

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES BUNCH - PETITIONER

VS.

RICHARD L. STALDER - RESPONDENT

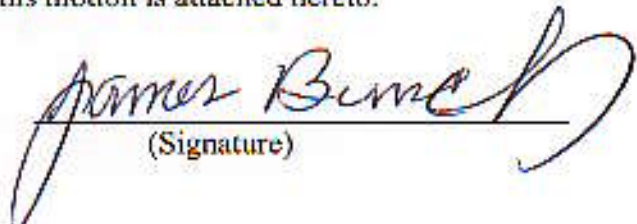
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court (s):

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.


(Signature)

QUESTIONS PRESENTED

I. Whether Fifth Circuit's denial of COA is contrary to clearly established law as decided by this Court where Petitioner makes a substantial showing State deprived Petitioner of due process of law by withholding exculpatory evidence of a gun received at the crime scene from the defense? U.S. Const., Amends 5th, 14th; Brady v. Maryland; Kyles v. Whitley; Napue v. Illinois; U.S. v. Agurs; Slack v. McDaniel; Barefoot v. Estelle.

II. Whether the Louisiana Supreme Court erred and deprived Petitioner due process when it reversed the trial court's grant of a "new trial" based on newly discovered evidence after a full and fair evidentiary hearing held July 11, 1996 - September 27, 1996? U.S. Const., Amend. 14th; 28 U.S.C. Section 2253(c)(1)(2); 28 U.S.C. Section 2254(d)(1)(2) Section (e)(1)(2); Brady v. Maryland; Slack v. McDaniel.

III. Whether Petitioner was entitled to COA where denied due process of law when Louisiana Supreme Court's reversal of trial court's grant to Petitioner of a new trial resulted in a decision contrary to and involved an unreasonable application of clearly established federal law as determined by this Court and constitute an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding? 28 U.S.C.; Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, ___ L.Ed.2d ___ (2000), Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963), William v. Taylor, 529 U.S. 420, 120 S.Ct. 1499, 146 L.Ed.2d. 435 (2000).

LIST OF PARTIES

The parties to the proceeding before the United States Court of Appeals for the Fifth Circuit were as follows:

- 1) James Bunch, Petitioner
- 2) Richard L. Stalder, Respondent and others.

TABLE OF CONTENTS

OPINIONS BELOW

	<u>Page</u>
<u>Number</u>	
Jurisdiction	2-3
Constitutional and Statutory Provisions Involved	2-3
Statement of the Case	4-5
Reasons for Granting the Writ	6-20
Conclusion	21
Proof of Service	22-23

TABLE OF AUTHORITIES

<u>CASE</u>	<u>PAGE</u>
Rose v. Lundy, 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d. 379 (1982)	7
Brady v. Maryland, 373 U.S. 83 (1963)	7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19
Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555	7, 8, 9, 10, 13, 15, 16, 17, 19
Napue v. Illinois, 360 U.S. 264 (1959)	8, 9, 11, 12, 16
U.S. v. Agurs, 427 U.S. 97, 104 (1976)	8, 9, 11, 12, 16
Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595 (2000)	7, 8, 11, 13, 14
Barefoot v. Estelle, 463 U.S. 880, 894, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)	8, 14
Williams v. Taylor, 529 U.S. 420, 120 S.Ct. 1479, 146 L.Ed.2d. 435 (2000)	6, 7, 9, 10, 12, 17, 19
U. S. v. Bagley, 473 U.S. at 678	8, 9, 10, 19
 <u>U.S. Constitutions</u>	
U.S. Const., Amend. 5 th	
U.S. Const., Amend. 14 th	
28 U.S.C. Section 2254	
28 U.S.C. Section 2253	

TABLE OF AUTHORITIES

Louisiana Constitution

La.Const., Art. 1 & 2, 13

La. Code of Criminal Procedure

La.C.Cr.P., Art. 928, 929, 930.8

IN THE
SUPREME COURT OF THE UNITED STATES

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

Federal Courts:

Opinions Below

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at No. 04-30132-95-CV-1883.

The opinion of the United States District Court appears at Appendix B to the petition and is reported at 95-CV-1883.

State Courts:

The opinion of the highest State Court to review the merits appears at Appendix C to the petition and is reported at 96-KP-2761, (La. 6/20/96), 695 So.2d. 1341.

The opinion of the trial court appears at Appendix D to the petition and is reported at 286-606 on October 8, 1996.

JURISDICTION

Federal Courts:

The United States Court of Appeals, Fifth Circuit, order denying COA was October 21, 2004. A timely Petition for Rehearing was denied December 22, 2004 appears at Appendix E.

State Courts:

The highest State Court reinstatement conviction and sentence June 20, 1997 appears at Appendix F.

The jurisdiction of this court is invoked under 28 U.S.C., Section 1257(a).

“constitutional and statutory provisions involved”

U.S. Const. Amend. 5th

“No person shall be deprived of life, liberty, or property without due process of law.”

U.S. Const. Amend 14th

“No state shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law.”

28 U.S.C. Section 2253(c)(1)(2)

“In a habeas corpus proceeding, there shall be no right of appeal from a final order unless a Circuit Justice or Judge issues a Certificate of Appcalability. (COA) may issue under Paragraph 1 only if the applicant has made a substantial showing of the denial of a constitutional right.”

28 U.S.C. Section 2254(d)(1)(2)

“The 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: (1) Resulted in a decision that was contrary to or involved an unreasonable application of clearly established

federal law as determined by the Supreme Court of the United States, or
(2) Resulted in a decision that was based on an unreasonable
determination of the facts in light of the evidence presented in the State
Court proceeding.”

28 U.S.C. Section 2254(e)(2)(b)

“The facts underlying the claim would be sufficient to establish by clear
and convincing evidence that but for constitutional error, no reasonable
fact finder would have found the applicant guilty of the underlying
offense.”

STATEMENT OF CASE

Petitioner, James Bunch, was charged with the crime of first degree murder after a trial by jury. Petitioner was found guilty as charged under La.R.S. 14:30, No. 286-606.

Thereafter, Petitioner was sentenced to serve life without benefit of parole, probation, or suspension of sentence. On appeal, the Louisiana Supreme Court affirmed. See State v. Bunch, 426 So.2d. 188 (La. 1982).

Petitioner's claim of newly discovered evidence constituted Brady claims. Petitioner filed an application for relief based upon these Brady violations in the District Court in accordance with the requirements of the exhaustion doctrine. See Appendix 1.

Petitioner contends that he was denied due process of law under the United States and Louisiana Constitutions which are guaranteed by the 5th and 14th Amendments and La. Const. Art. I, Sections 2 and 13 respectively.

The prosecution suppressed evidence that was favorable and material to the defense's position that Petitioner fired his pistol in fear of death or great bodily harm in order to protect himself. The prosecution suppressed the fact that the murder weapon was recovered on the scene of the incident, however, no weapon was introduced at the trial or disclosed to the defense.

In its answer to the defendant's appeal to the Louisiana Supreme Court on August 2, 1992, the State alleged in its opposition brief that the murder weapon was recovered on the scene of the incident that occurred June 19, 1981. [Case No. 82-KA-1372] See Appendix 2.

The factual basis for this Brady claim was not known to Petitioner or to his attorney before the trial, nor could it have been discovered by the defense from any other source. Although Petitioner had made requests for this document and all other records in the Criminal District Court years before, Petitioner by the State action (the refusal to give him the requested