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IN THE
SUPREME COURT OF THE
UNITED STATES

DAVID M. ISAACSON

*

LORIE DAVIS

VS

Petitioner,

*

Respondent,

CAUSE NO. 17-7328

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

PETITION FOR REHEARING

David M. Isaacson
Stevenson Prison Unit
1525 FM 766
Cuero, Tx. 77954

TDCJ ID NO. 1691396
Petitioner Pro Se

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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

COMES NOW Petitioner, David M. Isaacson, Pro Se, and prays this Court to grant Rehearing pursuant to rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Fifth Circuit Court of Appeals. In support of petition, Mr. Isaacson states the following.

STATEMENT OF FACTS

At jury trial, David Isaacson was convicted of aggravated assault on a public servant with a deadly weapon, two (2) counts and sentenced by the court to the minimum prison term of fifteen (15) years, to run concurrently. There were no injuries, there was no attempt to injure, in fact petitioner never said a single word.

According to two (2) of the State's three (3) witnesses, whose stories of what happened vary widely, petitioner pointed a handgun directly at them, sweeping between them for 20-30 seconds. This made them so mad they each got into his own vehicle and drove away. This is an extremely unusual response to what they claim had just happened don't you think? Most people would say it's totally unbelievable, I do!

One of the primary questions I would ask myself, if I were investigating or reviewing this case would be...[W]hy in the world, would this guy, a law abiding citizen, who had committed no crime, believe it was necessary, for the first time in his life to bring a loaded handgun with him to answer his front door?

For the past eight (8) years, Mr. Isaacson has been trying to answer that unasked question, and at the same time attempting to prove he is innocent of the crime for which he was convicted. Petitioner has written hundreds of letters to attorneys, family,

friends, organizations and professors. He has sent briefs, appeals motions, affidavits, requests and petitions to a host of state and federal courts, including this one.

Petitioner has spoken with clergy, corrections officers, strangers, attorneys and inmates. Mr. Isaacson has spent thousands of hours researching law, chasing down rules and regulations and studying past cases where precedence has been established. All this was done in an environment designed for failure with minimum support, including a most pitiful law library.

You can bet Mr. Isaacson has received a heck of an education through all this and learned a few things in spite of himself...

1. The sitting judge at trial told my highly acclaimed, retained defense attorney he thinks state's witnesses were lying while under oath
2. Every single person who has looked at my case (except the courts) believe I got screwed
3. There are those who pin on a badge, raise their right hand take an oath or wear a robe who believe themselves to be above the law

The Court might also ask itself... How or why does it believe Mr. Isaacson is the only person on this planet, who apparently can and has pointed a loaded gun directly in the faces of two (2) deputy sheriffs. From point blank range, no more than 1-2 inches. Swinging his gun back and forth for 20-30 seconds, never saying a word, his face remaining expressionless. While they themselves (contrary to state's own witness) repeatedly ordered him to put gun down, Blah, blah, blah. Then suddenly, simply turn completely around, putting his back to them, close his door and turn out the lights. Especially in our society, where law enforcement on a daily basis shoots someone in "self-defense" only to find out later the suspect was unarmed.

Those same two (2) deputies who swore under oath, in a court of law, at petitioner's trial, that Mr. Isaacson had pointed a gun at them were so upset they aided a Corporal who had arrived at the scene, in the arrest of Donna (who unknown to petitioner was present at the scene). Each of the three (3) deputies then got into his own squad car and left the area.

This left Mr. Isaacson, of whom they knew was heavily armed all by himself, completely alone, totally unsurviellanced for the rest of the night and more than half the next day. Over eighteen (18) hours to do as he pleased with no interference from anybody. Why can you imagine the lawsuits people would have filed, the tens or even hundreds of millions of dollars the state would have had to pay if Isaacson (whom they could easily have arrested at his home) had decided to drive over to the supermarket or mall or highschool loaded down with guns and ammo, and opened fire, and the public found out.

Just think about it. If Isaacson was the crazed maniac, the extremely dangerous, gun toting, violent criminal my attorney allowed the prosecutor to lead the jury to believe why was nobody shot. He could easily shot any or all of them, it's in the record.

It's really quite simple. Isaacson caught two guys and his and his girlfriend using illegal drugs in his home. When they refused his request to leave he went and got one of his pistols and asked them to leave again. They did!

A little while later, Isaacson was awakened by someone at his door. After viewing two (2) people just outside of his front door and given the time of night and the events that had taken place earlier, you don't have to be a rocket scientist to deduce or

conclude who it probably was. But just in case, Isaacson will put it in plain speak...It was late Sunday night. Social hour was over and petitioner was expecting no guests. It was too late for the girl scouts to be selling cookies. It was too late for the boy scouts to be selling spaghetti dinner or pancake breakfast tickets. It was too late even for Jehovah's Witness. However the Court will remember Isaacson had been forced to evict two (2) criminal trespassers from his home, with a show of force, i.e. a handgun, after finding them sitting around his diningroom table smoking weed and doing lines of, presumably coke through a straw and drinking beer with his soon to be ex-girlfriend.

Gee...what to do? Hide under the bed? No! Run out the back door and let them have the place? No! How about stand-up and protect yourself and your property? Yes! I already gave them the option to go away and now here they are back looking for revenge or a chance to get even. Probably with weapons of their own.

With gun in hand I walk to the front door which has a beveled cut glass panel in it. Locked and loaded, expecting to defend myself I yank the door open.

At my 10 o'clock three (3) feet, male. At my 2 o'clock six (6) feet, male, black jacket. Isaacson looks back and forth. They are in very good attack position but not moving. Maybe two (2) seconds pass and just as I realize, the message my eyes were sending my brain, the exact moment, hey these guys might be...10 o'clock guy moves. There in his right hand a GUN as he excitedly announced, "gun, turn around and drop it" to alert his partner of the threat. ...cops. Why are they here?

Isaacson was not hiding his weapon, it was in plain view in his

right hand slightly forward of his right knee (in plain view), (in plain view)! Petitioner did not drop his weapon but did immediately turn completely around (back to officers) and swing the door closed with his right heel. Effectively ending the situation. The total elapsed time from the opening of the door, to the closing of the door was six (6) seconds. Eight (8) seconds at the outside!

Isaacson, weak kneed, wobbled to the diningroom and sat down. While he attempted to digest the whole thing he realized all his girlfriends stuff was sitting on the table. Purse, car keys, cell phone, cigarettes and lighter-everything. He realized she must be here on his property somewhere. He checked the house then went out to check both the upper and lower deck. Walked down to the lake and called for her. Went back in through the house and after a quick peek outside went out the front door to the guest house. Mr. Isaacson even checked the garage. Donna was not there! In fact nobody was there! No cops, no two (2) guys, no Donna! Petitioner went back to bed finally and fell asleep wondering where in the hell was Donna? Probably partying her ass off! And why were the cops there? Both questions were answered Monday the 17th of November 2008.

Donna called Isaacson early Monday morning. Apparently, instead of coming to dinner the night before (Sunday) she got drunk and met the two (2) guys, later identified as maybe Chris and Dave, Either they offered or she asked for a ride to my house. Presumably to drunk to drive herself. Once there she invited them in. After Isaacson kicked them out (all three (3) left the house. Isaacson had returned to his bedroom, as you may remember, and was waiting for Donna to come in and explain herself. That didn't

happen!

She did come back in the house, but she never came to see Isaacson to explain herself. She say's she was standing in the livingroom when the doorbell rang. Before I could get there, she had already answered the door and stepped outside to talk to the deputies after they identified themselves, and closed the door behind her. Apparently she was one (1) of the two (2) people I saw standing outside the door when I looked just as she closed it.

When police saw me coming down the hall through the glass panel they moved her around the porch corner (out of my sight) and let me open the door. They let me step right in it. Up to my neck.

Although their stories of what happened vary significantly they both testified I pointed a gun directly at them for 20-30 seconds then just turned around shut the door on them. They did arrest Donna for public intoxication and take her to jail, after a one (1) hour stop down by the lake. A dark deserted parkinglot at the local boat ramp (Turkey Cove).

REASONS MERITING REHEARING

1. The Fifth Circuit's decision is clearly in conflict with *Strickland v. Washington*, 466 U.S. 668, (1984) where this Court made it perfectly clear, as in crystal clear, "the Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment, provides that the accused shall have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective assistance of counsel."

This Court may remember a more recent case, *Missouri v. Frye*, 132 S. Ct. 1399, (2012) when Justice Kennedy delivered the opinion of the Court. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea

on terms and conditions that may be favorable to the accused."

Here exactly like Frye, petitioner has shown with unwaivering consistancy the "record is void of any evidence of any effort by trial counsel to communicate the Offer to Isaacson during the offer window." 311 S.W.3d, at 355, 356. For the Fifth Circuit not to recognize ineffective assistance of counsel when it slaps them right in the face is unacceptable, inexcusable and unconstitutional ~~by~~ the letter of the law.

Furthermore, Isaacson can show prejudice because he went to trial facing a minimum of fifteen (15) years rather than the ten (10) offered. Or even the possibility of probation before that. The failure to allow me to even consider the offer because ~~H~~ defense counsel never told me it existed is in plain speak "INEFFECTIVE ASSISTANCE OF COUNSEL" and a violation of my constitutional right.

Defense counsel was "ordere~~d~~" by the convicting court to file an affidavit regarding the issue of the plea offer because they themselves were "ordered" by the Court of Criminal Appeals to the finding of facts and conclusions of law.

Isaacson fails to understand the court's decision to find defense counsels affi~~d~~avit credible, simply because, "he said so." Especially when the record and the physical evidence will not support it. Isaacson filed an affidavit in response to defense counsel's affidavit refuting the entire thing. There wasn't a word of truth to any of it-and the record does support that statement! This was and is Isaacson's right according to 28 U.S.C. §2246.

Isaacson cites the following for the Court: Although habeas petition may be decided on basis of affidavits, contested facts

facts ordinarily may not be decided on affidavits alone unless there is other evidence in the record supporting them. *Jordan v. Estelle*, C.A.5 (Tex.) 1979, 594 F.2d 144. Although statutory provision is made for taking of evidence by affidavit in habeas proceedings such procedure cannot be used to resolve substantial disputed questions of fact. *Campbell v. State of Minn.*, C.A.8 (Minn) 1973, 487 F.2d 1.

Lets not mince words about what is and what isn't substantial. There is nothing ambiguous about the word, it is what it is. Apparently everyone in the federal side knows about affidavits, the lesser, inferior courts may be a little slow in grasping this concept. Hell its only been forty (40) years! Isaacson is still waiting for anything at all, other than the statement from the convicting court, "...We find defense counsel credible and Mr. Isaacson not credible." So lets have it---- where is the record or physical evidence? Pretend I'm from Missouri, the "show me state," I want to see the proof (SHOW ME), ANYBODY, SHOW ME!!!!

Page 9 section A USA Today March 30th, y'all might have seen it or heard about it, but just in case the article petitioner refers to is about the killing in Sacramento. To recap... Timothy Davis, president of the Sacramento Police Officers' Association issued a statement about the police shooting, and killing an unarmed suspect by the name of Stephon Clark. The suspect was black, the officer is white. The statement in part said, and I quote, "Even as tragic as this event is, we cannot ignore the fact that the shooting was legally justified under the law, within police policy and in accordance with training." "These officers reacted to the threat as they perceived it. As such, their actions are legally

justified." "One officer shouted 'gun, gun, gun' to alert his partner of the threat." Does any of that sound familiar to the Court? Ring a bell, anything at all?

It was reported, Sacramento Police Officers were called to the location after a citizen witnessed Clark breaking out car windows. The Sheriff's helicopter arrived and located Clark breaking out the sliding glass door of a back yard.

Clark then turned on the officers, and in a dark back yard, took a shooting stance and pointed an object at the police officers. The police officers perceived the object as a gun. They perceived this as a deadly threat and fired on Clark to save their own lives. Anything familiar here?

Although Mr. Isaacson was not out in the community breaking windows and the law, but in his own home. Asleep in his own bed. In his own bedroom. Comal County Sheriff's Officers were dispatched to the location after a citizen called 911 with a false report about a domestic issue. Although there was an issue with the two (2) drug using "criminal trespassers." Who incidentally, just in case you missed it in record, or forgot, happened to stop by a friends apartment who just happened to live about two (2) miles from Isaacson, after they got tossed out. Took the party to her place. Her name is Lisa Green. She called 911. Are you following what I'm saying. Chris and Dave were mad because I kicked them out and Lisa after hearing their sob story dialed 911. They didn't she did. She was not even there. She made a false report. But who really cares. Big criminal, at home, asleep...Christ give me a break.

If the president of the Sacramento Police Officers' Association

is to be believed, and there is no reason not to... when he stated: "These officers reacted to the threat as they perceived it. As such, their actions are legally justified." They then opened fire on him, shooting him to pieces, (at least five (5) times in the back), killing him on the spot. The "investigation" that began shortly thereafter, revealed the black male suspect had no weapon on his person, nor was there a weapon found in the vicinity of his body.

Mr. Isaacson, a law abiding citizen, asleep in his own home, was awakened by the doorbell. Because of events earlier, Isaacson believed himself to be under attack and reacted to the threat as he perceived it. As such, his actions were/are legally justified. See Castle Doctrine [Law] !

Petitioner sure is lucky he was born a white man. Just imagine how many times he would have been shot if he were black and really had a gun in his hand, pointed at two (2) cops, point blank range.

Apparently this is proof there really are different standards. If your a "black man" even without a gun your shot to rags... If your a "white man" with a gun your going to prison...or shot... If your a "police man" who shoots the unarmed black man...or lies under oath at a white mans trial...make him a hero and buy him a few beers...

The proof, or physical evidence should be obvious to the Court. But just in case...the Court is reminded, Mr. Isaacson, the white male suspect, was not only not shot, but left unsurveillanced, completely unmolested (with all his guns and ammunition) to do as he pleased for the next eighteen (18) hours. Good thing Isaacsons' not the extremely dangerous gun toting maniac police would have

you believe, and the prosecution portrayed at trial. If the good citizens of the community were attacked by petitioner and men, women and kids were killed by this heavily armed madman. And they found out you let him run around for for half the night and all the next day. When you should have had him in jail or box. Just imagine the law suits.

SUGGESTIONS IN SUPPORT OF HEARING

The Court of Criminal Appeals failed in it's duty to acknowledge Mr. Isaacson's trial counsel was deficient in his representation by not recognizing the failure to communicate a plea offer is a constitutional violation. Failing to allow Mr. Isaacson the opportunity to consider a plea offer during the offer window is a violation of his constitutional right per amend. VI and IVX.

Maybe this Court in all its wisdom can explain to a fool like me where the logic is if...as an attorney, a defense attorney why you would base your complete strategy on "no crime was committed" then go on and on about self-defense, use-of-force, and mistake-of-fact. Then ask the judge to instruct the jury on those issues, one by one. Any bonehead, including me knows in order to get the instruction you need to admit you actually committed the crime, and then explain why and how. Explaining details like how it was not intentional, or whatever. Oops didn't know you were in there type thing.

Why not argue what the real defense is. Like Mr. Isaacson tossed a couple idiots out of his house because they were using illegal drugs and had become criminal trespassers (according to the letter of the law) contained in the Texas penal Code. This was lawfully exercised as Mr. Isaacson was the homeowner, and therefore had

every right to evict anyone he wanted to, for any reason, or no reason at all. But defense counsel advised me not to mention the pot or coke I caught them using.

Defense counsel also attempted to use self-defense and use-of force and mistake-of-fact as a tactical and strategic defense. Because Mr. Isaacson was at his home, inside his own house the entire time he was exercising his right under the "castle (Law) doctrine which is the right to use force to the extent deemed necessary, including deadly, in self defense if the person believes he is under attack. And he would have gotten the instruction to the jury. Had defense counsel done this the result would have been different. Isaacson has met the two (2) prong requirement in Strickland.

Clearly defense counsel's performance was deficient and fell far short of any professional standard. His performance in a word was "pitiful." He failed to question witnesses. Withheld evidence. Failed to mount a reasonable strategic or tactical defense. His courtroom demeanor, (presence) was disgusting.

Isaacson just like the police in Sacramento was legally justified under the law and within the parameters of the castle doctrine.

If this Court were to look at this with even minor effort it would conclude Mr. Isaacson was the victim here. He did nothing wrong, broke no law, and never pointed a gun at deputy sheriffs. The fact they just left is proof enough. The fact he still lives is proof. The deputies and the corporal committed perjury. It's in the record.

This case is not over...we will find out what really happened

to Donna while corporal Smith instead of arresting her and taking her straight to jail decided to stop down by the lake all alone in a dark lonely parkinglot for over an hour. Really!! And this was authorized by the Captain and the Lieutenant. Show me that in the policy and procedures manual.

Petitioner isn't asking the Court to set him free, even though he is innocent. Although that would be nice. Not at all. What Mr. Isaacson is asking for is a new trial thats all. Hell lets put it on the net for public opinion. Kill him or free him! I like it. To leave me in prison for a crime that never happened. I would rather be dead. Come kill me! I wish you would.

So go ahead pull out your rubber stamp and plant a big red D-E-N-I-E-D across the top sign it and date it.

The accusation, the charges, the trial, the appeal process, this whole event has nothing to do with the law or right and wrong. It's all about money and power. Ten years ago if you asked me what I thought about the judicial system in America, I would have told you it's the best in the world. If you asked me today I'd tell you it's the most corrupt.

Our system is broken. Eight (8) years to get to the Supreme Court. How long was the review half an hour? Less?

No Mr. Isaacson never pointed a gun at sheriff's deputies, but because of poor representation and other constitutional violations he was found guilty. How sad! How very, very sad!

CONCLUSION

For the reasons stated, this Court MUST grant Rehearing of its judgment entered on March 19, 2018, and issue a Writ of Certiorari to hold the Fifth Circuit accountable for failing to properly apply the law of this Court and grant Mr. Isaacson relief. Should Isaacson's cry for justice not be heard and denied relief; may this Court also cry and not be heard "For whoever shut their ears to the cry of the poor will also cry themselves and not be heard." Proverbs 21:13.

Respectfully Submitted



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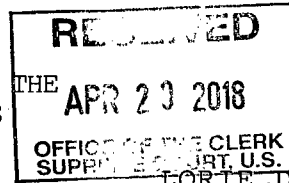
CERTIFICATE OF SERVICE

The under signed hereby certifies that a copy of the foregoing was mailed, postage prepaid, 1st class, this 11 day of April by placing it in the U.S. Post Office Box at the Stevenson Prison in Texas. Thereby invoking the mailbox rule. Addressed to the Attorney General of Texas, P.O. Box 12548, Austin Tx. 78711-2548



Petitioner

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DAVID M. ISAACSON,

*

vs

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Petitioner,

LORIE DAVIS,

Respondent,

CAUSE NO. 17-7328

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, David Isaacson, and makes certification that his petition for rehearing is presented to this Court in good faith pursuant to Rule 44. Mr. Isaacson further states the following:

1. This Court entered its judgment denying petitioner a Writ of Certiorari on March 19, 2018. Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay. Furthermore, petitioner believes that based upon the law of this Court and facts of this case, Isaacson is entitled to relief which has been unjustly denied him. He further believes that if the Fifth Circuit Court of Appeals are continually allowed to apply the Strickland standard improperly, a number of people will be denied their constitutional right to due process.

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

Executed on this 11th day of April, 2018.

David M. Isaacson