IN THE UNITED STATES SUPREME COURT OF APPEALS

No. 23-7141

KEITH MOLINEAUX,
PETITIONER

VS.

JOHN FRAME, SUPERINTENDENT
MOUNT OLIVE CORRECTIONAL COMPLEX,
RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

Filed By:

Keith Molineaux, *pro se*
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, West Virginia 25185

QUESTION(S) PRESENTED

I. Under *Miller-El v. Cockrell* 537 U.S. 322 (2003), should the Petitioner's novel claim that his confession was fabricated be encouraged to proceed further, thus necessitating a Certificate of Appealability under 28 U.S.C. § 2253?

II. Under *Miller-El v. Cockrell* 537 U.S. 322 (2003), should the Petitioner's claim that the State withheld *Brady v. Maryland* 373 U.S. 83 (1963) material be encouraged to proceed further, thus necessitating a Certificate of Appealability under 28 U.S.C. § 2253?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page, however, they are also briefly denoted below:

Petitioner:

Keith Molineaux
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, West Virginia 25185

Respondent:

Lindsay S. See, Esq.
Solicitor General
West Virginia Office of Attorney General
1900 Kanawha Blvd. East
Bldg. 1 Rm. 26E
Charleston, West Virginia 25301

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

OPINION BELOW

This case arises out of the Fourth Circuit Court of Appeals's January 3,2024 decision denying the Keith Molineaux ("Petitioner") a Certificate of Appealability, because the Petitioner had not "made the requisite showing" that he was denied his Constitutional rights. *A.R.* 50. Prior to this holding, the District Court stated that the Petitioner had not satisfied the COA standard in this case. *A.R.* 48. The Petitioner's request for *en banc* rehearing was denied.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Fourth Circuit Court of Appeals decided Petitioner's case on January 3, 2024. A timely Petition for Rehearing was filed, and it was subsequently denied on February 5, 2024. This Petition is timely filed within the 90 day filing window.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th U.S. Constitutional Amendment, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 2106

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

28 U.S.C. § 2253(c)

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

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

(B) the final order in a proceeding under section 2255.

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

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)."

STATEMENT OF THE CASE

It took the State of West Virginia eleven months to fabricate a confession which wholly inculpated the Petitioner of Felony Murder, in violation of West Virginia Code § 61-2-1. Absent this confession, there was no evidence to connect the Petitioner to the crime save for the self-serving statement of a codefendant. Reasonable doubt would have been cast in the minds of the jurors, and the jury would have had no option other than to return a verdict of not guilty.

On April 9, 2001, Michael Bevins heard two gun shots in close proximity to his trailer. *A.R.* 183. Shortly thereafter, he saw three individuals running out of the next trailer over, owned by John and Kimmie Stepp. *Id.* After the three individuals fled the Stepp residence, the Stepps' daughter, Courtney, ran from the home towards the Bevins residence and was able to give a description of the shooter once she arrived. *A.R.* 94.

After the shooting, Thomas King turned himself in to the Northfork Police Department, and requested to speak with the lead investigator of the shooting, Sgt. Pauley. *Id.* King gave a statement to police inculpating the Petitioner in the murders. *A.R.* 95. King also implicated

Brandon Britto and Jamie Jones. *A.R.* 96. The Petitioner and Britto were tracked down and arrested. *Id.* When Britto was arrested, police found the murder weapon under the couch that Britto was sitting on. *A.R.* 279. Several other pieces of evidence were also collected in this case at various points in time. Relevant to this pleading, police found two spent shell casings were recovered from the Stepp residence, *A.R.* 68-69, two spent bullets matching the gun found near Britto, *A.R.* 69, two pairs of hiking boots – both believed to belong to the Petitioner, *Id*, and one dresser drawer from the bedroom of the Stepp residence, *Id.* Courtney Stepp also gave a statement to police, wherein she indicated that the shooter who killed her parents "had twisties in his hair," which was a hair style unique to Britto. *A.R.* 391.

At the Petitioner's October 23, 2001 Grand Jury hearing, Sgt. Pauley testified that, upon arrest, the Petitioner "gave part of a statement, he would start talking and then quit and started talking again. So we do have a partial statement from him, but he, basically, denied any knowledge of it – of this incident." *A.R.* 96. However, at Petitioner's November 26, 2001 pre-trial hearing, Prosecutor Sid Bell was asked by the Court about the Petitioner's statement:

> **The Court:** Do these attorneys have a copy of [the Petitioner]'s statement?
> **Mr. Paesani:** I do not believe we do.
> **Mr. Bell:** No, Your Honor.
> **The Court:** Has he made a statement?
> **Mr. Bell:** I don't have the police report. I don't recall reading a statement that he gave himself.

A.R. 100. Since, at the time of the November 26, 2001 pre-trial hearing, the Petitioner still had not received the report of criminal investigation, the Circuit Court ordered the State Police to prepare a copy of the report and provide it to Prosecutor Bell so that it could be disclosed to Defense Counsel. On January 4, 2002, the Petitioner appeared before the Court again. Still, the Petitioner had not received the report of criminal investigation or his alleged statement, and the

judge threatened the State Police with a contempt charge. *A.R.* 103. Then, when asked about a trial date, the following occurred:

> **Mr. Paesani:** Judge, we had thought that we would come – we had thought when we were here in November – I think the Court ordered specifically then – or at least represented a December 16th disclosure. I think the Court set a December 16th disclosure time. I'm sorry – anyway, that was not met. There have been some conversations since then. It's so difficult for us to prepare a defense without any of those – not only has there not been a state police report, there's been no disclosure, at all. I'm not even in the position – we filed a Motion to Suppress just simply to preserve the right to bring that motion because the Court imposed upon us a deadline of today to file all pretrial motions.
> **The Court:** Well, we're going to extend that.
> **Mr. Paesani:** We don't even know if there's a statement to suppress.

A.R. 104.

On March 6, 2002, the Petitioner appeared for another pretrial hearing. There, the State proffered to the Circuit Court that they were not going to call Courtney Stepp as a witness at the Petitioner's trial, citing that it was in her best interest. *A.R.* 107. They also represented to the Court that, despite her indication that the shooter had "twisties" in his hair – a hair style that the Petitioner did not wear – her statement and testimony would not be exculpatory. *Id.* Additionally, at this hearing, the defense had indicated that there had not been a forensics report generated by the State police yet. *A.R.* 109. Specifically, the Petitioner requested the results of several items of clothing seized by police, including several articles of clothing and footwear. *A.R.* 110. In relation to these items, the prosecution argued that they had not been forensically examined:

> **The Court:** Have [these items] been forensically examined?
> **Mr. Bell:** I don't believe so. I think the forensic examination has been limited to the dresser drawer, the handgun, the marijuana that was found in the residence. I haven't seen any indication that the clothing or footwear from the vehicle were examined forensically.

Id. A West Virginia State Police Forensic Laboratory Case Submission form would beg to differ. *A.R.* 92. Clearly, the form indicates that two pairs of boots were submitted to the crime

laboratory for analysis. *Id.*

At the same March 6, 2002 pretrial hearing, Trooper Mike Crowder testified that, after several officers had been unable to elicit a confession from the Petitioner on April 11, 2001, he volunteered to interrogate the Petitioner further. *A.R.* 121; 435. For nearly two hours, Trooper Crowder took handwritten notes of the Petitioner's unrecorded interrogation, which started at about 9:30 a.m.. *A.R.* 122. The handwritten notes serve as the only record of this statement given by the Petitioner because the Petitioner allegedly indicated that he did not want the interview recorded. *A.R.* 123. What makes these notes special is the fact that Trooper Crowder *added* to these notes *twelve hours* after they were originally taken, *Id*, and *not one* other person was in the room at the time the confession was given. *A.R.* 126; 442. Although these notes were originally handed over to the State, the updated version never made it to Prosecutor Bell. *A.R.* 127. In fact, the original, "non-updated" notes never made it to the Prosecutor's office until March of 2002. *A.R.* 361.

The only tape recorded interview given by the Petitioner occurred on April 11, 2001 at 1:17 p.m., and lasted approximately thirty minutes. *A.R.* 131. The Petitioner did not admit guilt during this interview. In fact, Detective John Helton indicated that, on the day of the interviews, the Petitioner did not "make any reference to being involved" in the murders. *A.R.* 134. Ultimately, the interview notes manufactured by Trooper Crowder were deemed admissible, provided that a foundation could be laid as to authenticity. *A.R.* 137.

During the State's opening statement, Prosecutor Bell indicated to the jury that "[t]here's nothing signed by [the Petitioner], there's nothing on tape by [the Petitioner]." *A.R.* 181. Trooper Crowder's own post-conviction testimony confirms this. *A.R.* 440. Then, when Trooper Crowder testified, he was able to use his notes – which were not signed or initialed by the Petitioner – to

recreate for the jury the "statement" that the Petitioner allegedly gave. *A.R.* 232-234. During this editorialization of the Petitioner's alleged "statement," Trooper Crowder found a way to "slip in" a false statement that Courtney had identified the Petitioner as the shooter, *A.R.* 233, even though he never actually spoke to her. *A.R.* 439. He also managed to "slip in" testimony that Courtney was struck by a bullet, *A.R.* 233, even though he later testified that she was not. *A.R.* 437. Trooper Crowder did this while using his "updated" confession notes, which were provided to the State *the day after* the original notes were provided. *A.R.* 107.

Finally, when Sgt. Pauley testified at the Petitioner's trial, he stated that, on October 23, 2001, he still had no idea who the actual shooter was. *A.R.* 283. This lines up with Prosecutor Bell's statement on November 26, 2001 indicating that, 168 days after the shooting and the alleged "confession," he still had not seen a statement by the Petitioner. *A.R.* 100. This factual background begs two questions: (1) why did it take at least 324 days for a confession to become disclosed; and (2) why was Prosecutor Bell unable to explain the five-page "statement's" absence from discovery? *A.R.* 361. These questions are especially pertinent when one considers that, during closing arguments, Prosecutor Bell stated that:

> The defense attorney in his argument did not talk about Sergeant Mike Crowder, did he? I wonder why he didn't talk about Mike Crowder? Because you saw this police officer, and he's a good police officer and he's a believable police officer and he told you he talked to [the Petitioner] for an hour and a half to two hours on April 11th. He admitted to Crowder that he killed these people. He admitted out of his own mouth that he killed these people.

A.R. 306. This vouching of the State's witness was exceptionally improper, considering the fact that the confession did not even exist in the record until March of 2002 – at least 324 days after the alleged confession took place.

After trial, the Petitioner appealed his conviction and subsequent life without parole sentences to the West Virginia Supreme Court of Appeals. On January 27, 2004, the WVSCA

refused discretionary review. A Petition for Writ of Certiorari was filed in this Court, and denied on June 14, 2004. The instant claim was presented throughout a full round of habeas corpus proceedings in the State Court. *See generally*, *Molineaux v. Ames* No. 18-0898, 2021 W.Va. LEXIS 100 (W.Va. Mar. 16, 2021) (memorandum decision).

The claim was subsequently brought up to the U.S. District Court for the Southern District of West Virginia on a proceeding initiated under 28 U.S.C. § 2254. Ultimately, the claim was denied in a Memorandum Opinion and Order issued by U.S. District Judge Irene C. Berger. A certificate of appealability was also ultimately denied by both the District Court and the Fourth Circuit Court of Appeals. This Petition now follows.

REASON FOR GRANTING THE PETITION

In this proceeding, the Petitioner is seeking to have his denial of a Certificate of Appealability reviewed by this Court pursuant to *Miller-El v. Cockrell* 537 U.S. 322, 326-27 (2003) (establishing the Court's jurisdiction over COA questions). For a Certificate of Appealability to issue, the applicant in a proceeding under 28 U.S.C. § 2254 must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This Court has explained that:

> At the COA stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further."

Buck v. Davis 580 U.S. 100, 115 (2017) (quoting *Miller-El*, 537 U.S at 327 (2003)). "The question is the debatability of the underlying constitutional claim, not the resolution of that debate." *Miller-El*, 537 U.S. at 342. If a § 2254 Petition was struck down on procedural grounds without a merits determination on the underlying claims, a Certificate of Appealability should issue if:

> jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel 529 U.S. 473, 478 (2000). In this matter, the claim was reviewed on the merits, and was not struck down for any procedural deficiencies. Thus, the question is whether "jurists of reason could disagree" with the resolution in the district court, or whether the same jurists "could conclude the issues presented are adequate to deserve encouragement to proceed further." *Buck*, 580 U.S. at 115.

This case deals with egregious instances of prosecutor misconduct. First, the prosecutor was allowed to elicit testimony – which he knew (or should have known) to be false – that the Petitioner confessed to the murders, despite significant evidence beforehand that the prosecutor knew nothing about a confession. The Eighth Circuit has recognized the weight that confessions carry in the jury's determination of guilt. *Russell v. Jones* 886 F.2d 149, 152 (8th Cir. 1989) ("Confessions carry great weight..."). The fact that the jury heard evidence that the Petitioner confessed to the murders makes it a material matter. Furthermore, the fact that the prosecution's entire narrative throughout the trial was that the Petitioner, himself, shot the Stepps lends itself towards a narrative that the Petitioner should have been sentenced by jury to life without parole. The Petitioner was, ultimately, sentenced to life without parole, and it is because the prosecution withheld material evidence that Britto was the shooter, not the Petitioner.

In 1974, United States Supreme Court Justice Douglas severely admonished prosecuting attorneys, stating that

> The function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of people as expressed in the laws and give those accused of crime a fair trial.

Donnelly v. DeChristoforo 416 U.S. 637, 648-649 (1974). Furthermore, in addressing perjury as it relates to a claim under *Napue v. Illinois* 360 U.S. 264 (1959), the Fourth Circuit has recently

stated that:

> the government may not knowingly use false evidence, including false testimony, to obtain a tainted conviction or allow it to go uncorrected when it appears. False testimony includes both perjury and evidence that, though not itself factually inaccurate, creates a false impression of facts which are known not to be true. Convictions obtained by the knowing use of perjured testimony are fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.

Burr v. Jackson 19 F.4th 395, 410 (4th Cir. 2021) (cleaned up). This case is severely tainted by perjury and a lack of willingness to disclose material evidence towards punishment.

A. False and Misleading Testimony

Trooper Crowder testified that the Petitioner confessed to the crimes alleged, but there is no recording, and all throughout the majority of the pre-trial proceedings, Prosecutor Sid Bell denied knowledge of any confession made by the Petitioner. The only record the state had of this confession were notes made by the interviewing officer – which were amended nearly twelve hours later and were never disclosed to the prosecution in a timely manner. At trial, Trooper Crowder was able to recreate the confession using only his memory and the scant notes he held possession of.

The U.S. District Court for the Southern District of West Virginia explained that the West Virginia Supreme Court of Appeals properly analyzed the Petitioner's claim under *State ex rel. Franklin v. McBride* 701 S.E.2d 97 (W.V.a 2009), which employed the same standard as the federal standard. *Cf. State ex rel. Franklin v. McBride*, supra; *United States v. Basham* 789 F.3d 358, 376 (4th Cir. 2015). *A.R.* 41. The District Court concluded that this was not an unreasonable determination of the proper legal standard, and that "[n]othing presented in the objections, or the underlying petition, constitute 'clear and convincing' evidence of an error [...] and the Court cannot find anything in the record to establish that it was an *unreasonable* determination of the facts or law" that resulted in the claim being rejected in the State Court. *A.R.* 42.

This is a factual issue, and this Court has yet to address the relationship between 28 U.S.C. § 2254(d)(2) and 28 U.S.C. § 2254(e)(1). The Fourth Circuit has proffered that these statutes

> should not, for instance, be merged to require the petitioner to prove that a decision is objectively unreasonable by clear and convincing evidence. Both provisions apply independently to all habeas petitions. To secure habeas relief, petitioner must demonstrate that a state court's factual finding was incorrect by clear and convincing evidence, and that it was objectively unreasonable in light of the record before the court.

Winston v. Kelly 592 F.3d 535, 544-45 (4th Cir. 2010) (cleaned up). *See also*, *Elmore v. Ozmint* 661 F.3d 783, 850 (4th Cir. 2011) ("We consider whether the state PCR court based its decisions 'on an objectively unreasonable factual determination in view of the evidence before it, bearing in mind that factual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary.'") (quoting *Baum v. Rushton* 572 F.3d 198, 210 (4th Cir. 2009)). The Fifth Circuit Court of Appeals has explained that "clear and convincing evidence" requires a showing of "a high probability of success" on the argument being made. *United States v. Mitchell* 709 F.3d 436, 442 n. 14 (5th Cir. 2013).

The State Court made an unreasonable factual determination that a confession was made. The Petitioner did not confess to *any* officer. The State, throughout the majority of the case, was unaware of any confession. At the grand jury proceedings, the investigating officers testified that there was no statement given by the Petitioner. Suddenly, out of thin air, a statement appears through an arresting officer in the form of notes that were neither signed by the Petitioner, nor recorded by audio device. And, conveniently, the Petitioner allegedly refused to talk with a device to record the interview. It is unreasonable to say that the statement exists given the circumstances and the proof is in the pudding – all one has to do is read the transcripts, and all will become clear: the confession was fabricated. Because the confession was fabricated, Trooper

Crowder's testimony was fabricated.

Jurists of reason could debate this issue and, because this specific issue is so novel, it certainly deserved encouragement to move forward. The Petitioner can find no other case where the prosecution was able to present testimony about a confession that was falsified by police. This issue is one of fundamental importance because "[a] deliberate effort of the prosecutor to undermine the search for truth is clearly in the category of offenses anathema to our most basic vision of the role of the State in the criminal process" *United States v. Bagley* 473 U.S. 667, 713 n. 6 (1985) (Marshall & Brennan, JJ dissenting) and, in this matter of first impression, the State completely undermined the reliability of this search for truth.

For these reasons, a certificate of appealability should have issued.

B. Withholding of Material Evidence

The Petitioner's claim here is simply one which invokes this Court's holding in *Brady v. Maryland* 373 U.S. 83 (1963). Indeed, the withheld evidence must be "material" to either guilt *or punishment.* The District Court never "reach[ed] the merits of [the Petitioner's] contention" because it found that the evidence was not material. *A.R.*40-41. Primarily, there was evidence which was forensically tested, but never disclosed by the State. Throughout the investigation in this case, police collected several pieces of evidence from several different places, including a dresser drawer, a handgun, approximately $4,500, a box of bullets, and some clothing/footwear.

Prosecutor Sid Bell stated at the March 6, 2002 Suppression Hearing that the only pieces of evidence that were forensically tested were "the dresser drawer, the handgun, and the marijuana." *A.R.* 110. He then stated that he hadn't seen "any indication that neither the clothing, nor the footwear from the vehicle, were forensically examined." *Ibid.* When asked if the prosecutor made an inquiry into whether the other pieces of evidence were forensically examined, Mr. Bell indicated that he had. *Ibid.* Yet, Mr. Bell testified at the Petitioner's March

26, 2018 Omnibus Evidentiary Hearing that he did not yet have the report of criminal investigation[1] – which indicated that certain articles of clothing were sent to the lab for testing – on March 6, 2002. *A.R.* 356. The fact that the forensic reports came back with no findings indicates that the Petitioner could not have been the shooter. Courtney Stepp even verified this fact in her interview to police.[2]

Indeed, this evidence is not exculpatory. However, the State's case rested on the position that the Petitioner was the shooter and the prime mover, and they told the jury this narrative throughout the trial. These withheld evidentiary findings pertain, not towards guilt, but towards *punishment*. They show that the Petitioner was in *no way* the one who pulled the trigger, which was the jury's predication for the sentence of life in prison.

The Court's myopic view that, under the Felony Murder rule, the Petitioner is guilty – regardless of whether he fired the gun or not – fails to consider materiality towards *punishment*. None of the Petitioner's codefendants – including Mr. Britto – were found guilty of Felony Murder, which makes it appear that the Petitioner was the sole perpetrator of the murder. According to Courtney Stepp, however, the Petitioner was not the shooter; Britto was. The evidence indicates that the Petitioner was not the prime mover; Britto was. The gun was not found in the Petitioner's possession; Britto had it. The Petitioner should not have been sentenced to life in the penitentiary; Britto should have.

Based on the foregoing, the District Court was in error when they declined to review the

---

[1] Curiously, on April 23, 2002, the lead investigating officer, Sgt. Pauley, testified that he completed his report in November or December of 2001. *A.R.* 278. Since the defense team received the report in January of 2002, *A.R.* 110, Mr. Bell had every reason to know what was tested and what was not tested at the March 6, 2002 hearing.

[2] At the Petitioner's March 6, 2002 Suppression Hearing, Mr. Bell indicated to the Court that the statement of the victims' daughter, Courtney Stepp, was "in no way[] exculpatory to any of the defendants." *A.R.* 107. Nevertheless, Courtney Stepp indicated that the shooter had "twisties" in his hair – a trait that the Petitioner did not bear. Mr. Bell even testified at the March 26, 2018 Omnibus Evidentiary hearing that Britto had "an unusual hair style." *A.R.* 350.

Petitioner's claim under *Brady v. Maryland*, and jurists of reason could certainly debate the factual findings addressed above. This is a case of first impression, and finding a similar case to show that jurists of reason could debate this resolution is near impossible.

PRAYER FOR RELIEF

United States Congress has declared that:

> [t]he Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2106. Additionally, this Court's own rules indicate that it may enter a grant, vacate, and remand ("GVR") order summarily reversing a lower federal court decision that has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call an exercise of this Court's supervisory power." S. Ct. R. 10(a). The GVR option gives the Court the ability to "correct[] a lower court's demonstrably erroneous application of federal law" without making a decision on "any new or unanswered questions of law." *Maryland v. Dyson* 527 U.S. 465, 465 n. 1 (1999) (per curiam). given the erroneous application of federal law in this case, a GVR order is indicated so as to afford the Fourth Circuit Court of Appeals – a Court with a more economical ability to dispose of the Petitioner's case than this one – the opportunity to address the Petitioner's prosecutorial misconduct claims.

This Court has done just that in other cases, such as *Tharpe v. Sellers* 138 S.Ct. 545 (2018) (per curiam). In *Tharpe*, this Court summarily vacated the Eleventh Circuit's denial of a Certificate of Appealability, and remanded the case for further consideration on the question of whether the petitioner was entitled to a COA. *Tharpe*, 138 S.Ct. 546-47. In this matter, the Petitioner's "rubber-stamp" denial of a Certificate of Appealability needs to be reviewed. The

Petitioner has shown the denial of a substantial constitutional right; an unreasonable determination of the facts; and, in light of the novelty of this issue, encouragement to proceed further.

CONCLUSION

For the foregoing reasons, Petitioner humbly requests this Honorable Court grant him a Writ of Certiorari, and any other relief deemed just and proper. The Petitioner understands that this Court will act within the confines of justice.

Respectfully Submitted,
Keith Molineaux, *pro se*

Keith Molineaux
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, West Virginia 25185