NO. 24-6895

IN THE UNITED STATES SUPREME COURT

Herbert LaVonne Wiggins,
Petitioner,

V.

Bobby Lumpkin, Director,
Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS

Petition For Writ of Certiorari

Herbert L. Wiggins
Pro-se Petitioner
T.D.C.J.-ID# 01370636
Gib Lewis Unit HSE-120B
777 F.M. 3497
Woodville, Texas 75990

Question(s) Presented

(1) When did the law pass, saying the courts do not have to adjudicate the merits on a writ?

(2) How can a court refuse to adjudicate on the merits and deny newly discovered evidence?

(3) How can a court turn a blind eye to petitioner's writ when he has shown newly discovered evidence and has merits in his 60(b)?

(4) How is it that the state and federal courts can fail to determine facts under a 60(b), when they;
(1) neglects to make a finding of facts when it has the duty to do so;
(2) Makes factual findings under an incorrect legal standard;
(3) uses a "defective" procedure for finding the facts;
(4) Misstates the record in making findings of facts; and
(5) ignores evidence that supports the petitioner's claims;
(6) ignores the exhibits petitioner presented with his 60(b) and COA:

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

In The United States District Court
Northern District of Texas
Dallas Division
NO: 3:23-cv-(2598-D

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Petition For Writ of Certiorari To
The Fifth Circuit Court of Appeals;

The Petitioner, Herbert Wiggins, respectfully prays that a writ of Certiorari issue to review the judgment and unpublished order of the fifth circuit court of Appeals, rendered in these proceedings on Aug. 13, 2024.

Opinion Below

The Fifth Circuit Court of Appeals dismissed petitioner's COA for procedural grounds in Cause No. 24-10430. The unplublished order is in the appendix to this petition at page A1, infra. The refusal by the Fifth Circuit, Court of Appeals denying petitioner's "petition for rehearing Application of Appealability" is unjust. The rehearing to the court is marked page A2, infra.

Jurisdiction

The unpublished order of the Fifth Circuit, Court of Appeals was entered on Aug. 13, 2024. Petitioner did not receive the Fifth Circuit, Court of Appeals unpublished order until Aug. 21, 2024. A timely motion to that court for rehearing was denied by the court of appeals, on ~~Aug. 28~~ Sept 6 HW, 2024. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

Statutory and Constitional Provisions Involved

The following statutory and constitutional provisions are involved in this case.

U.S. Const., Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him, to have the courts to adjudicate the merits of his case, and to have assistance of counsel for his defence.

U.S. Const. Amend XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside, no state shall make or enforce any law which shall abridge the privileges or immunties of a citizen 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.

(a) The Supreme Court, a justice thereof, a circuit Judge, or a district court shall entertain an application for a 60 (b) in behalf of a person in custody pursuant to the judgment of a state court only on the grounds that he is in custody in violation of the constitution or laws or treaties of the United States.

(b)(1) An application for a 60(b) on behalf of a person in custody pursuant to a judgment of a state court shall not be granted unless it appears that --- (A) the applicant has exhausted the remedies available in the courts of the states; or

(B)(i) there is an absence of available corrective process; or (ii) circumstances exit that render such process ineffective to protect the rights of the applicant.

(2) An application for a 60 (b) motion may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the court of the state.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the state, within the meaning of this section, if he has the right under the law of the state to raise, by any available procedure, the question presented.

(d) An application for 60(b) motion on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim ---

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.
(E)(1) In a proceeding instituted by on application for a 60(b) motion by a person in custody pursuant to the judgment of a state court, a determination of a federal issue made by a state court shall be presumed to be correct.
(2) If the applicant has failed to develope the factual basis of a claim in state court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that---
(A) the claim relies on---
(i) a new rule of constitutional law, made retroactive to cases on colleteral review by the Supreme Court, that was previously unavailable; or
(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found applicant guilty of the underlying offense.
(f) If the applicant challenges the sufficiency of the evidence, of the evidence adduced in such state court pro-

ceedings to support the state court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the suffiency of the evidence to support such determintion. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the state shall produce such part of the record. If the state cannot provide such partinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the state court's factual determination.

(g) A copy of the official records of the state court, duly certified by the clerk of such court to be a true copy of a finding, judicial opinion, or other reliable written indicia showing such factual determination by the state court shall be admissible in the federal court proceeding.

Statement of the Case

On May 12, 2006, Petitioner, Wiggins pleaded not guilty to sexual assuatt of a child in Ellis County, Texas. See, State v. Wiggins, Case No. 29883 CR. Following a jury trial, Wiggins was convicted and sentenced to life imprisonment, in Texas Department of Criminal Justice. Petitioner then filed a direct appeal, and on July 11, 2007, petitioner's conviction and sentence were affirmed. See, Wiggins v. State, 10-06-00134-CR, 2007 WL 2004962 (Tex. App.-Waco). On January 4, 2010 petion-

er Wiggins filed a writ of habeas Corpus under 28 U.S.C. § 2254. See, Wiggins v. Thaler, NO. 3:10-cv-61-N (N.D. Tex.). On December 14, 2010, the District Court denied the petition on the grounds that issues were unexhausted in the lower courts. The first petition was dismissed due to premature and unexhausted remedies. That petitioner then filed a second § 2254 showing: (1) Newly discovered evidence that shows and prove that in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found petitioner guilty of the offence. That in 2018 the Ellis County court officials were fired and indicted for their wrongs and corruption in the courts. That the lower Courts refuse to adjudicate on the merits and newly found evidence produced by Wiggins, and continues to dismiss on anything, but the merits of the case.

Reason for Granting The Writ

The Fifth Circuit, Court of Appeals refused to acknowledge that there has been no adjudication on the Merits of petitioner's case in the state courts. In Miller v. Johnson, 200 F.3d 274 (5th Cir. 2000); accordingly, review is de novo when there has been no clear adjudication on the merits. Nobles v. Johnson, 127 F.3d 409, 416 (5th Cir. 1997); The court's must determine whether

petitioner claims were adjudicated on the merits by considering these factors, (1) what state courts have done in similer cases; (2) whether the case history suggest that the state court recognized any ground for not resolving the case on the merits; (3) where the state courts opinions suggest reliance on procedural grounds rather that an adjudication of the merits. This is a fundamental miscarriage of justice as no state court much less the Federal Courts have looked at or adjudicated on any merits pretaining to petitioner's case. Petitioner has shown that the state courts resolution of his constitutional claims was "contrary to" or "involved" an unreasonable application of a Supreme Court precedant. For the simple reason that in adjudication of petitioner's 5th, 6th, and 14th amendment claims along with the prosecutorial misconduct and attorney's misconduct, all courts have failed to apply the law was contrary to federal law as clearly established by decisions of the United States Supreme Court. All courts have failed to apply the law of the land which they themselves has made, they broken their own laws by doing all the above. For these reasons; a writ of certiorari should issue to allow petitioner's merits to be adjudicated by the state courts and federal courts and the Fifth Circuit, Court of Appeals.

The Court of Appeals denied petitioner's application for certificate of appealability on petitioner's 60(b) motion. To obtain a COA, Wiggins must make "a substantial showing of a denial of a constitutional right," 28 U.S.C. § 2253(c)(2): Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); The Court of Appeals denial of Wiggins COA was wrong. Petitioner filed a 60(b) motion not a successive habeas petition. Even if it were, the Supreme Court in Slack v. McDaniel, 529 U.S. 473, 484 (2000): NONE of our cases---have ever suggested that a prisoner whose habeas petition was dismissed for failure to exhaust state remedies, and who then did exhaust those remedies and returned to federal court, was by such action filing a successive petition, but a first petition. "Stewart v. Martinez-Villareal, supra at 644. A petition that has been dismissed before the district court adjudicated any claims to be treated as "any other first petition" and is not a second or successive petition. The district court denies relief on procedural grounds, a COA should issue. Because petitioner have showed the Court of Appeals that he was denied his constitutional right. by presenting exhibits A and B with the writ, COA. Plus, the Court of Appeals, Judge said, petitioner got procedurally barred out of the district Court on unexhausted remedies, this is not true. Petitioner

were denied because of unexhausted and premature remedies without prejudice. Slack v. McDaniel, 120 S. Ct. (2000): Since petitioner's petition was demissed without an adjudication on the merits, the federal habeas petition was not a second or successive petition, but a true 60(b) motion and should have been treated as a 60(b). So the Court of Appeals should have issued a COA and adjudicate on the merits of the 60(b) motion. See Smith v. Bounds, 813 F. 2d (4th Cir. 1987); the attorney's neglect in this case was serious and unexcusable. Gross neglect and abondoning of client by attorney creates an exception to rule, that a client is bound by the acts of an attorney, and also constitute extraordinary circumstances permitting relief from a judgment under Rule 60(b)(6). A motion under rule 60(b) should be granted when appropriate to accomplish justice. And because petitioner did not freely select his attorney, but attorney was appointed by trial court. The Supreme Court addressed this in Swift, supra. To permit this judgment to stand, in light of attorneys conduct and the absence of neglect by counsel, would be unjust. A motion under rule 60 (b) should be granted, such is appropriate to accomplish justice. The abandonment of Wiggins attorney constitutes extraordinary circumstances permitting relief from the judgment under

rule 60(b). [A] sound discretion hardly comprehends a pointless exaction of retribution. Dismissals for misconduct attributable to a clients attorney, should in no [way] penalize the innocent of his client. The public confidence in the legal system is undermined when a litigant's claim is dismissed due to the blameworthy actions of their counsel, the litigant does not have recourse in such a case unless the court give him relief. Under this circumstances justice would require that the district court and Court of Appeals should have reached a decision on the merits. In Younger v. Gilmore, 404 U.S. 15 (1971): this court held per curiam that such services are constitutionally mandated. Thus to deny adequate review to the poor means that they could lose their life, liberty or property, because of unjust convictions, such as this case. This hope, brought about in 1215 the royal concessions of Magna Charta; "To no one will we sell, to no one will we refuse, or delay, right or justice. No free man shall be taken or imprisoned, or disseised or outlawed, or exiled, or anywise destroyed; nor shall we go upon him, nor send upon him, but by the "lawful" judgment of his peers, or by the law of the land." These pledges were unquestionable steps toward a fairer and equal application of criminal justice. Our own consti-

tutional guaranties petitioner's due process and equal protection, both call for procedures in criminal trials which allow no invidious discriminations between persons. Both equal protection and due process emphasize the central aim of our entire judicial system. Petitioner has shown by Newly discovered evidence that was fraud by Ellis County officials. The new evidence where his trial counsel traded petitioner for another client to the prosecutor. But these courts are turning a blind eye to Wiggins claims and are breaking the laws that they themselves have made. See Miller v. Johnson, 200 F.3d 274 (5th Cir. 2000); see on adjudication on the merits: (HN3) Accordingly, section 2254(d) applies only to issues that have been adjudicated on the merits in state court. Review is de-Nova when there has been no clear adjudication on the Merits. Nobles v. Johnson, 127 F.3d 409, 416 (5th Cir. 1997); The courts must determine whether Wiggins claims were adjudicated on the merits by considering all the factors. This is a fundamental miscarriage of justice, because no court must less the state courts has adjudicated Wiggins Merits of his case. Wiggins, has showed that the state courts resolution of his constitutional claim was "contrary to" or "involved an unreasonable application of" Supreme Court precedent. For the simple reason that in adjudi-

cating petitioner's sixth amendment claim, the state courts entirely failed to apply the law pertaining to constructive denial of the right to counsel. Due to the state courts resolution of petitioner's sixth amendment claim was "contrary to" federal law as clearly established by the decision of the Supreme Court. Wiggins, note that his claims premised on several of the courts best-known decisions in the field of constitutional criminal procedure. Wiggins did not receive a counsel at his trial, nor any other time, because of the above reasons. Miller v. Johnson, 200 F.3d 274 (5th Cir. 2000); Under Texas law a denial of relief by a court of Criminal Appeals serves as a denial of relief on the merits of a claim, therefore, due process is done, by not adjudicating the claims. Therefore petitioner's 14th amendment rights was violated. This alone should warrant petitioner to be issued a COA from the Court of Appeals, Fifth Circuit. Prosecutorial Misconduct that rises to a level of a due process violation does not require an objection to be preserved for appeal under Texas law. Review is de-novo when there have been no clear adjudication on the merits. Nobles v. Johnson, 127 F.3d 409, 416 5th Cir. 1997): A petitioner is entitled to a certificate of appealability if he makes "a substantial showing of the denial of a constitutional right." 28

U.S.C. § 2253 (c)(2). The Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 893 (1983); held this means that the appellant need not show the he would prevail on the merits, but must "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issue [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 537 U.S. 322, 338 (2003);. Therefore, doubts as to whether to issue a certificate of appealability should be resolved in favor of the appellant. Fuller v. Johnson, 114 F.3d 491, 495 (5th Cir. 1997); Buxton v. Collins, 925 F.2d 816, 819 (5th Cir. 1991); Buie v. McAdory, 322 F.3d 980 (7th Cir. 2003); If a ground was dismissed by the District Court on procedural grounds, a COA must be issued if the petitioner meets the Barefoot standard as to the procedural question, and shows, at least, that jurists of reason would find it debatable whether the ground of the petition at issue states a valid claim of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 483-84 (2000);. Petitioner, has made and demonstrated a prima facie showing, by presenting exhibits A & B to the courts. Petitioner has shown "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and the facts underlying the claim, if proven and viewed in light of the evidence as a whole,

would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offence. The Court of Appeals, Fifth Circuit misconstrued petitioner's request for authorization to file a 60(b) motion, and COA to challenge his conviction. With the newly found evidence showing the fraud upon the court by the official of Ellis county and his trial counsel, as they were not exposed until 2018, and petitioner found out in 2021 of their firing and being indicted. Petitioner's following issues of the corruption and violations of the Ellis county officials and appointed attorney during petitioner's trial and false conviction has continued through out these years, with how many more corrupted trials and innocent individuals wrongfully convicted by these officials.

(1) Misstate, Inadvertence, Surprise, or excusable:

Due to attorney Jenkins "Misstakes" and Inadvertence, petitioner were convicted. By giving petitioner misadvise on not excepting the plea of six months in county jail and ten years probation. Petitioner was prejudiced by this misadvice by counsel, because petitioner had a meritorious defence. Petitioner counsel's unexcusable neglect is the reason petitioner

came to prison. Because of counsel's negligence "there is a especial need to apply rule 60(b) liberally. Petitioner have a sixth amendment right to effective assistance of counsel during trial and pleabarging. Missouri v. Frye, 132 S.Ct 1399 (2012); Lefler v. Cooper, 132 S.Ct. 1376 (2012); This is excusable neglect on petitioner's part.

(2) Newly Discovered Evidence;

This newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Fed. R. Civ. P. 59(b). Because the evidence was not known until after 2021 and this is such that a new trial would probably produce a different result. Because petitioner's counsel traded him to the prosecutor for another client. All of the Ellis County officials were fired and indicted for wrong doings, and they did the something to Wiggins in 2006, United States v. Newell, 315 F.3d 510, 515-25 (5th Cir. 2002); Strickland v. Washington, 104 S.Ct, 2052 (1984); Petitioner did not move for new trial under Fed.R.Civ.P. 59 (b) because he did not know about this at the time of trial. This deprived petitioner of his liberty and the conviction was unconstitutionally unfair to his rights as required by his sixth amendment rights. This conflict of interest that springs not from Multiple

clients represantation, but from a conflict between the attorney's personal interest than that of his client. A showing that an actual conflict adversely affected counsel's performance is not only unnecessary, it is often an impossible task, as the court emphasized in Halloway v. Arkansas, 98 S.Ct. 1175 (1978); but the client takes the impact of this illegal conflict at hand. Halfield v. Scott, 306 F3d 223, 230 (5th Cir. 2002); United States v. Hall, 200 F.3d 962 (6th Cir. 2000); United States v. Cronic, 104 S.Ct. 2039 (1984); In re Santa Fe Intl. Corp. 272 F.3d 705, 710 (5th Cir. 2001);

(3) Fraud, Misrepresentation, or Misconduct:

The fraud upon the court by the officials in Ellis county, Texas and court appointed attorney. "whether heretofore denominated" "intrisic or extrisic" is a misrepresentation of petitioner's counsel and misconduct by the prosecutor is illegal and should be set aside. For the prosecutor to commit fraudulently prosecutorial misconduct is a disgrace to the Texas and United States justice system and to the constitution. Under 60(c)(1)(d)(3); This rule does not limit a courts power to set aside a judgment for fraud upon the court. See 60(b)1-3; Pedroza v. Nolomas Auto Mall, Inc., 304 F.R.D. 307; A court cannot deprive a petitioner of his judgment without a proper hearing. A district

court must reserve such strong medicine for instances where the defaulting party's misconduct is correspondingly egregious. In calibrating the scales the judge should carefully balance the policy favoring adjudication on the merits with competting policies such as the need to maintain institutional integrity and the desirability of deterring future misconduct. Shepherd v. ABC, 62 F.3d 14-69: The inherent power encompasses the power to sanction attorney or party misconduct, and includes the power to enter a default judgment. Fraud exist where attorney "conspired with the prosecutor to trade petitioner Wiggins for another client." The "involvement of an attorney as a officier of the court in a scheme to trade a client should certainly be considered fraud upon the court." Thus, Jenkins and the prosecutor deliberately traded petitioner for another client, then both of them participated in the fraud, the conviction should be set aside and dismissed. Tampering with the administration of justice in a manner indisputably shown here involves far more than an injury to a single litigrant, it is wrong against the institution set up to protect and safeguard the public institutions in which fraud cannot complacently be tolorated consistently with order of society... The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception,

and fraud.

(4) Judgment, Relief From Judgment:

For the foregoing reason, this honorable court should set aside the judgment, because therefore the judgment is void and redress. As provided in Fed. R. Civ. P. 60(b) that a motion and upon such terms as are just, they may relieve a party or a legal representation from a final judgment, order, or proceeding.

(6) Any Other Reason Justifying Relief:

Sentencing:

Due to the fact that petitioner's counsel did not advise him of his sentencing exposure, that petitioner could get a life sentence. Had petitioner known this, he would have excepted the plea of six months in county and ten yrs. probation. Also petitioner's counsel did not object to his sentencing to life in prison. Smith v. United States, 348 F. 3d 545 (6th Cir 2003); Douglas v. Wainwright, 714 F.2d 1532 (11th Cir. 1983); Under U.S. sentencing guidelines Manual § 2L 1.2(b)(1)(C): petitioner was given a wrong sentence. The district court of Ellis county, Texas erred in treating petitioner's, Tex. Penal Code Ann. § 22.01 (a), assault conviction

as an "aggravated felony" under U.S. sentencing guidelines Manual §2L1.2(b)(1)(C): as it was not a crime of voilence under 18 U.S.C.S. §16: and thus was not an aggravated felony under 8 U.S.C.S. §11.01(a)(43)(F): Because the offence described in Tex. Penal Code Ann. § 22.01(a)(1) could not be classified as a felony under either state or federal law, the prior conviction did not satisfy 18 U.S.C.S. §16(b)'s definition for a crime of violence, the eight-level enhancement was eror. United States v. Villegas-Hernandez, 468 F.3d 874 (5th Cir. 2006): The district court erred in applying an eight-level sentencing enhancement, because petitioner was not or has never been convicted of a prior conviction, so therefore, is not a "crime of violence" as defined for this purpose by the United States sentencing guidelines, so accordingly petitioner's conviction should be set aside. Because petitioner was convicted, because the prosecutor used a prior assault charge, not a conviction. Prosecutor could only use a prior conviction to enhance petitioner's sentence to level-eight. Therefore, violating petitioner's legal rights as well, plus the jury gave petitioner a life sentence, not aggravated life, this was not brought up in the trial. The jurors or the judge, nor prosecutor pronounced anything during trial about this being an aggravated sentence. The court just added this after court was over, This made the aggravated assaultt,

illegal and void. United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005);

(6)(2) Trading Clients:

Petitioner's counsel traded him to the prosecutor for another client. Petitioner's counsel traded "Wiggins" to the prosecutor in order to bring his "Paying" client back on appeal and in front of Judge Knize. United States v. Newell, 315 F.3d 510, 515-22 (5th Cir. 2002): Petitioner's counsel implicated one defendant in order to obtain acquittal for another defendant. see Strictland v. Washington, 104 S.Ct. 2052 (1984): Strictland gauge an attorney's conflict of interest that spring not from Multiple clients representation, but also from a conflict between the attorney's personal interest and that of his client. A serious risk of injustice infects the trial itself. Johnson v. Zerbt, 58 S.Ct. 1019 (1938): A showing that actual conflict adversely affected counsel's performance is unneccessary, it is often an impossible task, as the court emphasized in Halloway v. Aarkansas, 98 S.Ct. 1173 (1978): Ineffectiveness is also presumed when counsel "actively represented conflicting interests". United States v. Cronic, 104 S. Ct. 2039 (1984); Hatfield v. Scott, 306 F.3d 223, 230 (5th Cir. 2002): Hayes v. Cain, 272 F.3d 757, 761 (5th Cir. 2001):.

This is also an fraudulent prosecutorial misconduct. All the officials in Ellis County court were fired and indicted for their wrongfully misconduct. This corrupt court convicted a lot of people with all this corruption over the years before they were caught in the act. But petitioner could not get proof of this, not even by due diligent, until now. But the Fifth Circuit Court of Appeals refuse Wiggins, when he wrote to get copy's of his Exhibits A+B which proves this. See Appendix A3 & A4

(6)(3) Anders Brief:

Trial counsel, as petitioner's counsel on Appeal failed to comply with the Anders requirements for filing a non-merit brief, where there were continuos arguable issues. See Robbin v. State, 152 F.3d 1062 (9th Cir. 1997): Lofton v. Whitley, 905 F.2d 885 (5th Cir. 1990): As stated in Anders v. California, 386 U.S. 738 (1967): Counsel should have supported the first appeal to the best of his ability. Appellate's counsel abandoned the petitioner and his appeal. See (10th Cir. Court of Appeals, Waco, Texas): NO. 10-0600134-CR: Evitts v. Lucey, 105 S.Ct. 830 (1985): Joshua v. Dewitt, 341 F.3d 430, 441 (6th Cir. 2003): Because petitioner's counsel failure to raise the constitutionally defective service of the biased jurors rose to a level

of prejudice. Strictland supra; Bell v. Quinters, 125 S.Ct. 2240 (2005); Counsel was ineffective on the implicit supposition that he knew the jurors were biased, yet he failed to object to their presence. Strictland v. Washington, 104 S.Ct. 2052 (1984); Lockhart v. Fretwell, 113 S.Ct. 838; Nix v. Whiteside, 106 S.Ct. 988-89; Counsel's failure to challenge the bias jurors was ineffective assistance. Virgil v. Dretke, 466 F.3d 598 (5th Cir. 2005);

(6)(4) Expert Witness:

The alleged admission of the child's statement violated the confrontation clause of the U.S. Const. amend. VI. It was months that elapsed between the supposed event in question and the child's alleged statement. This would have allowed for distortions of facts from coaching, confusion of facts and fantasy, or simple defect in memory to affect the trustworthiness of the statement. The five-year old child's statement about her grand father's alleged sexual abuse, months after the alleged event allowing time for confusion or fabrication and affecting their trustworthiness, so that their admission violated the confrontation clause. Nurse Caldwell was not working for Cooks Hospital Center in Fortworth Texas, but was working as a school nurse at the time she

said that she did the "examination" of the child was done, were the child went to school in Red Oak, Texas, this is considered as "Extraordinary Circumstances." The United States Court of Appeals, Tenth Circuit reversed on "Extraordinary Circumstances." Infants are also significantly more likely to delieve a distorted recollection. See Maryland v. Craig, 497 U.S. 831, 868, 110 S.Ct 3157 (1990): See also John R. Christionsen, the testimony of a child witness: Fact, fantasy and the influence of pretrial interviews, 62 Wash. L Rev. 705, 709-11 (1987): Petitioner, nor the Court of Appeals for the Eighth Circuit, see how a five year olds "recollection" of an event that happened months earlier can be considered so inherently trustworthy. Petitioner and the Court of Appeals, Eighth Circuit believe that even if the less exacting Scruitiny of Brecht were the applicable standard, reversal of Wiggins conviction would still be appropriate. See Reed v. Thalacker, 198 F.3d 1058 (8th Cir. 1999):

(6)(5) Actual Innocence:

In cases of actual innocence, the actual innocence exception also apply to procedurally defaulted claims. Where a discovery claim as grounds for relief. Marray v. Carrier, 477 U.S. 478: Petitioner's counsel

were inadvertence constitutional ineffective by trading petitioner to the prosecutor for another client. If the procedural default is the results of counsel, the sixth amend. itself, require the responsibility for the default be imputed to the state, which may not conduct trials at which persons who face incarceration must defend themselves without adequate legal assistance. The cause and prejudice test applies to procedural default on appeal. That safeguard is the right to effective assistance of counsel, may in a particular case be violated by even an isolated error of counsel, if that error is sufficiently egregious and prejudicial. United States V. Cronic, 466 U.S. 648, 657 N.20 (1984); See also Strictland V. Washington, 466 U.S. at 693-696: In an extraordinary case where a constitutional Violation has probably resulted in the conviction of one who is actually innocent, a federal court may grant a writ or 60(b) motion even in the absence of a showing of cause for the procedural default. United States Supreme Court, In an opinion by O'Connor, Burger, White, Powell, Rehnquist: That the attorney's error amounts to ineffective assistance, in violation of the Sixth Amend. rights. The "cause" and "prejudice" formula of Wainwright V. Sykes is not dispositive when the fundamental fairness of a prisoner's conviction is at issue. Even accepting the

validity of that test "cause" is established where a procedural default resulted from counsel's inadvertence. The errors at trial created prejudice and they worked to petitioner's actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that Miscarriages of justice within its reach are surfaced and corrected. Harris v. Nelson, supra. at 291: All the officials in Ellis County were corrupt and was fired and indicted.

Conclusion:

For these reasons above a certiorari should issue to review the judgment and unadjudicated opinion of the courts, so justice can be done in this case, as Wiggins has been waiting for 19 yrs. for justice to be done. "Martin Luther King Jr. once quoted: "Justice delayed is no justice at all": This is true, because Wiggins has had no justice at all.

Prayer For Relief:

Wherefore, premises, considered, petitioner prays this Honorable Court follow the Texas and United

States constitutional obligation to hereby grant petitioner's certiorari and Facts and laws of the land, pursuant to state code, federal code and the United States Supreme Court precedant rulings that require such a reversal and declaration of exoneration on all charges. Petitioner seeks release from his illegal restraints, and prays this court grants his remedies supported by law. He also prays for any other relief which this court deems just and proper under the circumstances.

Respectfully Submitted
Herbert L. Wiggins
Herbert L. Wiggins

Certificate of Service:

I Herbert Wiggins, petitioner, hereby certify that a true and correct copy of this foregoing certiorari with Facts and law has been Mailed to all party's in this proceedings on this the 18th day of [redacted] Feb. 2025. HW.

Respectfully Submitted
Herbert L. Wiggins
Herbert L. Wiggins

UNSWORN DECLARATION:

I Herbert Wiggins, T.D.C.J. # 01370636, being presently incarcerated at the Gib Lewis Unit of the Texas Department of Criminal Justice in Woodville, Texas, do declare as follows:

(1) That I am incarcerated in High Security Buiding at Gib Lewis Unit in Woodville, TX. because of a threat on my life by other inmates.

(2) Because of this I am unable to get an inmate trust fund account read out to send the Honorable Court.

(3) That I declare under penalty of perjury and under 28 U.S.C. § 1746 and V.t.C.A. Civil remedies, practice code §§ 132.001, & 132,003 that I am unable to pay the costs and that the above is true and correct, Executed on this the 18th day of Feb., 2025

Respectfully Submitted
Herbert Wiggins
Herbert Wiggins

Date: Feb. 18, 2025