25-5422

IN THE

SUPREME COURT OF THE

UNITED STATES

No.: _____

Lamont Johnson - Petitioner

v.

MICHELLE DAUZAT - Warden

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

TO THE

U.S. FIFTH CIRCUIT COURT OF APPEALS

Lamont Johnson, DOC #314545
David Wade Correctional Center
670 Bell Hill Rd.
HOMER, LOUISIANA 71040

Pro Se

Petitioner is a layman and prays that the Court give this Petition a liberal construction. See Haines v. Kerner 404 U.S. 519, 520 (1972).

Question Presented

Whether a second in time habeas application which raises a claim that the petitioner was prevented by state action from raising in a prior application, is a second or successive application under 28 USC § 2244(b).

PARTIES

Lamont Johnson is a state prisoner incarcerated a David Wade correctional Center in Homer Louisiana.

Michelle Dauzat is the Warden of David Wade Correctional Center in Homer Louisiana.

PROCEEDINGS BELOW

(Trial Court)- First Judicial District Court of Caddo case no.198, 495. State V. Johnson, guilty of 2 counts of agg.rape, Oct.14,1999 (2 consecutive life sentences Oct.25, 1999).

(Direct Appeal)- La. Second Circuit Court of Appeals case no.34, 009-KA State V. Johnson, (Denied) 1-24-01.

(Certiorari)- La. Supreme Court case no. 2001-k-0508. (Denied)3-8-02 State V. Johnson.

(Post Conviction)- First Judicial Distrct Parish of Caddo Case no. 198,495 State V. Johnson, Oct. 8,2002 (Denied).

(Supervisory Writ)- La. Second Circuit Court of Appeals case no. 37614-KH (Denied).

(Supervisory Writ)- La. Supreme Court case no. 2003-KH-1709 (Denied) 6-18-04 State ex rel. Johnson V. State.

(Habeas Corpus)- U.S. Western District case no. 05-286 (Dismissed with prejudice as time barred) 8-14-07. Johnson V. Warden.

(Habeas Corpus)- 4-16-24 Johnson V. Dauzat, 05:24-cv-00536 Magistrate Report and Recommendation (dissmissal without prejudice as Second "and" Successive) 6-4-24.

(Objection to Magistrate Report and Recommendation) 6-17-24 Johnson V. Dauzat, 05:24-cv-00536

(Habeas Corpus)- 6-18-24 Johnson V. Dauzat,05:24-cv-00536 (adopting Mag.R and R: Dismissed W/O prejudice as second"and"successive).

(Motion to Alter or Amend) 7-16-24 Johnson V. Dauzat,05:24-cv-00536.

(Habeas Corpus)- 7-22-24 Johnson V. Dauzat, 05:24-cv-00536 (motion to Alter or Amend: denied) 7-22-24.

(Notice of Appeal)- 7-29-24 Johnson V. Dauzat, 05:24-cv-00536.

(Forma Pauperis)- 9-10-24 Johnson V. Dauzat, 05:24-cv-00536 (Granted).

(App. for C.O.A. to 5th cir.)- 10-16-24 Johnson V. Dauzat,24-30514.

(C.O.A. District Court)- 10-25-24 Johnson V. Dauzat,05:24-cv-30514 (DENIED).

(C.O.A. 5th Circuit) 2-4-25 Johnson V. Dauzat,24-30514 (Denied)

Table Of Contents

TABLE OF AUTHORITIES

Decisions Below

The opinion of the U.S. 5th Circuit of Appeals has not yet been published, a copy is attached as appendix **A** to this petition. It is currently un able to be accessed by Petitioner through Westlaw.

The opinion of the U.S. District court for the Western District of Louisiana has not yet been published, 2024 WL3046223. A copy is attached as Appendix **B** to this petition.

The opinion of the Magistrate has not yet been published, a copy has been attached as Appendix **C** to this petition.

Jurisdiction

The Judgment of the U.S. court of Appeals for the 5th Circuit was entered on 2-4-25. Jurisdiction is conferred on the Supreme Court by 28 USC §1254(1).

Constitutional/Statutory Provision

This case involves the 14th Amendment to the Constitution of the United States section 1 clauses 3 and 4 which provide:

> **...Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within it's Jurisdiction the equal protection of the laws.**

This case involves the 6th Amendment to the Constitution of the United States which provides in pertinent part:

> **In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of counsel for his defense.**

This case involves 28 U.S.C. § 2244(b)(1) and (2) which provides in pertinent part:

> **(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.**
> **(2) A claim presented in a second or successive habeas corpus application under section 2254 that was NOT presented in a prior application shall be dismissed unless...**

This case involves 28 U.S.C. § 2244(d)(1)(B) which provides in pertinent part:

> **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 shall run from the latest of-**

(B) The date on which the impediment to filing an application created by state action in violation of the constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action.

Statement Of The Case

On 4-16-24 Petitioner filed a second in time application for writ of habeas corpus under 28 USC §2254, raising two claims of ineffective assistance of trial counsel and both asserting and showing from the law and the record that Petitioner was prevented by an impediment created by state action from presenting the claims in a prior petition. On 6-4-24 the magistrate recommended that the petition be dismissed as second "and" successive. On 6-17-24 Petitioner filed an objection to the Magistrate's report and recommendation. On 6-18-24 the district court adopted the Magistrate's report and recommendation and dismissed the petition as second "and" successive. (see Appx. B). On 7-16-24 Petitioner filed a Motion to Alter or Amend Judgment, based on manifest errors of law and fact. On 7-22-24 the district court summarily denied the Motion to Alter Judgment. (see Appx.B-1). On 7-29-24 Petitioner filed Notice of Appeal. Forma Pauperis status on appeal was granted on 9-10-24. After Petitioner filed his application for COA on 10-16-24 in the Fifth Circuit Court of Appeals, the Weastern District court on 10-25-24 denied COA. On 2-4-25 the Fifth Circuit Court of Appeals denied COA.

Basis For Federal Jurisdiction

This case raises a question of the interpretation of A.E.D.P.A. The U.S. Districtcourt had original jurisdiction conferred by 28 USC §1331

Reason For Granting The Writ

A.

This case presents a fundamental question of the interpretation of 28 U.S.C. § 2244(b) and 28 U.S.C. § 2244(d)(1)(B). Petitioner brought a second in time application for Writ of habeas corpus in the U.S. District Court for the Western District of Louisiana,presenting two previously defaulted claims of ineffective assistance of trial counsel.(see Appendix D). Petitioner asserted that he was prevented from presenting the claims in his prior application by state action due to Louisiana's system of appellate procedure, [which denied Petitioner an adequate opportunity to raise the claims], by the following means:

1. **Not permitting Petitioner to raise the claims on direct appeal.**
2. **Not appointing counsel on post-conviction to litigate the claims.**
3. **Denying an evidentiary hearing and discovery.**

Petitioner argued below and steadfastly maintains, that this system is the hornbook definition of an impediment created by state action under 28 U.S.C. §2244 (d)(1)(B). It is Petitioner's contention that the decisions of the court below are in direct con-

flict with the relevant precedents of this court, and because of the importance of the question involved and possibility of repetition in other Louisiana cases, issuance of the writ would be appropiate.

In the case at bar,Petitioner's second in time habeas corpus application raised two claims of ineffective assistance; **1) that counsel failed to investigate or consult; 2) counsel failed to present exculpatory evidence.** Petitioner asserted that he was prevented from presenting the claims in his prior application by a state created impediment, specifically, Louisiana's rule of Appellate procedure which did not allow Petitioner to raise the claims on Direct Appeal with the assistance of counsel, and required that the claim be raised in un-counseled post-conviction proceedings. (see State V. Truitt,500 So. 2d 355. The Magistrate concluded that the application was second "and" successive based on two findings:

> **1.) That an ineffective assistance claim was raised and adjudicated on Direct Appeal.**
>
> **2.) That the ineffectiveness claim regarding exculpatory evidence was not, but could have been, raised in a prior petition. (see Appx. C pg. 3**

Both findings are shown by the record, the facts, and the law to be manifestly unreasonable. In his objections Petitioner cited State V. Johnson,778 So.2d 706 (La. 2nd cir.) where the actual holding of the La. 2nd Circuit Court of Appeals established that no ineffective assistance claim was adjudicated or raised on Direct Appeal. (see State V. Johnson, supra at 711. (see also Appx. D-1). Thus, the first finding of the Magistrate is disproven by the case itself. As to the second finding of the Magistrate, that

the ineffectiveness claim regarding the exculpatory evidence could have been presented in a prior application but was not, petitioner in his objections, relied on Trevino V. Thaler, 133 S.ct 1911; Martinez V. Ryan, 566 U.S. 1; and Coleman V. Goodwin,833 F.3d 537 to establish that Louisiana's procedural frame work operated as an impediment to Petitioner's ability to present in his ineffective assistance claims fairly.(see Appx. E pg. 4-7). The Martinez/Trevino line of cases established the principle that where a state's procedural framework, by law or operation requires a prisoner to raise a trial ineffectiveness claim in collateral proceedings, **" a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial collateral proceeding there was no counsel or counsel in that proceeding was ineffective." Martinez V. Ryan, 566 U.S. 1, 18.** In the Martinez/Trevino line of cases the court recognized that such a state procedural framework constitute's an impediment:

> **" By deliberately choosing to move trial ineffectiveness claims outside of the direct appeal process, where counsel is constitutionally guaranteed, the state significantly diminishes a prisoner's ability to file such claims." Id. at 13.**

In Coleman V. Goodwin,833 F.3d 537 The U.S. Fifth Circuit court of appeals held that the rule of Martinez/Trevino applies to Louisiana's procedural regime:

> **" Louisiana's procedural system 'makes it highly unlikely in a typical case that a defendant will**

have a meaningful opportunity to raise a claim of [IATC] on direct appeal'...' Therefore Louisiana prisoners may benifit from the Martinez/Trevino rule "... .Id.at 543.(Quoting Trevino V. Thaler, 133 S.ct. 1911,1921).

This court found in Martinez and Trevino that Arizona and Texas' procedural regimes did not afford the prisoners in those cases an adequate opportunity to raise their ineffectiveness claims, even though those states appointed counsel and provided evidentiary hearings. Petitioner asserts that Louisiana's procedural regime is much more egregious; indigent prisoners such as petitioner are not permitted to raise the claim on direct appeal with the assistance of counsel and counsel is never, under any circumstances, appointed on post conviction to assist a prisoner in litigating such claims. Moreover, pro se prisoners are almost never afforded evidentiary hearings, regardless of whether a material factual dispute exists. The 14th Amendment mandates that states afford a prisoner an " **adequate opportunity to present his claims fairly in the context of the states appellate process.**" Ross V. Moffitt, 417 U.S. 600, 616. Petitioner contends, and it has not been disputed, that the Louisiana procedural regime operates as a state created impediment under §2244(d)(1)(B) to all indigent prisoners such as Petitioner, and this fact is established by the holding of the U.S. Fifth Circuit Court of Appeals in Coleman V. Goodwin,833 F.3d 537,543. It is an absolute fact that as a result of Louisiana's procedural framework every indigent prisoner is deprived of counsel when trying to raise a claim of IATC. For these reasons it is appropriate that the court grant

certiorari in this case to correct this gross injustice. And for the same reasons the second finding of the magistrate is objectively un-reasonable.

After the district court judgment (see Appx. B), Petitioner filed a Motion to Alter or Amend pursuant to F.R.C.P. 59(e) in order to allow the court to correct the material errors of law and fact. Relying on this courts holding in Panetti V. Quarterman,551 U.S. 930, 127 S.ct. 2842, 168 L.Ed. 2d 662, Petitioner maintained that because he has been prevented from raising his ineffectiveness claims in his prior application by a state created impediment, his current application is not second or successive.(see Appx. F).

> " Panetti establishes that deciding whether an application itself is 'second or successive' requires looking to the nature of the claim that the application raises to determine whether the Petitioner had a full and fair oportunity to raise the claim in his earlier petition." Magwood V. Patterson,561 U.S. 320, 349 (Kennedy J. dissenting).

Neither the Magistrate nor the district court gave any consideration to the action of the state in mechanically denying Petitioner's appilication as "second and successive", providing yet another reason why this conclusion is unreasonable. The district court, again relying on the objectively unreasonable findings of the Magistrate as demonstrated above, summarily denied the Motion to Alter or Amend.

B.

For the reason that follow, the dispositive holding of the U.S. Fifth Circuit Court of Appeals, (that Petitioner failed to make the necessary showing under Slack V. McDaniel,529 U.S. 529 U.S. 473), represents a substantial departure from the standard announced in that case.

In Slack V. McDaniel,529 U.S. 473, 120 S.ct. 1595, L.Ed.2d 542, this court announced the standard of review that federal courts must apply when a habeas corpus application has been dismissed on procedural grounds:

> " **We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoners underlying constitutional claim, a COA should issue when the prisoner shows, atleast, that jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right and that Jurists of reason would find it debatable whether the District Court was correct in it's Procedural ruling."** Slack V. McDaniel **Id.at 484.**

> " **Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district courts procedural**

holding." Id.at 484-85.

Petitioner asserts that the court of appeals has substantially departed from this standard in concluding that Petitioner had not made the requisite showing under Slack supra. Petitioner contends that he has indeed exceeded the showing required by Slack and will now address each component in order to demonstrate the court of Appeals' departure.

Component 1

Petitioner's habeas application raised two claims of ineffective assistance of trial counsel, **1.) for failure to investigate and consult; and 2.) Failure to present exculpatory evidence.** As to claim 1 Petitioner attached documentary evidence in the form of letters from key prosecution witness Carla Brown, attesting to a prior personal relationship with Petitioner which could have been used to impeach the witness by showing that she committed perjury when she testified that she did not know the Petitioner, as well as documentary evidence in the form of transcripts which reflect the fact that Petitioner repeatedly complained to the court about counsel's complete failure to meet or consult with Petitioner about strategy or the developments in the case, which counsel never disputed. As to claim 2, Petitioner attached to his habeas petition documentary evidence in the formof lab reports of DNA analysis which exclude Petitioner and implicate an unknown male as the donor. **(see Appx.D-2).** This evidence directly impeaches the testimony of the alleged victims and is further

and irrefutable evidence of counsel's ineffectiveness.

> " [T]he defendant bears the burden of proving that counsel's representation was unreasonable under the prevailing professional norms and that the challenged action was not sound trial strategy." Kimmelman V. Morrison,477 U.S. 365 (citing Strickland V. Washington, 466, 688-689).

If failure to investigate and utilize the evidence mentioned above was counsel's strategy it was clearly unsound and unreasonable and no reasonable argument can be made in counsel's defense. The Slack standard requires the Petitioner to show only that jurists of reason could debate whether the Petition states a valid claim of denial of a constitutional right. The Websters Dictionary defines the word "state" as: to express in words; declare. The Slack standard announced by this Court does not require that the Petitioner prove that jurists of reason would grant the habeas petition, only that the claim raised be debatable amongst them:

> " Indeed a claim can be debatable even though every jurist of reason might agree, after COA has been granted and the case has received full consideration, that the Petitioner will not prevail." Miller El v. Cockrell, 537 U.S. 322, 338.

Petitioner submits that the ineffective assistance of counsel claims raised in his habeas petition and supported by documentary evidence and jurisprudence from this Court, sufficiently states a valid claim of ineffective assistance that reasonable jurists could debate and that the Court of appeals' conclusion to the contrary represents a substantial departure from the Slack standard.

Component 2

In his Habeas Corpus application Petitioner contended that it was not "second or successive" because he was prevented by state action from raising the claims in a prior petition. The District Court managed to avoid this contention by adopting the Magistrate's Report and Recommendation which recommended dismissal of the application as "second or successive" based on two manifestly unreasonable findings as demonstrated above. Petitioner asserts that the findings of the Magistrate are an obvious smokescreen in an attempt to label Petitioner's application as successive simply because it is second in time. This Court has consistently rejected that notion:

> **" The Court has declined to interpret 'second or successive' as referring to all § 2254 applications filed second or successive in time, even when the later filings address a state court judgment already challenged in a prior § 2254 application." Panetti v. Quarterman, 551 U.S. 930, 944.**

The above passage alone contradicts the Court of Appeals' conclusion that jurists of reason would not debate whether Petitioner's application is "second or successive." Indeed, it demonstrates that the most eminent of "reasonable jurists", (The Supreme Court), would disagree with the Court of Appeals' procedural ruling.

Petitioner maintains that because his ability to present his claims of ineffective assistance has been, and continues to be, impeded by state action in violation of federal law as provided for 28 U.S.C. § 2244 (d)(1)(B), his second in time application raising those claims cannot be "second or successive" or "second and successive".

Petitioner's position is firmly supported by this Court's jurisprudence; in Banister v. Davis, 590 U.S. 504, the Court observed:

> **"The phrase second or successive application, we have explained, is given substance in our prior habeas corpus cases, including those pre-dating [AEDPA's] enactment. In particular, we have asked whether a type of later in time filing would have constituted abuse of the writ as that concept is explained in our [pre-AEDPA] cases. If so, it is successive; if not, likely not." Id. @ 512. (internal quoatation marks omitted).**

Because Petitioner was prevented from presenting his claims in a prior petition his second in time application raising those claims does not constitute abuse of the writ and therefore is not successive. The Black's Law Dictionary defines Abuse of the Writ Doctrine as follows:

> **The principal that a petition for writ of habeas corpus may not raise claims that should have been, but were not asserted in a previous petition. Black's Law Dictionary 11th Edition.**

Petitioner asserts that in light of the facts and authorities cited herein, reasonable jurists could in fact debate whether the district court was correct in it's procedural ruling and therefore the Court of Appeals erred in concluding to the contrary.

CONCLUSION

For the foregoing reasons, Certiorari should be granted in this case.