



No.
17-6500

IN THE
SUPREME COURT OF THE UNITED STATES

DANNY W. HOWELL -- PETITIONER
(Your Name)

VS.

SUPERINTENDENT -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR REHEARING

DANNY W. HOWELL
(Your Name)

WABASH VALLEY CORRECTIONAL FACILITY
(Address)

POST OFFICE BOX 1111
(City, State, Zip Code)

CARLISLE, INDIANA 47838
(Phone Number)

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TABLE OF CONTENTS

	PAGE
SUMMARY OF REHEARING ARGUMENT _____	1-2

ARGUMENT I

PETITIONER WAS DENIED DUE PROCESS AS A RIGHT SECURED, AND HABEAS CORPUS AS THE INSTRUMENT BY WHICH DUE PROCESS COULD BE INSISTED UPON BY A CITIZEN ILLEGALLY IMPRISONED IN VIOLATION OF DUE PROCESS AND SUSPENSION CLAUSES, AS WELL AS THE BAN ON CRUEL AND UNUSUAL PUNISHMENT; SEE AMDT. 5; ART. I, § 9, CL. 2; AMOTS. 8 AND 14; S. CT. R. 10 (a) _____ 2

CONCLUSION AND CERTIFICATION OF GOOD FAITH _____	6
--	---

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BANKS V. DRETKE, 124 S.Ct. 1256 (2004)	3-5
PATTERSON V. NEW YORK, 432 U.S. 197, 210 (1977)	2
TENNARD V. DRETKE, 124 S.Ct. 2562 (2004)	4

STATUTES AND RULES

UNITED STATES 5TH AMENDMENT	2
UNITED STATES 5TH AMENDMENT, ARTICLE I, SECTION 9, CLAUSE 2	2
UNITED STATES 8TH AMENDMENT	2
UNITED STATES 14TH AMENDMENT	2
28 U.S.C. SECTION 2244 (b)(2)	3
28 U.S.C. SECTION 2253 (c)	4
28 U.S.C. SECTION 2254	4
28 U.S.C. SECTION 2254 (d)(1)	4
28 U.S.C. SECTION 2254 (d)(2)	4
28 U.S.C. SECTION 2254 (e)(1)	3
SUPREME COURT RULE 10 (a)	2
FEDERAL RULE OF CIVIL PROCEDURE, RULE 60 (b)	4-5

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SUMMARY OF REHEARING ARGUMENT

THE STATE COMMITTED AN UNCONSTITUTIONAL MANDATORY PRESUMPTION ON THE ELEMENT OF INTENT. THE ALLEGED CONVICTION WAS THE PRODUCT OF DECEPTION BECAUSE THE JURY WAS NOT PERMITTED TO REJECT THE INFERENCE OF GUILT BASED ON EXCULPATORY OR IMPEACHING MATERIAL IN THE RECORD. THE LAW PRESUMED CONCLUSIVELY THAT HOWELL WAS GUILTY WHEN PROSECUTION [WITNESSES] Vouched FOR THE [TRUTHFULNESS OF THE ALLEGED VICTIM'S] ACCOUNT AND SUGGEST THAT "EXCULPATORY OR IMPEACHING INFORMATION AVAILABLE TO THE PROSECUTOR BUT PRESENTED TO THE JURY SUPPORTS THE VICTIM'S TESTIMONY." THE STATE COURT DECISION IS OBJECTIVELY UNREASONABLE IN LIGHT OF THE RECORD BEFORE THE COURTS, "CAUSE" EXIST FOR PROCEDURAL DEFAULTS AS A RESULT OF THE STATE RENDERING PROCEDURAL

COMPLIANCE IMPRACTICABLE, THE OTHERWISE DEFAULTED CLAIMS WAS REASONABLY UNKNOWN TO HOWELL'S LAWYERS AND HOWELL'S LAWYERS MADE NO INTENTIONAL DECISION TO FORGO CLAIM. IT CREATED PROCEDURAL ANOMALIES, ALLOWING REVIEW WHERE THE LOWER COURT DECISION DISFAVORS, BUT DENIED REVIEW WHERE IT FAVORS THE GOVERNMENT. . . . IT CLOSED OUR DOORS TO A CLASS OF HABEAS PETITIONERS SEEKING REVIEW WITHOUT ANY CLEAR INDICATION THAT SUCH WAS CONGRESS' INTENT. AFTER ALL, THE EXCULATORY AND IMPEACHING INFORMATION DID NOT COME TO LIGHT UNTIL THE SUBSEQUENT HABEAS CORPUS PETITION. "THERE IS AN EXCEPTION TO PROCEDURAL DEFAULTS."

ARGUMENT I.

"PETITIONER WAS DENIED DUE PROCESS AS A RIGHT SECURED, AND HABEAS CORPUS AS THE INSTRUMENT BY WHICH DUE PROCESS COULD BE INSISTED UPON BY A CITIZEN FALSELY OR ILLEGALLY IMPRISONED IN VIOLATION OF THE DUE PROCESS AND SUSPENSION CLAUSES, AS WELL AS THE BAN ON CRUEL AND UNUSUAL PUNISHMENT; SEE AMENDMENTS 5; ARTICLE I, § 9, CL. 2; 8 AND 14; ALSO SUPREME COURT RULE, 10 (a):"

THE STATE COMMITTED AN UNCONSTITUTIONAL MANDATORY PRESUMPTION OF GUILT ON THE ELEMENT OF INTENT BY USING DECEPTION TO SUPPRESS, EXCULATORY AND IMPEACHING INFORMATION THAT DEFINE THE ELEMENTS OF THE CRIMES HOWELL WAS CONVICTED OF, CONTRARY TO THE SUPREME COURT IN, PATTERSON V. NEW YORK, WHICH STATED THAT THERE ARE "CONSTITUTIONAL LIMITS BEYOND WHICH THE STATES MAY NOT GO" IN DEFINING THE ELEMENTS OF A CRIME, 432 U.S. 197, 210 (1977). FOR INSTANCE, THE LEGISLATURE MAY NOT DECLARE AN INDIVIDUAL GUILTY OR PRESUMPTIVELY GUILTY, NOR MAY IT COMMAND THAT THE FILING OF AN INDICTMENT OR MERE PROOF OF THE IDENTITY OF THE ACCUSED CREATES A PRESUMPTION OF ALL FACTS NECESSARY TO FIND GUILT. SEE Id. "OTHERWISE, DUE PROCESS DEMANDED HOWELL'S ACQUITTAL." (SEE CERTIORARI PETITION).

THE STATE'S DEFINITION OF THE OFFENSE VIOLATED DUE PROCESS WHEN IT OFFENDS THE PRINCIPLES OF JUSTICE SO ROOTED IN THE TRADITIONS AND CONSCIENCE OF OUR PEOPLE AS TO BE RANKED AS FUNDAMENTAL". PROSECUTOR'S ARGUMENTS INFRINGED UPON THE ROLE OF THE JURY AS FACT-FINDER AND DETERMINER OF GUILT AND INNOCENCE BY "CREATING THE PRESUMPTION FOR THE JURY

THAT PROSECUTOR'S [WITNESSES]' MISREPRESENTING STATEMENTS OF TOUCHING CONSTITUTES THE ELEMENT CHARGED OF, SEXUAL INTERCOURSE, WHICH LED POLICE TO FOCUS ON "HOWELL AS THE SUSPECT," AND PROSECUTOR SUBORN EXPERT WITNESS'S PERJURED TESTIMONY TO "DOUGH FOR THE TRUTHFULNESS" OF THE VICTIM'S CREDIBILITY BY SUPPRESSING EXCULPATORY EVIDENCE WHICH SHOWS THAT HOWELL'S SON COMMITTED THE ACT UPON WHICH THE PROSECUTION IS FOUNDED, AND IMPEACHING INFORMATION OF PROSECUTOR'S FRAUD AND DECEPTION BY CREATING A STATE COURT RECORD DEVOID OF PROSECUTOR'S FAILURE TO CORRECT ITS [WITNESSES' MISREPRESENTATIONS] IN ORDER TO OBTAIN "HOWELL'S" CONVICTION." IT WAS THE STATE THAT RENDERED PROCEDURAL COMPLIANCE IMPRACTICABLE. THE OTHERWISE DEFAULTED CLAIM WAS REASONABLY UNKNOWN TO HOWELL'S LAWYERS AND HOWELL'S LAWYERS MADE NO INTENTIONAL DECISION TO FOREGO CLAIM. SEE 28 U.S.C. § 2244 (b)(2).

LOWER FEDERAL COURTS APPLICATION OF § 2254 (d) IS CLEARLY ERRONEOUS WHERE, AS HERE, THE STATE COURT DECISION WAS OBJECTIVELY UNREASONABLE UNDER § 2254 (a)(1). IT APPLIED A GOVERNING LEGAL PRINCIPLE TO A SET OF FACTS DIFFERENT FROM THOSE OF THE CASE IN WHICH THE PRINCIPLE WAS ANNOUNCED AND IS FOUND TO BE CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW. OBVIOUSLY, WHEN STATE COURT APPLIED AN ERRONEOUS LEGAL STANDARD IN MAKING THE FACTUAL DETERMINATION IT INFECTED THE FACT-FINDING PROCESS, WHICH IS PRESUMPTIVELY UNREASONABLE UNDER §§ 2254 (d)(2) AND INCORRECT BY CLEAR AND CONVINCING EVIDENCE UNDER (e)(1).

STATE COURT DID NOT CONSIDER A PROPERLY PRESERVED CLAIM ON ITS MERITS, DISTRICT COURT DID NOT ASSESS THE CLAIM *de novo*. AEDPA'S DEFERENCE REQUIREMENT DOES NOT APPLY BECAUSE BRADY MATERIAL SURFACED FOR THE FIRST TIME DURING FEDERAL PROCEEDINGS. THE SUBSEQUENT HABEAS CORPUS FILINGS CLASSIFIED AS SECOND OR SUCCESSIVE PETITIONS IS CLEARLY ERRONEOUS. SIMILARLY, BANKS V. DRETKE, 124 S.Ct. 1256, 1272-76 (2004); "A PETITIONER SHOWS 'CAUSE' WHEN THE REASON FOR HIS FAILURE TO DEVELOP FACTS IN STATE-COURT PROCEEDINGS WAS STATE'S SUPPRESSION OF THE RELEVANT EVIDENCE"; "HOWELL HAS SHOWN 'CAUSE' FOR FAILING TO PRESENT EVIDENCE IN STATE COURT CAPABLE OF SUBSTANTIATING HIS BRADY CLAIM" BECAUSE:

(1) "STATE PERSISTED IN HIDING [PROSECUTION WITNESSES] THAT SUPPLIED CHARGING INFORMATION AND MISLEADINGLY REPRESENTED THAT IT HAD COMPLIED IN FULL WITH ITS BRADY DISCLOSURE OBLIGATIONS," AND

(2) PROSECUTOR FAILED TO CORRECT WITNESSES' MISREPRESENTATIONS OF THEIR DEALINGS WITH POLICE "IN TESTIMONIES AT GUILT AND PENALTY PHASES OF TRIAL, AND JUST AS "IT WAS REASONABLE FOR HOWELL TO RELY ON THE PROSECUTOR'S FULL DISCLOSURE REPRESENTATION, IT WAS ALSO APPROPRIATE FOR HOWELL TO ASSUME THAT HIS PROSECUTOR WOULD NOT STOOPTO IMPROPER LITIGATION CONDUCT TO OBTAIN HIS CONVICTION".

IN BANKS, SUPRA, 124 S.Ct. at 1272, 1279, "PREJUDICE WITHIN THE COMPASS OF THE 'CURE AND PREJUDICE' REQUIREMENT EXIST WHEN THE SUPPRESSED EVIDENCE IS 'MATERIAL' FOR BRADY PURPOSES"; "AT LEAST AS TO THE PENALTY PHASE," STATES "SUPPRESSION OF [PROSECUTION WITNESSES'] WHO SUPPLIED CHARGING INFORMATION" WAS "MATERIAL" FOR PURPOSES OF BRADY DOCTRINE AND "PREJUDICIAL" FOR PURPOSES OF PROCEDURAL DEFAULT DOCTRINE BECAUSE "ONE CAN HARDLY BE CONFIDENT THAT BANKS RECEIVED A FAIR TRIAL, GIVEN THE JURY'S IGNORANCE OF [WITNESSES'] TRUE ROLES IN THE INVESTIGATION AND TRIAL OF THE CASE" AND "ONE COULD NOT PLAUSIBLY DENY THE EXISTENCE OF THE REQUISITE 'REASONABLE PROBABILITY OF A DIFFERENT RESULT' HAD THE SUPPRESSED INFORMATION BEEN DISCLOSED TO THE DEFENSE".

THE REASONS TO GRANT, VACATE AND REMAND IN LIGHT OF TENNARD N. DEETKE, 124 S.Ct. 2562 (2004), CERTIORARI PETITION IS THAT REASONABLE JURIST WOULD FIND THE DISTRICT COURT'S ASSESSMENT OF THE CONSTITUTIONAL CLAIMS DEBATABLE OR WRONG". SIMILARLY, 7TH CIRCUIT'S DENIAL OF CERTIFICATE OF APPEALABILITY WAS VACATED BECAUSE IT MERELY PAID LIPSERVICE TO THE PRINCIPLES GUIDING ISSUANCE OF COA. SEE 28 U.S.C. § 2253 (C). THE COURT SUBSEQUENTLY GRANTS SENTENCING PHASE RELIEF AND ORDERS ISSUANCE OF COA ON CHALLENGE TO CONVICTION, SEE BANKS, SUPRA, 124 S.Ct. at 1280, WHERE A REASONABLE JURIST COULD DEBATE WHETHER (OR, FOR THAT MATTER, AGREE THAT) THE PETITION SHOULD HAVE BEEN RESOLVED IN A DIFFERENT MANNER OR THAT THE ISSUES PRESENTED WERE 'ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER'.

§ 2253 (C), COA REQUIREMENT ALSO APPLIED TO AN ORDER DENYING A RULE 60 (b) MOTION FOR RELIEF FROM A JUDGMENT DENYING A § 2254 PETITION. CERTIORARI REVIEW OF A "GRANT OR DENIAL OF AN AUTHORIZATION BY 7TH CIRCUIT COURT OF APPEALS TO FILE A SECOND OR SUCCESSIVE APPLICATION" DID NOT APPLY TO THE CASE BECAUSE IT IS THE LOWER COURT'S REFUSAL TO RECOGNIZE THAT THE SUBSEQUENT § 2254 FILING IS HOWELL'S FIRST, NOT SECOND. SIMILARLY COURT HAD GRANTED CERTIO-

RARI ON THE FOLLOWING ISSUES: (1) "DID THE SIXTH CIRCUIT ERR IN HOLDING THAT EVERY FED. R. CIV. P. 60 (b) MOTION CONSTITUTES A PROHIBITED SECOND OR SUCCESSIVE HABEAS PETITION AS A MATTER OF LAW?"; (2) "DOES COURT OF APPEALS ABUSE ITS DISCRETION IN REFUSING TO PERMIT CONSIDERATION OF A VITAL INTERVENING LEGAL DEVELOPMENT WHEN FAILURE TO DO SO PRECLUDES THE HABEAS PETITIONER FROM EVER RECEIVING ANY ADJUDICATION OF HIS CLAIMS ON THE MERITS?"

TO PRECLUDE A PETITIONER WHO CAN DEMONSTRATE THAT HE OR SHE IS ACTUALLY INNOCENT OF THE CRIMES THAT HE OR SHE WAS CONVICTED OF VIOLATES DUE PROCESS AND THE SUSPENSION CLAUSE . . . , AS WELL AS THE 8TH AMENDMENT'S BAN ON CRUEL AND UNUSUAL PUNISHMENT, "THE WRIT'S EXISTENCE AFFORDS SOME AMOUNT OF PROTECTION THAT CANNOT BE ELIMINATED WITHOUT VIOLATING THE CONSTITUTION," "FINES AND SANCTIONS WERE UNJUST,"

"THE LAW MUST SERVE THE CAUSE OF JUSTICE. . . . PERHAPS SOME WOULD SAY THAT HOWELL'S INNOCENCE IS A MERE TECHNICALITY, BUT THAT WOULD MISS THE POINT. IN A SOCIETY DEVOTED TO THE RULE OF LAW, THE DIFFERENCE BETWEEN VIOLATING OR NOT VIOLATING A CRIMINAL STATUTE CANNOT BE SHRUGGED ASIDE AS A MINOR DETAIL," IN ITS ATTEMPT TO REFINES THE BOUNDRIES OF THE JUDGE-MADE DOCTRINE OF PROCEDURAL DEFAULT, THE COURT HAS LOST SIGHT OF THE BASIC REASON WHY THE WRIT OF HABEAS CORPUS INDISPUTABLY HOLDS AN HONORED POSITION IN OUR JURISPRUDENCE: . . . HABEAS CORPUS IS, AND HAS FOR CENTURIES BEEN, A 'BULWARK AGAINST CONVICTIONS THAT VIOLATE FUNDAMENTAL FAIRNESS'."

IT WOULD BE A MISCARRIAGE OF JUSTICE IF WE TURNED A BLIND EYE TO SUCH ABUSE OF THE JUDICIAL PROCESS. BANKS V. DRETKE, SUPRA, 124 S. CT. 1256, DEMONSTRATES: "WHEN POLICE OR PROSECUTORS CONCEAL SIGNIFICANT EXCULPATORY OR IMPEACHING INFORMATION IN THE STATE'S POSSESSION, IT IS ORDINARILY INCUMBENT ON THE STATE TO SET THE RECORD STRAIGHT."; "WE HAVE SEVERAL TIMES UNDERSCORED THE 'SPECIAL ROLE PLAYED BY THE AMERICAN PROSECUTOR IN THE SEARCH FOR TRUTH IN CRIMINAL TRIALS,' COURTS, LITIGANTS, AND JURIES PROPERLY ANTICIPATE THAT 'OBLIGATIONS [TO REFRAIN FROM IMPROPER METHODS TO SECURE A CONVICTION], . . . PLAINLY RESTING UPON THE PROSECUTING ATTORNEY, WILL BE FAITHFULLY OBSERVED,' PROSECUTORS' DISHONEST CONDUCT OR UNWARRANTED CONCEALMENT SHOULD ATTRACT NO JUDICIAL APPROBATION."

CONCLUSION

PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

Danny W. Howell

DATE: JANUARY 18, 2018

CERTIFICATE OF GOOD FAITH

PETITIONER, DANNY W. HOWELL, HEREBY CERTIFIES THAT THIS PETITION FOR REHEARING IS BROUGHT PURSUANT TO SUPREME COURT RULE 44.1 WITH THE GOOD FAITH BELIEF THAT HE WOULD BE ALLOWED TO HAVE HIS ISSUES REVIEWED AND RELIEF GRANTED BY THE SUPREME COURT OF THE UNITED STATES AND NOT FOR THE PURPOSES OF DELAY.

DATE: JANUARY 18, 2018

Danny W. Howell
PRO-SE PETITIONER