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IN THE UNITED STATES SUPREME COURT

B. STATEMENTS OF THE FACTS

1. On December 12, 2007 Petitioner was convicted of Rape and Sexual battery.
2. On December 21, Petitioner was sentenced to twenty years.
3. On February 8, 2008 Petitioner filed a Motion to Sever and Suppression of DNA and was denied by Trial Court.
4. In December 2008 Petitioner was given a dismissal of a Separate Rape Charge in Shelby County, Tennessee from Same alleged Victim.
5. On April 27, 2009, the Tennessee Court of Criminal Appeals affirmed the judgment of the trial Court.
6. On March 19, 2010, Appellant filed a Petition for Relief and Post-Conviction Petition which was denied, along with habeas Corpus Petition on July 21, 2014 was denied September 27, 2017.

STATEMENTS OF THE QUESTIONS PRESENTED FOR REVIEW

1. Did the lower Courts abuse their discretion of not upholding the two Fourth Amendment (Search and Seizure) Constitutional Rights of Petitioner in the illegal Collection of DNA evidence from his home and Person by law officials?

2. Whether the lower Courts abused their discretion by allowing perjured testimonial evidence by law officials?

3. Whether the lower Courts abused their discretion in denying the Petitioner's Sixth Amendment Right to effective assistance of Counsel at all critical Stages in the Criminal Process?

4. Whether the lower Courts abused their discretion in denying the Appellant's request for DNA analysis of Wife's DNA?

5. Whether lower Courts denied Petitioner Due Process of law by failing to make requisite findings of fact upon each issue?

6. Did lower Court err when it found that Procedural

examining the alleged victim's mother regarding a Fourth Amendment violation of a warrantless seizure of evidence?
(C.) Not meeting with the Petitioner sufficiently?
(D.) Counsel on Direct appeal not assigning as error on Appeal the trial Court's decisions in denying Petitioner's Motion to Suppress alleged Statements?

11. Did Sharon Chandler's Statements about Petitioner's hospitalization at a mental health facility require an objection by trial Counsel on the ground of Petitioner's Constitutional Right to effective assistance of Counsel and Petitioner's Constitutional Right to not be Compelled to be a witness against himself?

12. Whether lower Courts abused its discretion in Procedurally barring Batson?

13. Whether lower Courts abused its discretion in Procedurally barring all issues of Petitioner's issues except two?

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7. On October 2017, Petitioner filed for COA to the Sixth Circuit Court and was denied on July 19, 2018.

TABLE OF AUTHORITIES (1.)

(A.) 1. Supreme Court of the United States, Buck vs. Davis no. 15-8049 argued Oct. 5, 2016 Decided Feb. 22, 2017 Reversed and remanded.
2. U.S.S.CT. Martinez v. Ryan No. 10-1001. Argued Oct. 4, 2011. Decided March 20, 2012. Reversed and remanded
3. Strickland v. Washington
4. Tenn. v. Jackson 899 S.W.2d 219, 221 (1993)
5. Tenn. v. Scarborough 201 S.W. 3d 607, 617 (2006)
6. Tenn. v. Bartram 925 S.W.2d 227, 229-30 (1996)
7. Tenn. v. Binette 33 S.W. 3d 215, 218 (2000)
8. Tenn. v. Yeargen S.W.2d 626, 629 (1997)
9. Iowa v. Tovar, 541, U.S. 77, 124 S.Ct. 1379
10. Katz v. United States, 389 U.S. 347, 357 (1967)
11. Terry v. Ohio, 392 U.S. 1, 20 (1968)
12. Johnson v. United States 334 U.S. 10, 13, 13-14 (1948)
13. Schmerber v. California, 384 U.S. 757, 767, 86 S.Ct. 1826

(B.) 1. T.C.A. 40-30
2. Ralph Blunt v. State, 1990 WL 88539 (Tenn. Crim. App. 6-29-90)
3. Banks v. State, 2012 WL 1067201, Citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984)

4. State v. Taylor, 968 S.W.2d 726 (Tenn. 1980) 1997, T.C.A.)
5. State v. Kelly, 603 S.W.2d 726 (Tenn. 1980)
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(C.) 1. T.C.A. 40-35-111 (6)

(D.) 1. Iowa v. Tovar, 541 U.S. 77, 124 S.Ct. 1379 (3-8-2004)
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6. Johnson v. Duckworth, 793 F.2d 898 (7th Cir.) Cert. denied 479 U.S. 937, 107 S.Ct. 416, (1986)
7. United States ex. rel. Caruso v. Zelinsky, 689 F.2d 262 (5th Cir. Unit B 1981)
8. Turner v. Tennessee, 664 F. Supp. 113 (M.D. Tenn. 1987) aff'd 858 F.2d 1201 (6th Cir. 1988), vacated on other grounds 492 U.S. 902, 109 S.Ct. 3208

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3. State v. Scott, 33 S.W.3d 746 (Tenn. 2000)
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103, DR 7-109.)
5. U.S.C.A. Const. Amend. 14; Const. Art. 1, 8-9.)
6. State v. Spurlock, 874 S.W. 2d 602 Tenn. Cr. App., 1993)
7. Clark v. State, 218 Tenn. 259, 402 S.W. 2d 863 (Tenn. 1966)
8. C.C.A., State v. Sweat)
9. (Id. at 181, 106 S.Ct. 2464 (Quoting Donelly vs. DeChristoforo
416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed. 2d 431 (1974))
10. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959)
11. Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963)
12. Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972) (Quoting Napue, 360 U.S. at 271, 79 S.Ct. 1173)
13. Mills v. Scully, 826 F.2d 1192, 1195 (2d Cir. 1987)

(G.) 1. Tenn. v. Keathly M2002 00568-CCA R3 CD.
2. Tenn. Code Ann. and 40-35-210 (b)(7)
3. State v. Stephenson, 878 S.W. 2d 530, 551, (Tenn. 1994)
4. United States v. Gilbert, 244 F. 3d 888, 924 (11th Cir. 2001)
5. United States v. Pagan, 33 F. 3d 125, 129-30 (1st Cir. 1994)
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7. Green v. U.S. 365 U.S. 301, 304-05, 81 S.Ct. 653, 5 L.Ed 2d. 670 (1961)
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9. United States v. Maldonaldo, 996 F.2d 598, 599 (2d. Cir. 598, 599 (2d Cir. 1993) Barnes, 948 F.2d at 332;

10. Phillips, 936 F.2d at 1256; Walker at 896 F.2d at 301; Posner, 868 F.2d 724; United States v. Navarro-Flores, 628 F.2d 1178, 1184 (9th Cir. 1980)
11. United States v. Miller, 849 F.2d 896, 897-98 (4th Cir. 1988)
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13. Johnson v. U.S., 520 U.S. 461, 466, 117 S.Ct. 1544 137 L.Ed. 2d 718 (1997)
14. U.S. v. Olano, 507 U.S. 725, 734, 113 S.Ct. 1770, 123 L.Ed. 2d 508 (1993)
15. Bank of Nova Scotia v. U.S., 487 U.S. 250, 255, 108 S.Ct. 2369, 101 L.Ed. 2d 228 (1988)
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(H) American Disability Act/Batson, Eagle v. Linahan, U.S. v. Morgan

(I) 1. Bartram 2012 – Buck v. Davis (2017)
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3. Hill v. Lockhart, 28 F.3d 832, 834-35 (8th Cir. 1994)
4. Reulter v. Crandel, 109 F.3d 575, 577-78 (9th Cir. 1997)
5. Jones v. Vance, 126 F.3d 408, 414 (2d. Cir. 1997)
6. Verdin v. O'Leary, 972 F.2d 1467, 1479-80 (7th Cir. 1992)
7. Swanger v. Zimmerman, 750 F.2d 291, 295-96 (3rd Cir. 1984)
8. In Doctor v. Walters, 96 F.3d 675, 681-82 (3rd Cir. 1996)
9. Grandberry v. Greer, 481 U.S. 129, 135-36 (1987)
10. Chandler v. Jones, 813 F.2d 773, 777 N.4 (6th Cir. 1987)

11. Clemmons v. Delo, 124 F.3d 944, 953-55 (8th Cir. 1997)
12. Jackson v. Shanks, 143 F.3d 1313, 1318-19 (10th Cir. 1998)
13. Jackson v. Amaral, 729 F.2d 41, 44 (1st Cir. 1984)
14. Rice v. Marshall, 816 F.2d 1126, 1129 (6th Cir. 1987)
15. Combs v. Coyle, 205 F.3d 269, 275 (6th Cir. 2000)
16. Roberts v. Sulton, 217 F.3d 1337, 1340 (11th Cir. 2000)
17. Coleman, 501 U.S. at 750
18. Murray v. Carrier, 477 U.S. 496 (1986) Id. at 488-89.
19. Lucas v. O'Dea, 179 F.3d 412, 419 (6th Cir. 1999)
20. Banks v. Reynolds, 54 F.3d 1508, 1514 (10th Cir. 1995)
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STATEMENTS OF REASONS SUPPORTING REVIEW

(A.)

Ineffective Assistance of Counsel

(1.) Petitioner ask this Honorable Court to find the lower Court's ruling of Procedural Default regarding all claims beginning with Petitioner's Fourth Amendment Violations of his Search and Seizure issues which Petitioner filed for relief on the basis of, be reversed.

Petitioner asks this Court to reverse the lower Court rulings be reversed; that is his motion to Suppress the collection of his DNA by law officials and the illegal Collection of evidence from his residence and alleged Statements were properly denied on procedural grounds, and-procedural grounds, and that Petitioner's request for an Independant DNA Testing was properly denied and that his Petition based on the denial of his Constitutional Right to effective assistance of Counsel at trial, on Direct Appeal and at the Post-Conviction Stage were properly denied. (See Strickland vs. Washington) State v. Jackson, 899 S.W.2d 219, 221) (Tenn. Crim. App. 1993) State v. Scarborough 201 S.W.3d 607, 617) (Tenn. 2006) (State vs. Bartram 925 S.W.2d 227, 229-30) (Tenn. 1996) State vs. Binette 33 S.W.3d 215, 218 (Tenn. 2000) (Quoting State v. Yeargen S.W.2d 626, 629 (Tenn. 1997).

(2.) Petitioner would State that his trial Counsel was ineffective for failing to move to Suppress the illegal Collection of a DNA sample from his person, and the illegal Collection of evidence from his residence without a warrant. An intrusion into the body for testing is Considered a Search of that person governed by "the Constraints of the Fourth Amendment State vs. Jackson, 899 S.W.2d 219, 221 (Tenn. Crim. App. 1993); See also State v. Scarborough, 201 S.W.3d 607, 616 (Tenn. 2006) (Finding that a blood draw and analysis of the same blood fall within the Fourth Amendment limitations). Therefore, a warrant is required for both 4th Amendment Violations unless the Warrantless Search falls within a recognized exception, eg. incident to a lawful arrest, plain view or Consent. State vs. Bartram, 925 S.W.2d 227, 229-30 (Tenn. 1996). If a Search falls outside a recognized exception, it "is presumed unreasonable, and evidence discovered as a result thereof is subject to Suppression or Seizure was conducted pursuant to one of the narrowly defined exceptions to warrant requirement. "State v. Binette 33 S.W. 3d 215, 218 (Tenn. 2000) (Quoting State v. Yeargan S.W. 2d 626, 629 (Tenn. 1997).

In this instant case, Petitioner while being arrested at his residence didn't consent in any way to a Warrantless Search and Seizure of his residence. Furthemore, While incarcerated and waiting for trial, Petitioner was Compelled by law officials to submit to an illegal DNA Collection. NO Consent was given nor is there anything in the record to indicate Petitioner's Voluntary Consent to Submit to DNA Testing. Additionally, no Search warrant was pursued or issued for Petitioner's DNA. However, given the lack of Consent or Search Warrant, Petitioner's trial Counsels did not Seek to Suppress the illegal Collection of DNA. This same DNA evidence, presented to the jury, even though it was a Violation of Petitioner's Fourth Amendment Rights, played a Significant role in the State's Case-in-Chief, yet the propriety of its Collection of Petitioner's Fourth Amendment Violations were never raised at the trial level nor on direct appeal even though Counsel objected: "Your Honor we would object to it being moved and Placed into evidence. I think there was a break in the Chain of Custody." This illegal evidence was moved into evidence by the Court whereupon, a bench Conference was had on the record in the presence of the jury but out of the hearing of the jury... However,

D.A. Dycus asked Sargeant Drewery: "Did you instruct Deputy Jason Drewery JR. on the Collection and retention of Certain evidence in this case?" "Yes, sir. He told me- basically told me what he had on the Scene and that there was some evidence that had been Collected on the Scene and I instructed him to take that evidence and lock it up..."
Petitioner Contends this issue is very substantial and has Merit. Furthemore, this Search and Seizure issue Consists of 4 points: Point (1) Illegally consfication of evidence from Appellant's residence and Appellant being Compelled to give DNA Samples. Point (2): These Searchs were involuntary and without Appellant's Consent or the Consent of appointed Counsel, Karen, Webb and Griggs. Point (3): Since Appellant was present at his residence, there was no exigent reason not to retrieve a Warrant for the pajamas and after being arrested and in Custody, there was no exigent need for law enforcement to avoid obtaining a probable cause or reasonable suspicion Search Warrant from a Neutral authority. Point (4) That, as the evidentiary hearing Court observed: Appellant trial Counsel did not Seek to file a motion to Suppress the result of these illegal unconstitutional Search and Seizure violations.

These 4 points are elementary areas where Competent defense attorneys would concern themselves with, and yet the Post-Conviction and District Court along with the Circuit (6th) Court decided it has no Merit and it is procedurally defaulted. However, Martinez held that "A State prisoner may obtain federal habeas review of a procedurally defaulted claim by showing cause for the default and prejudice from a violation of Federal law... An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; if the attorney appointed by the State to pursue the direct appeal is ineffective, the State prisoner has denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the Merits of his claims. Petitioner contends under the Standards of Strickland, U.S.C.A. Const. Amend. 6, appointed Counsel in the initial-review collateral proceeding-Direct Appeal, Where the Claim of Fourth Amendment violations should have been raised was ineffective, Where claims are Substantial and has Merit, which lower Courts overlooked. The Sixth Amendment's protections against ineffective assistance of Counsel are not designed simply to protect the trial, even though both Counsels' absence in Critical Stages of a Criminal proceeding may derogate from the accused's right to a fair trial." Iowa V. Tovar, 541, U.S. 77, 124 S.Ct. 1379. (3-8-2004) These Warrantless Searchs Violated 4th Amendment requirements. (Katz v. United States, 389 U.S. 347, 357 (1967). See also Terry V. Ohio, 392 U.S. 1, 20 (1968) (Police

Must, whenever practicable obtain advance judicial approval of Searchs and Seizures through the warrant procedure.") In Johnson v. United States, the S.Ct. Stated: "The point of the Fourth Amendment,,, is not that it denys law enforcement the Support of the usual inferences which reasonable men draw from evidence. Its protection Consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often Competitive enterprise of "ferreting out Crime." 334 U.S. 10, 13, 13-14 (1948) (emphasis Supplied).

An order compelling an individual to provide Corporeal evidence, Such as blood or Saliva for DNA analysis, Constitutes a Search and Seizure within the meaning of the Fourth Amendment. "Schmerber v. California, 384 U.S. 757, 767, 86 S.Ct. 1826. Furthermore, trial Petitioner was taken to the investigator's office outside of the jail, and was swabbed for Saliva DNA which was accomplished right next to the illegally Conviscated pajamas. Both swabs and pajamas were on the same table at the Same time. The likelihood of Cross-Contamination was unavoidable. Denial of due process in that the 5th Amendment requires that the two items be kept Separate, because of the volatile and violability of DNA.

During Direct Examination at trial of Sgt. Drewery by D.A. Dycus,,, "Did you instruct Deputy Jason Drewery Jr. on the Collection and retention of Certain evidence in this case? "Yes, sir,,, He told me—basically told me what he had on the Scene and that there was

Some evidence that had been Collected on the Scene and I told-instructed him to take that evidence and lock it up in the dispatcher's office..." "Did you take it to the Tennessee Bureau of Investigation Crime lab? Yes, Sir, I did. On March 20, 2007... and I wrote it up on a T.B.I Request Form as to what I wanted tested and what I want it tested for..." However, on Cross, Counsel for Petitioner Knew or Should have Known of this blatant Fourth Amendment Violation said: "Your Honor we would object to it being moved... and placed into evidence. I think there was a break in the Chain of Custody!" This Violation of Petitioner's Constitutional Right where this illegal evidence was moved into evidence by the Court whereupon, a bench Conference was had on the record in the presence of the jury... Which Petitioner Contends prejudiced the jury, where an unfair trial and Due Process were injected and the ineffectiveness of Counsel was initiated.

Furthemore, during Petitioner's Post-Conviction hearing Concerning the two Violations of Petitioner's right to effective Counsel and Fourth Amendment rights, Counsel Stowers asked Petitioner— "Now, when you were arrested, was there an occasion where Police officers took you to another place to get DNA? Yes." The Court: Are these issues you're Speaking of in your Amended Petition? Mr. Stowers: I did an addendum. The Court: But the issue... Mr. Stowers—for the-

Which ones Your Honor? The DNA collection, I did an addendum." The Court: But the issue on this Batson Challenge, these appeal issues, I don't see any of that in your Amended Petitition. Again Petitioner contends his Counsel Mr. Stowers Showed a Conflict of interest and was ineffective for Amending all of Petitioner's issues, even his Batson without meeting and discussing those issues. However, Mr. Stowers said: I have the Confession in the amended Petition, Your Honor. The Court: You have what? Mr. Stowers: The Confession is listed in the Amended Petition. I believe its Paragraph – it start with Paragraph 20 and I also list it, Your Honor, Paragraph – Concerning the appellate issue on Suppression of Confession Your Honor, that – The Court: You're Speaking of some Batson Challenges and Some other things. Is that anywhere in your Petition? Mr. Stowers: I would Concede, Your Honor, that the Batson is not listed in the Amended Petition...

Petitioner again had this Batson issue in his Petitions Since his appeal from Direct Appeal and why would Mr. Stowers amend it Knowing that he did not want this issue before the Court. If he Knew it or thought it had no merit or wasn't Substantial, why after intentionally removing it from the original Petition yet try to argue it in Court Knowing the judge wouldn't hear it?

Mr. Stowers: Well, I would just beg Your Honor to Consider at least the addendum. I've listed – Its very brief and it basically concerns the DNA collection which I believe is significant. When I was talking to Mr. Shotwell, (while Petitioner was waiting for hearing) in December 2012 just before the hearing was set)... he brought that up and I thought it was important enough to write a short brief on "the law to the Court concerning collection of DNA because I believe that was a corner-stone of the State's case, matching DNA to the pajamas of the alleged victim. Court: But it is first presented in your addendum that you filed yesterday. Mr. Stowers: That's correct, Your Honor. I felt duty bound that I had at least bring it to the Court's attention since, as the Court knows, anything that's not brought up in the PCR. Mr. Shotwell is forever barred from raising that issue on appeal or if he decides to - The Court: "The Court is going to deny to take up any issue that's not contained in the amended Petition. Mr. Stowers was appointed in August 2011. Here it is January 30, 2013... but here the day before the hearing an amended Petition is filed some sixteen, seventeen months after Mr. Stowers was appointed, more than two and a half years after the original Post-Conviction. So the day before this matter is set, to have additional addendums filed, will not be addressed by this Court.

Furthemore, Petitioner was asked: by Mr. Stowers: ... And when they went to get - when they (officers) asked when they told you to get the DNA, did they have you sign anything? No sir. Did they ask you, "Can we take your DNA? They just said, "We need to get DNA from you... When did you find out about the DNA on the pajamas? Ms. Weber came to me... She said that they have a small amount of DNA or something to that,... Were you also concerned about a Batson challenge? Yes. Did you want that to be addressed on Appeal? Yes. The Court: Mr. Davidson (D.A.) on Cross. Mr. Shotwell... Do you recall that an expert testified in your defense? Yes. A DNA expert? Yes... And there was proof from the State that your DNA was found on her pajamas. Do you recall that?... Your own expert testify that there was perhaps some DNA on the pajamas that belonged to a relative of your stepdaughter, do you recall that? Yes." Direct trial Counsel Ricky Griggs questioned: "Did you discuss with Roy Shotwell what proof would likely be if you went to trial? Yes, I did. Did that include DNA evidence? Yes... Our own expert testified that there was female DNA found on the pajamas but it was not DNA from the victim but of a close relative of the Victim."

Petitioner contends even though Post-Conviction Court rejected the 4th Amendment issues which asserted illegal Collection of DNA evidence, nevertheless the Court allowed Counselor and State to argue that same DNA evidence that is clearly a violation of Petitioner's 4th Amendment Rights. It was just not argued Violation of 4th Amendment rights, just worded DNA. Petitioner Contends lower Courts abused their discretion in Procedurally barring 4th Amendment issues. On Cross: Mr. Griggs, let me ask you a hypothetical. Would you have filed that Motion — and I don't know, you know, we file it... as defense lawyers, we file Motions routinely. Would you have filed that Motion? I don't know. If I would... had discussions with him and he was adamant about doing it, I may have.

Ineffective Assistance of Counsel (16)

2. The lower Courts obligation to make "Finding of fact" upon each issue was not Complied with. See T.C.A. 40-30- See Ralph Blunt v. State, 1990 WL 88539 (Tenn. Crim. App.) (6-29-90) See also Banks v. State, 2012 WL 1067201, citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984); State v. Taylor, 968 S.W.2d 900, 905 (1997; Tenn. Crim. App.)

When a trial Judge Summarily dismisses a proceeding brought pursuant to the Post-Conviction Procedural Act, the trial Judge is required to include in his final order all of the grounds raised in the petition and his findings with regard to each to each issue/ground. The findings with regarding facts by a trial judge are essential to Counsel's effectiveness. (State v. Kelly, 603 S.W.2d 726; State v. Yarbro, 618 S.W.2d 521. The Petitioner Contend lower Courts also misstated the alleged admission of Petitioner as overheard which is against Self-incrimination and his Patient-doctor privacy by Sargeant (then Corporal) Terry Walker. The lower Courts related this incident as though the Nurse responded it... "She said that Petitioner was brought in because he had been hearing voices." During the assessment of Petitioner, the Nurse said Petitioner told her he had done wrong and should have to pay for what he did. (Id.) The findings does help to support the overall findings. However, this alleged admission reportedly made to the Nurse was in fact, a Statement alledgedly overheard by Sargeant Walker, Which in fact was denied as seen, even having been made by the Nurse.

(3.) The Custodial Statements were involuntary as the trial Court alluded to with its observations in its Order of 1-30-13, about Petitioner's so-called alleged excited utterances. As stated in Petitioner's Post-Conviction Petition, and at the Post-Conviction hearing, the several objections to law enforcement official's allegations of statements made by him at the emergency room hospital to a Medical Nurse that Petitioner said "he had sex with his step-daughter." The Nurse at trial, on cross-examination testified that she was the only person in the treatment room. Officer Terry Walker alleged he heard the purported statements which were the subject of the motion to suppress, but could not recognize Petitioner in Court and after the Nurse said he was nowhere around and the doors were locked and no way officer Walker could have heard anything. Officer Walker took the stand and testified that he "wasn't sure" that Petitioner made the alleged statements. This Officer as stated was not even in the same room as the Petitioner and the Nurse on duty. Petitioner's pre-trial Counsel Karen Weber moved to suppress alleged statements during Motion to Suppress hearing but trial Court denied.

Before trial, in December of 2007, Officer Walker had been promoted to Sargeant. Then at trial D.A. Dyas leads the statements by telling the witness that he did know Petitioner after the witness stated on the stand that he did not know Petitioner. D.A. Dycus Characterized the Witness' Statement to mean he didn't know how to answer the question - even though as a Sargeant in law enforcement for approximately 7 years, he knew how to answer a question "did he know a suspect or not." (See pg. 164 generally of the trial transcript). The witness was asked a plain question that had zero difficulty. "Do you know Roy Shotwell? His answer was equally unambiguous "No sir."

Yet, Walker testified under oath that "I had sex with my step-daughter... with nobody in there. The only other thing he said was that I can recollect was when the nurse was in there he said that he was in here because "I was thinking about cutting my wrists." (pg. 167, T.T.) This statement was made on direct examination. This statement, as alleged is a violation of the Patient-Client privilege and should have been suppressed by trial Court, by perjurious statements by Walker at the Motion to Suppress hearing March 2007, who stated to Petitioner's Counsel Karen Webber in response to her question: "So he was there... Do you recall why he (Petitioner) was sent to the emergency room that day?" to which Walker replied: "Only for the statement that he made to the nurse that he had thought about cutting his wrists." If this statement was made by the Petitioner at the ER, then it was covered by the 5th Amendment Right not to be compelled to be a witness against himself, using statements allegedly made ~~by~~ a client to a doctor. (See pg. 49, Motion to Suppress transcript.) In this case Walker plainly states in open Court that "he (Petitioner) told the nurse "I remember hearing was that he was there because he had thought about cutting his wrists." (Id., pg. 50 lines 4-6) as "Exhibit A" (pg. 52, Id.) However, on pg. 57, in response to examination by defense Counsel's question: "Did he keep saying it over and over or did he just say it one time?" ANS. "Just one time that I heard." This is aggravated perjury under oath by law enforcement and the report and his testimony allowed by the Court to be heard by Petitioner's jury resulting in a loss as the Petitioner stated in his original Post-Conviction Petition, of his right to Confrontation to a fair trial because these statements which were conspired by law officials should never seen the light of day at Petitioner's trial and should have been appealed by defense Counsel who claimed there was no merit to appeal.

Petitioner stated in his original Post-Conviction Petition that he was "deprived" of Confrontational rights not to be a witness against himself and invasion of privacy - both Motions-to Suppress hearing Counsel and trial Counsel, who failed to initiate an investigation of the State's tampering with a witness and official Report and Conspiracy to obstruct Justice. Petitioner contends that the original Police Report which was issued by Walker, where he admitted his Sargeant Maddox advised him to write was patently false as the reporting officer who made these perjurous Statements was not even in the same room as the Petitioner and nurse on duty. Furthemore, Nurse Sharon Chandler testified under oath at trial that the "Petitioner did not go into what he did."...And while I was talking to him, I asked the deputy that was with him, "Is he around anyone within close proximity that he could hear other people talking that he may think he's hearing voices? And that was the extent of our conversation." (T.T. pg. 180, lines 1-12) Further damage to the credibility and Violations is where the Nurse was "Certain it was "Sargeant Maddox" who was with the Petitioner in the triage room with her. (T.T. pg. 185, lines 1-4), and that he (Walker) could not have heard "any Statement that Mr. Shotwell made." (T.T. pg. 185, lines 1-11).

Therefore, Walker's Statements should have caused the trial Court to sua sponte these Statements, and this is where the lower Courts abused their discretion by ruling procedural default of ineffective assistance of Counsel.

The lower Courts abused its discretion by failing to make any findings of fact relative to this "Major Contention" of Petitioner, as the law requires: T.C.A. 40-35-111 (6). This is a major Contention of the Petitioner, yet the lower Courts chose not to refer to the facts as preserved on the record. This omission was a denial of due process, by lower Courts.

Ineffective Assistance of Counsel
C

1. Petitioner contends Officer Ridgell acting as an agent of the State violated Miranda, Petitioner's Sixth Amendment and 14th Amendment while using his pseudonym of a "Friend" only to obtain information useful as an officer of the law. (op. pg.5) Counsel at Suppression hearing also filed to Suppress these violations yet refused to appeal, even though Ridgel stated under oath that his main purpose "Well, I'm not calling to be on his behalf or anything like that." This officer was clearly operating as an agent of the State and it is clear his motivation was to violate Miranda, Petitioner's 6th Amendment and 14th Amendment where Counsel was ineffective for not pursuing these on appeal.

Furthermore, Petitioner filed a motion to request this DNA testing of evidence on 11-2-09, by Attorney Griggs and then, because the Order denying request of DNA evidence was never sent to Petitioner, who incidently filed another Motion for DNA testing of the evidence which refutes lower Court's procedural default ruling had lower Courts ruled in Petitioner's favor, where Petitioner's issues of illegal 4th Amendment violations in (Bartram) would also rise as here in the Post-Conviction hearing. Court also denied a Second Motion filed and attached to his original Petition for relief on 3-19-2010.

In the United States Supreme Court ruling in "Skinner V. Switzer, 2011 WL 767703 (decided 3-7-2011) that State prison inmates may have a Constitutional right to test DNA evidence collection from a Crime Scene must be performed carefully and a chain of Custody established in order to produce DNA profiles that are meaningful and legally accepted in Court. (See State v. Scott, 33 S.W. 3d 746 (Tenn. 2000): It was also reversible error for Petitioner's DNA expert to testify for the State. (op. pg. 4) Counsel Should have had her declared a hostile witness, and Should have known in advance what his witness was about to say on the Stand would have incriminated his client. Especially Since the T.B.I. Lab results were "inconclusive." (See original Petition Post pp. 2) as to the identifying of the DNA. The expert assistance on issues Concerning anomalous results in various DNA tests could have made a difference in preparation and presentation of the DNA. The expert's assistance furthemore, of the DNA test analyst employed by the prosecution, (TBI) all reached inconsistent results regarding donor(s) of the pajamas. Therefore, both denials of Motions for DNA testing of evidence, independent of the State's testing results is and was a fundamental right being denied Petitioner. The Step-daughter's DNA was not on the pjs but there was no question by defense Counsel about whether the Mother had worn the pjs that were entered into evidence. The trial Counsel and the Post-Conviction Counsel Should have not violated Petitioner's Confrontational Right by having an independent DNA examination done to determine if the Mother's DNA appeared on the pjs, as Petitioner had advised both pre-trial and trial Counsel and the Post-Conviction Counsel. "Adequate

Cross-examination would have more probably than not revealed that the Mother's DNA was on the p.j.s. (See #2 Amended Petition for Post-Conviction Relief, Id.) Where Petitioner contends shows that by arguing these Constitutional Issues (1) Petitioner's trial Counsel did not seek to prevent the jury from hearing about Petitioner's Commitment for Mental health issues through a motion in limine or by a Contemporaneous objection during trial; (2) Petitioner's trial Counsel did not adequately cross-examine the victim's mother about the pajamas which were alleged to have been worn by the victim; (3) Petitioner's trial Counsel did not meet with him sufficiently, the United States District Court and the 6th Circuit Court both abused their discretion where they stated: The remaining nine issues have never been reviewed by the TCCA. Respondent contends that all issues except Issue Two are barred by procedural default.

Yet, Petitioner contends as earlier, that Issues (1) (2), (3), and (4) were not procedurally barred, and the other issues are without doubt part of the evidence in these 4 issues mentioned. Then, this available defense would likely have led to a different outcome. And to continue the Post-Conviction hearing on the illegal collection of the p.j.s, Petitioner contends an abuse of discretion and denial of due process of failure of lower Courts to ascertain whether in (Buck v. Davis) the U.S. Supreme Court held: (1) Court of Appeals was required to determine only if district Court's decision was debatable at COA stage (3) Prisoner was prejudiced by defense Counsel's deficient performance. (5) issue of Whether Supreme Court's decisions in Martinez and Trevino, permitting federal habeas review of an ineffective assistance of trial Counsel claim that was defaulted in a State post-Conviction proceeding if State habeas Counsel was Constitutionally ineffective in failing to raise it, and the claim has "Some Merit" applied retroactively to cases on Collateral review was waived. Therefore, Petitioner Contends an abuse of discretion and denial of due process consists of the lower Courts to ascertain the Merits of Petitioner's claim of the denial of his 5th, 6th, 4th and 14th Amendments rights regarding the Collection and an independent DNA examination of the evidence against him instead of relying Solely on the State's reporting and identification of Petitioner' DNA of these illegal Collections, as his DNA "expert Ms. Simonson did.

First, DNA expert Ms. Mary Simonson had no DNA experience in Tennessee. Only two (2) years experience in DNA forensics but no forensic DNA case work testimony for one year (T.T. pg. 371) She was learning her craft during that one year period (T.T. 371) Never did case work in Tennessee ... Only reviewed TBI Standards "Because I reviewed the Tennessee Bureau of Investigation's file in this case"... (T.T. pg. 373, lines 21-25). She testified that after Comparing his DNA Sample to the profile on the p.s." indicates a mixture of DNA from more than one individual ...03A Roy Shotwell cannot be excluded as a Contribution to the observed DNA mixture." (T.T., pg. 378, lines 5-8) Now the rule of DNA Typing on a "mixture of DNA from more than one individual ... And where a suspect 'cannot be excluded' was not followed by this DNA expert making her testimony results unreliable.

The DNA fraction from the pajamas pants (non-Semen) was not the same as the alleged Stepdaughter's. (T.T. pg. 379, lines 6-12) – "but Similarities at 9 of 16 areas ... Her observations that it is "unusual to find that many Similarities with Somebody who's not related." (T.T., pg. 379, lines 19-25) point to the necessity of testing the Mother's DNA. This Serious omission at this point in her testimony (So its appears that it belongs to a relative based on your experience?" (T.T. pg. 380, lines 1-8) is that Counsel did not Seek a DNA test of the Mother, whom Petitioner had informed all of his Counselors was ineffective and prejudiced his Case. The point that Petitioner's DNA (Sperm) was on the pjs is not the major contention in light of the fact that the female contribution was determined not the alleged Victim but was an unidentified female, the Mother's as Petitioner held all alone. By law, Counsels had to raise All available Defenses (Baxter v. Rose, etc.) which the independent DNA sampling from the Petition by Petitioner's expert witness, was a Serious blunder.

More importantly, lower Courts abused its discretion to approve the Motions requesting DNA testing of evidence. Therefore, the lower Courts abused its discretion when it ruled procedural default, where it is clear that Pre-trial and trial Counsels knew of this serious substantial violation of Petitioner's 4th, 5th, 6th, and 14th Amendments.

Ineffective Assistance of Counsel

Petitioner contends both Counsels were ineffective by failing to request and consult a handwriting expert where lower Courts abused their discretion in ruling procedural Default due to Prosecutorial Misconduct by D.A. Dycus, Walker and Maddox's tampering with a witness and an official Report, thus obstructing justice which rendered Petitioner's trial unfair and prejudice. Petitioner contends a reasonable probability that the outcome of the trial would have been different if defense Counsel had presented testimony of handwriting expert to contradict D.A. Dycus' response to Petitioner's Counsel Weber's statement accusing D.A. Dycus of tampering with a Police Report. (U.S. Court of Appeals, 2cD Cir. vs. Tarricone)(U.S.C.A. Const. Amend. 6)

Furthemore, Petitioner also contends that Counsels provided Constitutionally deficient representation and Petitioner was prejudiced by Counsels failure to present coherent argument, and where Counsel Stowers during Post-Conviction hearing amended this issue yet it is connected to the issue of his alleged statements overheard by officer Walker. This non argument on Petitioner's behalf at trial and at the Appeal level of Police fabrication, thus rendered the trial and appeal fundamentally unfair and unreliable. (American Bar Association Standards for Criminal Justice, Which were accepted by the Strickland Court as a proper guide for determining what is reasonable Conduct, require Counsel to "Conduct" a prompt investigation of the circumstances of the case and to explore all the avenues leading to facts relevant to the Merits of the case, Which lower Courts abused their procedural default on this issue which Petitioner presented in all Criminal procedural steps. (4-4.1)

In (United States Court of Appeals 1st Cir. Tejeda v. Dubois) Petitioner's Counsel Griggs and Weber provided Constitutionally deficient representation, Supporting ineffective assistance of Counsel claim where State's knowing use of false testimony by law officials to convict an accused is volative of the right to a fair and impartial trial as embodied in the Due Process clause of the United States Const. Amend. 14 and Tennesee Const. Art. 1, 8 and 19. District attorney General has both legal as well as ethical duty to correct false testimony of prosecution witness, and refrain from using false evidence to convict defendant (Sup. Ct. Rules, Rule 8, Code of Prof. Resp. Canon 7; EC 7-13, EC 7-26, EC 7-27; DR 7 102, DR 7-103, DR 7-109.) When State witness answers questions on either direct or Cross-examination falsely, District Attorney General ... has affirmative duty to correct false testimony; Whethe District attorney general Solicited false testimony is irrelevant. (U.S.C.A. Const. Amend. 14; Const. Art. 1, 8 and 9.) Petitioner

Contends D.A. Dycus Solicited and furthered false testimony of Sgt. Walker. (See General trial Record) (See State v. Spurlock, 874 S.W.2d 602 Tenn. Cr. App., 1993) (Clark v. State, 218 Tenn. 259, 402 S.W.2d 863 (Tenn. 1966), that evidence admitted erroneously necessitates a reversal of a conviction if it "operated to prejudice or harm of the accused, or deprived him of a Substantial right or a fair trial,,, Where the record shows nothing which can fairly be said to cure the effect of such error. (Court of Criminal Appeals, State vs. Sweat) The principal that a State may not knowingly use false evidence including false testimony to obtain a tainted Conviction implicit in any Concept of ordered liberty, does not cease to apply merely because false testimony goes only to the credibility of the Witness; the jury's estimate of the truthfulness and reliability of a given witness, especially (officers of law enforcement) may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interests of the witness in testifying falsely that a defendant's life or liberty may depend. The Due Process clause of the Fourteenth Amendment is violated when Prosecutorial Misconduct "So infects the trial with unfairness as to make the resulting conviction a denial of due process." (Id. at 181, 106 S.Ct. 2464 (Quoting Donelly v. DeChristoforo, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974) (Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) Which holds "a Conviction obtained through use of false evidence, [including evidence going to a Witness' Credibility] known to be such by representatives of the

State, Must fall under the Fourth Amendment. Also, the Supreme Court has established that only evidence "the Material" under (Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), that could "in any reasonable likelyhood... affect the judgement of the jury" precipitates due process scrutiny. (Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (Quoting Napue, 360 U.S. at 271, 79 S.Ct. 1173) (internal Quotation marks omitted); accord Mills v. Scully, 826 F.2d 1192, 1195 (2d Cir. 1987). Deliberate deception of a Court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.

Ineffective Assistance of Counsel

The Petitioner Contend State discriminated against him during Juror Selection. Trial Counsel argued this Substantial issue and yet felt it did not have any Merit to appeal and Post-Conviction Counsel furthered ineffectiveness and prejudice by amending Batson, yet wanted to argue. Petitioner Contends lower Courts abused their discretion by ruling procedural default. During Challenges before trial, (Mr. S. Williams was allowed to go to the restroom.)

Gen. Dycus: That was my Challenge.

Court: That's the person Subject to your Challenge that went to the restroom. What's your basis for that?

Mr. Griggs: He's given an indication that he could be fair and impartial, no ties, no knowledge of anyone, any of the parties and we just don't see why there's a need to challenge him other than on the basis of race.

Court: What race base reason you believe shows—

Mr. Griggs: Unless he has cause—either there is none or unless he knows the parties or if its something of that nature, I think the State has to show a neutral reason for excluding him. Its under Batson.

Court: What's the prima facia reason has been shown that he was struck for these reasons? Are you able to further show any prima facia reason why, is there race reasons?

Mr. Griggs: What other reason is there? I mean, he's indicated that he can be fair and impartial. I don't see any other reason that he couldn't be a juror.

Court: I find that there's a prima facia cause for the challenge. What's your reason for challenging Mr. Williams?

Gen. Dycus: Well, just for the record, (one of Mr. Grigg's challenges have been male blacks.)

Mr. Griggs: Well, you had an opportunity to challenge those if you thought there was a Batson issue, but you didn't.

Gen. Dycus: I never thought there was a Batson issue. The reason Mr. Williams was challenged was in this responses to me he wouldn't look me in the eye. That wasn't good enough reason for me. I come back up here and I talked to my victims, I'm saying, "Is there anybody you want challenged" and she said "Yes, Mr. Williams. I wasn't sure which Mr. Williams because I like James

Williams that you challenged. I said, "I wanted him," and she said "No, the guy in the blue shirt. He's glaring at me and I didn't like his response that he's excited about this being a rape case. I said, "Do you have any other reasons?" "Well, he says he's disabled and he's worked at the same job for the last two years, "Which is inconsistent."

Court: Anything in response?

Mr. Griggs: Nothing.

Court: The Court finds that unobjecting party by the State has articulated race/gender reasons-in the hearing for excuse, and the Court will allow.

Petititioner contends in Batson v. Kentucky the equal protection clause forbids prosecutor from challenging potential jurors solely on account of their race or on the assumption that blacks jurors as a group will be unable to impartially consider the State's case against a black defendant. Also, in the eleventh Circuit of Appeals in Eagle vs Linahan, held that appellant counsel's failure to raise Batson claim on appeal rose to level of ineffective assistance of counsel, where eagle's conviction was reversed and remanded. Petitioner contends trial counsel's failure to raise Batson claim as a serious substantial issue on appeal was deficient performance of the kind sufficient to support Sixth amendment claim where Petitioner was prejudiced.

In U.S. Courts of Appeals, Fourth Circuit, U.S.V. Morgan, Joe, Baylor and Skeeter Wilkins, Circuit Judge-held: District

Court did not follow preferred procedure in evaluating Batson Challenge, and remand was warranted for proper analysis. Petitioner contends peremptory Challenges by D.A. Dycus which was exercised in a racially discriminatory manner violated his right to equal protection. Also, the American Disability Act prohibits discrimination on the basis of disability in legal proceedings against a qualified individual such as jury duty... This act provides Comprehensive Civil Rights Protection's to achieve equal opportunities. It is a Civil Rights law that sets conditions for prohibitions of discrimination based on disability. Millions of Americans have disabilities to some degree, even our Judges, lawyers, etc., yet those who are able to work have fair and non-discriminating opportunities to do so under the law and ADA.

The ADA was passed by the Federal government and other agencies from discrimination. This is elementary and should have cautioned D.A. Dycus, yet he continued to make and Confessed his racially and biased responses, (1) "because juror was a black male (2) because juror was disabled (3) and "because juror could work." These are D.A. Dycus' Confessions of discrimination. These three discriminatory actions are so clear, violated Mr. Williams right to sit on the jury, where a racially based denial violated not only Petitioner's equal Protection but violated the entire Community to have D.A. Dycus' Confessions of racially discriminating practice to rule in Court by presiding Judge. In Eagle, striking of one black juror for racial reasons violates the equal Protection Clause, even though other black jurors are Seated, and even though valid reasons for the Striking of Some blacks jurors are Shown... Petitioner's was prejudiced by Counsel's deficient performance when a..."defendant raises the Unusual claim that trial Counsel, while effacacious in raising an issue, nonetheless failed to preserve it for appeal, the appropriate prejudice inquiry on a claim of ineffective assistance of Counsel asks whether there is a reasonable likelihood of a more favorable outcome on appeal had the claim been preserved. U.S.C.A. Const. Amend. 6. If defendant presents prima facia case of Batson discrimination, burden Shifts to Goverment to Come forward with racially neutral explanation for use of its Strikes, and if it does so, then defendant may neverless Show purposeful discrimination by proving the explanation is pretextual. Petitioner contends Counsel refused to provide pretext, where the intentional racial discrimination and the inadequate race-neutral explanations Should have appealed by Petitioner's Counsel.

Furthermore, Petitioner contends Post-Conviction Counsel was ineffective again by amending this issue and the D.A.'s Confession on Record, after trying to argue it, that he Conceded, which prejudiced the Petitioner, Violating his equal Protection rights.

Petitioner also contends lower Courts abused their discretion in its ruling of Procedural Default and disregarded (Bartram 2012) reversal. Also, McGuire v. Estelle, 902 F.2d 749, 752-53 (9th Cir. 1990) (Exhaustion requirement satisfied even though 2 of 4 claims not presented on appeal to State Supreme Court because claims briefed and argued on direct appeal before States appeal Court.

In Hill v. Lockhart, 28 F.3d 832, 834-35 (8th Cir. 1994) (exhaustion requirement was satisfied even though claim was not precisely articulated to the State Court, but instead was mentioned in paragraph focusing on different related claim. Reulter v. Grandel, 109 F.3d 575, 577-78 (9th Cir. 1997) (exhaustion requirement was satisfied because Petitioner adequately presented Confrontational Clause claim by including in the Supreme Court appeal reference to right to fair Confrontation of witness and Citing Key Federal cases decided on Confrontational Clause basis) Jones v. Vance, 126 F.3d 408, 414 (2d Cir. 1997) (exhaustion requirement satisfied because Petitioner asserted deprivation of "Constitutional right to Counsel" and directed State appellate's Court attention to relevant Supreme Court precedents so as to adequately alert Court "to Constitutional dimensions" of claims).

Verdin v. O'Leary, 972 F.2d 1467, 1479-80 (7th Cir. 1992) (exhaustion requirement satisfied for due process claim because Petitioner relied upon State cases applying Constitutional analysis or referring to Constitutional and presented fact pattern that fell within mainstream of Constitutional litigation. In Swanger v. Zimmerman, 750

F.2d 291, 295-96 (3rd Cir. 1984) (exhaustion requirement satisfied because issue was presented to State Court even if not specifically addressed in opinion. However, Federal Courts may dispense with the exhaustion requirement if further State litigation would be futile. Federal Courts determine the futility of seeking a remedy based on the totality of circumstances surrounding each petition. In Doctor v. Walters, 96 F.3d 675, 681-82 (3rd Cir. 1996) (exhaustion requirement not excused because State Court would likely find Petitioner's claim under State Post-Conviction relief Statute waived, but possibility remains that Petitioner's claim could be reviewed under Statute's "Miscarriage of Justice exception, Which Petitioner believes lower Courts ruled against. Criticism of the "Futility Doctrine" Focuses on its Potential as a method for bypassing State Courts; In Grandberry, the Court 481 U.S. 129, 135-36 (1987), Stated that although there is a Strong presumption in favor of requiring the prisoner to pursue his available State remedies, his failure to do so is not an absolute bar to (Federal) appellate consideration of his claims. At 131. The Court suggested that if the petition involves an unresolved issue of fact or State law, requiring complete exhaustion would Serve the value of Comity and efficiency. At 134-35 Grandberry States, if however, the Petitioner's Federal claim is clearly, without Merit or if it is evident that "a Miscarriage of Justice" occurred the Court of Appeals Should hold that the State waived the non-exhaustion defense. Federal Courts may however, dispense with the exhaustion requirement because of the manifest injustice to the

Petitioner. In Chandler v. Jones, 813 F.2d 773, 777 N. 4 (6th. Cir. 1987) (Appellate Court not required to dismiss exhausted claims, although Court dismissed unexhausted claim improperly amended to Petition on appeal.) See Clemmons v. Delo, 124 F.3d 944, 953-55 (8th cir. 1997) (No procedural default occurred because Counsel refusal to include all claims in appellate brief.. Jackson v. Shanks, 143 F.3d 1313, 1318-19 (10th cir. 1988) (No procedural default of ineffective Counsel claim occurred because Petitioner had no opportunity at time of direct appeal to develope facts relating to Counsel's performance and Second Post-Conviction Court did not rely on Petitioner's failure to raise claim in first Post-Conviction Petition in finding procedural default.

The Supreme Court has held that the Federal Court hearing a habeas is not obliged to consider sua sponte whether habeas claim is procedurally barred, if issue is not required/Raised by State. However, if the last State Court to which a Federal claim is presented, however, ignores a potential State procedural default and reaches the Merits of a claim, Federal habeas Courts may consider the claims.

Jackson v. Amaral, 729 F.2d 41, 44 (1st cir. 1984) (Federal habeas review not precluded by failure to raise voir dire objection on direct appeal, as required by State procedural law, because State Court disregarded procedural default and ruled on Merits of Federal claim. In Rice vs. Marshall, 816 F.2d 1126, 1129 (6th Cir. 1987) (Federal habeas review not precluded because State Courts chose not to enforce procedural rules and ruled on Merits of Petitioner's Federal claim. Combs v. Coyle, 205 F.3d 269, 275 (6th Circuit 2000)(habeas review not precluded because Petitioner's ineffective Counsel claims first presented for State Post-Conviction relief, rather than on direct appeal, were not procedurally defaulted. The Petitioner may obtain Federal habeas review by demonstrating either (1) Cause for his or her procedural default and actual prejudice as a result of the alleged violation of Federal law. Roberts v. Sutton, 217 F.3d 1337, 1340 (11th cir. 2000)(habeas review not precluded when some external factor to the defense impeded Counsel's or petitioner's efforts to comply with State's procedural rule. Furthemore, some federal habeas Courts avoid the "Cause" analysis by first examing the Merits of a procedurally defaulted claim to determine whether petitioner suffered prejudice due to its loss; (2) or that failure to review the claims will result in a fundamental Miscarriage of Justice." (Coleman v. 501 U.S. at 750. In Murray v. Carrier, the Court stated that procedural default would be excused even in the absense of "Cause" when "a Constitutional violation has probably resulted in the Conviction of one who is actually innocent." 477 U.S. 496 (1986) The Court held that attorney error or oversight in Criminal proceedings is not sufficent cause for excusing procedural default, (unless it rises to the level of ineffective assistance of Counsel in violation of Sixth Amendment.) Id. at 488-89).

Lucas v. O'Dea, 179 F.3d 412, 419 (6th cir. 1999)

(Procedural default as to fatal variance claim excused because attorney's failure to raise argument on direct appeal was sufficiently serious as to deny petitioner Counsel guaranteed by the 6th Amendment.

In Buck v. Davis, (207) Supreme Court Chief Justice Roberts held that: Court of Appeals was required to determine only if district Court's decision was debatable at COA Stage (3) Prisoner was prejudiced by defense Counsel's deficient performance. (4) District Court abused its discretion... on issue of whether Supreme Court's decisions in Martinez and Trevino, denying permitting federal habeas review of an ineffective assistance of trial Counsel claim that was defaulted in a State-Post-Conviction proceeding if State habeas Counsel was Constitutionally ineffective in failing to raise it, and the claim has "Some Merit" applied retroactively on Collateral review was waived.

REASONS FOR GRANTING THE PETITION

Petitioner contends violation of 4th Amendment Rights of Warrantless search and Seizure are national procedural Violations within Due Process. Therefore, his appointed attorneys unwillingness to adequately represent him in all those "critical" Stages initiated those procedural Violations of causing such alleged defaults, creating conflicts and prejudice. Furthemore, Petitioner agrees with the Supreme Court, Chief Justice Roberts that: Court of Appeals was required to determine only if district Court's decision was debatable, at COA Stage, and where defense Counsel's performance fell outside bounds of Competent representation, and District Court abused its discretion in denying appeal issue of whether Supreme Court's decisions in Martinez and Trevino, permitting Federal habeas review of an ineffective assistance of trial Counsel claim that was defaulted. Justice Kennedy held in Martinez that: inadequate assistance of Counsel at initial-review Collateral proceeding may establish cause of a prisoner's procedural default of a claim of ineffective assistance of trial, and where the Anti-terrorism and Effective Death Penalty Act did not bar Petitioner from using ineffectiveness of his Post-Conviction attorney to establish "Cause" for his procedural default, because nationally the claims are Substantial and prejudicial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, B Hunt Jr.

Roy Shotwell JR.

Date: December 17, 2018