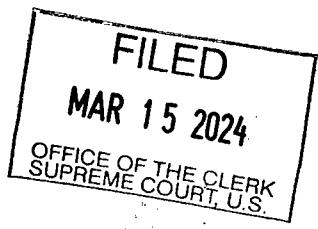


No. 24 - 5083



USCA 6 No 23-5433

IN THE
SUPREME COURT OF THE UNITED STATES
STEPHEN B. WLODARZ - PETITIONER
VS
MIKE PARRIS. WARDEN - RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

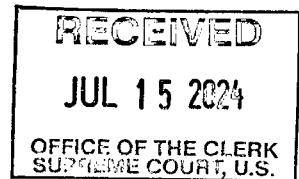
Stephen B. Wlodarz

TDOC NO 128363

Morgan County Correctional Complex

P O Box 2000

Wartburg, Tennessee 37887



QUESTIONS PRESENTED

1. Whether prosecutors and Petitioner's pretrial sheriff's department custodians violation of a scheduled trial by jury, which in all likelihood may have resulted in acquittal in a capital first degree murder charge, should toll AEDPA[†] one-year limitation period for filing 28 USC § 2254 factual innocence claim?
2. Whether the Sixth Circuit erred in agreement with district court's denial of Petitioner's Application for Certificate of Appealability?
3. Whether the Sixth Circuit erred in agreement with the district court's rigid enforcement the one-year statute of limitations in summarily denying to hear constitutional grounds raised in State's prisoner pro se petition for habeas corpus relief?
4. Whether district court erred in failing to take into account trial lawyer's express conflict of interest undisclosed that resulted in a fundamental miscarriage of justice in 'State Proceedings?'

[†] Anti-Terrorism and Effective Death Penalty Act of 1996

LIST OF PARTIES

All parties appear in the caption of the cover page

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39-13-204, 40-35-209 pg 7

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OTHER

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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

The order of the United States Court of Appeals appears at Appendix A of the petition and is unpublished.

The judgment order of the United States Court of Appeals appears at Appendix D to the petition and is unpublished.

The opinion of the United States district court appears at Appendix E of the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 02, 2023

A timely petition for rehearing en banc was filed in the United States Court of Appeals on November 16, 2023 copy appears at Appendix B, and a copy of the order denying rehearing filed on December 18, 2023 appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves. (i). Constitution of the United States Amendment Two which in pertinent part provides:

"[t]he right of the people to keep and bear Arms shall not be infringed."

And is tantamount to Constitution of Tennessee, Article I Declaration of Rights. Section 2

"That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind": and Section 2b

"That the citizens of this State have a right to keep and bear arms for their common defense."

Their application is demonstrated in the U.S. Dist. Court record, "The first shots were fired into what would be called... the front of the house." [Petitioner's owner built home]. "Nothin happened, they had time to get around and fire two or more shots in. They went into and through a wall in a room." (Id. Doc. 19-2 Pg. 1777. quoting the 9/18/2001 sentencing judge presiding over the 10/31/02 P-C trial, listed as "THE WITNESS" on P-C Trial transcript page 80). "When I opened the door two shots came through my window and went through both walls." (Id. TBI EX IR #3 / RI #7 Petitioner's Interrogation handwritten by TBI Special Agent. Prosecutor Steve Huntley. Doc 19-16, 2306 also Pg. # 2341-2347 State's eye-witness Sheriff's department SWAT Det. Brad Depew witnessed "the victim" in Petitioner's first degree

murder by premeditation, life without parole sentence, fire more than a dozen gunshots into Petitioner's home after twice hearing Wlodarz say "he hadn't done anything to be arrested" (Id. Stmt. of Det. Brad Depew R1 #19. Doc 19-16 Pgs. 2343, 2344), also quoted in Doc 3 #2 Exhibit "GENERAL GROUNDS TO ATTAIN THE ENDS OF JUSTICE pages 8-9 of 24.

(2) Constitution of the United States Amendment Four

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated: and no Warrants shall issue, but upon probable cause...."

Violation of Petitioner's Fourth Amendment is expressed in the warrantless intrusion onto Petitioner's driveway on 13 July 2000 at or about 3:00 pm. APPLICATION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY pgs. 11-15 and in the 'JUDGMENT' signed by Judge Tom Wright on 01 September 2000. Doc 19-16 Pg # 2308

- (a) Wlodarz had been " Arrested without warrant"
- (b) Wlodarz had not waived his right "to trial by a jury."

(3) Constitution of the United States Amendment Five

"No person shall be held to answer for a capital or otherwise infamous crime...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...nor be deprived of life, liberty, or property, without due process of law."

Violation of the Fifth Amendment is shown in Petitioner's 'GROUNDS

FOR RELIEF DOCUMENTS (Doc.3 Exhibit 1) listed 13 of 41 documents, State's threat of Petitioner's death Doc.20 trial court ORDER for State's written death penalty, and Doc 21 The Rogersville Review, Feb. 7/8 2001 ed. Headlined, 'DEATH SOUGHT' "[p]olice dogs led officers to Wlodarz home from burglarized home..."); and, the alleged "... killing officer ... in the perpetration of or attempt to perpetrate an aggravated burglary of the habitation of Barbara Bowen" (Doc 18-1 Pg # 415), results directly from sheriff's department custodian's and prosecutors violation of Petitioner's access "TO APPEAR" in court

"[w]hich directly usurped Petitioner's right to redress his Fourth Amendment rights violated by the sheriff's department and prosecutors; Petitioner's Fifth Amendment guaranteed rights to not be deprived of life, liberty or property without due process of law; Petitioner's Sixth Amendment right to enjoy the right to a speedy public trial by an impartial jury set for October 2nd, 2000; Petitioner's Eighth Amendment deprivation of protection from excessive bail, excessive fines and cruel and unusual punishment of death imposition under government's accusation that a trial by an impartial jury (Petitioner had not waived id 01 Sept 2000 JUDGMENT), would have more-likely-than-not proven to be bogus."

Quoting Doc.3 #3 Exhibit ARGUMENT-B GROUND TWO: Petitioner's [9/18/2001] Plea was not knowingly and voluntarily entered. State's

Drafted "WAIVER OF RIGHTS AND PLEA OF GUILTY" should be invalidated.

(4) Constitution of the United States Amendment Fourteen Sect. 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 laws."

(5) Tenn. Code Annotated (TCA) § 39-11-201 (a) No person may be convicted of an offense unless each of the following is proven beyond a reasonable doubt

(1) The conduct, circumstances surrounding the conduct, or a result of the conduct described in the definition of the offense; (2) The culpable mental state required; (3) The negation of any defense to an offense defined in this title if admissible evidence is introduced supporting the defense.

(b) In the absence of the proof required by subsection (a), the innocence of the person is presumed.

(c) A person charged with an offense has no burden to prove innocence

(6) T.C.A. § 39-11-611 (a). A person is justified in threatening or using force against another person when and to the

degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force. The person must have a reasonable belief that there is an imminent danger of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be, or honestly believed to be real at the time, and must be founded upon reasonable grounds. There is no duty to retreat before a person threatens or uses force.

Application of TCA §§ 39-11-201(a)(1-3), (b)(c) and 39-11-611(a) is contained in district court's record. Pgs. 1777, 2306, 2341-2347; raised on pgs. 10-11 of Doc. 3 #4 Exhibit: Ground Four Argument D "consisting of 13 pages submitted along with application for issuance of COA because of the extraordinary circumstances" (Id. COA application pg. 26). TCA § 39-11-611 is expressed in Petitioner's "Psychological & Neuropsychological Evaluation" in relevant part,

"[s]ituational factors related to police action on 13 July 2000 it is clear that he was unable to cause the death of another but simply reacted to a situation which was beyond his comprehension and beyond his control." pg.16 of 16 (Quoted in Doc 3 #2 Exhibit pgs. 7-8). ORDER filed Nov. 2. 2023 acknowledged that "Wlodarz's counsel commissioned the report and informed the trial court that it would be used to argue several affirmative defenses" (Id. ORDER- APPENDIX-D pg. 4)

(7) TCA 39-11-203. Defenses. Sentencing Commission Comments. "If the defense is at issue, the state must prove beyond a reasonable doubt that the defense does not apply" TCA § 39-11-203(d) mandates: the court shall instruct the jury

that any reasonable doubt on the issue requires the defendant to be acquitted"

Quoted in Doc 3 #4 Ex. Argument-D p.11. Notice. Pursuant Tenn R. Crim Proc. R. 12.2 Filed on June 28. 2001, and Notification "with regard to diminished capacity, duress or necessity and self-defense" were filed on July 27, 2001 and are marked Pgs. 11a(1) and (11) of Doc. 3 #4 Ex. Argument D.

(8) TCA §§ 39-13-204. Sentencing for first degree murder. (c) and, (9). TCA 40-35-209(b). These subsections

"[s]hall not be construed to authorize the introduction of any evidence secured in violation of the United States or the Constitution of Tennessee."

Both, 8 and 9 apply to Asst. D.A., Godbee's falsehoods, and the 9/12/2008 Error Coram Nobis Court's "immediate acquiescence to Mr. Godbee's fabricated 'gun in the Petitioner's truck'" Doc 3 #4 Ex. Ground Four: Prosecutor and Public Defender, "trial counsel" violation of Brady v. Maryland 373 U.S 83 (1963) in conjunction with Alford (1970) criterion, pgs 7-8: also, Doc 3 #2 Ex GENERAL GROUNDS TO ATTAIN THE ENDS OF JUSTICE; "[t]he State inserted a series of false claims herein proven untrue...including, falsely alleging '[t]he gun found in the pickup truck which was at the scene!" 9/12/08 Tr p. 35 (Dist. Ct. Doc 19.3 Pg 1869). when, in fact, there was no such gun and the pickup was located twenty (20) miles away and irrelevant to the case." Id. Doc. 3 #2 Ex p. 17: "His vehicle was not at the residence at the time of arrest and investigation." Quoting AFFIDAVIT of Steve Huntley, TBI Agent /Prosecutor, Sworn to and subscribed on 25 April, 2001. (Pg.1724)

(10). 28 USC § 2253 (c) (2): Petitioner's APPENDICES - B and C

STATEMENT OF THE CASE

Stephen B. Wiodarz, Petitioner v. Mike Parris, Warden, Respondent, Case No. 3:22-cv-88 is Petitioner's first petition under 28 USC § 2254. It was filed on August 16, 2021 in the prison mailroom, logged and verified by mailroom personnel (APPENDIX-C, p. 3 a). Twice the Court Clerk notified Petitioner that the court had not received his petition.

On March 9, 2022, Petitioner resubmitted copy of his original petition (Doc.3), declared, certified, verified under penalty of perjury, on August 16, 2021, within seven (7) months of exhausting actual innocence claim in state court to "attain the ends of justice" (MANDATE STATE OF TENNESSEE Filed September 23, 2020 "To the Honorable Judge of the Hawkins County Criminal Court"), expressed in Petitioner's 'MOTION TO PROCEED' (APPENDIX-F) in order "to conform with Petitioner's Motion To Reopen Post Conviction" Case 3:22-cv-88 Doc 19-16 Filed 10/10/22 Pgs. 2286-87 identify Exhibits A-through-F and attachments that corroborate Petitioner's claims and reason the motion should be granted.

"Furthermore, in its endeavor to attain the ends of justice...

the Post Conviction Trial Court Honorable Judge should take into consideration the government's role in Petitioner's 'Motion For Reconsideration Pursuant to Frazier v.

State, 495 S.W.3d 246 253 (Tenn 2016) "Our Oath Is To Do Justice Not To Perpetuate Error'" (Doc 19-19 2364-2461) [specifically referring to] "criminal law and civil law violations stemming from State officials knowing misrep-

representation of the truth and concealment of material facts (Constitutional Brady, 1963 violations) to induce the pretrial detainee / defendant / Petitioner to his detriment."

Id. Motion To Proceed in the Criminal Court, Filed November 16, 2020. Trial date 1-29-2021. Signed by Trial Judge on 29 January 2021 - DENIED by ORDER Filed January 29, 2021 by (Petitioner's former prosecutor, sheriff department employee). Randall L. Collier Clerk of Courts, serves as the final procedure to exhaust state remedies on Ground Four (in response 2254 Petition (Doc.3) page 12 (e)).

Doc. 3, factual innocence claim consists of fourty one (41) numbered documents (Doc.3 No.1 Exhibit) that contest each and every Wlodarz v. State decision and corroborate GENERAL GROUNDS TO ATTAIN THE ENDS OF JUSTICE with Supporting Facts (Doc 3 #2 Ex) along with four (4) Grounds for Relief with Arguments that jurists of reason could require Brady(1963) analysis to achieve fundamental fairness:

A. Ground One. Wlodarz had been denied the right to have competent conflict-free-counsel for his defense in State v. Wlodarz, Case No. 7772 terminated upon counseled WAIVER OF RIGHTS AND PLEA OF GUILTY accepted by the court judge on September 18, 2001. (Ground One contains 16 pages of documented GROUNDS FOR RELIEF SUPPORTING FACTS, including proof that "Detective Randall L. Collier, Prosecutor's 14 July 2000 AFFIDAVIT contains statements that are false." (Pg 1:3)).

B. Ground Two. Wlodarz' Plea was not knowingly and voluntarily entered: Specifically: the "WAIVER OF RIGHTS AND PLEA OF GUILTY"

should be invalidated. (Doc.3 #3 Ex.) "[p]rior to cumulative prejudices and Court ORDER for the State to file a written death penalty notice (Ground One Supporting Fact 20), Wlodarz did not waive his right 'to trial by jury' (Ground One Supporting Fact 12 JUDGMENT 01 Sept 2000) Nor requested such waivers" (Ground Two Supporting Facts Pg 2:8). Dr. Engum's evaluation reported to trial counsel provided to the State rendered Wlodarz death penalty incompetent (Pg 3:10): On March 19, 2001 the State received Results of Examinations from FBI that conclusively excluded ammunition in Wlodarz' 30-30 Winchester rifle from lead fragments recovered from Mr. Gibson's body during autopsy. (Ground One Supporting Fact 22). State's eye witness SWAT Deputy Gary W. Murrell had a visual of the rear of Wlodarz residence, the rear of the out buildings and the area to the side of the residence. Officer Gibson and Castle then returned to the rear of the building in plain view of myself but concealed from the residence" (Doc 3 #2 Ex. Pg 7 quoting Grounds for Relief Document 35 TBI Report # R179 Statement signed by SWAT member Deputy, Gary W. Murrell)." On September 12. 2008 the State conceded: 'So we never had a case' 9/12/08 Tr 37:20 quoting MR.GODBEE, Asst. D.A. " (Doc 3 #3 Ex. Pg. 3:10)

C Ground Three. Wlodarz's Alford best interest guilty plea is antithetical to North Carolina v. Alford, 91 S Ct 160 (1970) criterion

"[w]here strong evidence of actual guilt subsequently negated defendant's claim of innocence and provided strong factual bases for the guilty plea, and state had

a strong case of first degree murder, so that defendant advised by competent counsel, intelligently concluded that he should plead to second degree murder rather than be tried for first-degree murder, the court committed no constitutional error in accepting guilty plea despite defendant's claim of innocence." (Doc 3 #3 EX PRE-FACE quoting North Carolina v. Alford, 91 S Ct 160 (1970))

Petitioner's counsel, Public Defender, Mr Eichelman, entered the Alford plea on September 18. 2001 during Court's questioning of the defendant:

THE COURT: Now, the next question I usually ask is if you're pleading because you are guilty but, as I understand it, you've agreed upon an Alford plea: is that right?"

MR EICHELMAN: Yes, your Honor: (9/18/2001 Proceeding Tr. pg 15:19-23 Case 3:22-cv-88 Doc 18-4 Pg. 601. Ground Three Supporting Fact Pg 1:1)

On October 31, 2002 Mr. Eichelman was asked to describe his best interest plea advise to Petitioner Wlodarz

"The main thing that I explain about it, in concrete terms, is if it can make him feel better in terms of maintaining his position that this was an accident, than it does that."

Quoting 10/31/02 P-C Tr p 86: 21-24: Doc 18-2 Pg 573.

In light of the pending COMPLAINT for wrongful death filed by Mr. Gibson's family on July 13, 2001 (served on Wlodarz July 2002) averring "friendly fire" fatal shooting (Doc 3 #1 Ex #26 document) and Assistant District Attorney, former Prosecutor Godbee's

"No contest" plea in criminal court, jurists of reason can discern travesty in Petitioner's Alford best interest plea of guilty. Mr. Godbee was facing official misconduct charges involving six female pretrial detainees' complaints filed with Tennessee Claims Commission, reported in Johnson City Press, Feb 2. 2011 ed. "Intimidation common thread in six complaints." And, The Rogersville Review, Oct. 3. 2012 ed. reporting Mr. Godbee's "No contest plea.. An investigation by the Tennessee Bureau of Investigation reportedly found 'ten or more victims'...'"

"The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo contendere [Prosecutor Godbee's No contest plea] may not be used against the defendant in civil action based upon the same acts. As such, this plea is particularly popular in antitrust actions where the likelihood of civil actions following in the wake of a successful antitrust prosecution is very great." Id. Black's Law Dictionary 5th ed.

Pg. 945: Case 3:22-cv-88 Doc.19-3 Pg 1891.

Copies of Johnson City Press and The Rogersville Review are attached to APPENDIX-C marked, pgs. 6.a. and 6.b. The newspaper articles demonstrate Petitioner's diligence to attain justice "[i]n a state Judicial District with noted instances of prosecutorial intimidation through confidence that no one who complains about district attorney will be believed." ("He told me that nobody will believe me if I complained about him because he was the district

attorney." Id. Johnson City Press, Feb. 2, 2011 ed. quoting one of the prosecutor's victims). And, the resulting miscarriage of justice from the state's "offered plea." ("An offered plea is a plea in which the defendant... feels that he is going to be convicted, if he goes to trial" Id. News Article quoting the district attorney. Doc 18-4 633)

Reasonable jurists can find Petitioner's best interest guilty plea "is even more suspicious because Hawkins County's 'insurance carrier would not cover nor defend this action'- the 13 July 2000 Hawkins County Sheriff's Department SWAT assault that resulted in Officer Gibson's fatal shooting. id AFFIDAVIT OF JAMES O. Phillips III Hawkins County Attorney." (Doc. 19-3, 1891 copy enclosed with PETITION FOR REHEARING EN BANC- APPENDIX.B.)

D Ground Four. Prosecutor and Public Defender "trial counsel" violation of Brady v. Maryland 373 U.S. 83 (1963) in conjunction with Alford criterion. (Doc. 3 #4 Exhibit). Ground One. Wlodarz has been denied the right to have competent conflict-free counsel for his defense (APPENDIX.C. pgs. 10-23: Petitioner's proof that trial counsel lied during the 10/31/02 (original) P.C Trial while he was under oath to tell the truth), and Ground D. Argument (Petitioner's prosecutor's perjury and fraud claim raised under Brady (1963)) are both submitted in the Sixth Circuit (Petitioner's C.O.A application APPENDIX.D.) because they best explain extraordinary circumstances that resulted in Petitioner's 273 months of illegal imprisonment in the Tennessee Department of Correction.

Petitioner asks the United States District Court in Knoxville, Tenn-

essee for "Remand to the Hawkins County Criminal Court for trial within sixty (60) days or release from State's custody," (Doc. 3 pg 1b)

On June 21, 2022 district court ordered Respondent to "answer or otherwise respond to the petition...." (Doc.12: Pgs 375-376)

On October 10, 2022, Zachary L. Barker, Assistant Attorney General, Federal Habeas Corpus Division, representing the Respondent, filed documents from State Court record consisting of Petitioner's counseled pleading, pro se motions and petitions, Petitioner's letters seeking discovery documents and reports from court agents, and FBI in Washington D.C., and judgments from criminal court and C.C.A. Respondent's filed documents are stamped "Case 3:22-cv-00088 Page ID ## 386 through 2580".

On October 19, 2022 Respondent motioned the court to dismiss with prejudice Petitioner's pro se petition on procedural grounds without proper consideration for the extraordinary circumstances that bolster Petitioner's constitutional claims. (Doc. 20. 2581 Respondent's motion)

Petitioner pro se filed his reply on November 10, 2022.

District Court Judgment Order filed on March 22.2023 (Doc 24,2615) denied the petition, declined to issue COA and directed the Clerk to close the file. In its MEMORANDUM OPINION (APPENDIX-E). lower court placed preference on "PROCEDURAL HISTORY. State Proceedings" that lack substantial justice and fundamental fairness and are contested throughout Petitioner's grounds for relief; Because, (a).lower court has relied upon "the underlying facts" from proceeding that contained "no facts". Doc 23 (APPENDIX-E) Pgs 2603-04 citing,

Wlodarz v. State, No. E 2002-02798-CCA-R3-PC. 2003 WL 22868267 ("No facts were presented at the guilty plea hearing" at pg.2, Doc 18-7 Pg. 685). (b). Wlodarz 2003 CCA affirming the denial of post-conviction relief renders from Assigned Briefs, wherein "Facts are taken from news articles" (Quoting State's Brief Doc. 19-25 Pg. 2516. STATEMENT OF THE FACTS Pg 2518) inserted in Court Appointed Post-Conviction Appellant Counsel's STATEMENT OF FACTS (2521); not from Grounds For Relief Documents (Doc 3 #1 Ex) that refute the Hawkins County Sheriff's Department spokespersons false press reports (including but not limited to those marked Pgs 2524 through 2528). "I was convicted before I had a chance to go to trial" (Quoting Petitioner's 10/31/02 P-C testimony Tr. p.30:24 25. Doc.19-25 Pg.2514)

On 21 April 2023 Petitioner submitted APPLICATION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY (APPENDIX. C)

On 02 November 2023 the Sixth Circuit Judgment Order denied the application. (APPENDIX. D)

Petitioner's PETITION FOR REHEARING EN BANC (APPENDIX.B) was denied on December 18, 2023 (APPENDIX.A.)

Petitioner's two (2) previously submitted pro se petitions for writ of certiorari (15 March and 8 May 2024) failed to comply fully with the content requirements of Supreme Court Rule 14 and returned to Petitioner for correction and resubmission within sixty (60) days of May 8, 2024.

REASONS FOR GRANTING THE WRIT

A habeas petitioner may not appeal the denial of his petition unless the District Court or Court of Appeals "issues a certificate of appealability." 28 USC § 2253 (c) (1); Gonzales v. Thaler, 565 US 134, 143 n 5 132 S.Ct. 641 (2012). Under the Antiterrorism and Death Penalty Act of 1996 (AEDPA), a COA "may issue... only if the applicant has made a substantial showing of the denial of a constitutional right" § 2253 (c) (2). To make that showing, a habeas petitioner must demonstrate "that reasonable jurists could debate whether... the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further" Slack v. McDaniel, 529 US 473, 484, 120 S.Ct. 1595 (2000). AEDPA does not "require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus." Miller-El v. Cockrell, 537 US. 322 338, 123 S.Ct. 1029. (2003) (cited in Application for Issuance of Certificate of Appealability Pgs 1-3 and 24). Rather, "[a]t the COA stage, the only question is whether "the claim is reasonably debatable." Hernandez v. Peery, 141 S.Ct. 2231, 2234 2021 quoting Buck v. Davis, 137 S.Ct. 759, 773, 774 (2017)

In this case the District Court should have scheduled an evidentiary hearing on Petitioner's constitutional grounds and the Sixth Circuit should not have denied Petitioner his COA application.

I. PROSECUTORS AND PETITIONER'S PRETRIAL SHERIFF'S DEPARTMENT
CUSTODIANS VIOLATION OF A SCHEDULED TRIAL BY A JURY,
WHICH IN ALL LIKELIHOOD MAY HAVE RESULTED IN ACQUITTAL
IN A CAPITAL FIRST DEGREE MURDER CHARGE SHOULD TOLL
A.E.D.P.A.'S ONE YEAR LIMITATION FOR FILING 28 USC § 2254
FACTUAL INNOCENCE CLAIM

In 1996 Congress enacted the Antiterrorism And Effective Death Penalty Act ("AEDPA") which amended the habeas statute to impose restrictions on the filing of habeas petitions. For example, in a typical case, prisoner's must file within one year from the date the criminal judgment becomes final which usually means the point where Petitioner has exhausted his state remedies under section 2241(d)(1). Refusal to consider a constitutional claim due to a procedural bar which results in a fundamental miscarriage of justice should not prevent the federal court from hearing the merits of Petitioner's constitutional claim.

In Wainwright v. Sykes, 433 U.S 91 97 S Ct 2497 (1977), Justice Renquist wrote for the majority that the cause-and-prejudice standard would "not prevent a federal habeas court from adjudicating for the first time the federal constitutional claim of a defendant who in the absence of such an adjudication will be the victim of a miscarriage of justice"

"In appropriate cases, [the principles of comity and finality] must yield to the imperative of correcting a fundamentally unjust incarceration." Engle v. Isaac, 456 U.S 107.135, 102 S.C. 1558 (1982).

On September 01, 2000 State's witnesses attested under oath in open Court that Stephen B. Wlodarcz was not involved in any criminal activity on July 13, 2000 and revealed that police created exigency that factually did not exist. See APPENDIX. C. Pgs 11-20, APPENDIX. B. Pgs 5-6, Doc. 3 #3 Ex Supporting Facts Pgs.1-3, Grounds for Relief Documents 1-12; Doc.14. The Rogersville Review, 9/4/2000 ed. reporting the September 01, 2000 preliminary hearing. A jury trial scheduled for October 2, 2000 at 1:00 pm (Doc.13) was preempted by the State and concealed state's perjury underlying police action on July 13, 2000. APPENDIX. C. Pgs 14,15; H C S D. Det. Randall L. Collier July 14 2000 AFFIDAVIT Sworn to and subscribed before Glendo Davis, Notary Public. Doc 19-1 Pg 1610 also Grounds for Relief Document 3 Doc 19-1 Pg 1611; October 30, 2002 PC Tr Pg 10

"The case was dropped. As far as I know sir....

I never had due process in that -- on those charges "

"I found that an affidavit of the search warrant and the actual statements that were made under oath by officers Collier and Price contradicted. And it appeared to me that the affidavit... made out the following day was perjured." (PL Tr p.10:7-9,15-19 Quoting Petitioner, at p 12 Petitioner describes nature of Collier's perjury).

Proof of Det. Collier's July 14 2000 perjured Affidavit is found in Discovery items listed on Pgs.1833,1834,1835 of Doc.19-3. The Documents were "Hand Delivered" to Public Defender Eichelman by Asst. District Attorney Doug Godbee. They remained undisclosed.

Petitioner's post conviction trial lawyer declined the court's request for presentation of evidence supporting Petitioner's testimony. See APPENDIX C Pg 17. citing P-C Tr. Pgs.14 and 89.

On 7th day of February 2001 the State filed DEATH PENALTY NOTICE (Doc 19-1.1653. Doc 18-5 657) accusing falsely Petitioner of "murder committed for the purpose of avoiding, interfering with or preventing a lawful arrest or prosecution." State's NOTICE is in response to a Criminal Court ORDER Filed 6th Feb. 2001 (Doc 19-1 Pg 1652) that contains a gag order clause;

"All attorneys, parties, investigators and law enforcement officers involved in this case are strictly enjoined and prohibited from making any statements to the media...."

State v Wlodarz No. 7772 ORDER Filed 6th February 2001.

The Rogersville Review, February 7/8 ed. Headlined 'DEATH SOUGHT (Doc 19-1 Pg 1654) violated the gag order by publishing false press releases submitted by the "sheriff's department spokesperson, Glenda Davis" (Quoting Citizen TRIBUNE July 14, 2000: Doc 18-4 611-612). Contrary "to reports, officers" had not "responded... to investigate an aggravated burglary", nor had "police dogs led officers to Wlodarz home from the burglarized home". Nor had Wlodarz "ordered" anyone "off his property with a shotgun" (quoting The Rogersville Review, Feb 7/8 2001 ed): Citizen TRIBUNE July 14, 2000 Headlined: "A Hawkins County Sheriff's Department deputy was killed ... while attempting to arrest an armed suspect in connection with a burglary that occurred earlier in the day."

False press releases that discredit Petitioner's innocence compose State v. Wlodarz 7772(2001) and Wlodarz v State 2003 CCA affirmation of criminal court's denial of Petitioner's post conviction relief. Together, they structure district court's case BACKGROUND (Doc. 23 2603-04) that appears to validate perjury and resulting fraud. While lower court's reliance on Wlodarz v State 2003 exposes flaws in "state post-conviction or collateral review" (APPENDIXES D pg 3 and E pg 2607), the State never corrected the fundamental constitutional flaws arising from the 01 September 2000 preliminary attested testimony of State witnesses that Petitioner had not violated criminal law statutes. And, the 01 Sept. 2000 JUDGMENT (Doc 19-16 Pg 23D8 also Doc 3 #1 Ex 12) shows that Petitioner had not waived trial by jury. Because Petitioner had not waived trial by jury prior to State's intended death penalty prosecution by false press releases, fundamental structural constitutional errors affecting Petitioner's right to a fair jury trial had not been properly judicially resolved the case is still "pending", rendering inapplicable 2254(d)(2) in lower courts' denial of the 2254 Petition based on "Timeliness" calculations in "Equitable Tolling" APPENDIX E Pgs 5-6. APPENDIX D Pgs 2-3

Under § 2244(d) (2) the time during which a properly filed application for state post-conviction or other review with respect to pertinent judgment or claim is pending shall not be counted toward any period of limitation under this section.

2 THE SIXTH CIRCUIT ERRED IN AGREEMENT WITH DISTRICT COURT'S
DENIAL OF PETITIONER'S APPLICATION FOR CERTIFICATE OF
APPEALABILITY

By fiat the Sixth Circuit has demonstrated a "substantial showing of the denial of" Eighth Amendment protection from cruel and unusual punishment "constitutional right" 28 USC § 2253 (c)(2) (APPENDIX-D pg 2) i. e., denying Petitioner's innocence claim supporting documents under "A one-year period of limitations" and by speculating what defense counsel may have presented at trial (Doc. 23:2613). Under § 2253 (c)(2) a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 USC § 2253 (c)(2). Imprisonment of a person who has demonstrated his factual innocence, as has the Petitioner in this case, violates the Eighth Amendment. "A petitioner satisfies [the denial of a constitutional right] by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that the jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Id. Slack v. McDaniel, 529 US 473 481 at 484. 120 S.Ct. 1595 (2000) (APPENDICES B, pgs. 2-3., C.pgs. 1-3)

3. SIXTH CIRCUIT ERRED IN AGREEMENT WITH THE DISTRICT COURT'S RIGID ENFORCEMENT OF THE ONE-YEAR STATUTE OF LIMITATION IN SUMMARILY DENYING TO HEAR CONSTITUTIONAL GROUNDS RAISED IN STATE'S PRISONER'S PRO SE PETITION FOR HABEAS CORPUS RELIEF

"Unlike other parts of AEDPA, the one-year time limit for filing a petition for writ of habeas corpus enacted in section 101 of the Antiterrorism and Effective Death Penalty Act of 1996 is remarkably lucid.... Every relevant signal—from the Act's plain language, to its legislative history, to its structure—points to the same direction: Section 101's one-year timing provision is a statute of limitation subject to equitable tolling, not a jurisdictional bar." Id. Caldern v. U.S., Dist Ct. for the Cent. Dist. of Cal. 128 F 3d 1283, 1288-89 (9th Cir 1997); Also Neverson v. Farougharson, 366 F 3d 32, 41 (1st Cir. 2004); Dunlop v. U.S. 250 F3d 1001, 1004-07 (6th Cir. 2001); Harris v. Hutchinson 209 F 3d. 325 330 (4th Cir 2000); Smith v McGinnis 208 F 3d 13, 17-18 (2nd Cir. 2000) Talaini v. Chrans, 189 F 3d 597 597-98 (7th Cir. 2000) ("[t]he one-year deadline is not jurisdictional and therefore the judge-made doctrine of equitable tolling is available in principle" at 598.)

Moreover, AEDPA time limitations apply to the typical case in which no actual innocence claim is made (Doc 3 #2 Ex Pg 4 citing McQuiggin v Perkins, 133 S Ct 1924 at 1927 (2013)). And, district court granted Respondent's motion without examining documents corroborating Petitioner's factual innocence grounds entitlement.

4 DISTRICT COURT ERRED IN FAILING TO TAKE INTO ACCOUNT
TRIAL LAWYERS EXPRESS CONFLICT OF INTEREST UNDISCLOSED
THAT RESULTED IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE
IN STATE PROCEEDINGS

In 1980 the United States Supreme Court decided that a state prisoner can win a federal writ of habeas corpus only upon showing that the state participated in the denial of a fundamental right protected by the Fourteenth Amendment. The right to counsel guaranteed by the Sixth Amendment is a fundamental right. Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself. Cuyler v. Sullivan, 100 S.Ct. 1708, 1715 (1980). (Doc. 3 # 3 Ex at pg 6 citing Gideon v. Wainwright, 83 S.Ct. 792, 796 (1963); Johnson v. Zerbst, 58 S.Ct. 1019, 1024 (1938).

Throughout his 28 USC 2254 Grounds for Relief expressed on preceding pages, especially in Doc. 3 # 2 Ex, Doc 3 # 4 Ex. (Ground 4) and in APPENDICES B and C, Petitioner has shown that counsel appointed to represent Petitioner at trial "actively represented conflicting interests." Mickens v Taylor, 122 S.Ct. 1237, 1245 (2001) citing Sullivan, 100 S Ct 1708. And most recently proven "trial counsel" refuted exculpatory evidence such as Dr. Engum's evaluation that negated premeditation and intent by attesting "two shots were fired from a window" in the Petitioner's home (PC Tr p72) while misrepresenting circumstances of the action that resulted in a federal wrongful death

civil suit, Case No 2:01-cv-204 filed on July 13, 2001 (Doc 3 #1 Ex Document for Relief 26 COMPLAINT for wrongful death) "On page 2 sect.11 Plaintiff's avere that TBI has not released the ballistics on the bullet and bullet fragments to determine whether the bullet that killed Gerald Gibson came from Stephen Wlodarz's gun or friendly fire "(Quoting COMPLAINT in Doc. 3 #3 Ex on pg. 7 sect 26)

(a). Reasonable jurists may discern from trial counsel's attested "two shots were fired from a window", that firing from a window constitutes premeditation and/or intent. (b). Counsel's speculation undermines statutory self defense T.C.A. § 39-11-611 (a) that the State of Tennessee was burdened by law to disprove under TCA § 39-11-203. (c) TBI Report RI # 27 signed by SWAT member, State's eye-witness Deputy Gary W. Murrell states that he and Sgt. Greg Larkins observed Officer Gibson and Castle "... in plain view of myself but concealed from the residence" (Id. preceding pg.10 quoting Doc 3 #2 Ex pg.7, quoting TBI Report RI # 27). The location of Dpty. Gibson on the north side of the woodshed "concealed from the residence" is depicted in TBI Picture "#72-photo of area of shed where officer stood" and State's image book pictures 49.72.260-268 and are explained in Doc 3 #4 Ex 4 - ARGUMENT Ground Four pg 7. "Neither State's eye-witnesses Murrell nor Larkin ever expressed in reports or attested in open court that two shots were fired from a window in the Petitioner's home" (Id. Doc 3. #2 Ex. Supporting Facts on pg 14:35)

(d) The State had not disproved Mr. Gibson's Family's wrongful

death by friendly fire from Hawkins County Sheriff's Department SWAT members participating in the lethal siege on July 13, 2000.

On October 31, 2002 trial counsel testified that Petitioner "could see" Deputy Gibson "both looking outside toward the shed and looking around the corner of the shed" P.C.Tr pg 75-76

Whereas the actual distance from Petitioner to Deputy Gibson was no less than sixty (60) feet, (Doc.18-14 pg. 925. Affidavit of private investigator's measurements, consistant with TBI diagram measurements stamped Doc.19-16 pg 2339 (contained in Motion To Reopen Post Conviction. Exhibit.C. pgs 2337-2340)), Mr. Eichelman's testimony describes a face to face confrontation between Officer Gibson and Wlodarz:.... no further from you [P-C counsel standing at podium] than I am sitting on this stand" (Id. P.C Tr. 75: 6-7. 83: 4-22. Doc 3 #3 Ex. at pg 15). The TBI "Diagram" and "measurements" were provided to "Public Defender on 4/19/2001 by Doug Godbee Asst. District Attorney" (Doc 19-25 pg 2545 DISCOVERY)

Public Defender's Investigator Rick Taylor's 2/1/01 'CASE ACTIVITY MEMO' (Doc 3 #1 Ex Grounds for Relief Document 39 (contained in Motion To Reopen P-C pgs. 12a, b,c)) "is a true and exact copy of Mr Eichelman's Investigator Rick Taylor's '2/1/01 CASE ACTIVITY MEMO 'photo 'illustrates 'Bullet found here' on the outside woodshed building Northside wall at TBI Diagram location "F" , the rear of the building in plain view of Murrell and Larkins but concealed from the residence; consistent with TBI #72-photo of area of shed where officer stood. Taylor's diagram of a bullet refutes

Messrs. Stambaugh, and Eichman's transcribed P-C statement. The one single bullet that Investigator Taylor found could not have been fired from the house window." At pg 73 of the 10/31/02 P-C, Messrs Stambaugh and Eichman suggested that the back of the shed had been used "for target practice". (Doc 3 #3 Ex p 15)

Lower courts fail to meaningfully examine appointed counsels' (both trial counsel's attested and P-C counsel's expressed, "fired from a window" (pg. 2521 P-C counsel's Brief) to "fired out of the window" (APPENDIX E Doc 23 Pa 2612) overlooking "through window blind"

Examination of the blind in #34 [referring to TBI 'OFFICIAL FIREARMS IDENTIFICATION REPORT' RI #119 and OFFICIAL MICROANALYSIS REPORT] reveal the presence of two (2) apparent areas of damage/holes which roughly correspond to the holes present in Exhibit #18 [screen]" (Quoted in Doc 19-16 Pa 2312 Motion To Reopen P-C EXIBITS A & E)

Moreover, lower courts have overlooked police action causation for Petitioner's reaction.

"I went to the Northwest bedroom and opened the door. When I opened the door two shots came through my window" (Doc 3 #4 Ex Supporting Facts pg 3: TBI Ex (IR #3) RI #7: Motion To Reopen PC Pa 7a corroborated with TBI picture "#188-Projectile damage in Northwest room: TBI picture "#192 Projectile damage in closet of Southwestern room" indicate that both gunshots fired through the uncovered lower sash northside Northwest bedroom

window (TBI dictum #10) went through the bedroom closet walls into the southwest room" (Doc 3 #4 Ex pg 3)

"My shots were not aimed directed, or anything. They were back-off shots for the two shots that came in immediately before that" Id 10/31/2002 PC Tr 45:25-46:2"

Quoted in Ground Four ARGUMENT pg 11.

The resulting prejudice from the undisclosed material exculpatory documents that trial counsel misrepresented; each and every TCCA affirmation of trial courts' post conviction denials passed on to lower federal courts.

CONCLUSION

The petition for a writ of certiorari should be granted: Petitioner's factual innocence claim should be heard. Respectfully submitted: Stephen B Wlodaj July 5, 2024