No. 24-5179

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FORREST HAMMOND, PRO SE — PETITIONER

vs.

TIM HOOPER, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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THE QUESTION PRESENTED

A Louisiana Executive Pardon of a felony sentence erases the criminal history and restores civil rights and liberties to a party.

An Executive Commutation of a party's felony sentence only:

1.) shortens the length or severity of the sentence;
2.) leaves a full criminal record history on file, and;
3.) disables that party from enjoying civil and social liberties subjecting such a party to prejudices for a lifetime due to a felony conviction.

The question presented is:

1. Whether the commutation of Petitioner's sentence to time-served ending his state custody before his pending federal habeas corpus application was adjudicated on the merits, and before appellant brief was filed, Petitioner's federal public defender unilaterally filed a motion to dismiss his appeal based on false news reports that Petitioner had been pardoned by the Governor of Louisiana rendering the appeal moot, terminates or suspends federal habeas corpus jurisdiction and a motion to recall the mandate should be granted, so as to not defeat Petitioner's appeal of his illegal state court alleged conviction where Petitioner never pled guilty from proceeding to a final disposition in accord with the ordinary procedures for Judicial Review?

RELATED CASES

The following are cases of Petitioner's co-defendants and related to this case arising from the same trial court within the meaning of this Rule 14.1(b)(iii):

STATE v. RAMSEY, No. 54052, 292 So.2d 708 (La. Sup. Ct. March 25, 1974); Louisiana Supreme Court ruled La. C. Cr. Proc. Art. 817 unconstitutional, as the legislature cannot divest the Governor of his constitutional powers by depriving the Governor of his right to commute sentences, an elementary and fundamental concept taught in high school civic classes.

HAYES v. MAGGIO, No. 82-3163, 699 F.2D 198 (5th Cir. March 10, 1983). In this case the Fifth Circuit held "... that a mistake has been committed." REVERSED AND REMANDED.

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Appendix-A: Opinion of U.S. Fifth Circuit Court of Appeals dated May 6, 2024, Case No. 79-4029, Petition for Rehearing En Banc. Fifth Circuit treats petition as a motion for reconsideration [5TH Cir. R. 35 I.O.P.] (Pet. App. infra, 1a). Fifth Circuit unpublished order, April 2, 2024, Motion to Recall Mandate (Pet. App. 2a). Motion for Leave to File Exhibits to Petition for Rehearing En Banc, order, May 6, 2024 (Pet. App, infra, 3a). Order, Mandate issued January 29, 1980 (Pet. App. 4a); Entry of Dismissal, January 29, 1980 (Pet. App. 5a). Motion to dismiss Appeal, filed January 21, `1980 (Pet. App. 6a-7a).

JURISDICTION

The Fifth Circuit issued its opinion on May 6, 2024. (Pet. App. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Introduction

Petitioner seeks CERTIORARI to review the order of the Fifth Circuit denying relief on a Motion to Recall the Mandate filed on January 17, 2024. The mandate was issued on January 29, 1980, in case number 79-4029, under the caption Forrest Hammond vs. Ross Maggio, Jr., Warden, in cv-77-254, USDC/MDLA. (See Pet. App. infra, 1a-9a).

This case involves the power of a Circuit Court to recall its mandate issued over four decades ago in a case that originated a half-century ago on April 10, 1973, in the capital city of Baton Rouge, Louisiana. Petitioner submitted proof that a fraud had been perpetrated upon the Court. The Fifth Circuit denied Petitioner's motion to recall its mandate and reinstate Petitioner's original appeal.

Background

1. On the evening of April 10, 1973, at approximately 7:30 PM., a very popular druggist, Billy Middleton, was fatally shot in his drugstore. WBRZ TV- Channel 2 News interrupted prime-time network viewing to announce the breaking news. This case instantly became high-profile. (Pet. App. 35a-36a) The Baton Rouge District Attorney, the presiding trial judge, and arresting detectives, and many other high-ranking City-Parish and State Governmental Officials were personal friends of Billy Middleton. (Pet. App. 37a) They visited Middleton's drugstore daily during the weekday. The majority of Baton Rouge elected officials graduated from Louisiana State University during the terms Troy H. Middleton was president from 1951 to 1962, and President Emeritus in 1973. The deceased Middleton was the nephew of Troy H. Middleton when this case was being prosecuted.

On April 12, 1973, Petitioner was seventeen years old, attended Capitol High School and was three weeks from graduating. In honor of his mother's home-state, he was preparing to attend Southern Illinois University (SIU) on a full four-year Athletic Scholarship Award he'd recently signed on February 7, 1973. (Pet. App. 44a)

At 6:30 A.M., April 12, 1973, over twenty marked and unmarked City Police cars and motorcycles filled the street from block to block as Detectives and uniform police officers surrounded 2929 Washington Avenue aiming their weapons. Two uniform city police officers accompanied Det. Sgt. Robert Gill who unleashed nine hard knocks to the front door. Daisy, Petitioner's youngest sister, opened the curtains, then ran telling her father a lot of policemen were in the front yard. Forest Martin,

Petitioner's illiterate father, met Det. Gill and the *uniform officers* at the front door. They entered the residence. A tall white officer held a pump shotgun in his hands. A short white officer held a .38 revolver in his left hand. Petitioner was told to get dressed. While doing so, from his bedroom, he heard Det. Gill ask Martin who the trophies on a display table were for. Martin attempted to dispel whatever caused the police force presence at his house and bragged on his son having just received a scholarship award to Southern Illinois University. Without Mirandizing or stating why he was being seized, Det. Gill handcuffed Petitioner in front of his father, Daisy, and Paul and Teresa, two teenagers. Martin protested asking Det. Gill "Why you putting handcuffs on my boy? Is he under arrest? Where's the arrest warrant?" Det. Gill said "Oh, no, no, no Mr. Martin. He's not under arrest. My supervisor said new Louisiana Insurance laws require anyone riding in the back seat to be handcuffed. You know how insurance laws always changing. Come get him in about an hour or we'll bring him back. We just need him at headquarters to look at some photographs. He's not under arrest Mr. Martin." Outside the house at the marked police unit, the tall uniform officer tightened the handcuffs to maximum tightness and grabbed Petitioner behind the neck and forcibly shoved him down into the back seat. As the car sped off Petitioner looked back seeing his family on the platform step watching him go away. Petitioner asked the tall officer if he could loosen the handcuffs because they were hurting his wrist. The officer swung around placing his face against the wire screen and said "*Shut the fuck up Nigger boy*! *You want me to get back there with*

you? You going where you're gonna be a queer today! You ready to be a queer Nigger boy? You gonna be a queer today Nigger boy!" Petitioner said nothing.

2. At the Police Station Petitioner was placed in a temp-cell and became surrounded by Det. Gill, Det. Johnson, Fred Blanche, III, ADA, James Thomas, Investigator for the DA's Office, and the two unknown uniform police officers threatening him as Det. Gill and Johnson questioned him at length for a "gun." A series of leave and return to attempt questioning Petitioner persisted for hours with Petitioner answering no questions or saying a word. Martin had arrived at the police station within an hour of his son's apprehension from home, but Det. Johnson, who was at the back steps, refused Martin access to see his son and told him to wait in the vestibule. After three hours, Det. Johnson approached Martin in the vestibule and informed him why his son was at police headquarters. "We can't get nothing out of him. He won't talk to us. Will you come in here with us. Maybe you can get something out of him. Martin was crying, emotionally overwhelmed and became critically sick as he was brought to Petitioner in the cell who, upon seeing him shouted asking if he was alright, believing Martin was having a heart attack.

When Det. Johnson aided Martin to the cell, he said to Petitioner, who was crying while holding his father's arm through the cell bars, "Look, *Forrest, we know you're worried about not going to college or losing your scholarship. You don't have to worry about that. Ramsey's trying to put all the blame on you, We already know he's the triggerman. All we need is the gun. Don't worry about not going to college on your*

scholarship. The Judge won't take you away from your schooling. I can guarantee you that. All we need is the gun."

3. **Detailed Substance of Petitioner's First Statement**

No Miranda Warning was given. Petitioner explained that:

"PeeWee (Clovers Lee Hayes, co-defendant) and I were at the curb by Carolyn Florist Shop on the corner of Plank Road and Pawnee Street waiting for the traffic light to turn red for Plank traffic. **(Pet. App. 66a** *Still of Plank Road/Pawnee Street Intersection with Drugstore on Corner*) "Boodie" (Alton Ramsey, co-defendant) "was walking pass the front of the drugstore going to the poolhall a half a block away at Jackson Street and Plank. The light turned red. I crossed the south lane of Plank Road going home, but five cars stalled me in the middle at the double yellow lines. **(Pet. App. 67a).** I heard Peewee calling me. I turned and saw he was still at the curb. The light turned green and Plank Road traffic stalled me in the middle of the street. Peewee was pointing and yelling at Boodie who had changed his mind and was standing at the front door of the drugstore, "Don't do it Boodie! Don't do it! He got three guns! A twenty-five in his right pants pocket! A thirty-eight on his work counter and a shotgun! Don't do it Boodie! Somebody gonna get hurt!"

Peewee turned towards me yelling "Forest! Come back! Come Back!" The traffic light turned red for Plank. I jogged through the cars to the curb and asked Peewee "What?" **(Pet. App. 68a).** Peewee saw Mr. Middleton unlock the front door and let Boodie inside. Peewee got hysterical. "Boodie gonna try to rob my boss! Forrest you gotta go stop him! You gotta go get him!" I asked Peewee "Why I gotta go get him? Why you can't go get him?" We could see Mr. Billy and Boodie through the front window from the angle where we were across Pawnee Street on the corner.

"He won't listen to me Forest! I can't tell him nothing! Somebody's gonna get hurt! I done seen him like this before. I'm telling you Forrest! Somebody gonna get hurt!" I took one step to cross Pawnee, but I came back asking Peewee again, "Now, why you can't go get him? I mean, like, just go over there and call him out." **(Pet. App. 69a).**

Peewee then explained "Mr. Billy be having me help him process loads of drugs. One night after I finished and was leaving out the back door, Mr. Billy surprised me and shook me down. He found a lot of his cocaine, heroin, acid and LSD on me. Them be the drugs I be giving away at school. Mr. Billy called Ossie Brown, Judge Lear and Det. Gill. They came and made me get in the car and drove on the interstate to the Hilton Hotel and brought me home. Det. Gills said if Billy ever sees my face around the store after I clock-out he was gonna arrest me. Ossie Brown said he was gonna charge me with theft of controlled substance. Judge Lear said "And I'm going to sentence your black ass to Angola for ten years." I can't let Mr. Billy see my face, Forest! I clocked out at six o'clock today."

I wore a Sly Stone colorful knit hat. I told Peewee "Look. You stay right here. Don't go nowhere. Stay here until I come back. Let me go over here and get this Negro." I crossed Pawnee and came to the right front window looking for Boodie and Mr. Billy, but I didn't see them. **(Pet. App. 70a).** So, I went to the door, opened it and said "HEY, BOO," but my call was cut-off. To my right, Mr. Billy was on his back on the floor. Boodie was sitting straddled on his chest hitting him on the head with a big heavy bottle. I yelled! "BOODIE! WHAT'CHA DOING? WHAT'CHA DOING? LEAVE THE MAN ALONE! COME OUT! GET OUT OF THERE! LET'S GO! LET'S GO!" Boodie said "I can't! I can't! I can't get up!" I felt uncomfortable as cars drove by. I stepped across the threshold. The door closed behind me.

4. Faulty Tape-Recorder Tactic[1]

At the end of the 15-20-minute interview, Det. Gill was having trouble getting the tape-recorder to play-back. He said the interview did not record. (Pet. App. 72a and 73a – During Ramsey's confession the Baton Rouge detectives used the faulty tape recorder tactic to turn "Soap" into "Desitin ointment"). They left to get another tape-recorder that worked. Petitioner waited alone for their return to the interrogation room for *one hour*. During that hour Det. Gill delivered the tape to Ossie Brown, DA, who along with Judge Lear and Joe D. Woods, Chief Investigator, and others, listened to the *first statement* in Judge Lear's chambers.

5. Second Statement is Captioned with Miranda Warnings

Det. Gill returned with another tape-recorder. Det. Johnson refreshed his scholarship promises. Det. Gill took a card out of his suit pocket and said, "*Now, before you give your statement, my supervisor said I need to caption the interview with the information on this card. It doesn't mean anything. You've already told us*

[1] (See. Pet. App. a, Tr. 22 - Ramsey Trial Transcript) where the faulty tape recorder tactic is employed to change Ramsey's statement from "**Soap**" to "***Desitin Ointment***."

what happened. When I ask you if any promises were made, just say no so what we're going to do for you is not recorded. We always do things like this to help people."

Miranda was read on the front end of the second taped-recorded statement.

6. Evidence of Promises Implied at End of 2nd Tape-Recorded Statement[2]

Petitioner repeated again what occurred at Middleton's Drugstore, however, the second interview was much shorter. Det. Gill directed Petitioner on points he wanted him to talk about by *cutting-in* saying, "Now tell me what happened ***[a]fter*** you went inside the store." Det. Gill's *cut-to-the-chase* questions bridged over the Pawnee Street Corner Discussion between Petitioner and Hayes. In effect, Det. Gill deleted by editing Hayes' account of the criminal activity operations going on at Middleton's Drugstore involving Det. Gill, Middleton, the District Attorney and Mr. Elmo E. Lear, 19TH Judicial District Court Judge and many others. (Pet. App. 37a, "*Several of the police detectives who came to the store to investigate said they had known Middlton personally. Coroner Hypolite Landry who came to the store to pronounce a shooting victim dead was shocked to learn it was Middleton who had been shot. He said he had known the druggist many years.*)

7. City Jail Booking Desk Threats of Lynching

At the City Jail Booking Desk, Det. Gill, Johnson and three white elder Sheriff Deputies, including Captain M.L. Hugh, and a young deputy name Sgt. Daigle, stood in silence after handcuffs were removed. *"They're all in your hands now. Y'all make sure you take good care of them,"* Det. Gill said and left with Det. Johnson.

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[2] See Two Statements - 1978 Federal Habeas Corpus Evidentiary Hearing Transcript pages 139:14-15; 141:2-25; 155:3-7; 160: 1, 14; 198:10-11.

After a quiet moment, a short elder white deputy standing behind the booking counter began to indelibly utter threats, shouting:

> *"You mother fucking low life Niggers! You the sons of bitches that killed Billy! HUH? Do you know y'all killed a GOOD WHITE MAN? Billy was A GOOD WHITE MAN, God-damn-it! Now, he's gone because of the likes of you two worthless pieces of shit! God-damn your Nigger fuckin'souls! Billy was worth 10,000 of you low life blue gum Nigger sons of bitches! I mean! I curse the black bitch mamie fucking whore wombs that birth your low-life Nigger fucking Asses into this world you Mother Fuckin Eggplants! I ought to lynch your fucking Nigger asses! That's what I ought to do! We use to hang you blue gum Niggers right up there! Right up there on them gallows, you see'em? If this was the '60s we'd hang your Nigger fucking asses! Fuck a trial! Right up there on them gallows, you see'em! You see? You see? Look'at'em! Look at'em! You Nigger mother fucker! Look at'em! Look at them Gallows, BOY! You low life Nigger son of a bitch. Fuck you! We've hung a bunch of you low life blue gums Nigger sons of bitches from that beam. We ought to lynch you too, you fucking Eggplants - killed Billy. If this was the 60's, you'd be a swinging mother fucker by now. When I roll and print your Nigger ass, I'm gonna use all my powers and skills so God can ID your black ass on Judgment Day. Come on, follow me you fuckin'Eggplants."*

The four deputies assaulted Petitioner with chemical mace blinding him and placed a black trustee inmate in the cell to rape Petitioner, however, a black-street-drug-dealer who was also in the cell who knew Petitioner as an athlete, attacked the trustee inmate and incapacitated him causing the deputies to get other trustees to take him out the cell on a stretcher. Petitioner was not raped thanks to the use of the drug dealer.

8. Motion To Suppress Hearing – May 18, 1973

Petitioner was indicted for murder on April 18, 1973. (Pet. App 33a). On April 19, 1973, Petitioner, represented by Vincent Wilkins, entered a plea of *"Not Guilty." (Pet. App. 34a).* On May 18, 1973, a Motion to Suppress Hearing was held before

Judge Lear. (Pet. App. 34a). Warren J. Hebert, Petitioner's first attorney was a recent law school graduate employed by the Baton Rouge Public's Defender's Office. Prior to the hearing, Mr. Hebert entered the court running late. His first meeting with Petitioner was a brief 3—4 minutes standing talk in the courtroom while Petitioner was still in handcuffs and shackles.

Before the conclusion of the *second recorded statement*, Mr. Hebert quotes and questions Det. Gill during the suppression hearing, to wit: Det. Gill asked Petitioner one last question. "**We asked you to give us a statement and it was free and you did it because you wanted to, is that right**?"

In view of the promises, Petitioner's conscience directed his answered, "**It will help me. Yes.**" (See Pet. App. 74a, 75a, 76a – M2Suppress Tr., Pgs. 37, 18, 19).

On. Page 18, Judge Lear testified for Det. Gill without Mr. Hebert objecting. Judge Lear denied the Motion to Suppress. Mr. Hebert reserved a bill of exception and told Petitioner he would seek supervisory writs to the State Supreme Court on the ruling because he believed the police officers were lying.

9. Martin Seeks Son's First-Statement From District Attorney

On Monday May 21, 1973, Mr. Joe D. Woods informed Martin down in the Courthouse parking lot that Petitioner had given two different taped recorded statements to Det. Gill that he listened to in his office. Martin, and a company of concern parties visited the office of Ossie Brown, District Attorney. Martin asked Ossie Brown about that first statement he was in possession of (which was the first statement Petitioner had given that he was told did not record. Det. Gill discreetly

lowered the volume). In Martin's discussion with Mr. Brown, he refers to Petitioner's first statement as "*testimony*." Martin explains what happened when he asked Ossie Brown about the other taped "*testimony*" or statement that his son had given. (Pet. App. 77a).

10. Co-Defendant Alton Ramsey's Trial

On June 4, 1973, Alton Ramsey, Petitioner's co-defendant, was taken to trial. Mr. Troy Middleton was present wherein Ramsey's confession was played, and he testified he shot Billy Middleton three times in the chest. At 6:00PM, trial was recessed for dinner for the State's last witness. (Pet. App. 78a – The Petitioner is being transferred from the Parish Prison to the City Jail above the Courthouse).

11. Third Collusion

Director Bell testified that what Mr. Hebert did was in violation of Public Defender Policy Directives Rule 6. Mr. Hebert arranged a meeting with the DA that caused Petitioner to be brought from the Parish Prison to the DA's office. Sgt. Daigle brought Petitioner to the office of Ossie Brown. Judge Lear and Mr. Hebert were present in a lounge waiting area. Mr. Hebert beckoned for Sgt. Daigle to bring Petitioner to him. Ossie Brown was on a phone. He and Petitioner saw each other when Petitioner was pushed by Sgt. Daigle to stop looking inside offices. Mr. Hebert extended his hand to shake and reintroduced himself **[a]gain**, saying "*I'm Warren Hebert. I represented you at the motion to suppress hearing, remember?*"

Petitioner looked at Mr. Hebert's hand and asked, "What's all this?" Mr. Brown rushed out his office holding a manila folder shouting to Mr. Hebert, "*Is he ready? Is*

he ready?" Four white female typist stopped typing. Judge Lear stopped flirting with an office secretary and stood with hands behind his back, flexing on his toes, glaring at Petitioner who turned to Mr. Hebert asking, "*What? Ready for what? Where the Dentist*[3] *at*?" Mr. Brown erupted into rants and rages shouting "*THAT'S ALRIGHT! TAKE HIM BACK! THE DEAL IS OFF! I DON'T NEED HIM! TAKE HIM BACK! THE DEAL IS OFF! THE DEAL IS OFF!* Mr. Brown rushed back into his office slamming the door behind him.

Sgt. Daigle took Petitioner and placed him in a jail cell upstairs on the State-Witness side. Mr. Woods (Petitioner's 5th Grade Teacher and Chief Investigator for DA's Office) visited him in jail cell, saying, "*Forrest, I think you made a big mistake.*" Petitioner agreed and added, "*Yeah Mr. Woods. I should have just kept walking going home.*" Mr. Woods interrupted, "*No Forrest. Warren didn't tell you? You were expected to testify against Ramsey.*" Petitioner explained he knew nothing about testifying against Ramsey and was under the impression he was coming to see a dentist. Mr. Woods expressed disgust, but before leaving he warned, "Forest I don't like how this is looking. I'm going see what I can find out. Now, hear me good. You watch your back, boy!"

At 10:00 A.M., on June 4, 1973, 54-days after his arrest, Alton Ramsey was convicted of the murder of Billy Middleton. Petitioner had not seen the June 5, 1973 Morning Advocate Newspaper reporting on the Ramsey trial. That morning when Petitioner and Ramsey were sitting in a paddy-wagon about to be taken back to the

[3] Petitioner was told he was going see a dentist before shackled and transported from the Parish Prison.

parish prison, Sgt. Daigle ran up the ramp and took Petitioner off and told the transport deputy that the DA's Office called and said "To hold back Hammond."

Petitioner was placed in isolation rooms from June 5, 1973 to mid-September 1973. One month prior to Petitioner's October 15, 1973 trial date, he was *reinserted* back into the Parish Prison unaware of what the newspaper had published about him concerning the Ramsey trial. In Paragraph 35, Gibbs Adam, Journalist, identified Petitioner by named as the *State's Star Witness* against Ramsey, which labeled Petitioner as a "*Rat.*" (Pet. App. 38a) In conformity with jailhouse customs, to wit: "*The only good Rat is a dead Rat,*" Petitioner was perceived as a "*Rat*"[4] by a 12-Man Jailhouse Thug Jury, including Ramsey, who held a Jailhouse Trial on Petitioner using the Morning Advocate Newspaper's paragraph 35 as prima facie evidence that Petitioner was voluntarily in bed with the DA for months and was a confirmed "Rat" who struck a deal with the DA and should be raped or die!

The State did not need Petitioner's testimony to convict Ramsey whose own confession as well as his testimony convicted him. To place Petitioner on the witness stand would be counterintuitive to the purpose Det. Gill took the second taped recorded statement of Petitioner. To place Petitioner on the witness stand would give Petitioner the freedom to testify about the Plank Road/Pawnee Street Corner Discussion about the illegal drug operation going on at Middleton Drugstore that Det. Gill bridged over during the taking of Petitioner's second taped statement, and the district attorney's office would not place himself and others in jeopardy by placing

[4] **See State v. Lynch, 655 So.2d 470 (La. Ct. App. 1995), relative to the threats of against a "Rat" witness.**

Petitioner on the witness stand in the Ramsey Trial to risk him explaining how it occurred that he was at Middleton's drugstore on April 10, 1973.

Consequently, Petitioner was brutally beaten, stabbed over 17-times with a kitchen knife and hospitalized at Earl K. Long Memorial Hospital[5] Emergency Room and committed for an unspecified number of days for severe injuries sustained in the East Baton Rouge *Parish Prison*. See Anthony Graphia's Letter dated October 31, 1973 at Pet. App. 25a. Martin testifies of his son's condition when he visited him in the hospital at Pet. App. 79a, Tr. 66-Lines 1-8).

The Morning Advocate newspaper knowing and intentionally published false, misleading statements that Petitioner *had entered into a plea-deal with Ossie Brown*, ("That's *the same DA prosecuting us*," thugs shouted during their attacks. "This Niggah's a fucking *Rat*. It's right here in the newspaper! You ain't no star-athlelte! You the State's-Star-Witness! *Shit on my dick or blood on my knife, motha fucka*," the clique repeatedly shouted. "Gonna testify for them good white folks against Boodie at his trial, huh Niggah," the clique shouted as they held Petitioner and brutally stabbed and beat him with a wood brush and medal garbage can lid in his face.

Mr. Hebert, who in effect, only handled the filing of motions for the public defender's office, violated Public Defender Policy Directive Rule 6 pertaining to pre-trial conferences with the district attorney's office which was implemented due to a great deal of criticisms of public defender lawyers talking to the District Attorney's Office and Judges about a client's case without letting the client know about the basis

[5] **See Pet. App. a, Tr. 65-66:1-8. 1978 Federal Habeas Corpus Hearing transcript.**

and terms of the conference. (See Pet. App. 80a). Mr. Hebert arranged for Petitioner to be brought to the meeting in the DA's office without any communication between Petitioner and Mr. Hebert, period, and he had just graduated out of law school!

12. **Mentally Incompetent[6] to Stand Trial or Enter a Plea**

Petitioner was represented by a total of three attorneys from the East Baton Rouge Public Defender's Office, including the Director, Murphy Bell, who talked with Petitioner's father on multiple visits to the Director's office, but never once visited or met Petitioner while in jail. On October 15, 1973, Court began at 9:00 AM. The courtroom was packed full with standing room only in the public audience area. Petitioner was brought into court in shackles, bent over walking with an abnormal gait. He was allowed to stand at the security gate and talk with his siblings and girlfriend who were examining his fully red blood-shot eyes, touching his facial scar tissue where stitches had been recently removed while being watched by the full audience of the courtroom. After 20 minutes of waiting on Mr. Bell to arrive, Mr. Callihan first made contact with Petitioner's father and took him in to the jury conference room. After twenty minutes Mr. Callihan asked the bailiff to bring Petitioner to the jury room. When Petitioner entered the jury room he immediately saw his father sitting at a table with one hand covering his face, crying. Petitioner asked his father what was wrong and why was he crying. He answered Mr. Callihan said he did not know where Mr. Bell was and that he was not prepared to go to trial alone, so Petitioner had to plead guilty. Then, Mr. Callihan began trying to explain

[6] (See Pet. App. a, Tr. 183:1-2 "I was messed up. I was not myself mentally." 175:14-19 - "I was in a daze."

to Petitioner he should plead guilty without capital punishment. He allowed Petitioner to read the 1972 West Law Title 14 Murder statute, but did not show the West Law *pocket-part update* issued monthly by West Law Publications that reflected the death penalty was abolished in June of 1972. (See Pet. App. 81a - Offense against the person. (Pet. App. 82a thru 86a). Mr. Callihan explained to Petitioner if he were found guilty by a jury that could subjected him to the death penalty that even the governor could not *commute his sentence.* Petitioner rejected the idea of pleading guilty and told Mr. Callihan he was not guilty and would not plead guilty, but wanted to go to trial as he and Callihan discussed the previous night in the jail for ten minutes the first time the two had met. Petitioner asked where was Mr. Bell, whom Petitioner had never met, but discovered he was in the courthouse but not the courtroom.

In the course of the next three hours, several parties would find their way into the jury room sent in at the direction of the District Attorney or Assistant District Attorney to speak with Mr. Callihan. Other parties found to know Petitioner were sent into the jury room to accomplish persuading him to plead guilty to the murder charge and not go to trial. The thrust to get Petitioner to waive going to trial was to protect the illegal narcotic drug operations going on at Middleton's Drugstore. Due to his trauma Petitioner experienced flashbacks and refused to listen to Mr. Callihan and left from talking to him and went and stood by a window staring at ships docked in the Mississippi River. Mr. Charles R. Woods, a white teacher of Capitol high school who supported co-defendant Hayes, was sent in by the District Attorney to persuade

Petitioner to plead guilty. When Petitioner stopped talking to Mr. Woods, Mr. Woods left the jury room and returned a few minutes later with Petitioner's football coach, Roman Bates, Jr. Coach Bates immediately told Petitioner that the people that sent him in to talk to him did so because they felt since he was Petitioner's football coach, Petitioner would listen to him. However, Coach Bates said he told them he could not tell Petitioner to plead guilty or tell him what to do with his life.[7] (Pet. App. 87a-91a). Mr. Anthony Graphia, ADA prosecutor testified that Petitioner received absolutely nothing out of the plea bargain under which he was being forced to accept. (Pet. App. 92a, Tr. 51:8-16).

Mr. Callihan rushed Petitioner into the Courtroom saying "We need to hurry. You don't want to make the Judge angry. Make up your mind." Mr. Callihan forced Petitioner into the courtroom to another round of chaos[8] that erupted.

When Judge Lear asked Petitioner to confirm what he'd been told by Mr. Callihan concerning *his wish to plead guilty*, Petitioner affirmed saying. "Yes, sir." This ignited hysteria in Petitioner's young brothers and two sisters. Sheriff bailiffs wrestled with Petitioner's sisters who were trying to cross the rail to get to their brother. Approximately ten deputies filed into the Courtroom with riot-shields and batons as Petitioner was being sworn in and was not paying attention to Judge Lear, but watching with concern as Sheriff deputies wrestled and struggled holding his siblings down similar to the way Petitioner was held down in the parish prison attempted aggravated rape attack upon him. Petitioner's mind was wrecked.

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[7] See Transcript of 1978 Federal Habeas Corpus Evidentiary Hearing testimonies.
[8] See 1978 Federal Habeas Corpus Evidentiary Hearing testimonies.

Judge Lear told Petitioner "*You can put your hand down*" at an instance long after Petitioner had been sworn-in. As Judge Lear was talking – asking questions, Mr. Callihan nudged Petitioner to "Stop looking over there and pay attention." Petitioner could not resist his concern for watching his siblings with deputies wrestling them, and other deputies standing en-garde positions pointing batons. More deputies filed into the court room with only batons and post-up in front of the students who were standing up and talking loud to the Court. Mr. Callihan kept leaning over saying "Pay attention to the Judge."

Petitioner turned his head and looked back facing Judge Lear who evidently had said something when Petitioner was distracted, and when Petitioner turned back looking at Judge Lear, he said nothing, but stared at Petitioner as if waiting for him to respond to a question Petitioner never heard or understood. Judge Lear just sat there staring at Petitioner and turned looking ahead at deputies struggle with Teresa Ann and other deputies facing-off with the red and gold side of the courtroom of Capitol High students shouting "Where's the trial? We wanna see a trial!" Judge Lear turned back to Petitioner as if waiting for a response. Petitioner realized Judge Lear must have said something or asked a question. At that point, Petitioner turned his head looking at Mr. Callihan standing to his left and asked, "*What did he say*?" Mr. Callihan stood mute and refused to answer the question. Mr. Callihan too, as well as everybody in the packed courtroom was watching the ruckus during which time Judge Lear was asking Petitioner lengthy questions casted in legal terminology that sounded like courtroom jargon. Petitioner did not hear or understand what was said

at certain points by Judge Lear during the Boykin colloquy.[9] It was chaotic! (See Pet. App. 26a thru 30a, Tr. Boykin's Examination Transcript of Colloquy).

13. **Failure of Court to Call Upon Petitioner to Enter a Plea.**

The Boykin[10] Transcript shows that Judge Lear, 1.) never informed Petitioner of his right to trial by jury; 2.) Sixth Amendment Right to Counsel; 3) Judge Lear never called upon Petitioner to enter a plea; 4.) Petitioner never waived his right to a jury trial; 5.) never waived his right to counsel, and 4.) Petitioner did not enter a ***PLEA OF GUILTY***.

14. Federal Habeas Corpus Application

Petitioner exhausted his state court remedies at State ex rel Forrest Hammond v. Henderson, 338 So.2d 301 (La. 1976) and State ex rel Forrest Hammond v. Maggio, 346 So.2d 1107 (La.1977).

On June 6, 1978, the Fifth Circuit issued a mandate ordering the District Court granting an Evidentiary Hearing on Petitioner federal habeas corpus. (Pet. App. 8a-9a). On August 14, 1978, Petitioner's unrefuted, unrebutted testimony of prima facie evidence that he did not enter a plea of guilty in the State trial court was ignored by the court below. (Pet. App. 93a, a94, 95a, Tr. 125 thru 127). The Federal Magistrate-Judge read it in the transcript and then asked Petitioner on two occasions whether he pled guilty and Petitioner answered that he never pled guilty as verified by what the Magistrate read in the Boykin's transcript. The magistrate himself said he did not see anywhere in the transcript where Petitioner pled guilty.

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[9] (See Boykin Examination Transcript at Pet. App. 26a – 30a).

[10] **Boykin v. Alabama, 395 U.S. 238, 243 (1969).**

Petitioner presented documentary and testimonial evidence throughout his testimony at the 1978 Federal Habeas Corpus Evidentiary Hearing concerning his incompetent state of mind on October 15, 1973 due to the beating he sustained that hospitalized him.[11] Mr. Callihan ignored the fact that he had a psychologically traumatized client with all the symptoms manifesting the unwilling and involuntariness of a guilty plea that was never entered. For one reason, due to the chaos transpiring in the courtroom, the trial court judge was distracted and never called upon Petitioner to enter a guilty plea. The district Court knew this.

15. Bias U.S. Magistrate-Judge

Petitioner testified at his motion to suppress hearing, as well as his father, that the arresting detectives made promises that he would continue on with his college football and track scholarship to Southern Illinois University if he gave a statement. On September 6, 1978, at the continued and second 1978 Federal Habeas Corpus Evidentiary Hearing during the course of Petitioner testifying concerning his habeas corpus claims, which involved him mentioning the scholarship he lost, the U.S. Magistrate-Judge scorned him from the bench on pages 363:20-25 thru 364:1-7.

16. Executive Clemency – Commutation of Sentence

On February 16, 1979, Petitioner was transferred from the Louisiana State Penitentiary at Angola to the Louisiana State Police Barracks in Baton Rouge by order of Gov. Edwin W. Edwards. Petitioner worked at the Governor's Mansion as a

[11] (See 1978 Federal Habeas Corpus Evidentiary Hearing Transcript Pages 383:12-25 thru 384:1-19. At Pet. App. a, a.)

butler serving the first family and part-time driver for the Governor. A mini-boxing-gym was erected in the bomb shelter boiler room of the mansion for Petitioner to continue his boxing training, as, he was the Light-Heavyweight Champion of the Louisiana Department of Corrections while he was in Angola. Petitioner was entered into an A.A.U. Boxing Tournament while he worked at the Mansion. (See Pet. App. 40a – A.A.U. Boxing Bouts Begin Tonight).

On January 16, 1980, Gov. Edwin W. Edwards granted Forrest Hammond Executive Clemency, to wit: a Commutation of Life Sentence to Time-Served. Petitioner was released from State custody and walked home. (Pet. App. 41a).

The *Baton Rouge Advocate* printed a small newspaper article the next day with a headline falsely stating "*Youth gets **pardoned** in murder*." (App. 42a) The content of the news article was false, inflammable, generated public anger, and caused anxieties throughout the city of Baton Rouge. Petitioner received a phone call from Mr. Williams at the Police Barracks informing that his life was in danger based on what he personally heard State Troopers discuss at the barracks gas pump. Petitioner received death threat phone calls at his father's home.

17. Motion to Dismiss Appeal Filed by Mr. G.K. Anding, Jr. (Pet. App. 6a-7a)

On January 18, 1980, Petitioner's court appointed Federal Public Defender, Mr. George K. Anding, Jr., drafted a Motion To Dismiss Appeal. Mr. Anding states in paragraph 1, that "There have been no briefs filed in this appeal." As grounds for dismissal, Mr. Anding alleged in paragraph 2, "As appellant has been pardoned by

the Governor of the State of Louisiana as to the conviction upon which this appeal was based, the appeal has been rendered **moot** and may now be withdrawn."

Unlike a full pardon, which would have restored all civil rights and liberties, a commutation of a sentence subjected Petitioner to adverse collateral consequences against his civil rights, liberties and privileges. For example, a commutation allows for a positive criminal background check to be returned and disqualifies Petitioner from obtaining certain employment opportunities on the basis of a 1973 felony conviction. (Pet. App. 96a & 97a: Background Check.

Copies of Mr. Anding's Motion To Dismiss Appeal were cc:'ed to Judge West, Judge Parker, and Judge Polozola. No notice or copy of this action was sent to Petitioner. In fact, Mr. Anding filed the Motion To Dismiss Appeal without Petitioner's knowledge or consent is misrepresented as being a voluntary dismissal. Petitioner did not find out about the entry of dismissal until multiple decades later. During the interim Petitioner was pre-occupied with avoidance, staying alive, getting married, raising his family of six children and staying away from trouble undercover police agents were always directing to him.

Petitioner submits that the Fifth Circuit Local Rule 7, was not complied with by Mr. Anding not communicating with Petitioner concerning whether or not he consented to a voluntary dismissal of his pending appeal. (Pet. App. 64a). Had Mr. Anding contacted Petitioner to discuss dismissing his appeal, Mr. Anding would have discovered that Petitioner first of all, did not receive a pardon as was published by the news media statewide and as he alleged in his motion. Secondly, that Petitioner

had only been granted a commutation of his sentence to Time-Served. Because of the commutation of sentence, as opposed to a pardon, Petitioner had adverse collateral consequences he would suffer that could be rectified by a judgment of Fifth Circuit vacating and setting aside his alleged conviction and sentence. The Court should find it strange that there is nothing in the District Court's records under CV-77-254, USDC/MDLA, of Mr. Anding or the court below communicating with Petitioner concerning the dismissal of his appeal. Petitioner contends that a fraud had been perpetrated upon the Court below and that the court erred in denying Petitioner's motion to recall the mandate and reinstate his appeal or vacate the conviction and sentence.

No copy of the mandate was ever served upon Petitioner by certified mail from the U.S. 5TH Circuit Clerk as were served on other interested parties. This fact is reflected on the January 29, 1980 letter of the mandate. Petitioner had absolutely no knowledge of this action by Mr. Anding. Had Petitioner known, he would have objected and instructed Mr. Anding to stand down and allow his appeal to progress forward because Gov. Edwin W. Edwards only granted Petitioner a ***commutation of sentence and not a pardon.***

18. Chronic Post-Traumatic Stress Disorder

In 2003, 2008 and 2019, Petitioner was diagnosed with Chronic Post Traumatic Stress Disorder by three separate psychiatrists. The 2019 mental C-PTSD diagnosis and evaluation is incorporated and fully alleged herein. Dr. Haley's evaluation report. (Pet. App. 48a thru 56a – Exhibit A).

19. Good Faith Due Diligence

The 19TH JDC Clerk of Court records show that Petitioner was not silent for 44-years. In good faith Petitioner has attempted to rectify his problem. On November 20, 2023 at 2:13 PM, Petitioner received a call on his cell-phone from Mr. Daniel Murray, Staff Attorney for the Hon. Fred T. Crafisi, 19TH Judicial District Court, Division H - Section 1, Baton Rouge. Consequently, Petitioner took action by writing a letter on December 5, 2023 to the U.S. Fifth Circuit Court of Appeals Clerk inquiring about having his appeal reinstated in Case No. **79-4029** – Forrest Hammond vs. Ross Maggio, Jr., Dist. Ct. No. CA **77-254-A**. A Fifth Circuit deputy clerk informed Petitioner he needed to **file a *motion to recall the mandate***. Petitioner filed that motion on January 17, 2024 accompanied with a one-hundred (133) thirty-three-page Appendix referred to throughout the motion. (: Pet. App. 57a thru 60a, Exhibit B - Affidavit of Forrest Hammond; and (Pet. App. 61a, Exhibit C – Minute Report of 19TH Judicial District Court); and (Pet. App. 62a – 63a, Exhibit D – Motion to Vacate filed October 31, 2023, and Supplemental Memorandum filed November 15, 2023).

On no occasion did Mr. Anding ever contact Petitioner to inquire whether he wanted the motion filed in his pending case, or to informed Petitioner of his intent to file this motion. Mr. Anding obtained neither direct consent to file this motion to dismiss his appeal or a statement from Petitioner that he wished to voluntarily dismiss his appeal.

REASON FOR GRANTING THE PETITION

Petitioner's Appeal Was Not/Is Not Moot.

In **Carafas v. LaVallee**, 391 U.S. 234 (1968), and cases cited therein, this Court held that:

"On account of ... collateral consequences, the case is not moot." Pp. 391 U.S. 237-240. The issue presented is "Whether the expiration of petitioner's sentence, before his federal habeas corpus application was finally adjudicated and while it was awaiting appellate review, terminates federal jurisdiction with respect to the application." This Court held that:

(a) *Because of the "disabilities or burdens [which] may flow from" petitioner's conviction, he has "***a substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him.**" Pet. App 96a-97a.

(b)* Under the federal habeas corpus statutory scheme, once federal jurisdiction has attached in the District Court, it is not defeated by petitioner's release before completion of the proceedings on the (habeas corpus) application.** *See* ***Fiswick v. United States, 329 U. S. 211, 329 U. S. 222 (1946). Pp. 391 U. S. 237-238, Pp. 391 U. S. 237-238. The fact that his sentence of imprisonment has been served ***does not render moot a review of the conviction***..." Though the federal habeas corpus statute requires that the applicant be "in custody" when the habeas corpus application is filed, the relief that may be granted is not limited to discharging the applicant from physical custody, the statute

(28 U.S.C. sec. 2243) provides that, "the court shall . . . dispose of the matter as law and justice require."

The likelihood of a successful appeal is seen in **Clark v. Bertsch**, No. 3:10–cv–110, 2011 WL 9977236 (D.N.D. Sept.12, 2011), (Pet. App. infra, CAPTION A) where the petitioner Clark appealed to the U. S. Eighth Circuit from the dismissal of his 28 U.S.C. sec. 2254 habeas corpus petition. What is relevant and indistinguishable is the issue of there being 'no plea of guilty entered' by the defendant Clark in the state trial court. The North Dakota Supreme Court rejected Clark's argument, finding that "the totality of the circumstances **evinced** an intent to enter a plea of guilty." State v. Clark, 783 N.W.2d 274, 276–77 (N.D.2010). In Clark's initial federal habeas proceeding, an Eighth Circuit Federal District Court granted habeas relief and vacated Clark's conviction and sentence for the 2007 offense because there had been no actual entry of a guilty plea. The District Court held in Clark that: "**The fundamental question now before this Court is whether one can be sentenced for a crime to which no plea of guilty has been entered and no trial resulting in a conviction has been held. The answer is NO.**"

Pages 125 thru 127 of the 1978 Federal Habeas Corpus Evidentiary Hearing Transcript, Magistrate Judge admits his understanding that Petitioner did not enter a plea of guilty and repeatedly is manifestly shocked at the discovery, stating that he doesn't understand how this could be. On page 126 of the hearing transcript, furthermore, the Magistrate Judge admits his understanding that the state court

judge did not/had not called upon Petitioner to enter a plea. Therein the Magistrate concedes the truth, but in the face of facts he rhetorically speaks to the guilty plea throughout the hearing and denies due process and equal protection in violations of the U.S. Constitution 14th Amendment. See Pet. App. 45a thru 47a, Affidavit of Louisiana's former four termed Governor Edwin Washington Edwards.)

Another case under the umbrella of the Eighth Circuit is **State v. Wester**, 204 N.W.2d 109 (N.D. **1973**), that Court held: "**A defendant's expression of guilt, in order to constitute a plea of guilty, *must be made in response to a question by the court as to how the defendant pleads* and must be couched in language indicating that the defendant is formally making a plea rather than merely making an informal and spontaneous statement as to his guilt.**"

> "It has become obvious ... we are confronted with a ***unique*** situation when because of the *confusion on the part of all concerned*, including **trial judge**, **prosecuting attorney**, **defense attorney**, and **defendant**, no plea of guilty, either oral or in writing, was entered by the defendant or his counsel, and ***no plea was asked for by the judge or the prosecuting attorney***. Without at least ***a request for a plea, it is impossible*** *to presume* ***that a plea has been entered.*** **A plea is necessary in every criminal case and *where none is entered the trial is a nullity*.**" See Lumsden v. State, Tex.Cr.App., 384 S.W.2d 143, Willis v. State, 389 S.W.2d 464 (1965). People v. Sturdy, 235 Cal.App.2d 306, 45 Cal.Rptr. 203 at 206, 207, (1965), and ***Boykin v. State of Alabama*** 395 U.S. 238 (June 2, 1969).

Due to adverse realities Petitioner suffered, and the avoidance symptom of Chronic PTSD, his pursuits have been overwhelmingly challenging. Mr. Anding did

not have the right nor authority to unilaterally file a motion to dismiss the appeal without first consulting with Petitioner to get the facts straight about his release. See Mackey v. Hoffman, 682 F.3d 1247, 1252-53 (9th Cir. 2012). See ***Holland v. Florida***, 130 S. Ct. 2549, 2568 (2010) "Under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him.

Petitioner has received adverse rulings that have been handed down to defeat his claims through the decades including the ultimate unilateral decision to dismiss Petitioner's appeal by his attorney that denied him Judicial Review, thus, suspending the protections of habeas corpus after Federal habeas jurisdiction had attached. As Martin said to Petitioner often, "*Right is right and wrong is wrong. When you're right, you're right, and when you're wrong, you're wrong. I am right. You are wrong.* Am I right?"

CONCLUSION

Petitioner respectfully submits that his petition for a writ of certiorari should be duly granted.

Date: July 24, 2024.

Respectfully submitted by,

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