G.B.I. Investigative Summary into evidence. Mr. Starling was claiming that the State lacked probable cause to prosecute, and the evidence abducted at his trial was insufficient to support the jury's verdict, and was trying to prove it with the G.B.I. Investigative Summary that was used for the determination of probable cause. On March 10, 2021, The court adopted the Respondent's proposed Finial Order denying Mr. Starling relief holding his insufficiency of evidence claim procedurally barred (App. C1). On September 21, 2021, the Georgia Supreme Court denied Mr. Starling's Certificate of Probable Cause from being untimely. On October 1, 2021, Mr. Starling filed a motion for reconsideration claiming that the Court overlooked Mr. Starling's claims that the trial court lacked jurisdiction, and that he is being detained without any showing of probable cause. On October 7, 2021, the Georgia Supreme Court issued its Remittitur ending Mr. Starling's appeal. On November 2, 2021, said court issued an order dismissing Mr. Starling's motion for reconsideration for being untimely. The Court stated that it received Mr. Starling's motion for reconsideration on October 8, 2021, a day before the court issued its Remittitur, ending his appeal. The Georgia Supreme Court failed to send Mr. Starling a copy of its Remittitur. On December 2, 2021, Mr. Starling submitted a letter to the Supreme Court of Georgia inquiring about the court's Remittitur to determine when the statute of limitation clock's start's back running. On December 20, 2021, Mr. Starling received the court's Remittitur and noticed that it was issued on October 7, 2021.

On December 20, 2021, the same day, Mr. Starling received the Georgia Supreme courts Remittitur, he filed his First Federal Habeas application, pursuant to 2254. Alfred Starling v. Warden, No. 4:22-CV-30-CDL-MSH. Mr. Starling claimed that (1) The trial court lacked jurisdiction, (2) void arrest warrant, for lack of probable cause, (3) invalid indictment, (4) denied the right to be heard on his motion to suppress, (5)

denied a fair trial, (6) denied equal protection of the laws (7) denied a fair opportunity to litigate his constitutional violation's in the State Court's, and (8) a Gateway Actual Innocence claim. On March 1, 2022, Mr. Starling amended his 2254 petition claiming Fraud upon the Court's. On June 2, 2022, the Respondent filed a motion to dismiss Mr. Starling's First Federal Habeas application for being untimely, applying AEDPA Statute of Limitation. On July 12, 2022, Mr. Starling filed for a motion for discovery, in an attempt to get the G.B.I. Investigative Summary back into evidence, to which was used in the trial courts for the determination of probable cause, to show that the State lacked probable cause to prosecute Mr. Starling, and to present the Newly Discovered Statement's that Starling discovered, when he received his case file from his Appellate Counsel, that was within the G.B.I. Investigative Summary, to prove his innocence. On August 16, 2022, the Magistrate Judge issued an order denying Mr. Starling's Motion for Discovery, and issued its Report and Recommendation dismissing Mr. Starling's First Federal Habeas petition, applying AEDPA Statute of Limitation under 2244 (d) (App. B1).

On September 2, 2022, Mr. Starling filed for a Motion for Summary Judgement, showing the District Court that there was no genuine dispute as to any material fact and that he was entitled to Habeas relief. Mr. Starling also submitted the newly discovered statement's, with his motion, to prove his innocence. On October 17, 2022, the District Court adopted the Magistrate Judge Report and Recommendations dismissing Mr. Starling's First Federal Habeas petition for being untimely, applying AEDPA Statute of Limitation, and holding Mr. Starling's motion for summary judgment moot (App. B2). Mr. Starling file a timely notice of appeal, and a certificate of appealability.

On May 10, 2023, the United States Court of Appeals for the Eleventh Circuit issued an order denying Mr. Starling a COA (App. A1). Mr. Starling filed a timely motion for reconsideration. On July 19, 2023, said court issued an order denying the motion for reconsideration (App. A2), to which brings this matter.

**V.**  
**REASON FOR GRANTING**

1. The Eleventh Circuit Court of Appeals and the District Court decision is in conflict with this Honorable Court's decision, based on the fact that said courts held that Reasonable Jurists would not debate whether Mr. Starling's First Federal Habeas petition, pursuant to 2254, was untimely, applying AEDPA Statute of Limitation, with a Gateway Actual Innocent claim presented.

In McQuiggin v. Perkins, 569 U.S. 383 (2013), this Honorable Court held that the "Petitioner's....claim of actual-innocence allowed him to pursue his Habeas petition as if it had been filed on time....AEDPA's time limitations apply to the typical case in which no allegation of actual innocence is made....the habeas court must make it's determination concerning the petitioners innocence in light of all the evidence, including that alleged to have been illegally admitted, but with due regard to any unreliability of it, and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial."

Mr. Starling received his case file from his Appellate Counsel and discovered some statement's, within the G.B.I. Investigative Summary, that was excluded from his trial, and from the Court's Record. Said statement's shows that the Prosecutor lacked probable cause to prosecute Mr. Starling for Armed Robbery. Mr. Starling submitted these statement's, within his motion for summary judgment, that was filed in the District Court. The District Court issued an order dismissing Mr. Starling's 2254 petition, applying AEDPA Statute of Limitations, and holding his motion for summary judgment moot without considering Mr. Starling's innocence in light of all the evidence.

Therefore the lower courts erred in holding Mr. Starling's, First Federal Habeas 2254 petition untimely, applying AEDPA Statute of limitation, to an actual innocence claim, without making any determination concerning Mr. Starling's innocence in light of all the evidence, to which said decision is in conflict with this Honorable Court decision in McQuiggin, as stated above.

Wherefore, Mr. Starling request that this Honorable Court issue a writ of certiorari, remand the case back to the lower courts to determine if Mr. Starling made a proper showing of actual innocence in light of all the evidence or grant relief where this Honorable court deems fit.

2. The Eleventh Circuit Court of Appeals and the District Court applied the wrong standard of review, in holding that Reasonable jurists would not debate whether the miscarriage-of-justice exception applied to Mr. Starling's 2254 petition to the extent that Mr. Starling argued that the evidence to convict him was insufficient because it was based solely on hearsay, and his custodial statements to which denied him a fair trial.

In Jackson v. Virginia, 443 U.S. 307, 61 L.Ed. 2d 560, 99 S.Ct. 2781 (U.S. Va. 1979), this Honorable Court held "A federal habeas corpus court must consider...whether there was sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt. (quoting In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 368). In re Winship presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Pp. 2786-2788. In United States v. Gates, 792 Fed. Appx. 347 (2020), this Honorable Court held that "our review of the sufficiency of the evidence... is limited to determining 'whether there was a Manifest Miscarriage of Justice,' which results only if (1) 'the record is devoid of evidence pointing to guilt' or (2) the evidence on a key element of the offense is 'so tenuous that a conviction would be shocking.' (quoting United States v. Burton, 324 F.3d 768, 770 (5th Cir. 2003); see also United States v. McIntosh, 280 F.3d 479, 483 (5th Cir. 2002) quoting United States v. Cathey, 259 F.3d 365, 368 (5th Cir. 2001)). In Valenzuela v. Newsome, 253 Ga. 793 (1985), the Georgia Supreme Court held "Where defendant committed a procedural error in failing to directly appeal the sufficiency of evidence behind his conviction, the writ of Habeas

Corpus remained viable...if there was a miscarriage of justice....The term "miscarriage of justice" is by no means to be deemed synonymous with procedural irregularity, or even with reversible error. To the contrary, it demands a much greater substance, approaching perhaps the imprisonment of one who, not only is not guilty of the specific offense for which he is convicted, but, further, is not even culpable in the circumstances under inquiry."

The lower courts applied the Carrier standard that was held in Schlup v. Delo, 513 U.S. 298, to which "requires the Habeas petitioner to show that a constitutional violation has probably resulted in the conviction of one who is actually innocent....' To satisfy Carrier's "actual innocence" standard, a petitioner must show that in light of the new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt." In Schlup, this Honorable Court noted that "Though the Carrier standard requires a substantial showing, it is by no means equivalent to the standard that governs review of claims of insufficient evidence. The sufficiency of the evidence standard, which focuses on whether any rational juror could have convicted, looks to whether there is sufficient evidence which, if credited, could support the conviction."

The State's Record is devoid of any (admissible) evidence pointing to Mr. Starling's guilt. At Mr. Starling's trial the State presented testimony from Phyllomenia Tamplin, and Ginger Goodson, to which said testimony was based on speculation, and rumors from hearsay statement's that was never corroborated. The hearsay statement's was the only direct evidence presented to support a finding that Mr. Starling committed a robbery. The admission of the hearsay statement's violated Mr. Starling's, 6th Amendment right to confront his accuser, and the admission of his custodial statement violated his 5th Amendment right to be compelled to be a witness against himself. The admission of said evidence, was so tenuous, that it denied Mr. Starling a fair trial.

The standard for determining whether habeas relief must be granted is whether the...error "had substantial and injurious effect or influence in determining the jury's verdict. See Brecht v. Abrahamson, 507 U.S. 619, 113 S Ct. 1710, 123 L. Ed. 2d 353 (1993) quoting Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705 (1967), and Knotteakos v. United States, 328 U.S. 750, 776, 66 S. Ct. 1239, 1253, 90 L. Ed. 1557 (1946). In Henry v. United States, 361 U.S. 98 (1959), this Honorable Court held "Common rumor or report, suspicion, or even strong reason to suspect' was not adequate to support a warrant for arrest." Therefore it should not uphold a conviction.

The Prosecutor presented the G.B.I. Investigative Summary to the Court's recklessly and disregard for the truth, then omitted said summary from the States Record for the court's consideration. Mr. Starling submitted the G.B.I. Investigative Summary in his State habeas, trying to prove that the Prosecutor lacked probable cause to prosecute, and said court held Mr. Starling's exhibit inadmissible due to authentication, and dismissed Mr. Starling's State Habeas holding his claims procedurally barred. Thereafter, Mr. Starling filed his 2254 petition in the District Court, and filed for a motion for discovery, requesting the State to produce a certified copy of the G.B.I. Investigative Summary, to prove his innocence. The District Court dismissed Mr. Starling's petition, for being untimely, applying AEDPA Statue of Limitation, without considering his innocence in light of all the evidence.

The evidence abducted at Mr. Starling's trial is insufficient to support a finding of probable cause, or the jury's verdict. Had not the jury heard the inadmissible hearsay testimony, and Mr. Starling's inadmissible custodial statement it is more likely than not that no reasonable jury would have convicted him of Armed Robbery.

Therefore the lower courts erred in holding that reasonable jurists would not debate whether the miscarriage-of-justice exception applied to Mr. Starling's case.

Wherefore Mr. Starling request this Honorable Court to grant certiorari, remand the case back to the lower courts to address the merits of his claims or grant relief where this Honorable Court deems fit.

3. The Eleventh Circuit Court of Appeals and the District Courts decision, in holding that reasonable jurists would not debate whether Mr. Starling was entitled to equitable tolling, is in conflict with this court's decision.

In McQuiggin v. Perkins, 569 U.S. 383 (2013), this Honorable Court held "Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is...expiration of the AEDPA Statute of Limitations....Taking account of the delay in the context of the merits of a Petitioner's actual-innocence claim, is tuned to the exception's underlying rationale of ensuring 'that federal constitutional errors do not result in the incarceration of innocent persons.'" quoting Herrera v. Collins, 506 U.S. 390, 404, 113 S.Ct. 853, 122 L. Ed. 2d 203. Said court also noted that this Honorable Court held in Holland v. Florida, 560 U.S. 631 (2010), that equitable principles have traditionally governed the substantive law of habeas corpus. The Court's opinion remained, and affirmed, that the Supreme Court will not construe a statute to displace courts' traditional equitable authority absent the clearest command, and found that the text of 28 U.S.C.S. 2244(d)(1) contains no clear command countering the courts' equitable authority to invoke the miscarriage of justice exception to overcome expiration of the statute of limitations governing a first federal habeas petition. As the Court observed in Holland, the AEDPA, seeks to eliminate delays in the federal habeas review process. But the AEDPA seeks to do so without undermining basic habeas corpus principles and while seeking to harmonize the new rules governing this previously judicially managed area of law, it did so without losing sight of the fact that the writ of habeas corpus plays a vital role in protecting constitutional rights."

28 U.S.C. 2254 (a) states "...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.

(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 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.

Mr. Starling filed his first federal habeas 2254 petition, in the District Court, claiming that the trial court lacked jurisdiction, he was denied due process and equal protection of the laws within the State courts, and raised an actual innocence gateway claim, claiming that the evidence was insufficient to support the jury's verdict, and the admission of inadmissible evidence denied him a fair trial. The lower courts held Mr. Starling's petition untimely applying AEDPA Statute of Limitations pursuant to 2244 (d) and denied equitable tolling.

In Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (U.S. Va. 1979), this Honorable Court held "In a challenge to a state conviction brought under 28 U.S.C. 2254, which requires a federal court to entertain a state prisoner's claim that he is being held in 'custody in violation of the Constitution or laws or treaties of the United States,' the applicant is entitled to habeas corpus relief if it is found that upon the evidence abducted at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt....A federal habeas corpus court must consider...whether there was sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt." In United States v. Gates, 792 Fed. Appx. 347 (2020), the court held that "our review of the sufficiency of the evidence...is limited to determining 'whether there was a manifest miscarriage of justice,' which results only if (1) 'the record is devoid of evidence pointing to guilt' or (2) the evidence on a key element of the offense is 'so

tenuous that a conviction would be shocking." (quoting United States v. Burton, 324 F.3d 768, 770 (5th Cir. 2003), see also United States v. McIntosh, 280 F.3d 479, 483 (5th Cir. 2002), quoting United States v. Cathey, 259 F.3d 365, 368 (5th Cir. 2001)).

The State's record is devoid of evidence pointing to Mr. Starlings guilt, therefore, the lower courts erred in holding that reasonable jurists would not debate whether Mr. Starling was entitled to equitable tolling, applying AEDPA Statute of Limitations, without considering his constitutional violations and his Gateway actual innocence claim, due to insufficient evidence, to determine if there was a manifest miscarriage of justice.

Wherefore Mr. Starling request this Honorable Court to grant certiorari, remand the case back to the lower courts to determine if there was a manifest miscarriage of justice, or grant relief where this Honorable Court deems fit.

## CONCLUSION

Mr. Starling's conviction rest on a manifest miscarriage of justice, as stated above, therefore a Writ of Certiorari should issue to review the judgment and opinion of the Eleventh Circuit Court of Appeals.

This 11<sup>th</sup> day of October 2023.

Respectfully requested,

Alfred Starling

Alfred W. Starling  
Pro se  
Wilcox State Prison  
P.O. Box 397  
Abbeville, Ga. 31001