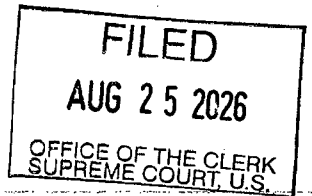


26-5880 ORIGINAL

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

PARNELL R. MAY — PETITIONER
(Your Name)

VS.

Dexter Payne — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PARNELL R. MAY - Pro Se
(Your Name)
A.D.C. #153557
East Arkansas Regional Unit P.O. Box 970
(Address)

MARIANNA, ARKANSAS 72360
(City, State, Zip Code)

XXX-XXX-XXXX "Incarcerated"
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Lower Courts did Abuse their discretion by overlooking the evidence in the record of the clerical mistake of inadvertently designating the dismissal with prejudice instead of without prejudice.
2. Whether the clerical mistake did violate Mr. Mays right to enjoy due process to a fair opportunity to seek federal habeas relief from an unconstitutional conviction.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

-OR-

RELATED CASES

TABLE OF AUTHORITIES CITED

CASES

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BANISTER Vs. DAVIS, 590 U.S. 504 (2020)
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Degen Vs. United States, 517 U.S. 820 (1996)
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Earl Vs. Fabinn, 556 F.3d. 717 (8th Cir. 2009)
Huey Vs. Teledyne, 608 F.2d. 1234 (9th Cir. 1979)
Korea Exch. Bank Vs. Hanil Bank Ltd (In re Jee) 799 F.2d 532 (9th Cir. 1986)

* See Next Page for Extension to Afore Cases cited:
STATUTES AND RULES

28 U.S.C. § 27.
28 U.S.C. § 636.
28 U.S.C. § 2244.
28 U.S.C. § 2254.
Federal Rules of Appellate Procedure, Rule 40.
Federal Rules of Civil Procedure, Rule 60 (a).
Act 1780 of 2001.
Act 2250 of 2005.
Arkansas Code Annotated § 16-112-201 to 208 (Repl. 2016).
Arkansas Rules of Appellate Procedure, Rule I.

OTHER

28 U.S.C. § 1254(1),

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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 Ap. 12 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 Bp. 1 to the petition and is

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

☐ For cases from state courts:

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

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

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 13, 2026.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JUNE 17, 2026, and a copy of the order denying rehearing appears at Appendix D, page 2.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- ➔ Pursuant to the Fourteenth Amendment to the United States Constitution: "No State, ... shall deprive any person of Life, Liberty, or property without due process of Law, Nor deny any person within its jurisdiction the equal protection of the Laws." United States / U.S. Const. Amend. XIV, § 1.
- ➔ Section 2254, codified as 28 U.S.C. § 2254, provides in pertinent part: "The Supreme Court, a Justice thereof, a Circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution, or laws, or treaties of the United States."...
- ➔ 28 U.S.C. § 2254.
This case involves Amendment XIV to the United States Constitution.
- ➔ 28 U.S.C.A. Federal Rules of Civil Procedure, Rule 60(c), provides in pertinent part: "The court may correct a clerical mistake or mistake arising from oversight or omission whenever one is found in a judgment, order or other part of the record,"...
- ➔ 28 U.S.C.A. Federal Rules of Appellate Procedure, Rule 40(b)(1)(A), provides in pertinent part: "A petition for panel rehearing must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended,"...

STATEMENT OF THE CASE

On October 21st 2022, Mr. May filed a state post conviction habeas corpus petition, pursuant to Act 1780 of 2001 as amended by Act 2250 of 2005 codified by Arkansas Code Annotated Section 16-112-201 to 208 (Repl. 2016). The state trial court failed to act on the state post conviction habeas corpus petition aforementioned, in a timely manner.

On April 12th 2023, Mr. May filed a federal habeas corpus Application, §2254, with the United States district court, UNAWARE that his state post conviction habeas corpus petition aforementioned, was still pending in the state trial court, while at the same time, that he filed his prior federal habeas corpus Application, see (Document #2).

On December 3rd 2024, the United States Magistrate Judge, recommended that Mr. May's prior federal habeas corpus petition be dismissed "without prejudice", see (Appendix C, p. 10).

On January 7th 2025, the United States district court judge "Approved and adopted" the U.S. Magistrate Judge's findings and recommendations, "in their entirety", which included dismissal of Mr. May's prior/initial federal habeas corpus petition, to be, without prejudice, see (Appendix B, p. 2).

However though, a clerical mistake was made in designating the dismissal with prejudice instead of "without prejudice", just as the U.S. district court judge's orders did intend, accordingly.

Record evidence of the proof that Mr. May did file a state post conviction habeas corpus petition before he filed his previous federal habeas corpus petition, where on March 09, 2023 the respondent filed a response to application for permission to file a successive habeas corpus petition, where on page two the respondent, asserted that, "... On October 21, 2022 May filed a habeas corpus petition in the Pulaski County Circuit Court contending that he had scientific evidence which would establish his innocence. See Arkansas Code Annotated § 16-12-201. That petition still is pending," see May v. Payne, No. 23-1326, ENTRY I.D. 525 3536 (page 2) (8th Cir. Mar 09, 2023).

Consequently, Mr. May prematurely filed his previous federal habeas corpus petition, on April 12th 2023, see (Document #2, p. 1-15) see also May v. Payne, No. 4:23-cv-00350-JM-JTK, 2024 WL 5294884, *1 (E.D. Ark. Dec 03, 2024).

The district court, and the Eighth Circuit Court of Appeals, both did overlook the fact, and-or-misapprehended the fact, that Mr. May did have a state habeas corpus petition, that was filed October 21st 2022 still pending in state court, as it was overlooked and-or-misapprehended, in the U.S. Magistrate Judge's Recommended Disposition on page 2 in its footnotes, see (Appendix C, p. 2 n. 2).

Cause for dismissal without prejudice

The state trial court, deliberately, continued to fail to act on Mr. May's state post conviction habeas corpus petition, in a timely manner... Accordingly, the state trial court would not respond to any motions or letters sent by Mr. May who was pro se, at that time, therefore Mr. May assumed that his state post conviction habeas petition never was filed so 7 months later he filed a federal habeas corpus application, and 11 months after that he filed a motion to amend his initial federal habeas application, proposing to add a claim of a gateway actual innocence presenting newly discovered evidence, that was not presented at trial, ... but such motion to amend his initial federal habeas application was denied, and his habeas petition dismissed. The U.S. district court, intended to dismiss Mr. May's prior initial federal habeas petition, without prejudice, and the record, did contain evidence, to prove the fact, that the U.S. district court did intend, to approve and adopt the U.S. Magistrate Judge's findings and recommendations, in their entirety, which clearly included the dismissal of Mr. May's federal habeas corpus petition without prejudice see (Appendix B, p. 2) (Appendix C, p. 10). Mr. May, filed a Motion Rule 60(a), pursuant to the Federal Rules of Civil Procedure, asking the U.S. district court, to correct such apparent clerical mistake in the record, but the U.S. district court →

→ Flatout denied such motion Rule 60(a), without explaining how it reached its decision, accordingly such was abuse of discretion see (Appendix B, p. ①).

(Mr. May did appeal such denial, where the United States Circuit Court of Appeal for the Eighth Circuit, overlooked such issue of abuse of discretion, that was committed by the U.S. district court, whom did turn a blind eye toward the evidence in the record, of such clerical mistake, as Mr. May had presented and demonstrated by the record, see (Appendix A, p. ②).

The U.S. Court of Appeals, 8th Circuit did not, express any legal or factual reasons for dismissing Mr. May's Appeal, nor did the U.S. district court, express any legal or factual reasons, for denying Mr. May's, Rule 60(a) motion for relief pursuant to Federal Rules of Civil Procedure, where, the record did contain, evidence of the clerical mistake of the U.S. district court's judgment, inadvertently designating the dismissal of Mr. May's prior federal habeas corpus petition, with prejudice, instead of without prejudice, as it was originally legally intended by due process of law, in accordance with, precedent case law authorities, and Federal Rules of Appellate Procedure Rule 40(b)(1)(A). Mr. May was boldly cheated, out of a fair opportunity to seek and enjoy federal habeas relief, from an unconstitutional conviction, in the State of Arkansas, where a fundamental miscar-

→ iage of justice did result in to the wrongful conviction of Parnell R May, who was, and still is, actually innocent of capital murder, in light of newly discovered medical scientific evidence that was not presented at his trial, where but for the constitutional violation of the state prosecutors adduced flawed/invalid forensic scientific testimony, no reasonable factfinder/jury would have found Parnell May guilty beyond a reasonable doubt of Capital murder. The U.S. district court and the U.S. Court of Appeals, 8th Circuit, both, denied and deprived to Mr. May, to enjoy the right to due process of such proper procedural due process, of federal habeas relief by flatout, denied and flatout dismissed, Mr. May's Motion for relief Rule 60(a), to the clerical mistake of inadvertent designation of the dismissal of his prior federal habeas petition with prejudice instead of without prejudice, which would have allowed Mr. May, to return back to the U.S. district court with his claim of gateway actual innocence based on such newly discovered evidence.

The United States district court, Judge James Moody, after flatout denying Mr. May's second Rule 60(a) motion for relief from such clerical mistake of inadvertently designating of the dismissal to his federal habeas corpus petition to be with prejudice, instead of without prejudice, as the U.S. district court Judge James Moody, had flatout denied the first, and second Rule 60(a) motions, without explaining its foundations to such conclusion, nor explained anything about how it reached such conclusions, in oppose to the actual evidence, in the record, showing the material fact that such clerical mistake, as Mr. May had asserted in his Rule 60(a) motions did, in fact exist, ... the U.S. district court Judge James Moody, denied both Rule 60(a) motions, and in denying the second Rule 60(a) motion, the U.S. district court Judge James Moody did expressly note in the order, ... "Mr. May's motion for relief (Dkt. No. 108) is DENIED. The Clerk is directed to refuse to accept any further pleadings from this Plaintiff without first seeking review and approval by this Court," see (Document #109, p. 1) and Appendix E, p. ①-②. Accordingly, such order as mentioned, automatically deprived Mr. May from due process of law, by depriving to him fair access to the court, where, there is an unfair catch 22, by the fact, that in order for Mr. May to seek approval by the district court, Mr. May needs to file a motion in that district court for such review and approval, just so he can file for any federal habeas relief, see (Appendix E, p. ①-②).

REASONS FOR GRANTING THE PETITION

I.

The Lower courts did Abuse its discretion in denying Mr. May's Rule 60(a) motion to correct a clerical mistake by overlooking the factual evidence in the record of such clerical mistake.

The Record, clearly showed that, the U.S. magistrate judge did Recommend that, Mr. May's initial Federal habeas corpus petition be dismissed without prejudice, see Appendix C, p. (10).

Accordingly where, the Record, clearly showed that, the U.S. district court judge did intend, to Approve and Adopt the U.S. magistrate judge's findings and Recommendation, in their entirety, see Appendix B, p. (2).

This Supreme Court has, basically held that in reviewing district court's decision, where, "the District Court did not — explicate its reasons for (denying Mr. May's Federal Rules of Civil Procedure, Rule 60(a) motion to correct a clerical mistake) see Appendix B, p. (1) see United States Vs. Taylor, 487 U.S. 326, 337 (1988). In Mr. May's case, "With regard to the (specific) factor that — "The circumstances of the case, leading to dismissal", see Taylor, 487 U.S., at 338.

The U.S. district court's denial, to Mr. May's motion for relief pursuant to Rule 60(a), of the Federal Rules of Civil Procedure, was Abuse of its discretion, where the U.S. district court, did fail to indicate foundation for its conclusion, in accordance with, Taylor, 487 U.S., at 336-344, and Federal Rules of Appellate Procedure, Rule 40, (a)(1)(A).

Mr. May did not have a "fair opportunity" to properly seek federal habeas relief from the unconstitutional conviction, in accordance with, see *Banister v. Davis*, 590 U.S. 504, 507 (2020), because the lower courts, did deprive, to Mr. May, to the right to have due process of law, to properly receive due process, under Rule 60(a), of the Federal Rules of Civil Procedure, for relief, from a clerical mistake of the inadvertent designation of the dismissal to Mr. May's previous federal habeas corpus petition, to be, with prejudice instead of, without prejudice, as it was technically legally intended, accordingly Mr. May, was deprived by the lower courts, from the fair opportunity to refile a Petition for a Writ of Habeas Corpus under 28 U.S.C. Section 2254, to seek and enjoy federal habeas relief, from, the fundamental miscarriage of justice that did result in to the wrongful conviction of Pennell R. May, a person who was actually innocent, of capital murder, in light of the newly discovered medically scientific exculpatory evidence, that was not presented at his trial, where, ... had such new reliable evidence been presented at trial, ... that it is more likely than not that no reasonable juror would have found Pennell R. May, guilty beyond a reasonable doubt, of capital murder, in accordance with, see *Schlup v. Delo*, 513 U.S. 298, 324-29 (1995), *Banister* *supra*, at 507.

Mr. May, did have a state post-conviction habeas corpus petition, filed in the state trial court, and it was filed on October 21st 2022, which was about six months before he filed his previous federal habeas corpus petition, in the United States District Court, on April 12th 2023, see May vs. Payne, No. 23-1326, ENTRY I.D., 5253536 (page 2 of 8th Cir. Mar. 09, 2023), see also, (Document #2, p. 1-15) see also May vs. Payne, No. 4:23-CV-00350-JM-JTK, 2024, WL 5294854, p. *1 (E.D. Ark. Dec 03, 2024). Accordingly, Mr. May's state post-conviction habeas corpus petition, was specifically pursuant to Act 1780 of 2001, as amended by Act 2250 of 2005 codified by Arkansas Code Annotated Section 16-112-201 to 208 (Repl. 2016), which specifically raised, ... the claim of new scientific evidence of his actual innocence, *Id.* Consequently, Mr. May's state post conviction habeas corpus petition aforementioned, was actively open, and or still pending in State trial court, at the time Mr. May filed his previous federal habeas corpus petition, and Mr. May's state post conviction habeas corpus petition was, still pending in State court at the time, the United States Magistrate Judge Jerome T. Kenney, recommended that, Mr. May's previous federal habeas corpus petition, be dismissed without prejudice, see May vs. Payne, No. 4:23-CV-00350-JM-JTK-2024 WL 5294854, p. *6 (E.D. Ark. Dec 03, 2024).

Accordingly, Mr. May's aforementioned state post conviction habeas corpus petition, was still pending in state court at the time, the United States district court Judge James-Moody, entered his order, ~~where~~ the U.S. district court Judge James Moody, did expressly determined specifically that, ... "After careful review of the -- findings and recommendations from the United States Magistrate Judge Jerome T. Kearney --" the Court concludes that the findings and recommendations, should be and are hereby, approved and adopted as this Court's findings in their entirety," see (Appendix B, p. 2) and Document #48, p. 1)

Basically, Mr. May did have a state claim of actual innocence based on new scientific evidence, still pending in state court, at the time he filed his previous federal habeas corpus petition. Therefore his actual innocence claim was technically legally unexhausted, and the Eighth Circuit basically held that, ... "district courts are required to dismiss without prejudice all claims contained in such a petition, petitions refiled after prisoner has exhausted state remedies are not deemed successive and are adjudicated under the same standard as would apply to a first petition," see *Crouch v. Norris*, 251 F.3d, 720, 725 (8th Cir. 2001), see also *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644 (1998). The state court failed to act on such petition in a timely manner.

It was established by the same Eighth Circuit Court that, "...First of all, the Supreme Court recently held that an application for post-conviction review need not be 'under court consideration' in order to be 'pending' within the meaning of § 2244(d)(2), see *Carey vs. Saffold*, 536 U.S. 214, 219-21 (2002). 'An application is pending as long as the ordinary state collateral review process is in continuance - i.e., until the completion of the process' *Id.* (quoting Webster's Third New Int'l Dictionary 1669 (1993)). The Court added that, 'until the application has achieved final resolution through the state's post conviction procedures, by definition it remains 'pending', see *Carey*, 536 U.S. at 219, see also, *Williams vs. Bruton*, 299 F.3d. 981, 983 (8th Cir. 2002). It was further decided that, "... We noted, however, that a habeas petitioner who still may raise the question presented by any available procedure" has not exhausted his or her remedies", see 28 U.S.C. § 2254(c). And that if the petitioner had filed a § 2254 petition, while he still had time to perfect his state appeal, the petition would surely have been dismissed for failure to exhaust state remedies" *Id.* (Mr. May's state post conviction habeas corpus petition was still pending for the purpose of § 2244(d)(2) until at least the end of the period for filing the record on appeal in state court, see *Williams*, 299 F.3d. at 984).

The Eighth Circuit had decided that, it... "Agree that a significant state created delay in providing a prisoner (as Mr. May) with notice that his state (post conviction habeas corpus petition) has become final, amounts to an extraordinary circumstance beyond a prisoner (as Mr. May's) control", see *Earl vs. Fabian*, 556 F.3d. 717, 723-24 (8th Cir. 2009),... where accordingly, such state created delay, did legally prevent the prisoner Mr. May from legally constructing, or legally raising the claim of new scientific evidence of his gateway actual innocence, because of such state government interference, of the state trial court's failure to act on Mr. May's state habeas corpus petition, in a timely manner, under Act 1780 of 2001 as amended by Act 2250 of 2003 codified by Arkansas Code Annotated § 16-112-201 to 208 (Repl. 2016), see *Davis vs. Payne*, 2023, Ark. 119-673 S.W. 3d. 436,... which, in turn, did prevent, Mr. May from legally properly constructing, and/or, did prevent, Mr. May from legally properly raising such claim of newly discovered scientific evidence of his gateway actual innocence, in his prior/initial federal habeas corpus application, see *McCleskey vs. Zant*, 499 U.S. 467, 497 (1991). Apparently, such was reasonable for the U.S. Magistrate judge to recommend that Mr. May's prior federal habeas corpus petition, be dismissed without prejudice, see (Appendix C, p. 10). As well as, such was reasonable for the U.S. district court judge, to approve and adopt the U.S. Magistrate judges, findings and recommendations, in their entirety, accordingly, see (Appendix B, p. 2).

It was unfair denial to access to courts, by the lower court, see (Appendix E, p. ①-②).
The district court's order to the clerk, to refuse to accept any further pleadings from Mr. May without first seeking review and approval from the district court, was unfair exercise of inherent power to Mr. May, where such unfair exercise of inherent power, was not, a "reasonable response to the problems and needs confronting the Court's fair administration of justice," in accordance with, see Dietz Vs. Bouldin, 136 S.Ct. 1885, 1892, 195 L.Ed. 2d 161- (2016), (quoting Degen Vs. United States, 517 U.S. 820, 823-824 (1996)), which was contrary to the express grant of, or limitation on the district court's power contained in a rule or statute, see Degen, 517 U.S., at 823, see also, 28 U.S.C. § 27. (a) (6), "Power of a single Judge to entertain a motion (for Relief under Rule 60(a)).", however, there is absolutely no Rule or Statute, that, authorized the district court to direct its clerk to refuse to accept any motions or any further pleadings from Mr. May, especially without informing him (Mr. May) about the specific reason for the Court's alleged need to exercise such inherent power unfairly to Mr. May, see (Appendix E, p. ①-②).

The lower courts, did overlooked and/or misapprehended the fact that Mr. May did have a state habeas corpus petition, that was filed October 21st 2022, still pending in state court in accordance with, Federal Rule of Appellate Procedure, Rule 40, (b)(1)(A), see Appendix C, p. ③ na) see May Vs. Payne No. 23-1326, Entry J.D. 5253536, page 2 (8th Cir. Mar 09, 2023).

A. Conflicts with Decisions of other Courts

The decisions of the courts below, that, ... "Federal Rule of Civil Procedure 60(a), Allows a district court to correct a clerical error in a judgment if the error causes the judgment to inaccurately reflect the results of the court's adjudication," see *Rivera v. PMS Stores Inc.*, 647 F.3d 188, 191, (5th Cir. 2011). The Fifth Circuit further decided that, ... "Rule 60(a) allows a district court to correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment." See *Rivera*, 647 F.3d, at 193. "A Rule 60(a) motion can only be used to make the judgment or record speak the truth, and cannot be used to make it say something other than what was originally was pronounced -- Here the change to the judgment targeted a clerical mistake. Inadvertently designating a dismissal as being (with prejudice) instead of (without prejudice) is the type of rote, typographical error of transcription that could be committed by a law clerk or a judicial assistant," see *Rivera*, 647 F.3d, at 194. "The reason for this rule is that making a post-judgment change to the stated pre-judicial effect of a (dismissal) requires the district court to exercise its discretion," -- "We conclude that the district court's mistake in designating (the dismissal to May's pro se federal habeas corpus petition with prejudice), was clerical in nature," -- "A district court's authority under Rule 60(a) is also limited to make corrections that are consistent with the court's intent at the time it entered the judgment," see *Rivera*, 647 F.3d, at 195.

Accordingly, the Fifth Circuit decided that the district court cannot rewrite what was originally expressly pronounced in its order. When the district court attempted to change the judgment so that the dismissal would be with prejudice we held that Rule 60(a) did not authorize the amendment. See *Rivera*, 647 F.3d at 196, see (Appendix B, p. 2).

Also the Fourth Circuit decided that... The basic distinction between clerical mistakes, and mistakes that cannot be corrected pursuant to Rule 60(a) is that the former consists of blunders in execution whereas the latter consists of instances where the court changes its mind either because it made a legal or factual mistake in making its original determination, or because on second thought it has decided to exercise its discretion in a manner different from the way it was exercised in the original determination. See *Rhodes v. Hartford Fire Ins. Co.*, 548 Fed. Appx. 857, 859-60 (4th Cir. 2013), ... "clerical mistakes, inaccuracies of transcription, inadvertent omission, and errors in mathematical calculations, are within Rule 60(a)'s scope, mistakes involving substantive legal reasoning are not" see *Sartin v. McNair Law Firm PA*, 756 F.3d 259, 265 (4th Cir. 2014). With prejudice, or without prejudice, is the type of clerical mistake "within Rule 60(a)'s scope," see *Rivera*, supra, at 194.

"Rule 60(a) finds Application where the Record makes Apparent that the court intended one thing but by merely clerical mistake or oversight did another. We Ascertain the district court's intent At the time it entered the judgment by reviewing any other Relevant documents that were produced contemporaneously with the judgment such as, a memorandum opinion, or order, findings of facts and conclusions of Law, the transcript of a hearing or a signed stipulation of the parties," see *Rivers*, 647 F.3d, at 196.

The Ninth Circuit decided that... "Allowing a judgment reflecting a dismissal with prejudice to be changed under Rule 60(a) to reflect a dismissal without prejudice where (the order in Mr. May's case) showed that the district court intended to Approve and adopt the magistrate judge's findings and recommendations, in their entirety which included that Mr. May's federal habeas corpus petition be dismissed without prejudice) see *Korea Exch. Bank Vs. Hanil Bank Ltd. (In re Jee)*, 799 F.2d 532, 535 (9th Cir. 1986), *Huey Vs. Teledyne*, 608 F.2d 1234, 1237 (9th Cir. 1979), see Appendices B, p. 2 (Appendix C, p. 10).

The Eighth Circuit Court of Appeal's decision as a matter of fact and as a matter of Law, Its factual error was - "The Court simply overlooked the clerical mistake of inadvertently designating the dismissal to Mr. May's prior initial federal habeas corpus petition to be with prejudice, instead of without prejudice, as the district court did intend, in accordance with, *Rivers*, 647 F.3d, at 193-97, see also, Federal Rule ->

→ of Appellate Procedure, Rule 40, (b)(1)(A), see also *Muhammad Vs. Close*, 540 U.S. 749, 754 (2004), where it held that... "The decision of the Court of Appeals was flawed as a matter of fact, and as a matter of Law," see *Muhammad*, 540 U.S. at 754.

The United States Supreme Court, decided that... "The primary meaning of dismissal without prejudice, is dismissal without barring the defendant (as Mr. May) from returning later to the same court, with the same underlying claim," see *Serrotek International Inc Vs. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001).

Consequently, because the lower courts in Mr. May's case both the U.S. district court and Eighth Circuit Court of Appeals, ... did Abuse their discretion, by flat out denying to correct the clerical mistake of inadvertently designating the dismissal to Mr. May's previous federal habeas petition, to be with prejudice, instead of without prejudice, as the record did show evidence of such clerical mistake, ... Accordingly, such denial to correct, such clerical mistake, did deny, which did deprive to Mr. May to enjoy the right, to a "fair opportunity to seek federal habeas relief from (an unconstitutional) conviction," as such, was decided in the United States Supreme Court, see *Banister Vs. Davis*, 590 U.S. 504, 507 (2020).

B. Importance of the Questions Presented

Mr. May's case presents fundamental questions of this Court's decision, in, *United States vs. Taylor*, 487 U.S. 326, 328 (1988), that, "This case requires us to consider the bounds of the district court's discretion to deny Mr. May's motion for relief under Rule 60(c), of the Federal Rules of Civil Procedure, where there was evidence in the record, that did show, that, the U.S. district court judge did intend, to dismiss Mr. May's prior initial federal habeas corpus petition without prejudice, where the intent of the U.S. district court was clearly expressed, and articulated, in its order, that, ... "After careful review of the findings and recommendations, and the timely objection thereto, as well as, de novo review, of the record, the Court concludes, that, the findings and recommendations should be, and are hereby, approved and adopted, as this Court's findings in their entirety," see (Appendix B, p. 2), *Id.*. See *Rivera vs. PNS Stores Inc.*, 647 F.3d at 196. It is apparent, in the record, that the U.S. district court, did intend, to dismiss Mr. May's prior/initial federal habeas corpus petition without prejudice, where, in the U.S. Magistrate judge's findings and recommendations, the U.S. magistrate judge, did recommend that, Mr. May's prior/initial federal habeas corpus petition, be dismissed without prejudice, see (Appendix C, p. 10). Accordingly, the fundamental question presented, which was, whether

→ the lower courts, did abuse their discretion, by overlooking the evidence, in the record, of the fact, that there did exist proof of a clerical mistake of inadvertently designating the dismissal to Mr. May's previous federal habeas corpus petition with prejudice instead of without prejudice, see *Rivera*, 647 F.3d, at 193-199, and see *Taylor*, 487 U.S., at 326-28, see (Appendix B, p. 2) (Appendix C, p. 6). Mr. May did have a claim of actual innocence based on new scientific evidence, properly raised by a state habeas corpus petition that was still pending in state court at the time the U.S. district court entered its order and judgment, to Mr. May's previous habeas corpus petition, as the record did reflect.

Technically, Mr. May's state post conviction habeas corpus petition pursuant to Act 1780 was properly filed application for state post conviction or other collateral review with respect to the pertinent judgment, or (Mr. May's actual innocence based on new scientific evidence claim that was still pending, where the date on which the impediment to filing such actual innocence based on new scientific evidence claim in a federal habeas corpus application under § 2254, created by state trial court's action of failure to act on Mr. May's, state habeas corpus petition in a timely manner, in accordance with *Dee Davis Vs. Payne*, 2023 Ark. 119, 673 S.W. 3d 436.

Accordingly such failure to act on Mr. Mays State habeas corpus petition Act 1780 in a timely manner, which did violate against Mr. Mays right to due process of Law to appeal any adverse ruling to such State habeas petition, in a timely manner in the Arkansas Supreme Court, as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution and Law, pursuant to Arkansas Code Annotated Section 16-112-206 (a)(b)(1)(2)(C) and Arkansas Rules of Appellate Procedure Rule I, (a)(b), "Appeals in criminal cases shall take precedence over all other business of the Supreme Court Appeals under Rules Appellate Procedure Civil, 2(a)(6)(7) and (9) shall take next precedence in the Supreme Court." *Id.*, all as mentioned, in accordance with 28 U.S.C. § 2244 (d)(1)(B) and (d)(2), where "The time during which (Mr. Mays' properly filed application for State post conviction habeas corpus petition) shall not be counted toward any period of limitation under this subsection," *Id.*, and "the date on which the impediment to file an application created by the State's action in violation of (such as mentioned) due process of Law provided by the Constitution, or Laws of the United States is removed," where Mr. May was technically legally prevented from filing his previous federal habeas corpus petition by such State action," § 2244 (d)(1)(B).

The U.S. district court, in Mr. Mays case, did not, expressly Note any intentional reasons to modify, in part, or Approve in part, or Adopt in part, any of the findings and/or recommendations, from the U.S. Magistrate Judge Jerome T. Kenney.

The Federal Law, provided that, U.S. Magistrate judges are empowered by statute, to preside over certain pretrial matters upon referral by a U.S. district judge, see 28 U.S.C. §636(b)

(1)(a). The U.S. district judge evaluating a U.S. magistrate judge's recommendations may adopt, or reject, such findings and/or recommendations, ... however though in Mr. Mays case, ... the U.S. district judge did approve, and did adopt, the U.S. magistrate judge's findings and recommendations, in their entirety, just as such was clearly plainly articulatively expressed and Noted in its order, see Appendix B, p. (2). Accordingly, the U.S. district judge, did not express that such U.S. district court had accepted in part, or rejected in part, or modified in part the recommended decision, of the U.S. magistrate judge, see (Appendix B, p. (2)) see §636(b)(1)(a). The U.S. district judge did expressly articulate and Noted in its order, that it did adopt and did approve the U.S. Magistrate judge's findings and recommendations, as its own, in their entirety, and that did legally technically included →

→ the U.S. magistrate judge's specific recommendation that Parrell May's prior federal habeas corpus petition be dismissed without prejudice, just as such was expressed and noted in Record Accordingly, see (Appendix B, p. 2) and see (Appendix C, p. 10)

The combined issues of the State court's failure to act on Mr. May's state post conviction habeas petition, "in a timely manner," *Davis v. Payne*, 2023 Ark. 119, 673 S.W. 3d 436, which resulted in his claim of actual innocence based on New Scientific evidence, to be "unexhausted," *Rhines v. Weber*, 544 U.S. 269, 278 (2005), and the clerical mistake of inadvertently designating the dismissal to Mr. May's previous federal habeas corpus petition, to be with prejudice, instead of without prejudice, in accordance with, see *Rivera v. PMS Stores Inc.*, 647 F.3d 188, 191-99 (5th Cir. 2011), ... Accordingly such aforementioned issues, did reasonably legally qualify as an extraordinary circumstance, in accordance with, see *White v. Dingle*, 616 F.3d 844, 846-849 (8th Cir. 2009), especially with both aforementioned issues combined, together reasonably qualify as an extraordinary circumstance, *White*, 616 F.3d, at 846-49.

Mr. May also presented a fundamental question, which was also whether the clerical mistake of inadvertently designating the dismissal to Mr. May's previous federal habeas corpus petition with prejudice, instead of without prejudice, did violate to Mr. May's right to enjoy due process, to a fair opportunity to seek federal habeas relief, from an unconstitutional conviction, in accordance with, the decision, of this United States Supreme Court, as decided in, see *Bonister vs. Davis*, 590 U.S. 504-507 (2020), quoting *Semtek International Inc vs. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001), where it was decided that, ... "The primary meaning of dismissal without prejudice, is dismissal without barring (Mr. May) from returning later to the district court with a gateway actual innocence claim," *id.*, quoting *Schlup vs. Delo*, 513 U.S. 298, 314-332 (1995). The record did contain clear evidence of, the fact, that, the U.S. district court did technically and legally intend, to approve and adopt, the findings and recommendations from the U.S. magistrate Judge, in their entirety, which did include, the recommended dismissal to Mr. May's previous federal habeas corpus petition without prejudice, in accordance with, *Rivera*, 647 F. 3d, at 193-199, as the record did show (Appendix B, p. 8) (Appendix C, p. 10).

The Lower courts did violate against Mr. May's Right to, ...
- enjoy due process, to "A fair opportunity to seek federal habeas relief from (an Unconstitutional) conviction," see *Banister v. Davis*, 590 U.S. 504, 507 (2020), where, had the U.S. district court granted Mr. May's motion for relief under Rule 60(a) of the Federal Rule of Civil Procedure and corrected the clerical mistake, of dismissal to Mr. May's prior/initial federal habeas corpus petition, from, with prejudice, to without prejudice, ... then Mr. May would have refiled a federal habeas corpus petition, after his state post conviction habeas corpus petition, is fully completely exhausted in State court of (his newly discovered evidence of his gateway actual innocence) claim," see *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001), (citing *Schlup v. Delo*, 513 U.S. 298, 314-332 (1995)). The fact, that Mr. May, had a state post conviction habeas corpus petition, under active processing and consideration, which was in other words, still pending in state trial court, at the time, Mr. May had filed his prior initial federal habeas application, ... Consequently, because, the state trial court did, ... fail to act on Mr. May's state post conviction habeas petition, as codified by Arkansas Code Annotated section 16-112-201 to 208, in a timely manner," see *Davis v. Payne*, 2023 Ark. 119, 673 S.W. 3d. 436, Accordingly such was, "the state created impediment," where, "the state system inordinately and unjustifiably," did delay review of Mr. May's claim of his New Scientific evidence of his actual →

→ innocence, by failure to act on his state postconviction habeas corpus petition, in a timely manner, pursuant to Act 1780 of 2001 as amended by Act 2250 of 2005 codified by Arkansas Code Annotated § 16-112-201 to 208 (Repl. 2016), see also Davis v. Payne, 2023 Ark. 119, 673 S.W.3d. 436, McKeskey v. Zant, 499 U.S. 467, 497 (1991).

Accordingly, Mr. May's claim of actual innocence based on new scientific evidence, was not properly exhausted in the State courts, thus was still pending at the time Mr. May filed his previous federal habeas corpus petition, and such claim of actual innocence based on new scientific evidence was still pending in State court at the time, the U.S. district court had entered its judgment which contained the clerical mistake of inadvertently designating the dismissal to Mr. May's previous federal habeas corpus petition to be with prejudice instead of, without prejudice, as such was intended, in accordance with see Rivera, 647 F.3d, at 193-199, see O'Sullivan v. Boerckel, 526 U.S. 832, (1999), Rhines v. Weber, 544 U.S. 269, 278 (2005), see also White v. Dingle, 616 F.3d. 844, 846 (8th Cir. 2010), "... We affirmed the district court's conclusion that (Mr. May's) petition included at least one unexhausted claim and that his petition was therefore subject to dismissal without prejudice," see White, 616 F.3d, at 846.

The fundamental questions presented were decided with this Court's decision, in *Muhammad v. Close*, 540 U.S. 749, (2004), where basically it held that, "... The (Eighth Circuit's) decision was flawed as a matter of fact, and as a matter of law. In making the erroneous factual finding (regarding the factual evidence of a legally recognized clerical mistake in the record, of, inadvertently designating (the) dismissal to Mr. May's prior/initial federal habeas corpus petition with prejudice, instead of, without prejudice," *Rivera*, 647 F.3d, at 194. Accordingly, "the court simply overlooked," *Muhammad*, 540 U.S., at 749-50, "... such clerical mistake in the record," *Id.*, *Id.*.

Rule 40(b)(1)(A) of the Federal Rule of Appellate Procedure, provided that, "... A petition for panel rehearing must -- state with particularity each point of law or fact that the petitioner (Mr. May) believes the Court has overlooked or misapprehended," *Id.*.

Consequently, Mr. May did state with particularity each fact, in the record of the clerical mistake, of inadvertently designating the dismissal to Mr. May's prior initial federal habeas corpus petition, with prejudice, instead of without prejudice, and Mr. May did state with particularity each point of law, accordingly, in his petition for Rehearing and En Banc Rehearing pursuant to Rule 40(a)(2)(b)(1)(A) of the Federal Rule of Appellate Procedure, but the Eighth Circuit did overlook such matter of fact, in the record, *Muhammad*, 540 U.S., at 749, 754, see Appendix D, p. ①

CONCLUSION

Mr. May prays that this Court grant his Petition for a Writ of Certiorari, and ask for this Court to ~~vacate~~ and-or-reverse the Lower courts judgment of dismissal to his Appeal, Remand his case to the Court of Appeals 8th Circuit with instructions to Remand Mr. May's case back to the U.S. district court, with instructions to properly consider the evidence in the Record of such clerical mistake of ~~inadvertently~~ designating the dismissal to his federal habeas petition with prejudice, instead of without prejudice, and Correct such clerical mistake, as due process of Law guaranteed, And-or-any other Relief Mr. May is entitled to receive,...

CONCLUSION

Accordingly based on the aforementioned Authorities and statements, ...
Parnell R. May's prays for this Court to grant the aforementioned
And The petition for a writ of certiorari should be granted.

Respectfully submitted,

Parnell R. May,

Date: June 23, 2026