No. 26-6024

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ANDREW MC GRAW — PETITIONER
(Your Name)

vs.

BRAND HUFFMAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDREW MC GRAW # 226514
(Your Name)
S. M. C. I. Unit: A-2
P. O. Box 1419
(Address)
LEAKESVILLE, MISSISSIPPI 39451
(City, State, Zip Code)
N/A
(Phone Number)

## QUESTION(S) PRESENTED

I

WHETHER THE APPEALS COURT COMMITTED REVERSIBLE FACTUAL AND LEGAL ERROR IN DENYING PETITIONER'S REQUEST FOR A COA UNDER 28 U.S.C. SECTION 2253 AND RULE 22(b) OF THE FEDERAL RULES OF APPELLATE PROCEDURES

II

WHETHER THE APPEALS COURT ERRED IN DENYING PETITIONER'S MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS

## 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. ANDREW MC GRAW AS PETITIONER AND BRAND HUFFMAN AS RESPONDENT

## RELATED CASES

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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 G 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[ ] is unpublished.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 D 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[X] is unpublished.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**: N/A

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[ ] is unpublished.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[ ] is unpublished.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 JANUARY 28, 2006.

[ ] 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: MARCH 10, 2006, and a copy of the order denying rehearing appears at Appendix G.

[ ] 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

SIXTH AMENDMENT to THE UNITED STATES CONSTITUTION PROVIDES THAT IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT to HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE

## STATEMENT OF THE CASE [1]

A. STATE TRIAL PROCEEDINGS

THE PETITIONER, ANDREW MC GRAW (HEREIN REFERRED TO AS "MC GRAW") WAS INDICTED BY THE APRIL 2018 TERM OF THE KEMPER COUNTY MISSISSIPPI GRAND JURY FOR FORCIBLE SEXUAL INTERCOURSE ON COUNT I AND INCEST ON COUNT II.

MC GRAW PROCEED TO TRIAL ON

[1] THE STATEMENT OF THE CASE WILL BE DIVIDED INTO FOUR (4) SEPARATE CATEGORIES TO INCLUDE: A. STATE TRIAL PROCEEDINGS, B. STATE COURT OF APPEALS PROCEEDINGS, C. STATE POST-CONVICTION PROCEEDINGS AND D. FEDERAL COURTS PROCEEDINGS

OCTOBER 28, 2019. MC GRAW WAS REPRESENTED AT TRIAL by ATTORNEY JAMES E. SMITH III AND ALLEN RHEA. BOTH ATTORNEYS ARE FROM CARTHAGE, MISSISSIPP.

ON OCTOBER 29, 2019 THE JURY FOUND MC GRAW GUILTY OF BOTH COUNTS OUTLINED IN THE INDICTMENT.

ON OCTOBER 30, 2019 CIRCUIT COURT JUDGE CHARLES W. WRIGHT SENTENCED MC GRAW TO TWENTY-FIVE (25) YEARS AS TO COUNT ONE(1) WITH A CONSECUTIVE TEN (10) YEARS

to SERVE ON COUNT TWO(2) IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS.

MC GRAW APPEALED HIS CONVICTIONS AND SENTENCES to THE MISSISSIPPI SUPREME COURT.

B. STATE COURT APPEAL PROCEEDINGS

MC GRAW WAS REPRESENTED ON DIRECT APPEAL by ATTORNEY GEORGE T. HOLMES OF THE OFFICE OF STATE PUBLIC DEFENDER.

MC GRAW RAISED THE FOLLOWING ISSUES ON APPEAL: (1) WHETHER THE EVIDENCE WAS SUFFICIENT to

COUNT I TO THE ELEMENT OF LACK OF CONSENT AND FORCE OR WHETHER THE VERDICT IN COUNT ONE WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE ON THE ELEMENT.

ON DECEMBER 10, 2020 THE MISSISSIPPI SUPREME COURT AFFIRMED MC GRAW CONVICTION AND SENTENCE FOR COUNT ONE. SEE: MC GRAW V STATE 306 SO 3d 715 (MISS. 2020).

C. STATE POST-CONVICTION PROCEEDINGS

MC GRAW FILED HIS FIRST STATE POST-CONVICTION PETITION RAISING THE FOLLOWING CLAIMS: (1) INEFFECTIVE

ASSISTANCE OF TRIAL COUNSEL (2) DENIAL OF DUE PROCESS AT SENTENCING (3) THE TRIAL COURT ERRED IN REFUSING TO GRANT EACH INSTRUCTION SUBMITTED BY THE DEFENDANT AND (4) THE TRIAL COURT ERRED IN ADMITTING THE DNA EVIDENCE OFFERED BY THE STATE.

THE STATE SUPREME COURT DENIED MC GRAW POST-CONVICTION RELIEF ON JUNE 27, 2024.

THE STATE SUPREME COURT DENIED MC GRAW RELIEF ON A SUCCESSIVE POST-CONVICTION PETITION ON AUGUST 21, 2024 PERTAINING TO

THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL.

MCGRAW FILED ANOTHER SUCCESSIVE POST-CONVICTION PETITION WITH THE STATE SUPREME COURT RAISING THE FOLLOWING ISSUES: (1) INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT PROPERLY PREPARING FOR TRIAL, NOT TALKING WITH MCGRAW ABOUT THE CASE AND NOT PRESENTING ANY DEFENSE (2) THE STATE ERRED IN ADMITING DNA EVIDENCE AND (3) DENIAL OF DUE PROCESS AT SENTENCING.

THE STATE SUPREME COURT DENIED

MC GRAW POST-CONVICTION RELIEF

ON NOVEMBER 25, 2024.[2]

D. FEDERAL COURTS PROCEEDINGS
(THIS INCLUDE BOTH THE DISTRICT AND APPEALS Courts)

ON JUNE 17, 2024 MC GRAW

FILED A PETITION FOR WRIT OF

HABEAS CORPUS IN THE UNITED STATES

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[2] AFTER THE MISSISSIPPI SUPREME COURT DENIED MC GRAW RELIEF ON NOVEMBER 25, 2024, HE FILED A PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT ON JANUARY 8, 2025 AND PLACED ON THE DOCKET JUNE 18, 2025. SEE: ANDREW MC GRAW V MISSISSIPPI NO. 24-7407. THAT PETITION WAS DENIED IN OCTOBER OF 2025.

District Court FOR THE SOUTHERN District OF MISSISSIPPI (NORTHERN Division)

ON MAY 5, 2005 THE STATE FILED A motion to Dismiss MC GRAW HABEAS CORPUS PETITION AS BEING UNTIMELY.

ON JUNE 6, 2005 MAGISTRATE Judge MICHAEL T. PARKER ISSUED A REPORT AND RECOMMENDATION THAT RECOMMENDED MC GRAW HABEAS CORPUS PETITION BE DISMISSED WITH PREJUDICE BECAUSE it WAS FILED UNTIMELY.

(SEE: APPENDIX - "A", ORDER DATED JUNE 5, 2005).

ON JUNE 18, 2005 MCGRAW FILED OBJECTIONS TO THE REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE.

ON JUNE 23, 2005 MAGISTRATE JUDGE MICHAEL PARKER ENTERED A ORDER WITHDRAWING HIS PREVIOUS REPORT AND RECOMMENDATION FILED ON JUNE 5, 2005. (SEE: APPENDIX - "B", ORDER DATED JUNE 23, 2005).

ON JUNE 26, 2005 MAGISTRATE

MICHAEL PARKER ISSUED A AMENDED REPORT AND RECOMMENDATION. (SEE: APPENDIX-"C", ORDER DATED JUNE 26, 2025).

ON JULY 9, 2025 MC GRAW FILED A AMENDED OBJECTIONS TO THE MAGISTRATE JUDGE REPORT AND RECOMMENDATION.

ON JULY 17, 2025 UNITED STATES DISTRICT JUDGE DANIEL P. JORDAN, III ISSUED A ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE. (SEE:

APPENDIX-"D", ORDER DATED JULY 17, 2025.[3]

ON JULY 30, 2025 MC GRAW FILED A NOTICE OF APPEAL, DESIGNATION OF RECORDS AND MOTION to PROCEED ON APPEAL IN FORMA PAUPERIS.

ON AUGUST 8, 2025 Judge JORDAN ISSUED A ORDER DENYING MC GRAW LEAVE to PROCEED ON APPEAL IN FORMA PAUPERIS. (SEE: APPENDIX-"E", ORDER DATED

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[3] THE JULY 17, 2025 ORDER CONTAIN A SEPARATE ORDER. DENYING MC GRAW A CERTIFICATE OF APPEALABILITY (COA).

August 8, 2005.)

ON October 15, 2005 Mc GRAW mailed to the United States Court OF APPEALS FOR THE FIFTH CIRCUIT A motion FOR LEAVE to PROCEED ON APPEAL IN FORMA PAUPERIS, A APPLICATION FOR CERTIFICATE OF APPEALability (COA) AND A BRIEF IN SUPPORT OF CERTIFICATE FOR COA.

ON JANUARY 26, 2006 United States Circuit Judge JAMES GRAVES JR. denied Mc GRAW A COA and motion to PROCEED ON APPEAL IN FORMA PAUPERIS (SEE: APPENDIX - F)

ORDER DATED JANUARY 28, 2026.)

ON FEBRUARY 17, 2026 MC GRAW MAILED THE APPEALS COURT A MOTION FOR RECONSIDERATION.

ON MARCH 10, 2026 A THREE(3) JUDGE PANEL DENIED MC GRAW A COA AND MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS. (SEE Appendix "G")

AT THIS JUNCTION, MC GRAW IS FILING A PETITION FOR WRIT OF CERTIORARI TO REVIEW ORDERS OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT WHICH DENIED MC GRAW A COA AND MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

## REASONS FOR GRANTING THE PETITION

THE District Court denied MC GRAW PETITION FOR WRIT OF HABEAS CORPUS AS being time-barred.

THE District Court AND Court OF APPEALS denied MC GRAW A CERTIFICATE OF APPEALability (COA). ALSO, both Courts denied MC GRAW motion to PROCEED ON APPEAL IN FORMA.

SINCE MC GRAW HABEAS CORPUS WAS DENIED ON PROCEDURAL

GROUNDS, MC GRAW MUST DEMONSTRATE THAT THE PROCEDURAL RULING BARRING RELIEF IS ITSELF DEBATABLE AMONG JURISTS OF REASON. SEE: BUCK V DAVIS 580 U.S. 100, 123, 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017); SLACK V MC DANIEL, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d. 542 (2000)

MC GRAW REQUEST A COA ON WHETHER JURISTS OF REASON WOULD DEBATE WHETHER "ACTUAL INNOCENCE" AND "MISCARRIAGE

OF JUSTICE" CLAIMS ARE EXCEPTIONS TO A HABEAS CORPUS time BAR UNDER 28 U.S.C. SECTION 2244(d)(1)(A). MC GRAW ALSO REQUESTS A COA ON WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR NOT INVESTIGATING THE STATE'S DNA EVIDENCE PRIOR TO TRIAL.

According to the ORDER denying the COA (SEE: APPENDIX - "F"), MC GRAW did NOT CHALLENGE THE district Court's determination that his SECTION 2254 APPLICATION WAS UNTIMELY FILED AND THAT

HE IS NOT ENTITLED TO EQUITABLE TOLLING.

ON PAGE FOUR (4) OF MC GRAW MOTION FOR LEAVE OF Court to PROCEED ON APPEAL IN FORMA PAUPERIS, MC GRAW ARGUED THAT THERE ARE EXCEPTIONS to THE AED PA ONE (1) YEAR STATUTE OF LIMITATIONS AND THAT THOSE EXCEPTIONS SHOULD APPLY to MC GRAW.

MC GRAW ARGUED IN THE APPEALS Court THAT HIS MISCARRIAGE OF JUSTICE AND ACTUAL INNOCENCE CLAIMS ARE "ENTWINED" WITH

THE CLAIMS THAT MC GRAW SECTION 2254 APPLICATION WAS NOT UNTIMELY AND THAT MC GRAW IS ENTITLED TO EQUITABLE TOLLING.

THIS COURT HAS RECOGNIZED VARIOUS EQUITABLE EXCEPTIONS TO PREVENT A MISCARRIAGE OF JUSTICE. SEE MCQUIGGINS V PERKINS, 133 S.Ct. 1924 (2013); HOUSE V BELL 126 S.Ct. 2064 (2006); SCHLUP V DELO, 115 S. Ct. 851 (1995).

THE APPEALS COURT DECISIONS DENYING COA (SEE: APPENDIX - "F" AND "G") OVERLOOKED AND

MISAPPREHENDED THE ACTUAL INNOCENCE AND MISCARRIAGE OF JUSTICE CLAIMS RAISED by MCGREAW WHICH ARE EXCEPTIONS to THE AEDPA STATUTE OF Limitations UNDER MCQUIGGINS, HOUSE AND SCHLUP, SUPRA.

DETERMINATION WHETHER to ISSUE A COA REQUIRES OVERVIEW OF CLAIMS IN HABEAS PETITION AND GENERAL ASSESSMENT OF THEIR MERITS. SEE: MILLER-EL V COCKRELL, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d.

931 (2003).

MC GRAW WAS FOUND GUILTY OF FORCIBLE SEXUAL INTERCOURSE AND INCEST. THE MISSISSIPPI SUPREME COURT RELIED HEAVILY ON DNA EVIDENCE to AFFIRM MC GRAW CONVICTIONS AND SENTENCES. SEE: MC GRAW V STATE, 306 So3d 715, 716-17 (MISS. 2020). WITHOUT THE DNA EVIDENCE, THERE WAS NOT EVIDENCE to SUPPORT MC GRAW CONVICTIONS AND SENTENCES.

IN MC GRAW HABEAS PETITION

FILED IN THE DISTRICT COURT, MC GRAW ASSERTS THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL by TRIAL AND APPELLATE COUNSELS, THAT THE TRIAL COURT ERRED IN REFUSING to GRANT EACH JURY INSTRUCTION HE SUBMITTED AND THAT THE TRIAL COURT ERRED IN ADMITTING DNA EVIDENCE OFFERED by THE STATE.

IN ELMORE v. OZMINT, 661 F.3d 783, 851 (4TH CIR 2011), THE COURT RULED THAT FAILURE to INVESTIGATE STATE FORENSIC EVIDENCE WAS

INEFFECTIVE ASSISTANCE OF COUNSEL.

IN DRAUGHON V DRETKE, 472 F. 3d 286, 296 (5TH CIR. 2005), THE COURT NOTED THAT COUNSEL FAILURE TO INVESTIGATE FORENSIC SHOOTING WAS INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE it DEPRIVED THE DEFENDANT OF A SUBSTANTIAL ARGUMENT.

THE COUNSEL THAT REPRESENTED MCGRAW WAS INEFFECTIVE FOR NOT INVESTIGATING THE STATE'S DNA EVIDENCE. COUNSEL FAILURE TO INVESTIGATE THE STATE'S DNA

EVIDENCE DEPRIVED MC GRAW OF A SUBSTANTIAL ARGUMENT.

MC GRAW SUBMIT THAT A JURIST OF REASON WOULD DEBATE WHETHER "ACTUAL INNOCENCE" AND "MISCARRIAGE OF JUSTICE" CLAIMS ARE EXCEPTIONS TO A HABEAS CORPUS TIME BAR UNDER 28 U.S.C. SECTION 2244 (d)(1)(A). MC GRAW ALSO REQUEST A COA ON WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR NOT INVESTIGATING THE STATE'S DNA EVIDENCE PRIOR TO TRIAL.

THE DISTRICT COURT AND APPEALS COURT

DENIED MC GRAW MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS, BECAUSE THE COA WAS DENIED. IF THIS COURT GRANT COA RELIEF, MC GRAW RESPECTFULLY REQUEST THE COURT GRANT IN FORMA PAUPERIS RELIEF.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew McGraw #

Date: 4-22-26