No. 25-6003

IN THE

SUPREME COURT OF THE UNITED STATES

QUINN R. TURNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Mr. Quinn R. Turner # 22325-032

FCI-Memphis/ P.O. Box 34550

Memphis, TN. 38184

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Whether Mr. Turner's due process of law rights of the Fifth Amendment U.S. Constitution were violated by the district court failing to adjudicate the merits of his Motion for Partial Disqualification in the first instance prior to presiding over the 2255 Proceedings ?

QUESTION NUMBER TWO:

Whether the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as to Ground One, claim, thus, did his ex-trial counsel provide him with ineffective assistance of counsel by failing to conduct legal research and by failing to file a pre-trial Motion to Dismiss Fatally Defective Count 1, Conspiracy of the Second Superseding Indictment did this violate his Sixth Amendment rights of the U.S. Constitution ?

QUESTION NUMBER THREE:

Whether the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as to Ground Two, thus, did his ex-trial counsel provide him with ineffective assistance of counsel by failing to object to the Constructive or Impermissible Amendment of the Second Superseding Indictment through Jury Instruction No. 16, did this violate his Sixth Amendment rights ?

QUESTION NUMBER FOUR:

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing and the Sixth Circuit's affirmance as it relates to Ground Four, thus, did his ex-trial counsel provide Turner with ineffective assistance of counsel by failing to object to the Government's Proposed Special Jury Verdict and requested a Special Jury Verdict Form in which the Jury would find the minimum and maximum amount of drugs attributed to Turner as approved by the Sixth Circuit in **McReynolds,** 964 F.3d 555, 563-67 (6th Cir. 2020), did this violate his Sixth Amendment rights of the U.S. Constitution ?

QUESTION NUMBER FIVE:

Whether the district court abused its discretion by failing to conduct Evidentiary Hearing and the Sixth Circuit's affirmance as it relates to Ground Five as to whether Turner's ex-appellate attorney provided him with appellate ineffectiveness by the inclusion of Grounds 1, 2, and 3, from his Direct Appeal opening brief did this violate his Sixth Amendment rights of the U.S. Constitution ?

QUESTION NUMBER SIX:

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing and the Sixth Circuit's affirmance as it relates to Ground Six as to whether Count 5, Felon in Possession of a Firearm is unconstitutional, thus, "actually innocent" as it violates

his Second Amendment rights of the U.S. Constitution ?

LIST OF PARTIES

[x] 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:

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES PAGE NUMBER

OTHER PAGE NUMBER

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 A, 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 B 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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was February 7, 2025

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 18, 2025

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

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1).

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

The date in 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

STATEMENT OF THE CASE

On September 22, 2023, Petitioner Turner filed his 2255 Motion to Vacate and Affidavit (Doc. # 309). The Government filed their Response Brief opposing relief being granted on December 08, 2023 (Doc. # 317). In January of 2024, Petitioner Turner filed his 2255 Reply Brief to conclude briefing schedule. On June 05, 2024, the district court adopted the U.S. Magistrate Judge's Report and Recommendation to deny Turner's 2255 Motion to Vacate and declined to grant a Certificate of Appealability (Doc. # 327). A timely Notice of Appeal was filed and on February 7, 2025, the Sixth Circuit Court of Appeals denied Petitioner Turner's request for a Certificate of Appealability and issued a 6-page Denial of COA Opinion in the case at bar.

Petitioner Turner, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, Three, Four, Five and Six or as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Turner, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Turner, respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, Three, Four, Five and Six as relevant to question # 1, Quinn R. Turner argues that his due process of law rights of the Fifth Amendment was violated by the failure of the district court to adjudicate the merits of his Motion for Partial Disqualification in the first instance prior to presiding over the 2255 Proceedings. Regarding question # 2, Quinn R. Turner argues that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as his ex-trial counsel provided him with ineffective assistance of counsel by failing to conduct legal research and by failing to file a pre-trial Motion to Dismiss Fatally Defective Count 1, Conspiracy in which violated his Sixth Amendment rights. Regarding question # 3, Quinn R. Turner argues that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as his ex-trial counsel provided him with ineffective assistance of counsel by failing to object to the Constructive or Impermissible Amendment of the Secon Superseding Indictment through Jury Instructions No. 16, in which violated his Sixth Amendment rights. Regarding question # 4, Quinn R. Turner that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as his

ex-trial counsel provided him with ineffective assistance of counsel by failing to object to the Government's Proposed Special Jury Verdict and requested a Special Jury Verdict Form in which the Jury would find minimum and maximum amount of drugs attributed to Turner as approved by the Sixth Circuit in violation of his Sixth Amendment rights. Regarding question # 5, Quinn R. Turner argues that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as his ex-appellate counsel provided him with appellate ineffectiveness by the inclusion of Grounds 1, 2, and 3, of his original 2255 Motion to Vacate from his Direct Appeal opening brief in which violated his Sixth Amendment rights. Regarding question # 6, Quinn R. Turner argues that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as Count 5, Felon In Possession of a Firearm is "unconstitutional" in which violates his Second Amendment rights. Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in **Slack** and **Miller-El,** thus, Quinn R. Turner is entitled to issuance of Certificate of Appealability as to Questions 1, 2, 3, 4, 5, and 6, in the matter herein.

QUESTION NUMBER ONE:

Whether Mr. Turner's due process of law rights of the Fifth Amendment U.S. Constitution were violated by the district court failing

to adjudicate the merits of his Motion for Partial Disqualification in the first instance prior to presiding over the 2255 Proceedings ?

In the instant case, Petitioner Turner, states on September 22, 2023, he filed his Pro Se 2255 Motion to Vacate and Affidavit (Doc. # 309), and also on September 22, 2023, he filed his Pro Se Motion for Partial Disqualification of U.S. District Court (Judge) David L. Bunnings (Doc. # 312). However, the district court did not take any action as to Turner's Motion for Partial Disqualification in which is supported by an Affidavit in which must be taken as true as the sound reasoning for Partial Disqualification of the district court but all was ignored until the 2255 Motion to Vacate was denied by the district court on June 05, 2024 (Doc. # 327 and 328). On January 09, 2024, Mr. Turner filed his Pro Se Emergency Writ of Mandamus Petition before the Sixth Circuit in Case No. 24-5029 (Doc. # 1); and on October 11, 2024, the Sixth Circuit denied Emergency Writ of Mandamus Petition to compel the district court to adjudicate his motion for partial disqualification, thus, the Sixth Circuit deemed it to moot (Doc. # 5-2). Turner's Motion for Disqualification in which is authorized consistent with Section 2255 Rules, supra note 2246 R. 4 advisory committee's notes and 28 U.S.C. 455 (a). At least two federal Circuit Courts have held that the mere accusations of judicial bias and misconduct justified partial recusal, see Ellis v. United States, 313 F.3d 636, 641-42 (1st Cir. 2002); and Murchu

v. United States, 926 F.2d 50, 53 n. 3, 56-57 (1st Cir. 1991). Quinn R. Turner, states that he filed his Pro Se Motion for Partial Disqualification at the same time he filed his timely 2255 Motion to Vacate on September 22, 2023 (Doc. # 312), however, federal judge David L. Bunning simply ignored and disregarded Turner's Motion for Disqualification and adjudicated the Motion for Partial Disqualification the same time the district court denied Turner's 2255 Motion to Vacate in which violates the letter and spirit of Section 2255 Rules, supra note 2247, R. 4 advisory committee's notes and his due process of law rights in the case herein. In fact, on October 26, 2023, Judge Bunnings issued a Show Cause Order for the Government to file a Response Brief (Doc. # 315), and on December 08, 2023, the Government did in fact file their Response Brief (Doc. # 317). Mr. Turner, contends that Judge Bunning's actions are alarming as he is disregarding the law and acting in a manner contrary to due process of law. See In re IBM Corp., 45 F.3d 641, 643 (2d Cir. 1995) ("A prompt (Motion for Recusal) application affords the district judge an opportunity to assess the merits of the application before taking any further steps that may be inappropriate for the judge to take."); and Marshall v. Jerrico, Inc., 446 U.S. 238, 242-43 (1980) (the Supreme Court held that Fifth Amendment constitutional right affords a criminal defendant to an impartial and disinterested tribunal in both

civil and criminal cases) (emphasis added).

If a district court judge is permitted to disregard and ignore a Motion for Partial Disqualification in which is authorized by Section 2255 Rules, supra note 2247, R. 4 advisory committee notes and 28 U.S.C. 455 (a), thus, the rule and federal statute becomes meaningless in which violates the letter and spirit of his Fifth Amendment due of process of law rights in this instance a Certificate of Appealability should issue as to Question Number One as it is debatable among jurists of reason as to whether a substantial showing of a denial of Turner's Fifth Amendment rights were violated in the case herein. **Slack,** 529 U.S. 473, 484 (2000).

QUESTION NUMBER TWO:

Whether the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as to Ground One, claim, thus, did his ex-trial counsel provide him with ineffective assistance of counsel by failing to conduct legal research and by failing to file a pre-trial Motion to Dismiss Fatally Defective Count 1, Conspiracy of the Second Superseding Indictment did this violate his Sixth Amendment rights of the U.S. Constitution ?

In the instant case, Petitioner Turner, states that as to Ground One he argued before the district court that he suffered from ineffective assistance of counsel by his ex-trial counsel failing to

conduct legal research and failing to file a pre-trial Motion to Dismiss Second Superseding Indictment as to Count 1, Conspiracy as it is fatally defective in violation of his Fifth and Sixth Amendment rights of the U.S. Constitution by the omission of the mens rea elements of **"knowingly and intentionally."** The district court denied Ground One by holding in relevant part as follows:

The district court held that in light of the U.S. Supreme Court's Ruling in Ruan v. United States, 142 S. Ct. 2370, 2379 (2022), that the government was not required to include the mens rea element in the indictment. The district court also relies upon the Sixth Circuit's decision in United States v. Martinez, 981 F.3d 867, 872 (6th Cir. 1992), to deny Turner's Ground One claim.

However, the U.S. Supreme Court has held that an indictment must charge all the essential elements of the offense and Mr. Turner's **knowledge and intent is an essential element of a violation of 21 U.S.C. 846, Conspiracy.** See United States v. Randolph, 794 F.3d 602, 608-09 (6th Cir. 2015) (To sustain a drug trafficking conspiracy conviction under 21 U.S.C. 846, the government must have proved (1) an agreement to violate drug laws; (2) knowledge and intent to join the conspiracy; (3) participation in the conspiracy.). It is black-letter law that an indictment must allege "the elements of the offense charged," thus, if it does not such indictment is subject to dismissal.

See Hamling v. United States, 418 U.S. 87, 117 (1974); United States v. Resendiz-Ponce, 549 U.S. 102, 108 (2007) (criminal indictment must set forth all elements of the charged crime); United States v. Heller, 579 F.2d 990 (6th Cir. 1978) (The Sixth Circuit held that: "The judgment was reversed and the case was remanded to the district court with instructions to dismiss the indictment because the indictment was fatally defective in that it did not charge defendant with having had an intent to extort. Since it failed to charge an essential element of the crime defined by the statute, the indictment could not stand.); United States v. Landham, 251 F.3d 1072, 1082 (6th Cir. 2001) (The Sixth Circuit held that: "Because the indictment failed, as a matter of law, to allege a violation of Sec. 875 (c), the district court erred in denying Landham's motion to dismiss Count Four."); United States v. Bankston, 820 F.3d 215, 227-231 (6th Cir. 2016) (The Sixth Circuit held that: "Because count 23 is based on conduct that, on the face of the relevant statutory exemption, does not constitute a crime, we find that the indictment, failed to state an offense in count 23." The Sixth Circuit held that: "where, as here, the underlying conduct is so patently not a crime that is satisfies Section 1001 (b) on its face, the indictment fails to state an offense when it charges a false statement crime while omitting the judicial function exception."); and the Sixth Circuit held in

United States v. Superior Growers Supply, Inc., 982 F.2d 173, 179-80 (6th Cir. 1992) (The Sixth Circuit affirmed the dismissal of the fatally defective indictment as to 21 U.S.C. 846, Conspiracy charge as it omitted an essential element of the offense and the Sixth Circuit relying upon Supreme Court Ruling in **Falcone,** stating that: "Those having no knowledge of the conspiracy are not conspirators,...."). Consistent with the U.S. Supreme Court notice requirement as outlined in **Apprendi,** 530 U.S. 466, 476 (2000), thus, this Court may only guess whether the grand jury received evidence of, and actually passed on, Mr. Turner's **knowledge and intent** as required by Sixth and U.S. Supreme Court precedents. See Williams v. Haviland, 2005 U.S. Dist. LEXIS 13228, 2005 WL 156672 (N.D. Ohio, 2005) (A federal judge in the Northern District of Ohio GRANTED Samuel L. Williams' Petition for a Writ of Habeas Corpus as the Court found that the indictment violated the inmate's rights under the Fifth and Sixth Amendment because the mens rea elements of the charged offenses were not presented to the grand jury. However, this decision was appealed and overturned by the Sixth Circuit Court of Appeals for the limited reason as the result of Samuel L. Williams being an Ohio state prisoner and not having the protection of the Fifth Amendment of the U.S. Constitution. See Williams v. Haviland, 467 F.3d 527, 529 (6th Cir. 2006) (The Sixth Circuit reversed on the ground

that the Fifth Amendment grand jury right, U.S. Const. amend. V. was not incorporated by the Fourteenth Amendment, U.S. Const. amend. XIV, and thus does not apply to state proceeding under the **Apprendi** holding.). Because Mr. Turner is a federal inmate he is entitled to the **Apprendi** holding and protections afforded to him under the Fifth Amendment, thus, he is entitled to relief in the matter herein. Furthermore, Quinn R. Turner, argues firmly that the mere citation of 21 U.S.C. 846, for drug conspiracy does not give Turner notice of the nature of the offense (especially here where Section 846, does not include the mens rea of "knowingly and intentionally" and the statute is of no notice to Turner). An indictment that must rely on a statutory citation does not "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished." See Hamling v. United States, 418 U.S. 87, 117 (1974). In testing the sufficiency of an indictment, "it is the statement of facts in the pleading, rather than the statutory citation that is controlling...." United States v. Waco, 535 F.2d 1200, 1202 n. 1 (9th Cir. 1976), cert. denied, 429 U.S. 978 (1976); and United States v. Hutcheson, 312 U.S. 219, 229 (1941) (same). See also, United States v. Hooker, 841 F.2d 1225, 1228 (4th Cir. 1988) (The Fourth Circuit held that: "We accordingly apply the rule in this case and find the count defective (by mitting the essential element of that the business

enterprise had an effect on interstate commerce) for failure to allege an essential ingredient of the offense charged ("interstate commerce")).

Quinn R. Turner's defect by the complete OMISSION OF MENS REA (knowingly and intentionally) missing essential element cannot be cured by a later jury instruction because there is nothing for a petit jury to ratify. Neither instructions nor a petit jury verdict can satisfy the fact the Fifth Amendment right to be tried upon charges found by a grand jury. Stirone v. United States, 361 U.S. 212, 219 (1960); and United States v. Camp, 541 F.2d 737, 740 (6th Cir. 1976).

The Sixth Circuit Denial of Certificate of Appealability as to Question Number Two, however, the Sixth Circuit denied a COA regarding the defective second superseding indictment by holding that: "Reasonable jurists would agree that Turner did not make this showing, because he alleged no facts from which to infer that the government would have been unable to simply file a third superseding indictment to correct the alleged defects. See 18 U.S.C. 3288 (savings clause permitting refiling of a felony indictment within six months of dismissal)."

However, Petitioner Turner, argues that the Sixth Circuit Denial of COA as to the defective indictment was wrong or debatable based upon the following:

Actual prejudice exists as there a reasonable probability that his ex-

trial counsel's 'deficient performance' prejudiced Quinn R. Turner, therefore, resulting in an unreliable or fundamentally unfair outcome of his Jury Trial proceedings in violation of his Sixth Amendment rights of the U.S. Constitution. **Strickland,** 466 U.S. 668, 691-92 (1984); and Lockhart v. Fretwell, 113 S. Ct. 838, 844 (1993) (the Supreme Court explained that under **Strickland** the fundamental fairness of the proceedings is measured by whether "the ineffectiveness of counsel... deprives the defendant of any substantive or procedural right to which the law entitles him."). Consistent with the Federal Rules of Criminal Procedure 12 (b) (3) (B), and Turner's Fifth and Sixth Amendment constitutional right he possessed a procedural right to challenge his Indictment in which was waived by his ex-trial counsel's 'deficient performance,' thus, actual prejudice exists in violation of his Sixth Amendment rights of the U.S. Constitution. See **Lockhart v. Fretwell,** 113 S. Ct. 838, 844 (1993). Moreover, consistent with Sixth Circuit and Ninth Circuit precedents have approved the grant of relief in 2255 Proceedings when the Indictment was to be dismissed without prejudice for a Section 3161 (b) violation as they reasoned that: "When a defendant has received ineffective assistance of counsel, the district court has the power to remedy the violation by placing the defendant in the same position he was in prior to the ineffective assistance," see Greenup v. United States, 401 F.3d 758, 767-68 (6th Cir. 2005); and

Nunes v. Mueller, 350 F.3d 1045, 1057 (9th Cir. 2003). Regardless, of the fact that the case that his Indictment would have likely been dismissed without prejudice Mr. Turner was entitled to a remedy the Sixth Amendment violation by **placing** Turner in the same position he was in prior to the ineffective assistance. **Greenup,** 401 F.3d 758, 767-68 (6th Cir. 2005); and Nunes v. Mueller, 350 F.3d 1045, 1057 (9th Cir. 2003). It should also be noted that Mr. Turner could have argued that Count 1, Conspiracy should have been dismissed with prejudice due to the Government's neglectful attitude in failing to comply with Criminal Procedure and controlling U.S. Supreme Court precedents to include every essential element within the Indictment.

Other federal courts have GRANTED relief or at minimum an Evidentiary Hearing as to ineffectiveness claims in failing to file a pre-trial Motion to Dismiss Fatally Defective Indictment. See United States v. Weathers, 186 F.3d 948, 958-959 (D.C. Cir. 1999) (Counsel's failure to object to an indictment that was improperly multiplicitous count warranted an evidentiary hearing)

A Certificate of Appealability should as to Question Number Two, as it is debatable among jurists of reason of a denial of his Fifth and Sixth Amendment constitutional rights. See **Slack,** 529 U.S. 473, 484 (2000).

QUESTION NUMBER THREE:

Whether the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing and the Sixth Circuit's affirmance as to Ground Two, thus, did his ex-trial counsel provide him with ineffective assistance of counsel by failing to object to the Constructive or Impermissible Amendment of the Second Superseding Indictment through Jury Instruction No. 16, did this violate his Sixth Amendment rights ?

In the instant case, Petitioner Turner, states that the district court denied the merits of Ground Two by holding that: "Contrary to Defendant's Objection, Magistrate Judge Stinnett did consider the **McReynolds** case in his analysis of this issue. (See Doc. # 323 at 10-11). The **McReynolds** court held that although the indictment did not include the mens rea element to the charged crime, including that element within the jury instructions did not constructively amend the indictment. See United States v. McReynolds, 964 F.3d 555, 562 (6th Cir. 2020). Magistrate Judge Stinnett concluded that Defendant's argument that the jury instructions in his trial constructively amended his indictment is similarly foreclosed here. (Id. at 11). The Court agrees. And as noted in the Objection itself, Defendant does not present any additional arguments not already raised before the Magistrate Judge. Therefore, this objection is **overruled."**

Petitioner Turner, asserts that the Sixth Circuit's Ruling in **McReynolds,** 964 F.3d 555, 561-62 (6th Cir. 2020), is distinguishable as the comparison is the facts and circumstances surrounding McReynolds's Indictment as to Conspiracy charged **"knowingly conspired"** but Quinn R. Turner's Second Superseding Indictment charges **no mens rea** in which constitutes a Constructive/ Impermissible Amendment in violation of his Fifth Amendment rights of the U.S. Constitution. See United States v. Daniels, 252 F.3d 411, 413 (5th Cir. 2001) ("A criminal defendant has a Fifth Amendment right to be tried only on charges presented in a grand jury and may not amend an indictment once it has been issued."); United States v. Diaz, 941 F.3d 729, 736 (5th Cir. 2019) ("A constructive amendment occurs... when the Government is allowed to prove an essential element of the crime on an alternative basis permitted by the statute but not charged in the indictment."); Patterson v. New York, 432 U.S. 197, 210 (1977) (Government bears burden of proving all elements of charged offense).

A constructive amendments are variances occurring when an indictment's terms are effectively altered by the presentation of evidence and jury instructions that "so modify essential elements of the offense charged that there is a substantial likelihood the defendant [was] convicted of an offense other than that charged

in the indictment." **Hathaway,** 798 F.2d at 910. See also, United States v. Beeler, 587 F.2d 340 (6th Cir. 1978). The Sixth Circuit has reversed convictions and remanded for further proceedings when an Indictment was impermissibly amended in similar situations. See United States v. Williams, 475 Fed. Appx. 36, 40 (6th Cir. 2012) (The Sixth Circuit held that the district court improperly amended the superseding information when it "literally altered" the superseding information and sentenced Williams for nonexistent crime. This amendment is per se prejudicial to Williams and constitutes plain error.); and United States v. Combs, 369 F.3d 925, 936-37 (6th Cir. 2004) (The Sixth Circuit held that an impermissible amendment occurred because the jury instructions facilitated the amendment by providing a supplemental explanation aligned with the unindicted "use" offense, thus, the Appellate court held that Combs was convicted of an offense that was not the subject of his indictment, his conviction on Count IV must be reversed.).

Similarly, Petitioner Turner, argues that the fact that the second required "essential element" of Conspiracy was omitted from his Second Superseding Indictment to then include within his Jury Instructions constructively or impermissible amended his Second Superseding Indictment because he was permitted to found GUILTY

based upon the fact that he **"knowingly and intentionally joined conspiracy" on a basis permitted by statute but not charged in the Second Superseding Indictment.** See United States v. Diaz, 941 F.3d 729, 736 (5th Cir. 2019); and United States v. Miller, 471 U.S. 130, 138 (1985) (Mere narrowing of an indictment by the court is not itself unconstitutional, but it is unconstitutional to convict a defendant of an offense different from that which was included in the indictment); **Stirone,** 361 U.S. 212, 217 (1960) (It is well-established that after an indictment had been returned, its charge may not be broadened except by amendment by the grand jury itself.); and United States v. Murphy, 406 F.3d 857, 860 (7th Cir. 2005) (impermissible amendment because judge instructed jury that government had to prove intimidation as part of witness tampering offense when indictment did not mention intimidation.); and United States v. Muresanu, 951 F.3d 833, 839-40 (7th Cir. 2020) (The Seventh Circuit relying upon **Cotton** vacated counts two and four as a violation of the Fifth Amendment by the omission of drug quantity alleged in the indictment but was included in the Jury Instructions).

Regarding Turner's Question Number Three the Sixth Circuit denied a Certificate of Appealability as to the constructive or impermissible amendment of the Second Superseding Indictment

as to Count 1, Conspiracy by holding that: "Turner argued that his attorney should have objected to the jury instruction requiring the jury to find that he knowingly and intentionally joined the conspiracy alleged in Count 1. He contended that the addition of this element constructively amended the superseding indictment. But an impermissible constructive amendment occurs only if the jury instructions and evidence presented during the trial "broaden the basis for conviction." United States v. Bradley, 917 F.3d 493, 502 (6th Cir. 2019) (emphasis added) (quoting United States v. Kuehne, 547 F.3d 667, 685 (6th Cir. 2008)); see Lucas v. O'Dea, 179 F.3d 412, 416 (6th Cir. 1999). Here, the change effectuated by the jury instructions **narrowed** the charge by adding a requirement—that the jury find that Turner knowingly and intentionally joined the conspiracy. Reasonable jurists would agree that counsel could not have raised a meritorious objection to the jury instructions because they did not broaden the charge alleged in the indictment." Mr. Turner argued that the Government constructively or impermissibly amended his Count 1, Conspiracy Second Superseding Indictment, however, put another way, he argues that the jury found him guilty of Count 1, Conspiracy in which was effectively altered by the presentation of evidence and jury instructions which changed the material elements of his offense

in which violated his Fifth Amendment Grand Jury Clause rights. See United States v. Brown, 332 F.3d 363, 371 (6th Cir. 2003) (a constructive amendment occurs where the indictment is effectively altered by the presentation of evidence and jury instructions which change the material elements of an offense. To determine whether a constructive amendment has occurred, therefore, we review the language of the indictment, the evidence presented at trial, the jury instructions and the verdict form utilized by the jury.). Contrary to the Sixth Circuit's Denial of COA as to the constructive or impermissible amendment of Second Superseding Indictment through the Jury Instructions and Evidence at Trial, however, reasonable jurists could find it debatable a denial of his Fifth and Sixth Amendment rights. See Stirone v. United States, 361 U.S. 212, 217 (1960) (A resulting conviction cannot stand because there is no assurance that it matches the offense charged. It is, in words, reversible per se.)

A Certificate of Appealability should issue as to Question Number Three as it is debatable among jurists of reason whether his Fifth and Sixth Amendment constitutional rights were violated in the case herein. See **Slack,** 529 U.S. 473, 484 (2000).

QUESTION NUMBER FOUR:

Whether the district court abused its discretion by failing to

conduct an Evidentiary Hearing and the Sixth Circuit's affirmance as it relates to Ground Four, thus, did his ex-trial counsel provide Turner with ineffective assistance of counsel by failing to object to the Government's Proposed Special Jury Verdict and requested a Special Jury Verdict Form in which the Jury would find the minimum and maximum amount of drugs attributed to Turner as approved by the Sixth Circuit in **McReynolds,** 964 F.3d 555, 563-67 (6th Cir. 2020), did this violate his Sixth Amendment rights of the U.S. Constitution ?

In the instant case, Petitioner Turner, asserts that the district court held that Ground Three ineffectiveness claim based upon the Special Verdict Form was denied by holding that: "With Turner, the only legal necessity is that jury instructions include a question asking if Turner has "50 grams or more of methamphetamine" as that would trigger a higher statutory ceiling for sentencing. [DE 207, PageID # 785-86 (Verdict Form). "A conspiracy conviction 'does not mean that a jury need return a special verdict describing the precise amount of drugs involved in the conspiracy. It is enough that the jury supportably determines, beyond a reasonable doubt, that the conspiracy involves a drug quantity that surpasses the threshold amount."' United States v. Grooms, 194 Fed. Appx. 355, 364 (6th Cir. 2006) (quoting Derman v. United States, 298 F.3d 34, 43 n. 4 (1st Cir. 2002)).

Defendant argues that "his ex-lawyer could have requested a

Special Jury Verdict Form Interrogatories in which request [sic] the Jury to find the minimum threshold amount to trigger an [sic] mandatory minimum sentence and also the maximum drug quantity amount." (Doc. # 324 at 17) (citing United States v. Leontaritis, 977 F.3d 447, 454 (5th Cir. 2020)). This is the same argument Defendant presented to, and was considered by and properly rejected by Magistrate Judge Stinnett. Therefore, this Objection is **overruled.**

The district court abused its discretion by denying Ground Three without conducting an Evidentiary Hearing as his ex-lawyer failed to request a Special Jury Verdict Form Interrogatories in which request the Jury to find the **minimum threshold amount to trigger a mandatory minimum sentence and also the maximum drug quantity amount,** see United States v. Leontaritis, 977 F.3d 447, 454 (5th Cir. 2020) (On the burden-of-proof side lies **Florez,** in which the special interrogatory directs the jury to "state the **maximum** quantity of heroin that the prosecution has proven beyond a reasonable doubt that the importation involved 10 Kilograms or more 3 Kilograms or more 1 Kilogram or more 100 grams or more...." Verdict Form, United States v. Florez, 04-cr-80 (E.D.N.Y., May 12, 2005)).

The special interrogatory asks the jury to make its own affirmative finding as to the precise amount of methamphetamine mixture attributable to Leontaritis, 977 at 454 (5th Cir. 2020).

The court is at all times free to structure its special interrogatory like the interrogatories in United States v. Pineiro or United States v. Florez. Verdict Form, United States v. Pineiro, No. 2:02-cr-20024, 2007 U.S. Dist. LEXIS 9574, 2007 WL 496403 (W.D. La. Apr. 07, 2007); Verdict Form, United States v. Florez, No. 04-CR-80 (E.D.N.Y., May 12, 2005).

The fact that his ex-trial counsel did not request the Special Verdict Form Interrogatories as to the maximum drug quantity amount, thus, has such request been made it could have likely resulted in a reduced drug quantity attributable to Mr. Turner especially in light of the Sixth Circuit precedents in **McReynolds,** 964 F.3d 555, 561-62 (6th Cir. 2020).

The district court abused its discretion by not conducting a prompt Evidentiary Hearing to resolve the merits of Ground Three as the 2255 Proceedings Record does not conclusively show that he is not entitled to relief in the case herein. **Smith,** 348 F.3d 545, 551 (6th Cir. 2003).

The Sixth Circuit denied a Certificate of Appealability as to Question Number Four regarding trial counsel ineffectiveness by failing to request Special Jury Verdict as to minimum and maximum drug quantity findings, thus, the Sixth Circuit held that: "In his third claim, Turner argued that his attorney provided ineffective assistance by failing to request a special jury verdict that would have required

the jury to find "the maximum drug amount [that] the [c]onspiracy involved." He argued that United States v. McReynolds, 964 F.3d 555, 563-67 (6th Cir. 2020), required the jury to make such a finding. But, as the district court noted, McReynolds simply requires the district court to make factual findings regarding the scope of the conspiracy and the foreseeability of certain acts when making drug-quantity calculations under the United States Sentencing Guidelines. Id. at 564-66. It does not require the jury to make such findings. See id. Reasonable jurists would therefore agree Turner was not prejudiced by counsel's failure to request a special jury instruction on this issue."

Mr. Turner **actually** argued that his ex-trial counsel failed to request a special Jury Verdict Form in which would require the jury to reach a findings as to the minimum and maximum drug quantities as approved by the Sixth Circuit in **McReynolds** and United States v. Saunders, 826 F.3d 363, 367-68 (7th Cir. 2016), and on that basis that his ex-trial counsel provided him with ineffective assistance of counsel. It could be said that consistent with Lockhart v. Fretwell, 506 U.S. 364 (1993), that was deprived of a procedural right based upon his ex-trial counsel's 'deficient performance' in which would constitute actual prejudice in violation of his Sixth Amendment rights of the U.S. Constitution.

Reasonable jurists could find this issue debatable of denial

of his Sixth Amendment rights in the case herein.

A Certificate of Appealability should issue as to Question Number Four as it is debatable among jurists of reason whether his Sixth Amendment constitutional rights were violated in the case herein. See **Slack,** 529 U.S. 473, 484 (2000).

QUESTION NUMBER FIVE:

Whether the district court abused its discretion by failing to conduct Evidentiary Hearing and the Sixth Circuit's affirmance as it relates to Ground Five as to whether Turner's ex-appellate attorney provided him with appellate ineffectiveness by the inclusion of Grounds 1, 2, and 3, from his Direct Appeal opening brief did this violate his Sixth Amendment rights of the U.S. Constitution ?

In the instant case, Petitioner Turner, asserts that his appellate ineffectiveness claim should be denied and the district court held as follows: "Defendant objects to Magistrate Judge Stinnett's conclusion that appellate counsel was not ineffective for failing to raise claims that did not have merit. Defendant argues the proper standard of review is whether Grounds One, Two, and Three presented a reasonable probability that the claims would have changed the result of Defendant's direct appeal. (Doc. # 324 at 21) (citing Smith v. Robbins, 528 U.S. 259, 285 (2000)). These claims are not meritorious and so, even applying this standard, do not present a reasonable probability

that raising them on appeal would have changed the result of the appeal for the reasons set forth in this Order and in the R & R as to Grounds One, Two, and Three. Therefore, this Objection is **overruled.**

Petitioner Turner, asserts that the Magistrate Judge employed the wrong legal standard to adjudicate the merits of his appellate ineffectiveness claim in which constitutes an abuse of discretion and merits granting a Certificate of Appealability in the case herein. The Sixth Circuit Court of Appeals has held that an error of law is an abuse of discretion. United States v. Lawrence, 135 F.3d 385, 405 (6th Cir. 2013). Applying the wrong legal standard constitutes reversible error on abuse of discretion. Jackson v. City of Cleveland, 925 F.3d 793, 813 (6th Cir. 2019); United States v. Gissantaner, 990 F.3d 457, 468 (6th Cir. 2021) (A district court "abuse[s] its discretion by incorrectly framing the legal standard."). Bills v. Clark, 628 F.3d 1092, 1096 (9th Cir. 2010) (The Ninth Circuit GRANTED a Certificate of Appealability (COA) on whether the district court applied the correct legal standard, thus, the Ninth Circuit VACATED and REMANDED with instructions to employ the correct legal standards) (emphasis added).

The standard for determining whether such claims should have been presented on Mr. Turner's Direct Appeal as the inclusion of such claims (Grounds 1, 2, and 3), there is a reasonable probability that such claims would have certainly changed the result, of Quinn

R. Turner's Direct Appeal proceedings, see Smith v. Robbins, 528 U.S. 259, 285 (2000). As to Ground One, had such claim been presented and added within his Opening Brief the Fatally Defective Second Superseding Indictment claim would have been reviewed under the plain error analysis, see United States v. Soto, 794 F.3d 635, 649-50 (6th Cir. 2015). Such claim regarding fatally defective second superseding indictment as to Count 1, Conspiracy violated his Fifth and Sixth Amendment Rights in which seriously impugns the fairness, integrity or public of judicial proceedings, see United States v. Bankston, 820 F.3d 215, 231 (6th Cir. 2016) (The Sixth Circuit reversed count 23 as it failed to state an offense under the plain-error analysis) (emphasis added). As it relates to Ground Two, Constructive or Impermissible Amendment of his Second Superseding Indictment through the Jury Instructions such constitutional error in violation of his Fifth Amendment Rights in which could have been raised under the plain error analysis in which seriously impugns the fairness, integrity or public of judicial proceedings, see United States v. Stubbs, 279 F.3d 402, 407-08 (6th Cir. 2002) (The Sixth Circuit reversed under the plain-error analysis) (emphasis added). In light of the Sixth Circuit's Ruling in McReynolds and the U.S. Supreme Court's Ruling in Alleyne v. United States, 570 U.S. 99 (2013), thus, such error should have also been raised under the plain error analysis as it relates to Ground Three,

in the case herein.

Movant Turner, argues firmly that Ground One and Two, should have certainly been raised on his Direct Appeal and his ex-appellate counsel's failure to do so constitutes ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution in which requires a prompt Evidentiary Hearing to resolve Ground Four appellate ineffectiveness claim in the case at bar. See Smith v. United States, 348 F.3d 545, 551 (6th Cir. 2003); and Fontaine v. United States, 411 U.S. 213, 215 (1973).

The district court abused its discretion by failing to conduct an Evidentiary Hearing regarding his ex-appellate counsel ineffectiveness in which violated his Sixth Amendment Rights of the U.S. Constitution. See Lombard v. Lynaugh, 868 F.2d 1475 (5th Cir. 1989).

The Sixth Circuit Denied Appellate Ineffectiveness claim by holding that the arguments raised in claims 1 through 3 lack arguable merit.

However, Grounds One and Two were certainly non-frivolous issues in which should have been raised on Direct Appeal as to the defective indictment and constructive or impermissible of second superseding indictment in which violated his Fifth and Sixth Amendment rights in which should been raised under ineffective

assistance of counsel or Rule 52 (b) plain-error analysis.

A certificate of appealability should issue regarding Question Number Five, as it is debatable among jurists of reason as to whether the district court's decision was wrong or incorrect, see **Slack,** 529 U.S. 473, 484 (2000).

QUESTION NUMBER SIX:

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing and the Sixth Circuit's affirmance as it relates to Ground Six as to whether Count 5, Felon in Possession of a Firearm is unconstitutional, thus, "actually innocent" as it violates his Second Amendment rights of the U.S. Constitution ?

The district court failed to conduct an Evidentiary Hearing as to Ground Six and denied the merits of Turner's "actual-innocence" claim of Count 5, Section 922 (g) (1) conviction and sentence by holding that: "Defendant objects to Magistrate Judge Stinnett's conclusion that Defendant's 922 (g) (1) conviction is not rendered unconstitutional by New York State Rifle & Pistol Assoc. v. Buren, 597 U.S. 1 (2022). Magistrate Judge Stinnett conducted an extensive analysis of the current state of this law in the Sixth Circuit as well as across other circuits in reaching this conclusion. (See Doc. # 323 at 15-17). The Court agrees with that analysis. Defendant raises no new arguments in his Objection. Therefore, this Objection is **overruled."**

In the instant case, Petitioner Turner, argues that Section 922 (g) (1) is unconstitutional in light of the U.S. Supreme Court's Ruling in New York State Rifle & Pistol Assoc. v. Bruen, 597 U.S. 1 (2022), however, consistent with the federal cases and appellate cases Rulings in United States v. Diaz, Case No. 23-50452, 2024 U.S. App. LEXIS 23725 (5th Cir. Sept. 18, 2024) (The Fifth Circuit held that: "Taken together," the Circuit said, "laws authorizing severe punishments for thievery and permanent disarmament in other cases establish that our tradition of firearm supports the application of Section 922 (g) (1) to Diaz." Considering the obverse, the Diaz opinion suggests that other offenses unknown in colonial times, like selling drugs, downloading child porn, securities fraud, or conspiracy to do anything illegal- could not trigger the felon-in-possession statute consistent with the 2nd Amendment); Range v. A.G. USA, 69 F.4th 96 (3rd Cir. 2023) (en banc) (holding 18 U.S.C. 922 (g) (1) to be "unconstitutional" in violation of the Second Amendment of the U.S. Constitution); United States v. Prince, 2023 U.S. Dist. LEXIS 196874, 2023 WL 7220127 (N.D. Ill., Nov. 2, 2023) (same); United States v. Griffin, 2023 WL 8281564 (N.D. Ill., Nov. 30, 2023) (same); United States v, Neal, 2023 WL 833607 (N.D. Ill., Feb. 7, 2024) (same); United States v. Taylor, 2024 WL 245557 (C.D. Ill., Jan. 1, 2024) (same); and United States v. Harper, 2023 WL 5672311 (M.D. Pa., Sept. 1, 2023) (same). Moreover, a Seventh District Court judge granted

a Certificate of Appealability as to whether Section 922 (g) (1) is unconstitutional in light of the U.S. Supreme Court Ruling in New York State Rifle & Pistol Ass'n, Inc. v. Buren, 142 S. Ct. 2111, 2126 (2022). See Linder K. Divos v. United States, Case No. 4:25-cv-00012-RGE (S.D. IA., Jan. 23, 2025) (Here, Divos can show that reasonable jurists would disagree or debate whether the **Buren** issue presented should have had a different outcome. The Court grants a certificate of appealability as to Divos's **Buren**-related grounds for relief.).

Here, Mr. Turner has been previously convicted of a 2007 Kentucky Robbery and remained out of trouble until being indicted for Conspiracy and firearm related charges in 2020, thus, such prior conviction may be subject to expungement should be utilized to categorized him in the dangerousness class of persons.

A certificate of appealability should issue regarding Question Number Six, as it is debatable among jurists of reason as to whether the district court's decision was wrong or incorrect, see **Slack,** 529 U.S. 473, 484 (2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Quonn K. Turner

Date: 07/14/2025