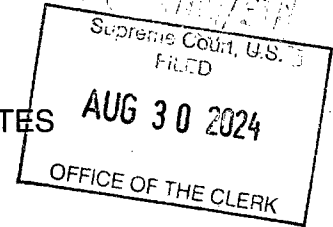


No. 24-5469

IN THE
SUPREME COURT OF THE UNITED STATES



CARL WESLEY MOTT — PETITIONER
(Your Name)

vs.

PAUL SCHRIEBER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Carl W. Mott #193734
(Your Name)

Woodland Center Correctional Facility
(Address)

9036 E-M36, Whitmore Lake, MI 48189
(City, State, Zip Code)

(Phone Number)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	16
CONCLUSION	27

INDEX TO APPENDICES

APPENDIX A: Sixth Circuit's order denying Certificate of Appealability, Mott v. Schrieber, No. 23-2012 (6 th Cir. June 04, 2024)	15
---	----

APPENDIX B: District Court's opinion and order denying petition for writ of habeas corpus, Mott v. Rewerts, No. 1:22- CV-876 (W. D. Mich. Oct. 18, 2023)	13, 18
--	--------

APPENDIX C: Michigan Supreme Court order denying leave to appeal on collateral review of state court judgment, People v. Mott, No. 163390 (Mich. May 03, 2022) and denial of motion to reconsider. (Mich. July 28, 2022)	11
---	----

APPENDIX D: Michigan Court of APPEALS order denying leave to appeal on collateral review of state court judgment, People v. Mott, No. 356426 (Mich. App. June 16, 2021) and denial of motion to reconsider. (Mich. App. July 22, 2021)	10
---	----

APPENDIX E: Berrien County Circuit Court opinion and order denying collateral Post-conviction relief from state court judgment, People v. Mott, NO. 16-003281-FH (Berrien Cir. Ct. NOV. 02, 2020)

..... 10

APPENDIX F: Michigan Supreme Court order denying leave to appeal on direct appeal of state court judgment, People v. Mott, NO. 158419 (Mich. Feb 04, 2019) and denial of motion to reconsider (Mich. May 28, 2019). 9

APPENDIX G: Michigan Court of Appeals opinion affirming state court judgment and sentence, People v. Mott, NO. 338923 (Mich. APP. JULY 24, 2018). 9

APPENDIX H: Petition for writ of habeas corpus supporting mem. of law, (draft version due to lost petition) Mott v. Rewerts, NO. 1:22-CV-876 (W.D. Mich. filed on Sept, 21, 2022). 12, 19

APPENDIX I: Motion for evidentiary hearing, Mott v. Rewerts, NO. 1:22-CV-876 (W.D. Mich. filed w/ habeas petition) (draft version due to lost motion). w/ request for discovery. 12

APPENDIX J: Trial transcripts pages 342, 343, 342. Benton Township complaint and warrant, trial trans. page 316. 4

APPENDIX K: Trial trans. day I, Pages 137, 142, 143, 144, 145, ... 5, 6, 22

APPENDIX L: Trial trans. day I, Pages 250, 262, 263, ... 6, 7

APPENDIX M: Trial trans. day II, Pages 291, 308, ... 7, 8

Petitioner asks this Court, that, he requested a copy of his Berrien County Circuit Court opinion and order denying collateral Post-conviction relief alluded to in Appendix E. Petitioner's copy was lost. Petitioner did not realize he no longer had a copy until a week prior to his writing this writ.) May Petitioner send in the copy when he receives it from the Berrien Court?

TABLE OF AUTHORITIES CITED

Cases	Page
Alcorn v. Smith, 781 F.2d 58, 59-60 (6 th Cir. 1986)	20
Bell, 535 U.S. at 696	25
Brewer v. Williams, 430 U.S. 387 (1977)	26
Campbell v. Vaughn, 209 F.3d 280, 287.	20
Cardwell v. Greene, 152 F.3d 331, 338.	20
Coleman, 399 U.S. at 9.	25
Coleman v. Thompson, 501 U.S. 722 (1991)	26
Cone v. Bell, 535 U.S. 685 (2002)	25
Gravelly v. Mills, 87 F.3d 779 (6 th Cir. 1996)	26
Gunner v. Welch, 749 F.3d 511 (6 th Cir. 2014)	26
Hamilton, 368 U.S. at 53	24
Martinez v. Ryan, 132 S.Ct. 1309 (2012)	26
McQuiggen v. Perkins, 133 S.Ct. 1924 (2013)	26
Missouri v. Frye, 566 U.S. 134 (2012)	26
Murray v. Carrier, 477 U.S. 478 (1986)	25
Penson v. Ohio, 488 U.S. 75 (1988)	24
Richter v. Bradshaw, 498 F.3d 344, 351 (6 th Cir. 2007)	21
Townsend v. Sain, 312 U.S. 293, 312-13; 83 S.Ct. 745; 9 L.Ed2d 770 (1963)	17

Wade, 388 U.S. at 225	24
White, 373 U.S. at 60	24
William v. Taylor, 529 U.S. 420, 437; 146 L. Ed 2d 435; 120 S.Ct. 1479 (2000)	18, 20, 21

STATUTES AND RULES

28 U.S.C. § 1254(i)	3
28 U.S.C. § 2253(c)	3, 16
28 U.S.C. § 2254	17
28 U.S.C. § 2254(e)(2)	18
28 U.S.C. § 2254(e)(2)(A)-(8)	20
Rule 8	20
Mich. Ct. Rule 7.208(B)	23, 25
U.S. Const. Amend. V	16
U.S. Const. Amend. VI	16
U.S. Const. Amend. XIV	16

LIST OF PARTIES

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

RELATED CASES

QUESTION(S) PRESENTED

- I. DID THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENY MR. MOTT'S REQUEST FOR A CERTIFICATE OF APPEALABILITY IN THIS HABEAS CORPUS CASE WHERE JURISTS OF REASON COULD CLEARLY DEBATE WHETHER MOTT WAS DENIED HIS FIFTH, SIXTH, AND FOURTEENTH CONSTITUTIONAL DUE PROCESS RIGHTS TO CONFRONTATION, AND THE EFFECTIVE ASSISTANCE OF COUNSEL, AND DID THE COURTS PREVENT MOTT FROM DEVELOPING A FACTUAL RECORD WHEN THEY DENIED HIM AN EVIDENTIARY HEARING?
- II. SHOULD THIS HONORABLE SUPREME COURT GRANT MR. MOTT CERTIORI OR IN THE ALTERNATIVE REMAND FOR AN EVIDENTIARY HEARING WHERE MOTT CAN SHOW THE INEFFECTIVE INTERPRETATION AND THE DENIAL OF COUNSEL WHO WAS EFFECTIVE AT TWO CRITICAL STAGES?

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

☒ For cases from **federal courts**:

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

☒ reported at NO. 23-2012 (6th Cir. June 04, 2024); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☒ reported at NO. 1:22-cv-876 (W.D. Mich. Oct 18, 2023); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☒ reported at 2022 Mich. Lexis 1468 (Mich. July 28, 2022); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Berrien County Trial Court court appears at Appendix D to the petition and is

☒ reported at Lost Berrien Trial Court order; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 04, 2024.

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

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 03, 2022.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: July 28, 2022, and a copy of the order denying rehearing appears at Appendix C.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1254(1):

Cases in the Court of appeals may be reviewed by the Supreme Court by . . . writ of Certiorari granted upon the Petition of any Party to any Civil or Criminal Case, before or after rendition of judgment or decree.

28 U.S.C. § 2253(c):

(1) Unless a Circuit Justice or Judge issues a Certificate of appealability, an appeal may not be taken to the Court of appeals from —

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State Court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under Paragraph (1) only if the applicant has made a substantial showing of the denial of the denial of a Constitutional right.

(3) The certificate of appealability under Paragraph (1) shall indicate which specific issue or issues satisfy the showing required by Paragraph (2).

STATEMENT OF THE CASE

Petitioner, Carl W. Mott, was arrested and charged in connection with the larceny of a picnic table and first degree home invasion that was reported to have occurred at 4550 Manor Rd., in Benton Township Michigan. This was initially a report on the theft of the picnic by farm owner Dustin Skibbe. One of Skibbe's migrant farm hands called his boss to report a theft of the table in progress at around 11:00 p.m. on July 26, 2016.

Two days later, Benton Township Detective Smit went out to the migrant farm and spoke with the elder Correa, a Spanish only speaking person, (without an interpreter) and claimed in his report that Mr. Correa stated that, "he had seen a bald headed looking through his cabinets." (See Appendix J, Complaint and warrant) However, when asked about this at trial, states Kos witness, Mr. Correa testified that he had never said anything like that to the detective. (See Appendix J, Trial Transcript Vol. II Pg 343- Lines 1-4) Det. Smit was questioned about this also, and he testified "it was a slight discrepancy." (See Appendix J, Trial Transcript Vol. II Pages 342-343-lines 25 + 1-3) Petitioner declares that this "slight discrepancy" is the reason he was charged with the home invasion to begin with and that this has an interpretation issue from the start.

on day one of trial, the trial court had interpreter Mr. Ugalde on the stand for voir dire. During questioning, Ugalde admitted to going over everything when he stated, "Today when I was going over everything with him again in the room, they use different words for - for words that we use. Like screendoor, they call it something different you know." (See Appendix K, Trial Transcripts Vol. I Page 137-Lines 4-7)

Then interpreter Ugalde admitted that he was ~~there~~ for the witnesses and was there to make sure their story's matched up, when he stated, "No, I simply was there for them before, so I know, when I read the story rid ... upstairs, I could literally go through it and see exactly that it matched what we said before. I mean, I know the whole process of what happened. Does that make sense?" (See Appendix K, Trial transcript Vol. I Page 142-Lines 6-10)

There were three indications that Ugalde did not plan to or was incapable of doing word for word translation of the States two key non-English speaking witnesses, (1) because he knew what had happened and (2) he would make sure the witnesses testimony matched up, (3) that he had always been free to paraphrase before, none of these things were objected to by appointed trial counsel, nor did counsel ask or move for a

a more neutral, Certified interpreter, especially when interpreter Ugaldes admitted to the Court he had failed the oral part of of the Certification test twice (the oral part includes the simultaneous word for word translation) (See Appendix K, Trial transcript Vol. I Page 143, - Lines 15-22).

The trial court was concerned about the interpreters over familiarity with the witnesses and their testimony, which the trial court addressed stating, "and two, that, because of your familiarity with the case and the testimony of what they said, I don't want you to change or say, 'well, he didn't say that before,' or to -- to paraphrase because you what these individuals previously may have said." (see Appendix K, trial transcript, Vol. I Pages 144-145 - Lines 23-25 and 1-2)

Interpreter Ugaldes however, did exactly what he was admonished for, he went on to give his own explanation of what the witness meant or giving his own meaning, Interpreter, "He said 'Got - he said, 'got on the truck,' literally, and its again, colloquialism, he means, in. So I repeated the "on" for what he said." (see Appendix L, Trial trans. Vol. I, Page 250 - lines 20-24) Again, trial counsel failed to object and trial court did not correct or instruct the jury that was the interpreter giving meaning, not the witness.



Interpreter Ugalde was once again explaining or giving his own meaning to what the witness was saying, Interpreter: "I--I need to clear something up. Camionisa, its also a colloquialism, when we speak Camionisa in Spanish, it means, station wagon, but in their terminology it means a truck with the back end open. So I keep saying truck, he keeps on stay'n (sic) station wagon. So I wanna make sure we're clear that the word is truck." (See Appendix L, trial trans. Vol. I Pages 262-263-lines 23-25 and 1-3) Again, no objection from trial counsel.

On the second day of trial, interpreter Ugalde once again was explaining or giving meaning to what the witness was saying, Interpreter: "Because, in Spanish they call it the bar because its a place where they have the horses. Where they used to have like, a bar by it, so they grew up with a bar, where you hooked the horses. So he used them both inner-- inner-- interspersed. So he's clarifying." (See Appendix M, trial trans. Vol. II Page 29/-lines 1-6)

On day two, the interpreter was continually talking at the at the same time as the witnesses and the attorneys and even the Court. so much so that the Court stenographer said so to the Trial Court whom admonished interpreter Ugalde. (See Appendix M, trial trans. Vol. II Page 305- Lines 10-24).

There was some confusion as to what one of the witnesses had said. So without being asked, interpreter Ugalde stated, "I - I have it all." "He said he waited for his son to come, he heard screams outside, saw the lights of the truck from the boss shine in that direction, he assumed it was the boss, and he said, so he just calmly went back over making sure his sons were okay, he just stayed there, Pat, hoping that his son would come back in to let him know what was going on. He said, then, that was all." (See Appendix M, trial trans. Vol. II Page 308 - lines 12-18) Again, trial counsel failed to object, even though this was complete hearsay and paraphrasing.

After the initial objection to the paraphrasing and summarizing, trial counsel, did not again object to any of the examples of interpreter Ugalde's paraphrasing, summarizing, or giving his own meaning to a witnesses testimony. The examples above are just a few of the violations of Petitioner Mott's Fifth Amendment due process right to confront his accusers. To list them all would be cumulative.

Petitioner Mott, has timely appealed at every stage and opportunity, beginning with his appeal of right, where through his appointed appellate counsel, Dana Carron, and a standard brief, argued that, "There was insufficient evidence to convict of home invasion, Court error in denying his request to strike a juror for cause, and

that his trial counsel was ineffective for failing to object to the use of an uncertified foreign language interpreter by the state. (See Appendix G, Michigan Court of Appeals opinion affirming state Court judgment of conviction and sentence, People v. Mott, NO. 338923 (Mich. APP. July 27, 2018)) In its opinion the Appellate in reference to the "insufficient evidence" issue, stated, "the jury could "infer" that defendant entered the house. (See Appendix G, Michigan Court of Appeals opinion affirming state Court judgment of conviction and sentence, People v. Mott, NO. 338923 (Mich. APP. July 27, 2018 - Page 2 - 4th paragraph)

Petitioner then timely submitted for leave to appeal in the Michigan Supreme Court raising the same three issues through attorney Kristina Dunne. The Supreme Court summarily denied Petitioner leave to appeal. (See Appendix F, Michigan Supreme Court order denying leave to appeal on direct appeal of state Court judgment and sentence, (Mich. Feb. 04, 2019 and denial of motion to reconsider, May 28, 2019)) Also through attorney Dunne, a motion for reconsideration was filed and summarily denied.

Petitioner Pursued Collateral Post Conviction Motion for Relief from Judgment raising six additional issues, first, the denial of his constitutional right to confront his accusers due to an ineffective interpreter, the denial of his right to the effective assistance of counsel on direct appeal, prosecutorial misconduct, including Brady violations, trial court errors which denied him a fair trial, ineffective assistance of trial counsel, and the improper scoring of his PRV's and OV's and improper 4th habitual. Petitioner asked for a binther hearing, oral arguments and a new trial, which the trial court denied [REDACTED] November 02, 2020, (see Appendix E, Berrien County Circuit Court and opinion and Order Denying Collateral Post-conviction Relief from State Court Judgment. People v. Mott, No. 16-003281-FH Berrien Circuit Court. NOV. 02, 2020)

Petitioner filed a timely delayed application for leave to appeal in the Michigan Court of Appeals and a motion for reconsideration, raising the six issues raised in relief from judgment, however, the Court of Appeals summarily denied leave and reconsideration. (See Appendix D, Michigan Court of Appeals order denying leave to appeal on collateral review

of State Court Judgment, People v. Mott, NO. 356426 (Mich. App. June 16, 2021) and Denial of Motion to Reconsider (Mich. App. July 22, 2021).

Petitioner sought leave to appeal the denial in the Michigan Supreme Court which was also summarily denied along with a motion for reconsideration, which was also denied. (See Appendix C, Michigan Supreme Court Order denying leave to appeal on collateral review of state Court Judgment. People v. Mott, NO. 163390 (Mich. May 03, 2022) and Denial of Motion to Reconsider (Mich. July 28, 2022).

On September 21, 2022, Mr. Mott filed a Petition for Habeas Corpus in the United States District Court for the Western District of Michigan, raising eight issues/grounds to grant habeas Corpus in his case. Two grounds from his direct appeal, insufficient evidence, and failing to raise a juror for cause, plus the ineffective assistance for failing to object to the non-Certified interpreter from his standard 4 brief. Mott raised the six additional grounds from his collateral appeal, (1) defendant was denied his right to confrontation due to an interpreter unable to properly translate, (2)

ineffective assistance of counsel on direct appeal, (3) prosecutorial misconduct and errors shifted the burden of proof onto defendant, (4) prosecutor failed to present sufficient evidence to prove guilt beyond reasonable doubt of 1st degree home invasion, (5) trial court errors denied defendant a fair trial, (6) defendant was denied the effective assistance of trial counsel, (7) counsel was ineffective in failing to investigate and argue inaccuracies in habitual charge and in proper scoring of PRU's and OU's. (See Appendix H, Petition for Writ of Habeas Corpus Supporting Memorandum of Law (draft version due to lost Petition), Mott v. Rewerts, NO. 1:22-cv-876 (W. D. Mich. filed on September 21, 2022). Petitioner also submitted a motion for an evidentiary hearing, requesting that an audio of the translated testimony be produced and played for a professional interpreter so that a factual record may be made upon which the Court can make a fully informed decision as to his confrontation, and both the effectiveness of trial and appellate counsel. (See Appendix I, Motion for Evidentiary hearing, Mott v. Rewerts, NO. 1:22-cv-876 (W. D. Mich. 2023) Petitioner only has a draft version to show Court due to loss of original. The Western District Court of Michigan,

denied the Petition, stating, "The Court found that a reasonable jurist could not conclude that this Court's dismissal of Petitioner's claims was debatable or wrong. Therefore, the Court will deny Petitioner a certificate of appealability. Moreover, although Petitioner has failed to demonstrate that he is in custody in violation of the Constitution and has failed to make a substantial showing of the denial of a constitutional right, the Court does not conclude that any issue Petitioner might raise on appeal would be frivolous. Citing, Coppedge v. United States, 396 U.S. 438, 445 (1962). (See Appendix B, District Court's opinion and order denying Petition for writ of habeas corpus, Mott v. Rewerts, No. 1:22-cv-876 (W.D. Mich. October 18, 2023, Page 50).

Petitioner filed a Petition for a Certificate of Appealability arguing that the Western District of Michigan Plainly erred when it summarily denied Plaintiff's/Petitioner's request for an evidentiary hearing where Mott could have shown through request audio of the interpreted testimony the lack of word for word translation denying him his Constitutional

Right of confrontation, by an interpreter who was incapable of performing proper translation according to Michigan and Federal Court Rules. If Petitioner would have been granted the requested evidentiary hearing, he could have also shown ineffective assistance of both trial and appellate counsel, and that there was insufficient evidence to convict of home invasion.

Petitioner, along with denial of an evidentiary hearing, claimed he was denied his right to confrontation, ineffective counsel on direct appeal, prosecutorial misconduct, insufficient evidence, trial court errors denying a fair trial, and ineffective assistance of trial counsel.

Petitioner ultimately argued that he should be granted a certificate of appealability on his first ground, violation of his constitutional right to confrontation. Petitioner's theory is that, since there was absolutely no physical inculpatory or exculpatory evidence, no photo, D.N.A., fingerprints, no video, no eyewitnesses to anyone illegally entering the migrant house ing. There were only inferences to a persons best guess. Therefore, any one of the errors complained of were the cause of conviction.

The United States Court of Appeals denied Mott his Certificate of Appealability, claiming Mott did not make a substantial showing of a constitutional violation or denied a constitutional right. (See Appendix A, Sixth Circuit's Order Denying Certificate of Appealability:

Mott v. Schrieber, NO. 23-2012 (6th Cir. June 04, 2024)

Mr. Mott asserts that he is entitled to proceed on appeal to the United States Court of Appeals for the Sixth Circuit with respect to ground one, violation of Petitioner's constitutional right to confront his accusers. Mott also contends that due to the lack of physical inculpatory or exculpatory evidence presented at trial, his remaining grounds would have been prejudicial enough to cause a jury to convict. In other words, there was nothing probative about the state case,

Mr. Mott asserts he is entitled to proceed on appeal, and he petitions this Court for permission to do so.

REASONS FOR GRANTING THE PETITION

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY PETITIONER FAIR PROCESS IN HIS PETITION FOR WRIT OF HABEAS CORPUS AND CERTIFICATE OF APPEALABILITY, WHERE PETITIONER WAS UNABLE TO HAVE AN EVIDENTIARY HEARING TO FURTHER HIS FIFTH AND SIXTH AMENDMENT VIOLATION CLAIMS BASED ON THE RECORD, DENYING PETITIONER THE ABILITY TO DEVELOP A FACTUAL RECORD, WHERE JURISTS OF REASON COULD CLEARLY DEBATE WHETHER MOTT WAS DENIED FOURTEENTH AMENDMENT DUE PROCESS RIGHTS TO A FAIR TRIAL.

MR. MOTT raised eight grounds for relief in his Petition for writ of habeas corpus in the District Court. Mr. Mott has made a substantial showing of the denial of the Constitutional due process rights given as required by 28 U.S.C. § 2253(c)(2), with respect to ground one of his habeas Petition, which alleges that Mott was denied his Fifth Amendment right to confrontation due to an ineffective interpreter who was incapable to perform a neutral, word for word translation.

of the states Key non-English speaking witnesses. Petitioner Mott was denied an evidentiary hearing first by the state courts and then the District court, which denied Mott the ability to advance and prove his factual allegations. Petitioner Mott also showed that these errors were prejudicial and prevented him a fair and impartial trial where there was clearly no physical inculpatory or exculpatory evidence presented by the state as to the home invasion. The state's evidence was purely testimonial from two Spanish speaking witnesses. Therefore, word for word was crucial.

Petitioner contends the District court failed to consider whether an evidentiary hearing would be meaningful, in that, whether an evidentiary hearing would have the potential to advance Petitioner Mott's claim. This Court, in Townsend v. Seain, 312 U.S. 293, 312-13; 83 S. Ct. 745; 9 L. Ed 2d 770 (1963) explains: "In deciding whether to grant an evidentiary, a federal court must consider whether such a hearing could enable an applicant to prove the petitioner's factual allegations, which if true, would entitle the applicant to federal habeas relief. Because the different standards prescribed by § 2254 control whether to grant habeas relief, a federal court must

take into account those standards in deciding whether to grant or deny, or whether an evidentiary hearing is appropriate.

Petitioner Mott was unable (due to the court's refusal to grant an evidentiary hearing), to develop the factual basis for his claim and an evidentiary hearing is not barred under § 2254(e)(2) where Petitioner was unable to develop the factual basis despite diligent efforts in the State Courts. Petitioner Mott has been very diligent in his pursuit to develop a factual basis in the State Courts and should be granted a hearing. See William v. Taylor, 529 U.S. 420, 437; 146 L.Ed 2d 435; 120 S.Ct. 1479 (2000).

The District Court claims Petitioner Mott did not show any evidence of mistranslated testimony by interpreter ugalde in his Petition for habeas corpus, and concluded that Petitioner's claim in ground one does not entitle him to habeas relief. (See Appendix B, District Court's Opinion and Order Denying Petition for Writ of habeas Corpus, Mott v. Rewerts, No. 1:22-cv-876 (W.D. Mich. Oct. 18, 2023, Page 15) The District Court's claim that Mott showed no evidence of mistranslation to the Court is simply not true. Mott showed the District Court the same evidence that he has shown this Court in his statement

Of Case, Pages 5 thru 8. Petitioner also showed the District Court in his Petition a big majority of the Paraphrasing, and mistranslated testimony Pages 12-20. (See Appendix H, Petition for writ of habeas Corpus Supporting Memorandum of Law, (draft version due to lost Petition), Mott v. Rewerts, No. 1:22-cv-876 (W.D. Mich. filed on September 21, 2022, Pages 12-20).

It is "Certworthy" to note that the State's Key Witnesses Spoke no English and therefore required an interpreter. As such Petitioner Mott, nor his trial Counsel, Prosecutor, or trial court Spoke Spanish. So it was vitally important that the interpreter followed the rules and performed a word for word translation of what was said in English to the witnesses and what was said in Spanish to the Petitioner, attorneys and the Court. These two key witnesses were the only witnesses to offer any evidence testimonial or otherwise as to the alleged home invasion in the Pre-lim and trial, since the State had no inculpatory or exculpatory evidence to offer, No Finger Prints, D.N.A., no Video, or Pictures, only objected to Pictures taken 50-60 days after the incident. The State had to rely solely on this mistranslated testimony to convict Mott.

Petitioner Mott has shown more than "conclusory" allegations and "bald" assertions of interpreter Ugalde's misconduct, and ineffectiveness. Mr. Mott has shown the need for an evidentiary hearing to prove his factual allegations, and that an evidentiary hearing would have the potential to advance his claims which would provide clear basis for habeas relief.

Under Rule 8 "Court's focus on whether a new hearing would be meaningful, in that a new hearing would have the potential to advance Petitioner's claim. Campbell v. Vaughn, 209 F.3d 280, 287 (3rd Cir. 2000) (discussing Cardwell v. Greene, 152 F.3d 331, 338 (4th Cir. 1998); See also Alcorn v. Smith, 781 F.2d 58, 59-60 (6th Cir. 1986).

The structures of § 2254 (e)(2)(A)-(8) do not apply where [a Petitioner] has not failed to develop - i.e., has been diligent in developing - the factual basis of his claims in State Court. See Robinson, 663 F.3d at 829 (citing [***] Michael Williams v. Taylor, 509 U.S. 420, 432; 120 S.Ct. 1479; 146 L.Ed 2d 435 (2000)). "Diligence... depends upon whether the prisoner made a reasonable attempt, in light of the information available at the time,

to investigate and Pursue Claims in the State Courts." Michael Williams, 529 U.S. at 435. "A Petitioner whose efforts to develop his Claims were rebuffed by the State Courts may still be deemed 'diligent.'" Richter v. Bradshaw, 498 F.3d 344, 351 (6th Cir. 2007) (Quoting Michael Williams, 529 U.S. at 435).

Along with the requests for an evidentiary as to the interpreter, Mott requested the hearing as to trial counsel and appellate counsel. Petitioner believes he can show he was denied the effective assistance of counsel at a "critical stage", i.e., voir dire of interpreter, and appellate counsel in appeal of right. (See APPENDIX I, Motion for Evidentiary hearing, Mott v. Reworks, NO. 1:22-CV-876 (W.D. Mich. filed w/ habeas corpus)

WHY REMAND IS NECESSARY

Here, in this present case, the record will show that Petitioner's Conviction was based solely on the testimony and interpretation of an uncertified interpreter. Because this issue was never properly addressed on direct review, Petitioner Mott raised the claim in post-conviction motion for relief, of how trial and appellate counsel were ineffective at critical stages

in the criminal process. If this Honorable Court reviews the record de novo, the record will show that the interpreter in this case has always been free to paraphrase his interpretations. The record will also show that this particular interpreter was not certified, had failed the oral section of the certification test twice, and was incapable of doing word for word translation. (See Appendix K, trial trans. Vol. I, Page 143 lines 15-22)

The record also reveals the trial court was concerned about the interpreters over familiarity with the witnesses and their testimony which the court made a small attempt to address. (See Appendix K, trial trans. Vol. I Pages 144-145-lines 23-25 and 1-2).

Here, in this critical pre-trial stage, trial counsel failed to object to the interpreters severely prejudicing the case. Petitioner, at every opportunity has tried to have the case remanded back to the lower court to conduct an evidentiary hearing to expand the record to show this Honorable Court Petitioner Mott's Fifth and Sixth Amendment violations.

Here, the Sixth Circuit erred in their ruling denying a Certificate of Appealability, where the issue of ineffective assistance of trial and appellate counsel was never adjudicated

on the merits. In order for this Court to see the Constitutional violations, we must look at the steps Appellate Counsel took. Here, the record shows that two critical stages in the initial criminal process was ignored. First by trial counsel at the pre-trial stages where trial counsel failed to hold the prosecution to an adversarial process by not challenging the interpreter before proceeding to trial, and, second, the record will also show Appellate Counsel failed to seek remand because of trial counsel's deficient performance, thus Appellate Counsel was deficient at a critical stage.

For this Court to fully understand how Petitioner was prejudiced on direct review, we must look at the whole record. Appellate Counsel failed to raise ineffective assistance of trial counsel pursuant to Mich. Ct. R. 7.208(b) to to expand the record, which denied Petitioner the opportunity to have the trial court address the claim properly. Petitioner has never been able to conduct an evidentiary hearing pursuant to Ginter 390 Mich. 436, to fully develop the record to show the Sixth Amendment violation by having the audio of the translated testimony played in court to

Show that the interpreter was giving his views instead of conveying exactly what the states non-English speaking witnesses ~~were~~ testifying to. We don't even know if the interpreter was conveying what was asked in English to the witnesses properly.

In Penson v. Ohio, 488 U.S. 75 (1988), this Court stated:

"When a defendant has been denied effective assistance during a critical stage on appeal, under such circumstances no specific showing of prejudice is required, because the adversarial process itself is presumptively unreliable."

A critical stage presents a moment when available defenses may be irretrievably lost, if not then and there asserted. Hamilton, 368 U.S. at 53. A critical stage is one where rights are preserved or lost. White, 373 U.S. at 60. Counsel's assistance is guaranteed whenever necessary to mount a meaningful defense. Wade, 388 U.S. at 225.

Determination as to whether a hearing is a critical stage requiring the provision of counsel depends upon an analysis whether potential substantial prejudice to defendant's rights inheres in the confrontation and the

ability of counsel to help avoid prejudice. Coleman, 399 U.S. at 9. And a critical stage holds significant consequences for the accused. Bell, 535 U.S. at 696.

In Murray v. Carrier, 477 U.S. 478 (1986) this Court reaffirmed that the right to effective assistance of counsel, may in a particular case be violated by even an isolated error. And in Mott's case here, we are dealing with direct review, where in Michigan, the Court rules allow an appellant to proceed back to the trial court to expand the record before proceeding into the Court of Appeals pursuant to Mich. Ct. R. 7.208(B) which is vital in any appeal.

In Cone v. Bell, 535 U.S. 685 (2002) this Court held that, a critical stage is one that holds significant consequences for the accused in a criminal proceeding. Here, in Petitioner's instant case, appellate counsel, by passing Mich. Ct. R. 7.208(B) procedural rule to expand the record, hampered Petitioner Mott the ability to preserve the issue properly. A State Prisoner who fails to comply with a State's procedural rule does not waive the right to Federal habeas review if he can show cause for non-compliance and actual prejudice or

actual innocence from the alleged constitutional violation, see McQuiggen v. Perkins, 133 S.Ct. 1924 (2013) or can show that a fundamental miscarriage of justice has occurred. Coleman v. Thompson, 501 U.S. 722 (1991); Gravelly v. Mills, 87 F.3d 779 (6th Cir. 1996) Also see the ruling from the Sixth Circuit in Gunner v. Welch, 749 F.3d 511 (6th Cir. 2014) following Martinez v. Ryan, 132 S.Ct. 1309 (2012) that said:

"It is common ground that an attorney's error during an appeal on direct review may provide cause to excuse a procedural default, for if the attorney appointed by the state to pursue direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with state procedures and obtain an adjudication on the merits."

It is well settled that the right to the effective assistance of counsel applies to certain steps before trial. The Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings. See Brewer v. Williams, 430 U.S. 387 (1977); Missouri v. Frye, 566 U.S. 134 (2012).

Conclusion

WHEREFORE, for the forgoing reasons, Petitioner Mott asks this Honorable Court to grant Certiorari in this case and remand this matter to the United States Court of Appeals for the Sixth Circuit for full appellate review of the issues complained of in Mott's writ of habeas Corpus as to ground one, two, and six, or in the alternative, remand down to the lower court for an evidentiary hearing before appellate review.

Respectfully Submitted,

Date: 8/28/ 2024

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