No. 25-5174 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



James Bradley Hammond — PETITIONER
(Your Name)

vs.

Bobby Lumpkin, Dir., TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

James Bradley Hammond
(Your Name)

2405 Meadow Creek
(Address)

Bedford, Texas. 76021
(City, State, Zip Code)

(817) 555-0481
(Phone Number)

## QUESTION(S) PRESENTED

QUESTION No. 1

WHTHER THE COURT OF APPEALS SHOULD HAVE ISSUED AND/OR GRANTED A CERTIFICATE OF APPEALABILITY (COA) FROM THE DISTRICT COURT'S DETERMINATION THAT THE PETITIONER'S CLAIMS WERE TIME-BARRED WHEN THE 1-YEAR LIMITATION PERIOD COMMENCED ON THE DATE PETITIONER RECEIVED THE AFFIDAVITS, RATHER THAN THE DATE THE AFFIDAVITS WERE SIGNED?

QUESTION No. 2

WHETHER THE COURT OF APPEALS SHOULD HAVE GRANTED AND/OR ISSUED A CERTIFICATE OF APPEALABILITY (COA) FROM THE DISTRICT COURT'S DETERMINATION THAT THE PETITIONER'S CLAIM OF ACTUAL INNOCENCE WAS NOT COGNIZABLE ON FEDERAL HABEAS CORPUS REVIEW?

## LIST OF PARTIES

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

[X] 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:

Jessica Manojlovich
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State of Texas
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## TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

## OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ 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[ ] is unpublished.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 _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

## JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 21, 2024.

[X] 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. ___A_____.

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 _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied 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. ___A_____.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C., Section 2244(d)(1)(A); A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of- (A) the date on which the jdugment became final by the conclusion of direct review or the expiration of the time for seeking such review.

Title 28 U.S.C., Section 2244(d)(1)(D); A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of- (D) the date on which the factual predicate of the claim or claims presented could have discovered through the exercise of due diligence.

Title 28 U.S.C., Section 2253(c)(1)(A) and (2); (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

## STATEMENT OF THE CASE

Petitioner was convicted for the alleged offense of Possession with Intent To Deliver between four to Two Hundred grams of Methamphetamine, A Controlled Substance, before the 432ND Judicial District Court of Tarrant County, Texas, in Case No. #1509181D, Styled: The State of Texas v. James Bradley Hammond.

On April 09, 2019, the Court of Appeals for the First District of Texas, in an Unpublished Writtern Opinion affirmed the Judgment & Sentence of Conviction in Case No. #01-18-00280-CR, Styled: James Bradley Hammond v. The State of Texas, 2019 Tex.App.LEXIS 2826 (Tex.App. 1st Dist. Apr. 01, 2019).

The Texas Court of Criminal Appeals refused Petitioner's Petition for Discretionary Review on September 11, 2019, in Case No. #PD-0432-19, Styled: In re James Bradley Hammond, 2019 Tex.Crim.App.LEXIS 903 (Tex.Cr.App. Sept. 11, 2019).

Before the State appellate court, Petitioner argued that the envelope addressed to him at the address of the apartment searched did not establish that he owned or had right to possession of the apartment. Therefore, the evidence was insufficient to support the conviction.

During the Petitioner's trial Officer McMeans testified, that the envelope satisfied his belief that the Petitioner was a resident of the apartment. He furthered that if someone is receiving mail at the location were they are from, it means that the person resides there at that location.

In light of the Petitioenr's argument before the court of

appeals, that he was not the only person in the apartment at the time of the search and, that the State did not introduce any evidence affirmatively linking him to the methamphetamine, the court of appeals held that there was at least some evidence that connected him to the apartment, evidence that the jury could have credited in determining that Petitioner was not an innocent bystander at the apartment, but instead used it as a place to prepare methamphetamine for distribution. The court of appeals held that it was undisputed that, in this case, the Petitioner waa not in exclusive possession of the apartment where the Officers discovered the methamphetamine, thus, the State had to present evidence linking the Petitioner to the methamphetamine. The court of appeals stated this evidence to be on that Officers found male and female clothing in the appartment, as well as an envelope that was addressed to the Petitioner that stated the address of the apartment where the methamphetamine was found, although the letter had no postage, no post-mark.

Before the State habeas court, Petitioner argued (1) He was actually innocent of the offense charged because newly discovered evidence consisting of the Testimonial Affidavit of Susan Thornbrue and Lora Slaten conclusively established that the envelope was not addressed for the Petitioner, but was addressed for the Petitioner's brother; and that the apartment was not in the Petitioner's name, nor did he reside there, and (2) He was deprived of his constitutional rights to effective

assistance of counsel, because trial counsel fail to conduct a thorough and reasonable investigation into the facts of the case, and acquiring the testimony of Thornbrue and Slaten.

The Texas Court of Criminal Appeals refused the Petitioner's Petition for Discretionary Review on September 11, 2019. Thus, the 1-year limitation period commenced on December 10, 2019, the ninety (90) day in which the time to file a Petition for Writ of Certiorari with the United States Supreme Court expired.

Therefore, the 1-year limitation period commenced on December 10, 2019 and expired on December 10, 2020.

Petitioner executed and filed his first State habeas application on October 13, 2022, after the 1-year limtation period had expired. However, Petitioner's State habeas application was filed within 1-year of the date that he recieved the testimonial affidavits of Thornbrue and Slaten on May 24, 2022.

The Texas Court of Criminal Appeals denied the Petitioner's State habeas application .

On initiated a federal habeas corpus proceeding on July 18, 2023, before the United States District Court for the Northern District of Texas, Fort Worth Division, in Case No. #4:23-CV-764-P, Styled: James Bradley Hammond v. Bobby Lumpkin, Director, TDCJ-CID. (Appendix A).

The district court dismissed Petitioner's federal habeas petition as time-barred on January 23, 2024, by adopting the Respondent's Answer, that the limitation period commenced on the dates that the testimonial affidavits of Thornbrue and

Slaten were signed on August 16, 2020 and November 04, 2020, and given the latest of the two (2) affidavits, the limitation period commenced on November 04, 2020 and expired on November 04, 2021.

Petitioner argued that the limitation period commenced on May 24, 2022, the date he received the testimonial affidavits relying on Rivera v. Nolen, 538 F.Supp.2d 429 (D. Mass. 2009).

The district court did not consider whether the Petitioner's federal habeas petition was timely if calculated from the date that he received the testimonial affidavits, rather than the date that they were signed.

Petitioner sought to appeal the determination of the district court and requested the issuance of a Certificate of Appealability from the United States Court of Appeals for The Fifth Circuit, in Case No. #24-10181, Styled: James Bradley Hammond v. Bobby Lumpkin, Director, TDCJ-CID. The court of appeals denied the Petitioner's request on October 24, 2024. (Appendix B).

Before the court of appeals relying on the decision delivered in Rivera, Petitioner argued that the district court erred and abused its discretion by holding that the Petitioner's federal habeas petition was time-barred under Title 28 U.S.C., Section 2244(d)(1) because reasonable jurists would find it debatable whether the district court was correct in its procedural ruling because under Title 28 U.S.C., Section 2244(d)(1)(D) the limitation period began on the date the Petitioner received the testimonial affidavits rather then on the date they were signed by the affiants.

In denying Petitioner's request for the issuance of a Certificate of Appealability, the court of appeals stated that, without any reasonable explanation for its determination, Petitioner failed to make the required showing as to the district court's limitation ruling. (Appendix B).

Notably, neither the district court or the court of appeals referred to any authority to support its finding that the limitation period commenced on the date that the testimonial affidavits were signed, rather then on the date that Petitioner received and became actually aware their existence and underlying facts for his claims.

The court of appeals simply announced that Petitioner fail to meet the requirements of Slack v. McDaniel, 120 S.Ct. 1595 (2000), in addition to Petitioner's claim that the affidavits established his actual innocence. (Appendix B).

The district court stated that claims of actual innocence were not cognizable on federal habeas review, and in part Petitioner did not establish that his actual innocence claim should serve as a gate way to over come his procedurally defaulted claims. As stated by the district court, because the United States Supreme Court has not definitively created a ground for federal habeas relief based on actual innocence absent an independent constitutional violation Petitioner's claim of actual innocence failed, however, the district court did not consider the impact of Petitioner's claim of ineffective assistance of counsel as the independent constitutional violation. Further, Petitioner argued that affidavits

was new evidence that proved he was actually innocent of the offense charged and served as to met the requirements of McQuiggin v. Perkins, 133 S.Ct. 1924 92013) and over come the time-bar.

The district court never considered and addressed whether the McQuiggin requirement would allow the Petitioner to proceed on the claims. (Appendix A).

## REASONS FOR GRANTING THE PETITION

Under the Antiterrorism Effective Death Penalty Act of 1996 (AEDPA), Title 28 U.S.C., Section 2253 (c)(1) and (2) is straight forward, as it provides that "Unless a circuit justice or judge issues a Certificate of Appealability (COA), an appeal may not be taken to the court of appeals." A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

This Court has the authority and jurisdiction to review a federal court of appeals' denial of a COA. Hohn v. U.S., 118 S.Ct. 1969 (1998). Notwithstanding, that the jurisdiction of the United States Supreme Court under a "Certiorari" lay only from final appealable Judgments or Decrees. Goodshot v. U.S., 21 S.Ct. 33 (1900). A certiorari cannot properly be issued to require a Circuit Court of Appeals to send up a case over which it has no jurisdiction for determination on the merits, when it has not rendered any decision in the case. There can be no determination of an appeal made on the merits until a COA has been granted. A COA is jurisdictional prerequisite, and until a COA has been issued, a federal court of appeals lacks jurisdiction to rule on the merits of the appeal from a federal habeas petitioner. Miller-El v. Cockrell, 123 S.Ct. 1029 (2003).

Although, the statute is straight forward that a COA will be granted only if the habeas petitioner makes a substantial showing of the denial of a constitutional right. Section 2253(c)(2).

The statute has been judicially rewrote and interpreted to mean, as in this case, when the district court has denied a claim on procedural grounds, then the habeas petitioner must demonstrate that a jurists of reason would find it debatable whether the district court was correct in its procedural ruling and the petition states a valid claim of a constitutional violation. Slack v. McDaniel, 120 S.Ct. 1595 (2000). Any doubts as to whether to grant a COA is to be resolved in the habeas petitioner's favor. Hill v. Johnson, 210 F.3d 481 (5th Cir. 2000).

Notwithstanding, a habeas petitioner sho seeks to appeal the denial of his federal habeas petition may do so only if a circuit justice or judge issues a COA. Section 2253(c)(1).

Several Circuits have interpreted that requirement to mean that a COA must issue so long as one of the judges, or as in this case, one of the Justices vote to grant it. Buck v. Davis, 137 S.Ct. 759 (2017), Shockey v. Vandergiff, 145 S.Ct. 894 (2025), Barksdale v. Marshall, 221 L.Ed.2d 577 (2005), and Miller-El.

On review by certiorari by this Court, the question is whether the court of appeals should neve issued a COA from the district court's determination of the case, or whether the issue presented is adequate to deserve encouragement to proceed further. Miller-El.

Therefore, if the Petitioner has stated a debatable issue concerning the correctness of the district court's procedural ruling, or for that matter shows that the issue presented is adequate to deserve encouragement to proceed further, and the

Petitioner has made a facial valid claim of a constitutional deprivation, then the court of appeals should have granted a COA based on the pleadings and record before the Court, which consist merely of the Appendicies attached to the petition for a writ of certiorari. On the other hand, if those materials are unclear or incompelte, then the court of appeals should have granted a COA, and the court of appeals, if it decides the procedural issue favorably to the Petitioner, may have to remand the case for further proceedings.

It appears that the court of appeals denied the Petitioner's request for a COA because the appeal was meritless and paid lip service to the principales of law that was suppose to guide the court of appeals in the determination of the issuance of a COA...

(1) Whether the court of appeals should have issued and/or granted a COA from the district court's determination that the Petitioner's claims were time-barred when the 1-year limitation period commenced on the date Petitioner received the affidavits, rather than the date the affidavit's were signed?

The graveman of this matter is whether the district court was correct by holding that the 1-year limitation period commenced on the date that the affidavits were signed, rather than on the date that the Petitioner received the affidavits? It can be assumed that the court of appeals agreed with this determination made by the district court rejecting the Petitioner's argument that a jurists of reason would find it debatable whether the district court was correct on the matter, when another Circuit

Court of Appeals has already decided the issue favorably to the Petitioner.

Under Section 2254(d)(1)(D) a 1-year limitation period shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of- the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the Respondent never argued that the affidavits in question was not newly discovered evidence that formulated the factual predicate of the claims, or that the Petitioner did not exercise due diligence in acquiring the newly discovered evidence that exculpated him from the commission of the alleged offense. The matter of due diligence was not of concern by the Respondent, but what was of concern was that the 1-year limitation period commenced on the date that the affidavits were signed and not the date that they were received by the Petitioner.

In Rivera v. Nolan, 538 F.Supp.2d 429 (D. Mass. 2009). the respondent argued that the petition was time-barred under Title 28 U.S.C., Section 2244(d)(1)(A), and the district court dismissed the petition. The United States Court of Appeals for the First Circuit remanded the case to the district court for the consideration of Rivera's argument under Section 2244(d)(1)(D).

In the case of Rivera, the affidavits were received by Rivera, via mail on January 14, 2003; June 12, 2003, and October 07, 2003.

Rivera filed his State habeas petition on December 28, 2004, with the period from November 05, 2003 until December 17, 2004, being tolled while he pursued State post-conviction remedies. The district court held that if January 14, 2003 was the date upon which the 1-year limitation period began running, Rivera's petition was timely filed. It was. The district court held that exercising due diligence as required by Section 2244(d)(1)(D), Rivera could not have learned of the evidence at a substantial earlier date.

The district court's review of the instant case is at best is cursory. The district court's opinion does not contain any evidence as to the date Petitioner filed his State habeas application, did not consider whether Petitioner's federal habeas petition was timely if calculated from the date he received the affidavits, rather then from the date the affidavits were signed.

Using the date averred by the Respondent, Petitioner State application for habeas corpus relief was filed on October 13, 2022, and Petitioner's federal habeas petition was filed on July 18, 2023. The matter of when the Petitioner's State habeas corpus proceeding reached its conclusion was not a factor as aruged by the Respondent. It was the Respondent's assertion to the limitation barred, that the limitation period commenced at the latest on November 04, 2020.

Petitioner argued that the limitation period commenced on May 24, 2022, the date he received the affidavits in support of his claims and expiredon May 24, 2023.

Petitioner' State habeas application was filed fourt (4)

months and twenty-two (22) days after the receipt of the affidavits in support of his claims. This left eight (8) months and eight (8) days remaing before the limitation period expired. Thus, the limitation period expired on June 21, 2023, excluding the pendency of his State habeas application, the filing of his federal habeas petition on July 18, 2023, was timely.

The demonstration that a juristsoof reason would findit debatable whether the district court was correct in its procedural ruling? Cf., Shockey v. Vandergriff, 145 S.Ct. 894 (2025);allowing an appeal whenever one judge votes to gran a certificate also reflects the substantive standard that governs habeas appeals. After all, a certificate must issue so long as "reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issue presented were adequate to deserve encouragement to proceed further." Slack. When one or more jurists believes a claim has sufficient merit to proceed, that itself might be thought to indicate that reasonable minds could differ on the resolution of the relevant claim. See., also Johnson v. Vandergiff, 143 S.Ct. 2551 (2023).

Petitioner argues that he has met the threshold requirement and has demonstrated that a jurists of reason would find it debatable whether the district court was correct in its procedural ruling because this issue has already been decided in Petitioner's favor under the Rivera decision, and when resolving any doubt in favor of the Petitioner as to whether to grant a COA, the court of appeals should have issued a COA.

The COA's status as the jurisdictional prerequisite for the merits of an appeal clearly requires that both the COA determination and the merits appeal be considered a part of the same proceeding.

Although, considering the merits of an appeal together with the determination of whether to grant a COA would be clearly sidestepping the COA standard for an appeal to be determined on the merits.

In this case, clearly there is room for debate when the facts of this case is the same as the facts in the case of Rivera, that the limitation period commenced on the date the affidavits were received. Thus, the district court's decision was debatable. Therefore, the court of appeals should have issued a COA.

Given this matter, this Court should reverse and remand the case for further proceedings.

(2) Whether the court of appeals should have granted and/or issued a COA from the district court's determination that the Petitioner's claim of Actual Innocence was not cognizable on federal habeas corpus review?

Petitioner argued that the affidavits constituted newly discovered evidence that showed that he was actually innocent of the offense charged.

The district court never determined whether the affidavits constituted newly discovered evidence. (Appendix B). The district court per the Respondent's Answer, held that the Petitioner did not establish that his actual innocence claim should serve as a gateway to overcome his procedurally defaulted claims.

In McQuiggin v. Perkins, 133 S.Ct. 1924 (2013), this Court

granted certiorari to resolve a conflict amoung the Circuits on whether Title 28 U.S.C., Section 2244(d)(1) could be overcome by a showing of actual innocence. This Court held that a claim of actual innocence, if proved, serves as a gateway through which a habeas petitioner may pass whether the impediment is a procedural bar or expiration of the statute of limitations.

This Court, however stated that a tenable actual-innocence gateway plea are rare, and a petitioner does not meet the threshold requirement unless he persuades a district court that, in light of the new evidence, no juror, acting reasonably would have voted to find him guilty behond a reasonable doubt.

Clearly, if a habeas petitioner shows that he is actually innocent of the offense charge would warrant the conviction to be vacated, but nonetheless would allow the consideration of time-barred claims, which in this case, Petitioner's Ineffective Assistance of Counsel Claim and the States use of perjury testimony.

The new evidence consisting of the affidavits of Slaten and Thornbrue established substantial doubt about the Petitioner's guilt, and was probative evidence in support of the claims raised by the Petitioner.

The district court's determination that the Petitioner's claim of actual innocence was not cognizable on federal habeas review is at best suspect and contrary to this Court's decision delivered in McQuiggin. The district court never assessed whether the affidavits were newly discovered evidence and never addressed whether the evidence established a substantial doubt about the Petitioner's guilt.

Clearly, there is room for debate, because the district court's assessment and/or decision that the Petittioner's claim of actual innocence was not cognizable on federal habeas review was clear error, and the court of appeals should have issued and/or granted a COA from the district court's determination.

Given this matter, this Court hsould reverse and remand the case for further proceedings. In light of the fact that the district court never actually considered and addressed the Petitioner's claim of actual innocence based on newly discovered evidence.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ James B. Hammond

James Bradley Hammond

Date: June 02, 2025