

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN MARTIN, SR. — PETITIONER
(Your Name)

VS.

HONORABLE EDITH H. JONES — RESPONDENT(S)
"et al"

ON PETITION FOR A WRIT OF CERTIORARI TO

THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN MARTIN, SR.
(Your Name)

M.W. MICHAEL UNIT 2 2664 FM 2054
(Address)

TENNESSEE COLONY, TEXAS 75886
(City, State, Zip Code)

903-928-2311
(Phone Number)

(13)

QUESTION(S) PRESENTED

1. Where the constitutional issues raised was to the degree that should have been debatable among jurist of reason, and were not lacking any factual basis in the record. And the conviction resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court preceedings, when case law supported a different outcome.

2. Where the Fifth Circuit Court of Appeals did not issue an opinion, where as, this Court reiterated that a prisoner seeking a COA need only demonstrate "a substantial showing of the denial of a constitutional right."

3. Should petitioner have been allowed the evidentiary hearing he requested of the district court in this habeas proceeding for the purpose of attempting to determine whether the affidavit "ONLY" hearing in State court that was provided by Mr. Bruce Smith, attorney for petitioner at trial, gave credence to the hearing being fair and impartial, when petitioner did not get the opportunity to participate in the hearing by affidavit or otherwise. Even though, on two (2) occasions Mr. Smith called petitioner a liar, and petitioner was denied his Sixth Amendment right under the Confrontation Clause to cross-examine Mr. Smith.

4. Where petitioner was denied his Sixth Amendment right to a speedy trial. More than 32-months after arrest.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Honorable Zack Hawthorn, United States Magistrate Judge, for
The Eastern District of Texas; and

Honorable Thad Heartfield, United States District Judge, for
The Eastern District of Texas

(15)

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

The opinion of the Opinion Unavailable 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 _____

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: _____, 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 _____.
10/29/2008
1/12/2011
D & E

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 10/29/2008 1/12/2011.
A copy of that decision appears at Appendix D & E. *With Co. 2*

A timely petition for rehearing was thereafter denied on the following date: September 12, 2007, and a copy of the order denying rehearing appears at Appendix C.

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 _____.
10/29/2008
1/12/2011
D & E

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VI

United States Constitution, Amendment XIV

28 U.S.C. §1254(1)

28 U.S.C. §2254

STATEMENT OF THE CASE

Following a jury trial in the 252nd District Court of Jefferson County, Texas, Petitioner was convicted of aggravated sexual assault of a child. He was sentenced to 30 years of imprisonment. The conviction was affirmed by the Texas Court of Appeals for the Ninth District. *Martin v. State*, 2007WL 1441-315(Tex.App.-Beaumont, 2004). The Texas Court of Criminal Appeals refused a petition for discretionary review. *Martin v. State*, PD-0932-07.

Petitioner subsequently filed a state application for writ of habeas corpus. The Court of Criminal Appeals denied the application without written order on the findings of the trial court without a hearing. *Ex parte Martin*, Appl. No. 51,191-03.

Petitioner filed his first federal writ of habeas corpus, pursuant to 28 U.S.C. §2254 on 11/17/2008. Docket #1. There has been seven docket filings in 2008, with docket #6 being an ORDER TO SHOW CAUSE. Since the "order to show cause" there has been a succession of docket filings with #35 being an ORDER granting #34 MOTION to suspend the §2254 writ proceedings. Dated 8/13/2010. Again, there was a succession of docket filings to docket #45 ORDER granting #45 and #44 MOTIONS to Reopen Case. Dated 07/30/2012. On August 3, 2015, Zack Hawthorn, United States Magistrate Judge, submitted his Report and Recommendations to the United States District Judge. On August 27, 2015, the U.S. District Judge entered an ORDER OVERRULING Petitioner's Objections to the Magistrate Judge's Report and Recommendation, and denied Certificate of Appealability.

REASONS FOR GRANTING THE PETITION

The Petitioner was denied Due Process of Law when the trial-court failed to hold a hearing upon newly discovered information of the jurors being exposed to an extrinsic element that was non-testimonial statements made by a hostile juror during deliberations and counsel failed to request that the court do so. Further, the U.S. District Court's findings of fact relied on Ms. Lyons' admission that she last performed sexual assault exams about 15-years ago, as well as other issues concerning ineffective assistance of counsel in violation of the 6th and 14th Amendments to the U.S. Constitution. (APPENDIX G, GROUND FIVE) (PURSUANT TO RULE 14(i)(vi))

A. THE REQUIRED HEARING WAS NOT HELD WHEN PRESENTED WITH EVIDENCE OF JUROR MISCONDUCT THEREFORE IN VIOLATION OF DUE PROCESS OF LAW

This issue of juror misconduct is factually straightforward. The statements made by a juror (#1 Ms. Lyons) during deliberations were non-testimonial and contrary to the evidence in the record as was "pointed-out" by a male juror. Ms. Lyons' factually unsupported arguments was an extrinsic element that was contrary to the medical expert who [d]id in fact, conduct the sexual assault examination, and her non-testimonial statements tainted the testimony of an expert witness. See U.S. v. Corrado, 227 F.3d 528,535 (6th Cir. 2000) (abuse of discretion to refuse to conduct evidentiary hearing when defendant told by third party that he had spoken with juror who claimed he could get other jurors to agree with him). (APPENDIX G, GROUND TWO)

B. THE PETITIONER WAS DENIED HIS RIGHT TO A SPEEDY TRIAL. HIS TRIAL DID NOT COMMENCE UNTIL AUGUST 16, 2004, MORE THAN 32 MONTHS LATER

It must be expressed that the R&R concedes that the greater portion of the delay was on the part of the court, which resulted in Petitioner losing his business, and Petitioner's defense was impaired because a prospective witness, Willy Wells, died prior to trial. (APPENDIX G, GROUND THREE)

C. THE PETITIONER WAS DENIED DUE PROCESS WHEN BEING CONVICTED UPON INSUFFICIENT EVIDENCE IN VIOLATION OF THE UNITED STATES CONSTITUTION

Contrary to the guilty verdict by the jury, Petitioner would state that there was enough evidence, such as the Aunt's testimony; Willy Wells statement and the expert testimony from the SANE nurse to support the assertion of a jealous, vindictive allegation of sexual assault orchestrated by the mother, out of rage and jealousy with no material fact supported by evidence to show otherwise. (APPENDIX G, GROUND FOUR)

**D. THE PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT FOUR CRITICAL
STAGES OF THE TRIAL PROCEEDINGS**

(a) Failure to obtain an expert witness; (b) Failure to adequately cross-examine the alleged victim; (c) Failure to conduct adequate voir dire; and (d) Failure to investigate and interview a potential witness who counsel was told about and given the name of the potential witness, and that witness' testimony would have been beneficial to defense. However, the potential witness passed away while waiting to be interviewed by defense counsel.

(Due to limited space on this page, the issues raised are discussed in the Petition). (APPENDIX G, GROUND FIVE)

The United States Court of Appeals for the Fifth Circuit has entered a decision in conflict with the decision of the United States Supreme Court in Tennard v. Dretke, 542 U.S. 274, 159 L.Ed 2d 384, 124 S.Ct. 2562 (2004).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Mather,

Date: September 24, 2018