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IN THE SUPREME COURT OF THE UNITED STATES

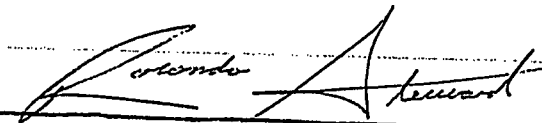
Rolando Stewart #631620 PETITIONER

vs

Warden Keith Cooley ET, AL RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO:
UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF
LOUISIANA Rolando Stewart #631620 vs. Warden Keith
Cooley ET, AL Civil Action No. 22-711-JWD-EWD
UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
Case No. 24-30152

PETITION FOR WRIT OF CERTIORARI



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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Does United States Constitution violations grant a 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus by a Person in State Custody and excuse the denial because of timeliness?

LIST OF PARTIES

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

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix C to the petition and is

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished

The opinion of the United States District Court appears at Appendix A, B to the petition and is

☒ reported at A:2024 WL 666492 B:unpublished; or

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 10th, 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The Jurisdiction of this Court is invoked under
28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendments: page:

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances 18

Amendment IV. searches and seizures; Warrants 18

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; self incrimination; Due Process of Law; Takings without Just Compensation 18

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Federal Rule of Evidence 803, 28 U.S.C.A. 12

STATEMENT OF THE CASE

This March 2nd, 2012 arrest and incarceration resulted in a illegal conviction by an illegal and ill-advised plea-agreement commenced December 17th, 2014 and sentenced April 22nd, 2015 by the 23rd Judicial District Court Parish of Ascension State of Louisiana. Paid attorney Jeffry L. Sanford #21069 filed a Motion for Post-Conviction Relief April 21st, 2017 denied August 17th, 2021 and Application for Supervisory Writ into the Louisiana First Circuit Court of Appeals filed November 17th, 2021 denied January 31st, 2022 which due to his misconduct led to his dismissal filed February 28th, 2022 and completed May 11th, 2022. Petitioner immediately filed in Pro Se a Motion for Rehearing on Order of Application for Supervisory Writ February 23rd, 2022 denied March 8th, 2022 and Writ of Certiorari into the Louisiana Supreme Court March 18th, 2022 denied May 10th, 2022 rehearing denied September 7th, 2022 the application was not considered deemed not timely filed with Supreme Court Judge Hughes, J concurring "The 30-day limitations period to file an application for a writ of certiorari in this court was not tolled by the filing of an application for rehearing and/or reconsideration of the court of appeals denial of defendant's supervisory writ application. see State v. Crandell, 05-1060 (La. 3/10/06), 924 so. 2d 122."

In this Habeas Corpus proceedings the United States District Court Middle District of Louisiana denied Petitioner's application as untimely filed while Petitioner has shown "cause" to grant the Petition and excuse the timely challenge. Notice of Appeal and Request for Certificate of Appealability and Brief in support were filed into the United States District Court Middle District of Louisiana March 4th, 2024 received notice of denial July 16th, 2024. Amended Notice of Appeal, Request for Certificate of Appealability and Brief in support were filed into the United States Court of Appeals Fifth Circuit August 6th, 2024 received notice of denial December 23rd, 2024.

REASONS FOR GRANTING THE PETITION

The historical importance of the writ, the policy that constitutional rights should not be denied "without the fullest opportunity for federal judicial review", the concerns over the availability of state remedies to guarantee those rights and the "institutional constraints" on this Court's Jurisdiction are compelling reasons for according state petitioners access to federal Habeas Corpus relief. Technical procedural rules should be applied less rigidly where accused voluntary tries his own case. see State v. Blankenship, La 186, 172, so. 4 (1937). A Habeas Petition-

er's reasonable confusion about whether a state Post-Conviction filing would be timely will ordinarily constitute "good cause" for him to file his petition in federal court without meeting exhaustion requirements of the Antiterrorism Effective Death Penalty Act (AEDPA) 28 U.S.C.A. § 2254 Pace v. DiGuilme, 544 U.S. 408, 418 (2005). 28 U.S.C. § 2244.

As the guilty plea does not automatically bar a defendant from invoking the actual innocence exception, that will excuse untimeliness. Having no DNA or physical evidence of petitioner through all investigation and reports is a sufficient showing of actual innocence to overcome the untimely filing of the federal Habeas Corpus Petition, supporting Petitioner is actually innocent of the crimes he admitted to. The other (4) defendants reported DNA or physical evidence from the crime scene their confessions of guilt are all inconsistent statements with the false accusations of Petitioner which show proof beyond a reasonable doubt Petitioner is factually innocent. see Fed. R.E. 803, 28 U.S.C.A.

The crimes had racial overtones. The decision to charge was made by the district attorney and the trial court appointed inexperienced counsel and tolerated conduct which was inconsistent with the precepts of Powell v. Alabama, 287 U.S. 45 (1932) requiring "effective aid" of counsel. The incompetency and failure to create a record on

appeal makes it impossible to assume Petitioner had a fair trial. Thus, the totality of the circumstances of this case constitute a prima facie showing of prejudice which the state must rebut in order to foreclose relief, even under the harshest applications.

In Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d. 476 (1968) Stewart, J. while joining the opinion and judgment of the court, stated, "that certain kinds of hearsay are at once so damaging so suspect and yet so difficult to discount that the jurors cannot be trusted to give such evidence the minimal weight it logically deserves, whatever the trial court's instructions". Black, J. concurred "in the result on the ground that admonition to the jury to use confession as evidence only against the confessor, but not against other defendants is ineffective in that effect of such a confession cannot be wiped away from the brains of the jurors. Under traditional rules of evidence, a co-defendant's confession inculcating the accused is inadmissible against the accused as hearsay."

The guilty plea hearing began in Docket Number 29441, on the True Bill for (3) counts of First Degree Murder, during which part of the plea counsel for the state filed new Bill's of Information for crimes that Petitioner had never been previously arraigned. The court does not show that a discussion on a plea to charges under Docket Number

29441, was a Boykinization of charges under Docket Numbers 33376, 33377, 33378 and 33379. Petitioner's Counsel waived formal arraignment and entered pleas to these charges. Therefore, Petitioner was not properly Boykinized under the new Bill's of Information the waiver of arraignment is not to facilitate a guilty plea being the Court has an affirmative duty to insure that the plea is made with competence, knowledge and understanding of its consequences. The failure of the court to read Petitioner the charges and/or adjourn for the charges to be explained and motions be filed, casts doubt whether Petitioner had any understanding to what he was pleading guilty to and proves on the record the Boykin Form was insufficient. The Pre-Sentence investigation read failed to include the numerous showings of Petitioner's innocence who received an excessive sentence of 63 years total.

The Writ of Habeas Corpus is a sacred part of our heritage. Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the Judiciary for a man's imprisonment: if the imprisonment cannot

be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today Habeas Corpus in the federal Courts provide a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office. see Fay v. Noia, 372 U.S. 391, 401-402 (1963)

While it is true that Louisiana can create a system of absolute forfeitures of federal constitutional rights which will govern its review of untimely claims, Michel v. Louisiana, 350 U.S. 91 (1953) it is equally true that considerations come into play when federal habeas corpus is invoked by a state prisoner and to accept Louisiana's invitation would be to reject the important historical role of federal habeas corpus review.

The arrest and indictment by a grand jury would be deemed illegal along with the commencing of the guilty plea. Brady v. Maryland, (1963) 373 US 83, Kyles v. Whitley, 514 US 419. The Ninth Circuit ruled that "Washington's relitigation rule does not serve as a bar to habeas review." Pittie v. Morgan, Nos. 01-99012, 01-99013 (consolidated), slip op. at 17, 2002 U.S. App. LEXIS 26208 at *20-21 (9th Cir., Dec. 19, 2002). State v. Johnson, 23 so. 3d 878 "Considering the wealth of exculpatory evidence Johnson presented pursuant to La. C. Cr. P. Art. 926.1, and the DNA

(15)

results, this trial court Judge did not abuse his discretion in ruling that Johnson had proven his factual innocence thus in my view, the Court of Appeal erred in reversing the decision of the district court, and in reinstating the conviction for 2nd Degree Murder." see Strickland v. Washington, 466 U.S. 668.

The court has accepted the principle that 'There is undoubtedly a difference in the way federal courts should treat post-conviction applications by state and federal prisoners.' Kaufman v. United States, 394 U.S. 217, 230 (1969) The will being carried out is that of Congress: Congress in 1867 sought to provide a federal forum for state prisoners having constitutional defenses by extending the habeas corpus powers of the federal court Jurisdiction is conferred by the allegation of an unconstitutional restraint and is not defeated by anything that may occur in the state court proceedings. State procedural rules plainly must yield to this overriding federal policy Fay v. Noia, 372 U.S. at 426-427. That policy is "that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review." Fay v. Noia, 372 U.S. at 424.

Petitioner is also entitled to statutory or equitable tolling, see 28 U.S.C. § 2244(d)(2), Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). It is the Petiti-

oners burden to demonstrate that equitable tolling is warranted which generally requires a showing of the following two elements: (1) that the litigant has been pursuing his rights diligently and (2) some extraordinary circumstance has stood in his way. Whereas, Petitioner's Paid attorney filed Post-Conviction relief in a timely manner but due to his mishandling and misrepresentation it was denied 3 years later from its initial filing. His Application for Supervisory Writs was also denied leading to his immediate dismissal. Petitioner filed in Pro Se a Motion for rehearing to the order of denial of the rehearing, a Writ of Certiorari into the Louisiana Supreme Court within the time limitations. see State v. Stewart, 2021 KW1420 (LA 1/31/22) reh'g denied 2022-KP-00363 (LA 5/10/22), 337 so. 3d 909, State v. Stewart, 2022-00503 (LA 5/10/22), 337 so. 3d 533, reh'g denied, 2022-00503 (LA 9/7/22), 345 so. 3d 421.

"Furthermore, these articles of the code of criminal procedure merely implement the constitutionality authorized right of a court to issue the writ of habeas Corpus. La. Const. Art. I, sec. 21 and Art. V, sec. 2" State v. Terry, 458 so. 2d 97 (La. 1984) C.C.P. Article 928 provides that an application may be dismissed without an answer only "if the application fails to allege a claim which, if established, would entitle the petitioner to relief." State v. Seymore, 570 so. 2d 176, 178 (La. App. 5th Cir. 1990) "since defendant

alleged both fraud and incompetence on the part of his counsel and complained that he was misled into accepting the guilty plea, the district court erred in relying solely on the Boykin Colloquy and forms to establish the knowing and voluntary nature of the plea resulting in the court's summary dismissal of defendant's application for post-conviction relief."

Habeas Corpus petition claims of:

1. Due Process
2. Insufficient Evidence
3. Ineffective Assistance of Counsel
4. Denial Equal Protection of Law

with additional claims of:

1. Witness Prior Inconsistent Statements
2. Denial Suppression of Identification
3. Denial Suppression of Evidence
4. Excessive sentence

all are violations of the United States Constitution including:

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Amendment IV. Searches and seizures; warrants

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; self incrimination; Due Process of Law; Takings without Just compensation

Amendment VI. Jury Trials for crimes and procedural

rights

Amendment VIII. Excessive Bail, Fines, Punishments

Amendment IX. Construction of Enumerated Rights

Amendment XIV. Citizenship; Privileges and Immunities;

Due Process; Equal Protection; Appointment of Representation; Disqualification of Officers; Public Debt; Enforcement

These are all grounds for relief that under 28 U.S.C. § 2253 "make a substantial showing of the denial of a constitutional right". On procedural grounds show at least, that Jurists of reason would find it debatable whether the ground of the petition at issue states valid claim of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 483-484. Also on procedural grounds "Rather, the petitioner need only show that the petition contains an issue (1) that is "debatable among Jurists of reason" (2) "that a court could resolve in a different manner", (3) that is "adequate to deserve encouragement to proceed further" or (4) that is not "squarely foreclosed by statute, rule or authoritative court decision, or... [that is not] lacking any factual basis in the record." Barefoot v. Estelle, 463 U.S. 880, 893, 103 S.Ct. 3383, 77 L.Ed. 2d 1090 (1983) see also Gardner v. Pogue, 558 F.2d 548 (9th Cir. 1977)

CONCLUSION

Petitioner's Habeas Corpus Petition was

denied by timeliness but not Petitioner's claims which meet the requirements to grant relief and excuse the timeliness. Following procedures into the United States District Court Middle District of Louisiana and the United States Court of Appeals Fifth Circuit Petitioner prays this court grant this Petition on Writ of Certiorari vacating the conviction and sentence and order immediate release.

Respectfully submitted, this the 10th day of
APRIL 1 2025

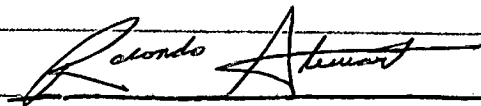


Rolando Stewart #631620
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3751 Lauderdale Woodyard Rd
Kinder, La 70648

Declaration of Inmate Filing

I am an Inmate at Allen Correctional Center. Today APRIL 10th, 2025 I am depositing the Writ of Certiorari in this case in the institutions internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621)



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