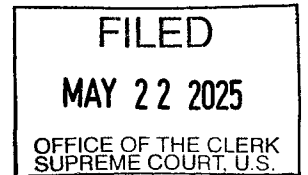


25 - 5172



**IN THE
SUPREME COURT OF THE UNITED STATES**

William Widmyer #3347933 --- PETITIONER

VS.

**David Ballard, Warden of Mount Olive Correctional Complex,
RESPONDENT**

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

PETITION FOR A WRIT OF CERTIORARI

William Widmyer #3347933
Mt. Olive Correctional Complex and Jail
One Mountainside Way
Mt. Olive, WV 25185

QUESTION(S) PRESENTED

1. Were the Petitioner's Constitutional Amendment Rights violated when petitioner's Rule 60(B) motion was denied yet, the Northern District court of Appeals stated:

"However, contrary to the district court's determination, "Widmyer [also] could properly challenge the District court's finding of procedural default in a Rule 60(B) motion. Explaining that a movant Rule 60(B) does not raise "a new habeas corpus claim, or attack [] the federal court's previous denial of the claim on the merits, when he 'merely asserts that a previous Ruling which precluded a merits determination,' such as" a denial for...procedural default, "was erroneous. Accordingly, the district court erred by declining to consider that argument under Rule 60(B).

2. Is there a Autonomy Right to assert claims in a Habeas proceeding, where under the state habeas statutes,¹ "both" the "habeas petitioner," and habeas counsel have to raise all claims.

If this is obstructed does this obstruction rebut the presumption of correctness under § 2254 (e) (1)?

¹ In Losh, it holds that both the Habeas petitioner, and habeas counsel must raise all claims, petitioner asserts, this rebuts the presumption of correctness cumulatively when obstructed by errors in both state court and errors by the Federal Court.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

RELATD CASES

- **Widmyer v. Painter** No. 01-C-31, Circuit court of Jefferson County, West Virginia. Judgment entered June 3, 2003, (Order Judgment of Recusal & Transfer.)
- **Widmyer v. Painter** No. 01-C-31, Circuit court of Jefferson County, West Virginia. Judgment entered Dec. 30, 2005. (Order Summarily denying petitioner's writ.)
- **Widmyer v. Painter** No. 01-C-31, Circuit court of Jefferson County, West Virginia. Judgment entered Jan. 30, 2006. (Motion for Evidentiary Transcripts.)
- **Widmyer v. Painter** No. 01-C-31 Circuit court of Jefferson County, West Virginia. Judgment entered March 3, 2006. (Order denying petitioner's motion for evidentiary transcripts because there were no hearings on the requested dates.)
- **Widmyer v. Ballard** No. 1:10-CV-84 U.S.District Court for the Northern District of West Virginia. Judgment entered Feb. 23, 2011. (Order declining to adopt report)
- **Widmyer v. Ballard** No. 01-C-31, Circuit court of Jefferson County, West Virginia. Judgment entered March 12, 2014. (Second Petition for writ of Habeas Corpus.)
- **Widmyer v. Ballard** No. 1:10-CV-84, U.S.District Court for the Northern District of West Virginia. Judgment entered Jan. 15, 2020. (Notice of opportunity to delete.)
- **Widmyer v. Ames** No. 1:10-CV-84 U.S.District Court for the Northern District of West Virginia. Judgment entered June 15, 2021. (Supplement to pending Rule 60(B)(6) Motion, and motion for certified question.)
- **Widmyer v. Ames** No. 1:10-CV-84 U.S.District Court for the Northern District of West Virginia. Judgment entered Aug. 29, 2021. (Additional points in Support .)
- **Widmyer v. Ames** No. 21-7378, U.S. Court of Appeals For the Fourth Circuit. Judgment entered Oct. 26, 2021 (Informal Opening Brief.)
- **Widmyer v. Ballard** No.cc-19-2013-c-224, Circuit court of Jefferson County, West Virginia. Judgment entered Feb.9, 2022. (Order denying RCP. Rule 60(b) Relief.)
- **Widmyer v. Ames** No. 22-0175 Supreme court of Appeals for West Virginia. Judgment entered March 7, 2023, (Appeal of denial of a Rule 60(B) Motion.)
- **Widmyer v. Ballard**, No. 1:10-cv-84 U.S. District Court for the Northern District of West Virginia. Judgment entered Sept. 14, 2023. (Memorandum opinion and order denying Rule 60 (B) Motion.)

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IN THE
SUPRMEM COURT OF THE UNITED STATE
PETITIONER FOR WRIT OF CERTIORAI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement 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 [enter site code here]; or,
- ☐ has been designated for publication but 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 [enter site code here]; or
- ☐ Has been designated for publication but 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 D to the petition is

- ☐ Report at [enter site code here]; or
- ☐ Has been designated for publication but not yet reported; or
- ☒ Is unpublished.

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

- ☐ Report at [enter site code here]; or
- ☐ Has been designated for publication but not yet reported; or
- ☐ Is unpublished.

JURISDICTON

- ☒ For cases from Federal courts:

The date on which the United States Court of Appeals decided my case
Was January 13, 2025.

- ☐ No petition for rehearing was timely filed in my case.
- ☒ A timely petition for a rehearing was denied by the United States Court of Appeals on the following date: March 11, 2025, and a copy of the Order denying rehearing appears at Appendix C
- ☐ An extension of time to file the petition for writ of Certiorari was granted to and including [Enter date here], on _____ in Application No. _____.

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 [enter date here.]

A copy of that decision appears at Exhibit _____.

- ☐ A timely petition for a rehearing was thereafter denied on the following date: [enter date here], and a copy of the Order denying rehearing Appears at Exhibit: _____.
- ☐ An extension of time to file the petition for writ of Certiorari was granted to and including [Enter date here], on _____ in Application No. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5

Criminal Actions-Provisions Concerning-Due process of law and just compensation clauses

No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service in time of War or public danger; nor shall any person be compelled in any criminal case to be a witness against himself, nor be property be taken for public use, without just compensation.

Amendment 6

Right of the accused.

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 been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment 8

Bail-Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted

Amendment 14

Section 1. [Citizens of the United States.]

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 abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the case

On January 20, 1999, Petitioner, William Widmyer was indicted in Jefferson County, West Virginia on Six (6) separate counts: (1) murder in the first degree; (2) Malicious assault; (3) destruction of property; (4) Breaking and entering; (5) petit larceny; and (6) possessing any vehicle knowing it to be stolen.

On July 22, 1999, following a two (2) day jury trial, petitioner was convicted of all counts as contained in the indictment. On August 30, 1999, the circuit court held a sentencing hearing and sentenced petitioner to the penitentiary for consecutive sentences of life without mercy on count 1; not less than two (2) years nor more than ten (10) years on count 2; one (1) year on count 3; not less than one (1) year nor more than ten (10) years on count 4; one (1) year on count 5; and not less than one (1) year nor more than five (5) years on count 6.

The West Virginia Supreme court refused the direct appeal on, November 1, 2000. Subsequently, a writ of Habeas corpus was filed on February 16, 2001 in the lower court but was denied on January 3, 2006 without an omnibus hearing. On February 6, 2006 the lower court appointed counsel to appeal the denial to the West Virginia Supreme court. On September 4, 2009, counsel filed a motion to file an appeal outside time Frame, seeking to appeal the denial of the writ of Habeas corpus nearly four (4) years late. Although the motion was granted, once again, the West Virginia Supreme court refused to review the appeal on February 11, 2010.

Petitioner filed a Federal § 2254 writ of Habeas corpus on May 27, 2010. In

the October 20, 2010 report and Recommendation, the Magistrate Judge Recommended that the court deny and dismiss the petition as untimely.

The Court rejected that recommendation on February 23, 2011, concluding that the petitioner was entitled to equitable tolling of the statute of limitations and that his petition had been timely filed. The court further found that, while timely, the petition included claims for relief not previously presented to the lower court. Thereby, the § 2254 petition was stayed until the petitioner returned to the lower court and exhaust his claims.

On January 26, 2013 the petitioner filed his second Habeas petition. Ultimately, after an evidentiary hearing (*petitioner did not have a evidentiary hearing on the first habeas*) on the express issue of whether the “Losh list” was filed properly on the first habeas, the lower court denied the second writ of habeas corpus. No other issues were allowed to be addressed, specifically the issues needing to be exhausted. On May 15, 2015 the West Virginia Supreme court affirmed the lower court’s decision by memorandum.

On December 10, 2013, the Northern District Federal Court mistakenly dismissed the petition without prejudice and ordered the case removed from the active docket. On June 4, 2015, petitioner filed a Second Federal § 2254 petition and indicated that all of his state remedies were fully exhausted. Thereby, on November 17, 2016 The court vacated its “Order Dismissing petition without prejudice” and Ordered the clerk of court to reopen the case.

On February 7, 2018 a second Report and Recommendation was filed. The conclusion was that the petitioner had procedurally defaulted seven (7) of his fourteen (14) claims. The remaining six (6) claims were considered as lacking merit.

Subsequently, on March 12, 2019, the fourth circuit court of Appeals denied the motion for a certificate of appealability. On April 16, 2019, the motion for Rehearing to the Fourth Circuit court of Appeals was denied by Order. The Mandate was issued April 24, 2019. Petitioner then filed "Petition for a writ of Certiorari" September 12, 2019 and petition for a writ of certiorari was denied November 5, 2019.

On, March 26, 2019 petitioner filed Rule 60(B) relief from a Judgment or Order Motion. On, January 15, 2020 The district court issued a Notice of Opportunity to Delete improper claims from Rule 60(B) motion ordered. Unfortunately, on February 26, 2020 "Order Denying Rule 60 Motion for relief from a judgment or order was docketed. On April 28, 2020, Notice of Appeal was filed on November 23, 2020 "Order Denying motion for certificate of appealability was docketed. On, December 23, 2020, Petition for Rehearing and Rehearing EN Banc was filed. This was denied on January 20, 2021 and the Mandate was January 28, 2021.

The petitioner then a filed "Motion to Reconsider Order Denying Rule 60(B) motion on February 26, 2021. Also, petitioner filed a "Supplement to pending Rule 60(B) motion for certificate question on June 21, 2021 also, "Additional points in support of pending Rule 60(B) motion was filed on September 13, 2021. These all

motions were unfortunately denied on September 16, 2021. The petitioner then filed motion for certificate of appealability on October 26, 2021.

During this time while in Federal court the petitioner filed a motion (A) to Re-Open Habeas Rule 60(B) (4) -(6)—(B) Motion to certify Questions to Circuit court of Jefferson County and (C) Motion for the appointment of counsel, and briefing scheduled order in state court also on November 7, 2021 and this was Denied February 9, 2022. The petitioner then filed an appeal to the West Virginia State court on March 9, 2022 and this was denied March 7, 2023.

Then Back in Federal Court the “Fourth Circuit of Appeals,” REMANDED the petitioners case back to the lower court on September 22, 2022 allowing the petitioner to have a “Notice of opportunity to delete improper claims from Rule 60(B) motions.”

The petitioner then filed a “Amended motion for relief of Judgment Rule 60(B) on December 27, 2022 and it was denied by new district Judge on September 14, 2023.

Once, again the petitioner filed a motion for certificate of appealability “Informal Brief in support of petition rehearing” on October 29, 2023. This was denied on January 13, 2025.

Finally, the petitioner filed a Rehearing EN Banc Motion on January 26, 2025 along with a motion for extension of time filed on January 27, 2025 which was granted. This was done because the Fourth circuit court of appeals did state in its

ruling that “Widmyer [also] could properly challenge the districts court’s finding of procedural default in a Rule 60(B) motion.” Admitting that Widmyer does have a legitimate claim in a procedural default occurring in state court. However, petitioners rehearing EN Bance was denied March 11, 2025 and the courts Mandate was filed March 19, 2025. Petitioner now ask this court to Grant Certiorari in the instant case.

Petitioner now comes to this court with a Novel issue concerning procedural default being defeated in a Rule 60(B) Motion.

Petitioner William T. Widmyer is an inmate and does not understand law very well or understands all of the legal procedures permitted by this court to assure Justice. However, the petitioner knows that a great injustice has occurred and the petitioner asks this court to please consider this “Petitioner for a Writ of Certiorari,” so, that this court can understand the Constitutional violations the petitioner has suffered over the years.

Starting from the beginning the petitioner will state the following facts of his whole procedural process and the following Errors in the procedural process.

The petitioner filed his first writ of Habeas corpus in circuit court. Due to petitioner’s ex-wife being employed at a law firm. This caused many conflicts of interest with many attorneys appointed to petitioners Habeas. Thus, also causing several conflicts of interest with circuit Judges appointed to petitioner’s Habeas. The petitioner had ten (10) attorneys appointed to petitioners First Habeas petition.

Also, several Judges were appointed to oversee the petitioner's First habeas.

The last Judge "Christopher C. Wilkes" denied petitioner's First writ of Habeas corpus without ever holding an Omnibus hearing. (This was the first procedural error in petitioner's case.) The petitioner then filed a "Motion for Evidentiary transcripts" of court's denial of Habeas corpus hearing. Since, the Denial stated there had been a hearing of this matter December 30, (2005) and also, stated Petitioner was represented by counsel "Christopher D. Janelle" Esq. and the prosecutor "Michael D. Thompson" was all present at the hearing. However, the petitioner's Motion was denied due to the fact no transcripts exist because, no hearing took place on that date at the courthouse before Judge Christopher C. Wilkes.

Petitioner wondered how his First writ of Habeas corpus could be denied without ever having an Omnibus Hearing where he could knowingly and intelligently waive any contention or ground for relief which he could advance upon direct appeal?

Petitioner then filed an appeal outside of time frame: Which was due to the fact that five (5) more attorneys were appointed to petitioner's appeal, because of conflicts of interest due to petitioner's ex-wife working at a law firm. Also, one attorney appointed to petitioner's appeal was arrested on other matter's causing the petitioner to miss his dead-line to file his appeal on-time. The West Virginia Supreme court agreed to hear the appeal. But then it was denied.

The Petitioner then filed a § 2254 Federal Habeas petition. This was granted under “extraordinary circumstance”, Justifying Equitable relief. Do to the ineffectiveness assistance of counsel of all previous attorneys’ appointed to petitioner’s First writ of Habeas petition. For not properly representing petitioner during his Habeas proceedings. Federal Judge Keeley then placed a court order declining to adopt report and recommendation and motion to dismiss and granted motion to hold petitioner’s § 2254 Federal habeas in abeyance and staying case.

The petitioner then went back to the circuit court to file a second (2) writ of Habeas corpus. (Judge Keeley had ordered the petitioner to exhaust seven (7) un-exhausted grounds in state court.) The petitioner was able to get his previous attorney re-appointed to his case that had lastly filed an appeal on his First habeas petition. This attorney “Christopher Prezioso” threw research discovered that petitioner’s First Losh List was illegally filed in petitioner’s First Habeas corpus. (This is the second procedural error in petitioner’s case.) The petitioner’s attorney Christopher Prezioso talked to the petitioner and asked if he could raise additional grounds to the petitioner’s Second (2) writ of Habeas Corpus? Stating that the biggest ground was the petitioner’s Losh List not being legally filed in his First habeas petition. The petitioner agreed to the attorney’s advice and his Second (2) Writ of Habeas was filed. The attorney managed to get an evidentiary hearing and we went to court. However, the attorney presenting this argument was Erroneous as a matter of law, which is ineffective assistance of counsel, “As the Fourth Circuit court of Appeals,” has found because counsel did not familiarizing himself with the

relevant law constitutes deficient performance. However, the Judge presiding over the case Judge Sanders. Had previously “**Recused**” himself off of the petitioner’s First Habeas petition. Felt he had no conflict of Interest in petitioner’s Second (2) habeas petition and denied petitioner’s Second (2) Habeas petition in court. (This was the third procedural error in petitioner’s case.)

The petitioner’s attorney Christopher Prezioso, then filed petitioner’s appeal in the West Virginia Supreme court. The attorney was highly discouraged stating that trying to prove ineffective assistance of counsel is impossible to prove in West Virginia. Then, to make matters worse, the petitioner’s appeal was denied in the West Virginia Supreme court. All the while at this time the Five Justices in the West Virginia Supreme court were being indicted on criminal charges and corruption in the West Virginia Supreme court. (This was the Forth procedural error in petitioner’s case.) Not only was the petitioner prejudiced by the circuit court judge not recusing himself on the second (2) habeas like he did on the first (1) Habeas but the Appellate Judges were corrupt also.

The petitioner then filed a Second (2) § 2254 Federal habeas. Believing that he had faithfully exhausted all Seven (7) grounds in state court. Judge Keeley then ordered that the petitioner’s Second (2) § 2254 Federal Habeas be dismissed and the petitioner’s First § 2254 Federal Habeas be re-instated. After Judge Keeley admitted that it was a mistake to delete the petitioner’s first § 2254 Federal habeas in the first place.

Judge Keeley then denied petitioner’s § 2254 Federal Habeas based off of the

erroneous fact's that she had received from state court. The petitioner then filed an appeal in the fourth circuit court of appeals and his appeal was denied.

The petitioner then filed a Rule 60(B) motion back in Federal court. Judge Irene Keeley then sent petitioner a "Notice of opportunity to delete improper claims from Rule 60(B) motion. Judge Keeley admitted that the petitioner had two new state grounds that he could raise in court. Also, there were some defects in the integrity of the Federal Habeas. The Petitioner sent a letter to Judge Keeley agreeing to delete improper claims from Rule 60(B) motion. Unfortunately, Judge Keeley once again denied petitioner's case. Petitioner filed an appeal with the Fourth Circuit of Appeals and was denied.

The Petitioner then received some help from a friend and the petitioner then filed a Second (2) Rule 60(B) motion. Asking Judge Keeley to reconsider denying petitioner's First Rule 60(B) motion. Along with three (3) Supplement motions which Judge Keeley called later three (3) more Rule 60(B) motion's. But, really they were simply three (3) supplement motion's pertaining to the original Second (2) Rule 60(B) motion asking for a reconsideration of the denial of the First Rule 60(B) motion. Once, again Judge Irene Keeley denied petitioner's motion. So, the petitioner once again filed an appeal to the Fourth Circuit of Appeals. Except this time the Fourth Circuit of Appeals **REMANDED** petitioner's Rule 60(B) motion back to the lower court. With an Order telling the then new district Judge "Thomas S. Kleeh" to allow the petitioner to have an opportunity to delete improper claims from his Rule 60(B) motion.

The petitioner was not sure which claim that he raised in his Rule 60(B) motion was actually a true Rule 60(B) motion? So, the petitioner asked the new district Judge Kleeh for appointment of counsel because, at this point the petitioner did not know what he was doing? Judge Kleeh denied petitioner's motion for counsel stating that the court does not provide counsel to help inmates overturn their convictions. The petitioner filed the best brief he could by responding to the Fourth Circuit court of Appeals Order. Allowing petitioner to Delete Improper claims from his Rule 60(B) motion. Unfortunately, Judge Kleeh denied petitioner's Rule 60(B) motion.

The petitioner then filed his Appeal to the Fourth Circuit of Appeals. Which was Denied. But, in the Fourth Circuit Courts Order of Denial the Fourth Circuit Judges Stated in the Denial. That the Petitioner was right and on page two (2) of Per Curiam: Stated on Record.

“The district court also correctly found Widmyer’s argument that the court erroneously relied on nonbinding authority in denying Widmyers § 2254 petition was a true Rule 60(B) claim. However, contrary to the district courts determination, “Widmyer [also] could properly challenge the district court’s finding of procedural default in a Rule 60(B) motion.” **Widmyer v. Ballard, No. 21-7378, 2022 WL 4376080, at *1 (4th Cir. Sept. 22,2022; See e.g. Richardson v. Thomas, 930 F.3d 587, 596 (4th Cir, 2019)** (explaining that a movant under Rule 60(B) does not raise “a new habeas corpus claim, or attack [] the federal court’s previous denial of the claim on the merits, when he ‘merely asserts that a previous ruling which precluded a merits determination,such as “a denial for...procedural default,” was erroneous (quoting **Gonzalez v. Crosby, 545 U.S. 524, 532 n.4 (2005)**). Accordingly, the district court erred by declining to consider that argument under Rule 60(B). Upon review, however, we decline to REMAND this case to the district court for reconsideration of this issue.”

The Fourth Circuit court of Appeals admits that there is an ERRER in the lower court's ruling and say's that Widmyer has a challenge on the district courts finding of procedural default in a Rule 60(B) motion, Yet, the Fourth Circuit court of Appeals declined to REMAND this case to the district court for reconsideration of this issue.

The petitioner is now acting pro se and does not have the knowledge to present just what this court desires, but respectfully ask this Highly Honorable court for their assistance please on this issue.

Reason for granting the petition

In the summary, the petitioner lists several reasons why this court should grant the petition and then will discuss it in more detail following now:

First, the petitioner filed his first writ of Habeas corpus. Due to petitioner's ex-wife being employed at a law firm. This caused many conflicts of interest with many attorneys appointed to petitioner's Habeas. Thus, also causing several conflicts of interest with circuit judges appointed to petitioner's habeas.²

During this time several "Evidentiary hearing's" had been requested by previous attorney's on petitioner's case. At least four (4) requests were made.³ However, the court never had these hearings due to conflicts of interest with these attorneys'.

²(See APPENDIX #J) pages 2-11 "Order Declining to Adopt Report and Recommendation, Denying Motion to Dismiss, Granting Motion to Hold in Abeyance and Staying Case.")

³(See APPENDIX #F) page. #11 of "Second petition for writ of habeas corpus and losh list".

Finally, the last Judge “Christopher C. Wilkes” denied petitioner’s first writ of habeas corpus without holding an **Omnibus** hearing. (This was the first procedural error in petitioner’s case.) The petitioner knew something was wrong so, he filed a motion for “evidentiary transcripts” of court’s denial of Habeas corpus⁴. Needless, to say this motion was denied due to the fact no transcripts existed. Because no hearing ever took place on that date at the court house before Judge Christopher C. Wilkes⁵. This greatly confused the petitioner because the Order denying the petitioner’s habeas specifically stated on the very Front page of order: “This matter came before the court this 30th day of December 2005, pursuant to petitioner’s petition for writ of habeas corpus.

Upon the appearance of William Trampus Widmyer, (“petitioner”), by counsel Christopher D. Janelle, Esq. and the appearance of Respondent, by counsel Michael D. Thompson, Esq⁶. How can the court claim that there was a hearing on this date? And stated that the petitioner was represented by counsel? When in fact no hearing ever took place?

This greatly confused the petitioner. Because in **Losh v. McKenzie, 166 W.Va. 762, 277 S.E. 2d 606, 1981 W.Va. Lexis 603 (W.Va. 1981)** the Supreme Court of Appeals announced the following Rule of resjudicata:

⁴(See APPENDIX #G) “Motion for Evidentiary transcripts.)

⁵(See APPENDIX #H) “Order Denying petitioner’s motion for evidentiary transcripts because there were no hearings on the requested dates.

⁶(See APPENDIX # I) See page. #1 “Order summarily denying Petitioner’s Writ of Habeas corpus AD Subjiciendum”.

“A judgment denying relief in post-conviction habeas corpus is res judicata on questions of fact or law which have been fully and finally litigated and decided and as to issues which with reasonable diligence should have been known but were not raised, and this occurs where there has been an **omnibus** habeas corpus hearing at which the applicant for habeas corpus was represented by counsel or appeared pro se having knowingly and intelligently waived his right to counsel.”

How can the petitioner knowingly and intelligently waive any and all grounds when no Omnibus habeas corpus hearing ever took place and, petitioner was never represented by counsel at an **Omnibus** habeas corpus hearing that never took place?

This also can be proven that **NO Omnibus** habeas corpus hearing ever took place in petitioner's case. By looking at a recent Rule 60(B) motion that petitioner filed in state court. On page #3 of “Order Denying RCP, Rule 60(B) Relief; Refusing Appointment of counsel; Refusing to certify Question.” This circuit Judge Hammer admitted on Record that **NO Omnibus** hearing ever took place in petitioner's first writ of habeas corpus⁷. This clearly proves that Petitioner never had an Omnibus Habeas Corpus hearing in petitioner's First Writ of Habeas Corpus, thus violating the Rules of (**Losh v. McKenzie.**)

Res-Judicata cannot be applied to petitioner's who have never had an Omnibus Habeas hearing. See Syl. Pt. 2, **Losh v. McKenzie, 166 W.Va. 762, 277 S.E. 2d 606, 608 (1981)**. “A Judgment denying relief in post-conviction habeas corpus is res judicata on questions of fact or law which have been fully and finally

⁷(See APPENDIX #E) page. #3 (Notice of Filing) “Order Denying RCP, Rule 60(B) Relief; Refusing appointment of counsel; Refusing to Certify Question”.

litigated and decided, and as to issues which with reasonable diligence should have been known but were not raised, and this occurs where there has been an omnibus habeas corpus hearing at which the applicant for habeas corpus was represented by counsel or appeared pro se having knowingly and intelligently waived his right to counsel.” Quoted in **Williamson v. Mirandy 2016 W.Va. 110 (February 19, 2016).**

Once, the petitioner’s First Habeas was denied and then his Appeal was denied. The petitioner then filed his first § 2254 Federal Habeas petition and equitable tolling was Granted. This also, helps to explain why the petitioner had so many ineffective assistances of Habeas counsel’s appointed to his first habeas corpus. Because no one was willing to properly and effectively represent the petitioner in his case⁸.

The petitioner was then sent back to the circuit court to file a Second (2) writ of habeas corpus. (Judge Keeley had Ordered the petitioner to Exhaust seven (7) un-exhausted grounds in state court.)

1. Petitioner was denied due process of law as the trial court failed to instruct the jury that murder in the second degree is a lesser included offense of murder in the first degree.
2. Petitioner was denied due process of law as trial court failed to instruct the jury that unlawful assault is a lesser included offense of malicious wounding.
3. Petitioner was denied due process of law as trial court failed to instruct

⁸(See APPENDIX#J) pages #9-11 “Order Declining to Adopt Report and Recommendation, denying motion to Dismiss, granting motion to hold in Abeyance and staying case.

the jury to listen to the audio tape of Defendant's statement to police.

4. Petitioner was denied due process of law as the trial court judge should have recused himself.
5. Petitioner was denied due process of law when the state was permitted to introduce a gruesome photo decedent's body.
6. Petitioner was denied due process of law as defendant was not promptly presented before a magistrate pursuant to West Virginia Code § 62-1-5(a) of the West Virginia Rules of Criminal Procedure.
7. Petitioner was denied due process of law when trial court admitted evidence was the result of an illegal arrest.

As stated supra petitioner was able to get his previous attorney re-appointed to his case that had lastly filed his appeal on his first habeas petition. This attorney "Christopher Prezioso", threw research discovered that petitioner's First Losh list was illegally filed in petitioner's First Habeas Corpus⁹. (This is the Second Procedural error in Petitioner's case.) The petitioner's attorney Christopher Prezioso talked to the petitioner and asked if he could raise additional grounds to the petitioner's Second (2) writ of habeas corpus? Stating that the biggest ground was petitioner's Losh list not being legally filed in his First Habeas petition.

The petitioner agreed to the attorney's advice and his Second (2) writ of habeas was filed. The Attorney managed to get an evidentiary hearing and we went to court. However, the attorney presenting this argument was Erroneous as a matter of law, which is ineffective assistance of counsel, "As the Fourth Circuit

⁹(See APPENDIX #F) pages #3-17 of "Second Petition for Writ of Habeas Corpus and Losh list.

court of Appeals,” has found because counsel did not familiarizing himself with the relevant law constitutes deficient performance. And also, the Judge presiding over the case Judge Sanders had previously “**RECUSED**” himself off of the petitioner’s First Habeas petition. Felt he had no Conflict of Interest in petitioner’s Second (2) Habeas petition and Denied petitioner’s second (2) habeas petition in court¹⁰. (This was the third procedural error in petitioner’s case.)

The petitioner’s attorney Christopher Prezioso, Then Filed petitioner’s appeal in the West Virginia Supreme Court. The Attorney was highly discouraged stating that trying to prove ineffective assistance of counsel is impossible to prove in West Virginia.

Then to make matters worse the petitioner’s Appeal was Denied in the West Virginia’s Supreme court. All the while at this time all five Justices in the West Virginia Supreme court were being indicted on criminal charges and corruption in the West Virginia Supreme Court. (This was the Fourth procedural error in petitioner’s case.) Not only was the petitioner’s prejudiced by the circuit Judge not **RECUSING** himself on the Second (2) Habeas like he did on the First (1) Habeas, but a corrupt Supreme Court in West Virginia Denied Petitioner’s Appeal. Which is stated in Judge Keeley’s order “Notice or opportunity to delete improper claims from Rule 60(B) motion” Stating “that the five Justices of the West Virginia Supreme court of Appeals who presided over his case and denied his state appeals were

¹⁰(See APPENDIX #K) “Order of Recusal & Transfer”.

corrupt¹¹.

The petitioner then filed a Second (2) 2254 Federal habeas. Believing that he had faithfully exhausted all seven (7) grounds in state court. Judge Irene Keeley then Ordered that the petitioner's Second (2) § 2254 Federal habeas be Dismissed and the petitioner's First § 2254 Federal Habeas be Re-instated. After Judge Keeley admitted that it was a mistake to Delete the petitioner's First § 2254 Federal Habeas in the first place¹². Judge Keeley then Denied petitioner's § 2254 Federal Habeas petition based off the Erroneous fact's that she had received from state court. The petitioner then filed an appeal in the Fourth Circuit court of Appeals and it was Denied.

The petitioner then filed a Rule 60(B) motion back in Federal Court. Judge Irene Keeley sent petitioner a 'Notice of Opportunity to Delete Improper claims from Rule 60(B) motion.' Judge Keeley admitted that the petitioner had two new state grounds that he could raise in court. It says "Widmyer alleges two defects in the state proceedings: (1) That the state court Judge who had recused himself from Widmyer's first state habeas petition should also have done so in his second habeas petition; and (2) that the five Justices of the West Virginia Supreme court of Appeals who presided over his case and denied his state appeal were corrupt. Because these two allegations are claims of ERRER in Widmyer's state conviction,

¹¹(See APPENDIX #L) page. #6 of "Notice of Opportunity to delete improper claims from Rule 60(B) motion".

¹²(See APPENDIX #L) page.# 3 of "Notice of Opportunity to delete improper claims from Rule 60(B) motion.)

not in the integrity of the federal habeas proceedings, they “present new claims for relief from a state court’s judgment of conviction.”¹³

Judge Keeley also, stated that there were some defects in the integrity of the Federal Habeas. Here, Judge Keeley says “Widmyer alleges two defects in the Federal Habeas proceedings. First, he contends that the court’s December 2013 dismissal of his First § 2254 petition resulted in the dismissal of his second state habeas proceeding. Second, he argues that there “could potentially” have been a conflict of interest with magistrate Judge Seifert’s involvement in the case. These theories of relief appear to be true Rule 60(B) arguments because allegations of defect in the integrity of the Federal habeas proceedings are not new claims.”¹⁴

The petitioner sent a letter to Judge Keeley agreeing to Delete improper claims from Rule 60(B) motion. Unfortunately, Judge Keeley once again Denied petitioner’s case. Petitioner filed an Appeal with the Fourth circuit of appeals and was denied.

The Petitioner then received some help from a friend and the petitioner then filed a Second (2) Rule 60(B) Motion. Asking Judge Keeley to reconsider Denying Petitioner’s First Rule 60(B) motion. Along with three Supplement Motions Which Judge Keeley called later three more Rule 60(B) motions. But, really they were simply three Supplement motions pertaining to the original second (2) Rule 60(B)

¹³(See APPENDIX # L) page.# 6 of “Notice of Opportunity to delete improper claims from Rule 60(B) motion.)

¹⁴(See APPENDIX # L) pages. #3-4 of “Notice of opportunity to delete improper claims from Rule 60(B) motion.

motion asking for a reconsideration of the denial of the First Rule 60(B) motion. Once, again Judge Irene Keeley Denied petitioner's motion. So, the petitioner once again filed an appeal to the Fourth Circuit of Appeals.

Except this time the Fourth circuit of Appeals **REMANDED** petition's Rule 60(B) motion back to lower court. With an Order telling the then New District "Judge Thomas S. Kleeh" to allow the petitioner to have an opportunity to Delete Improper Claims from his Rule 60(B) motion. The petitioner got excited and thought that he must finally have a true Rule 60(B) motion filed. But the petitioner was not sure which claim that he raised in his Rule 60(B) motion was actually a true Rule 60(B) motion? So, the petitioner asked the New District Judge Kleeh. For Appointment of counsel because, at this point the petitioner did not know what he was doing?

Judge Kleeh denied petitioner's motion for counsel stating that the court does not provide counsel to help inmates overturn their convictions. The petitioner was discouraged and scared. So, the petitioner filed the best brief that he could. Responding to the Fourth Circuit courts of Appeals Order. Allowing petitioner to delete improper claims from his Rule 60(B) motion. Unfortunately, Judge Kleeh denied petitioner's Rule 60(B) motion.

The petitioner then filed his Appeal to the Fourth circuit of Appeals which was denied. But in the "Fourth Circuit Order of Denial." The Fourth Circuit Judges stated in the denial. That the petitioner was right and on page two (2) of Per Curiam: Stated on Record.

"The district court also correctly found Widmyer's argument that the court erroneously relied on nonbinding authority in denying Widmyers § 2254 petition was a true Rule 60(B) claim. However, contrary to the district courts determination, "Widmyer [also] could properly challenge the district court's finding of procedural default in a Rule 60(B) motion." **Widmyer v. Ballard**, No. 21-7378, 2022 WL 4376080, at *1 (4th Cir. Sept. 22, 2022; See e.g. **Richardson v. Thomas**, 930 F.3d 587, 596 (4th Cir, 2019) (explaining that a movant under Rule 60(B) does not raise "a new habeas corpus claim, or attack [] the federal court's previous denial of the claim on the merits, when he 'merely asserts that a previous ruling which precluded a merits determination, such as "a denial for...procedural default," was erroneous (quoting **Gonzalez v. Crosby**, 545 U.S. 524, 532 n.4 (2005). Accordingly, the district court erred by declining to consider that argument under Rule 60(B). Upon review, however, we decline to REMAND this case to the district court for reconsideration of this issue."¹⁵

The petitioner now argues the issue of whether the Fourth Circuit court of Appeals, erred reversibly in not remanding petitioner's case for reconsideration of petitioner's seven (7) unexhausted claims that were not decided on the merits. This has denied petitioner his right to be heard in a meaningful manner under due process of law.

As stated above, there were multiple errors in petitioner's state habeas proceedings. These errors ultimately resulted in an erroneous finding of procedural default in Federal court.

West Virginia habeas statute is clear that "once a circuit Grants a petition and appoints counsel, both petitioner and habeas counsel must raise all claims," Petitioner raised his unexhausted claims in State court, but they were swept under

¹⁵ (See APPENDIX #A) Pages.#2-3 of "Fourth Circuit court of Appeals Denial for COA"

Conclusion

The combination of errors by the Fourth circuit court of Appeals, "Not addressing all of petitioner's claims," constitutes **reversible error**. Petitioner was Granted Equitable Tolling, and his case was stayed and placed on an inactive docket to allow petitioner to Exhaust Remedy's in state court.

The same extraordinary circumstances that were found to receive Equitable Tolling were not considered by the district court or the Fourth Circuit court of Appeals to determine if those same extraordinary circumstances justify Grounds for relief under Rule 60(B). Additionally, the question of whether cumulative error applies in civil proceedings is a split question among the circuits, this **novel** question has multiple levels that needs ironed out, whether cumulative error can be used to defeat a procedural default is the important question?

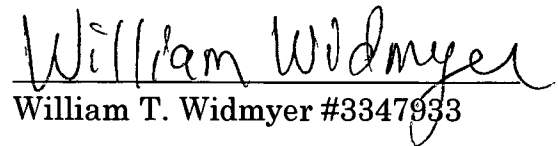
Remember, this court has never squarely defined what constitutes grounds to defeat a procedural default.

Justices, it is 2025, it is time the court define "procedural default"...please!...(United States v. Black, 388 F. Supp. 3d 682, (e.d. VA. 2019). "Allowing the procedural posture of this case to overrun an individuals liberty undermines the integrity of the court system and the value society places on Judges to get things right."

Relief Sought

I, William T. Widmyer, Respectfully Request that this matter be Remanded to the Fourth Circuit court of Appeals with directions to Remand this case to the district court for further, factual development, and the appointment of counsel, along with and all relief deemed proper by the court.

Respectfully Submitted:


William T. Widmyer #3347933

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM WIDMYER—PETITIONER

VS.

David Ballard, Warden—RESPONDENT(S)

PROOF OF SERVICE

I, William Widmyer, do swear or declare that on this date 5-22-25, as required by the Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITIONER FOR A WRIT OF CERTIORARI on each party to the above proceeding or the party's counsel, and on every other person required to be served, by depositing and envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid, or by delivery to a third-party commercial carrier for the delivery within #3 calendar days.

The names and addresses of those served are as follows:

West Virginia Attorney General
John B. McCuskey
State Capitol
1900 Kanawha Boulevard, East
Building 6, Suite #406
Charleston, WV 25305

I declare under penalty of perjury that the foregoing is true and correct.

Excuted on May 22, 2025

William T. Widmyer
(Signature)