

IN THE SUPREME COURT OF THE UNITED STATES

NO. 23-6661

JUSTIN GRANIER,

Petitioner

V.

STATE OF LOUISIANA,

Respondent

BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FOR THE STATE OF LOUISIANA

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TWENTY-THIRD JUDICIAL DISTRICT COURT
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QUESTION PRESENTED FOR REVIEW

While petitioner contends that there is a conflict within the Court of Appeals, Fifth Circuit, and other Circuit Courts of Appeals as to whether implied bias is clearly “established federal law”, in reality petitioner’s sole issue presented herein is whether the United States Court of Appeals, Fifth Circuit’s, ruling herein is either jurisprudentially or factually flawed in finding that petitioner failed to meet any mandatory threshold for proving implied juror bias. Based on the procedural history and rulings of this case in Louisiana State courts, the federal district court (Middle District of Louisiana), and the United States Court of Appeals, Fifth Circuit, petitioner has failed to establish any factual basis that would support a finding of implied juror bias herein.

LIST OF PARTIES

Pursuant to United States Supreme Court Rule 24 (1)(b), the following listed parties have an interest in the outcome of this case. These representations are made in order that the Justices of this Honorable Court may evaluate possible disqualifications or recusal.

PETITIONER/APPELLANT

Justin Granier

COUNSEL FOR RESPONDENT/APPELLEE

Donald D. Candell
Lindsey D. Manda

OTHER INTERESTED PARTIES

Tim Hooper, Warden,
Louisiana State Penitentiary

Liz Murrill,
Louisiana Attorney General

TABLE OF CONTENTS

1.	QUESTION PRESENTED FOR REVIEW.....	2.
2.	LIST OF PARTIES.....	3.
3.	TABLE OF AUTHORITIES.....	5.
4.	STATEMENT OF JURISDICTION.....	6.
5.	CONCISE STATEMENT OF THE CASE.....	7.
6.	ARGUMENT.....	17.
7.	CONCLUSION.....	22.

TABLE OF AUTHORITIES

STATUTORY

1. 28 U.S.C. Sec. 2254(d).....19.

JURISPRUDENCE

1. Cullen v. Pinholster, 563 U.S. 170(2011).....16.
2. Harrington v. Richter, 562 U.S. 86, —, 131 S.Ct. 770, 784–85,
178 L.Ed.2d 624, 639 (2011).....21.
3. Beckley v. Hooper, (E.D. La. 3/2/23), 2023WL2623158.....14.
4. Besse v. Tanner, No. CV16-2992, 2019 WK 4415242, at *12 (E.D. La. 9/16/19).....14.
5. Brooks v. Dretke, 418 F. 3d 430 (5th Cir. 2003).....18.
6. Burton v. Johnson, 948 F.2d 1150, 1156 (10th Cir. 199).....15, 19, 20.
7. Hall v. Superintendent, 834 F. Supp. 2d 848, 853 (N.D. Ind. 2011),
rev'd sub nom. Hall v. Zenk, 692 F.3d 793 (7th Cir. 2012).....21.
8. McCurtis v. Michaels, No. 04-1166, 2006 WL 3240762at *8 (W.D. La. 10/3/2006)..18.
9. McNair v. Campbell, 416 F.3d 1291, 1300–01 (11th Cir. 2005).....20.
10. Smith v. Cain, 708 F.3d 628, 635 (5th Cir. 2013).....16.
11. United States. v. Romo, (7th Cir. 9/27/90), 914 F.2d 889.....14.
12. United States v. Scott, 854 F. 2d 697 (5th Cir. 1988).....18.
13. United States v. Wilson, 116 F.3d 1066, 1087 (5th Cir. 1997).....18.
14. State v. Granier, 2018-0690 (La. 6/18/18), 246 So. 3d 576.....19.
15. State v. Noil, 01-521 (La. App. 5th Cir. 12/26/01), 807 So. 2d 295, 309,
writ denied, 02-0276 (La. 10/25/02), 827 So. 2d 1177.....14.
16. State v. Parker, 04-1017 (La. App. 5th Cir. 3/25/05), 901 So. 2d 513.....14.

SUPREME COURT RULES

1. Rule 1018..

STATEMENT OF JURISDICTION

Respondent asserts that absent this Honorable Court's discretionary action to review petitioner's writ herein, pursuant to the United States Supreme Court Rule 10 (a-c), petitioner's perceived claim does not rise to any level of constitutional and/or jurisprudential violation which requires this Honorable Court's consideration. As asserted above, the true issue herein does not merit this Honorable Court's consideration.

CONCISE STATEMENT OF THE CASE

In the early morning hours of September 15, 2001, the Ascension Parish Sheriff's Office received a hold up alarm activated at Delaune's Supermarket located on LA Hwy. 431 in Ascension Parish, State of Louisiana. Ascension Parish Sheriff's (APSO) Deputy Jeffrey Griffin was immediately dispatched to the scene. Upon arriving thereat, the subsequent investigation revealed that one of the supermarket's employees had been shot and killed. He was identified as seventeen year old Luke Villar who was found lying face down in the middle of the front door entrance. Three 30/30 caliber shell casings were found near the front entrance. Several minutes later, Deputy Griffin was joined by other deputies who secured the supermarket and began to investigate. A second employee, Angelina Weber, who had been hiding behind the counter, had also been shot.

Ms. Weber advised officers that Villar was outside performing his normal parking lot clean up duties when she heard someone say something and turned, thinking it was Villar talking to her. She saw a subject standing by the propane bottle rack with a rifle in hand. That perpetrator shot Villar in the back and he fell to the ground. Ms. Weber immediately pulled the automatic door open, entered the store, and ran behind a counter. As Villar rose to get up and make his way to the door, the perpetrator shot Villar in the back a second time. Ms. Weber

stated she went to the service counter area to initiate the silent alarm and when she looked up, saw the masked perpetrator standing inside the door who then shot at her.

Subsequently, APSO Detective Chris Fontenot obtained a taped statement from Jeremy McCoy who had been driving passed the supermarket just as the gunshots were fired. He stated that he saw an individual shoot Villar. He then drove to a nearby Exxon Station and called 911. McCoy's passenger, Joseph Rioux, confirmed those facts.

William Lanoux, another employee on duty at that time, informed detectives that while working outside the store, he heard two shots ring out. Rounding the corner toward the store's front, he observed an individual standing in front of the store with a rifle and Villar lying on the ground. He ran to his nearby apartment and called 911.

Shortly after this incident in an unrelated matter, APSO Detective Kyle Hanna obtained a statement from Janna Rossi who stated that between 4:00- 4:30 a.m. that date, she was awakened when Lucas Roddy, Justin Granier, and Joshua Barrow came to her residence seeking to talk to her sister's boyfriend, Taylor Dowden. She let them in and went to wake up her sister and Dowden. Her sister informed Rossi to tell the trio to leave but when she returned to the living room, they were seated. After they left the residence, Rossi discovered that a sum of money had been taken from her purse. Rossi's sister and Dowden denied taking the money. Rossi then reported the theft to the Sheriff's Office. She advised Detective Hanna that all three individuals were wearing bandanas and that Roddy and Barrow were wearing some type of navy blue and yellow striped shirt. Roddy had some type of beige or tan colored stocking on his head. Based thereon, Detective Hanna obtained an arrest warrant for Granier, Roddy, and Barrow for theft. That day, the trio were arrested. As Rossi's residence was near Delaune's Supermarket, detectives spoke to Roddy and Granier about the homicide which both denied having any

knowledge thereof. Further investigation revealed that some two weeks prior to this murder, Granier was at a party where a 30/30 rifle with a scope had been stolen.

On September 16, 2001, Detective Hanna and APSO Major Benny DeLaune received a phone call from Barrow's sister who stated that Barrow wanted to talk to the detectives. After Barrow's arrest, he had been placed in a cell with Granier. While therein, Granier asked Barrow to get rid of the rifle from the DeLaune shooting. Barrow advised detectives that the rifle had been placed under Nick Babin's residence. Roddy had been arrested at that residence the previous day. Barrow further advised that Roddy and Granier were bragging to their friends about the shooting. Based thereon, detectives obtained a search warrant for the Babin residence. Upon arriving thereat, the homeowner when informed of the search warrant, gave her consent to search the residence. Located outside the front door was a barbeque grill which when opened, contained clothing matching that described by witnesses on the morning of the shooting. Detectives also found a 20 gauge shotgun some 15 feet from the front door together with ammunition. Lanoux when viewing the clothing seized, stated it appeared to be the clothing he saw the guy with the weapon wearing.

That same day, APSO Sheriff Jeffrey Wiley, Assistance Chief Tony Bacala, and Warden Bobby Weber spoke to Granier. Granier stated that he wished to make a statement regarding the homicide. After being advised of his Miranda rights which he voluntarily waived, Granier stated that Barrow, Roddy, and he were at a party at Justin Smith's residence. While there, Roddy and Barrow left the party and returned a short time later with two rifles. Granier then drove Barrow and Roddy to a location near DeLaune's, knowing that they intended to rob the store. When he heard gunshots, he went to pick up Barrow and Roddy as they were running toward his location. Thereafter, they drove to Babin's residence where Barrow and Roddy changed clothes. The

clothes were then hidden in a barbeque pit at the residence. Based on certain statement inconsistencies, detectives decided to re-interview Granier. After being advised of his Miranda rights and waiving same, Granier stated that while he was at Justin Smith's residence, Roddy and he took Barrow's vehicle and left the party. They drove toward DeLaune's, parking the vehicle down the street from the store. He stated that Roddy, armed with a scoped 30/30 caliber rifle, and he with a 20 gauge shotgun, walked up to the store. As they rounded a corner of the building, a young man was in the parking lot near the front entrance. Roddy shot the employee in the back. As he fell trying to make his way to the door, Roddy shot him again. Granier stated that he turned and ran away when he heard a third shot ring out. Thereafter, Roddy came back to the car and they drove to Babin's residence, hiding the rifle behind the residence under the trailer and the shotgun in the bushes in the front of the trailer. The bandanas worn at the time of the shooting were placed in another vehicle. Granier described the clothing recovered from the barbeque pit exactly and confirmed that the 30/30 caliber rifle had been stolen. Based upon Granier's confession and the above mentioned investigation, arrest warrants were issued for Roddy and Granier, charging each of them with one count of first-degree murder in violation of LSA-R.S. 14:30, one count of attempted first-degree murder in violation of LSA-R.S. 14:27 and 14:30, and one count of attempted armed robbery in violation of LSA-R.S. 14:27 and 14:64.

Subsequently, Charlene Potter informed detectives that Roddy had informed her that he was going away for a long time, admitting that he had killed Villar while accompanied by Granier. When detectives went to Babin's residence, they noted he was not present. As detectives were leaving, they searched a nearby canal where they discovered a rifle butt sticking out of the water. Upon retrieving same and checking other information, detectives were able to determine that it was the stolen 30/30 caliber rifle.

On November 6, 2001, the grand jury returned a true bill, charging Granier with first-degree murder in violation of LSA-R.S. 14:30. Thereafter, he was formally arraigned, pleading not guilty to all charges. Subsequently, Granier's counsel filed a plethora of motions which were set and heard. In response to Granier's trial counsels' discovery requests, **the State provided Granier with open file discovery on two separate occasions.** ROA 1375, 1379. Trial was subsequently set for October 22, 2003. On that date, just prior to trial, the State amended the Bill of Indictment to charge Granier with Second Degree Murder in violation of LSA-R.S. 14:30.1. After being re-arraigned, trial commenced, the jury thereafter unanimously finding Granier guilty on October 24, 2003.

Granier's subsequent motion for a new trial was denied and sentencing was set for December 16, 2003. On that date for written reasons filed into the record, the trial court sentenced Granier to the Louisiana Department of Corrections for life with credit for time served, said sentence to be served without benefit of probation, parole, or suspension of sentence. He was further informed that he had two (2) years from the date of his conviction and sentence becoming final in which to seek any application for post-conviction relief.

In his subsequent direct appeal, Granier's appellate counsel claimed prosecutorial misconduct and ineffective assistance of counsel.¹ Granier also filed a pro se appeal.² After

¹ He alleged (a) prosecutorial misconduct in a subliminal violation of Rule 3.4(e) of the Rules of Professional Conduct, contending that the prosecutor was ethically bound to present accomplice/witnesses referred to during voir dire and opening statement as he allegedly "lulled" Granier's counsel into not objecting to hearsay under the impression that cross-examination would be afforded and (b) his trial counsel was ineffective in failing to object to the prosecutor's use of testimonial hearsay concerning the content of accomplice/witness's statements at trial and in failing to request a mistrial.

² 1. There was police misconduct in the coercion of witnesses;

consideration of all issues, the lower appellate State court denied his appeal and affirmed his conviction and sentence. ROA. 3200-3212. On writ of review to the supreme court, State of Louisiana, seeking review of the lower appellate court's affirmation of his conviction and sentence, same was denied. ROA. 3213. Granier failed to seek further appellate review to the United States Supreme Court and as such, his conviction and sentence became final on January 22, 2009. United States Supreme Court Rule 13 (1).

Granier subsequently filed a pro se Uniform Application for Post-Conviction Relief.³ ROA 3382-3421. After hearing, the trial court denied all claims. ROA. 3297-3302. From that

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2. There was prosecutorial misconduct because the prosecutor "disallowed" the witnesses to testify to the truth and forced them to read from the statements coerced from law enforcement officials;
 3. The trial court erred in denying his motion to suppress his statements; and
 4. The evidence was insufficient to support his conviction.

- ³ 1. He was denied effective assistance of counsel in violation of the Fifth, Sixth, and Fourteenth Amendment of the United States Constitution;
2. He was denied due process of law where the indictment was legally defective in violation of Article 1, Sections 2 & 15 of the Louisiana Constitution and the Fourteenth Amendment of the United States Constitution;
3. He was denied due process under the Louisiana Constitution Article 1 Section 17 and the Fourteenth Amendment of the United States Constitution where was denied a fair and impartial jury;
4. Defendant was denied his constitutional rights due to false testimony;
5. Defendant was denied his constitutional rights where he was denied his right to assistance of counsel;
6. Defendant was denied his constitutional rights to confront his accusers;
7. Defendant was denied his constitutional rights to full judicial review where the trial was not fully recorded; and

judgment, Granier sought review to the lower appellate State court, alleging the same issues as in the trial court which the lower appellate State court denied on the showing made. ROA. 3421. Granier then sought review thereof to the Louisiana supreme court which was denied. ROA. 3422-3441.

Granier thereafter filed a Second Uniform Application for Post-Conviction Relief, (ROA 3446-3474) alleging therein that:

1. The trial court's improper comment on the evidence and improper jury instructions violated petitioner's due process rights; and
2. Jury misconduct by a member of the jury violated petitioner's due process rights.

In response thereto, the State filed its objection to Granier's successive application for post-conviction relief (ROA 3480-3481) to which Granier filed a Reply and Traverse of Respondent's Objection (ROA 3482-3486). Granier then filed a supplement to his successive application for post-conviction relief, attaching thereto an affidavit from Brad Scott, an attorney who served as part of Granier's defense team as an alleged private contractor hired by his current counsel. Therein, **Scott alleged** that he had interviewed one of Granier's jurors and **based upon her responses to information he provided**, Granier claimed he was deprived of a fair trial, mandating that his conviction be overturned. ROA 3494-3506.

After hearing, the trial court dismissed Claim 1 as being repetitive and ordered the State to respond to Claim 2. ROA. 3511-3514. In response, the State asserted that pursuant to LSA-C.E. art. 606(B), to require that particular juror to testify would be a statutory violation. ROA. 3516-3616. After hearing, the trial court ruled that the juror in question could be forced to testify

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8. Defendant was denied his right to due process where the trial judge improperly instructed the jury.

as to her responses during voir dire. ROA. 3622-3625. Subsequently, it was learned that the juror in question (Gladys Delaune Mobley) had died whereupon Granier filed a notice of intent to use hearsay and non-hearsay testimony in support of his Claim 2. ROA. 3647-3650. The State filed its objection to the use of hearsay evidence. ROA. 3652-3653. After hearing, the trial court ruled that it would permit Granier to introduce hearsay testimony as to Claim 2, finding that this was an exception to the hearsay rule. ROA. 3654-3655. From that ruling, the State sought review from the lower appellate State court. ROA. 3730-3749. After consideration, the trial court's ruling was reversed, finding that the **hearsay testimony of Scott was inadmissible and remanded the matter back to the trial court for further proceedings.** ROA. 3729. Granier's challenge of that ruling to the Louisiana supreme court (ROA. 3763-3785) was denied (ROA. 3786).

Granier then filed a Motion for Evidentiary Hearing, alleging therein that while unable to adduce the hearsay testimony of Scott, he allegedly had several other witnesses to corroborate his initial claim of juror misconduct. ROA. 3819-3820. At this hearing (ROA. 3866-3940), only Juror Mobley's son, Sam Mobley, previously diagnosed as schizophrenic and found incompetent to stand trial on his own behalf in an unrelated previous criminal matter (ROA. 3871), was questioned **in chambers** (ROA. 3873). He testified that he was employed at DeLaune's one week prior to the crime for less than one hour before being fired. Around that time, he had been living with his father and had not lived with nor spoken to his mother for some time. ROA. 3898-3909. Based upon his testimony that he had been interviewed by police regarding the murder, Granier moved to have the State provide any and all evidence related to police questioning of him and/or his parents. He further moved to have any and all police records provided to him regarding search warrants which he claimed were executed at both Mobley's

mother's and father's residences. ROA. 3928. The State objected, informing the trial court that the State had provided open file discovery to Granier prior to trial⁴ as well as in its response to his 2015, public records request. Despite same, the State responded to include Sam Mobley's application for employment. ROA. 3930-3931. Based thereon, the State filed a Motion to Dismiss Granier's application for post-conviction relief under LSA-C.Cr.P. art. 930.8(A), alleging that he had not met the required burden to show that the facts upon which his allegations were made were not known to him or his prior attorneys prior to trial. ROA. 3945-3949. Thereafter, Granier filed a supplemental memorandum alleging prosecutorial misconduct in an attempt to introduce a new claim for post-conviction relief. ROA. 3951-3957. In response, the State filed a Motion to Dismiss Granier's new claim of prosecutorial misconduct, alleging that he had failed to comply with the procedures set forth in LSA-.C.Cr.P. art. 926 et seq. It also filed a Motion to Dismiss Granier's second application for post-conviction relief under LSA-C.Cr.P. art. 930.8(B) alleging that its ability to respond to, negate, or rebut the allegations of the petition caused by events not under the control of the State had been materially prejudiced by Juror Mobley's death. During the January 16, 2018, hearing on those dismissal motions, the State presented evidence to the trial court that the information related to Sam Mobley's employment at DeLaune's had previously been provided to Granier's counsel in response to his discovery request prior to trial and introduced evidence that showed Granier was already in possession of the complete employment application. **Granier failed to adduce any contrary evidence to the State's claim.** The State urged that Granier's claim be dismissed pursuant to LSA-.C.Cr.P. art.

4 It is settled that where the prosecution provides open file discovery, it is relieved of the necessity of providing written responses to discovery. State v. Noil, 01-521 (La. App. 5th Cir. 12/26/01), 807 So. 2d 295, 309, writ denied, 02-0276 (La. 10/25/02), 827 So. 2d 1177; State v. Parker, 04-1017 (La. App. 5th Cir. 3/25/05), 901 So. 2d 513; Besse v. Tanner, No. CV16-2992, 2019 WK 4415242, at *12 (E.D. La. 9/16/19); Beckley v. Hooper, (E.D. La. 3/2/23), 2023WL2623158; and see also United States. v. Romo, (7th Cir. 9/27/90), 914 F.2d 889.

930.8(B) and that his new post-conviction claim of prosecutorial misconduct be dismissed having failed to comply with the standard for such applications under LSA-C.Cr.P. art. 926. ROA. 3968-3969. Subsequently, the trial court ordered the State to file all procedural objections it had to Granier's application. Despite the State filing its procedural objections, the trial court summarily dismissed same without hearing by written order and provided written reasons. ROA. 4088-4091. From that ruling, the State sought supervisory writs to the lower appellate State court.⁵ ROA. 4038-4062. In a divided opinion, the State's writ was denied. ROA 4036-4037, 4063. From that ruling, respondent sought appellate review to the Louisiana supreme court. ROA.4180-4206. After review, the lower appellate court's affirmation of the trial court's ruling setting the matter for an evidentiary hearing was vacated, finding that:

a. petitioner's complaint regarding the seating of juror Mobley failed to allege a claim which if established would entitle him to relief citing LSA-C.Cr.P. art. 928 and Burton v. Johnson, 948 F.2d 1150, 1156 (10th Cir. 1991)("A party who seeks a new trial because of non-disclosure by a juror during voir dire must show actual bias, either by express admission or proof of specific facts showing a close connection to the circumstances at hand that bias must be presumed");

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- a. The trial court erred as a matter of law when it failed to require petitioner to prove that those facts upon which his claim is predicated were not known to the petitioner or his prior attorneys as mandated in LSA-C.Cr.P. art. 930.8(A);
 - b. The trial court erred as a matter of law in denying respondent's Motion to Dismiss Defendant's Petitioner of Post-Conviction Relief under LSA-C.Cr.P. art. 930.8(B) and finding that a juror's death was NOT a circumstance beyond the control of respondent that materially prejudiced its ability to respond to petitioner's allegations that said juror may have withheld information during voir dire;
 - c. The trial court erred as a matter of law by allowing petitioner to add a new claim for post-conviction relief without requiring him to comply with the provisions of LSA-C.Cr.P. art. 926 et seq.; and
 - d. The trial court erred as a matter of law in continuing to consider hearsay evidence in order to maintain petitioner's claim for post-conviction relief.

b. petitioner failed to show that respondent withheld material exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); and

c. all of petitioner's claims for post-conviction relief had been fully litigated, remanding the matter for further proceedings consistent with its ruling. ROA. 4175-4177.

Granier's request for rehearing was denied. ROA. 4226.

Granier thereafter filed a federal habeas petition alleging that:

1. His Sixth Amendment rights to a fair and impartial trial were violated due to juror bias,

2. His Fifth Amendment right to due process was violated because the State had actual knowledge of that one of the juror's son had a connection to the investigation and engaged in prosecutorial misconduct when it failed to advise the trial court and Granier,

3. His Fourteenth Amendment due process rights were violated when the trial judge made improper comments during jury instructions, and

4. He received ineffective assistance of counsel.

After review of the entire State court record and consideration of petitioner's claims, on December 30, 2020, the District Court Magistrate issued an Order and Reasons requiring a hearing on Claims 1 and 2. In its Order and Reasons, the Magistrate determined that the State court's summary dismissal of Claims 1 and 2 were contrary to clearly established federal law and ordered a de novo review of those claims. Citing Smith v. Cain, 708 F.3d 628, 635 (5th Cir. 2013), the Magistrate found that Cullen v. Pinholster, 563 U.S. 170(2011)'s limitation on federal evidentiary hearing did not apply herein and ordered a hearing on same. This matter was subsequently set for an Evidentiary Hearing after which post-hearing memorandums were submitted. ROA. 1091-1109, 1110-1133. On March 11, 2022, the Magistrate's R&R was issued in which it found as a matter of fact that while timely filed, Granier's Claims One and Two were without supporting factual basis, Claim Three failed in that the trial court's decision rejecting the claim was not contrary to or an unreasonable application of federal law, and Claim Four failed in

that Granier failed to establish that “but for” his trial counsel’s actions, the result of the trial would have been any different. ROA. 1134-1165.

The District Court on March 31, 2022, approved the Magistrate’s R&R analysis of the merits of Claims 3 and 4 and adopted that analysis as the Court’s opinion denying a COA. ROA.1178-1179. As to Claims 1 and 2, the Court, over Granier’s objection, approved the Magistrate’s R&R analysis of the merits of said claims and adopted that analysis as the Court’s opinion denying same with prejudice. ROA. 1180-1185. Yet based on its de novo review of the state court and federal proceedings, it found certain facts were inescapable.⁶ ROA. 1179. Based thereon, the District Court granted Granier a COA as to Claims 1 and 2 only. ROA. 1185-1186.

On or about April 26, 2022, Granier filed a Notice of Appeal challenging the judgment of the United States District Court. Therein, he alleged that (1) he was denied his Sixth Amendment right to an impartial jury due to juror bias based on newly discovered evidence and (2) his Fifth Amendment right was denied due to prosecutorial misconduct where the prosecutor withheld that alleged newly discovered evidence. After briefing, the United States Court of Appeals, Fifth Circuit, affirmed the District Court’s judgment denying Granier’s claims of alleged juror bias and prosecutorial misconduct. Justin Granier v. Tim Hooper, 22-30240 (5th Cir. 7/17/23). From that ruling Granier seeks this Honorable Court’s review.

⁵. “(1) Juror Mobley sat on the jury that convicted Petitioner of second degree murder in October 2003; (2) two years earlier, Suspect Sam Mobley, Juror Mobley’s son, was interviewed by Ascension Parish Sheriff’s Deputy Mike Toney as a possible suspect in the murder investigation that ultimately resulted in the Petitioner’s conviction; (3) Juror Mobley did not divulge that her son was interviewed when questioned at voir dire regarding her knowledge of and connection to Petitioner’s cane 1; (4) Deputy Toney’s investigation notes were among the papers in the state’s file, but were never disclosed to Petitioner, and were not divulged by the state after Juror Mobley’s voir dire answers failed to reveal her son’s involvement in Petitioner’s case.” ROA 1179. **It should be noted that petitioner in brief intentionally took poetic license with the exact language of the district court’s statement.**

ARGUMENT

Respondent asserts that petitioner's writ of certiorari must be denied based on both procedural and jurisprudential grounds. Procedurally and pertinent herein, United States Supreme Court Rule 10 requires that absent this Honorable Court's discretion, petitioner's writ should be granted only when:

“(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”

Herein, while petitioner procedurally attempts to frame his issue before this Honorable Court as one arising out of a conflict in decisions within the Court of Appeals, Fifth Circuit, as well as other federal courts of appeal (Supreme Court Rule 10(a)) as to implied bias being clearly established federal law, in reality his entire claim addresses his contention that the Court of Appeals, Fifth Circuit, erred in finding that the mere fact of a mother-son relationship as in the context herein does not mandate a finding of implied juror bias. Respondent asserts that implied bias may only be determined by a finding of specific facts⁷ substantiating same and is not a

⁷ See Brooks v. Dretke, 418 F. 3d 430 (5th Cir. 2003); United States v. Scott, 854 F. 2d 697 (5th Cir. 1988); McCurtis v. Michaels, No. 04-1166, 2006 WL 3240762at *8 (W.D. La. 10/3/2006; and United States v. Wilson, 116 F.3d 1066, 1087 (5th Cir. 1997) generally requiring specific facts supporting a claim of implied bias.

question of federal law. Respondent asserts that the entire State court record alone even more so when supported by the findings of the District Court Magistrate and ruling of the Court of Appeals, Fifth Circuit, mandate a denial of the instant writ based on the following absent this Honorable Court's discretion to consider same.

First, 28 U.S.C. Sec. 2254 (d) of the AEDPA bars any federal court from granting habeas relief with respect to any claim adjudicated on the merits in State court proceedings unless the adjudication of the claim:

- “ (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.

In considering writs of habeas corpus by individuals in custody, a determination of fact made by the State court must be presumed to be correct, the burden being on the petitioner to rebut the correctness of presumption by clear and convincing evidence. 2254 (e)(1).

Herein, the Louisiana Supreme Court in its consideration of respondent's writs of certiorari to review the April 6, 2018, decision of the Court of Appeal, First Circuit, State of Louisiana in 2018-KW-0156 and 2018-KW-0381, had before it the entire State court record which included all of the pertinent transcript hearings, pertinent pleadings and rulings as well as a copy of detective's notes taken while interviewing Sam Mobley. In its decision of those two writs, the supreme court granted respondent's writ, noting in pertinent part:

“Granted. Defendant's complaint regarding the seating of the now-deceased juror fails to allege a claim which, if established, would entitle him to relief. La.C.Cr.P. art. 928. *See also Burton v. Johnson*, 948 F.2d 1150, 1156 (10th Cir. 1991) (“**A party who seeks a new trial because of non-disclosure by a juror during voir dire must show actual bias, either by express admission or proof of specific facts showing a close**

connection to the circumstances at hand that bias must be presumed.”). State v. Granier, 2018-0690 (La. 6/18/18), 246 So. 3d 576. Emphasis added.

WORDS MEAN WHAT THEY SAY. Failing to allege a claim means that there must be some factual basis upon which the claim stands. The supreme court albeit without specifically stating same found that pursuant to established federal law there was no factual basis for petitioner’s claim. Moreover, without stating same, it found that even if established, the merits thereof would not entitle him to the relief sought. The court in citing Burton v. Johnson, supra, further recognized that both actual bias by express admission or proof of specific facts implying bias would be sufficient to grant habeas relief but found none. Respondent asserts that petitioner’s failure to establish either an unreasonable application of established federal law or an unreasonable application of the facts mandate application of the re-litigation bar.

Nevertheless, in the instant matter, the District Court declined to apply the re-litigation bar of the AEDPA, reasoning that no state court had adjudicated petitioner’s claim on the merits while considering the evidence before the District Court after its evidentiary hearing. Respondent asserts that based upon the State court’s proper consideration of established federal law and the facts adduced in State court proceedings, the Magistrate’s conclusions that the “Louisiana Supreme Court’s decision dismissing Petitioner’s claim for failure to state a claim was contrary to clearly established federal law”, was incorrect. Although respondent did not seek review of the Magistrate’s Order and Reasons, it asserts that the Louisiana Supreme Court correctly clearly stated established federal law and found as a matter of fact that petitioner had failed to meet his burden of actual or implied bias. Based thereon, respondent asserts that the District Court erroneously granted the evidentiary hearing wherein evidence was adduced therein and failed to serve as a basis for habeas relief. Respondent asserts that 28 U.S.C. Sec. 2254(d) applies with full force, and the District Court erred in disregarding it. McNair v. Campbell, 416

F.3d 1291, 1300–01 (11th Cir. 2005). Accordingly, respondent asserts that procedurally, this matter is not properly before this Honorable Court pursuant to Sec. 2254 (d)(1, 2).

Jurisprudentially, when a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.”

Harrington v. Richter, 562 U.S. 86, —, 131 S.Ct. 770, 784–85, 178 L.Ed.2d 624, 639 (2011).

The AEDPA does not require a state court to give reasons before its decision can be deemed to have been adjudicated on the merits. *Id.* at 131 S.Ct. at 785. Even where the state court does not cite to federal law, Harrington v. Richter makes clear that “a state court need not cite or even be aware of our cases under § 2254(d).” *Id.*, 131 S.Ct. at 784, 178 L.Ed.2d at 638. As such, habeas relief can only be granted if petitioner was able to meet one of the exceptions of § 2254(d). See Hall v. Superintendent, 834 F. Supp. 2d 848, 853 (N.D. Ind. 2011), rev'd sub nom. Hall v. Zenk, 692 F.3d 793 (7th Cir. 2012). In the instant matter, respondent asserts that petitioner failed to do so.

As noted above, the Louisiana Supreme Court’s granting of respondent’s writ of certiorari based solely on the entire State court record stated categorically that petitioner’s claim even if established would not entitle him to relief. That is a factual finding entitled to great weight. Further, the court acknowledged that to secure habeas relief, petitioner would be required to show either actual bias or proof of facts sufficient to find presumed (i.e. implied) bias. That was in reference to established federal law. Its judgment implicitly found that petitioner had proved neither.

Alternatively, if this Honorable Court determines that the AEDPA’s re-litigation bar is inapplicable herein, permitting the Magistrate’s district court’s hearing’s findings to be

considered, respondent asserts that the record clearly indicates that petitioner's claim is without a scintilla of constitutional, statutory or jurisprudential merit. The Magistrate found as a matter of fact that the testimony of the investigating officers at the federal evidentiary hearing, was credible and a reasonable account of their actions and interaction with Sam Mobley. The facts did not support petitioner's claim of actual or implied bias. Conversely, it found that petitioner's claim of the nature and extent of Sam Mobley's involvement in the murder investigation and any knowledge Juror Mobley might have had thereto was unreliable at best.

Petitioner in brief points to the opinion of the United States Court of Appeals, Fifth Circuit, as grounds for the granting of writs herein. Specifically, he cites to that particular portion of the opinion which states:

“it's impossible for Granier to show that the state court contravened ‘clearly established Federal law, as determined by the Supreme Court of the United States’ if he cannot point to a relevant *holding* from the Supreme Court.”

Respondent asserts that what petitioner fails to discern therefrom is that having failed to cite to a single holding in which the federal courts have found that the mere fact of an estranged mother-son relationship without more supports a finding of implied juror bias is without constitutional, statutory or jurisprudential merit. It is well settled that implied juror bias mandates a fact specific finding. Herein, the facts as derived from both the State and federal hearings support a finding of neither actual nor implied juror bias. As such, respondent asserts that his Honorable Court must dismiss petitioner's writ with prejudice.

CONCLUSION

Respondent asserts for those reasons set forth above, the ruling of the United States Court of Appeals, Fifth Circuit, must be affirmed, denying petitioner's writ of certiorari to this Honorable Court.

AFFIDAVIT OF VERIFICATION AND CERTIFICATE OF SERVICE

STATE OF LOUISIANA

PARISH OF ASCENSION

DONALD D. CANDELL, being first duly sworn, deposed and said that he has prepared and read the foregoing Opposition to Petitioner's Writ of Certiorari to the United States Supreme Court, that the allegations of fact and arguments of law contained therein are true and correct to the best of his knowledge; and that he has the 23rd day of April, 2024, delivered the foregoing Opposition to Petitioner's Writ of Certiorari to the United States Supreme Court by electronic and/or U.S. mail, to the following:

Justin Granier, LA DOC. No. 474480
Louisiana State Penitentiary
Angola, Louisiana



DONALD D. CANDELL
Assistant District Attorney, Respondent

Sworn to and subscribed before me,
This 23 day of April, 2024.

Lindsey Daigle Manda
NOTARY PUBLIC

Lindsey Daigle Manda
Print Name/Bar Roll # 30608
My commission expires at death