

25-5799
NO. _____

ORIGINAL

Supreme Court, U.S.
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IN THE

**SUPREME COURT OF THE UNITED STATES
OF AMERICA**

Mr. Eric Burgie --- PETITIONER

(Your Name)

vs.

State of Arkansas --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Arkansas Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Eric C. Burgie, ADC# 120956
(Your Name)

East Arkansas Regional Unit, P.O. Box 970
(Address)

Marianna, Arkansas 72360-0970
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Under Arkansas law, Mr. Burgie had a right to have his illegal sentences corrected but the Arkansas state courts denied his petition and post-conviction appeal without considering his due process-nonexistent offense and separation of power claim(s). The petitioner asks this court to decide whether the fundamental fairness principle in due process clause required state court to provide him with a fair hearing on his claims?
2. This court decisions suggest that application of resjudicata-claim preclusion to a litigants claim is only allowed when it has been shown that Mr. Burgie have been given a full and fair opportunity to litigate the claims in the prior action. The petitioner ask this court to decide whether the state court denied Burgie due process when it applied claim preclusive effect to his claims without first making a determination that those claims had been denied on the merits in prior actions for post conviction relief?
3. The petitioner ask this court to decide whether state court must determine whether Burgie was provided with a full and fair opportunity to litigate his claims in prior litigation where application of ~~res adjudicata~~ rule would unfairly deny Burgie review and conflict with state law rule that illegal sentence claims may be brought at any time?
4. Prior to Burgie's 2001 capital murder and aggravated robbery convictions the Arkansas Supreme Court in its decision in Simpson expanded the reach of the pre-2007 capital murder statute to include the unenumerated offense of "aggravated robbery." In later cases the court upheld its holding on the ground that aggravated robbery is still robbery, as though these were the same exact offenses under Arkansas law but they are not. On April 2, 2007 the Arkansas legislature amended the capital murder statute to include

aggravated robbery which made clear that Burgie was convicted of a non-existent offense based upon an incorrect interpretation of the pre-2007 capital murder statute. The petitioner asks this court to decide whether its due process holding in Fiore v. White, 121 S. Ct. 712 (2001), encompassed “non-existent offense claims” where a state court “improperly interprets” a criminal statute to include conduct not authorized by the legislature in the applicable statute on the date of the crime, in violation of the separation of powers principle?

5. The petitioner states that the Arkansas Supreme Court application of its decision in Simpson v. State, 274 Ark. 188, 623 S. W. 2d 200 (1981), to his case expanded the reach of the pre-2007 capital murder statute to include “aggravated robbery” which was an offense that was not amended into Section 5-10-101 by the Arkansas legislature until April 2, 2007, and constituted conviction of a non-existent offense. The petitioner asks this court to decide whether its holding in United States v. Davis, 139 S. Ct. 2319 (2019), encompassed Burgie’s claim that his 2001 capital murder and aggravated robbery convictions violated the twin constitutional pillars of due process and separation of powers?

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 as follows:

Related Cases

1. Burgie v. Hobbs, 2013 Ark. 360. (per curiam)
2. Burgie v. State, 2016 Ark. 144.
3. Burgie v. State, 2016 Ark. 170.

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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 issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals 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 United States district 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.

☒ For case from **state courts**:

The opinion of the highest court to review the merits appears at Appendix A to the petition and is

☒ reported at 2025 Ark. 94; or,

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

☐ is unpublished.

The opinion of the Circuit court appears at Appendix B to the petition and is

☐ reported at _____; 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 _____.

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

☐ A timely petition for rehearing was denied by the United States Court or 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 05-29-2025, a copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 07-17-2025, 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

1. United States Constitution, Amendment XIV, due process and equal protection clause. see, Appendix D.
2. Arkansas Constitution, Article 4, §2, separation of powers: No person or collection of persons, being of one of these departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted. see, Appendix E.
3. 2007 Arkansas Laws Act 827 (H.B. 2462). see, Appendix F.
4. Arkansas code Annotated §5-4-401 (a) (1) (3). Felonies---misdemeanors---incarceration. see, Appendix G.
5. Arkansas code Annotated §5-10-101 (a) (1) (A). Capital murder. see, Appendix H.
6. Arkansas code Annotated §5-12-102. Robbery. see, Appendix I.
7. Arkansas code Annotated §5-12-103. Aggravated robbery. see, Appendix J.
8. Arkansas code Annotated §16-88-101. Jurisdiction of courts for certain offenses generally. see, Appendix K.
9. Arkansas code Annotated §16-90-111. Correction or reduction of sentence: Any circuit court, upon receipt of petition by the aggrieved party for relief and after notice of the relief has been served on the prosecuting attorney, may correct an illegal sentence at any time... see, Appendix L.

STATEMENT OF THE CASE

1. On February 22, 2024, the Petitioner Eric C. Burgie filed a State post-conviction petition for relief pursuant to Arkansas code Annotated §16-90-111 (a) alleging that his 2001 capital murder and aggravated robbery convictions were illegal under Arkansas code Annotated §5-10-101 (a) (1) (A) (repl.1997).
2. In Mr. Burgie's petition he specifically stated that the circuit court had convicted him of a "non-existent offense" in violation of this court decision in Fiore v. White, 121 S. Ct. 712 (2001), and that the Arkansas Supreme Court "improperly interpreted" the pre-2007 capital murder statute when it expanded the reach of section 5-10-101 to include "aggravated robbery", which was conduct that was not included in that statute by the Arkansas legislature at the time the crime was committed. The petitioner stated that not only did the Arkansas Supreme Court reading of the capital murder statute violate this court constitutional ruling in Fiore it similarly contravened the separation of powers in Arkansas Constituion, Article 4, § 2., because courts in Arkansas do not have any authority to re-write the criminal laws in order to save it from being held as unconstitutional. The petitioner stated that this violated the Arkansas Supreme Court decision in Standridge v. State, 2014 Ark. 515, and this court constitutional holding in United States v. Davis, 139 S. Ct. 2319 (2019).
3. The Circuit Court entered an order on May 7, 2024, denying Mr. Burgie's petition to proceed In Forma Pauperis and petition to correct an illegal sentence. see Appendix B. And the petitioner filed his notice of appeal in the circuit court on May 21, 2024.

This court has consistently stated that state post-conviction proceedings must comport with the fundamental fairness mandated by the due process clause. see Pennsylvania v. Finley, 481 U.S. 551, 557 (1987); Ake v. Oklahoma, 470 U.S. 68, 76-77 (1985). Secondly, the petitioner argued that the courts May 29, 2025, opinion contained errors of law because it was inappropriate for the court to apply res judicata to his claims when the court never addressed the “non-existent offense” and separation of power claims raised in his section 16-90-111 (a) appeal or in any other post-conviction case he previously filed and that was addressed on the merits by it or the circuit court. see Burgie v. Hobbs, 2013 Ark 360. (per curium) ; Burgie v. State, 2016 Ark. 144. (per curium); see also Burgie v. State, 2016 Ark. 170. The petitioner contended that this violated the due process clause because he did not receive a full and fair opportunity to litigate his claims in the prior post-conviction cases. This court has consistently stated that res judicata claim preclusion is inapplicable where litigant did not have a fair opportunity to litigate his claims at such a hearing. see Kremer v. Chemical constr. corp., 102 S. Ct. 1883 (1982); Gahr v. Trammel, 796 F. 2d 1063 (8th cir. 1986). The petitioner states that the Arkansas Supreme Court has applied an identical test to that required by this court in Allen v. McCurry, 101 S. Ct. 411 (1980), which declined to preclude a claim unless party received a full and fair opportunity to litigate claim in prior action. see Bailey v. Harris Brake Fire Protection Dist., 287 Ark. 268, 697 S.W. 2d 916, 917 (1985). But it is clear from a review of the courts May 29, 2025, opinion that it chose to ignore this precedent in Burgie’s case. see Burgie v. State, 2025 Ark. 94, CR-24-532 (Ark. May 29, 2025). Thirdly, the petitioner states that the courts May 29, 2025, opinion contained further errors in that it only addressed the state law jurisdiction issues surrounding Burgie’s claims and deliberately

avoided addressing his due process and separation of powers claim altogether, which involved a federal question under Fiore v. White, 121 S. Ct. 712 (2001) and United States v. Davis, 139 S. Ct. 2319 (2019).id. Specifically, in the courts May 29, 2025, opinion, it stated that, “robbery” was an underlying felony and that aggravated robbery is still robbery: therefore, aggravated robbery was an appropriate “underlying felony” to support a capital murder conviction. see 2025 Ark. 94, at 2.

The petitioner argued in both the May 29, 2025, post-conviction appeal and his petition for rehearing filed June 12. 2025, that this was in fact an error of law contained in the courts opinion because “robbery” and “aggravated robbery” are not defined by the same criminal statute in Arkansas, have different sentencing ranges, and the Arkansas Supreme Court expanded the reach of section 5-10-101 to include the offense of aggravated robbery prior to legislative authorization in 2007 in violation of the separation of powers in Article 4, §2. of the Arkansas Constitution in order to save section 5-10-101 from being held unconstitutional. In both the appeal and petition for rehearing Burgie specifically stated that the court “improperly interpreted” the pre-2007 capital murder statute and convicted him of a non-existent offense in contravention of this court decision in Fiore v. White, 121 S. Ct. 712 (2001) and United States v. Davis, 139 S. Ct. 2319 (2019). The petitioner contention was that because the Arkansas legislature did not amend section 5-10-101 to include “aggravated robbery” until April 2, 2007, the State of Arkansas could not have proved that he committed capital murder with aggravated robbery as the underlying felony supporting the capital murder charge within the requirements of the Fiore due process holding. id.

7. On July, 17, 2025, the Arkansas Supreme Court entered an order with no opinion denying Mr. Burgie's petition for rehearing. see Appendix C.
8. The petitioner states that even though the Arkansas Supreme Court has interpreted "aggravated robbery" to be an offense included in the pre-2007 capital murder statute, the courts interpretation is incorrect and is at odds with this courts decisions in Fiore and Davis. id. However, while the Arkansas Supreme Court interpretation of section 5-10-101 is binding on this court, this court have stated that on rare occasions it has re-examined a state court interpretation of state law when it appears to be an obvious subterfuge to evade consideration of a federal question. see Mullaney v. Wilbur, 95 S. Ct. 1881 (1975). Furthermore, this court has stated that it will not defer to a lower court on state law issue when the construction is clearly wrong. see United States v. Durham Lumber co., 80 S. Ct. 1282 (1960); The Tungus v. Skovgaard, 79 S. Ct. 503 (1959); see also, Brockett v. Spokane Arcades, Inc., 105, S. Ct. 2794 (1985). The petitioner states that although he is alleging that the Arkansas Supreme Court application of res judicata to his claims in its May 29, 2025, opinion, violated the fundamental fairness requirement of the due process clause, it nonetheless constituted an apparent scheme of evasion to provide the court with an illegitimate excuse to avoid addressing Burgie's due process non-existent offense and separation of powers claim under this court decisions in Fiore and Davis.

-end of statement-

REASONS FOR GRANTING THE PETITION

- A. The National importance of having the United States Supreme Court decide the questions involved.
1. The Petitioner states that under Arkansas law, he was permitted to file in the trial court a petition to correct an illegal sentence which is designed to correct a sentence that's invalid on its face at any time. see Appendix L., Ark. code Ann. § 16-90-111 (a); see also, Williams v. State, 2016 Ark. 16, at 2. (per curium). And the Arkansas Supreme Court has made clear that courts in Arkansas do not have any authority to try and convict a defendant on a charge that is not a criminal offense. see Standridge v. State, 2014 Ark. 515, 452 S.W. 3d 103 (2014).
 2. However, in Mr. Burgie's post-conviction appeal the Arkansas Supreme Court applied res judicata to his claims on his appeal and avoided addressing entirely his due process non-existent offense and separation of powers claims made under this courts decisions in Fiore v. White, 121 S. Ct. 712 (2001) and United States v. Davis, 139 S. Ct. 2319 (2019). Instead, the state court did with subtle and obvious subterfuge sought to evade the federal question altogether by addressing only the jurisdictional state law aspects of his argument.
 3. Further more, the petitioner states that the courts application of res judicata to his claims in its May 29, 2025, opinion was inappropriate because it contravened the fundamental fairness requirement of due process clause which entitled Burgie to a fair and meaningful hearing under state post-conviction statute on his claims rather than denying him relief on

baseless res judicata grounds. This court should grant discretionary review here because although it has not been decided conclusively, existing authority suggests that state post-conviction proceedings must comport with fundamental fairness mandated by the due process clause. see Pennsylvania v. Finley, 481 U.S. 551 (1987); United States v. Mccollom, 96 S. Ct. 2086 (1976) (plurality opinion) (States have no obligation to provide this avenue of relief, and when they do, the fundamental fairness mandated by the due process clause require state to employ fair review); see also, Oken v. Warden M.S.P., 233 F. 3d 86 (1st cir. 2000). And this court stated in Dist. Attorney's office for the third Judicial District v. Osborne, 129 S. Ct. 2308 (2009), that prisoner may retain a state created liberty interest in demonstrating his innocence with new evidence under state law. *id*; see also, Mckithen v. Brown, 626 F. 3d 143 (2nd cir. 2010). In Mr. Burgie's case, the Arkansas Supreme Court expanded the reach of the pre-2007 capital murder statute in Simpson v. State, 274 Ark. 188, 623 S. W. 2d 200 (1981), to include "aggravated robbery" which was an offense that was not included in that statute at the time. see Burgie v. Hobbs, 2013 Ark. 360, at fn.3 (per curium). The Arkansas legislature amended the capital murder statute to include aggravated robbery on April 2, 2007. *id*; Appendix F. 2007 Arkansas Laws Act 827 (H. B. 2462). This constituted new evidence that put Burgie on notice that the state had convicted him of a non-existent offense and that the court had "improperly interpreted" the capital murder statute in Simpson in order to avoid holding it unconstitutional. The courts interpretation violated the due process clause and the separation of powers because it read section 5-10-101 to encompass an offense that was not authorized by the legislature on the date of the offense. This courts decisions have made clear that this is not permissable. The Arkansas Supreme Court decision in

Burgie v. Hobbs, 2013 Ark. 360. (per curium), clarified that the Arkansas legislature amended section 5-10-101 to include “aggravated robbery” in 2007. This means that prior to the 2007 amendment the legislature had not authorized Burgie’s 2001 convictions for capital murder and aggravated robbery. *id.*

4. The petitioner states that state and federal courts all across the country have condemned the practice of convicting defendants of nonexistent offenses. see Luurtsen v. Commissioner of Correction, 299 Conn. 740 (2011); In re Hinton, 152 Wash. 2d 853 (2004); Adams v. Murphy, 653 F. 2d 24 (5th cir. 1981)(“ nowhere in this country can a man be condemned for a non-existent crime”); see also, Kleve v. Hill, 202 F. 3d 1155 (9th cir. 2000); Kleve v. Hill, 243 F. 3d 1149 (9th cir. 2001) (A conviction for conduct that is not in fact a crime cannot be squared with the dictates of due process). It is universally understood in most if not all democratic countries that the criminal statute used by the state to justify the conviction and continued incarceration of a defendant must have been an actual law on the books at the time of the crime. The state cannot and should not be allowed to convict people of nonexistent offenses and justify it by “improperly interpreting” its criminal statute to cover an offense that was passed by the state legislature many years after the state has secured numerous convictions of defendants for the very same offense. The petitioner states that this court decisions in Fiore and Davis is directly applicable here under the stated circumstances and mandates reversal under due process and separation of powers principles. *id.*; People v. Stephenson, 30 p. 3d 715 (colo. App. 2001).
5. The petitioner states that this court should grant review in this case because there are numerous prisoners directly affected by how the state has applied section 5-10-101 in

Burgie's case, The Arkansas Supreme Court rewrote the capital murder statute in Simpson in violation of the separation of powers and now after many years have passed is reluctant to rectify the constitutional errors because it realized that after the legislature amended the capital murder statute to include aggravated robbery in 2007, it had made a serious mistake and have been convicting defendants of a nonexistent offense for which the only sentence is the death penalty and life without parole. see Burgie v. Hobbs, 2013 Ark. 360 (per curium); Simpson v. State, 224 Ark. 188, 623 S. W. 2d 200 (1981); Mcclendon v. State, 295 Ark. 303, 748 S. W. 2d 641 (1988); Nooner v. State, 907 S. W. 2d 677, 322 Ark. 87 (1995); Mullins v. State, 303 Ark. 695, 799 S. W. 2d 550 (1990); Gardner v. State, 2017 Ark. 230, No. CR-17-230 (2017); Jefferson v. State, 2023 Ark. 38, 660 S. W. 3d 575 (Ark. 2023).

- B. The Arkansas Supreme Court application of res judicata to Burgie's claims in post-conviction appeal constitute an obvious subterfuge to evade consideration of his constitutional claims and is at odds with this courts decisions.
1. The petitioner states that although it has not been decided conclusively, this courts decisions strongly suggest that a state post-conviction proceeding must be consistent with fundamental fairness mandated by the due process clause of United States Constitution. see Pennsylvania v. Finley, 481 U.S. 551 (1987); United States v. Mccollom, 96 S. Ct. 2086 (1976) (plurality opinion) (States have no obligation to provide this avenue of relief, and when they do, the fundamental fairness mandated by due process clause require state to employ fair review); see also, Oken v. Warden M.S.P., 233 F. 3d 86 (1st cir. 2000).
 2. The petitioner states that Mr. Burgie did not receive a fundamentally fair hearing on his constitutional and illegal sentence claims as required by due process clause, which is

reflected in the Arkansas Supreme Court May 29, 2025, decision in its opinion issued in Burgie's post-conviction appeal under Arkansas code Annotated § 16-90-111 (a) see appendix A; Specifically, the courts May 29, 2025, opinion which affirmed the trial court denial of Burgie's section 16-90-111(a) petition applied res judicata to his due process nonexistent offense and separation of power claims made under Fiore v. White, 121 S. Ct. 712 (2001) and United States v. Davis , 139 S. Ct. 2319 (2019). The court stated that Burgie has raised the jurisdictional state law claim that his capital murder and aggravated robbery convictions under section 5-10-101 was illegal because "aggravated robbery" was not included in the capital murder statute on the date of the offense. However, the petitioner states that what is clear here, is that the court deliberately avoided addressing the nonexistent offense and separation of powers claim in their entirety. The court did not state whether it had or had not decided those claims on the merits in Burgie's prior post-conviction actions, and the petitioner maintains that the Arkansas Supreme Court has not.

3. In the petitioner's State Habeas action that he filed in 2012, the Arkansas Supreme Court stated on the appeal that Burgie's separation of powers and due process claims was not cognizable in the State Habeas proceedings. see Burgie v. Hobbs, 2013 Ark. 360. (per curium). The court stated that such claims do no call into question the jurisdiction of the circuit court. id. The petitioner Mr. Burgie raised these issues in subsequent post-conviction petitions under Arkansas code Annotated §16-90-111 (a), the circuit court and Arkansas Supreme Court never addressed the non-existent offense and separation of power claims. The petitioner states that when Burgie filed his petition for rehearing on June 12, 2025, and in other post-conviction actions he filed asking the court to address the issues it had failed to address in his various post-conviction appeals it demonstrated

its reluctance to address the claims on the merits that it overlooked on the appeal. see Burgie v. State, 2016 Ark. 144; see also. Burgie v. State, 2016 Ark. 170. (per curium).

4. The petitioner states that the Arkansas Supreme Court application of res judicata to Burgie's claims in his May 29, 2025, appeal was clearly inappropriate because the court never provided him with a full and fair hearing on the nonexistent offense and separation of power claims and it never addressed these claims on the merits. This is at odds with this court's decision which strongly suggests that res judicata claim preclusion is inapplicable under these circumstances. see Kremer v. Chem. Constr. Corp., 102 S. Ct. 1883 (1982) (While our previous expressions of the requirement of a full and fair opportunity to litigate have been in the context of collateral estoppel or issue preclusion, it is clear from what follows that invocation of res judicata or claim preclusion is subject to same limitation); Gahr v. Trammel, 796 F. 2d 1063 (8th cir. 1986); see also, Johnson v. Spencer, 950 F. 3d 680 (10th cir. 2020).

Furthermore, the petitioner states that the Arkansas Supreme Court application of res judicata to his claims is inappropriate for another reason. It is apparent that the court used it as an illegitimate basis for circumventing addressing Burgie's constitutional claims because the implications from this court's decisions in Fiore v. White, 121 S. Ct. 712 (2001) and United States v. Davis, 139 S. Ct. 2319 (2019), is that his 2001 capital murder and aggravated robbery convictions under section 5-10-101 are unconstitutional. id. In addition to this, the Arkansas Supreme Court's own well established precedent shows that Burgie's convictions and sentences are illegal and reversal and dismissal is required for conviction of a non-existent offense. see Standridge v. State, 2014 Ark. 515. Moreover, this court has stated that on rare occasions it will re-examine a state court interpretation of

state law when it appears to be an obvious subterfuge to evade consideration of a federal question. see Mullaney v. Wilbur, 95 S. Ct. 1881 (1975).

5. Firstly, the petitioner states that this court should accept this case for review because the state of Arkansas have convicted him of what is clearly a non-existent offense and have incarcerated Mr. Burgie for over 25 years. The Arkansas Supreme Court is refusing to review Burgie's claims and correct his illegal conviction and sentence without lawful justification. Secondly, the petitioner states that this court should accept his case for review because he was denied a fundamentally fair post- convictions proceeding under Arkansas code Annotated§ 16-90-111 (a). see Appendix L, A. C. A. § 16-90-111 (a) correction or reduction of sentence. This court should address Mr. Burgie's due process nonexistent offense and separation of power claims that he raised under Fiore and Davis in his state post-conviction proceeding but was unfairly denied review of his claims on the merits because of the Arkansas Supreme Court inappropriate application of res judicata claim preclusion. The petitioner states that the court never ruled on these claims in his prior post- conviction proceedings and only applied res judicata so that it could avoid addressing Burgie's claims because it knew that his claims are meritorious and would overturn over (5) five decades of illegal capital murder convictions.
6. The petitioner states that the full and fair opportunity to litigate claim in prior litigation requirement required Arkansas Supreme Court to determine whether application of res judicata to his claims unfairly denied Burgie review and conflicted with state law rule that illegal sentence claims cannot be waived and may be brought at any time.

C. The ways in which the decision of the Arkansas Supreme Court was erroneous.

1. The petitioner states that this court should accept his case for review because the Arkansas Supreme Court denied him a fundamentally fair post-conviction hearing on his illegal sentence claims under Arkansas code Annotated § 16-90-111 (a), when it failed to address his due process nonexistent offense and separation of power claims under Fiore v. White, 121 S. Ct. 712 (2001) and United States v. Davis, 139 S. Ct. 2319 (2019). id. This court decisions indicate that the due process clause requirement of fundamental fairness applies to state post-conviction proceedings. see Pennsylvania v. Finley, 481 U.S. 551, 557 (1987); Ake v. Oklahoma, 470 U.S. 68, 76-77 (1985); United States v. Mccollom, 96 S. Ct. 2086 (1976).
2. The petitioner states that in this courts decision in Fiore it stated that, “a state cannot consistently with the due process clause, convict a defendant for conduct that its criminal statute, as properly interpreted, doe not prohibit.” see Fiorev. White, 121 S. Ct. 712 (2001); In re Hinton, 152 Wash. 2d 853 (2004).
3. The petitioner states that his 2001 capitol murder and aggravated robbery convictions and sentences under the pre-2007 capital murder statue violates Fiore due process rule and constitutes a nonexistent offense. id. The petitioner further states that the capital murder statute in effect on the date of the offense did not include aggravated robbery as an offense that the Arkansas legislature authorized to be used as an underlying felony to support a capital murder charge. see Appendix H., A. C. A. § 5-10-101 (a) (1) (A) (Repl. 1997).
4. The petitioner states that on April 2, 2007, the Arkansas legislature amended the

capital murder statute to include “aggravated robbery.” see Appendi F., 2007 Arkansas laws Act 827 (H. B. 2462).

5. However, the Arkansas Supreme Court interpreted the pre-2007 capital murder statute to include aggravated robbery in Simpson v. State, 274 Ark. 188, 623 S.W. 2d (1981), even though it acknowledged that the legislature in Arkansas did not amend section 5-10-101 to include that offense until 2007, which was well after Burgie’s 2001 convictions for capital murder and aggravated robbery. see Burgie v. Hobbs, 2013 Ark. 360, fn. 3. (per curium). And in later cases, the court upheld its decision in Simpson stating that aggravated robbery is still a robbery, as if those were the same criminal offenses under Arkansas law but they are not. see Burgie v. State, 2025 Ark. 94, CR-24-532 (Ark. May 29, 2025); Nooner v. State, 907 S. W. 2d 677, 322 Ark. 87 (1995). id.

The petitioner states that because the Arkansas Supreme Court improperly expanded the reach of the pre-2007 capital murder statute to encompass aggravated robbery which was an offense that was not authorized by the Arkansas legislature in the capital murder statute in effect on the date of the offense it constituted an improper interpretation of the statute. This violated the separation of powers in the Arkansas Constitution, Article 4, §2. because the court infringed on the functions of the Arkansas legislature to define crime and prescribe punishment for violation of its laws. see Standridge v. State, 2014 Ark. 515; see Sparrow v. State, 284 Ark. 396, 397, 683 S.W. 2d (1985); Trice v. City of Pine Bluff, 279 Ark. 125, 649 S.W. 2d 179 (1983). The Arkansas Supreme Court have constantly stated that courts in Arkansas do not have any authority to do this. id. The petitioner states that this is of particular importance to Burgie’s claim because in Fiore this court stated that States violate the due process clause when it convicts defendants for conduct that its

criminal statute as “properly interpreted”, does not prohibit. *id.*; see also, Luurtsema v. Commissioner of Corr., 299 Conn. 740 (2011). This court should grant review in Burgie’s case to decide whether the Arkansas Supreme Court convicted him of a non-existent offense when it “improperly interpreted” the pre-2007 capital murder statute to include aggravated robbery in violation of the twin constitutional pillars of due process clause and separation of powers. see Fiore v. White, 121 S. Ct. 712 (2001); see also, United States v. Davis, 139 S. Ct. 2319 (2019). And this court has made clear that a federal court is not bound by a state court interpretation of federal law; including the courts conclusion that a state conviction comported with a relevant federal constitutional guarantee. see Brown v. Davenport, 596 U.S. 118, 130 (2022); Brown v. Allen, 344 U.S. 443, 458-59 (1953).

6. Moreover, the petitioner states that the fact that the Arkansas Supreme Court “improperly interpreted” the pre-2007 capital murder statute to include aggravated robbery implicates this courts concerns that where a legislature fails to provide such minimal guidelines, a criminal statute may permit a standard-less sweep that invites arbitrary enforcement. see Kolender v. Lawson, 103 S. Ct. 1855 (1983); see also, United States v. Reese, 92 U.S. 214, 221, 23 L.ed. 563 (1875). In Reese this court stated that its concern for minimal guidelines stretches all way back to the late 1800’s, where it stated, “It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of government.” *id.* United States v. National Treasury Empl. Union, 115, S. Ct. 1003 (1995)) (recognizing “our obligation to avoid judicial legislation); Aptheker v. Secretary of State, 84 S. Ct. 1659 (1964) (warning against

judicial rewriting of statute to save it against constitutional attack.) see also, McDonald v. Moose, 710 F. 3d 154 (4th cir. 2013). In Burgie's case, the Arkansas Supreme Court decision in Simpson undoubtedly expanded the reach of the pre-2007 capital murder statute to include aggravated robbery and its application of Simpson to Burgie's 2001 capital murder and aggravated robbery convictions violated both the due process clause in U.S. constitution and separation of power principles in Arkansas Constitution. It cannot be said that such a standard-less sweep of the statute was not arbitrary and discriminatory. Moreover, it has long been axiomatic that due process requires the court to observe that fundamental fairness is essential to the very concept of justice. see Unsenba v. California, 62 S. Ct. 280 (1941).

7. The petitioner states that the Arkansas Supreme Court in its May 29, 2025, opinion stated that , “ robbery was an underlying felony, and aggravated robbery is still robbery; therefore, aggravated robbery was an appropriate “underlying felony” to support a capital murder conviction.” see Burgie v. State, 2025 Ark. 94, CR-24-532 (Ark. May 29, 2025), The court is basically saying that because of the Arkansas legislature's inclusion of “robbery” in the pre- 2007 capital murder statute this automatically encompassed aggravated robbery as well although the legislature did not amend section 5-10-101 to include that offense until April 2, 2007. see Burgie v. Hobbs, 2013 Ark. 360. (per curium). The court statements therefore, is making it to appear as if robbery and aggravated robbery is the same criminal offense under Arkansas law when it is not. The court did this just so it could make an illegitimate excuse for avoiding addressing the fact that Burgie's 2001 capital murder and aggravated robbery convictions are unconstitutional and illegal.

8. The petitioner states that under Arkansas law robbery and aggravated robbery are not the same criminal offense. Robbery according to statute in Arkansas is a class B felony and carried a sentencing range of 5 to 20 years. see Appendix I, A. C. A. § 5-12-102; see also, Appendix J, A. C. A. § 5-4-401 (a)(3). And aggravated robbery is a class Y felony and carried a sentencing range of 10 to 40 years, or life. see Appendix J, A. C. A. § 5-12-103; see also, Appendix G, A. C. A. § 5-4-401 (a) (1). The petitioner Mr. Burgie received life without parole for his capital murder conviction and a life sentence for aggravated robbery. Under the capital murder statute in effect on the date of the crime Burgie could not have received no more than 20 years for robbery. The life sentence that Burgie received for aggravated robbery although within the sentencing range for that offense would clearly be illegal on its face when applied to robbery within the context of the capital murder statute in effect on the date of the crime cannot be the same offense. The fact that aggravated robbery and robbery are not the same criminal offense is elucidated by the Arkansas Supreme Court in Holly v. Hobbs, 2015 Ark.467., when it stated that, “both the murder charge and the aggravated robbery charge included elements that are different from those that must be proved to establish simple robbery, and those elements are not overlapping.” id. Nelson v. State, 2015 Ark, 168 (per curium); see also, Mullins v. State, 303 Ark. 695, 799 S. W. 2d (1990).

The petitioner asks that this court grant review in Burgie’s case because due process and separation of powers require that he be provided with a fundamentally fair post-conviction proceeding and that no man or woman be convicted of a criminal offense that was not the law at the time of conviction. This is something that should be avoided in democratic countries who promote notions of liberty, freedom, and justice for all.