No. _____

IN THE

UNITED STATES SUPREME COURT

In re: DANIEL JOE HITTLE, Petitioner,

versus

UNITED STATES OF AMERICA, Respondent.

MOTION FOR LEAVE TO FILE:
PETITION FOR WRIT OF HABEAS CORPUS
And/or PETITION IN EXCESS OF PAGE LIMITATION

TO THE HONORABLE JUSTICE'S OF SAID COURT:

COMES NOW, Daniel Joe Hittle, Petitioner, Pro-se in the above entitled case, and files this MOTION FOR LEAVE TO FILE: PETITION FOR WRIT OF HABEAS CORPUS And/or PETITION IN EXCESS OF PAGE LIMITATION; and in support thereof, would show as follows:

I.

Daniel Joe Hittle, Petitioner, Pro-se, hereinafter 'Hittle', is confined in the Texas Department of Corrections, under sentence of death, with no Avenue of recourse available for the issues he seeks to bring before this Court; and has had no Federal review of the specific issues related to the State court conviction and sentence which he originally sought to raise into Federal review.

II.

After exhausting the available State remedies, Hittle commenced a 2254 action in the U.S.District Court for the Northern District of Texas, Dallas Division, and the said Court appointed counsel to represent Hittle in the Federal Process. Then after allowing counsel

originally appointed to withdraw; The Court appointed counsel who the Court recognized was NOT QUALIFIED (APPENDIX B) without allowing or providing Hittle an opportunity to address the matter.

Counsel subsequently filed a 2254 Petition for Hittle, raising the exact same claims that had been raised in the State process, But without setting forth why the State process was unreliable or incorrect in its fact-finding or conclusions, or offering any evidence to Challenge the States Findings/Conclusions.

The District Court denied relief on the basis of the presumption of correctness of the State's Findings/Conclusions, without ever having had Hittle's 'position and arguements' opposing the State's process indentified or presented to the Court; Thus, the Court reviewed the fact issue, without ever having the 'cause of the issue' identified or properly brought before it for review.

III.

Counsel appointed by the District Court then proceeded to file an Appeal to the U.S. Court of Appeals, Fifth Circuit, for Hittle; and AGAIN asserted the 'same unsuccessful claims' (APPENDIX A) as he presented to the Court below, WITHOUT EXPLAINING WHY THE DISTRICT COURT'S ANALYSIS OR CONCLUSION WAS WRONG, or presenting any cause for the Appeals Court to review the lower Court's decision; Thus, Hittle's appeal was denied without the Court ever having heard Hittle's underlying cause for Appeal; and without ever having had the opportunity to address apointed counsel's insufficient and inadequate presentation of his case to the Court's.

IV.

The Court's below have not afforded Hittle an opportunity to address the lack of presentation of his case, or to 'fairly present'

his claims, through their appointment and use of counsel they have acknowledged was NOT QUALIFIED; However, due to the current state of the Law, Hittle is Barred from challenging counsel's 'ineffective-assistance' or 'incompetency' pursuant to the 'Antiterrorism and Effective Death Penalty Act' ('AEDPA') enacted by the U.S. Congress in 1995; Specifically, §2261(e) BARS complaints related to Habeas Corpus counsel's representation; as well as §2254(i). These changes in the Law effective deprive Hittle of his Constitutional Rights, To Seek Redress (1st Amend.), To Assistance of Counsel (5th and 6th Amend's.), and To Due Process (5th and 14th Amends.); And deny him the opportunity to have his claims 'fairly presented' and 'reviewed' by the Federal Courts.

V.

Because Hittle challenges federal Law as it is applied to the review of his State Court claims, Certiorari is inapporpriate; and Habeas Corpus review is Barred in the lower Courts by the very Law Hittle challenges; Therefore This Court should GRANT him Leave to File his Petition For Habeas Corpus herein.

VI.

Hittle's Petition For Writ of Habeas Corpus is approximately two (2) pages in EXCESS of the Page limit of fourty (40) pages set forth in 'Supremem Court Rule 33.2(b)', Due to his related Motion To Proceed In Forma Pauperis, and This Motion For Leave To File, which are 'required' by Rule to be annexed to his Petition; Therefore This Court should GRANT him Leave to File This Petition in Excess of the page Limitationin order to review the important issue presented, and preserve the Constitutional Rights of a State prisoner.

No. _____

IN THE

UNITED STATES SUPREME COURT

October Term, 2000

In re DANIEL JOE HITTLE,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT
OF HABEAS CORPUS
TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT
And UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

PETITION FOR WRIT OF HABEAS CORPUS

Submitted By:

Daniel Joe Hittle
TDCJ # 000981
Terrell Unit
12002 F.M. 350 South
Livingston, Tx. 77351

PETITIONER PRO-SE

CAPITAL CASE

QUESTIONS PRESENTED

1. WHETHER 28 U.S.C. §2261(e) CONSTITUTIONALLY DENIES HITTLE THE RIGHT TO SEEK EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS AND EQUAL PROTECTION OF LAW, UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION ?

2. WHETHER HITTLE WAS DENIED DUE PROCESS AND THE RIGHT TO PETITION THE GOVERNMENT FOR REDRESS, UNDER THE FIRST, FIFTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, BY THE LOWER COURT'S APPOINTMENT AND USE OF COUNSEL, TO REPRESENT HITTLE IN THIS CAPITAL CASE, WHEN COUNSEL FAILED TO MEET THE REQUIREMENTS OF 21 U.S.C. §-848(q)(6), OR FAIRLY PRESENT HITTLE'S CASE TO THE COURT'S ?

3. WHETHER HITTLE WAS DENIED THE 'PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES', BY THE LOWER COURT'S APPOINTMENT AND USE OF COUNSEL, TO REPRESENT HITTLE IN THIS CAPITAL CASE, UNDER THE UNITED STATES CONSTITUTION ARTICLE IV, SECTION 2, AND THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE United STATES CONSTITUTION, WHEN COUNSEL WHO FAILED TO MEET THE REQUIREMENTS OF 21 U.S.C. §848(q)(6) WAS APPOINTED AND USED BY THE COURT'S ?

PARTIES IN INTEREST

Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Ave.,N.W.
Washington, D.C. 20530-0001

Texas Attorney General
P. O. Box 12548
Capital Station
Austin, Tx. 78711

United States Court of Appeals
For The Fifth Circuit
Office of the Clerk
600 Camp Street
New Orleans, LA. 70130

George W. Bush, Jr.,
Governor of Texas
P. O. Box 12488
Capital Station
Austin, Tx. 78711

United States District Court
Northern District of Texas
Dallas Division
Office of the Clerk
U.S. Federal Courthouse
Dallas, Tx. 75202

Gary L. Johnson
Director, TDCJ-ID
P. O. Box 99
Huntsville, Tx.77340

Texas Court of Criminal Appeals
P. O. Box 12308
Capital Station
Austin, Tx. 78711

Lawrence Brown
Appointed Counsel on
Federal Habeas Review
512 Main Street,
Suite 308
Fort Worth, Tx. 76102

Daniel Joe Hittle
TDCJ #000981
Terrell Unit
12002 F.M. 350 South
Livingston, Tx. 77351
PETITIONER PRO-SE

STATEMENT OF JURISDICTION

This Court's Jurisdiction in Original Proceedings is envoked Pursuant to: 28 U.S.C. §§ 1651, 2241(c)(3), 2242, 2254, 2401; and 42 U.S.C. §1981; The United States Constitution's Article I, § 9; and The United States Constitution's Article III; In conjunction to The United States Constitution's First, Fifth, Sixth, Fourteenth Amendments; and Article IV, Section 2 of The United States Constitution; and such other Authorities as the Court deems appropriate.

I.

This Court's Jurisdiction is envoked to review: 1. The Constitutionality of the 'Antiterrorism and Effective Death Penalty Act' ("AEDPA") effective April 24, 1996, as applied to this case; 2. The United States Court of Appeals for the Fifth Circuit No.00-10074 Judgment entered Aug.03, 2000; 3. The underlying Judgment of the United States District Court for the Northern District of Texas, Dallas Division, USDC No. 3:94-CV-1788-P; and 4. The underlying Order of the United Sttates District Court for the Northern District of Texas, Dallas Division, USDC No. 3:94-CV-1788-P, entered May 26, - 1995, Appointing Counsel.

II.

Notification has been made pursuant to Supreme Court Rules, Rule 29.4(b), on the Solicitor General of the United States.

Pursuant To 28 U.S.C. §1746

I declare (certify, verify, or state) under penalty of perjury that the foregoing is True and Correct, Executed on 9th day of November, 2000

BY:

Daniel J Hittle

Daniel Joe Hittle
Petitioner Pro-se

28 U.S.C. §2242 STATEMENT:
REASONS WHY APPLICATION NOT MADE TO COURT BELOW

The 'issues' presented in this Application are not presented to the Courts Below, because **Jurisdiction to hear the issues in the Courts below is BARRED**, Pursuant to 28 U.S.C. §2261(e), and/or 28 - U.S.C. §2254(i), Thus denying Hittle Due Process and Equal Protection of the Laws, and REQUIRING that he Petition THIS COURT for Redress.

The 'issues' presented in this Application are not presented to the Courts below, because the 'issues' arise by/through the procedures and review of the Courts below, therefore it was not 'ripe' for presentation to those Courts, because it is the process which occurred in the Courts below during their review in this case, in 'question'.

The 'issues' presented in this Application are not presented to the Courts below, because **Jurisdiction to hear the issues in the Courts below is BARRED**, Pursuant to 28 U.S.C. §2264, even though the 'factual predicate' could not have been discovered through the exercise of due diligence, where the 'factual predicate' arose through the process and review of the Courts below.

FACTS CONCERNING DETENTION AND AUTHORITY OF COURTS BELOW

Authority of the Courts below was envoked pursuant to 28 U.S.C.- §2254, after exhaustion of State remedies; and Counsel WAS APPOINTED in the Courts below, pursuant to 21 U.S.C. §848(q)(6).

Hittle is detained pursuant to a State court judgment of conviction and sentence of Death, after Jury Trial, for the Capital murder of Police Officer Gerald Walker, in Dallas, Texas on November 15, 1989, and Sentence was issued August 14, 1990 by Jury.

Hittle is detained pursuant to the foregoing, in the custody of Gary L. Johnson, director of Texas' Prison (TDCJ-ID).

STATEMENT OF THE CASE

Hittle was charged by indictment with the capital murder of peace-officer, Gerald Walker, in Dallas, Texas. At trial Hittle requested his 'appointed counsel' to raise an alibi defense, to point-out that evidence was materially altered, and that 'his gun' did not fire the shot that killed officer Walker; Due to counsel's 'ineffective assistance' these claims were not investigated or raised at trial; and on August 9, 1990, a jury found Hittle guilty. A punishment hearing then ensued, and after the jury affirmatively answered the two issues submitted, the Court sentenced Hittle to death August 14, 1990.

Hittle's subsequent 'Direct-Appeal' to the Texas Court of Criminal Appeals was denied: Hittle v. State,No.71,138 (April 3, 1993) in an unpublished opinion, And the U.S.Supreme Court denied Certiorari January 10, 1994: Hittle v. Texas, 114 S.Ct.700 (1994).

On January 31, 1994 the trial court set Hittle's execution date for "June 2, 1994", and on May 23, 1994 Hittle's appointed State Habeas Counsel, filed Application for State Habeas Corpus; Subsequently, the trial court modified the execution date to August 25, 1994, to permit time to consider the Habeas application. On August 9, 1994 the trial court entered findings/conclusion, recommending denial of the writ; and August 11, 1994 Hittle filed a "Supplemental Application for Writ of Habeas Corpus and to Modify Execution date..." which the trial court denied August 17, 1994.

The Texas Court of Criminal Appeals denied Hittle's Application for State Writ of Habeas Corpus August 17, 1994, Ex Parte Hittle, No.-27,035-01; and denied Hittle's "Stay of Execution" August 18, 1994.

An Application for Stay of Execution and Appointment of Counsel

was subsequently filed in the U.S.District Court for the Northern District of Texas, Dallas Division, whereupon that Court entered a 'stay' and appointed counsel; After 'altercations' with Hittle, Counsel ask the Court to withdraw, and the Court entered an Order May 30, 1995 (filed May 26, 1995) granting counsels motion to withdraw, and appointing "Lawrence Brown" (APPENDIX B), even though he did not meet the 'qualifications of 21 U.S.C. §848(q)(6), because Mr.Brown had previously prepared federal habeas petitions for two other prisoners. (Both subsequently executed because Mr.Brown has failed to 'adequately present' their cases!), and Mr.Brown filed Hittle's Federal Habeas Application December 12, 1996, in USDC No.3:94-CV-1788-P, N.D.Tex.,Hittle v. Scott, presenting nine (9) claims for relief.

December 10, 1999 the U.S. District court denied relief without conducting an evidentiary hearing (and No Hearing had been held in the State courts), adopting the Magistrates Recommendation, in full.

December 15, 1999 Mr.Brown filed Hittle's Application for Certificate of Probable Cause to Appeal, with the District Court. The Court granted Hittle forma pauperis status on appeal, but denied Certificate of Appealability December 30, 1999.

January 14, 2000 Mr.Brown filed Hittle's Application for Certificate of Probable Cause that Appeal is Taken in Good Faith, or Alternatively, Application for a Certificate of Appealability, with the Fifth Circuit, U.S. Court of Appeals, USCA,Fifth Cir.No.00-10074.

August 3, 2000 The Fifth Circuit denied Certificate of Appealability, in a 6-page unpublished opinion (APPENDIX A).

On or about September 1, 2000 Mr.Brown filed a "Petition For Writ of Certiorari", in behalf of Hittle in the U.S.Supreme Court. That 'action' though inappropriate, is pending, Hittle believes.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
AUG 03 2000
CHARLES R. FULBRUGE III
CLERK

No. 00-10074
Civil Action No. 3:94-CV-1788-P

DANIEL JOE HITTLE,

Petitioner,

versus

GARY JOHNSON, Director, Texas Department of Criminal Justice, Institutional Division,

Respondent.

Appeal from the United States District Court for the Northern District of Texas

Before DAVIS, JONES, and BARKSDALE, Circuit Judges.

By EDITH H. JONES, Circuit Judge:*

Appellant Daniel Joe Hittle has applied to this court for a certificate of appealability after being denied section 2254 relief by the federal district court. The contentions he raises are the same as those that he presented unsuccessfully to the district court. Finding no issue that deserves encouragement to proceed further, we deny COA.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Appendix A

Hittle was indicted in November 1989 for the capital murder of Gerald Walker, a Garland, Texas police officer. During the same crime spree, Hittle killed four other individuals. He was found guilty of capital murder and sentenced to death. The Texas Court of Criminal Appeals affirmed the conviction and sentence. Hittle v. State, No. 71,138 (Tex. Crim. App. -- April 7, 1993) (unpublished). Certiorari was denied by the U.S. Supreme Court. Hittle exhausted his state court post-conviction remedies and then applied to the federal district court for section 2254 habeas relief. The district court referred the matter to a magistrate judge whose lengthy and comprehensive report and recommendation denying relief it accepted.

Because the district court denied a certificate of appealability, Hittle has filed a motion for that relief in this court. In order to issue a COA, this court must be satisfied that Hittle has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2)(2000). This showing requires the petitioner to demonstrate that the issues he asserts are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are adequate to deserve encouragement to proceed further. See Slack v. McDaniel, ____ U.S. ____, 120 S.Ct. 1595, 1604 (2000); Barefoot v. Estelle, 463 U.S. 880, 893, 103 S.Ct. 3383, 3394 (1983). The

00A433

IN THE
UNITED STATES SUPREME COURT

DANIEL JOE HITTLE
VERSUS
UNITED STATES OF AMERICA

PETITION FOR STAY OF EXECUTION

RECEIVED
NOV 13 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

November 15, 2000

Mr. Daniel Hittle
TDCJ #000981 Terrell Unit
12002 F.M. 350 South
Livingston, TX 77351

Re: In Re Daniel Joe Hittle
No. 00-7012

Dear Mr. Hittle:

The petition for a writ of habeas corpus in the above entitled case was filed November 14, 2000 and placed on the docket November 14, 2000 as No. 00-7012.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by

Cynthia Rapp
Assistant

Enclosures