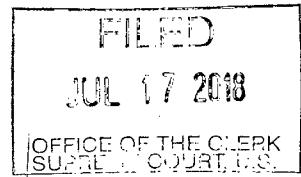


18-3624

IN THE  
SUPREME COURT OF THE UNITED STATES

IN RE: Criminal Action No. 5:09-cr-24



GARY RAY DEBOLT PETITIONER

VS.

UNITED STATES OF AMERICA RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS

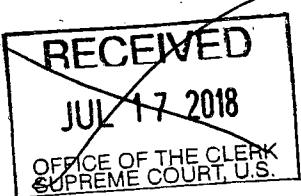
Fourth Circuit of Appeals  
Name of court last ruled on the merits of my case

GARY RAY DEBOLT

REG. NO. 06460-087

FEDERAL CORRECTIONAL COMPLEX

P.O. BOX. 1000 PETERSBURG VA. 23804



**QUESTION(S) PRESENTED**

1. Is it in violation of the fifth Amendment and Brady v. Maryland to convict a person with the use of false and manipulated evidence?
2. Is it in violation of the fifth Amendment and Brady v. Maryland to falsify and manipulate Discovery Evidence before it is given to the defense?
3. Is it in violation of the Sixth Amendment or Ineffective assistance of Counsel if defense counsel fails to investigate evidence that he new would have impeached the governments expert and star witness leaving no credible evidence to present in trial.

## 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:

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## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 2241(a), (b), 2242, and Article III of the United States Constitution.

28 U.S.C. § 2241. The Power to grant writ

(a) Writs of Habeas Corpus may be Granted by the Supreme Court, any justice there of,

(b) The Supreme Court, any Justice there of and any Circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for a hearing and determination to the district court having jurisdiction to entertain it.

28 U.S.C. § 2242. If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reason for not making the application to the district court of the district in which the applicant is held.

Article III, In all cases in which a state shall be the party, the Supreme Court shall have original jurisdiction. In all the other cases ... the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact,

## CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves the Fifth and the Sixth amendment of the Constitution of the United States.

The Fifth Amendment provides.

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

The Sixth Amendment Provides.

The right to effective assistance of counsel for his defense before, during and after his trial.

This case also involves Title 28 U.S.C. §§ 2255, 2244, and 2242, 2241.

Under 2255 (a), A prisoner in custody under a sentence of a court established by act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or law of the United States, or is otherwise subject to collateral attack, may move the court to impose the sentence to vacate, set aside, or correct the sentence.

Under 2255 (h). A second or successive motion must be certified as provided in section 2244 [28 U.S.C. § 2244] by a panel of the appropriate court of appeals to contain-

1. newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the movant guilty of the offense.

Under 2241 (a). Writs of habeas corpus may be granted by the

Supreme Court, any justice thereof,

2241 (b) The Supreme Court, any justice thereof ... may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

Under 2242 If addressed to the Supreme Court, a justice thereof or a circuit judge it may state the reason for notmaking application to the district court of the district in which the applicant is held.

## STATEMENT OF CASE

The Petitioner Gary R Debolt, submitted a motion pursuant 28 U.S.C. § 2255 in the Northern District Court of West Virginia. on the 13th of July 2012. This motion was denied by the court on the 5th of November 2013, unconstitutionaly by failing to address all cliams presented and failing to adequately review all the evidence presented.

District Court Judges must resolve all claims for relief, raised in a habeas corpus proceedings regardless of whether relief is granted or denied, Clisby V Jones 960 F.2d 925, 936 (11th circuit 1992).

On the 29th of May 2014, the petitioner filed for a appeal in the Fourth Circuit of Appeals, the Fourth Circuit affirmed the confictionwithout a clarifying opinion. On the 17th of November 2014 the petitonner filed for a petition for Certiorari in the Supreme Court, this petition was denied with out a opinion or reason.

The Petitioner has relieses that it is easier for the courts to deny a motion/ petition without a reason than try to understand the evidence and rule on it's actual merits.

In April of 2016 the petitonner was introduced to a computer expert, that took the time to review my evidence and all the data that I had presented to the courts. This expert discovered numerous errors made by the prosecution and there expert, that could not have been done by a simple program, and could not have been done by mistake. Thes errors violated Federal Rules of criminal Procedures 16; rules of discovery, the Fifth Amendment of the Constitution, the right to due process and presented a miscarriage

of justice

This expert also discovered that not only did the complete discovery contain thousands of false time stamps, it was not a mirror image like the prosecutions expert testified of being. A mirror image is like a copy but it is an exact duplicate of the media being copied. (see exhibit 11).

After reviewing the original coversheets and the coversheets used in trial, the expert discovered that none of the coversheets contained the correct time stamps and that if the correct time stamps would have been applied the petitioner would have had an alibi defense to use in trial.

After the expert reviewed all the errors made by the prosecutions expert he realized that the theory used by the prosecution in his reply to the petitioners first 2255 motion, could not have been true because of three reasons.

1. The original coversheets had two files that did not exist on the petitioners computer so were did the time stamps come from.

2. The error was caused by a time zone discrepancy between the prosecutions experts computer and the petitioners computer but yet the time difference between the original coversheets and the coversheets used in trial were not off by the same time.

3. Some of the media that was found came from a compact disk no matter where your time zone was these time stamps would not change, these time stamps are embedded into the file and do not change.

The petitioner had not presented all of this evidence in his

first 2255 because it was unknown to him and without a computer expert to review my data it would never have been discovered.

The petitioner is presenting these claims for the first time and is not classifying this petition as a second or successive petition.

Prior to the enactment of AEDPA, the caselaw construing former section 2244(b) recognized at least two situations in which a petition that was numerically "second or successive" could not be subjected to the restricted rules governing so-called "successive petitions". In the first situation, the later petition could not be viewed as "second or successive" because it attacked a criminal judgment different from the judgment assailed in the earlier petition. In the second situation, the later petition - although attacking the same judgment as the earlier petition - was not properly classifiable as "second or successive" because the earlier petition did not produce, or for some reason could not have possibly produced a judgment on the merits of the claim in question. In construing AEDPA's successive petition provision the Supreme Court has held that AEDPA preserves the preexisting law's recognition that these two situations are not subject to statutory and common law restrictions upon successive petitions.

These claims presented in this petition were not and could not have been ruled on in the first 2255 because the evidence was not discovered until after this motion was exhausted.

## GROUNDS FOR RELIEF

### **1. Actual Innocence.**

**Supporting Facts.** Due to the fact, that the governments expert witness, produced and presented false evidence to the defense as discovery, and presented false evidence and perjured testimony in the defendants trial, presents reasons to believe the defendant is actually innocent. (See brief in support of this claim).

### **2. Prosecutorial Misconduct.**

**Supporting Facts.** The prosecution presented false evidence to the defense as part of there discovery, and the evidence presented at trial contained false and misleading data, in the form of false time stamps and coversheets. The prosecution is in violation of the Fifth Amendment, Rules of Criminal Procedure, 16, and Brady V. Maryland, (See Brief in Support of)

### **3. Ineffective Assistance of Counsel.**

**Supporting Facts.** Counsel failed to investigate the corrected time stamps, and coversheets after finding out the defendants alibi defense was destroyed due to the first time stamps and coversheets were incorrect. He would have discovered that all the new time stamps and coversheets used in trial were false. (See Brief in support of)

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Facts and evidence that should be reviewed  
to understand the claims

The Movant is presenting in this motion documents that was received from the prosecution a year after trial, documents that was received from defense counsel before trial and a statement made by the defense counsel after trial.

In the last eight years the movant has presented these documents to prove his trial was a complete Miscarriage of Justice and that the movants conviction was in violation of his constitutional rights. These violations were not mere irregularities but were major constitutional violations which cast a significant doubt on the fairness of the movants trial and more importantly, called into question the reliability of the verdict.

Exhibits 1 thru 3.

These exhibits are correspondence between the movants trial counsel and the prosecution, after trial, for when the trial counsel was trying to receive a copies of the actual exhibits that were used in trial. This was because the defense never received any copies of the exhibits that were used in trial until a year later when the movant ask his counsel to retrieve a copy of all the exhibits used in trial.

These exhibits will show that the defense only received the incorrect exhibits. And it only took a year for the defense to receive a copy from the prosecution. It will also show that the defense counsel proceeded to trial with out a true copy of the exhibits that were used in trial even thou these exhibits was

a major part of the prosecutions case.

#### Exhibits 4 and 5

Exhibit four was a letter from the defense counsel to the movant stating that the evidence presented in the movants motion for a new trial ( which he refused to file) would have impeached the expert witness if he had used it. And exhibit five was a responce from this court stating that the evidence presented in the movants motion for a new trial may have been impeaching evidence but was not strong enough for a new trial. It is strange how the movants counsel and this court could see this evidence in the movants motion for a new trial but, some how it all disappered in the movants first 2255 motion.

#### Exhibit 6

This exhibit will show that the movant had a alibi defense only weeks before trial and when the prosecutions expert changed the time stamps to flase time stamps to benifit the prosecution, it destroyed the defenses alibi.

#### Exhibit 7

These exhibits are copies of some of the exhibits used in trial by the prosecution that had false time stamps and some that was used to present a theory that the files on the compac disks came from the movants computer. These were only a theory but, the expert presented them to the jury as a fact.

Exhibit 8

These exhibits were the original exhibits that was presented to the defense as part of the discovery but, were replaced by the so called corrected exhibits two days before trial. The defense never received a copy of the so-called corrected exhibits .

Exhibit 9

This exhibit will show the what the original time stamps were what they were changed to, and to what they should have been. It will show that some of the times were not consistance with the others and that some time stamps were changed and should not have been.

Exhibit 10

This exhibit is a time line chart that will show the time difference between eastern standard time (were we are at now ) and green wich mean time ( what the original time stamps were) and as this court can see the time difference of the two time zones were five hours behind and not three hours ahead of the original time stamps. The true time stamps would have been eight hours off of most of the exhibits which would have aloud the movant to present his alibi defense again.

These exhibits alone show that something was very wrong with the prosecutions experts forensic examination. The prosecution stated in there reply to the movants first 2255 motion that it did not changed the incriminating nature of the evidence, but if this was true than why did they presnt false time stamps twice?

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF HABEAS CORPUS

Comes now Gary ray Debolt Petitioner, Pro se in Forma  
Pauperis, in the above style action, requesting for this Court  
to Grant this petition to Vacate, Set Aside, or Correct Sentence  
Pursuant to 28 U.S.C. §§ 2255 with brief in support.

This Court has Jurisdiction over this matter pursuant 28 U.S.C. §§ 2241(a).

### Course of Proceedings

The petitioner was found guilty on February 5th, 2010, on two counts of possession of child pornography in violation of title 18 U.S.C. § 2252A(a)(b)(B) and five counts of title 18 U.S.C. 2252A (a)(2) receipt of child pornography.

On May 12th 2011 I filed a motion for a new trial this motion was denied on February 11th 2011.

This motion was denied by the courts for being a hybrid motion and not on it's merits.

I then filed a appeal in the Fourth Circuit of Appeals this appeal was denied and the case was affirmed.

On July 13th 2014 I filed my first 2255 motion in the Northern district of West Virginia, this motion was denied without the court carefully considering the evidence, some claims were not even addressed.

On May 29th 2014 I filed a appeal in the Fourth Circuit of Appeals on my 2255 decision, and it to was denied without a reason or opinion.

On November 17th 2014 I filed a petition for Certiorari in the United States Supreme Court. This Certiorari was denied without a reason or opinion.

On october 26th 2016 I filed a second 2255 motion pursuant 28 U.S.C. §2244 in the Fourth Circuit of Appeals and it too was denied without reason or opinion.

I have proceeded in following all the legal rules and regulations to file my claims in hopes that they would be carefully reviewed by the courts and the courts would provide a reason or a explanation as to why my claims have been granted or denied but i have realized that if the courts do not respond with a reason or clarification, or a opinion as to why the motion or petition has been denied than in no way can a person present a rgument to a higher court.

This is why I have presented this petition to the United States Supreme Court and invoked the right to present this

petition pursuant 28 U.S.C. § 2241(a) in hopes that this court will carefully review the evidence and rule accordingly by the law that this court has swore to uphold, and grant this petition and give me the right to present my case in a true and fair trial.

I have discovered time after time like dominoes one after the other errors made by the prosecution and my counsel, most of these errors were discovered by computer experts that have took the time to review my evidence.

I am now presenting this petition to vacate, Set Aside, or Correct Sentence, pursuant 28 U.S.C. § 2255 on behalf of new information and new evidence that I did not have in my possession before my first 2255.

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Statement of Facts

I have argued my innocence in the district court numerous times for over eight years. I have presented evidence that has escalated over the years, that clearly proved that my trial was a complete Miscarriage of Justice and in violation of my Fifth and Sixth Amendment but, yet I am still incarcerated for a crime I did not commit. The district court and the Appellant court has errored every time in reviewing and understanding the facts and evidence presented to them by my motions and appeals.

I am now presenting to the Supreme Court Government documents that were used in my trial by the prosecution and exhibits that was used in my trial by the prosecution that was also given to the defense as discovery and evidence that has been discovered by my own computer experts here at the facility. This court must take into concideration that this facility is housed with mostly inmates that have been charged with computer crimes and some have college degrees, in computer science, computer programing and computer repair.

I will present this evidence, that if reviewed by a computer savvy person, it will prove that the prosecution presented false evidence in the form of false time stamps in my trial and presented the defense with false and misleading discovery. This discovery along with coversheets used in my trial was used by the defense to prepare for trial. These coversheets presented evidence of a alibi defense that I could have used in my trial. (See exhibit 6 )

The prosecution was notified of this alibi defense weeks before trial, but some how (after a year of preparing with this

evidence for trial) the prosecutions expert discovered that all the time stamps on all the coversheets were incorrect because of a discrepancy in the time zones used by the experts computer and the defense computer. (See exhibit 2, and 6) It was very ironic that this mistake was discovered only two days before trial and after the defense presented the prosecution with the alibi defense.

Needless to say this error caused my alibi defense to be no good and benifited the prosecutions case because it presented a time now that put me at home.

Now what really seemed strange was that after the prosecutions expert caused this error and destroyed the only defense I really had my counsel never even questioned the new time stamps and by him takeing the word of the prosecutions expert it cost me my complete life as I know it.

I am presenting this petition in hopes that this court will carefully review the evidence with a open mind and not only see the prosecutions misconduct-but, also see how easy it is for this type of evidence to be manipulated to fit anyones case, because in this type of case only the prosecution and the expert has access to the original evience.

Citing cases; see Gomez v. U.S. Dist. Ct. for N. Dist of Cal. 503 U.S. 653, 654, 112 S.Ct. 1652, 118 L.Ed. 2d 293 (1992) (percuriam); Fay v. Noia, 372 U.S. 391, 438, 83 S.Ct. 822, 9 L.Ed. 2d 837 (1963). For this reason, the court has long instructed that statutes and rules governing habeas petitions must be applied with an eye toward "The ends of justice." Sanders v. United States, 373 U.S. 1, 12, 83 S.Ct. 1068, 10 L.Ed. 2d 148 (1963) holding that a district judge may decline to entertain a successive 2255 "only if he is satisfied that the ends of justice will not be served by inquiring into the merits" (internal quotation marks omitted).

As the court stated in Engle v. Isaac in appropriate cases "the principles of comity and finality that underlie federal habeas corpus review" must yield to the imperative of correcting a fundamentally unjust incarceration. 456 U.S. 107, 135, 102 S.Ct. 1558, 71 L.Ed. 2d 783 (1982)

To satisfy the Schulp standard, a claim of actual innocence must be both "credible" and "compelling". See House v. Bell, 547 U.S. 521, 538 S.Ct. 2064, 165 L.Ed. 2d 1 (2006). For the claim to be "credible", it must be supported by "new reliable evidence" whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was not presented at trial. Schulp, 513 U.S. at 324; See also House, 547 U.S. at 537. For the claim to be compelling, "the petitioner must demonstrate that "more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt." House, 547 U.S. 538.

Actual Innocence

Following the Supreme Courts decision in Sshlup V. Delo, 513, us 298, 115 S.Ct. 851, 130 L.Ed. 2nd 808 (1995) "the Courts have held that a habeas petition"" may use his claim of actual innocence as a gateway or means of excussing any procedure defaults, that enables him to obtain review of his Constitutional challanges to his conviction," Quoting Rivas V. Fisher 689 F.3d 514 2012 us App Lexis 13974. 2nd cir of Appeals.

The Actual Innocence" exception, also know as the " fundamental Miscarriage of Justice" exception is reserved for extraordinary cases in which "a constitutional violation has probably resulted in a conviction of one who is actually innocent. Murry V. Carrier, 477 us 478, 495, 91 L.Ed. 2d 397, 106 S.Ct. 2639 (1986). When a fundamental miscarriage of justice has occured a federal habeas court may grant the writ even in the absence of showing of cause for the procedural default. Id at 496.

My calim of actual innocence is presented with new information and new evidence that was not in my possession during my first 2255. This evidence is in the form of a staement made by my trial counsel in a responce to a disciplanary dispute between me and him and a statement made by a computer expert here at the facility.

This statement is evidence that proves that the changing of the time stamps by the prosecution, only days before trial did infact have a major impact on my defense at trial. It also proves that my defense counsel took no steps to review the prosecutions experts theory as to why the times stamps were changed (See Exh. 6)

My actual defense before trial was that I was not at home

when some of the files were either downloaded, moved or last accessed. This alone would have presented evidence to the jury that there had to have been a third party involved and this would have given the jury a reasonable doubt.

The prosecution's complete case was based on circumstantial evidence and unproven theorys provided by the prosecution's own expert witness. For instance he stated in trial that I made a stament during the interview that I like young females under the age of forteen and was sexually interested in them, he also stated that I used search terms that was associated with child pornography but, this was not true but, it was my word agaisnt the experts.

By presenting to the jury that this so called expert witness fabricated all the time stamps used in the coversheets to show that I was at home when the downloads took place and falsefied about reviewing two of the files from my computer that did not exist would have discredited his testimony and any evidence that he provided. The Jury would have found me not guilty on all of the remaining evidence.

No matter how-much circumstantial evidence the prosecution presented in trial against me with out the testimony and evidence from the lead/expert witness he had no case. And if I could have presented the true time stamps I could have proved that I was not at home when some of the file were either downloaded, moved or last accessed and would been found not guilty by the jury.

During my investigation in to the new time stamps I discovered that the theory given to the defense only two days before trial could not have been possible. The evidence proved that not only was the original coversheets incorrect but the new coversheets

were also incorrect and could not have been caused by a computer program the evidence will prove that ther was three reasons as to why this theory was false.

First the forensic computer was set for Green Wich Mean time, and my computer was to have been set for eastern standard time, which was only a guess because the expert did not check the time zone setting before he removed the hard dive from the computers, and if this was true than all the timestamps would have been off by five hours behind the original time stamps and not three hours ahead of the original time stamps like the new coversheets showed.

Second if this theory was ture and the time stamps were off because of the time zone differants than all the time stamps would have been off by the same amount of time but the record and evidence showed they were not. (see exhibit 9)

And third, the prosecutions expert not only changed the time of the time stamps on the files from the computer he also changed the time on the time stamps from the files on the compact disks.

The time stamps on the compact disks would not have changed even if there was a discrepancy in the time zones because the time stamps on the compact disks are embedded into the file like the name of the file it is no longer meta data.

If this evidence would have been presented to the jury during my trial there is no way a reasonable juror would have found me guilty beyond a reasonable doubt.

The Schulp Gateway Standard

As the Supreme Court has repeatedly recognized "habeas corpus is at it's core, and equitable remedy." Schulp, 513 US at 319

I have clearly satisfied the Schulp standard with the evidence presented in this petition. I have presented the Governments own documents the clearly prove that the original time stamps were false when given to the defense, the time stamps presented to the jury in my trial was false, all the media given to the defense as discovery was false. The theory given to the defense as to why the original time stamps were off was also false. With the statement given by my trial counsel, that the original evidence was proof of my alibi and was very important to my defense but was destroyed by the prosecutions misconduct when they falsified the new time stamps. This alone satisfied credible.

I can satisfy "compelling" by asking one simple question, if the the jury was persented with the evidence that the expert used by the prosecution falsified all the time stamps and had given the defense false and misleading discovery to prepare for trial and that I had a alibi defence before the time stamps were changed, and that he falsified, that he reviewed two files that did not exist in my trial do you think they would have believed any thing else he said or presented? I think the answer to this question would have been no and, if the jury did not believe any thing else this witness had to offer the prosecution had not case against me. This alone would have satisfied "compelling" by showing it would have been more than likely in light of the new evidence, no reasonable juror would have found me guilty beyond a reasonable doubt. House, 547 U.S. at 538.

The facts and evidence that has been presented in this petition proves that it was no mistake the time stamps were incorrect in all the evidence. The prosecutions expert, being a West Virginia State Police Officer, the Investigating officer that has investigated this typ of crime for years, and being qualified by the court to be a expert in computers, than there is no way this error could have happend TWICE in the same case.

By this court reviewing the evidence presented for this claim it would be impossible for this court not see that there was a complete miscarriage of justice and it must be remedy by granting my claim of Actual Innocence.

### Prosecutorial Misconduct

I have presented a similar claim in my first 2255 motion but, the court errored in carfully reviewing all the evidence and the facts. I will now present this claim of prosecutorial misconduct with new evidence and a better understanding of the facts.

The prosecution violated Brady v. Maryland multible times thruought my case. It has been very disturbing to see the courts have just overlooke the evidence like it was ok for the prosecution to falsify time stamps and manipulate the discovery given to the defense and then change it at will to fit there case. I have asked myself numerous times if this was a case of murder and the time stamp of the victims death was changed before trial to destroy the defendants alibi, then after trial it was discovered that that same time stamps that was used to convict him was false would the courts give him another chance? well this question was answered in Rivas v. Fischer 687 F.3d. u.s., App Lexis 13974 (2nd Cir, 2012). Just like in my case Rivas was convicted with the use of a false time stamp falsifie by the prosecutions expert to fit there case. The time stamp showed the time of death and in a murder case. The original time stamp was presented to the defense, which was used by the defense to prepare a alibi defence just like in my case. After trial it was discovered by a expert that the original time stamp was changed and that time stamp was false. Rivas filed a habeas corpus in the district court which was denied for being untimely, it was then later revereased by the appeals court and remanded back for the underlying claims.

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As this court can see I have presented the same typ of evidence plus more to the lowere courts, the only differants in Rivas's case and mine the courts saw a innocent man charged for a crime he didnt commit and in mine they see a man charged with a sex offence against children, Because if they actually saw the evidence and what it proved they would see what they saw in Revas's case a innocent man being covicted with false time stamps.

I must admit that some of the evidence presented by the p.c. prosecutions expert was overwellming but remember most of it was misleading and false. Take all the evidence presented by this expert and remove it from the case, well you dont have a case.

The Supreme Court established the satndard for determining whether the prosecution's failure to dosclose evience violated the petitioners rights. The Supreme Court also held that the suppression by the prosecution of evidence favoable to the accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of good faith or bad faith of the of the prosecution. See Brady V Maryland 373 U.S. 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963); at 87.

The Court subsquently made it clear that the duty to disclose such evidence applies even if there has been no request by the accused, United States V. Agurs, 427 U.S. 97, 107. 96 S.Ct. 2392 49 L.Ed. 2d 342 (1976). And the duty encompasses impeachment evidence as well as exculpatory evidence, United States V Bagley 473, U.S. 667, 676, 105.S.Ct. 3375, 87 L.Ed. 2d 481 (1985).

The facts and evidence presented in petition will prove that the prosecutions expert did intentialy changed the time stamps on the evidence to fit the prosecutions case. That showed that I could have been home when the files were either moved or downloaded or last accessed. The evidence shows that the time stamps were falsefied before trial and given to the defense to prepare for trial and it will also show that only two days before trial these time stamps were changed to another false time stamp.

In Rivas v. fischer, Rivas's claim was based on new evidence that was not presented to the jury that dramatically undermines the central forensic evidence linking him to the crime he was convicted of. Just like in my claims, the forensic expert was falsefying the time stamps to show Rivas did not anylonger have a alibi when the crime was comitted. "this time change did not prove that Rivas was innocent but because Rivas made such a showing that there was a doubt for the juryto consider, the court remanded his case back to the district court to consider his underlying claims.

In my case the prosecution changed the time stamp before the defense was ever permitted to review the evidence. The defense did a hire a so called computer expert to review the computer data but at that that time it was not known that all the time stamps were completely incorrect. So the defense had no way to prepare a true and accurate defense and when they did it was changed two days before trial because of the prosecution's experts error. A stated before there is no way the prosecutions expert could have made this error twice and the facts and evidence show

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that he did.

One question must be answered when the prosecutions expert realized that he had made a mistake on the time stamps why did he replace them with incorrect time stamps for a second time if it wasnt to benifit the prosecution.

I have presented to this court a time scale of the time zones which prove that eastern standard time is five hours behind Greenwich Mean time and not three hours ahead like on most of the chnged time stamps..(see exhibit 9).

In the courts original opinion and order too my first 2255 motion the Judge stated that " the Government in response stated that the time stamps had been differant because of the discrepancy in the system used by the investigating officer, this discrepancy was revieled to the defense counsel and the petitioner and was found not to affect the actual contant of the evidence and the incriminating nature". ON the contrary to this statement and the courts belief, the petitioner himself was not notified untill the first day of trial when he discovered it by himself. And as far as the time stamps it was a very important part of the evidence for the prosecution and the defense at trial. Because if the prosecution could not prove that I was at home when all the files were Moved, Downloaded, or Last accessed They could not prove it was me and only me at the computer.

And as far as the reason given to the court as to why the time stamps were off well the evidence proves this was false.

I realize that to the courts it is only a time stamp but, if the proisecution would go to so much trouble by presneting

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false time stamps in the discovery and not telling the defense when it was discovered and then replaceing false time stamps on the coversheets used in trial to more false time stamps, than what else would we find was false in my trial. This will never be known by me or the courts but what we do know is that there was false evidence presented in my trial. And Like a Supreme Court Judge once said if the lake has been poisoned it is better to drain the complete lake than risk harm to some one else with the same water.

### Ineffective Assistance of Counsel

This claim is very simple, the prosecution presented to the defense with some discovery (coversheets) a few weeks before trial. These coversheets was used by the defense to prepare for trial. These coversheets presented very importan time stamps, of when the files were created, modified, and some of them when they moved to another location. Two days before trial, which was on a weekend, the prosecutions expert discovered that there was a big mistake made in the time stamps, so they had to changed.

The court must take into consideration that these time stamps were the same time stamps that had been reviewed for over a year by this expert and the proseicution but it was only discovered after the defense presented the prosecution with a alibi defense and only two days before trial and it was a weekend.

The Defense counsel stated in a statement, (see exhibit 6) that the defense did have a alibi defense before trial and before the time stamps were changed. This was all distroyed by the change of the times:stamps, For this simple reason the defense counsel should have investigated the new time stamps with the his computer expert just to make sure the prosecutions expert did not make the same mistake twice considering this was the only defense I had.

If the defence would have taken the time to investigate and review the new time stamps he would have discovered numerous errors were made that effected my trial. These errors could have impeached the prosecution's expert and all the evidence that would have presented.

The following is some of the errors the defense Counsel would have discovered.

1. He would have discovered that all of the time stamps on each of the files used in my trial was incorrect.
2. All the discovery time stamps were incorrect, which also included all the time stamps on the history files.
3. Some of the time stamps were changed when they should not have been, and some were not changed when they should have been.
4. The time change between the original time stamps and the new time stamps were inconsistant and should have been the same.
5. The prosecutions misconduct could have been revieled to the jury and I would have been found not guilty.

One other thing he would have discovered but, was brought to his attention after trial, that some of the files use in trial did not exist in my computer. When I presented this to him why did he just let it go even after he stated if he would have used it in trial he could have impeached the expert witness. See exhibit 4).

Counsel could have prevented me from being convicted with the use of false evidence but, instead he failed by presenting a unexcusable defense.

REASON FOR PRESENTING THIS CASE  
TO THE SUPREME COURT

Pursuant 28 U.S.C. § 2242, if addressed to the supreme Court, a justice thereof or a circuit judge it shall state the reason for not makeing application to the district court of the district in which the applicant is held.

The Applicant is being held in a federal facility that is out side of his original district and the applicant is presenting a Writ of habeas corpus in which the district court would consider as a second or successive 2255, and would forward it to the 4th circuit of appeals, which would only deny it on bias a prejudicial reasons.

The applicant has presented these claims to the 4th circuit of appeals and it has been denied without a reason or clarification by law as to why it has been denied. The Applicant filed a petition for a reason or clarification as to why it was denied by law.

This petition was denied stateing that no reason has to be given.

"To deny the right to file a petition for writ of habeas corpus is an exercise of power so great in its impact on a petitioner that an appellant court must be able to ascertain the grounds for denial in order to fulfill its responsibility of review. It is therefore imperative that denial either of leave to file the petition, or denial of the writ itself, be accompanied by the expression of the reasons for the denial either by informal memorandum, by recitals in an order, or by findings" Tatem v. United States, 275 F. 2d 894: 107 U.S. App. D.C. 230, (1960).

(Citations admitted).

The Appeals court didnot supply a statement of reason as to rather the petition was frivolous or malicious and by denying a petition for <sup>no</sup> reason only means, the reason was for the denial, was not by law and by bias or prejudicial reasons.

The applicant has presented all his motions, petitions, and aplications in good faith and by the law, but they have all been denied for unknown or frivolous reasons. The Applicant has presented numerous reasons by law as to why he should have his case reviewed by a court that understands the evidence and the errors caused by the government during the applicants case.

The applicant has no other choice but to present this writ to the court of last resort in hopes that it will be reviewed by the evidence presented and not by any bias or prejudicial opinions

The Applicant has presented evidence that clearly proves his constitutional rights to a fair trial has been violated and this must be remedy or at least a reason why the courts allow this violation to stand without review...

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### Conclusion

I have followed all the rules and regulations that is required by the law to present this petition to this Court. I am praying that this court will respectfully review all the evidence in a unbias manor and ruled on according to the law.

I can not prove on paper that I am completely innocent but I can prove that my trial was a complete Miscarriage of Justice and if it was not for the prosecutions misconduct and the defense counsels ineffective assistance I would have been found not guilty by a reasonable jury.

The evidence presented in this petition has clearly shown that there was numerous errors found by my experts, and that most of these errors would have had a very big impact on my defense if they would have been presented to the jury.

I now pray that this Court will respectfully review my evidence and relize that this case is one of many more to come that includes computer Data. I aslo pray that this Court will see the truth and give me the chance to prove my innocence by granting this petition and present me with a evidentionary hearing remand it back for a new trial or vacate my conviction and release me.

Date 7/15/18

Respectfully Submitted

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