

No. _____

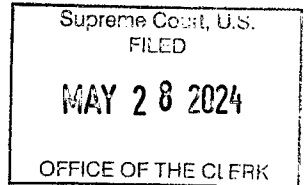
In 23-7834
Supreme Court of the United States

ORIGINAL

Willie Medina Petitioner

vs.

Bobby Lumpkin Respondent



On Petition For A writ of Certiorari to

Petition For writ of Certiorari

Willie Medina TOCS#02146747

TOCS- Terrell unit

1300 FM 655

Rosharon, Texas 77583

281-595-3481

Question(s) Presented

- 1) OFFICERS HAD NO PROBABLE CAUSE FOR THE STOP. IT'S NECESSARY OR NOT?
- 2) THERE WAS NO SEARCH WARRANT FOR THE CAR. THAT'S REASONABLE?
- 3) THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT MY CONVICTION. DIDN'T THE COURT NEED RIGHT ELEMENTS?
- 4) THERE WAS NO TRAFFIC VIOLATION TO JUSTIFY THE STOP. IT'S LEGAL FOR HPD TO USE ANY EXCUSE - EVEN IF THERE'S NO JUSTIFICATION?
- 5) MY PROLONGED DETENTION WAS UNLAWFUL. THAT HPD CAN HOLD ME TILL THEY FIND SOMETHING ILLEGAL?
- 6) I RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO OBJECT - JUDGE ANSWERING VERBALLY. IT'S LEGAL FOR LAWYER OBJECT ONLY WHAT THEY WANT?
- 7) TRIAL JUDGE WRONGFULLY ABUSED HIS DISCRETION. IT'S LEGAL FOR A JUDGE ACT HOWEVER HE FEEL LIKE?
- 8) DENIAL APPLICATION AS TIME BARRED. NO ACCESS TO PERSONAL PROPERTY DURING COVID-19 - MOVING FROM UNIT TO UNIT AND U.S. MARSHAL PICKED ME UP WITHOUT PERSONAL PROPERTY IT'S EXTRAORDINARY CIRCUMSTANCES. IT'S REASONABLE?
- 9) DENIAL OF STATE-COURT RECORDS. AG'S REFUSE - FAILED TO OBEY "ORDER TO ANSWER", DIDN'T PROVIDE ME COPIES NOR ANSWER MY ALLEGATIONS THAT I'M ENTITLED. RIGHT?

List of Parties

Yes All Parties Appear In The Caption Of The Case On The Cover Page.

N/A 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:

Related Cases

Willie Medina As Well Known As Guillermo Flores Medina. Judgment And Sentence Of 183rd District Court Of Harris County, Texas. In Case Number 1521065.

Medina v. State, 565 S.W. 3d 868 (Tex. App. - Houston 14th Dist. 2018. Pet. Ref'd). NO. 14-17-00611-CR

Medina v. State, PD-0040-19 (Tex. Crim. App. March 27, 2019 Pet. Ref'd.)

Ex Parte Medina, WR-23-873-03 (Tex. Crim. App. Denied Dec. 21, 2022).

Willie Medina v. Bobby Lumpkin, USOC No. 4:23-CV-334 (App. Denied Oct. 31, 23)

Willie Medina v. Bobby Lumpkin, NO. 23-20565 (5th Cir. App. Pet. Denied April 4, 2024 - unpublished opinions).

Willie Medina v. Bobby Lumpkin, NO. 23-20565 (5th Cir. App. Pet. Denied Of Reconsideration - Rehearing En Banc. Unpublished opinions). April 30, 2024.

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- Appendix A: Decision of State Trial Court 183rd District Court, Harris County, Texas. Cause No. 1521065. State v. Medina, 2017 Tex. Dist. Lexis 25428 (Tex. Dist. Ct. July 14, 2017) Guilty By Jury; Punishment By Judge; Terry Flenniken Presiding Judge.
- Appendix B: Decision of State Court of Appeals of Texas, 14th District Houston. Cause No. 14-17-00611-CR. Medina v. State, 565 S. W. 3d 868. Dec. 18, 2018-Judgment Affirmed By Justices Tracy Christopher, Samison, and Brown-Published Opinion.
- Appendix C: Decision of State Criminal Court of Appeals - Austin, Texas. Cause No. PO-0040-19. In Re Medina, 2019 Tex. Crim. App. Lexis 315 (Tex. Crim. App. Mar. 27, 2019) POR-Refused Unpublished opinion.
- Appendix D: Decision of The State Criminal Court of Appeals - Austin, Texas. Cause No. WR-23,873-03. Ex Parte Medina, (Tex. Crim. App. Dec. 21, 2022). State Habeas 11.07 Denied without Written Order. Unpublished opinion.
- Appendix E: Decision of United States District Court For Southern District of Texas. USDC No. 4:23-cv-334. Willie Medina v. Bobby Lumpkin, Federal Habeas 2254 Denied For Time Barred Oct. 31, 2023 Unpublished opinion.
- Appendix F: Decision of United States Court of Appeals Fifth Circuit New Orleans, Louisiana. Cause No. 23-20565. Medina v. Lumpkin, 2024 U.S. App. Lexis 8242. 5th Cir. App. April 4, 2024- Appeal Denied-unpublished order. Judges: Jones, Higginson, and Ho.
- Appendix S: Decision of United States Court of Appeals Fifth Circuit New Orleans, Louisiana. Cause No. 23-20565. Medina v. Lumpkin 2024 U.S. App. Lexis 10531. 5th Cir. App. April 30, 2024- Pet. Rehearing En Banc Denied-unpublished order. Judges: Jones, Higginson, and Ho.

In The
Supreme Court of the United States

Petition For Writ of Certiorari

Petitioner respectfully prays that a writ of certiorari issue
to review the judgment below.

Opinions Below

X For Cases From Federal Courts:

The opinion of the United States Court of Appeals appears
at Appendix F to petition and is

Yes reported at 2024 U.S. App. LEXII 8242; or

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

X is unpublished.

The opinion of the United States District Court appears at
Appendix E to petition and is

Not reported at N/A; or,

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

X is unpublished.

X For Cases From State Courts:

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

Yes reported at 2019 Tex. Crim. App. LEXIS 315; or,

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

X is unpublished.

The opinion of the State 14th Court of Appeals-Houston Texas
appears at Appendix B to the petition and is

Yes reported at 565 S.W. 3d 868; or,

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

N/A is unpublished.

Jurisdiction

X For Cases From Federal Courts:

The Date On Which The United State Court Of Appeals
Decided My Case Was April 4, 2024

N/A No Petition For Rehearing Was Timely Filed In My Case.

Yes A Timely Petition For Rehearing Was Denied By The United
States Court Of Appeals On The Following Date: April 30, 2024,
And A Copy Of The Order Denying Rehearing Appears At
Appendix J

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 A N/A.

The Jurisdiction Of This Court Is Invoked Under 28 U.S.C. § 1254(c)(1).

X For Cases From State Courts:

The Date On Which The Highest State Court Decided My Case
Was March 27, 2019. A Copy Of That Decision Appears At
Appendix C.

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.

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 A N/A.

The Jurisdiction Of This Court Is Invoked Under 28 U.S.C. § 1257(a).

Constitutional And Statutory Provisions Involved

The Scope of Review in my present situation case is depending upon constitutional and statutory provisions of United States of America. Constitutional violations as follows:

1) The statute of United States Const. Amends., 4, 5, 6 and 14 Amendments Constitutional Rights.

2) Vernon's Ann. Texas C. C. P. Art. 38.14.

3) Federal and Texas statute of Exclusionary Article 38.23.

4) Texas Const. Article 1, Subsection 9.

Statement of The Case

Appellant Mr. Medina, was charged with a Felony Offense of Possession of a Controlled Substance weighing more than 4 Grams and Less 20 Grams. Appellant Entered a Plea of Not Guilty. The Jury Found Him Guilty, and Trial Court Sentenced Him to Twenty-Five Years in Texas Department of Criminal Justice Institutional Division. Appellant Timely Filed a Written Notice of Appeal.

Trial Court Abused Its Discretion By Denying My Motion to Suppress Evidence Recovered During a Warrantless Search of My Vehicle. Even Evidence is Insufficient to Support my Conviction for Possession of Controlled Substance as the Evidence Fails to Establish Intentionally and knowingly Possessed the Contraband. From the Beginning of the illegal stop of my vehicle without Probable Cause; HPD officers stop me for no license plate. My SUV-Blazer's license plate was visible on front dashboard. According Texas Transportation Code's License Plate Display Requirement allows a driver to display a license plate on the front dashboard, without violating the statute U.T.C.A., of Transportation Code Subsection 502.404(a). See Texas v. Losoya, 128 S.W. 3d 413, 415 (Tex. App. Austin 2004). HN4 "Losoya. Refers us to the statutory predecessor of Section 502.404 (a), which provide that it was an offense to operate a motor vehicle "without having displayed thereon, and attached thereto, two (2) license number plates. One (1) at the front and one (1) at the rear." Act of May 23, 1975, 64th Leg., R.S., ch. 621. Subsection 3, 1975 Tex. Gen. Laws 1979, 1920 (Tex. Rev. Civ. Stat. Ann. at 6675 n-3c, Subsection 5, since Repealed) (Emphasis Added). The Omission of the emphasized phrase from Section 502.404(a) supports Losoya's argument that the present statute does not require the license plate to be physically attached to the vehicle. This, in turn is some evidence that the license plate need not be [416] attached to the front bumper of the vehicle as the state contends.

Number 2 Issue: Illegal Search and Seizure. It's violation of my Constitutional Rights where a Terry Search goes beyond what determine any valid Pat Down. A Full Search of me "Sprendeagle"

So Mr. Smith Can Search Me, Search my Pockets, Go Through All my Wallet Personal Papers, Taking OFF my Tennis Shoes And Socks To Search Them. According Terry v. Ohio, Is No Longer A Valid Putdown For A Traffic Violation. In The Same Time That Mr. Smith, Was Searched Me, Officer Mrs. Schromen, Was Searching All my SUV-Blazer Rummaged Through All-Looked underneath Door Panel, Glove Compartment-Throwing Down All Items Personal Medication Bottles, Letters-Not Finding Any Thing Illegal. Once I was Secured Inside Police Car with Handcuffs No Tennis shoes-Very Hot. Mr. Smith, Done checking For warrants-Turn OFF The Computer, Got out of The Police Car And Start Searching My Vehicle Looking underneath The Hood And Inside my Blazer-Not Finding Anything Illegal. They NEVER Advise Me About My Miranda's Warning.

Officer Mr. Smith, Radioed His Supervisor And Said, "That No Drugs Had Been Found In The SUV," He Informed His Supervisor "We Checked All The usual Places." I Truly Believe That At This Point According Criminal Procedures Law, All Suspicion And Probable Cause For Any Illegal Activity was Over. I NEVER Was Under Influence Of Any Drugs, My Vehicle NEVER Had Any Smell Of Anytype Of Illegal Drugs And I Didn't Have Anytype Of Contraband On my Person. After Long While Mr. Smith, Requested The Assistance Of A Canine Unit Without A Probable Cause. Just Because He Failed To Find Any Narcotics. Inventory was Merely A Ruse And unlawful Search For Contraband Without Probable Cause. HPD Officers, Misconduct Have Me Waiting For A Canine Unit Illegally Prolonged my Detention. It's A Violation According With Rodriguez v. United States, 135 S. Ct. 1609; 191 L. Ed. 2d 492. The Rodriguez Court Traced Its Ruling To Caballes, Stating "The Court So Recognized In Caballes' case, And We Adhere To The Line Drawn In That Decision Id. at 1615" It Also Said, Id "Lacking The Same Close Connection To Roadway Safety As The ordinary Inquiry A Dog Sniff Is Not Fairly Characterized As Part Of The Officer's Traffic Mission". Therefore, A Canine Sniff Is Unlawful If It Prolongs The Traffic Stop, Unless The Detention Is Based On A Reasonable Suspicion Of Criminal Activity, See Illinois v. Caballes, 543 U.S. 405; United States v. Alexander, 448 F.3d 1014. Absent A Reasonable Suspicion, Police Extension Of A Traffic Stop In order

To Conduct A Dog Sniff Violates The Constitution's Shield Against Unreasonable Seizure. Mr. Smith, Didn't Have Any More Suspicion Of Any Criminal Activity When He Prolonged my Detention To Call For The Assistance Of Canine Unit That Took More Than 45 Minutes To Arrived To The Traffic Scene. Their Unlawful Pre-Textual Inventory Search, Fishing Expedition And Dog Sniffing Was Plainly Unreasonable, Especially Without A Search Warrant That Was Unconstitutional. In *Rodriguez v. U.S.*, 135 S.Ct. 1609 (2015), Justice Ginsburg delivered the opinion of the Court, "This Case Presents The Question Whether 4th Amendment Tolerated A Dog Sniff Conducted After Completion Of A Traffic Stop. We Hold That A Police Stop Exceeding The Time Needed To Handle The Matter For Which The Stop Was Made Violates The Constitution's Shield Against Unreasonable Seizures. (Opinion 1, 2). Caballos' Case Reiterate That A Traffic Stop Prolonged Beyond That Point Is "Unlawful," See *Arizona v. Grant*, 556 U.S. 332 (2009); *Katz v. United States*, 389 U.S. 347.

IF The Canine Accurately Signaled Drugs In The Vehicle, Officers Should Have Obtained A Search Warrant. In *State v. Guzman*, 959 S.W.2d 631 (1998) Is Same Pattern Of My Case Situation. The Court Further Explained "In Order To Conduct A Warrantless Search, There Must Be Not Only Probable Cause, But Also Exigent Circumstances. In General, Because A Car Is Mobile, It May Be Lawfully Searched Without A Warrant. IF HOWEVER, In The Present Of My Situation The SUV-Blazer Was No Longer Subject To Being Moved Without Permission Of Law Enforcement Personnel." A Vehicle While In Police Custody Could Not Be Subject To The Moving Vehicle Exception Of *Carroll v. United States*, 267 U.S. 132; 45 S.Ct. 280; 69 L.Ed. 543 (1965). In My Case There Were No Exigent Circumstances Present Allowing HPO To Break Into Center Compartment Of My SUV-Blazer Without First Obtaining A Search Warrant. My SUV-Blazer Had Mechanical Problems, And I Was Inside The Police Car On Handcuffs. There Was No Reasonable Probable Cause To Legally Support The Search Without First Obtain A Search Warrant. See *White v. State*, 521 S.W.2d 255 (Tex. Crim. App. 1975); *Chambers v. Maroney*, 399 U.S. 42; 90 S.Ct. 1975; 26 L.Ed. 2d 419 (1970); *Michigan v. Thomas*, 458 U.S. 259; 102 S.Ct. 3079; 73 L.Ed. 2d 750 (1982) *State v. Guzman*, 959 S.W.2d 631 Crim. Ct. App. Jan. 28, 1998 Opinion

By: Meyers. Opinion on State's Petition For Discretionary Review. (632)
After The Pretrial Hearing. The Court Concluded That Byrd Had Probable Cause To Enter The Gas Tank, But That Entry Exceeded The Scope Of The Consent Authorized By Mr. Gutzman. The Court Held The Search Violated The Fourth Amendment Of The United States Constitution Because Byrd Failed To Obtain A Warrant, And Granted Appellee's Motion To Suppress. In *Arizona v. Gant*, 556 U.S. 332 (2009) HN14: Search And Seizure, Scope Of Protection: "Police May Search A Vehicle Incident To A Recent Occupant's Arrest Only If The Arrestee Is Within Reaching Distance Of The Passenger Compartment At The Time Of The Search Or It Is Reasonable To Believe The Vehicle Contains Evidence Of The Offense Of Arrest. When These Justifications Are Absent, A Search Of An Arrestee's Vehicle Will Be Unreasonable Unless Police Obtain A Warrant Or Show That Another Exception To The Warrant Requirement Applies."

Furthermore, Texas Statutes Article 38.23 Is Very Clearly And Not Avoidable (a) No Evidence Obtained By An Officer Or Other Person In Violation Of Any Provisions Of The Constitution Or Law Of The State Of Texas, Or Of The Constitution Of The United States Of America, Shall Be Admitted In Evidence Against The Accused On Trial Of Any Criminal Case." Admission Of Evidence Found In My SUV-Blazer During Warrantless Search Was Prejudicial Error Where Defendant Mr. Medina Was Already Arrested And Removed From Premises At Time Of Search. Trial Court's Error Of Admitting Evidence Which Was Improperly Seized By Officers Who Exceeded Scope Of Consensual Search Of My SUV-Blazer, And Was Very Harmless In Drug Prosecution Against Me Without A Search Warrant. Trial Court's Error In Denying Mr. Medina's Motion To Suppress Evidence Found In Vehicle During Unreasonable Continued Detention By The Sniffing Dog That Was Harmless And Nothing Else In Record Showed That Mr. Medina Possessed The Contraband. U.S. Const. Amend. IV; Vernon's Ann. Tex. Const. Art. I, Subsection 9. See *Mapp v. Ohio*, 367 U.S. 643; 81 S.Ct. 1684; 6 L.Ed. 2d 1081. Violation Of Federal Constitutional Rule-Excluding Evidence Obtained Through Unreasonable Search And Seizure Constituting A Reversible Harmless Error.

NUMBER 3 ISSUE: The Substance Is Insufficient To Support Mr. Medina's Conviction For Possession. Specifically Because Evidence Fails To Establish Beyond A Reasonable Doubt That Mr. Medina, knowingly, intentionally possessed the contraband. Furthermore, to support each fact it's necessary to establish the real facts, and guilt must be proven. Circumstances and true facts must not only be consistent with a guilt, but inconsistent with any other reasonable hypothesis. Presence at scene of offense, a drug house, or talking with other individuals standing alone is insufficient! Where state of conviction relies upon any small circumstantial evidence or elements, especially if facts proved are as consistent with hypothesis of innocence as of guilt defendant Mr. Medina is entitled to a acquittal. Especially if Mr. Medina, is not in exclusive control of premises in which contraband is found. Suspicion or a mere presence is not sufficient corroboration of accomplice testimony for purpose of conviction, Vernon's Ann. Tex. C.C.P. Art. 38.14; See Abu-Shabach v. State, 848 S.W. 2d 436; Code v. State, 683 S.W. 2d 431 (1984); Fisher v. State, 851 S.W. 2d 298 (1993). Under the standards first articulated in Jackson v. Virginia, 443 U.S. 307, 319 (1979) evidence is insufficient to support a conviction if, considering all the evidence in record in the light most favorable to the verdict, no rational fact-finder could have found that each essential element of charged offense was proven beyond a reasonable doubt. In my present case state court should hold evidence to be insufficient under Jackson's standard in two circumstances, (1) record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense, or (2) evidence conclusively establishes a reasonable doubt. See Jackson, 443 U.S. at 314, 320.

Furthermore, indictment charged Mr. Medina, with possession, a person commits the offense of possession if he knowingly and intentionally possesses the substance, Id Section 481.115 (a). Possession is defined as actual care, custody, control, or management, Tex. Penal Code Ann. Subsection 1.07(a)(39) (West Supp. 2017). To prove a possession, state must prove (1) the accused exercised full control over the substance and (2) that the accused knew the matter possessed was contraband. In my situation I didn't possessed any drugs; on records contrary

suggests I was unaware that any drugs were in the vehicle. I didn't have any proximity, or any accessibility of the substances. Record shows that contraband were well-hidden beneath the carpet underneath the center console area in the passenger's seat where K-9 officer was able to reach there only by using a screw-driver. There's no way I could hide contraband myself while I was driving and briefly stop closer to a house. The missing link here in my case is that HPD never observed anything illegal before or during traffic stop - that would lead a reasonable person to believe that this suspicious activity was related to the commission of any crime on foot. HPD instantly soon they stop me - abandoned the original purpose of the traffic stop - illegally and impermissibly expanded its purpose prolonging the traffic stop for a drug investigation. Which they lacked reasonable suspicion, no probable cause, no search warrant to justify my illegal arrest for illegal search and seizure. Even if the initial stop may be justified, however if arrest and detention exceeds the scope authorize by its justification police extension of a traffic stop in order to conduct a dog sniff violates the state and United States Constitution's shield against unreasonable searches. There is too many exclusive factors that can prove that I didn't have nothing to do with the drugs, for example: (1) drugs wasn't in plain view, (2) defendant's proximity to the accessibility of contraband that never was relevant, (3) I wasn't under influence of any type of drugs when HPD stop me, (4) never at any time I was possessed of any type of contraband when HPD searched me, (5) never at any time I made incriminating statements when I was pulled over - in fact I was very cooperative during the stop, (6) I didn't attempted to flee from the scene, (7) I didn't make furtive gesture or bad movements in attempt to hide anything, (8) my SUV-blazer didn't had any funny odor - didn't smell of any drugs, (9) officers never found during their search any type of drug's paraphernalia or contraband inside vehicle, (10) I didn't show any conduct indicating a consciousness of guilt at any time. Evidence is insufficient to support a conviction because evidence fails to establish beyond a reasonable doubt according Jackson v. Virginia's standards.

Number 4 Issue: Ineffective Assistance of Counsel:

Concerning About Ineffectiveness of My Trial Lawyer Mr. Jason, Are The Follows: During Trial He Didn't Performed The Right Legal Defense On My Behalf. He Failed To Object That One Of Jury's Member Illegally Ask The Judge Through A Court's Bailiff For Advice, Opinion, Information That My Lawyer Knew Wasn't Legal According Jury Trial Criminal Procedures. He Should Have Object And Call For A Mistrial. (2) He Failed To Request Specific Ruling That Can Help Me. Mr. Jason, Failed To Object And Instruct Jury Members About Article 38.23. Federal And Texas Exclusionary Rules That Would Have Benefit Me. My Trial Lawyer Violates My Due Process Of Law By Refusing To Instruct Jury About Exclusionary Ruling That It's Illegal To Use Any Evidence In Violation Of Constitutional Rights. It's Clear All Circumstances That Exist That HPD Wrongfully Deliberated, Reckless, And Grossly Negligent Disregard The 4th Amendment Rights. My Trial Lawyer Didn't Pursuing During Trial To The Extend To Allowed The Court Convicted Me Of A Crime I NEVER Commit Based On Illegal Inadmissible Evidence. He Ignores The Fact And Failed To Seek An Exception To A Statutory Remedy Governed By Article 38.23. His Ineffective Assistance Prejudice The Whole Outcome Of My Trial Case And My Freedom According Strickland v. Washington, 466 U.S. 668, 686 (1984). However, Evidence Was Seized In Violation Of My Constitution Rights, See U.S. Const. Amend. IV, Tex. Const. Art. 1, Section 9. "Evidence Is Inadmissible And Insufficient To Establish An Offense, See Mapp v. Ohio, 367 U.S. 643; 81 S.Ct. 1684; 6 L.Ed. 2d 1081.

Number 5 Issue: Prosecutorial Misconduct:

183 District Court Judge Mr. Terry Flenniken Presiding Judge. He Verbally Say To Court's Bailiff To Tell Jury's Member While They Were Inside Deliberation Room That "I did was obtaining the SUV In A Daily Basis - To Use All Evidence They Have." A Jury's Member, Court's Bailiff, Or Judge Never Had On Hand Any Jury's Question Form While I Was There Present. Clearly I Heard And Saw What Judge Said, When I Filed My State Habeas 11.07 On Their Respond They Sent Me A Jury's Member Question Form Stating To Me That Judge Flenniken, Never Answer The Bailiff Verbally. The Form Shows "Judge Cannot

ANSWER THAT QUESTION". THAT WAS JUDGE STATEMENT ON THE FALSE JURY'S QUESTION FORM. IT'S AN ERROR OF OMISSION, WHERE AS TO COURT JUDGE AFFIRMATIVELY AND ERRONEOUSLY INFORMED A MEMBER OF THE JURY VERBALLY, IT'S A VIOLATION FALSIFYING A JURY QUESTION FORM. BESIDE JUDGE ERRONEOUSLY STATES THAT HE WOULDN'T ENTERTAIN QUESTIONS DURING DELIBERATIONS. REFUSED TO ANSWER QUESTIONS FROM JURY COULD ITSELF PROVIDE A POSSIBLE BASIS FOR RELIEF BASED ON PRESSURE OR PARTIALITY ON THE PART OF THE COURT, THE VIRGEN ISLAND V. GEREQU, 523 F. 2d 140; TRUSCUTT V. CHAPLIN, 403 F. 2d 644-(3rd Cir. Ct. App. NOV. 18, 1968) HEAD NOTE 1: JURY TRIALS, JURY DELIBERATIONS: "COMMUNICATIONS BETWEEN THE JUDGE AND JURY MUST NOT DIRECTLY OR INDIRECTLY REFER TO THE SPECIFICS OF THE CASE, MUST BE COLLATERAL TO THE ISSUES UNDER CONSIDERATION, AND MUST NOT BE CAPABLE OF AFFECTING THE DELIBERATIVE PROCESS IN ANY MANNER." THE TRIAL JUDGE ACTED WRONGFULLY AND ABUSED HIS DISCRETION.

NUMBER 6 ISSUE: NO SEARCH WARRANT.

EVIDENCE WAS SEIZED IN VIOLATION OF MY CONSTITUTIONAL RIGHTS, WITHOUT PROBABLE CAUSE AND NO SEARCH WARRANT. I WAS STOPPED FOR PRE-TEXTUAL TRAFFIC VIOLATION. EVIDENCE PRESENTED AT TRIAL WAS ONLY 1 ELEMENT OF EVIDENCE WHICH FURTHER REVEALS THAT CANINE SNIFF WAS A CONTINUATION OF AN ILLEGAL INVENTORY SEARCH THAT WAS SEARCH FOR CONTRABAND PURPOSE. K-9 OFFICER INTRUDED HIS DOG INSIDE MY SUV TWICE AND WHEN DOG ALERT THE SECOND TIME, K-9 OFFICER FAILED TO COMPLY WITH GOVERNMENT LAW AND REFUSED TO REQUEST A SEARCH WARRANT. MY SUV-BLAZER WAS HAVING SOME MECHANICAL PROBLEMS-UNMOBILE, I WAS ON HANDCUTS INSIDE POLICE CAR FOR ALMOST 2 HOURS. SUFFICIENT FACTS SATISFY TO SHOW THAT AUTOMOBILE EXCEPTION IS INAPPLICABLE TO MY CASE. SINCE MY VEHICLE WAS NOT READILY MOBILE AND CONSEQUENTLY NOT AUTOMATICALLY EXEMPT FROM THE SEARCH WARRANT REQUIREMENT. POLICE WERE REQUIRED TO OBTAIN A SEARCH WARRANT PRIOR TO BREAKING OPEN WITH A SCREWDRIVER THE CENTER CONSOLE OF MY BLAZER DOWN ON THE PASSENGER SEAT. ESPECIALLY SINCE K-9 OFFICER NEVER CONDUCT AN EXTERIOR SWEEP WITH HIS DOG ON MY BLAZER FIRST BEFORE HE TOOK HIS DOG INSIDE MY BLAZER. THIS SITUATION SHOULD BE REVIEWED AS A SEARCH REQUIRING A SEARCH WARRANT.

THE UNITED STATES DISTRICT COURT DISMISSES MY PETITION BASED ON PROCEDURAL GROUNDS TIME-BARRED, THE SUPREME COURT ACCORDING, SLACK V. Mc DANIEL, 529 U.S. 473 THE COURT HOLD AS FOLLOWS: "WHEN THE DISTRICT COURT DENIES A HABEAS PETITION ON PROCEDURAL GROUNDS WITHOUT REACHING THE PRISONER'S UNDERLYING CONSTITUTIONAL CLAIM, A COA" SHOULD ISSUE WHEN THE PRISONER SHOWS, AT LEAST THAT JURISTS OF REASON WOULD FIND IT OBTABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHTS. IN DETERMINING WHETHER A "COA" SHOULD ISSUE WHERE PETITION WAS DISMISSED ON PROCEDURAL GROUNDS HAS TWO GOOD COMPONENTS THAT DISTRICT JUDGE AND 5TH CIRCUIT JUDGES SHOULD HAVE BEEN DIRECTED THEIR ATTENTION FIRST OF ALL. BUT THEY FAILED AND REFUSED TO REVIEW MY CONSTITUTION VIOLATION - DIDN'T EVEN BOTHER TO REVIEW MY CRIMINAL RECORDS CASE, TRANSCRIPTS AND EXHIBITS THEY DIDN'T EVEN ORDER THOSE RECORDS. BOTH OF THESE TWO COMPONENTS OF SUBSECTION 2253(C) IN MY CASE CAN SHOW CLEARLY THAT'S PART OF A THRESHOLD INQUIRY IF THEY HAD PROCEEDS FIRST TO RESOLVE MY CONSTITUTIONAL VIOLATIONS OF MY RIGHTS. ILLEGAL SEARCH AND SEIZURE WITHOUT A SEARCH WARRANT. IN RON V. WILKINSON, 565 F.2d 1254 (2nd Cir. 1977), W6 (SUPREME COURT) GAVE THE REQUIREMENT TO RULE 4, A LIBERAL CONSTRUCTION SPECIFICALLY OVER HOLDING EMPHASIZED THAT DISTRICT COURTS SHOULD NOT SUMMARILY DISMISS PRISONER PETITIONS CONTAINING SUFFICIENT ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS, ID AT 1258-59 A REQUIREING OF A RESPONSIVE PLEADING IS FAR FROM A MINDLESS FORMALITY PROCEEDING. MORE OVER, DUE TO THE PRO SE PETITIONER'S GENERAL LACK OF EXPERTISE COURTS SHOULD REVIEW HABEAS PETITIONS WITH A LENIENT EYE, ALLOWING BORDERLINE CASES TO PROCEED. SEE RECOMMENDED PROCEDURES FOR HANDLING PRISONER CIVIL RIGHTS CASES IN THE FEDERAL COURTS, TENTATIVE REPORT NO. 2, PART IV, SECTION D AT 57C FEDERAL JUDICIAL CENTER, 1977). THESE VIEWS ARE WHOLLY CONSISTENT WITH SUPREME COURT DOCTRINE, WHICH CONFIRMS THAT PRO SE COMPLAINTS MUST BE LIBERALLY WELL CONSTRUED. SEE BAYRON V. TRUDEAU, 702 F.2d 43, 45 (2nd Cir. 1983). THE JUSTIFICATION FOR THIS POLICY IS APPARENT IF THE WRIT OF HABEAS CORPUS IS TO CONTINUE TO HAVE MEANINGFUL PURPOSE, IT MUST

For a constitutional error, no reasonable juror would have found the Petitioner (Guilty). "The Court held that the standard set forth in *Murray v. Carrier*, 477 U.S. 478; 106 S.Ct. 2639; 91 L.Ed. 2d 397 (1986) which requires a petitioner to show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." The District Court dismissed my petition as untimely time-barred "without reviewing the whole records of my case and take good look to my constitutional violations and merits of my claims. *Vicks v. Bunnett*, 875 F.2d 258 (9th Cir. Ct. App. May 23, 1989) HN3 Jury Trials Instructions: Before the District Court can determine whether a constitutional error is harmless, it must review the entire state court record. If the entire record is not supplied by the parties, the District Court has a duty to obtain that record itself.

Do v. Menefee, 391 F.3d 147 (2nd Cir. App. Nov. 19, 2004).
HN2 Actual Innocence + Miscarriage of Justice: "Where a petitioner appears to be the victim of a fundamental miscarriage of justice, the principles of comity and finality must yield to the imperative of federal judicial review of the conviction. Cited by *Rodriguez v. United States*, 2006 U.S. Dist. LEXIS 67798 Discussion (Rule 60(b)) The reasons discussed above weigh against considering petitioner's motion on the merits. (10) Other factors, however, indicate that courts should not be too quick to dismiss a Rule 60(b)(6) motion on procedural grounds. The United States Supreme Court has stated that Rule 60 should be available to vacate judgments whenever such action is appropriate to accomplish justice. In *Valverde v. Stinson*, 224 F.3d 129 (2nd Cir. Ct. App. Sept. 11, 2000) HN7: Privilege Communications, Work Product Doctrine: Under the principle that a habeas corpus petitioner seeking equitable tolling must show that extraordinary circumstances prevented him from filing his petition on time, the intentional confiscation of a prisoner's habeas petition and related legal papers by a correction officer is extraordinary as a matter of law. A person is plainly prevented from filing a pleading for some period of time if he is deprived of the sole copy of that pleading. Followed by *Reques v. Vidal*, 2017 U.S. Dist. LEXIS 35499 WL 475444 Massachusetts District Court March 13, 2017 Sec 2. lack of access to legal resource: ... equitable tolling may be appropriate where

A PRISONER HAS EXPERIENCED A LACK OF ACCESS TO (4) NECESSARY LEGAL RESOURCES. FOR EXAMPLE, EQUITABLE TOLLING MAY BE APPROPRIATE WHERE THE PRISONER HAS BEEN DENIED ACCESS TO HIS LEGAL FILE. SEE VALVERDE V. STINSON, 224 F.3d 129, 133 (2d Cir. 2000) (FINDING THAT CONFISCATION OF A PRISONER'S LEGAL PAPERS BY A CORRECTIONS OFFICER SHORTLY BEFORE THE FILING DEADLINE MAY JUSTIFY EQUITABLE TOLLING); ESPINOZA-MATTHEWS V. CALIFORNIA, 432 F.3d 1021, 1027 (9th Cir. 2005) (FINDING IT UNREALISTIC TO EXPECT A HABEAS PETITIONER) TO PREPARE AND FILE A MEANINGFUL PETITION ON HIS OWN WITHIN THE LIMITATIONS PERIOD WITHOUT ACCESS TO HIS LEGAL FILE"). SIMILARLY, EQUITABLE TOLLING MAY BE APPROPRIATE WHERE THE PRISONER DOES NOT HAVE THE MEANS TO ACCESS LEGAL MATERIALS. SEE MENDOZA V. CAREY, 449 F.3d 1065, 1071 (9th Cir. 2006) PETITIONER'S LACK OF ACCESS TO A LAW LIBRARY, COMBINED WITH THE CONFISCATION OF HIS LEGAL FILES, CONSTITUTES EXTRAORDINARY CIRCUMSTANCES JUSTIFYING EQUITABLE TOLLING. IN MY PERSONAL PROPERTY I HAD EVERYTHING AND TDCS-OFFICER TOOK ALL AND STORED THEM WHERE I HAVE NO ACCESS TO NOTHING NOT EVEN MY TOOTH BRUSH. I WAS PLAINLY PREVENTED FROM WORK AND FILING A PLEADING FOR LONG PERIOD OF TIME - NOT DAYS BUT MONTHS. THEN LATER IN JULY 2021 U.S. MARSHALL PICKED ME UP TRANSPORTING ME TO FEDERAL CUSTODY NOT ALLOWED ME TO TAKE NONE OF MY PERSONAL PROPERTY. I STAY WITHOUT ACCESS TO MY LEGAL PAPER WORK AND HABEAS CORPUS MOTIONS FROM JULY 2021 TILL SEPTEMBER 2022 WHICH IS WHEN I RECEIVED MY PERSONAL PROPERTY THAT I HAD LEFT INSIDE STORAGE ROOM AT COFFIELD UNIT WHEN U.S. MARSHALL DIDN'T ALLOWED ME TO TAKE NOTHING. I HAVE SHOWN GROUNDS FOR GOOD & EXTRAORDINARY CIRCUMSTANCES FOR EQUITABLE TOLLING. (1) I HAVE PHYSICAL DISABILITIES BESIDE MY RIGHT HAND, (2) MY LACK OF ACCESS TO MY PERSONAL PROPERTY - ALL MY LEGAL FILE THAT WAS TAKING FROM ME BY TDCS-OFFICERS AND STORAGE THEM IN A ROOM THAT ONLY THEY HAVE ACCESS TO; (3) LACK OF ACCESS TO ANY LEGAL RESOURCES SINCE I AM A LOW IN PROCESS MEMORIES, (4) I HAVE DILIGENTLY PURSUED MY RIGHTS IN THE FACE OF THESE OBSTACLES, BUT IT IS DIFFICULT TO DO THINGS WITHOUT PERSONAL PROPERTY. ESPECIALLY WHEN TDCS-OFFICERS DO NOT FOLLOW THE RIGHT PROCESS WITH LEGAL PROCEDURES. THEY ALREADY HAD LOST 3 CHAIN ROD BAGS WITH PERSONAL PROPERTY. EVEN

While I was in Federal Custody Joe Corley Processing Center I did my best and wrote letters to TOCS-Cottfield unit Warden Asking Him to please notify Inmate Property Officer to Hold on my Property that soon I Finish with Federal Court I will Get Back to TOCS. I didn't know that would take almost 1 Year. While I was there I Ask the Joe Corley Processing Center's Warden to please Help me to Get my Personal Property Cause I need to work on my legal issue. He did call TOCS-Cottfield unit Asking the Inmate Property Officer to please transfer my Property to TOCS-Walls unit at Huntsville, and He (Warden) can have some of his officers to pick up my Property. But TOCS-Cottfield unit didn't do it on time. Finally thanks God my Federal Case Got Dismiss May 4, 2022 And I Got Transfer Back to TOCS-Bird unit for Re-Process Back from Bench Warrant on May 6, 2022. But I didn't reach my Re-Assign unit Terrell unit-R3 till July 22. It's when I re-wrote again to Cottfield unit Requesting my Personal Property 5 Chain Red Bags. But they only sent me 2 Bags and destroy the other 3 Bags. Their excuse was "Property was too old." September 2022 is when I put all my legal work together and my state Habeas 11.07 together. But never have been on my mind the intentions to not pursue my wrong conviction and violations of my Constitutional Rights.

United States District Court Judge abused his discretion Refused to take in full consideration my Constitutional violations By not provide to me a full and fair Evidentiary Hearing that I'm entitled to. Judge Denied me Equal Protection and Due Process Clause By Dismiss my Habeas 2254 without reviewing the entire state Court's transcripts, exhibits and records. Attorney for state officials didn't comply with Federal Habeas Rule 5, which I have the right to review any relevant state records that can help me to see the clarity of my allegations. Which is a violation of my Constitution 5, 6, 14th Amendments Rights that I am entitled. Uncontrollable circumstances stop me from continue my appeal, see *Valverde v. Stinson*, 224 F.3d 129, 133-134 (2nd Cir. 2000); *Outtry v. SCIP Superintendent Petsock*, 878 F.2d 123 (3rd Cir. App. Jun. 29, 1989). (U.S. Dist. Ct. 5, 11, Fed. R. Civ. P. 5(a), 10(c), 81(a)(2)).

Reasons For Granting The Petition

Petitioner Willie Medina, Requesting The United States Supreme Court To Granting A Certiorari. A Habeas Corpus Proceeding Involving A State Prisoner And Proceeding Under 28 U.S.C. Subsection 2254 And Application For A 2253 Certificate Of Appealability Such As The Application At Issue Which Resulted In A Denial By District Court And A Panel Of A Circuit Court Of Appeals Fifth Circuit.

This Petition Is Concerning A Denial Of An Accused's 2254 Motion To Vacate My Conviction On A Illegal Search And Seizure Without A Search Warrant And Violation Of Petitioner's 4th Amendment Constitutional Rights By Convicting Me Of Possession Of Controlled Substance Based On Illegal Evidence Obtained In Violation Of United States Constitution And Texas Constitution. Mr. Medina, Meets The 1254(c)(1) Description Which Confirms The Supreme Court's Certiorari Jurisdiction 1254(c)(1). The Supreme Court Have Statutory Certiorari Jurisdiction To Review Refusals To Issue A Certificate Of Appealability. My Whole Criminal Case And Wrong Conviction Is A Claim Of A Constitutional Violation Rights In Nature, And Throughout This Petition I Request The Supreme Court To Vacate The Judgment And To Remand The Case. Reconsider And Review By Ordering All My Criminal Case Transcripts, Video Body Camera And Trial Exhibits. So The District Judge Can Be Able To Make A Right Judgment And Reason The Conclusion Of My Civil Rights Violation. State Attorney General Lawyer Failed And Refused To Obey Habeas 2254 Federal Rules By Not Service Of Answer My Allegations With Transcripts And It's Exhibits, Which Was Plainly Mandated By The Judge And Under R. Governing Subsection 2254 Cases U.S. Dist. S. 11, Fed. R. Civ. P. 5, (a), 10(c), 81 (a) (2).

Both Of The Federal Court's Did Incorrect Decision Not Based On Standard Of Law And Is An Abuse Of Discretion By Denying Me Equitable Tolling As A Matter Of Law. Throughout This Petition I Request Supreme Court, Remand The Case With Directions To District Court Review And Order All Transcripts And Retrial Me Or Acquittal My Conviction.

Conclusion

The Petition For A writ OF Certiorari Should Be Granted.

Respectfully Submitted,

Willie Modina

Date: May 28, 24