24-7224

ORIGINAL

UNITED STATES SUPREME COURT

Devon Delehoy, Prose
Petitioner,
1600 N. Drive
Sioux Falls SD 57117

v.

Kellie Wasko, Sect. of Corr;
Marty Jackley, Attorney
General of South Dakota,
Respondents

CIV NO USAP 8-24-2826

PITITON FOR WRIT OF CERTORIARI TO THE COURT OF APPEALS FOR THE EIGHT CIRCUIT

Petitioner

Devon Delehoy
1600 N. Drive
Sioux Falls SD 57117

Respondents

South Dakota Department of Corrections
c/o Kellie Wasko, secretary of Corrections
3200 east Highway 34
Pierre SD 57501

South Dakota Attorney General
C/o Marty Jackley, attorney General
1302 East Highway 14 ste 1
Pierre SD 57501

QUESTIONS

Petitioner, Devon Delehoy (prose) submits the following questions of law under **28 U.S.C.A.** section **1331.**

1. Is a person who gets into a car voluntary, held against their will?

2. Is a person who exits a car and returns without concern, held against their will?

3. Is a person who performs a sexual act held against their will?

4. Is a person who drives home while their accused assualtant sleeps, being held against their will?

5. Is it a common reflection of kidnapping when the person invites her accused assaultant after the concern into her home?

6. Is the petitioner entitled to a jury instruction that describes the "knowing" element of the underlying offence?

7. Must a court screen a petition of habeas corpus under rule 4 of habeas 2254 cases?

8. Must a court rule on the merits under the 14th amendment

9. Can a habeas court grant a habeas absence of showing cause for the procedural default?

10. Is wrongfully convicted also known as innocence?

11. Is due diligence waived under the actual innocence?

12. Is timelessness excused under procedural default?

13. Is procedural default excused under actual innocence?

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UNITED STATES SUPREME COURT

Devon Delehoy (prose)	)	
Petitioner,	)	CIV NO. USAP8 24-2866
	)	
V.	)	
	)	APPLICATION FOR WIRT
Kellie Wasko, Secretary	)	OF
Of Department of Corr:	)	CERTOIRARI
Marty Jackley, Attorney	)	
General of South Dakota,	)	
Respondent	)	

IT COMES NOW: Petitioner, Devon Delehoy (prose) respectfully moves the court to grant the above captioned action, Application Writ of Certiorari pursuant under the jurisdiction of **28 U.S.C.A.** sections **1254(1).**

The matter brings fourth the 8th circuit Court of Appeals in addition to the South Dakota Federal District Court not ruling on the merits of a Writ Of habeas Corpus pursuant to **28 U.S.C.A** sections **2254.**

PARTIES

Respondent Kellie Wasko, Sect. of SD Corr.

Marty Jackley, Atty Gen.

RELATED CASES:

State v. Delehoy Cr 17- 139 (non-published)

State v. Delehoy, 929 N.W. 2d 103, 2019 SD 30 (state Supreme Court) (published)

Delehoy v. Young, 09-cv-21-000063 (non- published)

Delehoy v. State of South Dakota, 4:23 -cv- (federal Court Case) (published)

Delehoy v. State of South Dakota 24- (Appeal Case) (non- published)

CITATIONS

"In light of the evidence" SCHULP V. DELO, 513 U.S. 29, 102 S. Ct. 2616 (1995)

"Factual innocence is actual innocence" BOUSELY V. UNITED STATES, 523 U.S. 614, 118(1998)

"Untimelessness' Mc QUIGGEN V PERKINS,

"Judicial process" AKEN V. HOLDER, 556 U.S 418, 129 S. Ct. 1749, 173 L. Ed 3055 (2009)

COA

SLACK V. McDANIEL, 529 U.S. 473, 484-85, 120 S. CT. 1595, 146 L. Ed. 2d 542 (2000)

"Constitutional errors that resulted in one who is innocent"

SCHULP V. DELO, 513 U.S. 298, 115 S. Ct 851,165 L. Ed. 2D 808 (1995),

MURRARY V. CARRIER, 477 U.S. 478, 106 S. Ct. 2638 L. Ed. 3d 397 (1986)

Interest of justice, McCLESKY V. ZANT, 499 U.S. 467, 111 (1991), KUHLMAN V. WILSON, 477 U.S. 436, 106 S. Ct 2616(1986)

Petitioner respectfully prays the Writ of Certiorari issue the review of the judgments below:

OPINIONS BELOW

SOUTH DAKOTA, BUTTE COUNTY 4, JUDICAL CIRCIUT JUDGMENT:

The court of the BUTTE county circuit court judgment as seen in the subject matter contains the wrongful conviction of "Kidnapping pursuant to **SDCL 22-19-1.1**, as the testimony of the key witness detailed she was at no time held against her will.

STATE SUPREME COURT JUDGMENT:

The judgment of the South Dakota Supreme confirms the constitutional errors of the 14th amendment under a "Brady" violation, in relations to a tape recorded conversation not being developed prior to trial, in addition to the ineffective assistance of his trial council; however, due to the courts rules the ineffective was not heard. The court ruled that these matters did not amount to a constitutional violation in a wrongful conviction.

JUDGEMENT OF STATE HABEAS CORPUS:

This court made the conclusions based on the ineffectiveness of trial counsel Tim Barnud was not ineffective has he got the "major offence dismissed" which was not the underlying conviction thus said court failed to rule on the merit of the underlying offence.

JUDGMENT OF THE FEDERAL DISTRICT COURT:

The judgment of the South Dakota Federal District Court fails to recite the merits within the petition, of the ineffective assistance, and the abuse of the judicial discretion under the 14th amendment. The judgment contains the insufficient factor of due diligence was required, as well as the in proper consideration of dismissed counts.

JUDGMENT OF COURT OF APPEALS:

The 8TH Circuit Court failed to rule on the merits within the request for the COA.

JURISDICTION

Date of the federal court of south Dakota's judgment on August 23rd 2024 under the jurisdiction of **28 U.S.C. 1391.**

Date of the Eighth Circuit Court of Appeals judgment was on February 4th 2025 under the jurisdiction of **28 U.S.C 1291.**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The constitutional and statutory provisions that establish the frame work with the 8th circuit court of appeals must operate ensuring that the action by the Court's administration entitles the remanding of the action of the court.

The state law in question of kidnapping pursuant to **SDCL 22-19-1.1** is in place to secure that no person is held against their will: However, the case before the court is not the law's purpose at all; in fact the matter of **Cr17-139** trial transcripts reflect the testimony of the key witness herself detail the petitioner was never understanding that the circumstances presented anybody was being held against their will. By the combination of both parties not reviewing the petition or the sole evidence of court record is of great concern. The "plain error that affects substantial rights may be considered even though it was not brought to the court attention, (see **FRCP rule 52)** "as the legal questions presented under **28 U.S.C. 1331** were not settled as the plain error within the governing rule 4 of habeas corpus, the government's plain error review as long as the error was plain at the time of the appellant court review" (see: **HENDERSON V. UNITED STATES, 568 U.S. 266, 133 S. Ct. 1121, 185 L. Ed. 2d 85 (2013)** as the appellant court had the matter for over six (6) months, and never answered the presented questions that this court can answer in a very short period of time.

The fact the 8th Circuit Court of Appeals failed to rule on the merits of the request for COA, a contrary to the fact a court must grant the COA if a court failed to rule on the merits due to a procedural doctrine. The fact the appeal court failed to uphold the request for the COA, in addition failing to rule on the merits within the writ of habeas corpus which is required under the 14th amendment of the United States Constitution provisions.

The fact the 8th circuit Court of appeals failed to screen the petition and the request for COA under statutory frame work of **rule 4 of habeas 2254 cases.** This failure is outlined by the fact the challenged matter is found on page two (2) of **Cr22-19-1.1**, and yet the appeal court failed to conduct the defined limits of the statutory of **rule 4 of habeas 2254 cases** provisions.

The fact the 8th Circuit Court failed to review the petition, nor the arguments presented in the appeal, which brought the merits within the appeal that undoubtedly sustains the evidence of the district court's abuse of discretion as well as the merits of the wrongful conviction which suggest the "release of the body" is justified.

It's obvious that that the appeal court's plain error by never reviewing the challenged matter within the petition nor reviewing the court record that pertains to the cognizable claims. The judgments clearly indicate that the appeal court never

reviewed the merits with in the appeal by intentionally refusing to look at any filed document as if done; the judgments would address the claim which is not apparent with the judgments.

These judgments cannot stand as valid, as they open the door for an innocent person to be held against their will in violation of their constitutional right which would conflict with the ends of justice.

CASE STATEMENT

The case before the court is an absolutely outline of a miscarriage of justice. The fact that both the District court having the matter for a few days over a full year without ruling on the merits of constitutional violations that undoubtedly resulted in one who is innocence, in addition to not screening the writ of habeas corpus as required by rules of habeas corpus cases, as well as the 8th Circuit Court of Appeals. The fact, the district court, and the court of appeals failed to answer the presented simple questions under **28 U.S.C 1331** that obviously a person who gets into a car voluntary, is not held against their will, a person who exits a car and returns without concern, is not held against their will, a person who performs a sexual act is not held against their will, a person who drives home while their accused assualtant sleeps, is not being held against their will and yet the district as long with the appeal court never reviewed or answers the obvious questions.

The fact Petitioner presented historic rulings of this court that a court must rule on the merits, and as factual innocence is actual innocence which is waives procedural default examination, and the fact the appeal court dismissed the matter without ruling that a COA must be issued when a district court dismisses a petition due to a procedural doctrine without ruling on the merits. The fact the appeal for COA as addressed, this court's historic rulings, and yet both courts intentionally failed to uphold the rulings. This example the appeal court would rather attend to

injustice matters instead of ensuring no person is held in violation of a constitutional violation due to an illegal process.

The case before the court is a simple review, and an easy conclusion that the courts failed to uphold its duty to impair the great writ's purpose as seen in the argument. Obviously to be properly convicted of the underlying offence, the reliable evidence of hearing transcripts reflects Mr. Delehoy, his conduct was legal as all he did was drive his than girlfriend out to the country for a typical drive, and a drive home which is exactly what happened as the hearing transcripts provide the clear and convincingly.

Can this court allow a man to be held imprisoned when the key witness details the conduct of herself getting into the car, exiting the car, performing a sexual act, and driving home under the underlying offence? Obviously not, as it would open the door for constitutional violations to result in an illegal conviction a concept that upsets the sole corner stone of the criminal system entirely, as no court in our county has ever properly convicted a person under said situations as nor can this court muster.

ARGUMENT

The matter in **MCQUIGGIN V PERKINS, 569 U.S. 383, 133 S. Ct 1924 (2013)** this court ruled that the A.E D.P.A.S. does not attend to evidence as the affidavits found in this case were allowed even after being in the possession of that petitioner 6 years prior to filing his appeal, which allowed this court to find him innocent. The matter before the court in Mr. Delehoy's case is nothing less than a mirror to this ruling as he has attempted to present the reliable documentation" (see: **SCHULP V DELO, 513 U.S. 29, 102 S. Ct. 2616 (1995)**) of trial transcripts that reflect the key witness in fact established she was not being held against her will, thus the documentation that convincingly proves the wrongful conviction of the underlying offence.

This court ruled in MCQIGGIN V. **PERKINS, 569 U.S. 383, 133 S. Ct 1924 (2013)** id, (a court may consider an untimely 2254 petition, if by refusing to consider the petition for untimeliness, the court thereby would endorse a "fundamental miscarriage of justice" because it would allow that individual who is actual innocence to remain in prisoned" citing: **ESCAMILLA V. JUNGWRITH, 426 F.3D 868, 871-72 (C.A. 20005).** The fact the district court "weighed heavily upon the insufficient factor" (see **GENERL MOTORS COMP. V. HARRY BROWN'S LLC., 563 f.3D 312 8TH CIRC. (1984)** of "Mr. Delehoy needed to prove due diligence" which was the key factor of the "vehicle of injustice" (see **MIF**

REALTY LP V. ROCHESTER, 92 F.3d 752 8th circ. (1996) of dismissing the habeas corpus upon such limitations reflect the prejudicial harm entirely as "who asserts convincingly actual innocence claims must not need to prove diligence" (**PERKINS** id.).

This court can easily conclude, the constitutional violation of the ineffective assistance found within the habeas corpus by counsel failing to impeach the key witness by not asking one question of the underlying offence, which by the key witness's testimony established she got into the petitioner's car herself (see trial transcript , hereby referred to as T.T within the action) page 115 line 8-9) by counsel's own address "I mean when a person gets into the car we have consent" (see T.t. page 398 line 22-25). The fact the transcripts provide the testimony of the key witness in fact got out of the car after an argument, and then got back in (see t.t. page115 line13-14) as she in fact engaged in a sexual act (see t.t. page127 line 19-20) even the provided the testimony that she "drove home while he slept" (t.t. page132 line 20-21). By counsel's failure to impeach this testimony sustains the "objective performance that fell below any reasonable standard" as without the counsel failure "the outcome would have been different" (see: **STRICKLAND V. WASHINGTON, 466 U.S. 668, 685 (1984)** as the court record reflects when counsel asked any question out of the 151 asked questions towards any count, the count was dismissed, which establishes the prejudicial harms by counsel's failure.

The fact the district court failed to rule on the merit of the ineffective assistance of counsel Timothy Barnaud failing to defend his client by mis-leading the court by his address" I don't believe a mistake of fact instruction is applicable law" (see t.t page 409 line 20-23) which dysfunction demonstrates the dysfunction was so severe it deserves reversal" (see **STRICKLAND V. WASHINGTON, et. al.)** as the failure constitutes the cause for the procedural default under the ruling in **MUARRY V. CARRIER, 477 U.S. 478, 106 S. Ct. 2638 L. Ed. 3d 397 (1986)** as "counsel should know law" (see: **UNITED STATES V. BORTON, 575 F. Supp 132 (1983)** as the South Dakota Supreme Court ruling in **STATE V. EAGLER STAR, 558 N.W. 2D 70 1996 SD 143** (jury instruction is sufficient when considered as whole, they correctly state applicable law and inform jury) citing: **STATE V. FACTHORSE, 490 N.W. 2D 496, 499 (SD 1992)** which by counsels own remarks "I don't believe it's (mistake of fact) is not applicable" (see t.t. page 409 line 20-23) which in fact conflict with counsels own remarks "I mean I mentioned a consent instruction on a kidnapping charge because case law supports it" (t.t. page 409 line 19), as such instruction is absolutely due to the petitioner under his due process rights.

The fact the district court acknowledged the ground for relief of the judicial abuse of discretion by addressing: " a federal court can grant the habeas corpus relief only if trial judge erroneous refusal to accept additional jury instruction denied

petitioner due process" citing: **WALLACE V. LOCKART, 701 F.2D 719, 729 (8TH CIRC. 1983)** (see District courts adoption page 25-26). By the court denying the ground conflicts with the court ruling in **MURRY V. CARRIER, ET. AL.** (a court may grant a habeas absence of showing cause for procedural default). Obviously, if the lower court judge Mr. Day, denied any due process when he refused to allow the fact finder of the case by intentionally failing to turn over the jury instruction which was an absolute right under petitioner's right to be found guilty of each and every element of the crime charged. The fact the court acknowledged the fact; "I am not the right person to be asking" (t.t. page 398 line 26). By the example of deprivation of due process amounts to "undue restraints on liberty to entertain a habeas corpus application as more important than mechanical unrealistic administration of federal courts" (see **SHOCKLEY V. CREW, 4:19-CV-02520 src).**

By the appeal court failing to grant the COA which conflicts with this court's ruling in **SLACK V. MCDANIEL 529 U.S. 473, 484-85, 120 S.CT.1595, 146 L. Ed. 2d 542 (2000)** ("when a district court denies a habeas corpus petition on a procedural ground without reaching the petitioner claim , a COA should issue when a prisoner shows at least that a jurist of reason would find it debatable whether petition states a claim of denial of a constitutional right"), which ruling is proper, as the constitutional errors within in the petition, reflect a reasonable jurist would

undoubtedly find it obviously debatable as without the constitution violations resulted in one who is innocent.

The clear abuse of the court's discretion is impossible to ignore. The fact the opening address within the adoption reflects the sole concern within the petition was that of the mistake of fact jury instruction which was and is the fundamental concern. The fact the adoption only addressed the matter in the opening paragraph, and never once again tells the court mirrored the lower state courts action completely. This court has the ability to foresee that under the circumstances no person could be held to understand the situation of a person who performs the act of the key witness as detailed with her testimony is held under and against her will, which describes the essential defense of a mistake of fact theory defense (see Criminal Procedure TB b4 1st ed.) by the district court abusing the judicial court discretion by depriving Mr. Delehoy, of his fundamental right of due process under the 14th amendment as he must be found guilty of each and every element of the crime charged, which **SDCL 22-19-1.1**'s essential element of "HOLD" was not proven by any evidence within the trial without any doubt, which robs Mr. Delehoy of his liberties entirely.

By the court missing the key witness testimony that defense no person was could read the mind of another to understand the matter was the underlying offence as the key witness describes she loved him (see t.t. page 122 line 1, and page 132 line 20-21) and " means it" (see t.t. page119 line 18). The fact when the key witness

testified if she ever told the petitioner of her fears she claims "in my mind" (see t.t page 137 line 20) shows by the courts denial of the habeas corpus shows the district court must think Mr. Delehoy has telepathic abilities to understand that when a person gets out of the car, gets back in, engages in a sexual act, drives back home, that person is being held against their will in order to deny the habeas. The fact the key witness in fact invited Mr. Delehoy into her home and even prepared food for a friend. Who in their right mind allows a person who just forced you to endure a "kidnapping" concern into their home tells the person "we are working things out" (see t.t. page 133 line 16)? The fact no court in this entire nation would up hold such a conviction.

By the district court's failure to rule on the merit of the ineffective assistance of counsel failing to defend his client by counsel's own incredible dysfunction of misinforming the court that such instruction was not "applicable law" (see t.t. page line) which is a conflict as Mr. Delehoy absolutely has a due process interest in having the essential defense as counsel established " I mean when a person gets into the car it's not kidnapping" (see t.t. page 398 line 22-25) which reflects the " counsel's error shows cause for the procedural default" (see: **MURRARY V. CARRIER et. al.)** as without the constitutional error, Mr. Delehoy would have had a fair trial without any doubt, and by the district court failing to uphold the historic finding, absolutely defines the judicial abuse.

The fact the district court relied upon the finding in **JIMERSON V. PAYNE, 957 F. 3D 916, 917 8TH CIRC 2020)** (actual innocence how petitioner timely filed actual innocence claim within one year of co-defendants signing affidavit) by citing **28 U.S.C. 2244 (D) (1) (B)** which law as no proper application as this court ruled in **PERKINS** id. " the A.E.D.P.A.S time limitations only apply to typical cases in which actual innocence claim is made" obviously, for the court that " bears blinders" (**PERKINS** id.) as this court ruled "[w]e think that in an extraordinary case where a constitutional violation (ineffective assistance, abuse of discretional abuse) has properly resulted in one who is innocent, a federal habeas court may grant the habeas absence of showing cause for the procedural default" (see **MUARRY V. CARRIER,ET.AL.**) as "this rule or fundamental miscarriage of justice exception is grounded in the equitable discretion of habeas courts to see that a federal constitutional error do not result in the incarceration of innocent persons" (**HERRERA V. COLLINS** 508 U.S. 404, 113 S. Ct. 853.

Obviously, if not for the district courts, and the appeal court of not ruling on the constitutional errors within the writ, sustains the court abused their discretion by not being aware of the facts of the subject matter presented before the court which sustain that "in light of the new and reliable evidence (see: **28 U.S.C 2254 (e)(b)(2))** reflect "no reasonable juror would of found petitioner guilty of the underlying offence" (**SCHULP V. DELO, 513 U.S. 29, 102 S. Ct. 2616 (1995)**as Mr. Delehoy

has the absolute right of due process to be found guilty of each and every element of the crime charged as **SDCL 22-19-1.1** essential element of " intent or knowingly" is not supported by any sustainable evidence. This court can see, by the district courts " undue restraining an liberty to entertain habeas corpus application as more important than mechanical and realistic administration of federal courts" (**SHOCKLEY V. CREW, 4:19-CV- 0520SRC**) which the writ sustains " a reasonable jurist would find the district court assessment of constitutional claims debatable or wrong" (see: **SLACK V. MC DANIEL, 529 U.S. 473, 484(2000)** as it is " substantial showing that issues debatable among reasonable jurist, a court could resolve the issues differently" as the "question raised by his claim deserves additional proceeding" (see: **COX V. NORRIS, 133 F. 3D 565, 569 8TH CIRC. (1997).**

The fact the court heavily weighed its finding upon the due diligence (see adoption page) which conflicts with the ruling in **PERKINS** id. (due diligence is waived under a showing of actual innocence") which the district court's adoption claiming the petitioner claimed a 10 minute phone recording conversation which is a result of an incompetent jailhouse lawyer (Matthew Carter) which was addressed in the filed Journal entry (doc) as petitioner recited the mistake of fact jury instruction which was withheld from the "credibility of the jury" (see adoption) which resulted by the combination of counsel " I want a consent instruction, I mean when someone goes into a car it's not kidnapping" (see t.t. page 398 line 22-25) as by the

robbery of justice by the courts abuse of judicial discretion when the court replied " you're asking the wrong person" (see t.t. page 398 line 26) and yet the court denied the fact finder from the proper deliberation such evidence under the proper examination. By the district court in fact finding the ground for relief to be sufficient as recited in page 27 of the adoption by citing: **WALLACE V. LACKHART 701 f.2d 719 8th circ. (1983).**

It should be the reflection of the court's review that shows the district court's review that shows the district along with the court of appeal failing to uphold the courts administration of ethical business to rule on the merits of constitutional claims that resulted in one who is innocent. The trial transcripts present the obvious conclusion of the essential testimony that brings fourth the alleged victim herself describes the situation of mutual sexual act, driving home, inviting her boyfriend into her home, as no court in this country can or would uphold such a conviction for the underlying offence. The facts sustain Mr. Delehoy is not a telepathic person who can reads minds, as the key witness declared she, "tried everything talk wise" (see t.t. page 126 line 19) just not saying "no", or "stop" so how would a common person believe such situation is a description that sustains a conviction? The evidence reflects "the colorful showing of factual innocence (**KUHLAMN V. WILSON,477 U.S. 436, 106 S. Ct 2616 (1986)**, as this court ruled "factual innocence is actual innocence" (**BOUSLY V. UNITED STATES, 523 U.S. 614, 118(1998).**

There is no possible avenue for the description of the situation to be that of the underlying offence and for the writ to be denied as it "would allow the court to perform a fundamental miscarriage of justice as it allows an innocent man to be imprisoned" (**McQUIGGIN V. PERKINS,**et.al.)

REASON FOR GRANTING WRIT OF CERTIORARI

The compelling reason for granting the writ " is particularly important that judges consider and resolve challenges to inmates conviction and sentence" (see **UNITE STATES V. HIGGS, 141 S. Ct 645 (2021),** as the questions raise non frivolous considerations that a court must not ignore as would impregnate "incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted", **TEAGUE V. LANE, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334** quoting: **DESIST V. UNITED STATES, 394 U.S. 244, 262, 89 S. Ct. 1030, 1040 22 L. Ed. 2d 248 (1969).**

The facts within the writ is of great concern that without the court's ruling in favor of the petitioner would cause the irreparable harm as " the imprisonment if constitutionally improper constitutes an irreparable harm" (See: **FAREEM-ELV. KLINAR, 600 F. Supp. 1029, 1041 N.D. ILL 1984)** as Mr. Delehoy is likely to succeed on the merits of the constitutional violations within the petition as if not for the trial counsel failing to allow the jury to find the credibility of the witness under the scope of the essential defense theory, petitioner's best defense would of proven him innocent of the underlying offence, in addition to the court depriving Mr. Delehoy of his right to a fair jury and not one of the court which clearly violated Mr. Delehoy's 6th and 14th amendments rights without any doubt entirely.

The fact the courts failed to rule on the merits of the petition and that of the request for the COA under the 14th amendment of due process clause of the United States Constitution, of being heard upon the merits as the reflection of the party's judgments never recite any claim within the request for COA, which addressed the abuse of the district courts discretion failure to rule on the merits as foreseen by the district court's adoption (appendix) fails to reach the cognizable claims within the habeas corpus of the ineffective assistance of counsel, or the abuse of the courts discretion which did not establish any proof of the essential element of the underlying offence, in addition to the "error of law" (see: **GREISER V. MISSIOURI ETHIC COMP. 715 f.3D 674 8TH CIRC. (2013)** by failing to screen the petition under **rule 4 of habeas corpus 2254** as the district court allowed irrelevant materials of dismissed cases which played on the emotions of the court, which had the effect upon the 8th circuit court dismissing the matter as the " insufficient factor" (see **GENERL MOTORS COMP. V. HARRY BROWN'S LLC., 563 f.3D 312 8TH CIRC. (1984)** as the 8th circuit court of appeals reasoned for the dismissal, disallowed the court to screen the petition as the subject matter was established which results in the continued denial of the 14th amendment clause.

The compelling reasons to grant the writ of certiorari is prayed upon to grant the writ of certiorari in the interest of justice, as the sole purpose of the great writ as "there no more higher duty than to maintain it unimpaired" (see: **BROWN V.**

JOHNSON, 306 U.S. 19, 26,59, S. Ct. 442, 446, 83 L. Ed. 455(1939). There is no available alternate view that the hearing transcripts sustain that "miscarriage of justice is a safeguard against compelling an innocent man to suffer unconstitutional loss of liberty" (see: STONE V. POWELL, 426 U.S. at. 492-83 (1976) as "a court may not needlessly prolong a habeas corpus case given particular given the essential need to promote the finality of a state case" (see: CALDERON V. THOMPSON, 523 U.S. 5238, 118 (1998). As by the court denying the certiorari it would allow an innocent man to be "incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted", which is in conflict with the United States Supreme Court in TEAGUE V. LANE, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 quoting: DESIST V. UNITED STATES, 394 U.S. 244, 262, 89 S. Ct. 1030, 1040 22 L. Ed. 2d 248 (1969). As if the writ of certiorari is denied, it would a be an outline "the court thereby would endure a fundamental miscarriage of justice because it would allow an innocent man to be imprisoned" MC QUIGGIN V. PERKINS, 569 U.S. 383, 133 S. Ct. 1924 (2013) as "ordinarily, when a unfair judicial process (not ruling on the merits and not screening the petition) results in a denial of due process, and weighing the finding upon dismissed cases, Mr. Delehoy firmly believes the only proper method to uphold justice is by this court this court could simply find error, reverse and remand the matter" (see: REVERSE MINING COMP. V. LORD, 529 f.2d 181,185 8th circ. (1976) to the 8th circuit court so that

justice can be properly adjudicated and the matter can be remanded to the Nebraska district court in the interest of justice of the judicial transfer under **28 U.S.C. 1631.**

Mr. Delehoy, prays this court of such high honor, restore that a miscarriage is not performed any longer, as Mr. Delehoy has been diligently seeking justice for over a year with no merit being ruled upon, nor any court to uphold the strict ruling of this court as seen within the action. The "miscarriage of justice is a safeguard against compelling an innocent man to suffer unconstitutional loss of liberty" (see; **STONE V POWELL, 426 U.S. at. 492-83 (1976)** as it is asked of the court "judicial process" (see: **AKEN V. HOLDER, *556* U.S 418, 129 S. Ct. 1749, 173 L. Ed 3055 (2009)** to ensure the "ends of justice "(see: **KUHLMAN V. WILSON, 477 U.S. 436, 106 S. Ct 2616 (1986)** "will be severed" (see: **McCLESKY V. ZANT, 499 U.S. 467, 111 (1991).** Mr. Delehoy, ask the court to grant the writ of Certiorari as without the proper ability to have a fair opportunity to have his liberties heard as the interest of justice demands the court of the people for the people invoke justice is served to ensure no person is held in violation of a constitutional right. The presented evidence sustains the abuse of discretion that warrants the granting of the writ as the "innocence is so strong the court cannot have confidence of the outcome" (**SCHULP V. DELO** et. al), under the underlying offence without any doubt.

CONCLUSION

The matter before the court is simple. Did the appeal court rule on the merits? If done, this court would not be asking itself how did they not answer the questions: Did the appeal court screen the petition? Did the appeal court invoke established rules of habeas corpus cases of rule 4?

These facts present that the appeal court must rule on the merits of the abuse of discretion of the district court not performing it's obligated duty to rule on the merits, screen the petition, uphold this court's rulings of untimelessness in fact is procedural default and procedural default is not an absolute bar to deny granting the writ.

This court is asked to uphold that no person shall be held in violation of his constitutional rights due to an illegal process. Mr. Delehoy, prays this honorable court rule in his favor and remands the matter to the appeal court with strict instructions to uphold the administration of the court's business is to ensure the hands of justice or served.

Mr. Delehoy, wishes to thank the court's justices, and he believes this court will show the integrity of justice is of the great writ must be restored as no person shall be held in violation of a constitutional right due to an illegal process. He wishes

to thank the court for its time and deep considerations toward the preservation of restoring justice of this land.

WHEREFORE: Petitioner, Devon Delehoy (prose) respectfully moves the court, to order the sought relief under the following terms:

1. ORDER, the judgment vacated and remanded back to the 8th Circuit Court of Appeals.

2. ORDER, the 8th Circuit Court of Appeals is to rule on the merits.

3. ORDER, the 8th Circuit Court of Appeals is to screen the petition **under rule 4 of habeas corpus cases.**

4. ORDER, the 8th Circuit Court of Appeals is to remand the matter to the Nebraska District court under the filed motion of Jurisdictional transfer under **28 U.S.C. 1631.**

Respectfully submitted on this 19 day of March 2025.

Devon Delehoy
1600 N. Drive

Sioux Falls SD. 57117

APPENDIXS

APPENDIX A:

JUDGMENT OF STATE COURT

APPENIDX B:

JUDGMENT OF STATE SUPREME COURT

APPENIDIX C:

JUDGMENT OF STATE HABES CORPUS

APPENDIX D:

JUDGMENT OF SOUTH DAKTOA FEDERAL COURT.

APPENDIX E:

JUDGMENT OF 8TH CIRCUIT COURT OF APPEALS

APPENDIX F:

TESTIMONY OF Key Witness: Kari Vaugh

APPENIDIX G:

COURT RECORD OF Cr 17-139

APPENIDIX H:

STATE STATUTE READING

VERIFICATION

IT COMES NOW: Petitioner Devon Delehoy (prose) hereby verifies that the above statements are made truthfully and under the penalty of perjury.

Devon Delehoy

1600 N. Drive

Sioux Falls, SD 57117

Subscribed and duly sworn before me

On this 19 day of March 2025.

RYAN VANDERAA
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

Notary public/Clerk of courts

If notary, my commission expires

May 5th 2028