

No. ~~23-6515~~

ORIGINAL

IN THE SUPREME COURT
OF THE UNITED STATES

FILED

SEP 06 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOHN EDWARD HALL - APPLICANT

VS.

BOBBY LUMPKIN - DIRECTOR OF TDCJ
- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO UNITED STATE COURT OF APPEALS FROM THE
FIFTH (5th) CIRCUIT IN CAUSE NO'S. 23-10037
FOR DENIAL OF RULE 60(b) MOTION AND CAUSE NO.
3:16-CY-000725-G, FOR DENIAL OF HABEAS ACTION

PETITION FOR WRIT OF CERTIORARI

JOHN EDWARD HALL
W.F. RAMSEY UNIT 1
1100 FM 655
ROSHARON, TX. 77583
PROCEEDING PRO-SE

QUESTION'S PRESENTED FOR REVIEW

- 1) DOES ANTI TERRORISM EFFECTIVE DEATH PENALTY ACT OF 1996 (ATED-PA) (FED. LAW) CONTROL UNDER FOLLOWING: (A) SUBJECT MATTER JURISDICTION; (b) EXHAUSTION REQUIREMENT; (c) ADJUDICATION OF MERITS AND (d) ABUSE OF THE WRIT?
- 2) WHAT IS THE CORRECT STANDARD OF REVIEW OF HALL'S CONST. CLAIM? HALL BELIEVES IT IS THE "ABUSE OF DISCRETION" UNDER "DE NOVO" REVIEW OF LEGAL CONCLUSION HUTTO v. GAVIS, (FED. CLAIM)?
- 3) DID THE COURT OF 5th CIR, "ABUSE ITS DISCRETION" OF §2254(e)(1), (e)(2) (FED. LAW) ISSUE OF BURDEN OF PROOF UNDER CLEAR AND CONVINCING EVIDENCE INSTEAD OF PREPONDERANCE OF EVIDENCE OR REASONABLE PROBABILITY, CLEARLY ESTABLISHED FED. LAW STRICKLAND, (FED. CLAIM)?
- 4) DID THE 5th CIR, DECISION OF DENIAL OF BOTH HALL'S (COA) AND RULE 60(b)(4) MOTION CONFLICT WITH DECISION OF TROD COURT OF APPEALS, DID THE SAME IMPORTANT QUESTION OF "LACK OF SUBJECT MATTER JURISDICTION" CONSTITUTING A "VOID JUDGMENT"?
- 5) DOES HALL, HAVE A RIGHT TO APPEAL HIS CONVICTION AND SENTENCE BY WRIT OF CERTIORARI, AS A MATTER OF (FED. LAW) §2253(c) AND §2254(d)?

NOTE: THE QUESTION PRESENTED ON THIS PAGE ARE NOT LIMITED TO THE ONE PRESENTED INSIDE UNDER SUPREME COURT RULE 14.1(a).

LIST OF PARTIES

[] ALL PARTIES APPEAR IN THE CAPTION OF THIS CASE ON THE COVER PAGE, IS BOBBY LUMPKIN - DIRECTOR OF TOW.

[] ALL PARTIES WHICH DO NOT APPEAR IN THE CAPTION ON COVER PAGE. A LIST OF ALL PARTIES TO THE PROCEEDINGS, WHOSE JUDGMENT IS SUBJECT OF THIS PETITION ARE TO WIT:

5th CIR. PANEL OF JUDGES:

HAGNES, ENGELHARDT AND OLOHAM

UNPUBLISHED ORDER DENIAL
OF (COA) IN CASE NO.

23-10037, RULE 60(b)

AND CIV. ACT. 3:21-CV-1791

MAGISTRATE JUDGE RUTHERFORD

MADE R & R RULING ON
RULE 60(b) MOTION

SENIOR JUDGE JOE A. FISH

ORDER MADE BY

NORTHERN FED. DIST.

© DALLAS, 1100 COMM-

ERCE STREET, SUITE 1452

DALLAS, TX, 75242

GRETCHEN MERENDA

AAG

P.O. BOX 12548

CAPITOL STATION

AUSTIN, TX, 78711-2548

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IN THE SUPREME COURT
OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

APPLICANT, JOHN HALL, RESPECTFULLY PRAY THAT THIS WRIT OF CERTIORARI
(THE WRIT) BE ISSUED AND GRANTED TO REVIEW THE JUDGMENTS BELOW.

OPINION BELOW

[] FOR CASES FROM FEDERAL COURTS :

THE UNPUBLISHED OPINION R^D U.S. COURT OF APPEAL (5th CIR.) APPEARS
AT APPENDIX A, TO THIS PETITION, AND IS REPORTED AT SLACK V. MCDANIEL
120 S.Ct. 1595 (2000) CITING HERNANDEZ V. THAYER, 630 F3d 420, 428 (5th CIR
2011) DENIAL OF (LOA) IN CAUSE NO. 23-10037, MADE ON JUNE 20, 2023.

THE OPINION OF NORTHERN (FED. DIST.) APPEARS AT APPENDIX B, TO THIS PETITION
AND REPORTED IN DENIAL OF HALL'S RULE 60(b)(4) MOTION MADE ON

THE OPINION OF U.S. COURT OF APPEAL (5th CIR.) APPEARS AT APPENDIX C, TO THIS
PETITION AND REPORTED AT IN RE CAMPTON, 1061 F3d 585, 588-89 (5th CIR 2012)
IN CAUSE NO. 21-10899, DENIAL OF FILING (SOS) PETITION MADE ON NOV. 4, 2021.

THE OPINION OF NORTHERN (FED. DIST.) COURT AT DALLAS IN CIV. ACT. (3:16-cr-
725-6) FED. § 2254 PETITION APPEARS AT APPENDIX D, OF DENIAL WITH PREJUDICE
ON JUNE 27, 2017, ORDERED BY SENIOR CIRCUIT JUDGE JOE. A. FISH.

THE ORDER OF DENIAL WITH PREJUDICE IN CIV. ACT. (3:16-cr-725-6) WAS
BASED ON THE MAGISTRATE JUDGE PAUL STICKNEY'S FACT FINDINGS, CONCLUSION

IN THE SUPREME COURT
OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

OPINIONS CONTAINED HEREIN

AND RECOMMENDATION APPEARS AT APPENDIX E, TO THIS PETITION, MADE
ON JUNE 27, 2017.

[] FOR CASES FROM STATE COURTS:

THE UNPUBLISHED OPINION FROM (TCCA) GRANTING "MOT. FOR RECONSIDERATION"
APPEARS AT APPENDIX F, TO THIS PETITION WHICH ARE REPORTED AT EX PARTE
WEBB, 870 S.W.3d 1081 (TEX. CRIM. APP. 2008) AND EX PARTE (LITTON), 21
S.W.3d 272 (TEX. CRIM. APP. 2000) WHICH WAS MADE ON JULY 28, 2000,
WHICH GIVES RISE TO "LACK OF SUBJECT-MATTER JURISDICTION" CONSTITUTING
A "VOID JUDGMENT" AND UNREASONABLE APPLIED § 2254 (D)(1) (FED. LAW)
§ 2254 HABEAS RULE 9(h) ISSUE OF "ABUSE OF WRIT".

IN THE UNITED STATE
SUPREME COURT

JURISDICTION

[] FOR CASE FROM FEDERAL COURTS:

THE DATE OF JUNE 20, 2023, U.S. COURT OF APPEALS FOR FIFTH (5th CIR.) CIRCUIT DENIED COA IN CASE NO. 23-10037, FINAL ORDER.

THE NORTHERN FED. DIST. DENIED RULE 60(b)(4) MOTION ON OR ABOUT DEC, , 2022, FINAL ORDER.

THE NORTHERN FED. DIST. DENIED WITH PREJUDICE § 2254 HABEAS PETITION IN CIV. NO. (3:16-cv-725-B) ON JUNE 26, 2017, FINAL ORDER.

THIS SUPREME COURT HAS JURISDICTION INVOKED BY (AEDPA) TITLE 28 U.S.C. § 1254(C), § 2241(C) (FED. LAW).

[] FOR CASE FROM STATE COURT:

THE DATE OF JULY 22, 2020, THE HIGHEST COURT (TCCA) GRANTED "MOTION FOR RECONSIDERATION" WHICH VACATED OR MODIFIED PREVIOUS HABEAS RULING, TO DISMISSAL. A COPY OF THAT DECISION APPEARS IN APPENDIX F. FINAL ORDER

THE DATE ON WHICH HIGHEST COURT (TCCA) DECIDED MAX CASE IN HABEAS CORPUS 22,314-05, DISMISSAL UNDER TCCP, ART. 11, OT 54.

THE SUPREME COURT HAS JURISDICTION INVOKED BY (AEDPA) TITLE 28 U.S.C. § 1257(a)(3) (FED. LAW)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT (4th) = "ILLEGAL SEARCH AND SEIZURE" UNDER EXCLUSORY RULE, NO EVIDENCE MAY BE USED IN PROSECUTION FOR ANY CRIME COMMITTED, WHEN IT WAS USED IN VIOLATION OF HIS RIGHT TO "PRIVACY" ON PUBLIC STREET, WITHOUT PROBABLE CAUSE.

FIFTH AMENDMENT (5th): "NO PERSON SHALL BE MADE TO ANSWER ANY FELONY OFFENSE, UNLESS OBTAINED BY INDICTMENT, IN WHICH HIS OR HER LIFE OR LIBERTY ARE AT STAKE.

SIXTH AMENDMENT (6th): APPLICANT HAS A CONSTITUTIONAL (CONST.) RIGHT TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL AT A CRITICAL STAGE, TO PROTECT HIS CONST. RIGHT UNDER "CONFRONTATION CLAUSE"; "COMPLUSORY PROCESS" AND FREE FROM "CONFLICT OF INTEREST".

FOURTEENTH AMENDMENT (14th): APPLICANT HAS (CONST.) RIGHT TO EQUAL PROTECTION OF DUE PROCESS CLAUSE (FUNDAMENTAL FAIRNESS) PROOF BEYOND A REASONABLE DOUBT ALL ESSENTIAL ELEMENTS OF CHARGED OFFENSE, AND ACCESS TO COURTS.

ANTI-TERRORISM EFFECTIVE DEATH PENALTY ACT (AEDPA) TITLE 28 OF UNITED STATE CODE OR STATUTE (U.S.C.S)

§ 2254 (A) : A STATE PRISONER MAY FILE AN APPLICATION OF WRIT OF HABEAS CORPUS, ON HIS BEHALF, PURSUANT TO A STATE CONVICTION, HE IS "IN CUSTODY" IN VIOLATION OF (CONST.) RIGHT UNDER U.S. CONST. AMEND. AND/OR FEDERAL (FED.) LAW.

§ 2254(b): APPLICANT MUST EXHAUST STATE COURT REMEDIES BEFORE FILING A FED. HABEAS CORPUS APPLICATION.

§ 2254(d): A HABEAS CORPUS RELIEF, MAY NOT BE GRANTED, UNLESS THE MERITS DETERMINATION WAS CONTRARY TO, OR INVOLVED UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FED. LAW.

§ 2244(b) "SECOND OR SUCCESSIVE" APPLICATION

§ 2253(c)(2), (3) "CERTIFICATE OF APPEALABILITY" (COA)

§ 2254 RULES GOVERNING HABEAS CORPUS APPLICATION RULES 6-8 (EVIDENTIARY RULES) AND RULE 9(b) (ABUSE OF WRIT)

TEXAS STATUTES AND RULES

TEX. CONST. ART. 1 § 9

TEX. CONST. ART. 1 § 10

TEX. PENAL CODE § 19.02 (MURDER)

TEX. PENAL CODE § 12.42(b), (d) (HABITUAL OFFENDER STATUTE)

TEX. TCCP. ART. 11.07 § 3(b)

TEX. TCCP ART. 11.07 § 3(d)

TEX. TCCP ART. 11.07 § 4(a) (ABUSE OF WRIT)

TEX. TCCP ART. 37.09 (LHO)

STATEMENT OF THE CASE

MR. HALL, WAS CHARGED WITH MURDER ON OR ABOUT NOV. 17, 2008, IN DALLAS COUNTY UNDER TEX. CONST. ART. I, SECT. 10, OF TEX. PENAL CODE § 19.02(b), APPLICABLE TO (6th) AMEND RIGHT TO EFFECT. ASSIST. OF COUNSEL AT TRIAL MADE BINDING UPON THE STATE OF TEXAS BY FOURTEENTH (14th) AMEND., DUE PROCESS (FUNDAMENTAL FAIRNESS).

MR. HALL, PROCEED TO HAVE A JURY TRIAL UNDER (6th) AMEND. TO HAVE A FULL AND FAIR HEARING UNDER "COMPULSORY PROCESS" AND PLEADED "NOT GUILTY" BY WAY OF SELF-DEFENSE. AT THE PUNISHMENT / SENTENCING PHASE OF TRIAL, WHICH WAS A "CRITICAL STAGE", MR. HALL PLEADED "TRUE" TO THE ENHANCE PARAGRAPHS, ON MR. WEATHERSPOON'S ADVICE, AND THE JURY FOUND MR. HALL GUILTY OF TWO PRIOR CONVICTIONS UNDER TEX. CODE OF CRIMINAL PROCEDURE ART. § 12.42(d), AND SENTENCED HIM TO SEVENTY (70) YEARS, ON OCT. 29, 2009.

MR. HALL, WAS APPOINTED APPELLATE COUNSEL ALLEN FISHER, WHICH FILED MR. HALL DIRECT APPEALS ON OR ABOUT APRIL 12, 2010, AND THE COURT OF APPEALS FOR 5th DIST. @ DALLAS AFFIRMED ON OR ABOUT APRIL 11, 2011, HIS CONVICTION AND SENTENCE.

REASONS FOR GRANTING WRIT OF CERTIORARI

MR. HALL CONTENDS THIS SUPREME COURT SHOULD GRANT THIS WRIT OF CERTIORARI (I.E. THE WRIT) TO WIT: (1) BOTH THE STATE OF TEXAS AND HALL HAVE A "PROTECTED RIGHT OF INTEREST" UNDER 14TH AMEND. DUE PROCESS CLAUSE, EQUAL PROTECTION OF THE LAW (FUNDAMENTAL FAIRNESS) TO MAKE SURE THAT AN INNOCENT PERSON SHALL NOT BE INCARCERATED FOR CRIME HE IS ACTUAL OR FACTUAL INNOCENT OF, AS IT APPLIES TO A LESSER-INCLUDED OFFENSE (I.E. L10) AND INVALID "PRIOR CONVICTION" AND (2) THE DECISION OF 5TH CIR., IS IN CONFLICT WITH TWO OTHER COURT OF APPEALS WHICH HAVE DECIDED THE FED. QUESTION OF "LACK OF SUBJECT MATTER JURISDICTION" WHICH CONSTITUTES A "VOID JUDGMENT".

I. JURISDICTION

THIS SUPREME COURT HAS JURISDICTION TO HEAR AND DECIDE WHETHER TO GRANT (THE WRIT) BECAUSE NORTHERN FED. DISTRICT (FED. DIST.) @ DALLAS DENIED HALL'S RULE 60(b)(4) MOTION - TO REOPEN HALL'S PREVIOUSLY CLOSED HABEAS CORPUS PROCEEDING §2254 IN CIV. RET. (3:16-CV-725-B) WHICH WAS DENIED WITH PREJUDICE ON JUNE 27, 2017. HALL APPEALED THAT DECISION TO THE FIFTH CIRCUIT COURT OF APPEALS (I.E. 5TH CIR.) FOR A CERTIFICATE OF APPEALABILITY (I.E. COA) WHICH WAS DENIED ON JUNE 20, 2023.

HALL RELIES UPON ANTI-TERRORISM EFFECTIVE DEATH PENALTY ACT (I.E. AEDPA) TITLE 28 OF CHAPTER 153 HABEAS PROCEEDINGS; 28 U.S.C.S. §§ 1254(i); §2253(c) (FED. LAWS) LEGAL CONCLUSION HOHN V. U.S., 118 S.Ct.

1069 (1998) CITING LINDH V. MURPHY, 117 S.Ct. 2059 (1997) §2254 (d):

" UNDER §1254(1) "CASE IN" AND "CASE NO" MEANS- WHEN APPLICANT (HALL) FILES A COMPLAINT (I.E. PETITION FOR HABEAS CORPUS OR APPEAL) IN A CRIMINAL OR CIVIL ACTION, PROCEEDING, OR SUIT IN A COURT OF APPEAL, APPLICABLE TO HALL'S RULE 60(b)(4) MOTION AND (COA) WHICH ARE FINAL ORDERS THAT MAY BE REVIEWED BY SUPREME COURT BY (THE WRIT) BEFORE OR AFTER RENOVATION OF JUDGMENT OR DECREE".

" UNDER §2253(L) (FED.LAW) A FINAL ORDER FROM A JUDGMENT OR DECREE MAY BE REVIEWED BY (THE WRIT) UNDER VIOLATION OF A RIGHT, TITLE, OR PRIVILEGE SET UP BY U.S. CONST. AMEND., STATUTE, OR FED. LAW".

THUS HALL, HAD 90 DAYS FROM THE (5th CIR) FINAL ORDER DENYING HALL'S (COA) FROM DENIAL OF HIS RULE 60(b)(4) MOTION DONE ON JUNE 20, 2023, TO FILE (THE WRIT) WITH SUPREME COURT ON OR ABOUT SEPT. 20, 2023. HALL RELIES UPON HOUSTON V. LACK, 108 S.Ct. 2379 (1988) §2254 (d) (FED.LAW) ISSUE OF "FILED" UNDER "MAILBOX RULE", WHEN HALL SIGNED AND DATED (THE WRIT) ON SEPT. 6, 2023 AND PLACED (THE WRIT) INSIDE THE W.F. RAMSEY UNIT 1 INSTITUTIONAL INTERNAL MAILING SYSTEM.

II. STANDARD OF REVIEW

HALL, ASKS THIS SUPREME COURT THE FOLLOWING TWO QUESTIONS TO WIT:
(1) DOES (AEDPA) CONTROL UNDER THE FOLLOWING, (A) SUBJECT MATTER JURISDICTION, (B) EXHAUSTION RULE, (C) ADJUDICATION OF MERITS AND (D) ABUSE OF WRIT? (2) WHAT IS THE CORRECT STANDARD OF REVIEW TO HALL'S CONST. CLAIM?

HALL BELIEVES THAT (AEDPA) DOES CONTROL IN THIS CASE, UNDER LINDH (FED. CLAIM) BECAUSE (AEDPA) WAS ENACTED ON JULY 9 OF 1996, BEFORE (HALL) "FILED" ANY STATE OR FED. HABEAS CORPUS PETITION, CHALLENGING HIS

CONVICTION AND SENTENCE WERE OBTAINED IN VIOLATION OF U.S. CONST. AMEND., OR FED. LAWS OF U.S. OF AMERICA.

HALL BELIEVES THE CORRECT STANDARD OF REVIEW SHOULD BE "ABUSE OF DISCRETION" BECAUSE WHEN A FED. COURT DENIES A HABEAS PETITION OR MOTION, IT IS A PURE QUESTION OF LAW, APPLICABLE TO "DE NOVO" REVIEW UNDER §§ 2254(d)(1), (d)(2) (FED. LAW) BECAUSE HALL'S STRICKLAND V. WASHINGTON, 109 S.C.T. 2052 (1984) § 2254(d) (FED. LAW) ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL (IAC) IS A "MIXED" QUESTION OF LAW AND FACTS. UNDER LEGAL CONCLUSION, HUTTO V. DAVIS, 102 S.C.T. 703 (1982) QUOTING CULLEN V. PINNHOLSTER, 131 S.C.T. 1388 (2011) §§ 2254(d)(2) (e)(1), (e)(2) (FED. LAW) WHICH HELD:

"THE LOWER FED. COURTS (I.E. NORTHERN (FED. DIST.) FEDERAL DISTRICT AND (5th CIR.) SHOULD FOLLOW SUPREME COURT PRECEDENT, NO MATTER HOW MISGUIDED THAT COURT MIGHT THINK IT TO BE" APPLICABLE TO § 2254(d)(1) REVIEW

"UNDER § 2254(d)(1) (FED. LAW) REVIEW SHOULD BE LIMITED TO THE RECORD THAT WAS BEFORE THE STATE COURT (I.E. TCCA) THAT "ADJUDICATED CLAIM ON THE MERIT". THE FOCUS SHOULD BE ON WHAT THE (TCCA) KNEW AND DID. THAN (TCCA) DECISION MEASURED BY SUPREME COURT PRECEDENT AT THE TIME (TCCA) RENDERED ITS DECISION".

HALL RELIES UPON LEGAL CONCLUSION JEFFERSON V. LIPTON, 130 S.C.T. 2217 (2010) QUOTING TOWNSEND V. SAIN, 83 S.C.T. 745 (1963) § 2254(d) § 2254(e)(1), (e)(2) (FED. LAW) ISSUE OF "PRESUMPTION OF CORRECTNESS" WHICH WAS MODIFIED BY (AEDPA) WHICH RENUMBERED § 2254(d)(1) EXCEPTIONS TO § 2254(e)(1) EXCEPTIONS, APPLICABLE TO § 2254(e)(2) (FED. LAW) ISSUE OF GRANTING OR REFUSING AN "EVIDENTIARY HEARING" IF HALL HAS "FAILED TO DEVELOP THE RECORD IN A STATE COURT PROCEEDING, LEGAL CONCLUSION, WILLIAMS (MICHAEL) V. TAYLOR, 130 S.C.T. 1474 (2000)

"(AEDPA) §2254(e)(1) (FED. LAW) "PRESUMPTION OF CORRECTNESS" - REQUIRES DEFERENCE BY FED. COURT, AS IT APPLIES TO (TCCA) FACT-FINDINGS, BECAUSE (FED. DIST.) COURT MAKES ITS DECISION BASED UPON THE SAME IDENTICAL STATE RECORD THAT WAS BEFORE (TCCA) AND PRESUMPTION OF CORRECTNESS APPLIES UNLESS ONE OF THE EIGHT EXCEPTIONS APPLY BY CLEAR AND CONVINCING EVIDENCE, THAN (HALL) HAS REFUTED THAT PRESUMPTION, AND IS ENTITLED TO FED. HABEAS CORPUS RELIEF".

A: DISCUSSION OF PROCEDURAL FILING AND RULINGS

HALL CONTENTS HIS CONVICTION AND SENTENCE BECAME "FINAL" FOR FED. HABEAS CORPUS REVIEW OF (AEDPA) TITLE 28 U.S.C. §2244(d) (FED. LAW) §2244(d)(1)(A), §2244(d)(2) ISSUE OF "STATUTORY TOLLING", DATE ON WHICH JUDGMENT BECAME "FINAL" BY CONCLUSION OF DIRECT APPEALS, OR EXPIRATION OF TIME TO SEEK REVIEW, LEGAL CONCLUSION CASPARI V. BOHLEN, 114 S.Ct. 948 (1994) QUOTING JIMENEZ V. QUARTERMAN, 129 S.Ct. 681 (2009) UNDER §2254(d)(1) INDISTINGUISHABLE FACT: HALL FILED STATE PETITION 82,314-01, ON OR ABOUT SEPT. 2, 2004 WITH (TCCA) FOR AN OUT-OF-TIME PETITION FOR DISCRETIONARY REVIEW (PDR) AND (TCCA) GRANTED PETITION ON NOV. 19, 2004 AND REISSUED ITS INMATE ON DEC. 15, 2004, SO UNDER §2244(d)(1)(A) (FED. LAW) (PDR) WOULD BE THE "OTHER COLLATERAL REVIEW" BEFORE EXPIRATION TO SEEK REVIEW.

HALL FILED (PDR) UNDER HOUSTON (FED. CLAIM) "MAILBOX RULE" ON FEB. 27, 2015, WITH (TCCA) AND (PDR) WAS SET FOR SUBMISSION ON MAR. 10, 2015. (TCCA) REFUSED (PDR) ON APRIL 22, 2015.

HALL FILED STATE HABEAS PETITION (82,314-03) ON OR ABOUT DEC. 9, 2015 WITH (TCCA). (TCCA) "DISMISSED" UNDER TEX. CODE OF CRIMINAL PROCEDURE (TCCP) ART. 11.07 §4(A) INTERPRETATION OF §2254 HABEAS RULE GOVERNING HABEAS PROCEEDINGS RULE 9(b) (FED. LAW) ISSUE OF "ABUSE OF WRIT" LEGAL CONCLUSION

MCCLESKY v. ZANT, 111 S.C.T. 1454 (1991) §2254(d).

(AEDPA) TITLE 28 U.S.C. § 2254(a) (FED. LAW) PLACES TWO REQUIREMENTS UPON (HALL), A STATE PRISONER, BEFORE HE CAN FILE AN §2254 PETITION IN FED. COURTS TO WIT: (1) HE IS BEING HELD "IN CUSTODY" PURSUANT A STATE COURT JUDGMENT, IN VIOLATION OF U.S. CONST. AMEND., OR FED. LAWS, IN WHICH HALL MUST EXHAUST STATE REMEDIES AND HIS CONVICTION AND SENTENCE MUST BE "FINAL" APPLICABLE TO HALL'S CONST. CLAIM "ADJUDICATED ON THE MERITS" §2254(b) (FED. LAW) AND (2) PLACES ONE YEAR STATUTORY LIMITATION PERIOD UPON FILING §2254 PETITION IN FED. COURTS.

HALL, HAD 90 DAYS FROM (TCCA) ORDER REFUSING (PDR) ON APR. 22, 2015, TO FILE (THE WRIT) WITH SUPREME COURT, WHICH UNDER §2244(d)(1)(A) (FED. LAW) MADE HALL'S CONVICTION AND SENTENCE "FINAL" ON OR ABOUT JULY 21, 2015. NOW ON JULY 22, 2015, FED. CLOCK BEGAN TO RUN UNTIL HALL FILED HABEAS PETITION 82-314-03 ON DEC. 9, 2015, ALLOWING ABOUT 4½ MONTHS OR (161 DAYS) TO ELAPSE OFF ONE YEAR STATUTORY PERIOD. NOW UNDER §2244(b)(2) (FED. LAW) ISSUE OF "STATUTORY TOLLED" FROM DEC. 9, 2015 - THEN FEB. 2, 2016 (53 DAYS) UNTIL (TCCA) "DISMISSED" PETITION. THUS WHEN HALL FILED §2254 PETITION IN CAUSE NO (3:16-CV-725-B) WAS TIMELY AND MERITORIOUS PETITION.

THE (5th CIR) DECISION OF DENIAL OF HALL'S (COA) WAS UNREASONABLE APPLICATION §2254(d)(1) (FED. LAW) LEGAL CONCLUSION SLACK v. McDaniel, 120 S.C.T. 1595 (2000) §2254(d), §2253(1)(2), (1)(3) (FED. LAW) REQUIRES ISSUANCE OF (COA), SHALL INDICATE WHICH ISSUE THAT SATISFY THE SHOWINGS REQUIRED BY §2253(1)(2) WHICH WAS CONTRARY TO §2254(d)(1) LEGAL CONCLUSION, BAREFOOT v. ESTELLE, 103 S.C.T. 3383 (1983) §2254(d) (A SHOWING OF DENIAL SUBSTANTIAL OR CONST. RIGHT, INCLUDES SHOWINGS THAT REASONABLE JURISTS COULD DEBATE WHETHER THE PETITION SHOULD HAVE BEEN RESOLVED IN A DIFFERENT MANNER OR

THAT ISSUES PRESENTED WERE "ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER").

HALL PRESENTED THE ISSUE OF LACK OF "SUBJECT MATTER JURISDICTION" IN CIV. ACT. (3:10-CV-125-G), IN WHICH (FED. DIST.) DENIED WITH PREJUDICE, HALL'S §2254 FED. HABEAS PETITION ON OR ABOUT JUNE 27, 2017. INSTRINSIC EVIDENCE APPENDIX "E" OF MAG. JUDGE RECOMM. PG. 4 LL 12-19 IN WHICH HALL STATED: (HIS CONST. CLAIM SHOULD NOT BE PROCEDURALLY BARRIED BECAUSE (TCCA) SHOULD NOT HAVE CONSIDERED SECOND STATE PETITION (82-314-02) ON THE MERITS, BECAUSE HIS (PCR) WAS STILL PENDING AT THE TIME OF HABEAS FILING) WHICH (FED. DIST.) "ABUSED ITS DISCRETION" OF §2254 HABEAS RULE 4 AND 5 (FED. LAW) IT SHOULD HAVE "LIBERALLY CONSTRUED" PRO SE PLEADINGS UNDER FED. R. CIV. PROC. RULE 12(b)(6) (FED. LAW) ISSUE OF "FACTUAL ATTACK".

THE (5th CIR) RELIANCE UPON HERNANDEZ V. THALER, 630 F3d 460, 468 (5th CIR. 2011) STANDS IN CONFLICT WITH TWO OTHER CIRCUIT COURT OF APPEALS TO HAVE DECIDED UPON THE QUESTION OF "LACK OF SUBJECT-MATTER JURISDICTION" UNDER JURISDICTION RULE 10(a) (FED. LAW) LEGAL CONCLUSION ORNER V. SHALALA, 30 F3d 1307, 1310 (10th CIR 1994) AND BURKE V. SMITH, 252 F3d 1060 (11th CIR. 2001) §2254(d) (FED. LAW), APPLICABLE TO APPENDIX "A" PG. 1 LL 4-5 (THE DIST. COURT DENIED WITH PREJUDICE AS PROCEDURALLY BARRIED HALL'S §2254 CLAIMS THAT TRIAL COUNSEL RENDERED (IAC)) PG. 2 LL 1-6 HALL ASSERTS: (HE IS ENTITLED TO RULE 60(b) RELIEF BASED ON STATE HABEAS ORDERS SUBSEQUENTLY ISSUED BY (TCCA)); AND THE (5th CIR) ERRONEOUS RELYING UPON MISSTATEMENTS OF LAW AND FACTS.

THE INDISTINGUISHABLE FACTS OF SLACK, (FED CLAIM) APPLICABLE TO HALL'S CASE ARE AS FOLLOWS: 1) THEY BOTH APPEALED THEIR MURDER CONVICTIONS BY FILING STATE HABEAS PETITION; 2) THEY BOTH FILED §2254 PETITION WHICH CONTAINED BOTH EXHAUSTED AND UNEXHAUSTED CLAIM; 3) ONLY, SLACK, WAS GRANTED "ABEY"

MOTION TO RETURN TO STATE COURT TO EXHAUST STATE REMEDIES, BUT HALL WAS DENIED TO RETURN TO STATE COURT UNDER §2254(b)(2)(B)(ii) (FED. LAW) ISSUE OF "FINALITY" BECAUSE (ADA) MEREDONIA STATED: ("IT WOULD BE "FUTILE" FOR HALL TO GO BACK TO STATE COURT BECAUSE (TCCA) HAS DENIED HALL'S CONST. CLAIM UNDER "ABUSE OF WRT") WHICH ACTIVELY "MISSED" HALL FROM GOING BACK TO (TCCA) SOONER, APPLICABLE TO JEFFERSONS (FED. CLAIM) §2254 (e)(4) "LACK OF SUBJECT MATTER JURISDICTION" EXCEPTION, (e)(6), (e)(7) EXCEPTION APPLIES BECAUSE IN CIV. PET. (3:16-CV-725-G) HALL WAS DEPRIVED A FULL AND FAIR HEARING IN VIOLATION OF 14th AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS).

NOW UNDER §2244(b) (FED. LAW) "FINALITY DETERMINATION" OF §2244(b)(2) (b)(1) (FED. LAW) ISSUE OF "DUE DILIGENCE" FOR "FACTUAL PREDICATE" OF "LACK OF SUBJECT MATTER JURISDICTION" APPLICABLE TO §2254(b)(2)(B)(i) (FED. LAW) ISSUE OF "EXCEPTION TO EXHAUSTION RULE" BECAUSE MOTION FOR RECONSIDERATION (MOT. FOR RECUSIO.) WAS STILL AVAILABLE WHEN HALL FILED §2254 PETITION IN CIV. PET. (3:16-CV-725-G).

HALL FILED (MOT. FOR RECUSIO.) ON OR ABOUT MAY 16, 2020 WITH (TCCA) AND MOTION WAS GRANTED ON JULY 20, 2020, WHICH REVERSED/MODIFIED (TCCA) PREVIOUS HABEAS RULING, PETITION (82,314-02) DENIAL WITHOUT WRITTEN ORDER TO "DISMISSAL" FOR "LACK OF SUBJECT MATTER JURISDICTION" AND PETITION (82,314-03) "DISMISSAL" UNDER (TCCP) ART. 11,0734(a) "ABUSE OF WRT" TO "DISMISSAL" UNDER (TCCP) RULES 73.1(g) LACK OF SIGNATURE VERIFICATION AND RULE 73.2 LCU-COMPLAINT, INTERPRETATION OF TITLE 18 FED. R. CIV. PROC. RULE 41(b) (FED. LAW) ISSUE OF "DISMISSAL" WAS "AMBIGUOUS" MEANING YOU DO NOT KNOW IF IT WAS WITH OR WITHOUT PREJUDICE, THAN IT MUST BE ASSUMED IT WAS WITHOUT PREJUDICE, WHICH WOULD CONSTITUTE THERE WAS NO "ADJUDICATION OF MERITS" OF HALL'S CONST. CLAIMS UNDER §2254(d) (FED. LAW).

HALL NOW ATTEMPTING TO EXHAUST STATE REMEDIES UNDER § 2254(b)(1) (A) (RED. LAW) FILED TWO MORE STATE HABEAS PETITIONS, HABEAS PETITION (88, 314-04) FILED ON OR ABOUT NOV. 4, 2000 WITH TCRA, WHICH WAS DENIED WITHOUT WRITING ORDER ON OR ABOUT DEC. 9, 2000. NOW BEFORE (TCRA) REORDERED ITS DECISION IN HABEAS PROCEEDINGS (88, 314-04) HALL FILED A HABEAS PETITION (88, 314-05) WITH THE CAPTION "AMENDED PETITION" ON OR ABOUT DEC. 8, 2000 UNDER HOUSTON, (RED. CLAIM) WHICH (TCRA) "DIS- MISSED" UNDER (TCRA) PET. 11.07 § 4(a) ON OR ABOUT APR. 7, 2001

NOW UNDER SLACK'S INDISTINGUISHABLE FACTS, 4) BOTH AFTER UNSUCCESSFUL ATTEMPT IN STATE COURT, RETURNED TO RED. DIST. COURT FILES § 2254 PETITIONS AND (RED. DIST.) UNDER BOTH PETITION AND (COA) AND 5) THEY BOTH APPEARED THOSE DECISIONS BY FILES A (COA) IN COURT OF APPEALS.

THE MOST DISTINGUISHABLE FACT OF SLACK, (RED. CLAIM) IS THAT SLACK, WAS GRANTED A (COA) FOR ISSUE ONLY THAT (RED. DIST.) WAS INCONGRUENT IN ITS PROCEEDING RULING (I.E. SLACK'S 1995 PETITION WAS (SOS) PETITION UNDER § 2254(b) (RED. LAW) BECAUSE CLAIM WHERE NO BROUGHT IN 1991 PETITION AND SLACK, DID NOT ATTEMPT TO MAKE A SHOWING OF "DENIAL OF A JUST, RIGHT". NOW COMPARED TO HALL, ATTEMPTED TO MAKE BOTH SHOWINGS BUT, (5th CIR.) ONLY ANSWERED JUST CLAIM UNDER § 2253(c)(2) (RED. LAW) AND NOT § 2253(c)(3) (RED. LAW) ISSUE ARE DEFERRABLE, AND DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

NOW UNDER TITLE 18 U.S.C. FED. R. APP. PROC. RULE 47; FED. R. CIV. PROC., RULE 32.1 AND (5th CIR.) RULE 47.5(4) (FED. LAW) WHERE UNPUBLISHED OPINION MAY BE CITED FOR THEIR PRESUMATIVE VALUE, COMPARE TIPTON V. THALER, 354 FED. APPX. 134 (5th CIR. 2009) (UNPUBLISHED OPINION) WHICH SHOWS THAT BOTH (FED. DIST.) AND (5th CIR.) WERE INCORRECT IN ITS PROCEDURAL RULING UNDER CIV. ACT. (3:16-CR-725-G) DENIAL WITH PREJUDICE; DENIAL OF (SOS) PETITION; DENIAL OF BOTH RULE 60(b)(4) MOTION AND (COA).

NOW UNDER §2254 (d)(1) INDISTINGUISHABLE FACTS OF TIPTON, (FED. CLAIM AS IT APPLIES TO HALL'S PROCEDURAL FILINGS ARE TO WIT: 1) BOTH THEIR CONVICTION AND SENTENCE WERE AFFIRMED ON DIRECT APPEALS; 2) THEY FILED (ADRS) WHICH WERE REFUSED; 3) THEY FILED STATE HABEAS PETITION WHICH WERE DENIED WITHOUT WRITTEN ORDER; 4) THEY BOTH FILED (MOT. FOR RECONSID.) INFORMING (TCCA) HABEAS PETITION WERE FILED DURING PENDENCY OF DIRECT APPEALS, REQUESTING PREVIOUS RULING BE "DISMISSED" FOR "LACK OF SUBJECT MATTER JURISDICTION" WHICH (TCCA) GRANTED; 5) THEY BOTH EXHAUSTED STATE REMEDIES, RETURNING TO FED. COURT FILING §2254 PETITION WHICH WERE DENIED; 6) THEY BOTH FILED (COA) WITH (5th CIR) AND (5th CIR.) GRANTED TIPTON'S (COA) TO REVERSE THE DENIAL OF HIS §2254 PETITION "ON THE MERITS" UNDER §2254(d) (FED. LAW) AND REMAND BACK TO (FED. DIST.) FOR FURTHER PROCEEDINGS.

THE PROCEDURAL RULING OF (FED. DIST.) IN CIV. ACT. (3:16-CR-725-G) OF DENIAL WITH PREJUDICE, WAS INCORRECT UNDER JEFFERSON, (FED. CLAIM) §2254(e)(1) (FED. LAW) PRESUMPTION OF CORRECTNESS, DOES NOT APPLY TO HALL'S CASE, BECAUSE JEFFERSON, (FED. CLAIM) §2254(e)(1), (e)(4), (e)(7) AND

AND (e)(8) EXCEPTIONS APPLIES TO HALL CASE. THE (FED. DIST.) COURT RELIED UPON THE (TCCA) ERRONEOUS HABEAS RECORD AT THE TIME OF CIV. ACT. (3:16-CV-725-G) FILING UNDER JEFFERSON (E)(8) EXCEPTION, WHEN IT RELIED UPON THAN MAG. JUDGE PAUL STICKNEY RECOMMENDATION INTRINSIC EVIDENCE APPX "E" UNDER RELEVANT PART OF PROCEDURAL FILING AND RULINGS PG. 1 LL 5-12; PG. 2 LL 1-15; RECOGNIZING THAT HALL HAD FILED THREE (3) STATE HABEAS PETITION, BEFORE FILING IN FED. COURTS.

THE (FED. DIST.) ERRONEOUSLY RELIED UPON APPX "E" MAG. JUDGE RECOMMENDATION @ PROCEDURAL BAR PG. 3 LL 14-16 STATING THAT: (CLAIMS 2 AND 3, ARE PROCEDURALLY BAR BECAUSE (TCCA) RULED ON THEM IN A SECOND PETITION AS "ABUSE OF WRIT" UNDER MCCLESKY (FED. CLAIM) APPLICABLE TO JEFFERSON § 2254(e)(1) EXCEPTION BECAUSE UNDER (TCCA) ORDER GRANTING (MOT. FOR RECONSID.) UNDER APPX "F", CLEARLY SHOWS THAT "DISMISSAL" MEANS A COURT DECLINES TO ADDRESS HALL'S CONST. CLAIMS ON THE MERITS, BECAUSE OF UNRELATED MATTERS AND THE REASONABLE JURISTS OF 5th CIR PRECEDENT, § 2253(c)(3) (FED. LAW) LEGAL CONCLUSION MURPHY V. JOHNSON, 205 F3d, 809, 813 (5th CIR. 2000); MERCADIEL V. LAHO, 179 F3d, 271, 275 (5th CIR. 1999) AND FISHER V. TEXAS, 119 F3d 295 (5th CIR. 1999) (HAVE DECIDED THE ISSUE OF "ADJUDICATION OF MERITS" WAS DEBATABLE AND DESERVE ENCOURAGEMENT TO PROCEED FURTHER) BECAUSE "ABUSE OF WRIT" WAS UNREASONABLE APPLIED, AND IS NOT AN "ADJUDICATION OF MERITS" BECAUSE IT CAN BE OVERCOME BY "CAUSE" AND "PREJUDICE" EXCEPTION UNDER MCCLESKY, (FED. CLAIM).

THE (FED. DIST.) DECISION OF DENIAL WITH PREJUDICE, UNDER §2254 (b)(2) (FED. LAW) WAS CONTRARY TO §2254(d)(1) (FED. LAW) LEGAL CONCLUSION ROSE Y. LINDO, 102 S.Ct. 1981 (1982) §2254(d) WHICH HELD (A "MIXED" PETITION CONTAINING EXHAUSTED AND UNEXHAUSTED CLAIMS MUST BE "DISMISSED" WITHOUT PREJUDICE, BECAUSE (TCCA) MUST BE GIVEN FIRST OPPORTUNITY TO CORRECT ANY CONST. ERRORS, UNDER §2254(b)(1)(A) (FED. LAW) ISSUE OF "EXHAUSTION RULE", THE REASONABLE JURISTS OF §2253(c)(3) (FED. LAW) LEGAL CONCLUSION, PICARD Y. CONDORE, 92 S.Ct. 509 (1971) AND RICHARDSON Y. PIERCE 762 F.2d 429, 431 (5th Cir 1985) (HAVE DECIDED THE EXHAUSTION RULE, DEBATABLE WHEN HALL "FAIRLY PRESENTED" HIS CONST. AMEND. RIGHTS TO THE HIGHEST STATE COURT WHICH IN TEXAS IS (TCCA), IN A PROPER CORRECT MANNER, WITH THE SAME FACTS AND LEGAL THEORIES WHICH DESERVES ENCOURAGEMENT TO PROCEED FURTHER).

THE (FED. DIST.) DECISION OF DENIAL OF (SOS) PETITION FOR "LACK OF SUBJECT MATTER JURISDICTION" WAS CONTRARY TO §2254(d)(1) LEGAL CONCLUSION STEWART Y. MARTINEZ-VILLAREAL, 118 S.Ct. 1618 (1998) §2254(d) BECAUSE (FED. DIST.) "ABUSED ITS DISCRETION" UNDER EITHER "PLAIN ERROR" OR "DE NOVO" STANDARD OF REVIEW, BECAUSE (FED. DIST.) DID NOT "LIBERALLY CONSTRUCT" HALL'S "LACK OF SUBJECT MATTER JURISDICTION" CLAIM UNDER JEPPERSON, §2254(e)(6), (CIT) EXCEPTION APPLY, BECAUSE APP'X "E" MAG. JUDGE RECOMM. PG. 4 LL 12-19, UNREASONABLE APPLIED §2244(b) (FED. LAW) (SOS) REQUIREMENT, AND UNDER PG. 5 LL 13-17 UNDER SUMMARY, WAS CONTRARY TO, (TCCA) ORDER GRANTING (MOT. FOR RECOUSID.) APP'X "F", BECAUSE (FED. DIST.) RELIED UPON STATE COURT DECISION TO DENY RELIEF WAS NOT CONTRARY TO, OR DOES NOT INVOLVE UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FED.

LAW AND IS NOT BASED ON UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF EVIDENCE IN STATE COURT PROCEEDINGS, MARTINEZ-VILLAREAL (FED. CLAIM) @ 16022, UNDER §2254(b)(1)(A) (FED. LAW) REFLECTS A POLICY OF FED.-STATE COMITY... IT FOLLOWS THAT ONCE A FED. CLAIM HAS BEEN "FAIRLY PRESENTED TO STATE COURTS EXHAUSTION RULE HAS BEEN SATISFIED.

SLACK, (FED. CLAIM) @ 16005-16006, HALL SHOULD NOT BE LIMITED TO CLAIM MADE IN THE INITIAL 2016 PETITION, BECAUSE IT WAS DONE WITHOUT THE BENEFIT OF COUNSEL, HANDWRITTEN, AND THERE WAS NO "ADJUDICATION OF MERIT" TO HALL'S CONST. CLAIM.

THE (FED. DIST.) AND (5th CIR.) DECISION TO DENY HALL'S RULE 60(b) (4) MOTION - RELIEF FROM FINAL JUDGMENT OF §2254 PETITION IN CIV. ACT. (3:16-CV-725-G) DENIAL WITH PREJUDICE, WAS INCORRECT, LEGAL CONCLUSION KLAPROTT V. U.S., 69 S.Ct. 384 (1949) QUOTING FACKELMAN V. BELL, 564 F.2d. 734 (5th CIR. 1977).

THE FACT THAT HALL FILED (MOT. FOR RECONSID.) WITH (TCCA) CLAIMING "LACK OF SUBJECT MATTER JURISDICTION" AND (FED. DIST) NOR (5th CIR) WANTS TO "LIBERALLY CONSTRUCT" (MOT. FOR RECONSID.) AS HALL'S RULE 60(b)(4) MOTION UNDER FACKELMAN (3) FACTOR, IN ORDER TO ACHIEVE A SUBSTANTIAL JUSTICE, AND REASONABLE JURISTS OF LEGAL CONCLUSION U.S. v. ADDONIZO, 99 S.Ct. 2235, 2240 (1979) §2254(d) (FED. LAW) HAS DECIDED ISSUE OF "LACK OF SUBJECT MATTER JURISDICTION" AS A "FUNDAMENTAL CONCEPT" UNDER 14th AMEND., DUE PROCESS (FUNDAMENTAL FAIRNESS), THAT CAN NEVER BE WAIVERED OR FORFEITED, BECAUSE UNDER FACKELMAN (4) FACTOR, IF A COURT DOES NOT HAVE JURISDICTION TO HEAR AND DECIDE A CASE, THAN

THAT JUDGMENT IS "VOID" (I.E. DENIAL WITH PREJUDICE).

NOW THE REASONABLE JURIST OF LEGAL CONCLUSION, MASSACHUSETTS V. U.S., 136 S.Ct. 709, 716 (2016) §2254(d) (FED. LAW) ISSUE OF "LAW OF CASE DOCTRINE" (LOCD) GENERALLY MEANS ("WHEN A COURT DECIDES UPON A RULE OF LAW (I.E. LACK OF SUBJECT MATTER JURISDICTION AND UNREASONABLE APPLIED §2254 HABEAS RULE 9(b) (FED. LAW)) THAT DECISION SHOULD CONTINUE TO GOVERN THE SAME ISSUE IN A SUBSEQUENT PROCEEDING IN THE SAME CASE, APPLICABLE TO "DISMISSAL" OF PREVIOUS HABEAS RULINGS UNDER PACKELMAN (5) FACTOR, IT CLEARLY SHOWS THAT THERE WAS NO "ADJUDICATION OF MERITS" TO HALL'S CONST. CLAIM, UNDER APPX "F" (TCCA) ORDER GRANTING (MOT. FOR RECORDING.).

THUS THE (5th CIR.) DECISION TO DENY HALL'S (COA) IN APPX "A" WAS STILL BASED ON ERRONEOUS (FED. DIST.) RECORD UNDER APPX. "B" MAG. JUDGE RUTHERFORD RECOMM. PG. 3 LL 18-22 WHICH STATED: ("THIS (FED. DIST.) COURT "ADJUDICATED" HALL'S §2254 PETITION ON THE MERITS ON JUNE 27, 2017) AND CLAIM BROUGHT IN (SOS) PETITION, COULD HAVE BEEN BROUGHT IN 2016 PETITION) WAS CONTRARY TO §2254 (d) LUNDY (FED. CLAIM) BECAUSE 2016 PETITION SHOULD HAVE BEEN "DISMISSED" WITHOUT PREJUDICE, FOR CONTAINING EXHAUSTED AND UNEXHAUSTED CLAIMS.

HALL IS ENTITLED TO FED. HABEAS CORPUS RELIEF OF BOTH LUNDY AND KLAPPORT (FED. CLAIM), TO HAVE THE JUDGMENT OF "DENIAL WITH PREJUDICE" REVERSED TO "DISMISSAL" WITHOUT PREJUDICE AND REMAND BACK FOR FURTHER PROCEEDING, BECAUSE (FED. DIST.) NOR (5th CIR.) CONSIDERED HOW (TCCA) "DISMISSAL" STATE PETITIONS ON "JURISDICTIONAL GROUNDS" AND ITS WITHDRAWAL OF §2254(d) (FED. LAW) ISSUE OF "ADJUDICATION OF MERITS" AFFECTED HALL'S §2254 PETITION. THE (5th CIR.) RELIANCE UPON (FED. DIST.) "MISSTATEMENT OF LAW AND FACTS", HAVE HELD TO THE CONTRARY, ITS JUDGMENT MUST BE VACATED.

CONST. CLAIM

NOW UNDER SLACK, (FED. CLAIM) §2253 (C)(2) (FED. LAW) ISSUANCE OF (COA) ONLY IF HALL, HAS MADE SUBSTANTIAL SHOWING OF DENIAL OF A CONST. RIGHT, INTERPRETATION OF TITLE 18 U.S.C. FED. R. CIV. PROC. RULE 12(b)(6) (FED. LAW) ISSUE OF "FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, APPLICABLE TO TITLE 28 U.S.C.S §2254(a) (FED. LAW) ISSUE OF "IN CUSTODY".

HALL ASKS THIS SUPREME COURT THE FOLLOWING QUESTION, WHAT IS, WHEN AND WHERE DID HALL CITE A COGNIZABLE FED. HABEAS CORPUS CLAIM?

HALL CONTENDS A COGNIZABLE HABEAS CLAIM - MEANS CAPABLE OF BEING HEARD; TO BE JUDICIALLY HEARD BY A COURT WHICH INCLUDE: (1) THE JUDGMENT WAS RENDERED WITHOUT PERSONAL OR SUBJECT-MATTER JURISDICTION; (2) CONVICTION AND/OR SENTENCE WERE UNCONSTITUTIONAL IMPOSED; (3) CONVICTION AND SENTENCE VIOLATES FED. LAW AND (4) SENTENCE OR JUDGMENT OTHERWISE OPEN TO COLLATERAL ATTACK.

HALL CITED A FED. CLAIM UNDER LEGAL CONCLUSION HARRINGTON V. RICHTER, 131 S.C.T. 770, 775 (2011) QUOTING BAUDWIN V. REESE, 124 S.C.T. 1347 (2004) §2254 (a):

"A FED. CLAIM IS WHEN YOU ARE ATTACKING YOUR CONVICTION AND SENTENCE, IN ORDER TO OBTAIN FED. HABEAS CORPUS RELIEF. A FED. CLAIM WAS CITED WHEN A U.S. CONST. AMEND. (I.E. 4th, 5th, 6th AND 14th); A SUPREME COURT PRECEDENT (I.E. STRICKLAND V. WASHINGTON, ETC...) CITING U.S. CODE OR STATUTE (I.E. (FED. R.) TITLE 18 U.S.C. FED. R. CRIM. AND CIV. PROC., TITLE 28 U.S.C.S. §2244, §2253, §2254) WHICH ARE GOVERNED BY U.S. CONST. AMEND. AND FED. LAWS."

APPLICABLE TO REESE, (FED. CLAIM) CAN BE RECOGNIZED BY UNDERLYING IT, BY USING THE (PARENTHESIS) AFTER SAID CLAIM, APPLICABLE TO LEGAL CONCLUSION, WILLIAMS (TERRY) V. TAYLOR, 120 S.C.T. 1495 (2000) §2254 (d) (FED. LAW).

"THE MOST COMMON TYPE OF CONST. VIOLATION IS WHEN (TCL) HAS VIOLATED THE PUBLISHED OPINION OF SUPREME COURT PRECEDENT, BUT NOT LIMITED TO STRICKLAND V. WASHINGTON, WHICH INTERPRETS CONST. AMENDS., THROUGH ITS PUBLISHED OPINIONS. IF (TCL) VIOLATES A SUPREME COURT PRECEDENT BY DECIDING A CASE DIFFERENTLY, THAN IT WOULD ENTITLE (HALL) TO FED. HABEAS CORPUS RELIEF, WHICH MAY OVERTURN HIS CONVICTION AND SENTENCE."

HALL CONTENDS CITED A COGNIZABLE HABEAS CLAIM, UNDER §2254(b)(1)(A) (FED. LAW) ISSUE OF "EXHAUSTION RULE", WHEN HE FILED STATE HABEAS PETITION 82,314-05, ON OR ABOUT DEC. 2, 2020, AS IT APPLIED INITIAL §2254 PETITION IN CIR. PET. (3:16-CV-725-B) AND (SSS) PETITION FILED ON JUNE 18, 2021, CLAIMING UNDER §2254(a) (FED. LAW) IN RELEVANT PART: A STATE PRISONER, SUCH AS HALL MAY FILE A §2254 PETITION CHALLENGING HE IS BEING HELD "IN CUSTODY" PURSUANT TO A STATE COURT JUDGMENT.

IN A FELONY CRIMINAL CASE, "JUDGMENT" MEANS THE SENTENCE (I.E. TO YRS) AND THE SENTENCE IS THE JUDGMENT IN WHICH BEING CHALLENGED THAT HALL'S CONVICTION AND SENTENCE WERE OBTAINED IN VIOLATION OF U.S. CONST. AMEND., AND FED. LAW.

HALL RELIES UPON STRICKLAND, (19AC) (FED. CLAIM) ISSUE OF SHOWING TRIAL COUNSEL, KEVINETH WEATHERSPOON, WAS "DEFICIENT PERFORMANCE" FELL BELOW OBJECTIVE STANDARD OF REASONABLENESS AND SAID DEFICIENT PERFORMANCE "PREJUDICE" THAT DEFENSE QUOTING CRONIC V. U.S., 104 S.Ct. 2036 (1984) §2254(d) (FED. LAW) ISSUE OF "PREJUDICE IS PRESUMED", IF COUNSEL WAS "CONSTRUCTIVE DENIAL OF COUNSEL" AT A CRITICAL STAGE — MEANING COUNSEL FAILED TO PUT THE PROSECUTIONS' CASE TO THE ADVERSARIAL TESTING PROCESS, WHICH SHOULD BE REVIEWED UNDER "DE NOVO" STANDARD OF REVIEW, UNDER CULLEN (FED. CLAIM) §2254(d)(6), (e)(1), (e)(2) (FED. LAW).

HALL INVOKED HIS CONST. RIGHT UNDER 6th AMEND. TO HAVE A FULL AND FAIR HEARING AND TO HAVE EFFECT. ASSIST. OF COUNSEL, UNDER JEFFERSON (FED. CLAIM) §2254 (e)(5) EXCEPTION, WHEN HALL WAS ARRAIGNED BY A MAG. JUDGE ON OR ABOUT NOV. 19-20, 2008, CLAIMING HIS INDIGENCY, INTRINSIC EVIDENCE (EXH. 1) (ARRAIGNMENT SHEET) LEGAL CONCLUSION GIDEON V. WAINWRIGHT, 83 S.Ct. 793 (1963) §2254 (d) (FED. LAW) ISSUE OF "IDENTIFYING CRITICAL STAGES". HALL WAS THEN APPOINTED TRIAL COUNSEL, KENNETH WEATHERSPORN, TO FACE MURDER CHARGE INVOKING 5th AMEND. RIGHT (CONST. AMEND. LAW) ISSUE THAT NO PERSON SHALL ANSWER TO A FELONY CRIMINAL CHARGE WITHOUT THE PRESENTATION OF INDICTMENT, WHEN HIS OR HER LIFE AND LIBERTY ARE A STAKE, APPLICABLE TO "NOTICE" OF 14th AMEND. DUE PROCESS CLAUSE, EQUAL PROTECTION OF LAW (FUNDAMENTAL FAIRNESS) MADE BINDING UPON STATE COURT, INTRINSIC EVIDENCE (EXH. 2 INDICTMENT) PRESENTED ON OR ABOUT DEC. 15, 2008 LEGAL CONCLUSION POWELL V. ALABAMA, 53 S.Ct. 55 (1939) §2254 (d) (FED. LAW).

HALL POSES THIS QUESTION TO SUPREME COURT, (1) SHOULD A SUB-CLAIM UNDER STRICKLAND (IAC) (FED. CLAIM) ALWAYS BE "DISMISSED" UNDER §2254 HABEAS RULE 9(b) (FED. LAW) ISSUE OF "ABUSE OF WRIT"?

HALL BELIEVES THE ANSWER TO THAT QUESTION IS "NO"! HALL RELIES UPON LEGAL CONCLUSION ENGLE V. ISACC, 102 S.Ct. 1558 (1992) §2254 (d) (FED. LAW) (14th AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) OF THE TRIAL, ITSELF IS UNDER ATTACK, BECAUSE OF WEATHERSPORN'S COUNSEL (IAC) UNDER STRICKLAND, (FED. CLAIM) OF 6th AMEND. VIOLATION OF "COMPULSORY PROCESS" TO HAVE A "FULL AND FAIR HEARING") AND THE REASONABLE JURISTS §2253 (1)(2), (3) (FED. LAW) LEGAL CONCLUSION, MURRAY V. CARREER, 106 S.Ct.

2639 (1986) §2254(d) (ONE GROUND OF STRICKLAND (IAC) (FED. CLAIM) CAN SUPPORT BRANSTING HABEAS CORPUS RELIEF, WHEN ACTS OF OMISSION ARE NOT THE RESULT OF PROFESSIONAL JUDGMENT); VASEQUEZ V. HILLER, 106 S.Ct. 617 (1986) §2254(d) (ISSUE OF "MATERIAL FACTS" MAY AFFECT THE OUTCOME OF HIS CASE, IN REGARDS TO CLAIMS THAT DO NOT "FUNDAMENTALLY ALTER" CLAIMS PREVIOUSLY PRESENTED, BUT MERELY SUPPLEMENTS) AND MAYCE V. FELIX, 125 S.Ct. 2562 (2005) §2254(d) (FED. LAW) INTERPRETATION OF 18 U.S.C. FED. R. CIV. PROC. RULE 15(C)(1)(B) (FED. LAW) ISSUE OF "RELATION-BACK" — WHERE A CLAIM ARE BASED UPON THE SAME OPERATIVE FACTS, WHERE HALL, AS ASSERTED CLAIM OR DEFENSE; AROSE OUT OF SAME CONDUCT, TRANSACTION, OR AN OCCURRENCE, WHICH WAS SET OUT IN THE ORIGINAL PLEADING.

THE FACTS SUPPORTING HALLS CONTENTIONS ARE AS FOLLOWING: HALL FILED HABEAS PETITION (82,314-04) ON OR ABOUT OCT. 22, 2020 UNDER HOUSTON (FED. CLAIM) RAISING TO GROUNDS OF ERROR TO WIT: (1) TRIAL COUNSEL WAS (IAC) UNDER STRICKLAND (FED. CLAIM) FOR FAILURE TO REQUEST (LID) OF (VOL. MAUS.) AND (2) TRIAL COUNSEL WAS (IAC) UNDER STRICKLAND, FAILURE TO SQUASH PRIOR CONVICTION, BECAUSE HE WAS ON PAROLE CAN NOT BE USED. NOW BEFORE (TCCA) MADE ITS DECISION ON HABEAS PETITION (82,314-04), HALL FILED AN "AMEND. PETITION" ON DEC. 2-6, 2020 UNDER HOUSTON (FED. CLAIM) ALLEGING THE THREE GROUNDS OF ERROR TO WIT: GROUND ONE: HALL'S CONVICTION AND SENTENCE WERE OBTAINED IN VIOLATION OF HIS CONST. AMEND. RIGHTS 5th, 14th, AND 14th AND FED. LAWS:

FACTS SUPPORTING: 1(a) HALL WAS DEPRIVED OF EFFECT. ASSIST. OF COUNSEL WHEN TRIAL COUNSEL MADE ERRORS DESCRIBED BELOW, FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS WHICH DEPRIVED HIM OF FUNDAMENTALLY FAIR TRIAL.

1(b) TRIAL COUNSEL FAILED TO HAVE A FIRM COMMAND OF ALL THE LAWS WHICH GOVERNED MURDER, APPLICABLE TO SUDDEN PASSION AND ADEQUATE CAUSE (I.E. AFFIRMATIVE DEFENSE) AND LESSER-INCLUDED OFFENSE (I.E. LIO) OF VOLUNTARY MANSLAUGHTER (I.E. VOL. MANS.) AND 1(c) HAD TRIAL COUNSEL, INVESTIGATED AND PURSUED BOTH AFFIRMATIVE DEFENSE AND (LIO) AT A CRITICAL STAGE (I.E. PUNISHMENT / SENTENCING) BY REQUESTING A JURY CHARGE INSTRUCTION, THUS VIOLATED HALL 14th AMEND DUE PROCESS (FUNDAMENTAL FAIRNESS) WHICH ALLOWED HALL TO BE CONVICTED AND SENTENCE, BEYOND WHAT WAS AUTHORIZED BY LAW, CONSTITUTING AN "ILLEGAL" SENTENCE.

GROUND TWO: HALL'S SENTENCE AND CONVICTION WERE OBTAINED IN VIOLATION OF HIS CONST. RIGHT UNDER 4th, 5th, 6th, AND 14th AMEND., AND FED. LAWS.

FACTS SUPPORTING : 2(a) HALL WAS DEPRIVED OF EFFECT. ASSIST. OF COUNSEL WHEN TRIAL COUNSEL MADE ERROR DESCRIBED BELOW, FELL BELOW AN OBJECTIVE STANDARD OF REASONABleness WHICH DEPRIVED HALL OF FUNDAMENTALLY FAIR TRIAL, 2(b) HAD TRIAL COUNSEL INVESTIGATED THE LAWS CONCERNING ATTACKING PRIOR CONVICTION AND COUNSEL INDUCED A PLEADING OF "TRUE" TO ENHANCEMENT PARAGRAPH, WHICH WAS "INVOLUNTARY" AND 2(c) HAD TRIAL COUNSEL PURSUED ATTACKING "PRIOR CONVICTION" AT CRITICAL STAGE, AND HAD JURY KNOWS THAT PRIOR CONVICTION WAS INVALID, THAN IT CAN NOT BE USED TO ENHANCE HIS SENTENCE, CONSTITUTING "ILLEGAL SENTENCE". A "FUNDAMENTAL MISCHANCE OF JUSTICE" WOULD OCCUR IF "PRIOR CONVICTION" CLAIM IS NOT DECIDED ON THE MERITS, ONE WHO IS BOTH "ACTUAL AND FACTUAL INNOCENT" OF TWO PRIOR CONVICTIONS.

GROUND THREE: HALL'S CONVICTION AND SENTENCE WERE OBTAINED IN VIOLATION OF HIS CONST. RIGHT UNDER 6th AND 14th AMEND., AND FED. LAWS.

FACT SUPPORTING : 3(a) HALL WAS DEPRIVED OF EFFECT. ASSIST. OF COUNSEL WHEN TRIAL COUNSEL MADE ERROR, DESCRIBED BELOW, FELL BELOW AN OBJECTIVE STANDARD

OF REASONABleness, WHICH DEPRIVED HALL OF FUNDAMENTALLY FAIR TRIAL. 3(b) TRIAL COUNSEL FAILED TO COMMUNICATE TO HALL, THAT PROSECUTION MADE ANY PLEA BARGAIN OFFERS, 3(c) HAD TRIAL COUNSEL COMMUNICATED PLEA BARGAIN OFFER TO HALL OR NEGOTIATED FOR DEF. THAN PROCEEDING WOULD HAVE BEEN DIFFERENT BECAUSE IT WOULD HAVE ALLOWED HALL THE OPPORTUNITY TO ACCEPT SAID OFFER, WHICH WOULD HAVE BEEN LESS HARSH, THAN ONE HALL RECEIVED FROM JURY.

WHICH (TCCA) "DISMISSED" HABEAS PETITION (82,314-05) UNDER (TCOP) ART. 11.07 §4(a) AS "ABUSE OF WRIT" WHICH WOULD BE CONTRARY TO §2254(d)(1) VASQUEZ (FED. CLAIM) BECAUSE SUB-CLAIMS MERELY SUPPLEMENTS, HALL'S CLAIM THAT WEATHERSPOON WAS CONST. VI (14C) UNDER 6th AMEND. GUARANTEE.

THE (TCCA) DECISION IN HABEAS PETITION (82,314-05) WAS UNREASONABLE APPLICATION §2254(d)(1) (FED. LAW) (LEGAL CONCLUSION SCHMUCK V. U.S., 109 S.Ct. 1443 (1989) §2254(d) CLEARLY ESTABLISHED FED. LAW AT THE TIME OF HALL'S TRIAL AND WHEN (TCCA) MADE ITS DECISION UNDER CULLEN (FED. CLAIM) UNDER THE "ELEMENTS TEST" FOR A (LHO) OF (VOL. MANUS.) APPLICABLE TO (TCCA) FINDING THAT WEATHERSPOON, WAS EFFECT. ASSIST. OF COUNSEL, WHICH WAS CONTRARY TO §2254(d)(1) STRICKLAND (FED. CLAIM).

HALL RELIES UPON SCHMUCK, (FED. CLAIM) WHICH HELD AT RELEVANT PART: THAT A (LHO) SHOULD BE GIVEN IF: (1) (LHO) ELEMENTS ARE INCLUDED INSIDE THE GREATER CHARGED OFFENSE, (IN THIS CASE IS MURDER) AND (2) THERE MUST BE SOME EVIDENCE TO GIVE RISE TO (LHO) OF (VOL. MANUS.)

TRIAL COUNSEL, WEATHERSPOON, WAS "DEFICIENT PERFORMANCE" OF FACTS (1)(a)(b) UNDER 6th AMEND. RIGHT OF "COMPULSORY PROCESS" TO PRESENT A PROPER DEFENSE TO THE JURY, FOR HALL TO HAVE A "FULL AND FAIR" TRIAL, AND HAVE THE JURY HEAR EVIDENCE TO SUPPORT THAT DEFENSE.

SO UNDER "DEFICIENT PERFORMANCE" PROOF OF STRICCIANO (IAC) (FED. CLAIM) INFORMATION IS THE KEY, APPLICABLE TO SCHMUCK, (FED. CLAIM) FIRST PROOF OF "ELEMENTS TEST".

THE SUBSTANTIVE LAW AT TIME OF HALL'S MURDER TRIAL WAS TEX. CONST. ART. 1 § 10; TEX. T3 RD LEG. CHAPTER 900 (S.B. 1067); TEX. PENAL CODE § 19.02 (MURDER); TEX. PEN. CODE § 205 (AFFIRMATIVE DEFENSE); TEX. CODE OF CRIMINAL PROCEDURE (TCCP) ART. 37.09 (LESSER-INCLUDED OFFENSE (LIO) SUBJECT (1) AND (3) INTERPRETATION OF (FED. LAWS) TITLE 18 U.S.C. CHAPTER 51 (HOMICIDE); § 1112 VOLUNTARY MANSLAUGHTER (VOL. MANS.); 18 U.S.C. FED. R. CRIM. PRO. (FRCr.P) RULE 31(C) (LIO) MADE "RETROACTIVE" ON COLLATERAL REVIEW. LEGAL CONCLUSION, TARBLE V. LANE, 109 S.Ct. 1061 (1989) § 2254 (d) HELD:

"FOR "RETROACTIVE" TO APPLY HAS TWO EXCEPTIONS: (1) PLACES A PRIMARY CONDUCT ON A CERTAIN CLASS OF PEOPLE (I.E. HABITUAL OFFENDER) BEYOND STATES AUTHORITY TO PUNISH AND (2) "WATERSHED RULES" ARE PROCEDURAL RULES TO BE OBSERVED FOR ORDERED LIBERTY".

FOR WEATHERSPOON, TO HAVE BEEN EFFECT. ASSIST. OF COUNSEL UNDER FACT (b) AT A BARE MINIMUM WEATHERSPOON, SHOULD HAVE READ OPENING PARAGRAPHS OF § 19.02 (b)(1), (2) AND (d) WHICH WOULD SHOW THAT AFFIRMATIVE DEFENSE AND (LIO) OF (VOL. MANS.) ARE ELEMENTS OF CHARGE OFFENSE AND WEATHERSPOON VIOLATED HALL'S CONST. RIGHT UNDER 5th AMEND., "NOTICE" FOR AFFIRMATIVE DEFENSE AND (LIO), DOES NOT HAVE TO BE ALLEGED IN THE INDICTMENT, BUT FOR HALL TO BE AFFORD BENEFIT OF 6th AND 14th AMEND. TO HAVE A FULL AND FAIR HEARING AND (FUNDAMENTAL FAIRNESS) PROOF BEYOND A REASONABLE DOUBT OF ALL ELEMENTS OF CHARGED OFFENSE, MUST GIVEN JUR^y CHARGE INSTRUCTION UNDER TEX. CONST. ART. 1 § 10; (TCCP) ART. 36.14, 36.19, LEGAL CONCLUSION TAYLOR V. KENTUCKY, 98 S.Ct. 1130 (1978) § 2254 (d) (FED. LAW) (AN ATTORNEY'S ARGUMENTS AND EVIDENCE PRESENTED AT TRIAL ARE

NO EXCUSE OR SUBSTITUTE FOR A PROPER JURY CHARGE INSTRUCTION).

WEATHERSPOON, PERFORMED DEFICIENTLY UNDER SCHMULIC (FED. CLAIM) 2ND PRONG, WEATHERSPOON SHOULD HAVE UNDERSTOOD THE IMPORTANCE OF PROSECUTORIAL WITNESSES OF ALLEN AND PETERS' TRUE TESTIMONY UNDER JEFFERSON (FED. CLAIM) §2254(e)(8) EXCEPTION APPLIES TO (R.R. VOL 3 PG. 1168 LL 5-8; PG. 1178 LL 1-10.) ALLEN'S TESTIMONIAL EVIDENCE FOR SHOWING OF CHIO, SHOWING DAVIS ALONG WITH OTHERS WERE THE FIRST AGGRESSORS:

Q: WAS THERE OCCASSION WHERE YOU SAW WHAT HAPPENED TO PEOPLE, WHO DID NOT DO WHAT BIG A AND BALDHEAD SAID?

A: ALEX (BIG A) WOULD TRY TO FIST FIGHT SOMEBODY

Q: HOW DID BIG A CAUSE PROBLEMS BETWEEN D AND BALDHEAD

A: BIG A WAS TELLING BALDHEAD, HE DID NOT WANT TO SEE D, ON THE TRACKS ANYMORE

Q: WAS THERE AN OCCASSION WHERE YOU WARNED D, THEY WERE OUT TO GET HIM?

A: YES, SIR

Q: HAVE YOU HEARD BALDHEAD THREATEN TO KILL D?

A: YES, SIR

PETERS' TESTIMONY §2254(e)(8) EXCEPTION (R.R. VOL 3 PG. 208 LL 11-13; PG. 209 LL 4-5; PG. 210 LL 13-18; PG. 212 LL 21-23)

Q: HAVE YOU SEEN BIG A AND BALDHEAD BEAT UP ANYBODY?

A: YES, MAJ AND WOMEN

Q: YOU SAID THEY BEAT UP WOMEN

A: ALEX, HIT A WOMAN WITH A GUN, AND BALDHEAD WAS WITH HIM

Q: DID YOU EVER TELL D, THEY WERE OUT TO GET HIM

A: YES, SIR

Q: HAVE YOU EVER HEARD THEM MAKING THREATS AGAINST D

A: HE TEXTED D FROM HIS PHONE

Q: WHO IS HE, BALDHEAD TEXTED D, THREATEN HIM

A: BALDHEAD, TEXTED D, THREATEN HIM, ITS GOING TO BE YOU OR ME.

THESE TESTIMONIES WERE BOLSTERED BY HALL'S TESTIMONY § 2254(e)(8) EXCEPTION (R.R. VOL. 4 PG. 200 (L 2-7; PG. 211 (L 4-11; PG. 216 (L 23-25))

Q: HOW DID THEY WANT YOU DEAD?

A: THEY WERE MAKING DEATH THREATS, SENDING MESSAGE THROUGH ALLEN AND PETERS.

Q: WHAT HAPPENED WHEN BIG A CAME BACK?

A: BIG A, HAS A GUN, TALKING ABOUT HOW HE CAN'T SEE ME OR MY FAMILY AROUND ANYMORE

Q: WHAT ELSE?

A: ALLEN TELLS ME TO WATCH MY BACK. THEY ARE GOING TO ROB AND KILL ME, AND PETERS' TELLS ME THE SAME THING.

Q: WHAT HAPPENS DAY OF CRIM?

A: BALDHEAD APPROACHES FROM BEHIND ME. PULLS A GUN AND FIRES. I RETURN FIRE AND KILL HIM. I'M SCARED, I'M SCARED, I HAD NO INTENTION TO KILL ANYBODY THAT DAY. IN MY MIND IT WAS A LIFE AND DEATH SITUATION.

NOW WEATHERSPOON, PERFORMED DEFICIENTLY UNDER SCHMULIC (PED. CLAIM) OF 2ND PRONG, UNDER FACT (b) BECAUSE IT WAS WELL ESTABLISHED THAT HALL'S RIGHT TO AN INSTRUCTION ON ANY DEFENSIVE THEORY RAISED BY THE EVIDENCE. THE CREDIBILITY OF THE EVIDENCE, WHETHER IT CONFLICTS WITH OTHER EVIDENCE OR IS CONTRADICTED MAY NOT BE CONSIDERED BY TRIAL JUDGE, IN DETERMINING WHETHER (L10) OF (VOL. MANUS.) SHOULD BE GIVEN.

NOW COMPARE JEFFERSON, (PED. CLAIM) § 2254(e)(8) EXCEPTION (INTRINSIC EVIDENCE R.R. VOL. 5, PG. 2 (L 9-10, 12 TRIAL RECORDS)) WHERE TRIAL JUDGE TRACY HOLMES ASKED TRIAL COUNSEL WEATHERSPOON, DO YOU HAVE ANY OBJECTIONS OR ADDITIONS TO JURY CHARGE INSTRUCTION? WEATHERSPOON'S RESPONSE WAS ("NONE FOR DEFENSE"). NOW PROSECUTION ATTORNEY ADDRESSING JURY ON HOW SOMETHING GETS INTO JURY CHARGE INSTRUCTION, JEFFERSON § 2254(e)(8) EXCEPTION, R.R. VOL. 5 PG. 4 (L 21-25 (TRIAL RECORDS))

STATED: ("THERE JUST MUST BE JUST A SHRED OF EVIDENCE, JUST SOMETHING THAT WAS MENTIONED DURING WITNESSES TESTIFYING, THAN IT GETS INTO JURY CHARGE").

THE (TCCA) DECISION IN HABEAS PETITION (82,34-05) WAS CONTRARY TO § 8254 (D)(1) TO SCHMUCK (FED. CLAIM), BECAUSE IT IS BEYOND DISPUTE THAT AFFIRMATIVE DEFENSE AND (LHO) OF (VOL. MAUS.) ARE ELEMENTS INCLUDED INSIDE CHARGE OFFENSE OF MURDER, AND THE REASONABLE JURISTS OF LEGAL CONCLUSION MULLANEY V. WILBUR, 95 S.Ct. 1881 (1975); MATHEW V. US, 108 S.Ct. (1988) § 8254 (d) (FED. LAW) (HAVE DECIDED THE 6th AMEND., CONST. RIGHT TO EFFECT. ASSIST. OF COUNSEL, TO HAVE "COMPULSORY PROCESS" OF (LHO) TO HAVE A "FULL AND FAIR HEARING") DIFFERENTLY FROM (TCCA) BECAUSE (TCCA) "DISMISSED" HABEAS PETITION (82,34-05) UNDER (TCCP) ART. 11.07 § 4(a).

NOW UNDER STICKLAND 2ND PROGS (IAE) (FED. CLAIM) OF "PREJUDICE" IS A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME IS ENOUGH TO UNDERMINE THE CONFIDENCE OF THAT OUTCOME WHICH IS (FROM MURDER TO (LHO) OF (VOL. MAUS.)). BUT FOR WEATHERSPORN'S CONST. ERROR OF 6th AMEND. VIOLATION OF "COMPULSORY PROCESS" APPLICABLE TO 14th AMEND. VIOLATION OF DUE PROCESS (FUNDAMENTAL FAIRNESS) PROOF BEYOND A REASONABLE DOUBT OF ALL ELEMENTS OF CHARGED OFFENSE, WHICH DEPRIVED HALL'S JURY OF ITS FACTFINDINGS FUNCTION UNDER TEX. CONST. ART. 1 § 10, (TCCP) ART. 36.14, 36.19, LEGAL CONCLUSION BECK V. ALABAMA, 100 S.Ct. 2362 (1980) § 8254 (d) (CAPITAL CASE) CITING BRECHT V. ABRASHAMSON, 113 S.Ct. 1710 (1993) (FED. LAW) § 8254 (d) ISSUE OF "PLAIN ERROR" RULE 52(a) (F.R. CIV. P.) (FED. LAW).

WEATHERSPORN'S DEFICIENT PERFORMANCE UNDER SCHMUCK (FED. CLAIM) PREJUDICED HALL 6th AMEND. OF "COMPULSORY PROCESS" UNDER FACT 1(c) BECAUSE WEATHERSPORN DID NOT PRESENT A PROPER DEFENSE OF AFFIRMATIVE DEFENSE NOR

(LHO) OF (VOL. MANSLA.) WERE NEVER TALKED ABOUT AT CRITICAL STAGE UNDER GIDEON, (FED. CLAIM) (I.E. YOUR DIRE, PUNISHMENT/SENTENCING PHASE) BY REQUESTING A JURY CHARGE INSTRUCTION AT HALL'S MURDER TRIAL.

THE SUBSTANTIVE LAW AT TIME OF HALL'S MURDER TRIAL WAS TEX. CONST. ART. 1 §10; TEX. PEN. CODE §12.32 A FIRST DEGREE FELONY, PUNISHABLE AT A MINIMUM OF 5 YRS TO A MAXIMUM TO 99 YRS. WHEN HALL INVOKED HIS 6th AMEND. CONST. RIGHT, UNDER "FULL AND FAIR" HEARINGS, HE OPTED FOR JURY TO DETERMINE HIS GUILT OR INNOCENCE, AND DETERMINE RANGE OF PUNISHMENT, BUT FOR WEATHERSPOON'S CONST. ERRORS, UNDER 6th AND 14th AMEND., JEFFERSON, (FED. CLAIM) § 2254(e)(1), (e)(3) EXCEPTIONS APPLY, BECAUSE JURY DID NOT KNOW ABOUT AFFIRMATIVE DEFENSE NOR (LHO) OF (VOL. MANSLA.) AT TRIAL, INTRINSIC EVIDENCE (EXH. C, JURY CHARGE INSTRUCTION), HALL WAS DEPRIVED OF HIS CONST. RIGHT UNDER 14th AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) BECAUSE JURY HAD NO WAY OF KNOWING IT COULD HAVE FOUND HIM GUILTY OF ONLY A (LHO) OF (VOL. MANSLA.) UNDER §12.33 TEX. PEN. CODE, A SECOND DEGREE FELONY, PUNISHABLE BY MINIMUM OF 2 YRS TO A MAX. OF 20 YRS, THUS HALL WAS "ACTUAL PREJUDICE" BY AN EXTRA 50 YRS. TO HIS SENTENCE, BECAUSE JURY DID NOT KNOW ABOUT THE THIRD OPTION OF (LHO) DONE IN VIOLATION OF BECK, (FED. CLAIM) LEGAL CONCLUSION GLOVER V. U.S., 121 S. CT. 1046 (2001) § 2254(d) (FED. LAW) (ANY AMOUNT OF ACTUAL JAIL TIME AS 6th AMEND. VIOLATION UNDER "PREJUDICE" STANDARD).

THUS, THE SENTENCE GIVEN BY HALL JURY WAS "ILLEGAL" UNDER § 2254 (FED. LAW) BECAUSE SENTENCE WAS IMPOSED IN VIOLATION OF HALL'S 6th AMEND. "COMPULSORY" PROCESS TO PRESENT AFFIRMATIVE DEFENSES AND (LHO) OF (VOL. MANSLA.) TO HAVE "FULL AND FAIR" HEARINGS AND 14th AMEND. DUE

PROCESS (FUNDAMENTAL FAIRNESS) TO HAVE JURY TO HEAR AND DECIDE ALL ESSENTIAL ELEMENTS OF CHARGED OFFENSE IN VIOLATION OF 5th AMEND. "NOTICE" OF (LID) DOES NOT HAVE TO BE ALLEGED IN THE INDICTMENT, AND HAS VIOLATED (FED. LAWS) OF BECK AND GLOVER (FED. CLAIMS) AND THE TO YRS SENTENCED WAS EXCESSIVE OF THE MAXIMUM AUTHORIZED BY LAW OF § 12.33, SECOND DEGREE FELONY, HAD JURY BEEN INFORMED OF (LID) OF (VOLMAUS.)

HALL BELIEVES HE IS ENTITLED TO FED. HABEAS CORPUS RELIEF OF LEGAL CONCLUSION LAMBRIX v. SINGLETARY, 117 S.C.T. 1517 (1997) QUOTING CLYLER v. SULLIVAN, 100 S.C.T. 1708 (1980) § 2254 (d) (FED. LAW)

"IF STRUCTURAL ERROR (JURY CHARGE INSTRUCTION WHICH WAS COMMITTED THE AFFIRMATIVE DEFENSE AND (LID) OF (VOLMAUS.) WHICH UNDERMINES THE CONFIDENCE IN THE FAIRNESS AND RELIABILITY OF PROCEEDINGS (I.E. MEANS JURY WAS MISINFORMED ABOUT (LID) BY WEATHERSPOON'S CONST. ERRORS OF 6th AND 14th AMEND), THEN "PREJUDICE IS PRESUMED" UNDER CROUCH (FED. CLAIM), WHEN HABEAS COURTS FINDS CONST. ERROR OCCURRED AT TRIAL, AND IS IN GRAVE DOUBT WHETHER ERROR HAD SUBSTANTIAL AND INJURIOUS EFFECT ON THE JURY VERDICT, THEN ERROR WAS NOT HARMLESS, THEN HALL MUST WIN".

"THE ISSUES OF "CONFLICT OF INTEREST" AND "ADVERSE EFFECT" ARE DEBATABLE AND DESERVE ENCOURAGEMENT TO PROCEED FURTHER, BECAUSE WHEN "CONSTRUCTIVE DENIAL OF COUNSEL" FAILED TO PUT PROSECUTION CASE TO ADVERSARIAL TESTING PROCESS, WHEN THERE WAS ANOTHER PLAUSIBLE DEFENSIVE THEORY OR DEFENSE WAS AVAILABLE TEST WAS NOT USED".

THE REASONABLE JURISTS OF LEGAL CONCLUSION PATTERSON v. NEW YORK, 97 S.C.T. 2319 (1977); JUREK v. TEXAS, 96 S.C.T. 2950 (1976) AND ROMPILLA v. BEARD, 135 S.C.T. 2456 (2005) § 2254 (d) CLEARLY ESTABLISHED FED. LAW OF SUPREME COURT PRECEDENT AT TIME OF HALL'S MURDER TRIAL, HALL DECIDED THE LEGAL THEORIES OF 6th AMEND "COMPULSORY PROCESS" AND 14th AMEND DUE PROCESS (FUNDAMENTAL FAIRNESS) DIFFERENTLY THAN (TECA) WHICH FOUND WEATHERSPOON WAS EFFECT. ASST. OF COUNSEL

WHICH WAS CONTRARY TO STRICKLAND (1AC) (FED. CLAIM), BECAUSE WEATHER-
SPORN, CAN NOT EFFECTIVELY SERVE HALL, WHO WAS FACING MURDER CHARGE,
WAS IGNORANT OF FACTS OF AFFIRMATIVE DEFENSE AND (LJO) OF (VOL. MANS.).
THERE WAS NO TACTICAL OR STRATEGICAL REASON FOR WEATHERSPORN, NOT TO
REQUEST INSTRUCTIONS AT CRITICAL STAGE OF TRIAL. EVEN THOUGH DEFENSES ARE
INCONSISTENT WITH EACH OTHER, IT WOULD HAVE GIVEN HALL THE BENEFIT
OF 6th AMEND. "COMPULSORY PROCESS" AND 14th AMEND. DUE PROCESS (FUNDAMENTAL
FAIRNESS).

THUS, ENTITLING HALL TO BECK (FED. CLAIM) TO BE RE-SENTENCED
UNDER PROPER CHARGE OF (LJO) OF (VOL. MANS.) UNDER § 12.33 A SECOND
DEGREE FELONY, UNDER NEW PUNISHMENT HEARING.

HALL RELIES UPON LEGAL CONCLUSION, McQuiggin v. PERKINS, 133 S.C.T.
1923 (2013) § 2254 (d) (FED. LAW) ISSUE OF "FACTUALLY INNOCENT" QUOTING
HOLLAND v. FLORIDA, 130 S.C.T. 2549 (2010) § 2254 (d) (FED. LAW) ISSUE OF "DUE
DILIGENCE" AND "EXTRAORDINARY CIRCUMSTANCE", WHICH WOULD RESULT IN A
"FUNDAMENTAL MISCARriage OF JUSTICE" OF ONE WHO IS "FACTUALLY INNOCENT"
OF BOTH CHARGE OFFENSE AND TWO FINAL PRIOR FELONY CONVICTIONS, APPLICABLE
TO THE NEXT TWO GROUNDS OF ERRORS.

HALL CONTENTS IN GROUND TWO: HIS CONVICTION AND SENTENCE WERE OBTAIN-
ED IN VIOLATION OF HIS CONST. AMEND., RIGHTS OF 4th, 5th, 6th, AND 14th AMEND
AND (FED. LAW) OF LEGAL CONCLUSION OF MACEUS V. COOK, 109 S.C.T. 1923 (1989)
§ 2254 (d) CLEARLY ESTABLISHED FED. LAW AT TIME OF HALL'S TRIAL AND WHEN
WITH (TECA) DECISION OF DENYING HABEAS PETITION (82,314-05) UNDER
ISSUE OF "ABUSE OF WRIT" APPLICABLE TO § 2254 (a) "IN CUSTODY" ISSUE.

HALL PRESENT THIS AFFIDAVIT (EXH.B) (CONSISTING OF STEPS TAKEN TO OBTAIN INFORMATION AND DOCUMENTS IN SUPPORT OF HIS CLAIMS) OF §2254 (d)(2) (FED. CLAIM) OF CULLEN, APPLICABLE TO §2244 (b)(2)(B)(i) (FED. LAW) ISSUE OF "PREOCCUPIED FACTS" AND "DUE DILIGENCE", INTRINSIC EVIDENCE (EXH. 9 AFFIDAVIT FOR DISCOVERY PG. 2 LL 18-23); (EXH. 10 MOTION TO COMPEL); AND (EXH. 11, AFFIDAVIT, IN 5th CIR. MOTION TO COMPEL).

HALL CONTENDS (TCCA) AND (5th CIR.) HAVE "ABUSED ITS DISCRETION" OF §2254 (e)(1)(e)(2) (FED. LAW) ISSUE OF "PRESUMPTIONS OF CORRECTNESS" AND "EVIDENTIARY HEARINGS" UNDER §2254 HABEAS RULES (FED. LAW) RULE 6 (DISCOVERY) RULE 7 (EXPANSION OF RECORD) AND RULE 8 (EVIDENTIARY HEARINGS) INTERPRETATION OF (TCCP) ART. ACT. 11.07 §3(d) UNDER WILLIAMS (MICHAEL) (FED. CLAIM).

THE SUBSTANTIVE LAW AT TIME OF HALL TRIAL WAS TEXAS CONST. ART. 1 §10, TEX. PEN. CODE §12.42(d) (HABITUAL OFFENDER STATUTE) INTERPRETATION OF CONST. AMEND. 5th AND 14th AMEND (FED. LAWS) ISSUE OF "NOTICE" THAT STATE WERE GOING TO USE PRIOR CONVICTIONS TO ENHANCE HALL SENTENCE WHEN FOUND GUILTY OF CHARGED OFFENSE, PRIOR CONVICTION MUST BE ALLEGED IN THE INDICTMENT (LEGAL CONCLUSION SPENCER V. TEXAS 87 S.C.T. 648 (1967) §2254 (d) (FED. LAW).

NOW UNDER TEAGUE AND EXCEPTIONS "RETROACTIVE" "WATERSHED RULES" INTERPRETATION OF TEX. CONST. ART. 1 §9, (TCCP) ART. 14.01(b) AND 38.28 BY 14th AMEND., (FED. LAW) ISSUE OF "ILLEGAL SEARCH AND SEIZURE" AND "EXCLUSORY RULE" (LEGAL CONCLUSION TERRY V. OHIO, 88 S.C.T. 868 (1968) (FED. LAW) PROCEDURAL RULES GOVERNED FOR ORDERED LIBERTY OF 6th AMEND. "FULL AND FAIR HEARINGS".

WEATHERSPOON WAS DEFICIENT PERFORMANCE UNDER FACT 2(a),(b), BECAUSE INFORMATION IS THE KEY. WEATHERSPOON WAS GIVEN "JUSTICE" UNDER 5th AMEND., PRIOR CONVICTIONS WERE ALLEGED IN THE INDICTMENT WHICH SHOULD HAVE ALERTED WEATHERSPOON, TO TRY AND GET PRIOR CONVICTION SQUASHED BY FILING "MOTION FOR SUPPRESSION" BY ATTACKING PRIOR DRUG CONVICTIONS WAS "ILLEGAL" OBTAINED.

NOW UNDER MAYLE, (FED. CLAIM) HALL IS CONTESTING HIS PLEADING OF "TRUE" TO ENHANCEMENT PARAGRAPHS WAS DONE IN VIOLATION OF 6th AMEND. "COMPULSORY PROCESS" TO HAVE "FULL AND FAIR HEARINGS" TO PRESENT PROPER DEFENSE AND EVIDENCE TO SUPPORT SAID DEFENSE. THE (TCCA) "ABUSED ITS DISCRETION" OF §2254(b) (FED. LAW) LEGAL CONCLUSION TOLETT V. HENDERSON, 93 S.C.T. 1654 (1973) §2254(d) (FED. LAW) ISSUE OF "VOLUNTARINESS" WHICH WOULD CONSTITUTE A "WAIVER" TO NON-JURISDICTIONAL ISSUE OF LEGAL CONCLUSION BOYKIN V. ALABAMA, 89 S.C.T. 1709 (1969) §2254(d) (FED. LAW).

WEATHERSPOON, UNDER 2(b) FACT WAS SUPPORTED BY JEFFERSON §2254 (E)(7), (E)(8) EXCEPTION (FED. LAW) (R.R. VOL 6 CRITICAL STAGE (PUNISHMENT / SENTENCE UNDER GLIDEON, (FED. CLAIM) PG. 2 LL 2-5; PG 3, LL 20-26 PG 4 LL 1679):

FROM JUDGE TRACY HOLMES: WEATHERSPOON, HAVE YOU TALKED TO YOUR CLIENT (HALL) ABOUT PRIOR CONVICTION TO BE USED FOR ENHANCEMENT.

RESPONSE FROM WEATHERSPOON: NO, I HAVE NOT, I USED A SHORT RECESS TO TALK TO HIM, WHILE JURY WAS ON LUNCH BREAK, HALL PLEADS "TRUE" TO ENHANCEMENT ON WEATHERSPOON'S FAULTY ADVICE.

TRAIL JUDGE HOLMES: HOW DO YOU PLEAD BEFORE JURY ABOUT PRIOR CONVICTIONS, WEATHERSPOON ANSWERED "TRUE" RATHER THAN HALL.

THE (TCCA) DECISION OF FINDING WEATHERSPOON WAS EFFECT. ASS. OF COUNSEL, WAS UNREASONABLE APPLICATIONS §2254 (D)(1) (FED. LAW) LEGAL CON-

CONCLUSION, HILL V. LOCKHART, 100 S.Ct. 366 (1985) § 2254(d) AND THE REASON-
ABLE JURISTS § 2253 (1)(2), (1)(3) (FED. CLAIM) LEGAL CONCLUSION, HENDERSON V.
MORGAN, 96 S.Ct. 2253 (1976); MARSHALL V. CORBERGIAN, 103 S.Ct. 843 (1983)
§ 2254(d) (FED. CLAIM) HAVE DECIDED "DEFICIENT PERFORMANCE" UNDER (4th AMEND.),
STRICKLAND (IAC) (FED. CLAIM) DIFFERENTLY THAN (TCCA), WHICH IS ~~PERMISSIBLE~~
BECAUSE NO ADEQUATE DEFENSE, NOR WAS IT A STRATEGICAL DECISION FOR
WEATHERSPORN NOT TO HAVE FILED ANY MOTIONS TO SUPPRESS "PRIOR CONVIC-
TIONS" AND HALL'S PLEADING OF "TRUE" CAN NOT BE KNOWINGLY, VOLUNTARILY
AND INTELLIGENTLY MADE UNDER EITHER TOLETTI OR BOYKIN (FED. CLAIM)
BECAUSE UNDER § 2244(b)(2)(B)(1), § 2244(d)(1)(B) (FED. CLAIM), ISSUE OF "NEW
CONST. RULE" MADE "RETROACTIVE" ON COLLATERAL REVIEW BY SUPREME COURT
PRECEDENT, APPLICABLE TO STRICKLAND (IAC) (FED. CLAIM) BECAUSE NOTHING
CAN BE SAID TO BE "WAIVED" OR "FORFEITED" IF HALL DOES NOT HAVE THE
RIGHT TO EFFECT. ASST. OF COUNSEL UNDER (4th AMEND.) GUARANTEE.

HALL CONTENDS UNDER STRICKLAND (IAC) (FED. CLAIM) UNDER "PREJUDICE"
PROVE, IF NOT FOR WEATHERSPORN'S DEFICIENT PERFORMANCE UNDER FACT 2(a)(b),
UNDER (4th AMEND.) "ILLEGAL SEARCH AND SEIZURE"; 5th AMEND VIOLATION "NOTICE"
OF PRIOR CONVICTION, VIOLATED (4th AMEND.) "COMPULSORY PROCESS" TO PRESENT STATED
DEFENSE AND PRESENT EVIDENCE TO SUPPORT, A REASONABLE PROBABILITY OF
A DIFFERENT OUTCOME IS ENOUGH TO UNDERMINE THE CONFIDENCE OF THAT
OUTCOME (I.E. JURY FINDING HALL GUILTY TO TWO PRIOR CONVICTIONS).

IF WEATHERSPORN, UNDER FACT 2(c), PRESENT AT CRITICAL STAGE
PRE-TRIAL INVESTIGATION UNDER GIDEON, (FED. CLAIM) WITH THE PRIOR CON-
VICTION PRECISELY HEARD CONDUCT ON OR ABOUT NOV. 27, 2006 IN CASE NO.

F-0671635-JW, UNDER § 2244(b)(2)(B)(i) (FED. LAW) "NEWLY DISCOVERED EVIDENCE" ALONG WITH OBTAINING PROBABLE CAUSE AFFIDAVIT FROM DALLAS POLICE DEPARTMENT (DPD) AND FILED MOTION FOR SUPPRESSION, ALONG TOGETHER WOULD HAVE FOUND HALL NOT GUILTY OF TWO PRIOR CONVICTIONS WHICH VIOLATED HALL 14th AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) BECAUSE (EXH.3) (JUDGMENT/SENTENCING SHEET) SHOWS JURY CONSIDERED PRIOR CONVICTIONS WHEN DETERMINING HALL'S SENTENCE.

HALL WAS ACTUAL "PREJUDICE" BECAUSE JURY WAS GIVEN A CHARGE UNDER § 12.42(d) TWO PRIOR CONVICTIONS PUNISHABLE BY MINIMUM 25 YRS TO MAXIMUM OF LIFE SENTENCE, WHICH VIOLATED HALL'S 14th AMEND. (FUNDAMENTAL FAIRNESS) DUE PROCESS UNDER (FED. PROC.) RULE 52(b) (FED. LAW) "PLAIN ERROR" WHICH AFFECTED THE SUBSTANTIAL OR INDETERMINABLE AFFECT SO THE JURY'S VERDICT BECAUSE (JURY WAS INFORMED ABOUT PRIOR CONVICTIONS) UNDER § 2254(a) (FED. LAW) BECAUSE HALL'S 10 YR SENTENCE WOULD BE "ILLEGAL" IT WAS NOT AUTHORIZED BY LAW OF TEX. PEN. CODE § 12.42(b) ONE PRIOR CONVICTION CAN BE PUNISHED BY 15 YRS MINIMUM AND UP TO 99 YRS, ALSO DONE IN VIOLATION OF CONST. AMEND. 21st AMEND., "ILLEGAL SEARCH AND SEIZURE" AND U.S. VIOLATION CAN BE USED TO ENHANCE SENTENCE NOR BE USED AGAINST YOU IN SUBSEQUENT CHARGE, AND THE REASONABLE JURORS § 2253(c)(2)(B)(3) (FED. LAW) LEGAL CONCLUSION BURGETT V. TEXAS, 88 S. CT. 258 (1967); U.S. V. TUCKER, 92 S. CT. 589 (1972) AND CHISOLM V. U.S., 114 S. CT. 1732 (1994) § 2254(d) (HAVE DECIDED THE CONST. RIGHT AMEND. 14th AMEND "MAY BE CONVICTION" AND 6th AMEND, "COMPLUSORY PROCESS" IN HALL'S FAVOR) DIFFERENTLY THAN (TCCA) FOR "CONSTRUCTIVE DENIAL OF COUNSEL AT CRITICAL STAGE.

HALL, IS ENTITLED TO FED. HABEAS CORPUS RELIEF OF MALENG.

(FED. CLAIM) BECAUSE THERE IS NO WAY HOW TO JUDGE HOW MUCH THE JURY WEIGHED INTO PRIOR CONVICTION THAT WAS NOW FOUND "INVALID", IT CAN NOT BE USED TO ENHANCE HALL'S SENTENCE, SO HALL MUST REMAIN BACK FOR A NEW PUNISHMENT HEARING, WITHOUT CONSIDERATION OF "INVALID" CONVICTION, UNDER GLOVER, (FED. CLAIM).

THE (TCCA) DECISION TO "DISMISS" HABEAS PETITION (82,314-05) WAS UNREASONABLE APPLICATION §2254 (D)(1) (FED. LAW) LEGAL CONCLUSION UTAH V. STRIEFF, 136 S.Ct. 2056 (2016) §2254 (d) (FED. LAW), FINDING THAT WEATHERSPORN WAS EFFECT ASSIST. OF COUNSEL APPLICABLE TO "PRIOR CONVICTION" BEING INVALID.

IN HALL'S THIRD GROUND OF ERROR: HIS CONVICTION AND SENTENCE WERE OBTAINED IN VIOLATION OF HIS CONSTIT. AMEND. 6TH AMEND. "COMPULSORY PROCESS" TO HAVE A "FULL AND FAIR HEARING" BECAUSE OF WEATHERSPORN'S, STRICKLAND (IAC) (FED. CLAIM) VIOLATED 14TH AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) UNDER LEGAL CONCLUSIONS MISOURI V. FRYE, 132 S.Ct. 1391 (2012) §2254 (d) (FED. LAW) ISSUE OF "FAILURE TO COMMUNICATE OR NEGOTIATE PLEA BARGAIN OFFER."

HALL WAS INDICTED FOR MURDER ON OR ABOUT DEC. 15, 2008, WEATHERSPORN WAS CONSTITUTIONALLY (IAC) UNDER 6TH AMEND. GUARANTEE OF FACT 3(a) BECAUSE UNDER GUIDECO (FED. CLAIM) PLEA BARGAIN PROCESS IS NOW CONSIDERED A "CRITICAL STAGE", IT HAS BECOME A VITAL PART OF THE JUDICIAL SYSTEM, INTERPRETATION OF TITLE 18 U.S.C. FED. R. CRIM. PROC. RULE 11 (FED. LAW) ISSUE OF "PLEA BARGAIN OFFERS" UNDER FRYE, AND HILL (FED. CLAIMS).

WEATHERSPORN DEFICIENT PERFORMANCE OF FACT NO. 3(b) UNDER FED. R. CIV. PROC. RULE 11 (b)(2), (b)(3) (FED. LAW), MAKE MANDATORY THAT WEATHERSPORN INFORM HALL OF ALL FORMAL PROSECUTION OFFERS, MADE BY STATE BE MADE IN WRITING AND FORMAL OFFERS MADE PART OF THE RECORD UNDER §2254 (D)(2)

(FED. LAW) CULLEN (FED CLAIM) BEFORE TRIAL OR AT SUBSEQUENT PROCEEDINGS TO BE SURE HALL WAS FULLY ADVISED OF SAID PLEA OFFERS, GUARANTEED BY BOTH 6TH AMEND., "COMPULSORY PROCESS" TO HAVE "FULL AND FAIR HEARING" AND 14TH AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) UNDER 2854(a) (FED. LAW), RULE 52(b)(2) SERIOUSLY AFFECT THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF THE JUDICIAL PROCEEDINGS (HALL DID NOT KNOW ABOUT ANY FAVORABLE PLEA BARGAIN).

THE REASONABLE JURISTS §2253(D)(2), (C)(3) LEGAL CONCLUSION, LEE v. U.S., 137 S.Ct. 1958 (2017); CAPLER v. COOPER, 132 S.Ct. 1376 (2012) AND MONTGOMERY v. LOUISIANA, 129 S.Ct. 2079 (2009) §2254(d) (ALL HAVE DECIDED THE CONST. RIGHT UNDER 6TH AMEND. TO HAVE EFFECT. ASSIST. OF COUNSEL TO HAVE "FULL AND FAIR HEARINGS" AND 14TH AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS)) DIFFERENTLY FROM (TCCA) AND ISSUE OF "DUTY TO INFORM CLIENT ABOUT PLEA OFFERS" AND "PREJUDICED" ARE DEBATABLE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

THE (TCCA) "ABUSED ITS DISCRETION" OF §2254(D)(2), (C)(3) (FED. LAW) UNDER CULLEN, (FED. CLAIM) BECAUSE THE RECORD IS "SILENT" OF ANY EVIDENCE OF ANY EVIDENCE OF ANY EFFORT BY TRIAL COUNSEL, WEATHERSDOWN, TO COMPLY WITH HALL'S REQUEST FOR SAID RECORD, REQUESTED FOR IN SAID AFFIDAVIT (EXH. B) APPLICABLE TO §2254(b)(5)(B)(i) (FED. LAW) ISSUE OF "FACTUAL PREDICATE" AND "DUE DILIGENCE". THEN HOW DID (TCCA) MAKE ITS DECISION?

HALL, CONTENDS THAT IF FACT 3(c) IS PROVEN "TRUE" SHOWS "FACTUAL PREDICATE" IF NOT FOR WEATHERSDOWN'S CONST. ERRORS, OF "COMPULSORY PROCESS" RIGHT TO "PLEA BARGAIN OFFER" TO HAVE "FULL AND FAIR HEARINGS", THERE IS A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME AT TRIAL (IE HALL WOULD HAVE ACCEPTED PLEA OFFER) INSTEAD OF GOING TO TRIAL WHICH VIOLATED 14TH AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) BECAUSE WEATHERSDOWN ALLOWED STATE OFFER TO ELAPSE

WITHOUT HALL'S KNOWING ABOUT ANY OFFER DEPRIVED HALL FROM BENEFIT OF ACCEPTING A REDUCED CHARGE AND SENTENCE, WHICH VIOLATED RULE 11(b)(2) (b)(3) (FED. LAW) APPLICABLE TO HALL'S PLEADING OF "TRUE" TO ENHANCEMENT PARAGRAPHS WITHOUT BENEFIT OF "PLEA BARGAIN" BECAUSE HALL "AUGUSTO" ENLITED TO GO TO TRIAL OF WEATHERSPORN ADVICE, HE COULD NOT CHARGE OFFENSE.

WEATHERSPORN'S DEFICIENT PERFORMANCE OF FACTS 3(a)(b) PREJUDICED FACT 3(c) BECAUSE "IF" NOT FOR WEATHERSPORN'S CONST. ERRORS, HALL WOULD HAVE ACCEPTED OR NEGOTIATED FOR A BETTER PLEA BARGAIN OFFER, BECAUSE STATE PLEA BARGAIN OFFER WAS LESS HARSH, THAN ONE JURY HALL OUT HALL ENTITLED TO, GLOVER, (FED. CLAIM).

THE REASONABLE JURISTS §2253 (C)(2) (C)(3) (LEGAL CONCLUSION), BRADY V. MARYLAND, 83 S.Ct. 1194 (1963) (FED. LAW); BANKS V. DRETKE, 124 S.Ct. 1256 (2004) AND STRICKER V. GREENE, 119 S.Ct. 1936 (1999) §2254 (d) (HAVE ALL DECIDED 6th AMEND., ACCESS TO COURT FOR (FULL AND FAIR HEARING) IN HALL'S FAVOR) DIFFERENTLY FROM (TCOA), IT WAS DEBATABLE WHICH DESERVE ENCOURAGEMENT TO PROCEED FURTHER, BECAUSE THE "EXCULPATORY AND IMPEDING" EVIDENCE WAS IN THE COURT POSSESSION, IT IS ON THE STATE TO SET THE RECORD STRAIGHT. HALL HAS NEVER BEEN ABLE TO OBTAIN THE RECORDS OR INFORMATION DELETED IN HABEAS PETITION (82,3/4 05) IN 2020, BUT HE HAS NOT FAILED "TO DEVELOP THE RECORD" UNDER §2254 (e)(2) (FED. LAW) UNDER WILLIAMS (MICHAEL) (FED. CLAIM) (A REASON PERSON IS NOT AT FAULT WHEN HIS DILIGENT EFFORTS TO PERFORM THE ACT, OR BY SOMEONE WHO THWARTED THAT ATTEMPT (I.E. BY THE CONDUCT OF ANOTHER, OR FAULT LIES IN THOSE CIRCUMSTANCE OR WITH ANOTHER) §2254 (b)(2)(B)(i) (FED. LAW) APPLICABLE TO §2244 (d)(1)(D) (FED. LAW) ISSUE OF ONE YEAR PERIOD BEGINS.

HALL RELIES UPON HOLLAND, (FED. CLAIM) § 2254 (d) (FED. LAW) ISSUE OF "EXTRAORDINARY CIRCUMSTANCE" CONSTITUTING "CAUSE" OVERCOME AND PROCEDURAL DEFAULT SUCH AS, "ABUSE OF WRIT" OR "SOS" PETITION REQUIREMENT BECAUSE NO COURT HAS APPLIED "EXTRAORDINARY CIRCUMSTANCE" PRINCIPLE WHEN CONSIDERING WEATHERSPOON'S "DEFICIENT PERFORMANCE" FOR FAILURE TO TURN OVER WORK CASE FILE, WHICH HAS VIOLATED BOTH 6th AND 14th AMEND., DENIAL OF "ACCESS TO COURT" TO HAVE FULL AND FAIR HEARING, DUE PROCESS (FUNDAMENTAL FAIRNESS).

IF NOT FOR COURTS, CONST. ERRORS, HALL WOULD HAVE BEEN ABLE TO SUPPORT CLAIM WITH PROPER DOCUMENTS, SHOWING THAT A "FUNDAMENTAL MISCARriage OF JUSTICE" HAS OCCURRED IF HALL CONST. CLAIMS ARE NOT HEARD OF THE MERITS, THUS PREJUDGED ONE WHO IS FACTUALLY INNOCENT OF BOTH CHARGED OFFENSE AND TWO PRIOR FELONY CONVICTIONS, TO OBTAIN RELIEF FROM "ILLEGAL" RESTRAINT SOWER (LEGAL CONCLUSION) KEENEY V. TAMAYO-REYES, 112 OCT. 175 (1998) § 2254 (d) (FED. LAW).

PRAYER FOR RELIEF

IN CONCLUSION, HALL BELIEVES HE HAS PUT FORTH A PROTECTED INTEREST OF A VIABLE CLAIM OF "LACK OF SUBJECT MATTER JURISDICTION" CONSTITUTING A "VOID JUDGMENT" AND "FACTUALLY INNOCENCE" AND 6th AND 14th AMEND., WHICH WOULD ALLOW THIS SUPREME COURT TO GRANT (THE WRIT), TO REVERSE THE (5th CIR.) JUDGMENT OF DENIAL OF ((OA) AND § 2254 PETITION AND DEMAND BACK FOR FURTHER PROCEEDING, TO CONDUCT AN RE-SENTENCING HEARING UPON PROPER LAW OF § 12.33 SECOND DEGREE FELONY AND § 12.42(b) PRIOR CONVICTION FOR ONLY ONE.

RESPECTFULLY SUBMITTED 19 DAY OF DEC. 2003

John Hall