NO: 23-7427

THE SUPREME COURT OF THE UNITED STATES

Term of the Court: October, 2023-2024

ALTON D. PELICHET
Petitioner,

-vs-

FREDEANE ARTIS
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

APPLICATION FOR CERTIFICATE OF APPEALABILITY

APPENDIX

CERTIFICATE OF MAILING

PROOF OF SERVICE

By: ALTON D. PELICHET #148688
Petitioner, In Forma Pauperis
Thumb Correctional Facility
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QUESTION PRESENTED

I.

Whether this Honorable Court should grant Petitioner's Petition for a Writ of Certiorari, where Petitioner has demonstrated that his rights to a fair trial, due process and equal protection of the law, guaranteed by the sixth and fourteenth amendments to the United States Constitution, has been violated and the United States District Court for the Eastern District of Michigan, and the United States Court of Appeals for the Sixth Circuit, in denying to issue a certificate of appealability is clear error?

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NO: _____

THE SUPREME COURT OF THE UNITED STATES

Term of the Court: October, 2023-2024

ALTON D. PELICHET

Petitioner,

-vs-

FREDEANE ARTIS

Respondent.

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

Petitioner, Alton D. Pelichet, respectfully prays that a Writ of Certiorari issue to review the orders of the U.S. District Court for the Eastern District of Michigan and the U.S. Court of Appeals for the Sixth Circuit, dismissing an Application for Writ of Habeas Corpus, and denying to issue a Certificate of Appealability, where Petitioner has made a substantial showing of the denial of Federal Constitutional rights.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the 6th Circuit appears at Appendix A, and is unpublished.

The decision of the US District Court Eastern District of Michigan appears at Appendix B, and is unpublished.

The decisions of the United States Court of Appeals for the 6th Circuit denying Petition for Rehearing and Rehearing en banc appears at Appendix C, and are unpublished.

Title 28, USC, § 1915 et seq. Proceedings In Forma Pauperis, text is set forth in Appendix D.

JURISDICTION

The U.S. Court of Appeals for the Sixth Circuit's Order denying rehearing en banc, in this matter, was filed on March 22, 2024, and is set forth at Appendix C. This Honorable Court's jurisdiction is invoked pursuant to Title 28 USC § 1254(1) for Writ of Certiorari upon petition of Petitioner, after rendition of final judgment; 28 USC § 2101(c) directing the time for Writ of Certiorari to review any judgment or decree in a civil action, shall be taken or applied for within ninety days after entry, and Supreme Court Rule 10(a), a U.S. Court of Appeals has entered a decision in conflict with the decision of another U.S. Court of Appeals on the same important matter; or 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 for an exercise of this this Court's supervisory power; a state

court or U.S. Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in conflict with this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. United States Constitution - Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertainted by law, and to be informed of he nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

B. United States Constitution - Amendment XIV 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 to any person within its jurisdiction the equal protection of the law.

II. STATUTES

A. Title 28, United States Code, § 1254(1)

Courts of Appeals, Certiorari
Final judgments or decrees rendered by the U.S. Courts of Appeals. Upon the petition of a Party.

B. Title 28, United States Code § 1915 et seq

Proceedings In Forma Pauperis
(Text is set forth in Appendix D)

C. Title 28 United States Code, § 2101(c)

Directing the time for writ of certiorari to review any judgment of decree in a civil action, shall be taken within ninety days after entry of such judgments or decree.

STATEMENT OF THE CASE

Following a non-jury trial on 2/22/77 Petitioner Pelichet was convicted of First Degree "Felony" Murder, MCL 750.316; MSA 28.548; Armed Robbery, MCL 750.529; MSA 28.797; Assault with Intent to Rob being armed 750.89; MSA 28.284; and Possession of a Firearm During the Commission of a Felony 250.227b; MSA 28.424(2).

On 3/14/77, Petitioner was sentenced to imprisonment for life for "Felony Murder", a term of 10-15 years for robbery armed, 10-15 years for assault with intent to rob being armed, 2 years for possession of a firearm during the commission of a felony.

The prosecution presented four primary witnesses: Their testimony was basically consistent. That Petitioner held them at gun point, took money from on of them; and shot and killed Valma Cannady.

Petitioner Pelichet testified, on his own behalf for the defense. He testified that the gunshots were forced off, his arms being grabbed, by three men who jumped him in the hall at Ms. Cannady's apartment door.

After the defense rested the trial judge listen to closing arguments and stated: "Frankly, I do not believe the

defendant. I think he is lying. I credit the testimony of the prosecution's witnesses. And so I find him guilty under Count 1 of committing homicide while engaged in the perpetration or an attempt perpetration of a robbery..." The judge, in what is on the record at sentencing dated 3/14/77, further stated: "...it is not clear that shots from your gun, intentionally, caused the death..." The judge came to this conclusion reviewing the testimony under the best light of the prosecution.

The judge found Petitioner guilty based on the intent to commit the underlying enumerated offense alone. (Sent. Trans. P.5 - Appendix E in Application for Writ of Habeas Corpus.) Such a finding in undoubtedly clear error and an abuse of discretion.

Petitioner appealed his convictions to the Court of Appeals (COA) as a mater of right. On 3/21/79, the COA set aside the felony-firearm conviction and affirmed in all other respects in COA No. 77-1285. Application for Leave to Appeal in the Mich. Supreme Court resulted in the Court reversing the COA and reinstating the felony-firearm and denied leave in all other respects. 411 Mich 1038 (1981).

Petitioner filed a Motion for Relief from Judgment which was denied on the date 10/06/2006. On 3/24/2007 the Mich. COA denied leave to appeal; and on 10/29/2007, the Mich. Supreme Court denied leave to appeal.

Petitioner Pelichet on the date 4/02/2020, mailed for

filing a successive motion for relief from judgment in the Wayne County Circuit Court - Criminal Division; based on a significant possibility that he is innocent of the charge he is convicted and constitutes a constitutional violation. The motion was placed before the Honorable Wanda A. Evans.

In a letter dated 6/16/2020, the trial court responded to the motion by stating: "Your motion has undergone a preliminary disposition review and it has been determined that at this time you do not qualify for relief pursuant to MCR 6.502(G)(1) and (G)(2)." Further the letter states; More specifically. . ."Your most recent Motion does not allege a retroactive change in law, nor is there an allegation of newly discovered evidence. No place does the letter indicate the Court viewed or determined whether there was a "significant possibility defendant is innocent of the crime." The letter was signed by Donna M. Bettis, who is the Judicial Attorney to Judge Evans.

A denial or rejection of a successive motion pursuant to MCR 6.502(G)(1) or (2) is not appealable. Thus, Petitioner brought a Complaint for a Writ of Superintending Control in the Michigan Court of Appeals. In an Order dated 10/02/20 same was denied.

Petitioner brought Application for Leave, in the Michigan Supreme Court, from the decision of the Michigan Court of Appeals. Same was denied in an Order dated 3/30/21.

Petitioner filed Petition for Writ of Certiorari in

this Honorable Court, challenging the denials of a writ of superintending control by the courts of the State of Michigan. Same was denied 6/14/21 - Docket No. 20-7955.

On April 1, 2021 an order issued an amendment to MCR 6.502(G)(1). The amendment eliminated the requirement to return successive motions to the filer and eliminated the prohibition on appeal of a decision made on a motion for relief from judgment. Thus, on August 23, 2021 Pelichet refiled his second motion for relief from judgment. Same was denied in an order dated June 30, 2022.

Petitioner appealed to the Michigan Court of Appeals. Same was denied in an order dated February 3, 2023. Petitioner appealed to the Michigan Supreme Court. Same was denied in an order dated May 2, 2023.

Petitioner brought Application for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan. In an Opinion and Order dated August 15, 2023, the Application was dismissed. The Court also denied to issue a Certificate of Appealability.

Petitioner filed Application for a Certificate of Appealability in the United States Court of Appeals for the Sixth Circuit. The Court denied same in an Opinion and Order dated February 6, 2024.

Petitioner filed Petition for Rehearing and Rehearing en banc. On the date March 06, 2024 Rehearing was denied, and on March 22, 2024 a Rehearing en banc was denied.

Petitioner's conviction and sentence should be set side because he was denied his right to a fair trial, due process and equal protection of the law based on two precedents issued by this Honorable Court: Fiore v. White, 532 US 225, 121 S.Ct 712, 148 LEd2d 629 (2001), and Bunkley v. Florida, 538 US 835, 123 S.Ct 2020,155 LEd2d 1046 (2003).

Petitioner now brings Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

The issue raised concerning the denial of a Certificate of Appealability is set forth and more fully explained in the Argument section of this Petition.

ARGUMENT FOR THE ALLOWANCE OF THE WRIT

A Writ of Certiorari should issue for several reasons: The District Court dismissed Petitioner's Petition for Writ of Habeas Corpus as untimely, thus not reaching Petitioner's underlying Constitutional claim. A Certificate of Appealability should have issued, where Petitioner showed, at least, that jurist of reason would find it debatable whether the Petition stated a valid claim of the denial of a constitutional right. Further, Petitioner is actually innocent of the crime for which he stands convicted. Actual innocence, when proven serves as a gateway through which Petitioner may pass when the impediment to consideration of the merits of his constitutional claim is expiration of the statute of limitations.

Also, Petitioner depends on a Michigan Supreme Court precedent that was not made retroactively applicable during his direct appeal; as authority for his actual innocence claim. However, two United States Supreme Court precedents decided over some 20 years later, that under the circumstances identical to Petitioner's circumstance, that the question is not rather a State Supreme Court decision is retroactive, but rather, has his Federal due process and equal protection rights been satisfied.

A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; and has ignored an important question of Federal Law, which has not been, but should be, settled by this Honorable Court; the Petition present an issue resolved by implication by this Court but not specifically and unequivocally decided by this Honorable Court; or 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 for an exercise of this Honorable Court's supervisory power.

ARGUMENT

THIS HONORABLE COURT SHOULD GRANT PETITIONER'S PETITION FOR A WRIT OF CERTIORARI, WHERE PETITIONER HAS DEMONSTRATED THAT HIS RIGHTS TO A FAIR TRIAL, DUE PROCESS AND EQUAL PROTECTION OF THE LAW, GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, HAS BEEN VIOLATED AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, IN DENYING TO ISSUE A CERTIFICATE OF APPEALABILITY IS CLEAR ERROR.

Constitutional Due Process and Equal Protection of the Law, whether it applies, and, if so, has been satisfied is reviewed de novo. Cooper Industry v. Leatherman Tool Group, Inc., 532 US 424, 435; 121 S.Ct 1678; 149 LEd2d 674 (2001).

Alton D. Pelichet ("Petitioner"). presently confined at the Thumb Correctional Facility in Lapeer, Michigan, filed a pro se Petition for Writ of Habeas Corpus challenging his conviction for first-degree "felony" murder, which was imposed following a bench trial in the Recorder's Court of Detroit, (Now Wayne County Circuit Court - Criminal Division). He was sentenced to consecutive terms of life imprisonment without the possibility of parole and two years imprisonment for possession of a firearm during the commission of a felony in 1977. In the pleadings, he raises claims concerning the trial court's denial of his second motion for relief from judgment, the validity of the trial court's guilty verdict, and effectiveness of trial and

appellate counsels.

The District Court ordered Petitioner to show cause why the case should not be dismissed for failure to comply with the one-year statute of limitations applicable to federal habeas actions.

The Antiterrorism & Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 USC § 2242 et seq, became effective on April 26, 1996. The AEDPA includes a one-year period of limitations for habeas petitions brought by prisoners challenging state court judgments.

Petitioner's Habeas Petition is dated June 08, 2023, no doubt, long after the one-year grace period expired. Petitioner concedes that his habeas petition is untimely, however, Petitioner is actually innocent of the charge that he has been found guilty of, i.e. first degree "felony" murder, and serves as a gateway through which he may pass. In support thereof, Petitioner respectfully represents to this Honorable Court as follows:

The AEDPA's Statute of Limitations is not jurisdictional. Day v. McDonough, 547 US 198, 205, 126 S.Ct 1675, 164 LEd2d 376 (2006). The Statute of Limitations in 28 USC § 2244(d)(1) is not jurisdictional and it is subject to equitable tolling, Sherwood v. Prelisnik, 579 F3d 581, 587-88 (Cir 6, 2009), and an "actual innocence" exception McQuiggin v. Perkins, 569 US 383, 386, 133 S.Ct 1924, 185 LEd2d 1019 (2013).

Petitioner's primary argument, to support why his Application for a Writ of Habeas Corpus should not be dismissed for failure to comply with the one-year statute of limitations, is that he is actually innocent of the crime for which he has been convicted of. This should, no doubt, raise the concern of the Court because of the inherent injustice that results from the conviction of a person innocent of the crime for which he has been convicted. Wyzkowski v. Department of Corrections, 226 F3d 1213, 1218 (Cir 11, 2000). The Petition for Writ of Habeas Corpus is Petitioner's first and only Habeas Petition. This Court should be mindful that: "Dismissal of a first federal habeas petition is a particularly serious mater, for that dismissal denied the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Lonchar v. Thomas, 517 US 314, 324 116 S.Ct 1293, 134 LEd2d 440 (1996). If there is a "core function" of habeas corpus, "it would be to free the innocent person unconstitutionally incarcerated." Alexander v. Keane, 991 F.Supp 329, 338 (SD NY 1998). The United States Constitution may require that when a claim of actual innocence is involved, habeas review should remain open until a habeas petitioner has had at least one "meaningful opportunity for review." United States v. Zune-Arce, 25 F.Supp 2d 1087, 1100 (CD CAL 1998); aff'd 245 F3d 1108 (Cir 9, 2001). To utilize the one-year statute of limitations contained in the AEDPA to preclude a petitioner

who can demonstrate that he or she is factually innocent of the crime that he or she was convicted would violate the Suspension Clause contained in the United States Consitution Article 1, § 9 Clause 2, as well as the Eighth Amendment's ban on cruel and unusual punishment. Therefore an actual innocence exception exist to the statute of limitations contained within § 2244(d)(1). Holloway v. Jones 166 F.Supp2d 1185, 1190 (ED SD Mich 2001).

This Honorable Court has indicated that a claim of "actual innocence" is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. Herrera v. Collins, 506 US 390, 404, 113 S.Ct 853, 122 LEd2d 203 (1993). In order for such a claim to be credible "a claim of actual innocence must be based on reliable evidence not presented at trial." Calderon v. Thompson, 523 US 538, 559, 118 S.Ct 1489, 140 LEd2d 728 (1998)(quoting Schlup v. Delo, 513 US 298, 324, 115 S.Ct 851, 130 LEd2d 808 [1995]). A claim actual innocence require a showing that no reasonable juror would have found the defendant guilty. Schlup v. Delo, 513 U.S. at 329.

On the date February 22, 1977 Petitioner was found guilty of First Degree "Felony" Murder and Felony Firearm after a bench trial in the then Recorder's Court of Detroit. His direct appeal of his convictions concluded in 1981. The judge's guilty finding was based solely on the fact that

Petitioner was engaged in the commission of a felony when the victim was killed. (Exhibit D, contained in the Application for Writ of Habeas Corpus - Trial Judge's Amended Findings, P.5). On the date November 24, 1980, the Michigan Supreme Court decided that the first degree murder statute of Michigan has never allowed the mental element of first degree murder to be satisfied by proof of the intent to commit the underlying offense. People v. Aaron, 409 Mich 672, 299 NW2d 304 (1980). Under the law, actual innocence applies when a Petitioner is "innocent of the charge for which he was incarcerated." Schlup v. Delo, supra, at 513 US 321. The Sixth Circuit Court of Appeals says that a Petitioner can demonstrate his actual innocence by showing that an intervening change in the law establishes his innocence. Phillips v. United States, 734 F3d 573, 581-82 (Cir 6, 2013). The Aaron decision necessarily demonstrates Petitioner is "actually innocent" of First Degree Murder, based on the trial court's findings. However, the Aaron Court stated that its decision was to have prospective application only; applied to "all trials in progress and those occurring after the date of this opinion." People v. Aaron, supra. Aaron was not retroactively available to individuals tried before November 24, 1980, the date of the Courts decision.

In Pelichet's second Motion for Relief from Judgment, filed in 2021, he asserts that the retroactivity of Aaron is not the question a court should entertain, but rather, has

his federal due process and equal protection rights been satisfied, where the decision in Aaron was the proper interpretation of the Michigan First Degree Murder statute when Petitioner was convicted. See e.g., Fiore v. White, 532 225, 121 S.Ct 712, 142 LEd2d 629 (2001), and Bunkley v. Florida, 538 US 835, 123 S.Ct 2020, 155 LEd2d 1046 (2003), two cases where their Supreme Courts decided for the first time the proper interpretation of the statute in effect when the defendants were convicted, which parallels the Michigan Supreme Court's decision in People v. Aaron, supra. The Michigan courts has refused to entertain the question, in spite of Fiore and Bunkley. See People v. Terlisner, 2014 Mich. App. LEXIS 1584, 2014 WL 421895 (Mich. App. August 26, 2014). The obvious answer is no. Thus, Aaron is available as new reliable intervening law which establishes your Petitioner's "actual innocence" of the crime in which he has been convicted of, and serves as a gateway through which Petitioner may pass the AEDPA's statute of limitation. The "new evidence" need not be newly discovered. Schlup v. Delo, supra, at 513 US 328.

Actual innocence, when proved, serves as a gateway through which a Petitioner may pass when the impediment to consideration of the merits of their constitutional claims is expiration of the statute of limitations. McQuiggin v. Perkins, 569 US 383, 386, 133 S.Ct 1924, 185 LEd2d 1019 (2013). Sensitivity to the injustice of continued

incarceration of an individual who is innocent of the crime for which he has been convicted should not abate when the impediment is the AEDPA's statue of limitations. McQuiggin, 569 US at 384.

The McQuggin, court found further support for its reading of the statute in Holland v. Florida, 560 US 631, 130 S.Ct 2549; 177 LEd2d 130 (2010), describing the equitable foundations of habeas corpus law and the absence from AEDPA's statute of limitations provisions of any "clear command countering the court's equitable authority to invoke the miscarriage of justice exception to overcome expiration of the statute of limitations governing a first habeas petition." McQuggin v. Perkins, supra, 569 US at 397.

The exception for statute of limitations for the showing of "actual innocence" allows the Federal Courts to further AEDPA's basic purposes of eliminating delays in the Federal Habeas review process, without undermining basic habeas corpus principles and to ensure that the statute of limitations does not impinge upon the vital role that the writ of habeas corpus plays in protection constitutional rights or close courthouse doors that a reliable showing of actual innocence would ordinarily keep open. See, e.g., Holland v. Florida, supra.

The reliable evidence, in this matter, is a Michigan Supreme Court precedent and is not susceptible to manipulation and, therefore, is appropriately considered

reliable evidence despite the time lapse. See, e.g., Larsen v. Soto, 742 F3d 1083, 1093-1095 (2013). Also, the delay in bring this action, has not caused any prejudice to the Attorney General or any benefit to the Petitioner. id.

Because actual innocence provides an exception to the statute of limitations, rather than a basis for equitable tolling, a Petitioner who can make a showing of actual innocence need not demonstrate reasonable diligence in brining his claim. McQuiggin, supra, 133 S.Ct at 1936.

Petitioner submits there is ample reasons to justify relief requested in this matter. The United States District Court dismissed Petitioner's Petition in an Order dated August 15, 2023, (Appendix B). It is clear that the Court came to conclusions that were not rational, and failed or refused to address the Petitioner's primary argument that is presented in Petitioner's Response to the District Court's order to show cause.

The District Court judge states: "Pelichet also has not demonstrated he acted diligently to protect his rights." Because actual innocence provides an exception to the statute of limitations, and not a basis for equitable tolling, Pelichet who makes a showing of actual innocence need not demonstrate he acted diligently in brining his claim. McQuiggin v. Perkins, 569 US 383, 133 S.Ct 1924, 1936, 185 LEd2d 1019 (2013. There is no "diligence" requirement. This Honorable Court rejected such an argument explaining that

"[i]t would be bizarre to hold that a habeas petitioner who asserts a convincing claim of actual innocence may overcome the statutory time bar § 2244(d)(1)(D) erects, yet simultaneously encounter a court fashioned diligence barrier to pursuit of his petition." id. at U.S. 398.

Even though the District Court and the Court of Appeals judges seem to concede that a petitioner my establish factual innocence by showing "an intervening change in the law established [his] actual innocence." Phillips v. United States, 734 F3d 573, 582 (Cir 6, 2013). To do so, a petitioner must show; 1) the existence of a new interpretation of statutory law, 2) which was issued after the petitioner had a meaningful time to incorporate the new interpretation into his direct appeals or subsequent motions, 3) is retroactive, and 4) applies to the merits of the petition to make it more likely than not that no reasonable juror would have convicted him." ibid.

The District Court judge states that Pelichet has failed to meet the second and third requirements. The judge opines that because Aaron was decided in 1980 while Pelichet's direct appeal was pending, he had an opportunity to present his mens rea argument on direct appeal and during collateral review of his convictions in the state courts, as to the second requirement. And on the other hand he states, "it is clear that the holding of Aaron is not retroactive because the Michigan Supreme Court explicitly held that its

decision would 'apply to all trials in progress and those occurring after the date of its opinion.'" Aaron, 490 Mich at 734, 209 NW2d at 329. Pelichet's trial was completed in 1977, well before Aaron was decided in 1980. On the one hand the judge is saying Pelichet could have applied Aaron on direct appeal and during collateral review, and on the other hand that Aaron is not retroactively applicable. This position is irrational as a matter of fact, and unacceptable as a matter of law.

Further, the judge either failed, or refused to address Pelichet's argument that the retroactivity of Aaron is not the question a court should entertain, but rather, has Pelichet's federal due process and equal protection rights been satisfied, where the decision in Aaron was the proper interpretation of the Michigan First Degree Murder statute when Pelichet was convicted. This Honorable Court has made it crystal clear that when a state supreme court decides for the first time the proper interpretation of the statute in effect when the defendant is convicted, retroactivity is not the question, but rather has a defendant's due process and equal protection rights been satisfied. Fiore v. White, 532 US 225, 121 S.Ct 712, 148 LEd2d 629 (2001); Bunkley v. Florida, 538 US 835, 123 S.Ct 2020, 155 LEd2d 1046 (2003)(Two cases where their supreme courts decided for the first time the proper interpretation of the statute in effect when the defendant was convicted, and the courts decided the decisions were not

retroactively applicable. This Honorable Court overruled in both cases, because defendants were innocent of the crimes for which they were convicted based on the decisions of the state supreme courts. In the Bunkley case, the defendant's conviction was reduced to the lesser an encluded charge for which he was guilty).

Pelichet filed Application for a Certificate of Appealability (COA) in the United States Court of Appeals for the Sixth Circuit. Same was denied by a single judge on February 06, 2024. (Appendix A).

The decision of the single judge of the court conflicts with decisions of this Honorable Court in Fiore v. White supra, and Bunkley v. Florida, supra; and consideration by this Honorable Court is necessary to secure and maintain uniformity of the court's decisions. Further, the proceeding involves a question of exceptional importance where it involves an issue on which the single judge decision conflicts with the above cited United States Supreme Court authorities.

The Appellate Judge Clay, denied Pelichet's Application for a Certificate of Appealability (COA), based on a contention made by Pelichet concerning the nonretroactivity of People v. Aaron, supra, at the time of Pelichet's direct appeal. The learned judge decided that the "statement prevents Aaron from satisfying the third element of the Phillips standard."

The judge either failed, or refused, to address Pelichet's argument that the retroactivity of Aaron is not the question a court should entertain, but rather, has Pelichet's federal due process and equal protection rights been satisfied, where the decision in Aaron was the proper interpretation of the Michigan First Degree murder statute when Pelichet was convicted. See, Fiore v. White, supra, and Bunkley v. Florida, supra.

It must be noted: the decision in Bunkley came twenty three (23) years after the decision in Aaron. Further, the appellate courts of Michigan has continued to deny the availability of Aaron based on it not being retroactively applicable, in spite of Fiore and Bunkley. See, People v. Terlisner, 2014 Mich. App. LEXIS 1584, 2014 WL 421895 (Mich. App. August 26, 2014). Thus, Aaron has not been available to Pelichet in the Michigan Courts on direct or collateral appeal. However, based on the above Aaron is available in the federal courts as new reliable intervening law which establishes Pelichet's actual innocence of the crime for which he has been convicted, and serves as a gateway through which Pelichet may pass the AEDPA's statute of limitations. The district court judge makes absolutely no reference to this argument whatsoever, nor does the appellate court justice, for reasons better known the learn judge and justice.

The decisions in Fiore and Bunkley, in effect satisfies

the third element of Phillips; they renders retroactivity automatic under the circumstances of the case at bar, or the very least, not a question. The Michigan appellate courts, the federal district court, and decision of sixth circuit court of appeals, in either failing or refusing to address the decisions of Fiore and Bunkley, is a complete disrespect for United States Supreme Court precedent. It should not be allowed to continue, and if so, would be a very poor commentary on the judiciary, in this matter.

Pelichet contents that he is detained in violation of the Constitution of United States of America. That he is innocent of the charge; first degree "felony" murder. The claims the district court is refusing to address on the merits, on Petitioner's federal habeas corpus, are of constitution magnitude to wit: the trial court's denial of Petitioner's motion for relief from judgment based on unreasonable analysis, and reliance on an outdated version of MCR 6.502(G)(1) & (2); where the trial court judge following a bench trial found Petitioner guilty of first degree "felony" murder based on the intent to commit an enumerated felony alone, in violation of the statute of the crime and sentence he stand convicted of; the manifest denial of effective assistance of both, trial and appellate counsel is sufficient to overcome the procedural default of MCR 6.508(D)(3).

When the district court denies a habeas petition on

procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue, and an appeal of the district court's order taken; specifically where, as in the case at bar, the prisoner shows, at least, that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 US 473, 120 S.Ct 1595, 146 LEd2d 542 (2000).

Since Pelichet's claim rest entirely on the application of Fiore v. White, supra, and Bunkley v. Florida, supra, resolution of his COA application requires a consideration of the application of Fiore and Bunkley to the facts and circumstances of People v. Aaron, supra. See, e.g., Miller-El v. Cockrell, 537 US 322, 123 S.Ct 1029, 154 LEd2d 931 (2003).

This Honorable Court's precedents set forth in Fiore v. White, supra, and Bunkley v. Florida, supra, eliminating the question of retroactivity, where a state supreme court has viewed, for the first time, and decided the proper interpretation of a statute in place at the time of a defendant's conviction. The circumstances of both Fiore and Bunkley, are identical to the circumstances in People v. Aaron, supra, thus, it is beyond question that Pelichet's claim is, at minimum, "reasonably debatable" and a COA should issue. Buck v. United States, 500 US 100, 137 S.Ct 759, 197 LEd2d 1, 17 (2017).

The United States Court of Appeals for the Sixth Circuit's primary reason for denying a COA, was Petitioner's position that Aaron was not available to him during his direct appeal because, at the time, it was nonretroactive, therefore, prevents Aaron from satisfying the third element of the Phillips standard. Phillips, 734 F3d at 582. As stated above, twenty three (23) years subsequent to Petitioner's direct appeal this Honorable Court decided both Fiore and Bunkley, which either satisfied the third element of Phillips because it renders retroactivity automatic, or eliminates completely the question of retroactivity.

Where Petitioner sought a COA to initiate appellate review of the dismissal of his habeas petition, the Sixth Circuit Court of Appeals should have limited its examination to the threshold inquiry into the underlying merits of his constitutional claim; which the Court of Appeals failed to do. Slack, 529 US at 481.

After evaluating all of the circumstances of the case at bar, this Honorable Court should come to the conclusion that the circumstances are extraordinary and/or exceptional, that Pelichet is actually innocent of the crime for which he has been convicted of, and that jurist of reason would find that the issue(s) is debatable. Therefore, it is clear that this Honorable Court should grant the attached Application for a Certificate of Appealability.

RELIEF SOUGHT

WHEREFORE, the foregoing reasons Petitioner respectfully prays that this Honorable Court GRANT the Petition for Writ of Certiorari; GRANT the attached Application for a Certificate of Appealability; ISSUE a Certificate of Appealability; REMAND to the United States Court of Appeals for the Sixth Circuit with instructions to proceed accordingly; or GRANT such other relief the Court deems just and equitable under the circumstances.

Respectfully submitted,

Alton D. Pelichet

Alton D. Pelichet #148688
Petitioner, In Forma Pauperis
Thumb Correctional Facility
3235 John Conley Drive
Lapeer, Michigan 48446

Dated: April 29, 2024.

NO: _____

THE SUPREME COURT OF THE UNITED STATES

Term of the Court: October, 2023-2024

ALTON D. PELICHET
Petitioner,

-vs-

FREDEANE ARTIS
Respondent.

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

CERTIFICATE OF MAILING

ALTON D. PELICHET, declares that on the 29th day of April 29, 2024, he did mail the original signed copy of Petition for Writ of Certiorari, Application for Certificate of Appealability, Appendix, Certificate of Mailing, Proof of Service, aotion for Leave to Proceed In Forma Pauperis, Declaration in Support, and all other pertinent documents to:

Office of the Clerk
SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, D.C. 20543

By mailing same, first class mail, with postage prepaid and in accordance with the Ecpedited Legal Mail system of the Michigan Department of Corrections, to the above address.

Alton D. Pelichet
Alton D. Pelichet #148688

I declare under the penalty of perjury that the foregoing is true and correct. Excuted on Aprial 29, 2024.

Alton D. Pelichet
Alton D. Pelichet #148688