

No.		
<p style="text-align: center;"><b>IN THE</b></p> <p style="text-align: center;"><b>SUPREME COURT OF THE UNITED STATES</b></p>		
	<b>DeANDRE M. ANDERSON</b>	— <b>PETITIONER</b>
	<b>SHARMAN CAMPBELL.</b>	— <b>RESPONDENT(S)</b>
<b>ON PETITION FOR A WRIT OF CERTIORARI TO</b>		
<b>United States Court of Appeals for the Sixth Circuit</b>		
<b>PETITION FOR WRIT OF CERTIORARI</b>		
<b>DeAndre M. Anderson # 734230</b>		
<i>In Pro Se</i>		
<b>GUS HARRISON CORRECTIONAL FACILITY</b>		
<b>2727 E. Beecher Rd.</b>		
<b>Adrian, MI. 49221</b>		
(City, State, Zip Code)		

## **QUESTION(S) PRESENTED**

- 1. Does the cases stated apply to this case?**
- 2. Does the statute of limitation yield to the imperative of correcting a fundamentally unjust incarceration?**
- 3. Is having new evidence the only possibility of granting a writ or post-conviction procedure?**
- 4. Is constitutional violations enough to reverse a conviction?**
- 5. Was it improper for the prosecution to refer to harassment and stalking allegation without presenting proof?**
- 6. Can multiple trial errors result in a wrongful conviction?**
- 7. Is there probable cause for the officer to conduct a warrantless search or warrantless arrest?**
- 8. Did the officer violate Due Process and 4<sup>th</sup> Amendment Right to being safe in one's place, person and other effects?**
- 9. Is assault or rape an act of the victim or the offender?**
- 10. Is testimonial evidence without physical evidence enough for a conviction after having various errors before and during the trial process?**
- 11. Was Miranda warnings required when the officer contacted the defendant?**
- 12. Could coercion and/or duress exist from the officer's action?**

LIST OF PARTIES	
<input checked="" type="checkbox"/>	All parties appear in the caption of the case on the cover page.
<input type="checkbox"/>	All parties <b>do not</b> 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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### **SECONDARY AUTHORITIES:**

**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**

**Federal Courts.**

The opinion of the United States Court of Appeals for The Sixth Circuit appears at Appendix [A] to the petition and is Unpublished

The opinion of the United States District Court appears at Appendix [B] to the petition and is Unpublished

**State Courts**

The opinion of The Michigan Supreme Court appears at Appendix [C] to the petition and is Unpublished.

The opinion of The Michigan Court of Appeals appears at Appendix [D] to the petition and is Unpublished.

## **JURISDICTION**

Circuit denying, a Petition for Writ of Habeas Corpus. And a Certificate of Appealability on. July 26, 2018. Petitioner's filing this Petition for Writ of Certiorari pursuant to 28 U.S.C.A. § 1254(1) and 28 U.S.C.A. § 1257(a), as a state prisoner convicted in the 26<sup>th</sup> Circuit Court for Alpena County in the State of Michigan, after a bench trial on June 23, 2009. Petitioner was found guilty of C.S.C 1<sup>st</sup> Degree. MCL, 750.520b(1)(c) and Third-Degree C.S.C. MCL 750.520d(1)(b) and also 1<sup>st</sup> Degree Home Invasion MCL 750.110a (2). Petitioner was sentenced on July 15, 2009 to concurrent sentences of Eighty-Five months to Fifty years and Fifty months to Twenty years in prison, this Petition for Writ of Certiorari is being filed within the 90-day period of the final decision from the United States Court of Appeals for the Sixth

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Due process under the U.S. Const. VI and the XIV Amendment, requires that a defendant have the effective assistance of counsel at trial and on direct appeal.

Petitioners rights to be safe from warrantless searches was violated under the U.S. 4<sup>th</sup> Amendment.

## STATEMENT OF THE CASE

Petitioner DeAndre M. Anderson, # 734230 was convicted in the 26<sup>th</sup> Circuit Court for Alpena County in the State of Michigan, after a bench trial on June 23, 2009. Petitioner was found guilty of C.S.C 1<sup>st</sup> Degree. MCL, 750.520b(1)(c) and Third-Degree C.S.C. MCL 750.520d(1)(b) and also 1<sup>st</sup> Degree Home Invasion MCL 750.110a (2). Petitioner was sentenced on July 15, 2009 to concurrent sentences of Eighty-Five months to Fifty years and Fifty months to Twenty years in prison, at the bench trial the prosecutor refers to stalking and harassment of the alleged victim without proof's being presented in the preliminary examination or at the trial stages, counsel for the defense also not investigating or objecting to stalking and harassment allegation in the preliminary examination, or appeal process, neither defense counsel or the prosecution reported the actions of the Alpena police failing to acquire a warrant prior to contacting Petitioner and the trial judge refusing to allow Petitioner his 6<sup>th</sup> Amendment right to confrontation of the witness by not allowing the question "have you ever been raped before?" On Oct 18, 2013. Motion for relief from judgment was denied and on May 1, 2017 judgment was entered by the U.S. District Court stating that the statute of limitation of the AEDPA had expired. In July 2018 the U.S. Court of Appeal for the Sixth Circuit reaffirmed the District Court's decision to deny Writ of Habeas.



## **ISSUE I**

### **INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.**

Counsel in the preliminary and appellate stages failed to object, investigate and preserve Petitioner's Sixth Amendment right by letting the questioning and testimony of alleged harassing phone calls and text messages in to record (see Prelim. Exam. Pg. 12-14, pg. 51 trial transcript pg. 60,66-67). Defense counsel's Sixth Amendment duty to investigate includes obligation to investigate all witness who may have information concerning his client's guilt or innocence. Town v Smith, 395 F.3d 251 (2005)

### **PROSECUTOR MISCONDUCT.**

During the trial process the Prosecutor used improper arguments by referring to the defendant and accusing the defendant of stalking and harassing the alleged victim without producing proof of said charges (see Prelim Exam, pg. 12-14, also Bench Trial pg. 11, 62, 66-67). The prosecution's duty is to show the whole transaction, whether tendency is to show guilt or innocence, including evidence which is attainable [through investigation]. See Hurd v People, 25 Mich 405 (1872) also the Brady disclosure rule.

### **ABUSE OF DISCRETION.**

The judge in the trial process ruled the question "have you ever been raped before?" inadmissible when asked by the defense (see pg. 155-56 Bench Trial). According to the court in People v Hackett, 421 Mich 338. Admission of such evidence as prior sexual conduct or reputations may be required where offered to preserve a defendant's right to confrontation such as to show a complaining witness bias, ulterior motive for making a false charge or prior false accusation of rape. That question would possibly show witness bias and/or be evidence having a tendency to

make the existence of any fact that is of consequence more probable or less probable than it would be without the evidence. Furthermore, rape is not an act of the victim but an act of the offender. (see T.M. Cooley L. Rev. 391 line 119-129) (see also MRE 404b).

### **VIOLATION OF DUE PROCESS.**

The violation of 4<sup>th</sup>, 5<sup>th</sup>, 14<sup>th</sup>, Amendment Rights by the officer cause duress and a coercive environment. The officer while conducting a warrantless search located the defendant at the third residence that he went to and did not mirandize the defendant upon contact (see Bench Trial pg. 279). The location that the officer came to contact the defendant at was not his place of residence nor was the place public and he was the prime and only suspect. "Where nature of charge made by complainant against defendant was such that defendant was prime and the only suspect, there was sufficient custodial duress when sheriff's detective advised defendant that he wanted to talk to him in his police car and informed defendant of accusation made against him to require warning to defendant of his rights to remain silent and to have counsel present. People v Gilbert, 21 Mich App. 442 (1970). Furthermore, though the court is obligated to the procedural default it must yield to the imperative of correcting a fundamentally unjust incarceration. If the previous courts, consider and/or ruled like the previous cited cases the outcome would have been different and not fundamentally unfair.

## **REASONS FOR GRANTING THE PETITION**

Petitioner is entitled to post-conviction relief where he was deprived of his right to due process and a fair trial under the XIV Amendment to the United States Constitution and also under Mich Const 1963 art 1 sec 17. Petitioner is also entitled to relief where he was deprived of his VI and XIV Amendment rights to the United States Constitution and under Mich Const 1963 art 1 sec 20. Petitioner also states that the extraordinary circumstances that show failure to consider the claims will result in a fundamental miscarriage of justice. (see Coleman v Thompson, 501 US. 720). The extraordinary circumstances of the trial process previously mention are there being no substantial or physical evidence and it being a Bench Trial with Pro se defense making the fairness of the process even the more critical. But instead there's various constitutional violations in a process made up of just complaint, testimony, and presumption of innocence. "As the court has explained, "the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration. 26.4 miscarriage of justice rule."

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

**Respectfully submitted,**

DeAndre M. Anderson # 734230