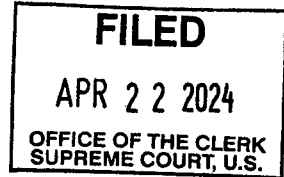


ORIGINAL

No. 23-7310



IN THE
SUPREME COURT OF THE UNITED STATES

In Re Arthur Holloway — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Arthur Roger Holloway, Jr.
(Your Name)

Memorial Unit - 59 Harrington Rd.
(Address)

Roshamo, Texas, 77583
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1) Whether the Fifth Circuit Court of Appeals *prima facie* review of Petitioner's motion for leave to file a second or successive 2254 habeas corpus petition is satisfied by a reasonable probability that the 2254 petition could meet AEDPA's substantive standards after plenary district court consideration or by a determination that a reasonable judge could find that the petition meets those standards, or on the other hand, whether the Court of Appeals must decide whether the petition actually does meet those standards ("Appendix - A").

(2) Whether the Fifth Circuit Court of Appeals had jurisdiction to review the circuit panel's denial of Petitioner's motion for leave to file a second or successive 2254 habeas corpus petition, by way of Petitioner's Suggestion For Rehearing *En Banc*, and if so, did the Fifth Circuit abuse its discretion by taking no action on Petitioner's Suggestion For Rehearing *En Banc* petition if Petitioner proves by clear and convincing evidence that the Fifth Circuit, in fact, had jurisdiction to entertain petitioner's suggestion for rehearing *en banc* petition ("Appendix - B").

LIST OF PARTIES

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

[.] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

UNITED STATES SUPREME COURT

Ex parte Arthur R. Holloway, Jr.,
TDC # 03037836, Petitioner;
Re: Original Writ of Habeas Corpus;
"Pending Assignment, docketing,
and disposition."

RELATED CASES

UNITED STATES SUPREME COURT

ARTHUR R. HOLLOWAY, JR., - Petitioner;
v.
BOBBY KUMAKIN, TDC Director, - Respondent;
Re: Petition For Writ Of Certiorari;
Dented on: April 04, 2023;
Reh. Den: September 09, 2023;
Sup Ct. No. 22-7049.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, NEW ORLEANS

In re Arthur R. Holloway Jr - Petitioner
TDC # 03037836.
Re: Motion For Leave To File A Second or
Successive 2854 Petition;

Dented on: May 03, 2023;
Suggestion For Rehearing En
Bang; Dented on: May 22, 2023;
5th Cir No. 23-20150.

Arthur R. Holloway Jr - Petitioner;
v.
BOBBY KUMAKIN, TDC Director - Respondent;
Re: Certificate of Appealability; Dented
on: May 28, 2023;
5th Cir. No. 20-20357.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

See Next page . . .

CONTINUED RELATED CASES

ARTHUR R. HOLLOWAY JR., Petitioner;
v.
BOBBY LUMAKIN, JAIL Director - Respondent;
Re: 38 U.S.C. § 2254 Petition;
Denied on: June 23, 2020;
Civil Action No: 4-19-CV-01711.

Arthur R. Holloway, Jr. - Appellant;
v.
THE STATE OF TEXAS - Appellee;
Re: Direct Appeal;
Denied on: March 30, 2017;
Case No: 14-15-00973-CR.

TEXAS COURT OF CRIMINAL APPEALS,
IN AUSTIN TEXAS

Ex parte Arthur R. Holloway Jr. - Petitioner;
Re: Second or Successive 11.07 Habeas
Corpus Application;
Dismissed on: March 08, 2023;
WR No. 89-612-02.

Ex parte Arthur R. Holloway Jr. - Petitioner;
Re: First State Habeas Corpus 11.07
Application;
Denied on: March 07, 2019;
WR No. 89-612-01.

In re Arthur R. Holloway Jr. - Petitioner;
Re: Petition for Discretionary Review;
Denied on: November 01, 2017;
Case No. AD-0312-17.

FOURTEENTH COURT OF APPEALS,
IN HOUSTON TEXAS

17TH DISTRICT COURT OF
HARRIS COUNTY, TEXAS

THE STATE OF TEXAS - State,
v.
Arthur R. Holloway, Jr. - Defense;
Re: Guilty Verdict; Judgment
Entered on: November 12, 2015;
Case No. 1392086.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

☒ reported at N/A; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☒ reported at N/A; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

☒ reported at N/A; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

"Merits were not addressed in successive state habeas proceedings"
The opinion of the Texas Court of Criminal Appeals court appears at Appendix N/A to the petition and is

☒ reported at N/A; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

"White card 'disposal' submitted with motion for leave to file successive 2254 petition."

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was May 03, 2023.

☒ No petition for rehearing was timely filed in my case.

☒ A timely ~~suggestion for rehearing en banc~~ ^{was rejected} by the United States Court of Appeals on the following date: May 03, 2023, and a copy of the ~~letter rejecting~~ rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. ~~§§§§ 2241(a)~~,
2241(c)(3); 2242; 2244(a)(3)(A); and Sup. Ct. R. 20.4(a).

[] For cases from state courts:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

[] A timely petition for rehearing was thereafter denied on the following date:
N/A, and a copy of the order denying rehearing
appears at Appendix N/A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

N/A

**STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT**

On November 12, 2015, the Petitioner Arthur R. Holloway, Jr. ("Holloway") was convicted of the Capital Murder of Le Duy Nguyen ("Nguyen") in the 177th District Court of Harris County, Houston, Texas, wherein the jury found Holloway guilty and assessed Holloway's punishment at life without parole in the Texas Department of Criminal Justice - Institutional Division ("TDCJ-ID"), in the case of *State v. Holloway*, 2015 Tex. Dist. Ct. LEXIS 24430 (Tex. Dist. Ct. Nov. 12, 2015).

Holloway's conviction was affirmed, and his Petition for Discretionary Review ("PDR") was denied in the Fourteenth Court of Appeals in Houston, Texas, in the cases of *Holloway v. State*, 2017 Tex. App. LEXIS 2736 (Tex. App. Houston Fifth Dist., Mar. 30, 2017) and in the Texas Court of Criminal Appeals ("TCCA") in the case of *In re Holloway*, 2017 Tex. Crim. App. Nov. 01, 2017. Holloway then filed his "first" state habeas corpus 11.07 application in the TCCA, which the TCCA denied on March 27, 2019, in the case of *Ex parte Holloway*, No. WK-89612-01 (Tex. Crim. App. March 27, 2019).

Thereafter, Holloway challenged the denial of his state habeas corpus application by way of his "first" federal habeas 2254 petition, in the United States District Court for the Southern District of Texas, Houston Division ("USDC"), which the U.S.D.C. denied on June 30, 2020, in the case of *Holloway v. Davis*, Civ. A. No. 4:19-cv-01711 (S.D. Tex. June 30, 2020). That same date the USDC denied Holloway a Certificate of Appealability ("COA") sua sponte. Notice Of Appeal was given on July 05, 2020.

On May 28, 2021, the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana denied Holloway's COA, in the ...

(See, pg 4.1, next)

... case of *Holloway v. Lumpkin*, 2021 U.S. App. LEXIS 32381 (5th Cir. Tex. May 30, 2021), Holloway's Petition for A writ of Certiorari ("Certiorari") was denied in the United States Supreme Court ("Supreme Court") on April 04, 2022, in the case of *Arthur R. v. Lumpkin*, Dir. Tx. App. 2022 U.S. LEXIS 1819 (U.S. Apr. 04, 2022). On September 09, 2022, the Supreme Court denied Holloway's Petition for Rehearing, in the case of *Arthur R. v. Lumpkin*, Dir. Tx. App. 2022 U.S. LEXIS 3380 (U.S. Sep. 09, 2022).

On December 28, 2022, Holloway filed his "second" state habeas corpus application, which the TCCA "dismissed" on March 08, 2023, in the case of *Ex parte Holloway*, No. WP-89,612-02 (Tex. Crim. App. Mar. 08, 2023).

On April 13, 2023, Holloway sought leave to file a second or successive 2254 petition w/ proposed 2254 petition, in the Fifth Circuit, which the Fifth Circuit denied on May 03, 2023, in the case of *In re Arthur R. Holloway*, Tr. No. 23-20150 (5th Cir. May 03, 2023). ("Appx-A"). On May 22, 2023, the Fifth Circuit took "no" action on Holloway's Suggestion for Rehearing En Banc Petition. ("Appx-B").

In Holloway's motion for leave to file a second or successive 2254 petition ("Appx-K"), Holloway sought leave based on a prima facie showing that Holloway's newly discovered Brady claim meets the... successive petition substantial requirements, which, aided by an... evidentiary hearing of a sort that only the U.S. district court would conduct, would require fuller review of Holloway's Brady claim. ("Appx-A"). Despite making the required prima facie showing, the Fifth Circuit applied the wrong criteria and therefore denied Holloway's motion, on the grounds that "1) Holloway's claims were noncognizable in a federal habeas proceeding; and, 2) Brady and actual innocence claims are 'not' recognized in... obtaining authorization to file a second or successive petition." ("Appx-A").

(See pg 4.2, next)

Under 28 U.S.C. § 2242, the United States Supreme Court ("Supreme Court") has jurisdiction to consider Holloway's Original Habeas Corpus petition because the Supreme Court is the only court remaining to consider the questions presented herein and the claims within the petition.

Petitioner did not file his petition in the district court because he must first request leave in the court of appeals pursuant to 28 U.S.C. § 2241(c)(3)(A).

Petitioner sought leave to file his second or successive 2254 petition in the Fifth Circuit Court of Appeals in New Orleans, Louisiana, but the Fifth Circuit panel denied leave on May 03, 2023. ("Appx-A"). Holloway then filed a "Suggestion For Rehearing En Banc Petition" in the Fifth Circuit, to consider the panel's denial, but the Fifth Circuit, on May 22, 2023, refused to take action on Holloway's petition because the Fifth Circuit claimed it had "no" jurisdiction over Holloway's petition ("Appx-B"). 28 U.S.C. § 2242.

Under 28 U.S.C. § 2241(a), the Supreme Court has jurisdiction to grant a writ of habeas corpus. This jurisdiction extends to the instant original habeas corpus petition because Holloway is a prisoner who is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3)(A).

Under Sup. Ct. R. 20.1(a), the Supreme Court has jurisdiction to consider the instant habeas petition because the issues presented in this petition presents exceptional circumstances that warrants the exercise of the Court's discretionary powers, and because, adequate relief cannot be obtained in any other form or by any other court, ... considering this is virtually the only remedy available to Holloway to raise his newly discovered Brady claims and have it remanded to the district court.

REASONS FOR GRANTING THE PETITION

ARGUMENTS AND AUTHORITIES IN SUPPORT OF QUESTION FOR REVIEW NUMBER ONE REGARDING DENIAL OF MOTION FOR LEAVE TO FILE SUCCESSIVE PETITION

(I)

The statute limits the scope of review to the specific question of whether a motion for leave to file a second or successive 2254 habeas petition make a prima facie showing that any of the claims in the petition satisfy AEDPA's substantive successive petition standards, thereby rendering irrelevant other possible grounds for dismissal such as ultimate lack of merit, nonexhaustion, procedural defaults, and the like. Thus, although the statute does not give any indication of what the prima facie standard requires, the statute's "prima facie showing" language and the Supreme Court's interpretation of it impose a "gatekeeping" task strongly suggest that the circuit courts review at this stage should not resolve the question whether the petition actually satisfies the successive petition standards or whether some affirmative defense to relief exists but only whether there is some reasonable likelihood that the petitioner—perhaps aided by an evidentiary hearing of a sort that only the district court can conduct—will thereafter be able to satisfy the new successive petition standards.

Exceptional circumstances exist that justify the use of this Court's power to issue an original writ and also take into account (without necessarily being bound by) AEDPA's criteria for review of the claims presented in Holloway's second or successive 2254 petition ("Appx-A"), because the Fifth Circuit's panel applied the wrong criteria to Holloway's "motion for leave to file a successive 2254 petition" ("Appx-A"), which resulted in the Fifth Circuit's panel erroneously denying Holloway's "motion for leave to file a successive 2254 petition" ("Appx-A"), thus depriving Holloway of an opportunity to present his newly discovered Brady claim to the federal district court for fuller review ("Appx-A"). See *Shinn v. Ramirez*, 148 S.Ct. 1718 (May 23, 2022) (HULL); *In re Will*, 970 F.3d 536, 547-48 (5th Cir. 2020) (per curiam).

In Holloway's motion for leave ("Appx-A"), Holloway alleged . . .

and hereby asserts that leave to file a second or successive 2254 petition ("Appx-A") was warranted, and is hereby warranted, because:

"Holloway has recently discovered that the accomplice-witness Mrs. Khaurdica Williams ("Khaurdica") gave substantially different testimony at Co-defendant Corey Ma Gee's ("Ma Gee") trial, than that provided by Khaurdica at Holloway's trial, that would exculpate Holloway ("Appx-A") which was discovered through the exercise of due diligence on November 01, 2023, which Holloway could not have discovered sooner even with due diligence, and could not have thus raised in a previous application or petition, for the reasons stated below, which, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the Brady error ("Appx-A"), no reasonable factfinder would have found Holloway guilty of murdering the alleged victim Le Duy Nguyen ("Nguyen") ("Appx-A"). Storey v. Lumpkin, 143 S. Ct. 2576 (June 30, 2022); Shinn v. Ramirez, supra.

"In Holloway's trial (TRIAL #1): "the jury heard testimony of the accomplice Khaurdica (supra). According to Khaurdica, on May 13, 2023, Holloway allegedly called Khaurdica for a ride. Late that night, Holloway allegedly asked Khaurdica to see her car keys, but Khaurdica allegedly refused because she allegedly thought that Holloway was intoxicated. Instead, Khaurdica alleged she drove Holloway, and Co-defendant Lynell Jordan ("Jordan") to a trap house, that Ma Gee and Ma Gee's gang allegedly used for dealing drugs. Khaurdica alleged that Holloway and Jordan entered the trap house while she, high on Xanax, allegedly remained in her car. Khaurdica alleged that when Holloway and Jordan returned to her car "Jordan was carrying a rifle like the one Khaurdica allegedly seen in a video released to the media about the Phillip GG robbery." Khaurdica alleged Holloway directed her to drive to an alley near Nguyen's house. That "Holloway allegedly exited her car with the rifle and

1. Due diligence can be shown by prompt action on part of the petitioner as soon as the petitioner is in a position to realize that the petitioner has an interest in challenging the prior state conviction. See Johnson v. United States, 344 U.S. 295 (April 04, 2015) (HMA).

2. See, Holloway v. State, 2017 Tex. App. LEXIS 2736 (Tex. App. Houston, 14th Dist., March 30, 2017) ("Accomplice Witness Evidence"). Note: "The bold lettering signifies the trials and substantially different testimony."

walked away. Khaurdrica alleged she heard two gunshots thereafter and Holloway returned to her car with the rifle. ("Appx-A"). In re Will, supra; Storey v. Lumpkin, supra; Spain v. Ramirez, supra.

In Ma Gee's trial (TRIAL#2):³ "Khaurdrica (supra) testified for the Prosecution⁴ for her alleged role in Nguyen's (supra) murder. According to Khaurdrica, "Khaurdrica drove Jordan (supra) and her boyfriend, Holloway (supra) to the residence of Nguyen the night Nguyen was murdered. [Jordan] was armed with an AK-47. Jordan and Holloway allegedly... exited Khaurdrica's car this time. Khaurdrica alleged she heard two gunshots, and [Jordan] and Holloway returned to her car." ("Appx-A").
Id.

("Substantially Different Testimony")^{3, supra.}

The Prosecution's^{4, supra} failure to disclose said "substantially different testimony," (supra), as "material, impeachment evidence" to Holloway violated Holloway's constitutional rights to due process under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 318 (1963), and Napue v. Illinois, 360 U.S. 264, 99 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), because said "substantially different testimony" was in fact, material to Holloway because said "substantially different testimony" would result in Holloway being acquitted for the murder of Nguyen ("Appx-A") or would entitle Holloway to a new trial ("Appx-A") when coupled with the facts and evidence hereinbelow. Id.

Said "substantially different testimony" was "favorable" to Holloway because "the Texas legislature has determined that fact finders should exercise caution when considering the testimony of an accomplice, such as Khaurdrica, because accomplices often have incentives to lie such....

3. See Magee v. State, 2017 Tex. App. LEXIS 5938 (Tex. App. Houston (1st Dist.), June 29, 2017) L"... Background at paragraph 79. The **BOLD** lettering signifies the trials and substantially different testimony.

4. When police or prosecutors conceal significant exculpatory or impeachment evidence in the State's possession, it is ordinarily incumbent on the State to set the record straight. See Banks v. Dretke, 540 U.S. 668 (2004).

... as to avoid punishment or shift blame to another person. See, *Blake v. State*, 971 S.W. 2d 451, 454 (Tex. Crim. App. 1992). Therefore, a conviction... "cannot" be had in the State of Texas unless corroborated by other non-accomplice evidence tending to connect Holloway to the offense. See, *Smith v. State*, 332 S.W. 3d 439 (Tex. Crim. App. 2011).

"The Texas legislature has also determined that an accomplice, such as Khaurndrica, "cannot corroborate her own testimony with... statements made by Khaurndrica to another person." ⁵ See, *Brown v. State*, 167 Tex. Crim. App. 352, 330 S.W. 2d 845, 847 (1959).

("Accomplice Witness Rule")."

Khaurndrica in fact, had an incentive to lie on Holloway about... Holloway's alleged involvement in Nguyen's homicide ("Appx-A") considering prior to Khaurndrica taking the stand at Holloway's trial ("TRIAL #1", *supra*), Holloway objected to the fact that Khaurndrica's testimony would be based upon statements being obtained through the use of psychological plays, threats, and promises ("Appx-A"), because Houston Police Department ("HAPD") Homicide Detectives bring Khaurndrica's children inside of the HAPD's interrogation room while interrogating Khaurndrica, and thereafter threatened Khaurndrica they would take custody of Khaurndrica's children if Khaurndrica failed to tell them Holloway murdered Nguyen ⁶ ("Appx-A"). *Blake v. State*, *supra*.

Despite Holloway's objection, the trial judge overruled Holloway's objection and thus allowed Khaurndrica to publicly testify falsely about Holloway's alleged involvement in Nguyen's homicide ("TRIAL #1 and 2", *supra*). *Id.*; *Storey v. Hampton*, *supra*; *Napue v. Illinois*, *supra*; *Brady v. Maryland*, *supra*.

"It would have been futile for Holloway to raise the issue that Khaurndrica's testimony against Holloway was obtained through the use of psychological plays, threats, or promises" ("illegally obtained testimony").

⁵ See, *Magee v. State*, *supra* at *5 ("Before Magee's trial Khaurndrica made statements to police and 'her friends' all concerning her alleged role in driving Holloway and Jordan to Nguyen's house on the night Nguyen was murdered and her visit to jail when 'she claimed' she told Magee about Nguyen's death.

⁶ See, "April 04, 2011 Online Article: 'Big Time Attorney Waste / Arthur R. Holloway, Jr.' by: 'The American Injustice Reporter'."

... because "under Texas law, detectives and CPS officials, are allowed to bring Khaurndria's children inside of the interrogation room while interrogating Khaurndria because Khaurndria had requested to see her children, and suggested that her children be escorted to see her."⁷ See *Hernandez v. State*, 421 S.W. 3d 717-718, 2014 Tex. App. LEXIS 585 (Tex. App. Amarillo, 2014) ("detectives statements emphasizing to defendant that if she failed to cooperate with their interrogation she faced separation from her... children was not threats of governmental action to punish a failure to cooperate, but were accurate representations of her predicament"); accord, *State v. Aguilar*, 535 S.W. 3d 605, 2017 Tex. App. LEXIS 7749 (Tex. App. San Antonio, Aug. 16, 2017) ("At times, both law enforcement and CPS operate on separate parallel paths.").

Moreover, the jury was instructed on the "accomplice witness rule" (*supra*) and was thus free to believe Khaurndria's testimony at Holloway's trial ("TRIAL #1"). See *Holloway v. State*, *supra* at F11; *Tuckson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

Holloway's direct appeal attorney did, however, raise the issue on direct appeal that: "Khaurndria's accomplice witness testimony was insufficient corroborative evidence to support Holloway's conviction," which the Fourteenth Court of Appeals, in Houston, Texas, denied. See *Holloway v. State*, 2017 Tex. App. LEXIS 8726; *Malone v. State*, 253 S.W. 3d 253, 257 (Tex. Crim. App. 2008) ("when evaluating the sufficiency of corroborative evidence under the accomplice witness rule, we eliminate the accomplice's testimony from consideration and examine the remaining evidence in the record to determine if there is any evidence that tends to connect appellant to the offense."); *Tuckson v. Virginia*, *supra*.

In his Petition For Discretionary Review ("PDR"), Holloway raised the same issue the direct appeal attorney raised in the Court of Appeals (*supra*), in addition to raising concerns regarding Khaurndria's statements made to her friends - prosecution witnesses "Leslie Bullock (*in fra*), and Renchelle Dixon (*in fra*), which the Texas Court of Criminal Appeals...

7. "A court should evaluate threats and promises along a continuum. At one end lie threats of serious adverse consequences, and promises of substantial leniency; and at the other are suggestions that cooperation is a good thing, and silence is, 'unhelpful.' The closer a statement comes to the former, the more likely the resulting confession is involuntary." See *Crane v. Ky.*, 476 U.S. 683 (June 29, 1986) (HN4).

... ("TCCA") denied said PDR. See, *In re Holloway*, 2017 Tex. Crim. App. LEXIS 1137 (Tex. Crim. App. Nov. 01, 2017); *Brown v. State*, *supra*; *Jackson v. Virginia*.

The reason Holloway did "not" raise this issue in his state habeas corpus proceeding(s) is because, in the State of Texas "sufficiency of the evidence used to substantiate a felony conviction is "not" cognizable on an application for a post-conviction writ of habeas corpus. See, *Ex parte Grigsby*, 137 S.W.3d at 674 (Tex. Crim. App. 2004).

likewise, because Holloway did raise this issue on direct appeal, Holloway's insufficiency claim could "not" be raised in state habeas, because the direct appeals court denied said claim on the merits. See, *Holloway v. State*, *supra*; *Ex parte Nallor*, 149 S.W.3d 125, 131-132 (Tex. Crim. App. 2004).

However, Holloway did "make attempts to raise his sufficiency of the evidence claim in the United States Supreme Court ("Supreme Court") following direct appeal, but said claims were impeded by prison officials. See, *Holloway v. Davis*, Civ. A. No. 4:19-cv-01711 (S.A. Tex. June 23, 2020) ("Document No. 13" at page 41, No. 9."); *Coleman v. Thompson*, 501 U.S. 72, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991).

Fortunately, despite Holloway's attempts to exhaust the matters, heretofore under the accomplice witness rule, as dictated by Texas law, the facts relating to Khoundrica's testimony and any statements she made to third persons has been properly exhausted in Texas, and thus, "fairly presented" to the state courts, and is therefore appropriate facts to consider in this original habeas corpus proceeding. See, *O'Sullivan v. Boerckel*, 536 U.S. 838, 119 S. Ct. 1728, 1732, 144 L. Ed. 2d 1199.

The "Prosecution's constitutional duty" ^{"FNU, supra"} to correct said "substantially different testimony" (*supra*) produced by Khoundrica at Holloway's trial ("TRIAL #1") and McGee's trial ("TRIAL #2"),...

... is well settled both in law and in professional regulations governing prosecutorial misconduct. See *Storey v. Humphreys*, supra; *Brady v. Maryland*, supra; *Napue v. Illinois*, supra. The prosecutor should have recognized the "misleading nature" of Khamndrica's "substantially different testimony" ("Appx-A") ("TRIALS #1 and 2", supra) when Khamndrica placed Lynell Jordan ("Jordan") (supra), "outside her car, with an AK-47 in his hands headed towards Nguyen's house intending to murder Nguyen" ("Appx-A") ("TRIAL #2"). Id. finds it didn't matter if it were "more credibility issues" with Khamndrica's "substantially different testimony" ("TRIALS #1 and #2") ("Appx-A"). See *Napue v. Illinois*, supra, quoting *People v. Sawides*, 1 N.Y. 2d 554, 557, 154 N.Y. 2d 885, 887, 136 N.E. 853, 854, 855 (1956) ("A lie is a lie, no matter the subject").

Fortunately, even if Khamndrica did "not" have an incentive to lie for the reasons stated in the putset, Khamndrica was indicted as Holloway's codefendant, and under Texas law, that is, the "accomplice witness rule" (supra), Khamndrica is therefore an accomplice to the alleged offense, thus, Khamndrica's testimony and statements she made to third persons should "not" be considered reliable in light of her "substantially different testimony" ("TRIALS #1 and #2") ("Appx-A"). See *Blake v. State*, supra; *Napue v. Illinois*; *Brady v. Maryland*.

"Prosecution witness Mrs. Leslie Bullock, supra ("Bullock's") trial testimony (XVII. R.R. at 14-111) should be discredited in light of Khamndrica's "substantially different testimony" because Bullock "affirmatively" stated that, "when Khamndrica and Holloway allegedly arrived at her house they were there to avoid police after being caught stealing" (XVII. R.R. at 19-21) ^{FNS} Id. That Holloway and Khamndrica's children went inside Bullock's house while Bullock and Khamndrica walked to the store wherein Khamndrica told Bullock Holloway allegedly murdered Nguyen (XVII. R.R. at 22-23)." See *Brown v. State*, supra; *Napue*.

Because Bullock's trial testimony was based upon statements Khaundrica made to Bullock while walking to the store^{Id.} (XVII. R.R. at 22-23) that implemented Holloway in Nguyen's homicide (XVII. R.R. at 22-23),... Bullock's testimony, as previously stated, should be discredited since it has been discovered that Khaundrica's statements that, was made to Bullock^{Id.} (XVII. R.R. at 22-23) was based upon perjured testimony, in light of the "substantially different testimony" ("TRIALS #1 and #2") ("APPX-A"). See, *Id.*

Bullock also "affirmatively" stated, that: "when she drove Holloway and Khaundrica to Southwest Houston, so Holloway could get his Food Stamp Card, "Khaundrica told Bullock" Holloway murdered Nguyen when Holloway went inside (XVII. R.R. at 100-101), which... also should be discredited since that statement is a lie, in light of Khaundrica's "substantially different testimony,"... *supra.* See, *Id.*

Moreover, Bullock's remaining testimony (XVII. R.R. at 3-99, 102-111) should be discredited, in light of Khaundrica's "substantially different testimony,"... because:

"Bullock testified that she observed Holloway and Khaundrica watching a video of the Phillip 66 robbery that aired over the media on her laptop (XVII. R.R. at 80-81). *Id.* Watching a video of a Phillip 66 robbery in which, McGee was criminally charged for "cannot" be considered creditable to connect Holloway to the murder of Nguyen, because it only constitutes a possible motive. *Id.* Moreover,... Khaundrica "affirmatively" stated that she had seen a video of the same Phillip 66 robbery a month before Bullock alleged she seen Holloway and Khaundrica watching a video of the robbery (XVII. R.R. at 21), which comprehends that Khaundrica had to tell... Bullock to mention the Phillip 66 robbery when her and Bullock walked to the store (XVII. R.R. at 22-23), or when Holloway went inside to retrieve his Food Stamp Card (XVII. R.R. at 100-101). *Id.*

Bullock also testified that: "she drove Holloway and Khaundrica near a crime scene while enroute to pickup Holloway's Food Stamp Card, and when they witnessed a heavy police presence in a nearby neighborhood, Holloway stated: "they must have found "somebody" dead (XVII. R.R. at 100-101). *Id.* Passing a crime scene, and stating "they must have found somebody dead" is "not" credible evidence that Holloway murdered Nguyen. *Id.*

This leave one last statement to address that Bullock made: "that Holloway murdered Nguyen." *Id.* When questioned by Holloway on Holloway's prose cross-examination of Bullock: "when he opened the door, I, smashed him so he out of there, & that what you heard me ("Holloway" say (XVII. R.R. at 102); Bullock could "not" answer Holloway's question in the "alternative" (XVII. R.R. at 102), which comprehends that Bullock was most likely trying to remember what Khaundrica told her to say when they took a walk to the store (XVII. R.R. at 32-33), or what Khaundrica told her to say when Holloway went inside to retrieve his Food Stamp Card (XVII. R.R. at 100-101). *Id.*

Evidence of what Holloway may have said is "not" credible evidence that Holloway murdered Nguyen (XVII. R.R. at 102). *Id.* Taken Bullock's testimony into context (XVII. R.R. at 32-102), coupled with her being Khaundrica's best friend... (XVII. R.R. at 30); Khaundrica telling Bullock, Holloway murdered Nguyen (XVII. R.R. at 32-33, 100-101), and Khaundrica's "substantially different testimony" ("TRIALS #1 and #2") ("APPX-A"). Bullock's testimony cannot be deemed credible under the circumstances of this case. *Id.*

"Prosecution witness, Renschelle Dixon, *supra*, ("Renschelle"). . . . testimony should also be discredited because Renschelle "affirmatively". . .

... stated that she learned about Nguyen's murder from her sisters, Crystal Nixon ("Crystal") and Christain Nixon ("Christain"), who allegedly learned about Nguyen's death from Khauradica. Id. Renchelle alleged that she then took a walk down the street within Nguyen's neighborhood and witnessed Nguyen's body from the street (XVI. R.R. at 64-66, 77). Id.

Renchelle's testimony should be discredited for several reasons. Id. The first reason is because Renchelle's testimony is based upon statements Khauradica made to Crystal and Christain and they made to Renchelle, which thus, was excluded under the "accomplice-witness rule." Id. Brown v. State, supra.

The second reason Renchelle's testimony should be discredited is because Nguyen's neighbor testified that when he past Nguyen's front door on his way to work that morning, which was several hours before Renchelle's alleged discovery of Nguyen's body, he did not see Nguyen's body when he passed Nguyen's front door (XVII. R.R. at 4), nor did he see Nguyen's front door open (XVIII. R.R. at 4). Id. Moreover, Nguyen's neighbor testified that he did not hear any gunshots around the time Khauradica alleged Holloway murdered Nguyen (XIII. R.R. at 4), nor did he see Holloway fleeing the neighborhood the night Nguyen was allegedly murdered (XVIII. R.R. at 4), or at any time before or after Nguyen's murder (XVIII. R.R. at 4). Id.

The third reason Renchelle's testimony should be discredited is because Crystal testified that he, nor Christain mentioned anything about Holloway being involved in Nguyen's homicide and Renchelle therefore lied (XVI. R.R. at 59-62). Id. Moreover, Renchelle lied to the entire courtroom about her identity (XVIII. R.R. at 136-138) (XVIII. R.R. at 59-64). Id.

"Thus, Renchelle's testimony should be discredited in light of Khauradica's 'substantially different testimony' supra." Id.

In addition to the facts hereinabove, "Holloway maintains ...

... that Khumdriga's "substantially different testimony" is "favorable" to Holloway, and therefore "material", because said testimony ("Appx-A") ("TRIAL #1 and #2" supra), when viewed in light of the evidence as a whole, is "not" sufficient to connect Holloway to the murder of Nguyen considering (1) Holloway was "not" a suspect or otherwise involved in ... Nguyen's murder (XVII. R.R. at 133-155); (2) Holloway was "not" a suspect or otherwise involved in the robbery of the Phillip 66 gas station; neither Holloway's fingerprints nor DNA was found at the Phillip 66, at Nguyen's house; on ballistic evidence; nor anywhere else doing the investigation of the case (XIV. R.R. at 130) (XVIII. R.R. at 118-132); (3) Holloway was "not" involved in the arson of Nguyen's car (XIV. R.R. at 19); (4) Holloway's voice was "not" heard on any of Mabree's jail phone calls to Jordan planning to murder Nguyen, nor was Holloway name mentioned in any way that would implement Holloway in Nguyen's homicide (XIV. R.R. at 118-119) (XV. R.R. at 9-10) (XVIII. R.R. at 130, 132); and (5) Holloway pled "not" guilty of murdering Nguyen (XIII. R.R. at 31). Id.

Thus, the "substantially different testimony", supra, is "favorable... evidence" that is blatantly "material" to Holloway. Id. Especially since it fits Holloway's "trial theory", that: "Holloway is 'not' guilty of murdering Nguyen (XIII. R.R. at 31); Jordan who planned to murder Nguyen possibly murdered Nguyen (XVI. R.R. at 117-119); Jordan sent his girlfriend 'Tish' to visit Mabree to ensure Mabree that Jordan, in fact, murdered Nguyen (XVIII. R.R. at 50-52); and Khumdriga made false statements against Holloway, because she had an incentive to lie, for the reasons stated at all times hereinabove." ("Appx-A"). Id.

"If the Prosecution would have disclosed said 'substantially different testimony' ("Appx-A") to Holloway, when he was revealed at Mabree's trial ("TRIAL #2"), ... Holloway could have raised this as an issue on direct appeal or at a new trial, which could have warranted a new trial, wherein Holloway would have prevailed because, said "substantially different testimony", coupled...

... with every single witness excluding Holloway for the murder of Nguyen (XIII. R.R. at 113) (XIV. R.R. at 129, 130) (XV. R.R. at 40-90, 89-90, 112-139, 178-179) (XVI. R.R. at 102, 112-132, 133-155) (XVII. R.R. at 53-75, 120, 127), and the facts hereinabove, viewed in light of the evidence as a whole, would have been, and will thus be sufficient to establish by clear and convincing evidence, that, but for the Brady error, no reasonable factfinder would have found Holloway guilty of murdering Nguyen. See, *United States v. Bagley*, 473 U.S. 667, 703 n.5, 87 L. Ed. 2d 481, 105 S.Ct. 3375 (1985); *In re Will*, supra; *Shinn v. Ramirez*, supra. ("Appx-A")

As a result of the Prosecution's failure to turn over Khawndrica's "substantially different testimony", supra, to Holloway, Holloway was "prejudiced" and therefore "harmed" because the Prosecution concealed Holloway's instant Brady and Napue claim ("Appx-A"), that is, Khawndrica's "substantially different testimony" ("Appx-A") ("TRIALS #1 and #2"), until Holloway discovered said "substantially different testimony", supra, on November 09, 2022, through the exercise of reasonable and due... diligence.^{FN1} *Id.*; *Storey v. Lumpkin*, 142 S.Ct. 2578. Under that rule, the Prosecutor ran the clock and escaped his responsibility^{FN4} to disclose said "substantially different testimony", supra, to Holloway, ... resulting in extreme due process violations such as creating the instant bar ("Appx-A"), thus closing the door to Holloway's Brady claim herein ("Appx-A"). *Id.*

Holloway could not raise this instant Brady claim ("Appx-A") in a previous application or petition, for reasons external to Holloway, because the Prosecution, as stated hereinabove, ... failed to disclose Khawndrica's "substantially different testimony", supra, to Holloway when said "substantially different testimony" became available to the Prosecution, in May 2026 at Malice's trial.^{FN3} ... despite the Prosecution's obligation to disclose said "substantially ...

... different testimony," which was known to the Prosecution in May of 2016, ^{FBI} but unknown to Holloway until November 09, 2022 ("Appx-A"). Id.

However, through the exercise of due diligence ^{FBI} on November 09, 2022, when prison officials at TDCJ's Griffith Unit issued Holloway a Security Tablet, Holloway accessed the 24/7 unlimited access to law library app and was able to discover Mabree's trial case law ("Appx-A"). Id. While reading Mabree's case Holloway discovered that Khamarika provided said "substantially different testimony" ("Appx-A") ("TRIALS #1 and #2"), which Holloway believe was and is, therefore "material" to Holloway for the reasons stated at all time herein. Id.

There was literally "no" way that Holloway could have discovered said "substantially different testimony" ^{supra} sooner or should have known about said "substantially different testimony" sooner, because Holloway's trial occurred in November of 2015, ... six (6) months "prior" to Mabree's May 16, 2016 trial, and while Holloway was already in the Texas Department of Criminal Justice-Institutional Division ("TDCJ-ID") serving his ("Holloway's") life sentence. ^{Id.}

The Prosecution nor Mabree subpoenaed Holloway to attend Mabree's trial, which would have provided Holloway of a means to learn of... Khamarika's "substantially different testimony" sooner. Id.

As for Holloway using the "only" alternative means available to Holloway to learn of Khamarika's "substantially different testimony" - which was to file a motion to obtain a copy of Mabree's trial transcripts - that alternative was futile because Holloway did "not" know that said "substantially different testimony" existed prior to November 09, 2022 ("Appx-B"), which is a prerequisite before obtaining a co-defendant's trial transcripts in the State of Texas. See *McLishan v. State*, 749 S.W. 2d 83, 86-85 (Tex. Crim. App. cert. denied, 488 U.S. 959, 102 L. Ed. 2d 125, 109 S. Ct. 154) (1988) ("More here that a transcript may assist in the preparation of a case will 'not' suffice to show requisite particularized need for co-defendant's trial transcripts.").

As for Holloway requesting a copy of Mabree's trial transcripts, following the jury's verdict in Holloway's November 2015 trial, Mabree's trial transcripts did "not" exist until May of 2016, ... "six-months after Holloway's trial." Id.

As for Holloway requesting a copy of Mabree's trial transcripts on direct appeal, Texas law, as stated above, does "not" allow Holloway to obtain a co-defendant's trial transcripts, without first "knowing" that a specific portion of that transcript, tailored to a specific request, exists. Id.

likewise, the same rule applied to Holloway's state habeas corpus proceedings. Id.

With no right to appointed counsel and no specific reasons to justify being entitled to a copy of Mabree's trial transcripts, Holloway, as an indigent prisoner alone or possibly with the help of a family member or friend, was left to try and obtain necessary records from ... Mabree's trial, ("TRIAL #1, supra"), that Holloway obviously did "not" know existed, to prepare previous or subsequent applications. Id. In re Bonilla, 424 S.W. 3d 532 (Tex. Crim. App., March 12, 2014).

However, even if Holloway would have found a family member or friend to assist Holloway by requesting said "substantially different testimony" ("App-A"), despite "not" knowing said testimony existed, the district court clerk's policy in the State of Texas, would also have operated to withhold that information from Holloway's family and friends because Holloway's family and friends are "not" Mabree's family, friends, nor Mabree's attorney, or agent acting on behalf of Mabree. Id. In re Bonilla, 424 S.W. 3d 533; Tex. Gov't Code § 552.008.

Although Section 552.008 and the district clerk's policy would have required the district clerk to respond to an attorney acting on behalf of Mabree, for information that was immaterial to Holloway acting pro se, those ... requirements does "not" apply to Holloway. Id.

A discovery motion in the federal district court to obtain...

As for Holloway requesting a copy of Mabree's trial transcripts following the jury's verdict in Holloway's November 2015 trial, Mabree's trial transcripts did "not" exist until May of 2016, ... six months "after" Holloway's trial. *Id.*

As for Holloway requesting a copy of Mabree's trial transcripts on direct appeal, Texas law, as stated above, does "not" allow Holloway to obtain a co-defendant's trial transcripts without first knowing that a specific portion of that transcript, tailored to a specific request, exists. *See, Id.*

This same rule applied to state habeas corpus proceedings in the State of Texas. *Id.*

With "no" right to appointed counsel and "no" specific reasons to justify being entitled to a copy of Mabree's trial transcripts, Holloway as an indigent prisoner, alone or possibly with the help of a family member or friend, was left to try and obtain necessary records from Mabree's trial ("TRIAL#2, supra"), that Holloway obviously did "not" know existed, to prepare previous or subsequent applications. *Id.* *In re Bonilla*, 404 S.W.3d 532 (Tex. Crim. App. March 12, 2014).

However, even if Holloway would have found a family member or friend to assist Holloway by requesting said "substantially changed testimony" (supra), "despite" "not" knowing said testimony existed, on Holloway's behalf, the district clerk's policy in Texas would also have operated to withhold that information from Holloway's family and friends because Holloway's family and friends are "not" Mabree's family, friend, nor Mabree's attorney, or agent acting on behalf of "Mabree". *Id.* *In re Bonilla*, 404 S.W.3d 533; Tex. Gov't Code § 552.008.

Although Section 552.008 and the district clerk's policy would have required the district clerk to respond to an attorney acting on behalf of Mabree, in Texas, for "information that was 'immaterial' to Holloway" acting pro se, those requirements does "not" apply to Holloway. *Id.*

A discovery motion in the federal district court to obtain Mabree's trial transcripts ("TRIAL#2, supra") would have been futile during Holloway's "first federal habeas 2014 proceeding" because, ...

... Holloway did not know or could not have known that said "... substantially changed testimony" (supra) existed, and thus, would "not" have been able to make a "specific" request for said testimony. See, Rule 6(b) of the Rules Governing §54 Cases In United States District Courts ("A party seeking discovery must 'specify' any requested documents."); *Richie v. Thaler*, 2020 U.S. Dist. LEXIS 48496 at *51 (S.D. Tex. May 12, 2020) ("Richie does not allege specific facts showing that discovery is justified by good cause as required" by Rule 6 of the Rules Governing Section 54 Cases.)

likewise, it would have been "futile" for Holloway to request for Mabeco trial transcripts in the federal district court, because although it would have been unnecessary to Holloway's claims in Holloway's first federal habeas §54 petition, Holloway did "not" know or could "not" have known that said "substantially changed testimony" (supra) existed and could "not" have met the requirements in the federal district court to obtain Mabeco's trial transcripts, which require's: "(1) relevance, and (2) need for certain transcripts, and (3) with specificity." See, *Yost v. Davis*, 2018 U.S. Dist. LEXIS 5595, #1-#4 (S.D. Tex. July 27, 2018).

Making in the federal district court for an evidentiary hearing of any sort would have also been futile for the reasons stated above. See, *Crowley v. Lumpkin*, 2022 U.S. Dist. LEXIS 179660, *37-38 (S.D. Tex. Sept. 30, 2022) ("A federal habeas corpus petitioner can have an evidentiary hearing if a genuine factual dispute exists and the state has not afforded a full and fair hearing.")

A request for production of the transcripts from Mabeco trial ("TRIAL #2, supra") relating to Khundria's "substantially changed testimony" (supra) in the Fifth Circuit Court of Appeals ("... Fifth Circuit") on appeal ("COA") of the denial of Holloway's first... federal habeas petition" would have also been futile for the reasons stated above. See, *United States v. Davis*, 369 Fed. Appx. 546, 547 (5th Cir. March 29, 2016) ("Davis's motion for transcripts did not set forth the issues, in his petition, or explain why the requested transcripts were necessary to decide those issues.")

Since Holloway did "not" know or could "not" have known of Khaundrick's "substantially changed testimony" ("TRIALS #1 and #2, supra") for the reasons stated above, Holloway could "not" have known of its relevancy, and thus, could "not" make a discovery request either, in the Fifth Circuit for discovery of said substantially changed testimony. See, Davis v. U.S. Marshal Serv., 849 Fed. Appx. 80, 86-1871, 5th Cir. March 29, 2004 (LNU15). This court recognizes broad and liberal treatment of discovery rules. In civil cases, parties are entitled to discover all information relevant to any parties claim or defense that is not privileged.

On Certiorari appeal of the denial of Holloway's "first federal habeas petition" to the United States Supreme Court ("Supreme Court"), the Supreme Court was "not" required to provide me free transcripts from Mabec's trial regarding said "substantially changed testimony" (supra), and a motion addressed to the Supreme Court would have "not" been appropriate, especially since Holloway could "not" establish a specific need for Mabec's trial transcripts, for the... reasons stated above. See, Griffin v. Illinois, 351 U.S. 12, 19-30, 76 S.Ct. 585, 100 L.Ed. 891 (1956).

As stated hereinabove, Holloway did "not" discover that Khaundrick's testimony had "substantially changed" ("TRIALS #1 and #2, supra") until November 09, 2000. In re Mills, supra; Storey v. Lumpkin, supra; Shinn v. Ramirez, supra. By this time Holloway's Writ of Certiorari petition had been denied in the Supreme Court on April 04, 2001, ... which is several months and five days prior to Holloway discovering said "substantially changed testimony" (supra). Tel. But see, Arthur R. v. Lumpkin, Cir. Tx. Dec. 2000 U.S. LEXIS 1819 (U.S. Apr. 04, 2001).

Thus, it would have been futile for Holloway to request for Mabec's trial transcripts in the Certiorari proceeding in the Supreme Court, because there was no reason for Mabec's trial transcripts and the Supreme Court would have denied Holloway's request because said request would have been irrelevant to Holloway's Certiorari... proceeding. Tel. Griffin v. Illinois, supra.

Thereafter, Holloway petition for rehearing of the denial of Holloway's Certiorari was denied in the Supreme Court, that is, the Supreme Court denied Holloway's petition for rehearing on September 09, 2022. *Id.*; But see, Arthur R. v. Lumpkin, Dir., Tx. DCJ, 2022 U.S. LEXIS 3380 (U.S. Sept. 09, 2022).

This means that Holloway had fourteen (14) months from the denial of his petition for rehearing in the Supreme Court on September 09, 2022 to the discovery of said "substantially changed testimony" (*supra*) on November 09, 2022 to seek Magee's trial transcripts. *Id.*

However, within those fourteen months, Holloway had "no" legal basis for seeking Magee's trial transcripts, for the reasons stated above, and a request for Magee's trial transcripts without any need or relevance with have failed in Texas, especially since the Supreme Court denied Certiorari on Holloway's habeas corpus claim(s). See, *McKibbin v. State*, *supra*.

Without those transcripts ("TRIAL#2, *supra*"), or the State or Magee issuing a subpoena to attend Magee's trial ("Id"), which would have enabled Holloway to learn of Khannadira's "substantially changed testimony" ("TRIALS#1 and #2, *supra*") there was obviously no other way that Holloway could have learned of said "substantially changed testimony" (*supra*), and thus, could "not" raise Holloway's instant "substantially changed testimony" (*supra*) claim in a previous application or petition, when considering the reasons for "not" raising said claim in a previous application or petition, as established hereinabove. *In re Will's Shinn v. Ramirez; Storey v. Lumpkin*. ("Appx-A").

However, notwithstanding Holloway's reasons for "not" raising said "substantially changed testimony" ("Id") in a previous application or petition, the Prosecution was obligated "EN4" to bring said... "substantially changed testimony" ("Id") to Holloway's attention in May of 2016 when the Prosecution was exposed to said....

... "substantially changed testimony" ("Id."), which could have enabled Holloway to raise said claim ("Id.") in a previous application or petition, Id.

Holloway was "prejudiced" as a result of the Prosecution's failure to bring said "substantially changed testimony" ("Id.") to Holloway's attention because Holloway was unable to discover said "substantially changed testimony" ("Id.") sooner which, as previously stated, would have enabled Holloway to raise said claim in a previous application or petition, but however, created a procedural bar ("successive... petition bar") that Holloway must now overcome to have the merits of his Brady claim ("Id.") reached. Id. ("Appx-A")

If the Prosecution would have disclosed said "substantially changed testimony" ("Id.") in May of 2016 when it became known to the Prosecution, Holloway would have prevailed on his Brady claim for the reasons stated at all times hereinabove. Id.

However, when Holloway learned on November 09, 2022 that said "substantially changed testimony" ("Id.") existed, Holloway immediately researched, constructed, drafted, and filed his "second habeas corpus application" in the state habeas court on December 28, 2022, ... encompassing said "substantially changed testimony" ("Id.") claim ("Appx-A"), which the Texas Court of Criminal Appeals ("TCCA") "dismissed" on March 08, 2023 ("Appx-A") Id.

After the TCCA "dismissed" Holloway's "second habeas corpus application", which raised identical "substantially changed testimony" ("Id.") claim on March 08, 2023, Holloway immediately filed a "Motion for leave to file A Second or Successive Federal Habeas 2254 Petition w/ A Proposed Petition", in the Fifth Circuit on April 13, 2023, which the Fifth Circuit "denied" on May 03, 2023 ("Appx-A"), in the case of In re Arthur Holloway, Jr, No. 23-20150 (5th Cir. May 03, 2023). Id.

In its "denial" of Holloway's Motion for leave To file A Second or Successive Federal Habeas 2254 Petition ("Appx-A"), the Fifth Circuit stated that its "denial" of said motion, which facts were virtually identical to the facts alleged at all times hereinabove ("Appx-A"), was because: "(1) Holloway's claim was noncognizable in a federal habeas proceeding; and (2) Brady and actual innocence claims are not recognized in obtaining authorization to file a second or successive petition" ("Appx-A"). See, *In re Holloway*, supra at Unpublished Order at pages 2-3; *In re Will*, supra; *Shinn v. Ramirez*, supra.

Holloway believes that "exceptional circumstances" exist that justify the use of the Supreme Court's discretionary powers to issue an original writ and also to take into account (without necessarily being bound by) AFIPA's criteria for review of the facts alleged at all times hereinabove, because in its "denial" of Holloway's Motion for leave To file A Second Or Successive 2254 Petition (supra), the Fifth Circuit applied the wrong criteria to Holloway's Motion for leave ("Appx-A"), which resulted in the Fifth Circuit erroneously denying Holloway's motion ("Appx-A"), thus depriving Holloway of an opportunity to present Holloway's newly discovered Brady and Napue claims to the Federal District Court for fuller review ("Appx-A, B"). See, *Id.*

"Holloway's Brady and Napue claims which was based on the facts alleged at all times hereinabove, which is virtually identical to the facts alleged by Holloway in his motion for leave to file a second or successive 2254 petition" ("Holloway's Brady claim"), which the Fifth Circuit based its "denial" ("Appx-A, B"), presented facts that established a "prima facie" showing that satisfied the "second or successive petition requirement of 28 U.S.C. 2244(b)(2)" which was all that was required of Holloway ("Appx-A, B"). See *Bandster v. Davis*, 140 S. Ct. 1698 (June 01, 2000) (HULL) to file a second or successive ...

... application in a district court, a prisoner must first obtain leave from the court of appeals based on a prima facie showing that his petition satisfies the statute's... gatekeeping requirements. 28 U.S.C. § 2244(b)(3)(C). Under those provisions, which bind the district court even when leave is given, a prisoner may not reassert any claims presented in a prior application. 28 U.S.C. § 2244(b)(1). And he may bring a new claim only if it falls within one of two narrow categories, roughly speaking, if it relies on a new and retroactive rule of constitutional law or if it alleges previously undiscoverable facts that would establish his innocence. 28 U.S.C. § 2244(b)(2). Still more: Those restrictions, like all statutes and rules pertaining to habeas corpus, trump any inconsistent Federal Rule of Civil Procedure otherwise applicable to habeas proceedings. R. Governing § 2254 Cases U.S. Dist. Ct. 13"

Rather than considering "whether, 'Holloway's Brady claim' (supra),... aided by an evidentiary hearing that only the United States District Court ('District Court') would conduct,... would enable 'Holloway's Brady claim' (supra) to satisfy the 'second or successive (prima facie) requirements of 2244(b)(2)' ("Appx-A, B"), the Fifth Circuit basically ruled on 'Holloway's Brady claim' (supra) ("Appx-A, B"), which was "not" allowed when determining whether to grant Holloway authorization to file a "second or successive 2254 petition" ("Appx-A, B"). Id. In re Will, supra; In re Holloway, supra.

Whether "Holloway's Brady claim" (supra) made a "prima facie" showing that any of the claims in Holloway's petition ("Appx-A, B") satisfied AEDPA's substantive successive standards, was the scope of review that the statute permitted the Fifth Circuit, thereby evidently rendering irrelevant other possible grounds for dismissal such as ultimate lack of merit,... nonexhaustion, procedural default, and the like. Id. In re Davila, 888 F.3d 179 (5th Cir. April 23, 2018) (HN4) (HN5) (HN6) (HN7) (HN8).

Thus, although the statute does not give any indication of what the prima facie standard requires, the statute's "prima facie showing" language and the Supreme Court's "gatekeeping" task (Felker v. Turpin, 518 U.S. 651, 657 (1996)) strongly suggest that the Fifth Circuit's review ("Appx-A, B") at that stage should have "not" resolved the question whether "Holloway's Brady claim" (supra) actually...

... satisfied the successive petition standard or whether some affirmative defense to relief existed but "only" whether there was some reasonable likelihood that Holloway - perhaps aided by an evidentiary... hearing of a sort that only the district court can conduct - will thereafter have been able to satisfy the new successive standard. *Id.* *Bowley v. United States*, 533 U.S. 614, 620-23 (1998) ("By 'prima facie showing' we understand it to be simply a sufficient showing of possible merit to warrant a fuller exploration by the district court. If in light of the documents submitted with the application it appears reasonably likely that the application satisfies the stringent requirements for filing a second or successive petition, we shall grant the application").

This interpretation is strongly reinforced by AEDPA's requirement, in cases in which authorization to file is granted, that the district court revisit the issue of the petition's compliance with the standard for filing a successive petition. See 28 U.S.C. § 2244(b)(4); *Tyler v. Cain*, 533 U.S. 656, 660 n.3 (2001) ("after court of appeals authorizes filing of successive petition based on 'prima facie showing' that the application satisfies the statutory standard, district court must determine whether applicant has 'shown' that the claim satisfies the... standard").

Only by treating the "prima facie showing" as requiring something less than a final determination can AEDPA be read to avoid requiring a district court - unconstitutionally - to review the Fifth Circuit's "denial" ("Appx-A, B") *denovo*. See, *Plant v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995) ("under Article III of Constitution, federal court's decision is 'subject to review only by superior courts in the Article III hierarchy'").

As noted, if the circuit panel authorizes the filing of the petition, the district court must examine each of its claims to ensure that they satisfy AEDPA's substantive standards for successive petitions. See 28 U.S.C. § 2244(b)(4) *supra*; *Tyler v. Cain*, *supra*.

If the panel instead denies leave to file the petition, as it did in Holloway's case ("Appx-A"), AEDPA prohibits circuit court reconsideration by means of a "petition for rehearing" - although apparently it does "not" bar "rehearing en banc". See *Evans v. United States*, 504 U.S. 255, 259, 284 n.4 (1992).

9. Despite "rehearing en banc" not being prohibited, the Fifth Circuit rejected Holloway's "Suggestion for Rehearing En Banc" ("Appx-B") because it alleged 2244(b)(3)(E) does not permit review.

Thus, for the reasons stated at all times hereinabove, Holloway believes that exceptional circumstances exist for the Supreme Court to exercise its discretionary powers to issue a writ authorizing Holloway to file a second or successive 2254 petition in the district court for further review of "Holloway's Brady Claim" (supra) ("Appx-A", *Boesley v. United States*, supra).

ARGUMENTS AND AUTHORITIES IN SUPPORT OF QUESTION
FOR REVIEW NUMBER TWO REGARDING THE FIFTH CIRCUIT'S
FAILURE TO ENTERTAIN PETITIONER'S SUGGESTION FOR
REHEARING EN BANC

(#1)

The availability of rehearing en banc - either upon a party's "suggestion" or upon the court's sua sponte order - is unclear. In another section of AEDPA, Congress specifically refers to both suggestions for rehearing en banc and ... petitions for rehearing. Given AEDPA's explicit reference to en banc rehearings when it intends to regulate them, the failure to mention them in the successive petition provisions appears intentional, not inadvertent.

Exceptional circumstances exist that justify the use of this Court's discretionary power to issue an original writ, because the Fifth Circuit abused its discretion by refusing to entertain Holloway's "suggestion for rehearing en banc petition" ("Appx-B") to review the panel's ... "denial" of Holloway's motion for leave to file a second or successive 2254 petition ("Appx-B, A"), because "Section 2244(b)(3)(E) does not permit review of the denial of Holloway's request to file a successive petition" ("Appx-B"), thus depriving Holloway of an opportunity to have...

issuance of an original writ of habeas corpus authorizing Holloway to file a "second or successive 2254 petition," for the reasons stated at all times hereinabove, is warranted because the Supreme Court will thereby provide Holloway an opportunity to have his newly discovered Brady claim ("Appx-A") fully reviewed by the district court, which when aided by an evidentiary hearing of a sort that only the district court can conduct, might enable Holloway to establish his entitlement to relief. *Id.* Therefore, other pro se litigants who face those same obstacles would have a stronger basis to rely on, such as the instant case and similar cases. *Id.*

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Arthur A. Holloway, Jr.

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