No. 25-7289

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

LAVELLE EUGENE MARKS,

Petitioner,

-vs-

RUSS RURKA, (Acting Warden)

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Submitted by:

Lavelle Eugene Marks, #499291
Petitioner In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Dated: 4/15/26

QUESTIONS PRESENTED FOR REVIEW

(I)

DID THE STATE PROSECUTOR (TAYLOR) SUPPRESSION OF EVIDENCE, MATERIAL TO PETITIONER MARK'S ACTUAL INNOCENCE VIOLATE HIS RIGHT TO EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION WARRANTING A NEW TRIAL?

(II)

WAS PETITIONER MARKS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILING TO OBTAIN THE SUPPRESSED TAPE INTERVIEW OF JAMES MCNEELY?

(III)

WERE PETITIONER'S RIGHTS VIOLATED WHEN THE STATE WITHHELD CRUCIAL EVIDENCE PERTAINING TO HIS GUILT OR PUNISHMENT UNDER BRADY V MARYLAND?

(IV)

WAS APPELLATE COUNSEL CONSTITUTIONALLY INEFFECTIVE FOR NOT PROPERLY INVESTIGATING PETITIONER'S CASE PRIOR TO THE APPEAL?

LIST OF PARTIES

The Parties listed in, or associated with, the instant Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, are listed on the cover page heading and can be addressed as:

Petitioner Party:

Lavelle Eugene Marks, 499291
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Respondent Party:

Russ Rurka, Acting Warden,
Lakeland Correctional Facility
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Coldwater, Michigan 49036

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The Decisions Below

The February 4, 2026 order from the U.S. Court of Appeals for the Sixth Circuit, denying the second- subsequent petition for writ of habeas corpus, is an unpublished decision and can be found in the appendix at page (1a to 4a). The United States District Court order denying the second habeas petition on August 19, 2025, is an unpublished decision and coun be found in the appendix at (5a to 23a). The Order granting permission to file a second subsequent habeas petition under Title 28 USC § 2254, entered into the record on December 11, 2023, granting authorization to file a second habeas petition is an unpublished order and judgment and can be found in the appendix at (24a to 26a).

Jurisdiction

Petitioner Levelle Eugene Marks seeks review in this Honorable Court, from the denial of his habeas corpus petition by the United States District Court. The Court of Appeals order and judgment denying the appeal from the US District Court was entered on February 4, 2026. Jurisdiction of this Court is invoked under Title 28 USC §1254(1).

This Writ of Certiorari challenge the Opinion and Orders entered on february 4, 2026, by the Sixth Circuit Court of Appeals under citation, *Marks v Rurka,* No. 25-1835, denying his appeal from the US District Court's denial of his Title 28 USC § 2254 habeas petition, where the ruling is conflicting with a decision of this Court on the subject matter of the *Brady v Maryland,* 373 US 83 (1963), and conflicts with the prejudice ruling announced in *Strickland v Washington,* 466 US 668 (1984), [recognizing counsel's obligation to assert a valid defense and protect his client's constitutional rights].

This Petition is timely, from the Sixth Circuit denying relief, pursuant to Rule 13.1 of the Rules of this US Supreme Court. Jurisdiction is invoked pursuant to Title 28 USC § 1251.

Jurisdiction of this Court is also invoked under the supervisory authority vested in Title 28 USC § 1251; U.S. Const. Art III, and US Const. Amends. VI and XIV. Furthermore, Petitioner seeks supervisory jurisdiction of this Court to determine whether the courts below

arrived at, but completely disregarded the ruling in *Bradt v Maryland.* And, because this Court has never decided that a *Brady* claim, once discovered, can be used to establish 'new evidence,' it can now determine whether prejudice should be presumed from the withheld documents from the prosecution.

Constitutional and Statutory Provisions Involved

The issue presented for certiorari review to this Court is in direct violations of constitutional amendments, and statutory provisions infra:

1). U.S. Const. Amend VI (1791)

> In all criminal prosecutions the accused shall have the right to confront and cross examine the witnesses against him, and ... to have the assistance of counsel to assist in his defense.

2). US Const Amend. XIV, § 1 (1868)

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce and law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3). Michigan Const. 1963 Art 1, §§ 17. (Due Process of Law - Fair Investigation Clause]

4). Title 28 USC § 2254(d)(1); (d)(2).

5). State Statutes: MCL § 750.316(1)(a) (Murder in the First Degree).

Petitioner urges this Court to grant his petition for a writ of certiorari and clarify that a Sixth Amendment ineffective assistance of counsel claim, on both trial and appellate counselors, violates the due process clause requiring a new trial, or warrants remand the the state courts for additional testimony establishing a record to support the Petitioner's theory of 'actual innocence' and but for the error, no juror, acting reasonably, would have voted to find Petitioner guilty. Accord, *House v Bell,* 547 US 518 (2006).

Statement of the Case

Petitioner, Lavelle Eugene Marks was convicted in the State Courts of Michigan for the beating death of Mark Carter at his home in Ypsilanti Township, Michigan. Petitioner and codefendant Glenn Turner forcibly brought the victim to the apartment where he was beaten to death. He was charged with open murder and three counts of kidnapping along with extortion.

Petitioner, entered a plea of guilty to second degree murder in exchange for dismissal of the kidnapping and extortion charges. On September 12, 2005, Petitioner accepted the plea and he was sentenced to imprisonment to (35 to 70) years. On appeal, the Michigan Court of Appeals denied relief. *People v Marks,* COA No. 273595 - 12/6/06. The Michigan Supreme Court denied denied the application for leave to appeal. *Peopple v Marks,* 478 Mich 870 (2007). A habeas petition was denied and the Sixth Circuit Court of Appeals affirmed. Marks v Davis, 504 F. App'x at 387. Certiorari was denied on 4/15/13, *Marks v Warren,* 569 U.S. 935 (2013).

On September 23, 2020, Petitioner filed a second motion for relief from judgment in the state trial court which was denied. This motion was premised on new evidence, i.e., a swom affidavit from James McNeely. An application for leave to appeal was denied and on May 26, 2022, the Michigan Court of Appeals denied relief. The Michigan Supreme Court denied relief under citation, *People v Marks,* 985 NW 2d 830 (2023). Reconsideration in the Michigan Supreme Court was denie donunder citation, People v Marks, 511 Mich 970 (2023).

Petitioner submitted a motion for authorization to file a second habeas petition on July 27, 2023. On december 11, 2023, the Sixth Circuit granted the authorization premised on the showing under Title 28 USC § 2244(b)(2), (3)(C), through the James McNeely's affidavit. The habeas petition was filed on March 22, 2024. Respondent filed a motion to dismiss. On August 19, 2025, the US District Court denied relief and dismissed the habeas petition.. The Court of Appeals for the Sixth Circuit denied relief on february 4, 2026. This writ of Certiorari to the US Court of Appals for the Sixth Circuit follows. Petitioner seeks a Writ of Certiorari to address the Sixth Amendment violation of the right to effective assistance of counsel and the due process violation under *Brady v Maryland.*

A. Decisions of Other Courts on the Question

In the context of the question presented in this Petition for Writ of Certiorari under *Brady v Maryland,* there are decisions which have addressed the violation of Brady, but failed to apply the two prong inquiry of whether or not the state wihholding of the evidence was material to Petitioner's guilt or innocence, as opposed to the non-exemption of the second-in-time claims arising under Brady are not exempt from the second or successive restrictions of 28 USC § 2244(b). *In re Siggers,* 615 F 3d 477, 479 (6th. Cir. 2010). Petitioner calls upon this Court to rule that under *Brady,* the 'materality' of the withheld documents, as it relates to Petitioners 'actual innocence' if proven, are sufficient grounds to justify habeas relief in a second habeas petition under 28 USC § 2254. This Court is urged to grant certiorari and issue an opinion on this subject matter under the Fourteenth Amendment's Due Process Clause, and the Sixth Amendment guarantee of effective assistance of counsel outlined in *Strickland,* supra.

B. The Importance of the Question Presented

The importance of the *Brady* question presented in this Petition is for this Court to address the due process clause of the Fourteenth Amendment in tandem with the 'actual innocence' claim the withheld exculpatory evidence establishing the actual innocence of Petitioner supports, and rule that such a circumstance warrants relief under the age old concept that it is better to allow the guilty to escape punishment, that to allow an innocent man to suffer imprisonment for a crime he did not commit. Acord, Berger v United States, 295 US 78, 88 (1935). Therefore, the question is important for this Court to spend its precious time to address the significance in the first instance. S. Ct. Rule 10(c).

Reasons for Granting Writ of Certiorari

(I)

THE STATE PROSECUTOR (TAYLOR) SUPPRESSION OF EVIDENCE MATERIAL TO PETITIONER"S ACTUAL INNOCENCE VIOLATES HIS RIGHT TO EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION WARRANTING A NEW TRIAL.

The Courts below failed to address this claim under a constitutional question presented. This Court has addressed such a claim previously. Petitioner avers that pursuant to both state and federal constitutions, no person shall be denied the equal protection of the law. Mich. Const. 1963, Art 1, § 2; U.S. Const. Amend. XIV. The Michigan Supreme Court has stated that, a violation of the equal protection clause has occurred where there is evidence of invidious classification. cf. *Ver Hoven Woodward Chevrolet, Inc v Dunkirk,* 351 Mich 190; 88 NW 2d 408 (1958). The United States Supreme Court has ruled that, equal protection claims are ordinary based on class-based discrimination, *Pyler v Doe*, 457 US 202, 213; 102 S Ct 2382; 72 L Ed 2d 786 (1982). In *Plyer,* the Court opined:

> "The equal protection clause was intended to work nothing less than the abolition of all class-based and invidious class-based legislation." Id. 457 US, at 213.

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Petitioner asserts that he was entitled to relief where he demonstrated that the State Prosecutor withheld specific documents tending to support his actual innocence where the withheld document clearly indicated that it was someone else, not Petitioner Marks who struck the victim on the head with a piece of wood. Had this information been made available to the Defense, there would be no guilty plea, and a jury would have, more than likely, voted to acquit him of the second degree murder charges under MCL § 750.317.

Petitioner should be afforded the same protection due to his claim of suppression of the evidence to support his actual innocence. Indeed, the state prosecutor stated on the record that:

> Although I do believe that it is my obligation as an officer of the Court to tell the court there is still discovery that the People have yet to be provided to defense counsel ... there is at least one taped interview that has yet to be provided to the defense.

The Court nor the Defendant's attorney requested the facts of the taped interview be made public. The taped interview from Mr. McNeely lends support to Petitioner's actual innocence and the withholding of this information was a *Brady* violation, which, under the law, should have been turned over to the defense whether requested or not. cf *Kyles v Whitley,* 514 US 419 (1995).

It is invidious class based legislation which is not in accords with the constitutional provisions of equal protection under Mich. Const. 1963, Art 1, § 2; U.S. Const. Amend. XIV. Thus, Petitioner is the victim of invidious classification prohibited by the constitutions. cf. *United States v Batchelder,* 442 US 114, 125 n. 9; 99 S Ct 2198; 60 L Ed 2d 755 (1979).

The equal protection clause prohibits selective enforcement based upon an unjustifiable standards. Once a State Court has established a rule it must apply the rule with an even hand. "The equal protection clause prohibits a state from affording one person ... the ... benefit of a ruling ... while denying it to another." i.e., *Myers v Ylst,* 897 F 2d 417, 421 (9th. Cir. 1990). A state may not also establish a rule and apply it retroactively to one case, and refuse to apply the same rule in an identical case. 897 F 2d at 421.

Inconsistent applications of state law can give rise to an equal protection claim. *Little v Crawford,* 449 F 3d 1075, 1082 (9th. Cir. 2007). Accord *Romer v Evans,* 116 S Ct 1620, 1628; 134 L Ed 2d 855 (1996). In *Romer,* the US Supreme Court invalidates a Colorado statute because it was directed only at the gay population. The Court emphasized that, the legislation disadvantaged the group burdened by it. *Romer,* 116 S Ct, at 1628. Equal protection forbids unequal enforcement of facially valid laws, if such unequal enforcement is a product of an improper motive. *Yick Wo v Hopkins,* 6 S Ct 1064; 30 L Ed 220 (1885).

Petitioner has alleged that a violation of his equal protection guarantee occurred in his case when he was deprived of the due process protection afforded under *Brady v Maryland.* He has demonstrated that he is being treated differently Therefore, applying the rational basis test to this claim, *Hillard v Fergusion,* 30 F 3d 649, 652 (5th. Cir 1994), he urges this Court to focus on whether he is/was similarly situated to other groups of prisoners who were provided relief under a *Brady* violation. Consistent with federal law, the equal protection clause essentially directs that all persons similarly situated be treated alike. *City of Cleburne v Cleburne Living Center,* 473 US 432, 439; 105 S Ct 3249; 87 L Ed 2d 313 (1985). Petitioner urges this Court to grant certiorari. US S Ct Rule 10.1

II

PETITIONER MARKS WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILING TO OBTAIN THE SUPPRESSED TAPED INTERVIEW OF JAMES MCNEELY.

During the state court trial, Petitioner was represented by Attorney Glenn Barrett. Attorney Barrett conducted both the plea negotiation and sentencing. Counsel also knew about the withheld taped interview of James McNeely because the prosecutor went on the record ant made clear that it had not been turned over to the defense. Defense counsel had no knowledge of what the taped interview disclosed, and he allowed his client to tender a guilty plea where evidence supported his actual innocence was available for him to use at trial. Counsel's conduct, or the lack thereof, constitutes prmia facie ineffective assistance for failing to fully investigate the case. cf *Strickland v Washington,* 466 US 668 (1984).

Petitioner was denied his right to the effective assistance of counsel during his state court proceedings, thereby violating his Sixth Amendment guarantee of the effective assistance of counsel. Defense counsel failed adequately investigate the Petitioner's case before trial. To establish ineffective assistance, a criminal defendant must demonstrate that counsel's performance was deficient and fail below the an objective standard of reasonableness. This is the first prong of the *Strikcland v Washington's* inquiry. Additionally, a defendant must show that the deficient performance resulted in prejudice. The second prong of the *Strickland* inquiry under *Strickland v Washington,* 466 US 668 (1984).

Petitioner asserts that Attorney Barrett failed to contact and investigate a key witness in the case who possessed information directly relating to his guilt and innocence. The State alleged that Petitioner, along with his codefendant, Glynn Turner, beat Mr. Carter and killed him. The autopsy report reveals that the victim dies from 'blunt force trauma' to the head. Defendant admitted in his factual basis for the plea that he hit Carter on the head with his hand which did not cause his death. The withheld taped interview by the prosecutor contained this supportive information and defense could have made effective use of it at trial. This information was never

made a part of the state court records in this case. There was never a hearing on this Sixth Amendment claim. Therefore, this certiorari petition should issue for at least a remand for a hearing to ascertain whether or not defense counsel intentionally ignored the withheld *Brady* evidence which supported his client's innocence.

Had defense counsel conducted a basic investigation and spoken to James McNeely, he would have called him as a witness, went to trial on the matter, and left the fate of his client for the jury to determine. This evidence was not presented to the jury as factual evidence against Petitioner, and defense counsel failure to investigate allowed a 'fictitious' guilty plea to be tendered by his client. Petitioner's plea to murder was constitutionally deficient. *Kimmelman v Morrison*, 477 US 365, 383; 106 S Ct 2674 (1986)) (one error may support an ineffective assistance claim under the proper circumstances).

Trial counsel was ineffective for failing to call witness McNeely whose testimony would have exposed the true identity of the murderer. McNeely's taped interview directly contradicted the prosecution's theory and would have been powerful impeachment evidence. Effective impeachment of even one eyewitness can warrant a new trial. *United States v Agurs*, 427 US 97, 112-113 (1976).

This was not reasonable, nor was it sound strategy. *Roe v Flores-Ortega*, 528 US 470, 481; 120 S Ct 1029). This was prejudicial representation under *Strickland*, 466 US at 696.

Petitioner has a constitutional right to be represented by competent counsel at every stage of the proceedings where his rights may be effected - a principle long recognized by this Court as far back as *Powell v Alabama*, 287 US 45 (1932); *Coleman v Alabama*, 399 US 1 (1970). The writ of certiorari should issue to resolve the Sixth Amendment error and injury to Petitioner. S. Ct. Rule 10.

III

PETITIONER'S RIGHTS WERE VIOLATED WHEN THE STATE WITHHELD CRUCIAL EVIDENCE PERTAINING TO HIS GUILT OR PUNISHMENT UNDER BRADY V MARYLAND.

In the age old case of *Brady v Maryland,* 373 US 83 (1963), this Court clearly established that a prosecutor has a constitutional duty to turn over all evidence, including impeachment evidence, crucial to a defendant's guilt or punishment. *Brady,* 373 US at 87. The Courts below failed to address this claim under the due process clause and those decisions resulted in a contrary to, and a severe unreasonable application of the *Brady* trilogy as determined by this Court. Thus, certiorari is warranted. S. Ct. Rule 10.

Here, *sub judice*, the state prosecutor withheld a critical interview report and evidence from James Neeley who identified the person who hit the victim in the head with a piece of wood, and attempted to hit him again and Petitioner stopped him. This evidence supported Petitioner's claim of actual innocence and had it been presented to the jury a different outcome would have arose as opposed to a guilty plea. Under clearly established law and the U.S. Constitution, Petitioner is unequivocally entitled to this suppressed evidence.

The requirement of due process mandate disclosure of all evidence that might lead a jury to entertain reasonable doubt regarding a defendant's guilt, as well as any impeachment evidence Petitioner could have used for his defense. The constitutional obligation of the state to turn over this withheld material fell on death ears in light of the *Brady* requirement.

Both impeachment evidence and exculpatory evidence fall squarely within the *Brady* ruling. In the instant case, the State violated *Brady v Maryland* by withholding evidence related to the actual murderer who hit the victim on the head with a piece of wood and the victim later died from 'blunt force trauma to the head.' The report and the reasoning for not disclosing the taped interview by prosecutor Taylor was provided to the court but does not exclude the prosecutor of its duty to disclose. *Kyles v Whitley*, 514 US 419, 437; 115 S Ct 1555 (1985).

Instead of providing the defense with the taped interview of McNeely, the prosecutor allowed Petitioner to tender a guilty plea whereby he gave a factual basis for the plea which was legally incorrect. The prosecutor also had a duty to discover any favorable evidence known to others acting on behalf of the government, including the police investigators. *Strickler v Green,* 527 US 263, 281; 119 S Ct 1936 (1999). This Court has reaffirmed this obligation repeatedly, including in *United States v Bagley,* 473 US 667, 676; 105 S Ct 3375 (1985).

The nondisclosure of the taped interview denied Petitioner of due process and a fundamental fair trial, and the withheld material evidence directly relevant to his guilt or punishment created such a 'prejudicial impact' that reversal is the only method to correct this travesty of justice.

Given the nature of the case, and because the incident giving rise to the homicide was never attributed to Petitioner but for his guilty plea, his actual innocence claim warrants certiorari review under clearly established law by this Court. *Schlup v Delo,* 115 S Ct 851 (1995). Certiorari is warranted here.

Petitioner's rights were violated, and he deserves a fair trial. He was convicted on the basis of his guilty plea which involved a false assertion that he had hit the victim on the head. The withheld taped interview would have shown that it was someone else, not Petitioner, who struck the fatal blow causing the death of the victim, a result so unjust that prejudice must be presumed. *Brady,* 373 US at 87.

The Materiality of the State's Suppressed Document comports with Brady's mandate

In *Brady,* this Court ruled that the withheld document under *Brady,* must be material to guilt of punishment. The taped interview with Mr. McNeely, is not only material evidence to guilt, it is material to punishment because had the document not been withheld, it could have been placed before the jury for deliberation. Thus, the withheld document was indeed material to Petitioner's defense, because had it been known to the jury, Petitioner may have been acquitted altogether. Thus, under *Brady,* this Court should grant certiorari and remand the case for a new trial. Accord, *United States v Bagley,* 473 US 667, 682; 105 S Ct 3375 (1985).

> "Bagley's touchstone of materiality is a reasonable probability of a different results, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." cf *Kyles v Whitley,* 514 US at 434; 115 S Ct 1555.

To establish 'materiality' a defendant must show that there is a reasonable probability that had the evidence been disclosed to the defense, the results of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *United States v Bagley,* 473 US at 682. This standard does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. *Kyles,* 514 US at 434. A reasonable probability exists in this case because, had the suppressed evidence been disclosed, the jury may have voted to acquit, this is what the reasonable probability requires. *Strickler v Green,* 527 US at 290. See too, *Smith v Cain,* 132 S Ct 627, 630 (2012).

In *Brady,* this Court, for the first time, imposed on prosecutors broad disclosure obligations. *Brady* was found guilty of murder and sentenced to death. At trial he admitted participation in the crime, but denied he was the shooter. Prior to trial his attorney specifically asked for codefendant's extra judicial statement. Mr. Boblit (codefendant) was tried separately. The prosecutor disclosed several of Boblit's statements to the police, but failed to disclose one critical statement in which Boblit admitting doing the shooting. This Court ruled that the failure to disclose violated due process warranting reversal. *Brady,* 373 US at 87.

Thus, in order to comply with *Brady* the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf, including the police. *Strickler v Green,* 527 US 263, 281 (1999). Prejudice to Petitioner must be presumed and certiorari must issue as a matter of fundamental fairness. US Const. Amend. XIV. Accord, *Bagley,* 473 US at 682; *Strickler,* 527 US at 289-290; *Kyles,* 514 US at 434. The document is material because it established a crime by someone else, it is material because it eliminates Petitioner's culpability in the victim's death. Certiorari is worth the time to review the case.

ISSUE-IV

APPELLATE COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR NOT PROPERLY INVESTIGATING PETITIONER'S CASE PRIOR TO THE APPEAL.

Petitioner asserts that the Courts below failed to address this claim and the state courts of Michigan applied a contrary to-unreasonable application of clearly established law as determined by this Supreme Court Accord, *Evitts v Lucey,* 469 US 387 (1987). This Court is urged to apply that standard to the facts of this claim, and grant him the appropriate relief. Applying the correct application of law to the Sixth Amendment inquiry, Petitioner would be entitled to a new trial on the merits where all supporting evidence, establishing his actual innocence, can be placed before the jury. See, i.e., *Schlup v Delo,* 115 S Ct 851, 856 (1995).

Discussion

It is well recognized by law that a criminal defendant is entitled to effective assistance of counsel on his appeal as of right. It goes without saying, "lawyers in a criminal court are necessities, not luxuries", *Gideon v Wainwright,* 372 US 335, 344; 83 S Ct 792, 796; 9 L Ed 2d 799 (1963). Premised on this body of law, Petitioner is entitled to a writ of certiorari to review the decisions below as being contrary to clearly established law from this Court. cf *Williams v Taylor,* 529 US 420 (2000).

In the instant case, Petitioner was represented at initial appeal by Attorney Nicholas Venditelli. Attorney Venditelli had full access to the trial court records. He knew, had he read the entire trial transcript, that the prosecutor admitted there were still discovery material not yet disclosed to the defense. Appellate counsel would have learned that there existed a taped interview with James McNeely who identified the person who struck the fatal blow to the head of the victim. Counsel did not investigate the taped interview and filed a frivolous appellate brief based on the guilty plea proceedings. Thus, Petitioner had no read appeal of right by direct or application. He is entitled to certiorari relief. S Ct Rule #10.

Counsel's actions, or the lack thereof, amounted to no action and violated Petitioner's constitutional right to effective assistance on appeal of right, *Evitts*, supra; *Penson v Ohio*, 448 US 75; 109 S Ct 346, at 352 (1988). In *Satterwhite v Texas*, 486 US 249, 256; 108 S Ct 1792, 1797; 100 L Ed 2d 284 (1988), this Court stated:

> "A pervasive denial of counsel cast such doubt on the fairness of the trial process, that it can never be considered harmless error. Because the fundamental importance of the assistance of counsel does not cease as the prosecutorial process moves from the trial to the appellate stage, the presumption of prejudice must extend as well to the denial of counsel on appeal." cf. *Penson*, 109 S Ct, at 354. id.
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Petitioner recognize that counsel is not required to raise all non-frivolous issues. *Jones v Barnes*, 463 US 745; 103 S Ct 3308; 77 L Ed 2d 987 (1983). However, the Court in *Jones v Barnes* did not say, or even hint, that counsel's selection of issues on appeal is beyond constitutional scrutiny under the Sixth Amendment. The Seventh Circuit has opined:

> Were it legitimate to dismiss a claim of ineffective assistance of counsel on appeal solely because we found it improper to review appellate counsel's choice of issues, the right to the effective assistance of counsel on appeal would be worthless. *Gray v Greer*, 800 F 2d 644, 646 (7th. Cir. 1986).

On direct appeal, petitioner appealed his plea based conviction and sentences by way of the state's application procedures due to the conviction being by guilty plea. He was appointed Attorney Mr. Venditelli. He attempted to have the attorney move the trial court for withdrawal of the plea and take to matter to trial. No attempts were made by the appellate attorney to get this done. None of the claims actually submitted by counsel warranted relief. Thus, no relief was obtained on the appeal. The Court of Appeals denied relief.

Appellate counsel failed to move for remand to conduct a hearing on the trial attorney's failure to investigate the taped interview which the prosecutor admitted was not turned over to the defense. Counsel did not raise the within claims of error. Thus, appellate counsel rendered constitutionally defective assistance by failing to present this Sixth Amendment claim which was clear in the record and the verdict rendered.

Evidence of Appellate Counsel's Failures

Assuming that Appellate counsel read the trial transcripts before submitting the appellate brief as required under case law authority. cf. *Entsminger v Iowa,* infra. He would have discovered that there was at least one glaring constitutional claim which should have been submitted for review. Had appellate counsel simply read the plea transcripts, he would have known that a possible *Brady* claim was available when the prosecutor admitted there was still discovery materials he had not yet turned over to the defense. Petitioner was prejudiced by this failure.

There was no downside to presenting a claim of ineffective assistance of counsel on the trial lawyer who did nothing to obtain the taped interview from James McNeely. The information contained in that taped interview was supportive of the actual innocence defense and defense counsel should have used it to get his client acquitted of the homicide. This claim remains a mystery in this case.

The critical failure of an attorney to object or raise an issue can be ineffective assistance if it deprives the defendant of an opportunity for dismissal of the case or for success on appeal. *Gravley v Mills*, 87 F 3d 779 (6th. Cir. 1996). Petitioner had numerous substantial errors which should have been presented on appeal. Had the within claim been presented, it is reasonable to assume that he would have prevailed on direct appeal, but for the failure of his appellate attorney. *Mapes v Coyle,* 171 F 3d 408 (6th. Cir. 1999) [addressing criteria- appellate counsel].

Consequently, Petitioner was denied his constitutional right to have the effective assistance of counsel on his appeal of right as guaranteed by the Sixth Amendment, for failure to present meritorious claims such as the Sixth Amendment claim on trial counsel.

Had appellate counsel read the sparse transcripts (the plea proceedings), he would have learned that his client did not act to kill the victim by hitting him with his hands. He failed to discuss any type of appellate issues with his client prior to submitting the appellate brief... he would have uncovered these facts. cf. *Entsminger v Iowa,* 386 US 748; 87 S Ct 1402; 18 L Ed 2d 501 (1967).

In *Powell v Alabama,* 287 US 45; 53 S Ct 55 (1932), which established the right to counsel, and the right to be heard in the defense, the Court said that:

> "It never has been doubted by this Court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case constitute basic elements of the constitutional guarantee of due process of law." 53 S Ct, at 64, id.

Prejudice, in this case should be presumed, *People v Reed,* 449 Mich at 391, and relief granted. US Const. Am. VI. In *McFarland v Yukins,* 356 F 3d 688 (6th. Cir. 2004), the US Court of Appeals for the Sixth Circuit found ineffective assistance of appellate counsel from the failure to raise the issue of ineffective assistance of trial counsel. The Court explained:

> "Because we have already held that the ineffectiveness claim was meritorious and should have resulted in a reversal of *McFarland's* conviction, there is no question but that appellate counsel's errors were prejudicial. Consequently, *McFarland* has shown cause and prejudice excusing her failure to raise ineffective assistance of trial counsel on her direct appeal. Nothing, therefore, bars her from litigating this claim."

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This Court should focus on whether the errors undermined the reliability and confidence in the results. cf. *Strickland v Washington,* 466 US 668, at 686.

Good Cause and Actual Prejudice

The claim of ineffective assistance of appellate counsel is "good cause" for failing to present an issue in the appeal of right. *Edwards v Carpenter,* 529 US 446; 120 S Ct 1587; 146 L Ed 2d 518 (2000); *Murray v Carrier,* 477 US 478, 488; 106 S Ct 2639; 91 L Ed 2d 397 (1986). Accord, MCR 6.508(D). These rulings should not be ignored by this Court to deny relief. Consequently, had the within claim of error been presented on initial appeal, the results would have undoubtedly been different. In this case, the issue not presented on direct appeal are highly meritorious and would have changed the results when considered on the merits. *Mayo v Henderson,* 13 F 3d 528 (6th. Cir. 1994). Thus, Petitioner is entitled to relief. US Const. Amends. VI and XIV.

Conclusion

WHEREFORE, and in light of all the foregoing submitted above, Petitioner Marks respectfully asks this Court to grant his petition for writ of certiorari and remand the case back to the lower courts for further review on the merits of the claims asserted. For these reasons the writ of certiorari should be issued.

Respectfully submitted,

Lavell Marks

Dated: April 15, 2026

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