19-7749

NO. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREY L. BRIDGES,

Petitioner-Appellant,

v.

DAVID GRAY, WARDEN,

Respondent-Appellee,

On Petition for a writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

ANDREY L. BRIDGES #A650493
Belmont Correctional Institution
P.O. Box 540
68518 Bannock Road
St. Clairsville, Ohio 43950

IN PROPRIA PERSONA

Andrey Bridges

QUESTIONS PRESENTED

I: Does the State affirmative defense of Res Judicata defeats Amendment Fifth; Sixth; Eighth, and Fourteenth of the United States Constitution?

II: If a free standing claim show Factual Innocence, or Actual Innocence, should it be allowed to be heard and reviewed in "all" ***court[s]***, when the free standing claim shows a manifest injustice of Due Process, and Equal Protection[s] of the Law, as protected by Amendment 5th, 6th, and 14th of the United States Constitution?

III: In a circumstantial case, if record produces speculation on the elements of charge[s] and on the evidence, does speculation holds as set forth in ***O'Laughlin v. O'Brian***, 568 F.3d 287, 304,308, and ***Brown v. Palmer***, 441 F.3d 347, 351 and makes a conviction "unconstitutional, contrary, and unreasonable to federal law?

IV: ***Under Schulp v. Delo,*** 513 U.S. 298, 330 (1995); holding: the assessment of witness credibility is beyond the scope of [habeas review], "But" when the witness credibility and evidence is flawed should **Schulp**; be left open to habeas review as ***Bousley***, 523 U.S. at 623, and ***Murray v. Carrier***, 477 U.S. at 496?

V: If the record shows counsel was deficient and resulted in actual prejudice, as held by the United States Supreme Court precedent in ***Strickland v. Washington***, 466 U. S. 668, 688, did the lower court[s], in reviewing this claim; violate Constitutional rights of Petitioner when it made exceptions to and by passed Due Process of law as held by 14th Amendment of the United States Constitution?

PARTIES TO THE PROCEEDING

The parties to the proceeding in which is asked to be reviewd are, Andrey L. Bridges Petitioner, **at:** Belmont Correctional Institution, P.O. Box 540, St. Clairsville, Ohio 43950,

Brigham Sloan warden of Erie Correctional Institution, **at:** 501 Thompson Road, Conneaut, Ohio 44030, and David Gray warden of Belmont Correctional Instituion, **at:** P.O. Box 540 St. Clairsville, Ohio 430950, and Attorney General Assistance-Stephanie L. Watson, and Attorney General Assistance Paul Kerridge, **at:** the Office of Criminal Justice Section, 150 E. Gray street 16th Floor, Columbus, Ohio 43215.

Judges; Eugene E. Siler, John M. Rogers, Joan L. Larsen, Ralph B. Cole, Richard Griffen, and Ramond M. Kethledge of the Sixth Circuit Court of Appeals, **at**: Potter Stewart US Courthouse, 100 E. 5th Street Room540, Cincinnati, Ohio 45202;

Judge Jack Zouhary, and Magistrate Judge William H. Boughman, of the Northern District Court of Ohio Eastern Division, **at;** Carl B. Stokes US Court House, 801 W. Superior Ave. Rm, 161, Clevland, Ohio 44113,

Judges Tim McCormack, Sean C. Gallagher, Patricia Ann Blackmon, Anita Laster Mays, Mary Eileen Kilbane, Mary J. Boyle, Frank Celebrezze, Larry A. Jones Sr., Eileen T. Gallagher, **at:** The Eighth District Appellate Court of Cuyahoga County, 1 Lakeside Ave, Cleveland, Ohio 44113,

Judge Hollie L. Gallagher, **at:** Cuyahoga Common Pleas Court Justice Center 1200 Ontario St. Ste. 16A, Rm. Cleveland, Ohio, 44113.

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NO. _____

_____♦_____

IN THE
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ANDREY L. BRIDGES,

Petitioner-Appellant,

v.

DAVID GRAY, WARDEN,

Respondent-Appellee,

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PETITION FOR A WRIT OF CERTIORARI

Based on upholding the United States Constitution and on this court interpretation of manifest injustice[s], and miscarriage of justice[s], that violates the United States Constitution; Andrey L. Bridges respectfully asks that a writ of certiorari issue to review the lower courts order[s], and remand to trial court for a new trial, or dismiss all actions against Andrey L. Bridges and give him relief.... "FREEDOM" from further unlawful imprisonment.

OPINIONS BELOW

At issue[s] in this petition is ongoing violations of the 5th, 6th, 8th, and 14th Amendment[s] of the United States Constitution and a violation to the United States Constitution right of Due Process, and violation of Equal Protection of the "Law[s]", that is Govern by the United States Constitution.

The violation[s] started May 5, 2013; in Case No. ***State of Ohio v. Andrey L. Bridges,*** [1] CR-13-574201 of the Cuyahoga County of Common Pleas Court, of Cleveland Ohio; Attached to that case of violation[s] are also in the Cuyahoga County Court of Appeals, Cleveland , Ohio ***State v. Andrey L. Bridges*** Case[s] No. CA-13-100805, affirming the trial court conviction, and denying the Application for reopening, and reply brief, and Case No[s] ***State v. Bridges***, Ca-14-101938, ***State v. Bridges***, Ca-101938; ***State v. Bridges,*** CA-102930, ***State v. Bridges***, CA-103090; ***State v. Bridges***, CA-103634; State v. Bridges, CA-104506; Denying void judgement[s] and Actual Innocence and ineffective assistance of counsel, Due process violations and constitutional rights guaranteed by the 5th, 6th, 8th, and 14th, Amendment of the United States Constitution.

Also in The Ohio Supreme Court: in ***State of Ohio v. Andrey Bridges***, Case No[s], 14-2074, Memorandum in Support of Jurisdiction and reconsideration; and ***State v. Bridges,*** 14-2063, Memorandum in support of jurisdiction and Reconsideration; and ***State v. Bridges***, 15-0718, Memorandum in Support of

[1] **NOTE:** There has been middle initials left out in some of petitioner case[s] so case[s] well be State of Ohio v. Andrey L. Bridges, and State of Ohio v. Andrey Bridges.

Jurisdiction and Reconsideration; and ***State v. Bridges***, 16-0030, Memorandum in Support of Jurisdiction and reconsideration; and ***State v. Bridges***, 16-1621, Memorandum in Support of Jurisdiction and reconsideration.

Also in the United States District Court for the Northern District Court of the Eastern Division, ***Bridges v. Sloan***, Case No. 1:15-cv-02556, Petition, Return of Writ by Respondent, Traverse of Petitioner, and all attached documents, and Report and Recommendation by the magistrate Judge, Reply to the Report and Recommendation by Petitioner, and order by the District Judge.

Also in the United States Court of appeals for the Sixth Circuit Court, Case # 19-13297, ***Bridges v. Gray***, Petitioner request for certificate of Appealabilty , and attached filings, and the order of the lower court. All to which were denied.

JURISDICTION

ON December 10, 2015; Petitioner filed his timely habeas petition to all his state exhausted claims above. The Northern District of the Eastern Division of Ohio "See" ***Bridges v. Sloan***, Case no. 1:15-cv-02556. On February 25, 2019; the District Court denied that petition. On March18, 2019, Petitioner appealed by request of certificate of Appealabilty to The United States Appeals Court of the Sixth Circuit "See" Case No 19-3297). On November 21, 2019; the certificate of Appealabilty was denied, and On December 2, 2019; Petitioner filed a timely en banc rehearing to that court order. On January 07, 2020; The court denied the timely en banc rehearing, and this court now have Jurisdiction under 28 U.S.C.§ 1254(1).

STATUES AND CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 5 of the United States Constitution provides, in pertinent part: No person shall be deprived of life, liberty, or property without due process of law.

Amendment 6 of the United States Constitution provides, in relevant part: In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense.

Amendment 8 of the United States Constitution prohibits, in relevant part: the infliction "cruel and unusual punishments."

Amendment 14 of the United States Constitution provides, in relevant part: "No state...shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutory provisions that are relevant to this petition, Ohio Rev. Code Ann §2903.02(A), Rev. Code Ann §2903.11(A)(1), Rev. Code Ann §2921.12 (A)(1), Rev. Code Ann §2927.01 (B), §2254 petition for habeas corpus; American Jurisprudence 2d, 569-570, Factual innocence---freestanding actual innocence.

INTRODUCTION

This court has not yet determined whether a prisoner may be entitled to habeas corpus relief based on freestanding claim of actual innocence." See" ***Mcquiggin v. Perkins,*** 569 U.S. 383, 392 (2013)) citing ***Herrera v. Collins,*** 506 U.S. 390, 404-05 (1993)): see also ***Cress,*** 484 F.3d at 854.

Yet it had been determined in ***Schulp,*** 513 U.S. at 316, that to demonstrate actual innocence, a petitioner must "present evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that a trial was free of non-harmless error. A showing of actual innocence must rely on "new reliable evidence-whether it be exculpatory, scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was not presented in trial, and to show cause and prejudice.

However, in ***Murray v. Carrier,*** 477 U.S. 478, 496 (1986) held: in any extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal court may grant the writ even in the absence of showing cause for the procedural default.

There is confusion on whether granting a freestanding claim on non-death penalty cases and how the rule is applied or must be applied as to what is exactly an extraordinary case, and how ***Schulp,*** is determined and how ***Murray v. Carrier,*** is determined as to the means of actual innocence and showing of innocence, and manifest injustice, and miscarriage of justice.

Not only that, the lower court[s] have recognized a freestanding claim of actual innocence, "See" ***Montgomery v. Bagley,*** 482 F. Supp.2d. 919; that court held: In making a "free standing" claim of actual innocence, Montgomery relied on ***Herrera v. Collins,*** 506 U.S. 390, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993). But that court also held that the circuit courts are split on whether ***Herrera***, recognizes such a claim.

Several courts have read *Herrera* as invalidating free-standing actual innocence claims in habeas. ***Creel v. Johnson,*** 162 F.3d 385, 395 (5th Cir. 1998); ***Sellers v. Ward***, 135 F.3d 1333, 1338-39 (10th Cir. 1998); ***Guinan v. United States,*** 6 F.3d 468, 470 (7th Cir. 1993); ***Meadows v. Delo,*** 99 F.3d 280, 283 (8th Cir. 1996).

Other courts have read ***Herrera*** as authorizing a free-standing claim of actual innocence, or have at least assumed for the sake of argument that habeas courts could consider free-standing claims of actual innocence. ***Carriger v. Stewart,*** 132 F.3d 463, 476 (9th Cir. 1997) (en banc) (holding that "free-standing" actual innocence is a proper claim but not finding sufficient evidence of it); ***Cornell v. Nix,*** 119 F.3d 1329 (8th Cir. 1999); ***O'Dell v. Netherland,*** 95 F.3d 1214, 1246 n. 25 (4th Cir. 1996) (assuming for the sake of argument that "free standing" actual innocence states a claim but noting that the *Herrera* opinion at 506 U.S. at 416-17 seems to dictate otherwise.)

For purposes of this analysis, the court assumed in Montgomery that he could raise a "free-standing" claim of actual innocence, and The Supreme Court indicated that if such a claim exists, a petitioner must convince the Court "that those new facts unquestionably establish innocence." ***Schlup v. Delo,*** 513 U.S. 298, 316-17, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).

There is confusion in the actual innocence realm of law, and the need for this court to interpret if a freestanding claim can be entertained in habeas corpus or in collateral proceedings, and how and when it should be applied and to what standard[s] of law that shall or must be applied.

This case is the ideal vehicle for resolving the important issues as stated above and below. Because there are multiple manifest injustices that sits at the United States Constitution door, and many Americans, those who rely on the law and the Constitution, and those who up hold the law and the Constitution, is ___ confused.

Thus leaving Constitutional violations standing for this courts attention on which; and how the courts shall apply freestanding, actual innocence, miscarriage of justice and what is a manifest injustice, and how innocence is applied and not applied, and when a showing of innocence is freestanding, whether it shall be or not be heard.

Here, Petitioner case meets this exceptional question[s], and hereby asks this Honorable "Justice[s]" of this United States Supreme Court to determine on the stated. Because not only the factors and questions is based on freestanding claim of

Factual and Actual innocence, "But" also free standing claim[s] also consists and involves ineffective assistance of counsel[s], procedural default[s], speculation[s] on evidence and element[s], circumstantial evidence and on state res judicata.

Example:

STATEMENT OF THE CASE

Petitioner submitted before trial began as set forth in Case No. Cr-13-574201-A, October 9th, 2013 (T. 1-9) that his counsel does not have a defense nor is willing to apply one, the trial court denied his motion and denied him the right to appeal that denial.

Trial proceeded and on the trial date of October 28, 2013 in Case No. CR-13-574201-A; Trial counsel requested for an investigator to defend and give petitioner due process of law to investigate the state's case and the circumstances surrounding the murder. The trial court ignored the motion because counsel filed it after the jury was impaneled.

On November 13, 2013; The trial court of Cuyahoga County Common Pleas court of Ohio, found petitioner guilty for asserting he violated Ohio Rev. Code Ann §2903.02(A) (murder), Rev. Code Ann §2903.11(A)(1) (felonious assault) , Rev. Code Ann §2921.12 (A)(1) (Tampering with evidence), and Rev. Code Ann §2927.01 (B)(gross abuse of corpse).

In which he was sentenced a life sentence with eligibility of parole after 18 years and 6 months.

Petitioner, lost in trial and court appointed counsel for appeal, "See" Court of Appeals of the Eighth Appellate Division District of Cuyahoga County, Ohio; Case No. ***State v. Bridges,*** 2015-Ohio-1447, C.A. No. 100805. Raising the argument that the state convicted him unlawfully and the evidence is based on unsupported testimony, against the weight of the evidence and insufficient evidence. In which that court affirmed the conviction based on circumstantial evidence, of murder tampering with evidence and gross abuse of corpse.

Petitioner then filed an application for ineffective assistance of counsel, stating appellant counsel were ineffective for not raising that trial counsel prejudiced him by not giving him effective assistance of counsel "See" Case No. ***State of Ohio v. Andrey L. Bridges,*** [2] CR-13-574201 of the Cuyahoga County of Common Pleas Court, of Cleveland Ohio; Attached to that case of violation[s] are also in the Cuyahoga County Court of Appeals, Cleveland , Ohio ***State v. Andrey L. Bridges*** Case[s] No. CA-13-100805, affirming the trial court conviction, and denying the Application for reopening, and reply brief, and Case No[s] ***State v. Bridges***, Ca-14-101938, ***State v. Bridges***, Ca-101938; ***State v. Bridges,*** CA-102930, ***State v. Bridges***, CA-103090; ***State v. Bridges***, CA-103634; State v. Bridges, CA-104506; Denying void judgement[s] and Actual Innocence and ineffective assistance of

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counsel, Due process violations and Constitutional rights guaranteed by Amendment 5th, 6th, 8th, and 14th, of the United States Constitution.

Also in The Ohio Supreme Court: in ***State of Ohio v. Andrey Bridges***, Case No[s], 14-2074, Memorandum in Support of Jurisdiction and reconsideration; and ***State v. Bridges***, 14-2063, Memorandum in support of jurisdiction and Reconsideration; and ***State v. Bridges***, 15-0718, Memorandum in Support of Jurisdiction and Reconsideration; and ***State v. Bridges***, 16-0030, Memorandum in Support of Jurisdiction and reconsideration; and ***State v. Bridges***, 16-1621, Memorandum in Support of Jurisdiction and reconsideration.

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Also in the United States Court of appeals for the Sixth Circuit Court, Case # 19-13297, ***Bridges v. Gray***, Petitioner request for certificate of Appealabilty, and attached filings, and the order of the lower court.

Petitioner have submitted that the courts in entertaining the ineffective assistance of counsel claims, murder, tampering with evidence and gross abuse of corpse; are violating his Equal protection of the laws by holding his claims res judicata, and are stipulating them as procedural defaulted, and over stepping the

United States Constitution.

Petitioner have submitted that no courts are hearing his claim properly and have shown that all opinions and orders are in conflict with one another. "See" above Case[s], opinions and order[s], "and" Appendix's".

Prime example is shown when petitioner shown the courts he is being ping ponged on the claims placing and replacing the claims on the record and then when raised in the proper avenue re-placing the claims outside the record, in collateral proceeding[s]. "Compare" ***State v. Bridges***, 2015-Ohio-1447, to ***State v. Bridges***, 2015-Ohio-5428; and ***State v. Bridges***, 2016-Ohio-7298. and ***State v. Bridges***, 2014 Ohio Misc. LEXIS 23569.

No matter where petitioner allege his rights the courts then stipulate the claims as holding them res judicata.

Petitioner, have then found as held under the Supreme Court of the United States showing due diligence that he is Factual innocent of the crime[s] he is convicted of, the lower court[s] then placed a burden on him saying his claims are set in a freestanding claim, and no court can hear his case under that statue.

Petitioner have submitted that evidence that was used to support the conviction and sentence is unconstitutional, because the state evidence is not corroborative to the elements of the charge[s] and had demonstrated the prejudice and shown the courts how the evidence is flawed. The courts still up held the conviction and ruled that petitioner case is overwhelming.

Even when petitioner shown prejudice, showing that no expert testified as to the evidence that dna, or a weapon, or place or location can by a shadow of a doubt that connect petitioner to the crime or Location. The only connection was a phone call in which the experts could not determine if it was petitioner on the other end of the call talking to the victim. **(Trial Transcript 553-1514).** **EXAMPLE**

STATEMENT OF FACTS

(T.1-12) Petitioner requesting effective assistance of counsel before trial, stating counsel do not have a defense, they argue and he did not do the crime. The trial court denied the motion and denied him the right to appeal the denial.

(T.553-592) On April 17, 2013, the body of Carl Acoff Jr. was found in a pond behind an apartment located at 7168 Mckenzie Road, in Olmsted township. Jeffrey Bland, who was living at the residence upon finding or discovering the body testified in trial. He moved at the resident sometime late January 2013. He walks by the pond everyday going and coming to and from work. He never seen the body in the pond before. He first seen the body floating in the pond on the first day, which was more in the middle of the pond. On the Second day he seen the body floating closer to the shore line. He threw a stick at the body and hit the crotch area and notice oil coming from the body and went to the Landlord house and told him what he found. Then he went to the police department.

(T. 707-1514) All experts testified that they do not know or have a location of where the murder happened, or a day location or time.

(T.707-1514) trial experts concluded that there was one presence of dna from the victim on a cord of a space heater. Any other dna was inconclusive except touch dna that belonged to Jeffrey Bland the person who found the body.

(T.1100-1193) Jason Quinones – the lease holder testified that he always is at his girlfriend house (Ireans), but on January 5, 2013; **came to the apartment at 12pm** and seen petitioner standing in freezing cold in a T-shirt standing next to a fire pit, burning objects that was not his (Jason's). Andrey the petitioner, tried to stop him from going into the apartment, but he went in anyway. Going to the apartment he seen drops of blood coming from the finger of Andrey's on the stairs going up to the apartment. He only stayed for Five to Seven minutes. He told Andrey to clean up the apartment and to leave, because his house was dirty. Andrey moved out then.

(T. 1214-1311) Bill king arrived at the apartment with Jason **at 12pm,** he seen Andrey- Petitioner standing next to a fire pit and when Jason went into the apartment. He then started taking pictures of petitioner because he knows a killer look and he thought petitioner killed someone. He testified that he also was taking pictures that weekend because he discovered an app, so that was the reason he took the picture because the fire looked cool in a negative. He also testified they only stayed for Five to seven minutes.

(T.1100-1193, and 1214-1311) stated that they left Ireans house- (Jason girlfriend) **around 11am**, and came to the apartment **around 12:pm** after paying for a gas bill, and to collect money from Bridges for the bills.

(1194-1218) Irean Liptke Corroborated both Jason and Bill statement.

(T.1219-1240) Candice Perachio the girlfriend of Ireans son, **testified that Bill was not there that night.** Irean, Jason, her and the kids **were the only ones there that night or weekend.** She testified she remember this day because it was a day she went to work for an interview, she just stated. Ireane and Jason was there that weekend, and they were playing rummy, **Bill was never there**. She did not see him either when she left or when she came back, in fact she thought Jason was at the home the entire day.

(T1355-1398) Christine Ross expert for the state testified that there was calls from Petitioner call to the victims and that **she is not sure who was on the other end of the calls talking**. The victim did make a **call at 12:20pm** on January 5, 2013 to a 440 number. **However, she can only go on what information she was given**, she is also **not trained in triangular system,** that is when calls can jump to other satellites.

(1100-1039) Timothy Lewis, the taxi driver **was not 100% sure he recognized recognized both victim and petitioner from January 5th, 2013,** but they looked familiar. He did not recall any arguments, or don't remember the cloths or any other thing pertaining to the victim and petitioner.

He did not remember if the victim was a female or male.

(T.789-810) Martha Acoff, the mother testified no one had her son Facebook account but him.

(812-835) Nicole Cantie, the cousin of victim testified she saw Facebook posting after January 5, 2013. It was on January 22, 2013 saying good night world.

(311-1332) David Roose, states expert for the photos testified the photos are not modified and the time that Bill took the photos **are at 15:27:45 that is 3:27:45 pm**.

(T.1458-1514) Detective who investigated the case testified, that there is a corroborating statement connected to petitioner mentioning Jason and Bill are the killers, and that petitioner statement shows a fear of Jason and Bill.

On October 28, 2013 during trial, trial counsel requested in motion to the court that they need appointment of investigator, to defend petitioner, and give him a due process right and to investigate the case. The trial continued and petitioner was left without defense or due process to test the state's case.

In multiple attempts petitioner raised ***Ake v. Oklahoma,*** (1985) 470 U.S. 68, 77, 105 S. Ct. 1087, 84 L. Ed. 2d 53, 62, holding that indigent defendants have the right to effective assistance of counsel and is entitled to defense of the state's case, and that it was necessary to prepare for an effective defense. That the trial court denied him that right, and that his counsel was ineffective. For not timely moving for an investigator.

Petitioner then threw his own diligence discovered that the victim was still alive

after the state said he was murdered. By showing two posting of the victim Facebook account and other statements within the police reports that the detective stated he did not himself investigate. Petitioner also submitted how his dna made its presence in the apartment, after trial and this was also to the facts he is innocent, and showing the courts that he did have ineffective assistance of counsel[s]. The sixth Circuit had misapplied this fact of the new evidnce, "See" ***Bridges v. Sloan,*** Case No. 1:15-cv-02556; ***Bridges v. Gray***, Case # No. 19-13297, ***In re Bridges,*** 2019 U.S. App. LEXIS 38172 ; ***Bridges v. Gray***, 2019 U.S. App. LEXIS 38285; ***Bridges v. Gray***, 2020 U.S. App. LEXIS 387; ***Bridges v. Sloan***, 2019 U.S. Dist. LEXIS 29542.

Petitioner also demonstrated through the record that the detective also stated he requested evidence to be tested but they never were. And that the recording of petitioner statement was broken, yet still played in trial court. That shown petitioner innocence.

Petitioner also demonstrated the time Jason and Bill arrived to the apartment were different from the expert states evidence that were used to convict him, and placed the states witnesses to the location with the victim, and how their alibi is flawed and the state's evidence is insufficient, speculated and flawed, and that his conviction is against the United States Constitution, and against the standards set in ***Jackson v. Virginia***, 443 U.S. 37; and ***Strickland v. Washington,*** 446 U.S. 668. And against ***Rivas v. Fisher,*** 687, F.3d 514, 552 where compelling evidence

called into serious doubt linking petitioner to the crime.

The lower courts then ping ponged all the claims of ineffective assistance of counsel claims, denied his actual innocence claim by using res judicata.

Petitioner then in turn in his hurdles raised and shown the court that pursuant to ***Durr v. Mitchell***, 487 F.3d 423, 434-35, and ***Richey v. Bradshaw***, 498 F.3d 344, 359 (6th Cir. 2007); where a court incorrectly applies res judicata the state rule then, is not considered reliance on an adequate and independent rule, the issues was reserved for proper review, yet the Sixth Circuit, failed to de novo the claims that was not procedural defaulted.

Then ignored all relevant issues and evidence stating petitioner is raising a freestanding claim. The sixth circuit held that the lower court did not violate petitioner sixth Amendment right nor any other Constitutional rights and denied petitioner stating he did not raise a constitutional violation, and so Petitioner comes to this court for fairness.

The lower court[s] also held that the evidence was not prejudicial and was supported by circumstantial evidence, even though the evidence was all based on speculation. As held in ***O'Laughlin v. O'Brian***, 568 F. 3d. 287, 304, 308 also as held in ***Brown v. Palmer,*** 441, F.3d 347, 351 (5th Cir. 2006), holding when evidence is speculated the conviction is unconstitutional.

This court has held: An allegation that a verdict was entered upon insufficient evidence, as opposed to a freestanding claim of actual innocence, states a claim

under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. ***Jackson v. Virginia***, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); ***In re Winship***, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); Johnson v. Coyle, 200 F.3d 987, 991 (6th Cir. 2000); ***Bagby v. Sowders,*** 894 F.2d 792, 794 (6th Cir. 1990)(en banc).

In order for a conviction to be constitutionally sound, every element of the crime must be proved beyond a reasonable doubt. ***In re Winship***, 397 U.S. at 364. ***Jackson v. Virginia***, 443 U.S. at 319; ***United States v. Paige***, 470 F.3d 603, 608 (6th Cir. 2006); United States v. Somerset, 2007 U.S. Dist. LEXIS 76699 (S.D. Ohio 2007).

This rule was recognized in Ohio law at ***State v. Jenks,*** 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991)(paragraph two of the syllabus), superseded on other grounds by state constitutional amendment as stated in ***State v. Smith***, 80 Ohio St.3d 89, 102 n.4, 1997- Ohio 355, 684 N.E.2d 668 (1997).

Of course, it is state law which determines the elements of offenses, but once the State has adopted the elements, it must then prove each of them beyond a reasonable doubt. "See" ***In re Winship,*** supra.

Under Ohio Law, the charges petitioner was convicted of had to be proved that under § 2903.02 Murder he **(A)** No person shall purposely cause the death of another or the unlawful termination of another's pregnancy, and under Ohio Law he had to be proved that he, under **§2903.11 Felonious assault, (A)** No person

shall knowingly do either of the following:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. And Under Ohio Law **§2921.12 Tampering with evidence, petitioner had to A)** No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following: **(1)** Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation; and Under Ohio Law petitioner had to §2927.01 Abuse of a corpse, **(B)** No person, except as authorized by law, shall treat a human corpse in a way that would outrage reasonable community sensibilities. In order to be convicted of such charges.

Petitioner, shown the lower court[s] that he is actually and factually innocent of the crimes for which he was convicted and sentenced. Yet the lower court[s] have stated, a claim of actual innocence is not itself a constitutional claim but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. ***Herrera v. Collins***, 506 U.S. 390, 404, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993). The actual innocence exception is very narrow in scope and requires proof of factual innocence, not just legal insufficiency. ***Bousley v. United States***, 523 U.S. 614, 623, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998).

In this case, the petitioner is hurdling the systematic denial[s] from the lower court[s] when determining the freestanding actual innocence claim, and ask this court, to determine if it is cognizable. Because courts are in conflict with whether it should be heard or not heard, any departure hearing these issues are dangerous, because while showing facts that proves such innocence, and showing violations of due process rights, the court[s] are not reviewing them because there is not a place to come, or go to be heard in the instance.

Although the Supreme Court has suggested that it may recognize freestanding actual innocence claims in capital cases, see ***Herrera,*** 506 U.S. at 417, it has not done so in non-capital cases such as this one.

This departure is not only dangerous to the constitution, but also in the realm of law, because while the Supreme Court has never held that a "freestanding" actual innocence claim is cognizable in a non-capital case, it has recognized that a "freestanding" actual innocence claim could be possible in a capital case. ***Herrera v. Collins***, 506 U.S. 390, 417, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993) ("in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim."); see also House, 547 U.S. at 554-55.

However, in Herrera, the Supreme Court reasoned that the "threshold showing for such an [*21] assumed right would necessarily be extraordinarily high." 506

U.S. at 417. In ***House,*** the Supreme Court declined to resolve the issue of whether there is a cognizable "freestanding" actual innocence claim, but concluded that if there was, the showing of actual innocence would require more convincing proof than the "gateway" actual innocence claim espoused in ***Schlup v. Delo***, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).

The only case regarding freestanding claim in the United States Supreme Court are ***McQuiggin v. Perkins***, 569 U.S. 383 however in this case it only determines the exceptions of untimely as held: The Court has not resolved whether a prisoner may be entitled to habeas relief based on a freestanding actual innocence claim ***Herrera v. Collins***, 506 U.S. 390, 404-405, 113 S. Ct. 853, 122 L. Ed. 2d 203, but it has recognized that a prisoner "otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence," id., at 404, 113 S. Ct. 853, 122 L. Ed. 2d 203.

The Court has already applied this "fundamental miscarriage of justice exception" to overcome various procedural defaults, including, failure to observe state procedural rules, such as filing deadlines. See ***Coleman v. Thompson***, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640.

The exception, the Court's decisions bear out, survived AEDPA's passage. See, e.g., ***Calderon v. Thompson***, 523 U.S. 538, 558, 118 S. Ct. 1489, 140 L. Ed. 2d 728; House, 547 U.S., at 537-538, 126 S. Ct. 2064, 165 L. Ed. 2d 1.

These decisions "see[k] to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case." ***Schlup***, 513 U.S., at 324, 115 S. Ct. 851, 130 L. Ed. 2d 808.

Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is The Supremacy Clause of the Federal Constitution, U.S. Const. art. VI, cl. 2, proclaims that the Constitution, and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the judges in every state shall be bond thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

Therefore, state laws and constitutional provisions that conflict with the Federal Constitution are without effect.

In other words, a state may not legislate in an area in which it is preempted by the Federal Constitution or federal law. Under America's federal system of government, the states possess sovereignty concurrent with that of the federal government, subject only to the limitations imposed by the supremacy clause of the United States Constitution.

Although the legislative authority in the states consists of the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, any state law or constitutional provision is still subject to the limitations which are contained in the Constitution of the United States.

That same prohibition applies even when the challenged law is authorized under a state constitutional provision.

A state constitution must give way to requirements of the Supremacy Clause when there is a conflict with the Federal Constitution.

When the state recognition of a miscarriage of justice exception would render a claim to proceed.

But when the state makes exceptions as to set vague and incomplete defenses for reasons to deny would render futile responses that lead to constitutional violations.

Many petitions have been denied that could not pass through the actual-innocence gateway, in a freestanding claim. Congress' inclusion of a miscarriage of justice exception is not fully determined, yet courts recognize a due process violation of equal protection of the law and the right to effective assistance of counsel in **§§2244(b)(2)(B)** and **2254(e)(2)** indicate an intent to hear cases courts from applying the exception of denial of constitutional rights.

Congress did not simply incorporate the miscarriage of justice exception to hear every claim, but it inherited law to review rather a constitutional claim is present, harmful, and how the affects harms the constitution.

If this court does not take jurisdiction unrestricted constitutional violations will stand and still stand in the door way of this court yelling for justice and fairness.

The barriers not to hear freestanding claims of innocence claim will never invoke the miscarriage of justice exception. Nor does Due Process sit in the instance of innocence.

Schlup, 513 U.S., at 327, 115 S. Ct. 851, 130 L. Ed. 2d 808. Bears the burden on constitutional law, an unexplained delay in reserving constitutional claims.

Taking account of the delay in the context of the merits of a petitioner's actual-innocence claim, rather than treating timeliness as a threshold inquiry, is tuned to the exception's underlying rationale of ensuring "that federal constitutional errors do not result in the incarceration of innocent persons." **Herrera**, 506 U.S., at 404, 113 S. Ct. 853, 122 L. Ed. 2d 203. Pp. 398-400, 185 L. Ed. 2d, at 1034-1035.3.

Here, it is not insufficient to rewrite *Schlup*'s actual-innocence standard[s]; or to deny whether, a freestanding claim is constitutional. There is cause to and should be where, how, and when a freestanding claim is vital to state a constitutional claim. Like in petitioner case; There is conflict in decisions of courts of appeals. ***Triplett v. Lowell*** (1936) 297 US 638, 56 S Ct 645, 80 L. Ed 949, reh den (1936) 298 US 691, 56 S Ct 745, 80 L Ed 1409 and (ovrld in part on other grounds by ***Blonder-Tongue Lab. v University of Illinois Found***, (1971) 402 US 313, 91 S Ct 1434, 28 L Ed 2d 788, 169 USPQ 513, 1971 CCH Trade Cases P 73565).

Under *Schlup*'s demanding standard, the gateway should still be open when a petition presents "evidence of innocence as strong that a court cannot have

confidence in the outcome of the trial unless the court is also satisfied that the trial was free of non-harmless constitutional error." 513 U.S., at 316, 115 S. Ct. 851, 130 L. Ed. 2d 808. Pp. 400-401, 185 L. Ed. 2d, at 1035-1036.

The sixth circuit held that the lower court did not violate petitioner sixth Amendment right nor any other Constitutional rights and denied petitioner stating he did not raise a constitutional violation, and so Petitioner comes to this court for fairness.

The lower court also held that the evidence was not prejudicial and was supported by circumstantial evidence, even though the evidence was all based on speculation. As held in ***O'Laughlin v. O'Brian***, 568 F. 3d. 287, 304, 308 also as held in ***Brown v. Palmer,*** 441, F.3d 347, 351 (5th Cir. 2006), holding when evidence is speculated the conviction is unconstitutional.

REASON FOR GRANTING THE WRIT

I: The issues presented are of importance in The Constitutional and Uniform Administration of Innocence and manifest miscarriage of justice.

Ohio statue of res judicata is unconstitutional because it defeats Amendment Fifth; Sixth; Eighth, and Fourteenth of the United States Constitution,

A: The lower United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;

Ohio, ignoring a free standing claim that shows a manifest injustice of Due Process, and Equal Protection[s] of the Law, as protected by Amendment 5, 6, and 14; of the United States Constitution is unconstitutional. Because it denies a United states citizen fairness and deprive life and liberty and shorten reliance on justice in the court[s] of law.

B: The lower court has decided an important matter; and has decided an important federal question in a way that conflicts with a decision by court(s) of last resort,

Ineffective assistance of counsel, ***Strickland v. Washington,*** 446 U.S. 668, ***Ake v. Oklahoma,*** (1985) 470 U.S. 68, 77, 105 S. Ct. 1087, 84 L. Ed. 2d 53, 62; Right to be heard fairly, ***Durr v. Mitchell***, 487 F.3d 423, 434-35, and ***Richey v. Bradshaw***, 498 F.3d 344, 359 (6th Cir. 2007); Proof beyond a reasonable doubt, ***Jackson v. Virginia***; 443 U.S. 37; prejudicial circumstantial evidence ***O'Laughlin v. O'Brian***, 568 F. 3d. 287, 304, 308 also as held in ***Brown v. Palmer,*** 441, F.3d 347, 351 (5th Cir. 2006), factual and actual innocence, under ***Schulp v. Delo,*** 513 U.S. 298, 330 (1995); **Schulp**; ***Bousley,*** 523 U.S. at 623, and ***Murray v. Carrier***, 477 U.S. at 496? ***Rivas v. Fisher,*** 687, F.3d 514, 552 where compelling evidence called into serious doubt linking petitioner to the crime.

C: has so far departed from the accepted and usual course of judicial proceeding, as to call for an exercise of this Court[s] supervisory power.

Ineffective assistance of counsel, ***Strickland v. Washington,*** 446 U.S. 668, ***Ake v. Oklahoma,*** (1985) 470 U.S. 68, 77, 105 S. Ct. 1087, 84 L. Ed. 2d 53, 62; Right to be heard fairly, ***Durr v. Mitchell***, 487 F.3d 423, 434-35, and ***Richey v. Bradshaw***, 498 F.3d 344, 359 (6th Cir. 2007); Proof beyond a reasonable doubt, ***Jackson v. Virginia***, 443 U.S. 37; prejudicial circumstantial evidence ***O'Laughlin v. O'Brian***, 568 F. 3d. 287, 304, 308 also as held in ***Brown v. Palmer,*** 441, F.3d 347, 351 (5th Cir. 2006), factual and actual innocence, under ***Schulp v. Delo,*** 513 U.S. 298, 330 (1995); **Schulp**; ***Bousley,*** 523 U.S. at 623, and ***Murray v. Carrier***, 477 U.S. at 496? ***Rivas v. Fisher,*** 687, F.3d 514, 552 where compelling evidence called into serious doubt linking petitioner to the crime.

II: A. State court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

Ineffective assistance of counsel, ***Strickland v. Washington,*** 446 U.S. 668, ***Ake v. Oklahoma,*** (1985) 470 U.S. 68, 77, 105 S. Ct. 1087, 84 L. Ed. 2d 53, 62; Right to be heard fairly, ***Durr v. Mitchell***, 487 F.3d 423, 434-35, and ***Richey v. Bradshaw***, 498 F.3d 344, 359 (6th Cir. 2007); Proof beyond a reasonable doubt, ***Jackson v. Virginia***, 443 U.S. 37; prejudicial circumstantial evidence ***O'Laughlin v. O'Brian***, 568 F. 3d. 287, 304, 308 also as held in ***Brown v. Palmer,*** 441, F.3d 347, 351 (5th Cir. 2006), factual and actual innocence, under ***Schulp v. Delo,*** 513 U.S.

298, 330 (1995); **Schulp**; ***Bousley***, 523 U.S. at 623, and ***Murray v. Carrier***, 477 U.S. at 496? ***Rivas v. Fisher***, 687, F.3d 514, 552 where compelling evidence called into serious doubt linking petitioner to the crime.

III: A. State court and United States court of appeals has decided an important question of federal law that has not yet been decided, but should be, settled by this court

This court has not yet determined whether a prisoner may be entitled to habeas corpus relief based on freestanding claim of actual innocence **"See"** ***Montgomery v. Bagley***, 482 F. Supp.2d. 919; that court held: In making a "free standing" claim of actual innocence, Montgomery relied on ***Herrera v. Collins***, 506 U.S. 390, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993). But that court also held that the circuit courts are split on whether ***Herrera***, recognizes such a claim.

Several courts have read *Herrera* as invalidating free-standing actual innocence claims in habeas. ***Creel v. Johnson***, 162 F.3d 385, 395 (5th Cir. 1998); ***Sellers v. Ward***, 135 F.3d 1333, 1338-39 (10th Cir. 1998); ***Guinan v. United States***, 6 F.3d 468, 470 (7th Cir. 1993); ***Meadows v. Delo***, 99 F.3d 280, 283 (8th Cir. 1996).

Other courts have read ***Herrera*** as authorizing a free-standing claim of actual innocence, or have at least assumed for the sake of argument that habeas courts could consider free-standing claims of actual innocence. ***Carriger v. Stewart***, 132 F.3d 463, 476 (9th Cir. 1997) (en-banc) (holding that "free-standing" actual-innocence is a

proper claim but not finding sufficient evidence of it); ***Cornell v. Nix,*** 119 F.3d 1329 (8th Cir. 1999); ***O'Dell v. Netherland,*** 95 F.3d 1214, 1246 n. 25 (4th Cir. 1996) (assuming for the sake of argument that "free standing" actual innocence states a claim but noting that the *Herrera* opinion at 506 U.S. at 416-17 seems to dictate otherwise.)

For purposes of this analysis, the court assumed in Montgomery that he could raise a "free-standing" claim of actual innocence, and The Supreme Court indicated that if such a claim exists, a petitioner must convince the Court "that those new facts unquestionably establish innocence." ***Schlup v. Delo,*** 513 U.S. 298, 316-17, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995)

B: Has decided an important question in a way that conflicts with relevant decisions of this court,

Ineffective assistance of counsel, ***Strickland v. Washington,*** 446 U.S. 668, ***Ake v. Oklahoma,*** (1985) 470 U.S. 68, 77, 105 S. Ct. 1087, 84 L. Ed. 2d 53, 62; Right to be heard fairly, ***Durr v. Mitchell***, 487 F.3d 423, 434-35, and ***Richey v. Bradshaw***, 498 F.3d 344, 359 (6th Cir. 2007); Proof beyond a reasonable doubt, ***Jackson v. Virginia***, 443 U.S. 37; prejudicial circumstantial evidence ***O'Laughlin v. O'Brian***, 568 F. 3d. 287, 304, 308 also as held in ***Brown v. Palmer,*** 441, F.3d 347, 351 (5th Cir. 2006), factual and actual innocence, under ***Schulp v. Delo,*** 513 U.S. 298, 330 (1995); **Schulp**; ***Bousley,*** 523 U.S. at 623, and ***Murray v. Carrier***, 477 U.S. at 496?, and

Rivas v. Fisher, 687, F.3d 514, 552 where compelling evidence called into serious doubt linking petitioner to the crime.

CONCLUSION

Based on upholding the United States Constitution and on this court interpretation of manifest injustice[s], and miscarriage of justice[s], that violates the United States Constitution; Andrey L. Bridges respectfully asks that a writ of certiorari issue to review the lower courts order[s], and remand to trial court for a new trial, or dismiss all actions against Andrey L. Bridges and give him relief.... "FREEDOM" from further unlawful imprisonment.

Respectfully submitted,

ANDREY L. BRIDGES #A650493
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IN PROPRIA PERSONA

CERTIFICATE OF SERVICE

I. Andrey Bridges, certify or state; that a copy of the forgoing was placed in the prison mail box on this ~~11~~ 11th day of ~~January~~ Febuery, 2020; and was sent to Brigham Sloan, warden of Lake Erie Correctional Institution, 501 Thompson Road, Conneaut, Ohio 44030; and David Gray, warden of Belmont Correctional Institution, P.O. Box 540 St. Clairsville, Ohio 43950; and Attorney General Assistant Stephanie L. Watson, and Attorney General Assistant Paul Kerridge, Ohio Attorney General Office Criminal Justice Section, 150 E. Gay Street, 16th, Floor; Columbus, Ohio 43215. And to all other parties involved in such styled case.

The copies were sent pre-paid first class mail, by U.S. Mail service.

Respectfully submitted,

Andrey Bridges

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