

Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RONELL HOWLETT,

PETITIONER, Pro Se

-Vs.-

REED RICHARDSON,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT of APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronell Howlett
Petitioner, Pro Se

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Ronell Howlett, petitioner, pro se, hereinafter "Howlett" respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court Of Appeals For The Seventh Circuit.

OPINIONS/DECISIONS BELOW

The following decisions, orders and opinions are provided to allow for this Court the ability to offer an intelligent and knowing decision as to whether to grant this petition for writ of certiorari.

A. The opinion of the United States Court of Appeals For The Seventh Circuit dated May 9, 2018, denying rehearing with suggestion for rehearing en banc, appears at Appendix 100 to the petition.

B. The opinion of the United States Court of Appeals For The Seventh Circuit dated April 4, 2018, affirming the district court denial for habeas corpus, appears at Appendix 200 to the petition.

C. The opinion of the United States District Court For The Eastern District Of Wisconsin, dated January 30, 2017, denying Motion To Alter or Amend its decision dated January 30, 2017, appears at Appendix 300 to the petition.

D. The opinion of the United States District Court For The Eastern District Of Wisconsin, dated January 30, 2017, denying the petition for habeas corpus, appears at Appendix 400 to the petition.

E. The decision of the Wisconsin Supreme Court dated, January 7, 2016, denying a petition for review appears at Appendix 500 to the petition.

F. The decision of the Wisconsin Court of Appeals, dated October 30, 2015, denying reconsideration of its decision dated October 9, 2015, appears at Appendix 600 to the petition.

G. The decision of the Wisconsin Court of Appeals, dated October 30, 2015, affirming the trial court's decision appears at Appendix 700 to the petition.

H. The decision of the trial court dated December 5, 2014, denying reconsideration of its decision dated December 1, 2014, appears at Appendix 800 to the petition.

I. The decision of the trial court dated November 10, 2014, denying postconviction relief, appears at Appendix 900 to the petition.

J. The decision of the Wisconsin Supreme Court, dated October, 21, 2013, denying a petition for review appears at Appendix 1000 to the petition.

K. The decision of the Wisconsin Court of Appeals, dated, May 14, 2013, denying direct appeal, appears at Appendix 1100 to the petition.

L. The decision of the trial court dated, July 6, 2012, denying postconviction relief, appears at Appendix 1200 to the petition.

JURISDICTION

The date on which the United States Supreme Court of Appeals For The Seventh Circuit decided the case at bar was dated April 4, 2018 and appears at Appendix 200.

A timely petition for rehearing and suggestion for rehearing en banc was denied by the United States Court of Appeals For The Seventh Circuit on the date of May 9, 2018, and a copy of the order denying rehearing appears at Appendix 100.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

LIST OF PARTIES

All parties appear in the caption of this case on the cover page.

RATIONAL FOR GRANTING REVIEW ON CERTIORARI

The issues presented for consideration to this Court have both been decided by the State of Wisconsin and affirmed by the United States Court Of Appeals For The Seventh Circuit, whereby allowing the circumvention of the protections of the United States Constitution's Fifth, Sixth and Fourteenth Amendments.

The State of Wisconsin's reliance on a procedural bar without explanation, thereby dismissing the issue(s) and preventing the review of the claim(s) by the federal courts in habeas corpus proceedings circumvents the provisions of 28 U.S.C.A. §2254.

In addition, the State of Wisconsin has decided an important question of federal law which has not been, but must be settled by this Court. The current standings of the State of Wisconsin's decisions conflict with these same protections.

The full application of the facts in support of these considerations will be provided infra.

Howlett now moves to the Constitutional and Statutory Provisions Involved.

QUESTIONS PRESENTED FOR REVIEW

- A. Is A Federal Court Permitted/Required To Review A State Court's Reliance On A Procedural Bar, When A Petitioner Claims The Application Of The Facts Do Not Support The Procedural Bar?
- B. Does A State Court's Reliance On A Procedural Bar Effectively Deny Ones Right/Access To A Habeas Corpus Pursuant to 28 U.S.C. §2254?
- C. Does The State Of Wisconsin's Application Of The Rape Shield Law Violate A Defendant's Right To Present A Defense?

LIBERAL INTERPRETATION REQUESTED

Howlett, proceeding pro se, unlearned in the law, remains incarcerated and indigent, respectfully request liberal interpretation in the review of this petition for writ of certiorari. This request is asserted pursuant to precedence. See Price v. Johnston, 334 U.S. 266, 292, 68 S.Ct. 1049, 92 L.Ed.2d 1356 (1948); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d. 652 (1972); Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 104 S.Ct. 1723, 80 L.Ed.2d. 196 (1984).

Howlett's ability to litigate these issues has been hindered by his incarceration, limiting his ability to research, investigate, and present these issues before the courts. It is for these reasons, Howlett requests careful consideration of the issues and their pertinent facts as they greatly effect his federal constitutional rights.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The claims/issues requested of this Court to review involve the constitutional right to due process as protected by the United States Constitution's Fourteenth Amendment.

In addition, the claims/issues presented are protected by the United States Constitution's Fifth and Sixth Amendments providing the right to effective assistance of counsel, present a defense, and confront ones accuser.

STATEMENT OF THE CASE

As this case involves a victim under the age of 18, the victim will be identified as "C.A."; the victim's first and last initials.

On June 5, 2009, the State of Wisconsin, filed a criminal complaint charging Howlett with three counts of first-degree sexual assault of a child under age 13, contrary to Wis. Stat. §988.02(1)(e).

C.A. alleged Howlett, a van driver employed by the school C.A. attended, sexually assaulted her on three separate occasions. The assaults occurred in the van in which Howlett drove students to and from school. The assaults consisted of C.A. performing oral and manual masturbation on Howlett.

The police searched and photographed the van where the assaults occurred finding no physical evidence or detection of evidence having been removed through cleaning.

Howlett denied all plea offers and proceeded to trial, claiming his actual innocence.

Between March 22nd and the 24th, 2010, the case was tried before a jury.

The State's case rested on C.A.'s testimony, her knowledge of sexual terms, and a cell phone which Howlett allegedly gave to C.A. for payment of sexual acts.

The defense rested on Howlett's testimony, denying the allegations.

No expert testified for either the State or the defense.

Howlett was found guilty on all three counts.

On May 27, 2010, court sentenced Howlett to a prison term of 21 years; (consecutive terms of five years of incarceration and two years of extended supervision).

On September 2, 2011, postconviction counsel, challenged the following issues:

1. Trial counsel did not introduce school attendance records to impeach C.A; demonstrating C.A. was not at the school when the alleged sexual allegations occurred.

2. Trial counsel did not impeach the victim witness with her prior preliminary hearing testimony.

3. Trial counsel chose not to introduce a photograph of the defendant's penis to impeach the victim. The photo depicted a mole on Howlett's penis which contradicted C.A.'s testimony.

4. Trial counsel did not introduce other reasons for C.A.'s theft of a phone for impeachment purposes.

5. Trial counsel did not use previous conduct of the victim stealing of a phone at the school from a teacher to impeach the victim.

6. Trial counsel did not object to the prosecutor's leading questions of both C.A. and the investigating officer; failed to object to hearsay of the witnesses.

The trial court held an evidentiary hearing, after

which the court denied the postconviction motion. The court found, in part, C.A.'s age was a factor as to the State's need to ask leading questions, her lack of knowledge of when the assaults occurred, and inconsistencies in her statements. Appendix 1200

Appellate counsel filed an appeal; the appellate court affirmed the trial court's decision. Appendix 1100

The Wisconsin Supreme Court denied a petition for review. Appendix 1000

Howlett proceeded pro se, retained a child psychologist. The psychologist reviewed the C.A.'s statements, police reports and the methodology in which C.A.'s statements were obtained. There existed no recording of the interview of C.A. by any party. The psychologist identified numerous issues, including the failure of police to investigate allegations of sexual abuse by C.A. against other individuals and the methodology of the interview process tainting the statements of C.A.

Howlett, filed a collateral appeal challenging theses issues and counsel's failure to present the sexual act Howlett witnessed between C.A. and another student the day before C.A. made the allegations against Howlett.

The trial court denied the collateral attack without a hearing or further briefing. The trial court reasoned the findings of the expert would not have altered the outcome of the trial. The sexual behavior between C.A. and the other student witnessed by Howlett would be barred

by Wisconsin's Rape Shield Law. Appendix 900

Howlett filed a motion for reconsideration, the trial court denied same. Appendix 800

Howlett appealed the trial court's decision to the Wisconsin Court of Appeals who affirmed the trial court's decision relying on the procedural bars of Escalona and Starks. Appendix 700

Howlett filed a motion to reconsider its decision which was denied. Appendix 600

Howlett filed a petition for review with the Wisconsin Supreme Court which was denied. Appendix 500

Howlett proceeded to the United States Eastern District Court For The State Of Wisconsin, having filed a petition for habeas corpus, pursuant to 28 U.S.C.A. §2254. The court denied the petition yet provided a certificate of appeal on the issue of ineffective assistance of counsel, which encompassed all the issues presented in both direct and collateral appeals in the State courts. Appendix 400

Howlett filed a motion to alter and or amend pursuant to Rule 59(e) with the district court, which was denied. Appendix 300

The United States Court Of Appeals For The Seventh Circuit having denied Howlett's request to appoint counsel, which flies in the face of its own practice, denied the appeal with little explanation other than offering deference to the State's decisions. Appendix 200

Howlett timely filed a request for rehearing and

suggestion for rehearing en banc with the United States Circuit Court For The Seventh Circuit, which was denied on May 9, 2018. Appendix 100.

This petition now follows.

STATEMENT OF THE FACTS

1. Impetus Of The Case

The issues presented herein have their foundation in Howlett's criminal conviction. The conviction stems from the allegations of C.A., a nine year old child. C.A. who attended a bible study class at the family church, Resurrection Power Ministry, made the allegations during a discussion of sexual abuse.

The pastor, after sharing his personal story of abuse, requested the children to come forward and discuss similar experiences. C.A. and several other children joined the pastor and shared stories of their personal experiences of sexual abuse. The pastor and staff interviewed the children after which relaying the children's allegations to their parents. The parents chose the next course of action. C.A.'s parents contacted the Milwaukee Police Department (MPD) the following day, June 4, 2009.

Officer Young (Young) of the MPD, interviewed C.A. at the family's home. The interview was not recorded.

C.A. alleged, Howlett assaulted her on three separate occasions while Howlett sat in the driver's seat of the school van, traveling from school to C.A.'s home. After an assault, Howlett allegedly gave her an inoperative cell

phone as a gift. This cell phone, according to the State is the only corroborating physical evidence in this case.

Howlett was charged with three counts of first degree sexual assault of a child. Howlett proceeded to trial with a "he said-she said" defense; despite having provided trial counsel of a motive for C.A. to have made the allegations.

2. The Defense

Howlett presented trial counsel with information surrounding an incident he witnessed the day before C.A. made the allegations of sexual assault. Howlett informed trial counsel he had witnessed C.A. performing oral sex on another student M.H. in the school van as Howlett drove the two students home. Howlett, provided counsel with the pertinent facts, including the date, time, and location of the incident; the name of the other student, as well as the fact Howlett reported the incident BEFORE his arrest to school officials in the form of a written incident report. See Appendix 1300.

Trial counsel retained a private investigator who interviewed M.H.'s parent, who admitted to an incident occurring between C.A. and her son, M.H. on that date in the school van. See Appendix 1400. Trial counsel failed to present the incident to the court. Neither the court or the jury were aware of the incident.

Trial counsel failed to consider the empathy the jury would share for a nine year old child having been sexually

assaulted. In so doing failed to inform Howlett of the possible ramifications such empathy may have on the verdict. This lack of consideration of a jurist's empathy led trial counsel to present a defense void of evidence surrounding C.A.'s ability to comprehend sexual terms, timelines, and related facts relevant to her testimony, including those presented in the direct appeal.

Trial counsel rested on the jury's own personal experiences of young children to identify with C.A., when in fact, trial counsel had knowledge of C.A.'s sexual contact with another student, thereby clearly establishing the fact, C.A.'s experiences were not typical of a nine year old child.

Howlett testified in his own behalf vehemently denying he had touch C.A. in any manner. Further Howlett testified the phone which C.A. stated he gave her, was in fact a cell phone which was confiscated from another student that day and left unsecured in the school van, which followed school policy, thereby C.A. had removed the cell phone from the van. This contention is supported by the documented incident in which C.A. stole a cell phone from a teacher at the same school.

The jury convicted Howlett of all three counts.

3. Direct Appeal

During direct appeal proceedings, Howlett AGAIN, notified postconviction counsel of the incident he witnessed between C.A. and M.H. the day before the allegations were

made against Howlett. Postconviction counsel failed to present the information to the court, rather relying on those issues outlined in the direct appeal proceedings supra. Appendix 1200

The issues presented by appellate counsel fell flat, as the court determined in part, the cognitive development of a nine year old child would easily explain and dismiss appellate counsel's arguments. Appendix 1100

4. Collateral Proceedings

a. Expert Witness

Howlett, proceeding pro se, retained a child psychologist, Dr. Daniel Swerdlow-Freed, (Swerdlow-Freed) who specializes in the area of child sexual abuse and child development. Upon review of the record, Swerdlow-Freed opined the forensic interview conducted by Young, which was not recorded, was tainted explaining C.A.'s numerous inconsistent statements. More importantly, Young failed to investigate allegations of abuse made by C.A. identifying other perpetrators. Young chose to focus only on Howlett with no known explanation. Swerdlow-Freed opined, C.A.'s documented sexual behavior and alleged previous abuse served as a foundation for the allegations against Howlett.

Appendix 1300.

Swerdlow-Freed did not comment on C.A.'s truthfulness or character.

Swerdlow-Freed's findings provide a defense which trial counsel was required to investigate and develop.

counsel with direction to pursue and investigate.

b. C.A.'s Sexual Behavior With M.H.

Howlett identified an incident which occurred between C.A. and M.H., another student, on the van while Howlett was driving both student's home from school.

Howlett filed an incident report with school officials documenting the sexual behavior between C.A. and M.H. the day before C.A. alleged Howlett abused C.A.. The incident report detailed on June 3, 2009, approximately 5:56 pm., C.A. and M.H., while seated together in the back of the van, C.A. had her head on M.H.'s lap, M.H. was looking down at C.A.'s head. Howlett confronted both students, who appeared startled. C.A. raised her head, M.H. pulled up and buttoned his pants. Howlett reasoned both students were engaged in oral sex and immediately separated the two students, informing both students they were in trouble and their parents and school administrators would be notified.

The incident was investigated and supported by private investigator, Santo Galati, (Galati) who was retained by trial counsel. Galati interviewed both M.H. and his mother, Heidi Allison, (Allison) on March 19, 2010. Allison admitted she was aware of M.H. having had sexual contact with C.A. in the van on that date. (Appendix 1400) Counsel failed to develop this defense.

c. Rape Shield Law

Howlett, understanding the Rape Shield Law, Wis. Stat.

§972.11(2), preventing the defense to question or raise a victim's sexual history, is intended not to prejudice the victim; or the State's case.

To balance a defendant's right to confront ones accuser as protected by both the State and federal constitutions; the State of Wisconsin has provided an exemption to the Rape Shield Law. The exemption allows for the consideration of a victim's sexual history, to do so five factors must be presented by the defense before the trial proceedings.

See State v. Pulizzano, 155 Wis.2d. 633, 456 N.W.2d. 525 (1990). Specifically, the defense must make an offer of proof meeting these five factors: (1) The prior act clearly occurred; in this case, Howlett's incident report, and the private investigator's report support the fact C.A. and M.H. had engaged in a sexual behavior. (2) The act(s) must closely resemble, yet are not required to be identical to those of the present case; allegations against Howlett resemble those which Howlett witnessed C.A. and M.H.'s sexual behavior, both in time, place, and act. (3) The prior act is clearly relevant to the material issues; the sexual behavior between C.A. and M.H. provided motive for C.A. to have made the allegations against Howlett. Further, the incident demonstrates C.A.'s knowledge of sexual terms and behaviors. (4) The evidence is necessary for the defense; the defense was required to address several questions, why C.A. would fabricate an allegation against Howlett and how C.A. would have the knowledge of sexual

terms and behaviors, both questions would be addressed by the sexual incident witnessed by Howlett. (5) The probative value outweighs the prejudicial effect; the prejudicial effect of a 9 year old child having had a previous sexual experience would be limited if not nullified by the jury's empathy. The probative value is evident in providing Howlett with the means of addressing the key questions of why and how a 9 year old child would have the need and ability to make specific sexual allegations against Howlett.

Howlett argued the State of Wisconsin acknowledged the Rape Shield Law "takes on a slightly different role when the complainant is a child". State v. Dunlap, 2002 WI 19, 259 Wis.2d 466, ¶19, 640 N.W.2d. 112. Furthermore, it is noted the Rape Shield Law is not absolute. *Id.*

5. State Court Collateral Proceedings.

a. Trial Court's Decision

The trial court, without an evidentiary hearing or further briefing, reasoned in the application of the Pulizzano factors, the sexual behavior between C.A. and M.H. is unclear and ambiguous. Further the sexual behavior does not demonstrate that the prior act "closely resemble those" of the present case.

The trial court denied the Swerdlow-Freed's findings as having no effect on the outcome of the verdict.

At no time did the trial court rest on a procedural bar for its findings.

The trial court denied the motion for collateral review. Appendix 1200

On reconsideration and appeal Howlett argued the trial court's decision is erroneous, lacking a rational mental process by which the facts of the record and law relied upon are stated and considered together for the purpose of achieving a reasoned decision. The trial court overlooked the statement of M.H.'s mother, Allison, and the incident report filed by Howlett, which included the admission of sexual contact between C.A. and M.H.

The trial court's reliance on Howlett having not visually seen the "skin to skin" contact between M.H. and C.A.; defies the Pulizzano standard of the act in question being similar to that which Howlett is accused. The court ignored, the fact Howlett observed M.H. pulling up his pants, after C.A. raised her head from M.H.'s lap.

At no time did the trial court deny C.A. and M.H. had sexual contact.

Howlett relied on Pulizzano standard, as to offering of proof of a similarity between the sexual act in which the victim participated and that of the allegations against Howlett. Howlett alleged he had met all five factors therefore the incident between C.A. and M.H. was permitted to be presented to the jury as a defense.

b. Collateral Appellate Proceedings

The appellate court, unlike the trial court; refused to review the facts and merits of the collateral appeal.

Rather the appellate court relied on two procedural bars in affirming the trial court's decision to deny the collateral appeal motion. The appellate court introduced for the first time the reliance on the Escalona and Starks procedural bars.

The appellate court, did not provide an evidentiary hearing or apply the facts to the Pulizzano standard. The appellate court did not review or state any of the facts presented, rather made a broad affirmation of the trial court's findings. Appendix 700.

More specifically, both the trial and appellate courts erred and/or did not acknowledge the following in the application of these facts:

1. The incident report filed by Howlett prior to the allegations made by C.A.
2. The sexual behavior between M.H. and C.A. which occurred in the van, driven by Howlett.
3. Denying the allegations against Howlett were not similar to the sexual incident which Howlett witnessed between C.A. and M.H..
4. Despite presenting issues, if true, which warranted an evidentiary hearing per the standards outlined in State v. Bentley, 201 Wis.2d. 303, 310, 548 N.W.2d. 50 (1996); State v. Machner, 92 Wis.2d 797, 285 N.W.2d. 905 (Ct. App. 1979) an evidentiary hearing was not presented.
5. The testimony of the expert would not be permitted as it was deemed a statement of the victim's credibility.
6. The appellate court's reliance on a new, and inconsistently applied procedural bar, specifically Starks, Howlett equal access to the courts and to the review of the merits of his claims.

Howlett requested reconsideration of the appellate court's failed reliance on a procedural bar through the

court's reliance on a procedural bar through the inaccurate application of the facts, yet again the court denied Howlett's attempts for justice.

6. Federal Proceedings

Howlett filed a petition for habeas corpus pursuant to 28 U.S.C. §2254, in so doing, Howlett argued all the issues presented in both direct and collateral appeals. At issue is the district and appellate court's refusal to review the collateral proceedings due to the State relying on a procedural bar, thereby denying review of those issues presented during collateral proceedings.

Both courts reasoned the procedural bars were properly asserted thereby a federal court is barred from review.

Appendix 100-400

Howlett argued, the State court erred in the application of both procedural bars, Escalona and Starks as neither bar was applicable.

Specific to the bar of Starks, Howlett argued this was a new procedural bar, introduced literally months before the initiation of collateral proceedings, in which the bar was not known to Howlett, nor was it routinely followed by the State court system.

Specific to Escalona, Howlett argued the trial court failed to properly apply the factors of Pulizzano, and misinterpreted the expert witness' findings as well as how the expert's findings were to be utilized in the defense. Howlett argued the expert's findings were of

great value to the defense both as direct testimony from the expert and as providing direction to the defense in terms of impeaching State witnesses and developing the argument of the methodology used to obtain the statements of C.A. led to the statements being tainted.

Both courts reasoned, their ability to address any issue in which the State relied upon a procedural bar prevented further review. Appendix 100-400

Both courts determined, Howlett did not provide facts relevant to the appropriate standard. Neither Court reviewed the facts Howlett presented demonstrating the reliance on either procedural bar was misplaced. *Id.*

Howlett presented such arguments in both a Rule 59(e) motion to the district court and a motion for rehearing and rehearing with suggestion for en banc review. Howlett's efforts went unheard. Appendix 100;300

Both courts determined Howlett's claim of actual innocence and the existance of a fundamental miscarriage of justice unwarranted, finding the State courts determined the evidence was strong against Howlett. *Id.*

This leads to this petition for writ of certiorari.

FACTS IN SUPPORT
FOR GRANTING OF THIS PETITION

A. Is A Federal Court Permitted/Required To Review A State Court's Reliance On A Procedural Bar, When A Petitioner Claims The Application Of The Facts Do Not Support The Procedural Bar?

1. Current U.S. Supreme Court Standards

Howlett recognizes the current standing of this Court

in which a state court's decision to decline to address the merits of a state prisoner's constitutional claim was based on an independent and adequate state procedural ground, the district court is barred from reviewing the claim in a federal habeas petition. Coleman v. Thompson, 501 U.S. 722, 729, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991).

A state's procedural ground is independent if the last state court to consider the question "clearly and expressly" relied on the procedural default as the basis for its decision to decline to address the merits of the constitutional claim. Ford v. Georgia, 498 U.S. 411, 423-24, 111 S.Ct. 850, 112 L.Ed.2d. 935 (1991) A state's procedural ground is adequate if the procedural rule is firmly established and regularly followed and applied in a principle manner. *Id.*

In addition the petitioner must fairly be deemed to have been apprised of the rule's existence at the time they acted for the state procedural grounds to be adequate. NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 457, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)

The district court in denying review, reasoned, "Here, the state court of appeals explicitly relied on Escalona and found no justification for the failure to raise the arguments earlier. Accordingly, because the state court relied on an independent state procedural ground, no federal habeas relief is available." Appendix 400

The district court did address the merits given the

complexity of the procedural default rule when ineffective assistance of counsel is raised as a bar relying on Lee v. Baenen, No. 10-C-040, 2013 WL 34226, at *7 (E.D. Wis. Jan. 30, 2013). Id. The district court merely recited the trial court's decision, failing to apply the arguments of the petitioner. Finding "double deference is owed under AEDPA precludes a federal court from undertaking any kind of searching, ex post facto review of counsel's performance on a matter like this." Id.

2. Relevant Facts

Howlett concedes the State relied on two procedural bars, specifically, Escalona and Starks as a means to deny the issues presented in collateral appeal proceedings.

Howlett does not deny the current precedence deny the review of those issues in which a state court has procedurally barred; thereby providing deference to the state court's decision.

Howlett does question a State's ability to haphazardly rely on a procedural bar as a means dismiss and prevent review of a federal constitutional right.

In the case at bar, Howlett has argued the trial court's review of the issues presented on collateral review, specifically, trial counsel was ineffective for failing to retain a child psychologist to review and identify potential issues and factors for the defense and failure to present a sexual incident between C.A. and M.H., under the exemption of the Rape Shield Law, as a means to

establish a motive for the allegations and address the the question of C.A.'s knowledge of sexual terms and behaviors. Howlett argues, the State court's reliance on the two procedural bars is misplaced, denying Howlett his federal constitution rights to effective assistance of counsel, due process, and to present a defense.

Howlett argues the use of a procedural bar haphazardly allows a State to prevent federal review of any constitutionally protected right. The mere phrase "is procedurally barred" prevents a federal court from reviewing an issue with its foundation in the U.S. Constitution. Neither the district or appellate court is permitted to review the facts in which a State court has expressly relied upon a procedural bar.

Although, as in this case the district court did a cursory review of the trial court's decision, (despite the trial court did not rest on a procedural bar), the district court did not review the facts outside of the record, facts Howlett argued were not considered and supported the issues. Regardless, the outcome remains the same, the denial of review issues which rested on a procedural bar. Appendix 400

Both the district and appellate courts relied on current precedence in denying review of the claims which the State deemed procedurally barred. Therefore, this claim is ripe for review and consideration of the question; is a federal court barred from reviewing a claim involving

a federal constitutional right simply due to being procedurally barred?

3. Requested Action

To protect the sanctity of the federal habeas corpus process and the federal constitutional rights, a federal court must maintain the ability to review the facts in which a State court relies on a procedural bar.

To merely "rubber stamp" a State court's use of a procedural bar chills the federal review of a constitutionally protected right, and the writ of habeas corpus.

Howlett now moves to the second question for this Court's consideration.

B. Does A State Court's Reliance On A Procedural Bar Effectively Deny Ones Right/Access To A Habeas Corpus Pursuant to 28 U.S.C. §2254?

1. Current United States Supreme Court Standard

For sake of Brevity the foundation for this question is provided for in aforementioned question A. and will not be repeated at this time. Additional citations will be provided as needed.

A fundamental question has been continuously argued surrounding the spectrum of the writ for habeas corpus as it applies to the review of State court decisions. See Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d. 854 (1973); Brecht v. Abrahamson, 507 U.S. 619, 648, 113 S.Ct. 1710, 123 L.Ed.2d. 353 (1993).

Presently a federal court is barred from reviewing an issue in which the state rests its disposition on

procedurally bar. A State court's decision is to receive deference.

Howlett's question rests on whether deference to a State's reliance on a procedural bar effectively denies the availability of habeas review. More directly, deference of a procedural bar effectively empowers the state to deny federal review of a meritorious constitutional claim.

The State of Wisconsin, relies on procedural bars routinely in collateral reviews, to the point Escalona has become the "go to" means of denial of both State and Federal constitutional claims.

This Court's standing in Harrington v. Richter, 131 S.Ct. 770, 788, 178 L.Ed.2d. 624 (2011) places both great deference to State court decisions and increases the bar for the determination of counsel's ineffectiveness. In the same breath this Court determined the Richter presumption is a strong one that may be rebutted only in unusual circumstances, it is not irrebuttable. Johnson v. Williams, 568 U.S. 289, 292, 133 S.Ct. 1088, 185 L.Ed.2d. 105 (2013).

Howlett asserts providing complete deference to State's decisions as to the those which rest on a procedural bar provides no incentive to examine federal constitutional claims carefully and thoroughly. See Makey v. United States, 401 U.S. 667, 687, 91 S.Ct. 1160, 28 L.Ed.2d. 404 (1971); Desist v. United States, 394 U.S. 244, 89 S.Ct. 1030, 22 L.Ed.2d. 248 (1969).

Howlett argues, the use of procedural bars in this

case, fundamentally denies the right to federal review. Howlett has demonstrated the facts in which the State has relied upon in support of the procedural bars are incomplete, incorrect, and inappropriate, yet has no means to challenge the State's reliance on these procedural bars.

2. Relevant Facts

The relevant facts pertaining to this issue have been presented *supra* and will only be summarized at this time.

Howlett had argued in both State and Federal proceedings the procedural bars relied upon to deny federal review do not apply for the following reasons:

The clearly stronger bar known as Starks, was new at the time Howlett initiated the collateral attack. There simply was no known way Howlett could have been aware of the standard. Further, the bar was not routinely followed due to the bar being introduced months before Howlett filed the collateral attack. Without acknowledging this argument, the State relied on Starks.

The Escalona bar, can only be utilized after a defendant has failed to show a sufficient reason for not having presented the issues in the direct appeal. Howlett argued trial and appellate counsel was ineffective; an established and accepted sufficient reason by the State. Due to the failure to consider the material facts presented in the argument, the State incorrectly relied on Escalona as means to deny collateral appeal.

The federal courts merely accepted the State's conclu-

sions without further discussion. Appendix 100-400

3. Requested Action

The habeas corpus has a long history, one which has been founded on the premise of justice. The habeas corpus protects ones federal constitutional rights, which may be threatened by numerous factors including, unconstitutional laws, misapplication of the law and facts and unfortunately judicial bias and prosecution misconduct. To provide deference to the State's reliance of procedural rules threatens the intent of the writ of habeas corpus.

This Court has set the precedence in this matter to provide the State's decision deference, in fact when a decision includes a claim of ineffective assistance of counsel, as is the case here, double deference is applied. Appendix 400. At issue is the procedural bar, and placing blind faith the State has properly exercised its reasoning as to the application of its own procedural rules.

To be clear, Howlett does not contend a procedural rule in of it self is impermissible rather the rules misapplication to the facts. Without the ability to review the State's application of the facts to the procedural rule asserted, it allows the State the ability to disallow federal review of a constitutional issue. Howlett also understands the need to provide deference to the State court's decision, yet blind deference which impacts his federal constitutional rights must not be sacrificed to appease the State judiciary.

Howlett respectfully request, the federal courts be

permitted to review the facts as applied to the procedural bar implicated to determine if the procedural bar relied upon is properly utilized.

C. Does The State Of Wisconsin's Application Of The Rape Shield Law Violate A Defendant's Right To Present A Defense?

1. Current U.S. Supreme Court Standards

Before moving forward, Howlett notes, this Court has not directly addressed whether Wisconsin's rape-shield statute, or any similar rape shield statute, violates a defendant's right to present a defense. See Hanson v. Beth, 738 F.3d. 158, 163-64 (7th Cir. 2013). This Court has yet to hold that any application of a rape shield statute is inconsistent with the Constitution, making it particularly hard to say that failure to make a constitutional exception is contrary to clearly established federal law. Simply this Court has never deemed a rape shield statute unconstitutional. See Jardine v. Dittman, 658 F.3d 772, 778 (7th Cir. 2011)

This Court has long protected a defendant's constitutional right to due process as protected by the Fourteenth Amendment. The right to present a defense and confront ones accuser is recognized as a fundamental element of the right to due process and the Sixth Amendment, right to present a defense. Holmes v. South Carolina, 547 U.S. 319, 329-31, 126 S.Ct. 1727, 164 L.Ed.2d. 503 (2006). Nevertheless trial courts retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable

limits on cross examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witnesses' safety or interrogation that is repetitive or marginally relevant. Delaware v. Van Arsdall, 476 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

A Sixth Amendment violation occurs when the defendant shows that he was denied the opportunity to elicit testimony that would be relevant and material to the defense.

Jurisdictions, including Wisconsin have made efforts to protect rape victims from the humiliation of public disclosure of the details of their prior sexual activities. Wisconsin's efforts have been promulgated in Wis. Stat. §972.11 which provides in part, the introduction of any evidence concerning the complainant's prior sexual history or reputation is generally barred regardless of the purpose.

In so doing, jurisdictions have restricted the defendant from utilizing the victim's sexual history. Unfortunately the defendant's right to present evidence to the jury is infringed.

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him: and to have compulsory process for obtaining witnesses in his favor." U.S. Const. Amend VI.

Recognizing the Rape Shield Law may unconstitutionally infringe upon a defendant's confrontation right, Wisconsin has permitted in specific circumstances a process in which

a defendant may introduce the sexual history of the victim. The Wisconsin Supreme Court in State v. Pulizzano, 155 Wis.2d. 633, 456 N.W.2d. 325 (1990) allowed for the admission of otherwise prohibited evidence of complainant's sexual conduct in order to protect the defendant's constitutional right to present a defense. Pulizzano, introduced a five part test:

(1) the prior acts clearly occurred; (2) the acts closely resembled those of the present case; (3) the prior act is clearly relevant to a material issue; (4) the evidence is necessary to the defendant's case; and (5) the probative value of the evidence outweighs its prejudicial effect.

Pulizzano, 155 Wis.2d at 651-52. If the defendant makes the showing, the court must then determine whether the State's interests in excluding the evidence are so compelling that they nonetheless overcome the defendant's right to present evidence. *Id.*

The Seventh Circuit has expressly held that the Pulizzano test incorporates the "right to present a defense" standards found in the Supreme Court's decisions in Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d. 297 (1973) and Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)

2. Relevant Facts

Howlett argued trial, postconviction, and appellate counsel was ineffective for failing to present the sexual incident Howlett witnessed between C.A. and M.H. as part of the defense. Howlett informed all counsel of the incident, trial counsel investigated and corroborated

Howlett's observation, yet did not bring forth a motion pursuant to Pulizzano. A record of trial counsel's rational for not doing so has not been preserved, as a requested evidentiary proceeding was denied. Appendix 100

Howlett asserts his right to question and develop for the jury, C.A.'s sexual behavior with M.H., as witnessed by Howlett immediately prior to the allegations of C.A. was admissible. Howlett argues the sexual behavior between C.A. and M.H. would address the questions of a reasonable jurist. Specifically,

1. How a nine year old would have learned of sexual terminology.
2. How a nine year old would have learned of sexual acts.
3. Why a nine year old would have made the allegations i.e. motive.

The trial court, in applying the Pulizzano factors reasoned as Howlett did not actually witness the sexual behavior between C.A. and M.H. (skin to skin contact), only the behaviors associated with the sexual behavior i.e. pulling up and buttoning of pants, head on lap, etc. it was impossible to state with any certainty any sexual act had occurred. This despite the fact, M.H.'s mother stated M.H. admitted to such behavior on that date and time, corroborating Howlett's report. Appendix 1300-1500. The sexual act Howlett witnessed between C.A. and M.H. clearly mirrored that of which Howlett was alleged to have C.A. perform.

1. Both the allegations against Howlett and that which Howlett witnessed, included, C.A. performing oral sex.
2. Both sex acts occurred in the school van.
3. Both the sex acts occurred in transit between school and the children's homes.
4. The allegation occurred the day after Howlett witnessed, reprimanded C.A. and M.H. for their sexual behavior.

Applying the Pulizzano standard, Howlett has met all five factors. Even though Howlett did not see C.A.'s mouth on M.H.'s penis, clearly the behaviors of C.A. and M.H., in conjunction with M.H.'s mother's statement demanded an evidentiary hearing to establish the facts. In this case, no State court found an evidentiary hearing warranted.

3. Alternative View

Assuming the State is correct, the incident witnessed by Howlett was not similar to that of the allegations as he did not witness the actual skin to skin contacts, clearly the obvious question must be, was there any sexual behavior at all between C.A. and M.H.? More appropriately, if Howlett did not witness a sexual act, as the State has reasoned, as there is no similarities between the allegation and that of which he witnessed between C.A., the Rape Shield Law would not be applicable. Therefore the incident would be permitted, allowing a jury to determine for themselves what the type of behavior between C.A. and M.H. entailed. The incident alone, served as a motive for C.A. to fabricate an allegation, as Howlett, separated C.A. from M.H.,

reported the behavior to the school.

In this case, trial, postconviction and appellate counsel were ineffective for failing to pursue the incident between C.A. and M.H., regardless if it was deemed sexual or not by the State.

The question which begs to be asked, would the presentation of the incident between C.A. and M.H. have led to a different outcome at trial.

Lets assume a reasonable jurist, had heard of C.A.'s allegations against Howlett, clearly, a sense of empathy and trust is offered to the victim. As previously discussed, a jurist would require sufficient evidence to explain:

1. C.A.'s knowledge of sexual terms.
2. C.A.'s knowledge of sexual acts/behaviors.
3. C.A.'s motive to "make up" the allegation.

This incident addresses these questions.

The prejudicial effect to C.A. and the State, is ridiculously non existent. A reasonable jurist would see C.A.'s sexual behavior with M.H. as a greater problem, one which cries out for support rather than blame. No nine year old child should have been exposed to any sexual behavior. Nor should Howlett be punished for the abuse C.A. has suffered leading to her sexual behaviors.

4. Wisconsin's Rape Shield Law

Wisconsin does not offer a blanket shield against a victim's sexual history, as stated supra, Wisconsin offers

an exception to the rule, which has come to be known as the Pulizzano standard. Although offering an exception rather than a blanket provision of a victim's sexual history allows Wisconsin to "skirt" the confrontation clause, it is the application of this provision which requires scrutiny by this Court.

Howlett asserts, the application of the Pulizzano factors is not appropriate in the case at bar as the victim is a nine year old child, one who is not expected to have a sexual history. Any sexual history would be deemed unprecedented and obviously abusive in nature. Rape shield Laws are designed to protect a victim from humiliation, and prejudice a victim due to their sexual history. In the case of a young child, such prejudice is nonexistent. A nine year old cannot experience the feelings of humiliation. Simply the role of a Rape Shield Law does not have the same value or effect as it would in the case of adults and persons of age who are expected to be sexually active, certainly a nine year old child.

5. Requested Action

A state is constitutionally prohibited from enacting a rape shield law that limits a defendant's ability to introduce otherwise admissible evidence. The Sixth Amendment rights of confrontation and compulsory process guarantee exactly this: no person accused of a crime may be denied the right to introduce evidence when the probative value outweighs the prejudicial effect. The state may

not legislate to alter the rules of evidence so as to place unusual and new burdens on the accused's ability to defend himself.

Admittedly there is nothing wrong with requiring that the relevance of sexual history evidence be determined before trial, by employing the traditional standard of probative value weighed against prejudicial effect.

Wisconsin employs such practice in theory.

Howlett was denied this opportunity as trial counsel failed to bring the sexual incident between C.A. and M.H. to the trial court's attention. On collateral appeal, Howlett, despite requesting such a hearing, was not provided this opportunity.

It goes without argument, Howlett was denied the ability to confront C.A. as to her behavior with M.H.. The material facts surrounding the incident between C.A. and M.H. was highly probative to the defense and yes carried little prejudicial effect to either the State or the victim.

The application of the Pulizzano standard, clearly violated Howlett's constitutional rights to due process; the right to confront ones accuser.

This Court is requested to review application of Wisconsin's Rape Shield Law and its exception both as it was applied in the case at bar as well as its infringement on a defendant's constitutional rights.

More importantly, this Court is requested to not simply review the statute and precedence rather its present

applications by the Wisconsin judiciary. Throughout this petition, Howlett has consistently argued, the statute and precedence may, on its face be constitutional, yet the application of same begs scrutiny.

This Court has never reviewed or found a state's Rape Shield Law to be unconstitutional. Howlett offers this Court the opportunity to review Wisconsin's Rape Shield Law as it was applied in the case of a nine year old child.

In so reviewing the Rape Shield Law, question its application to a young child, a child who by all moral and legal standards should not have a sexual history to protect.

Secondly, the value of a young child's sexual abuse history in relation to the defendant's ability to overcome the empathy and belief a reasonable jurist has of a young child.

Finally, the right to confront ones accuser, to demonstrate why an allegedly innocent nine year old child would make such allegations, understand sexual terms and behaviors. To disallow the ability to confront the victim of the unfortunate sexual abuse denies a defendant his constitutional rights protected by the Fifth, Sixth, and Fourteenth Amendments.

This Court is requested to accept this petition to protect Howlett's and all defendant's who face similar circumstances.

CONCLUSION

Ronell Howlett, petitioner pro se, request this Court to liberal construe the issues presented herein, thereby protecting and enforcing his constitutional rights.

Howlett, has claimed his actual innocence throughout the criminal trial, appellate and habeas proceedings. In so doing, Howlett has faced the incredible battle of defending himself against the allegations of a nine year old child. The innocence projected upon a child is not easily countered, without that ability to challenge the child's allegation with a previous and corroborated sexual incident with another child, the jury is left with only the projected innocence of any normal nine year old.

This Court is requested to find, the State of Wisconsin's application of its Rape Shield Law, attacks Howlett's constitutional rights.

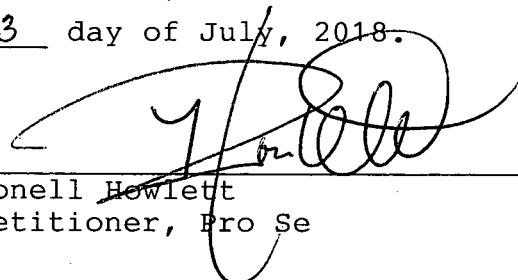
In addition, Howlett is requesting this Court to review the ability to review a state's use of its procedural bar. Specifically, if the federal must apply complete deference to a relied upon procedural bar. Howlett argues, the federal court must have the ability to review the application of the facts to a procedural bar to determine if the procedural bar is appropriate.

Howlett buttresses this question asking if the protections afforded by the writ of habeas corpus is weakened if not lost, if complete deference to a state's

reliance on a procedural bar is afforded.

Howlett respectfully requests this Court consider the questions and relative facts presented, if necessary, amending the questions as it sees fit to pursue these issues herein.

Dated this 23 day of July, 2018.


Ronell Howlett
Petitioner, Pro Se

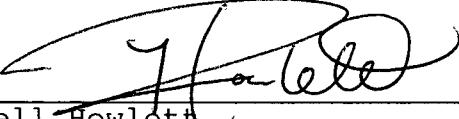
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768-6500

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I hereby certify that the petition for writ of certiorari contains 37 pages, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date of 23 day of July, 2018.



Ronell Howlett
Petitioner, Pro Se

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