

No. 10-8168

IN THE  
SUPREME COURT OF THE UNITED STATES

Charles E. Justise Sr., Petitioner

ORIGINAL

Supreme Court, U.S.  
FILED

MAR 25 2020

OFFICE OF THE CLERK

v.

State of Indiana, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF INDIANA

PETITION FOR WRIT OF CERTIORARI

Charles E. Justise Sr.  
DOC # 921730  
3038 West 850 South  
Bunker Hill, IN 46914

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SUPREME COURT, U.S.

## QUESTIONS PRESENTED

1. **(Issue of First Impression)** Whether Justise has a right, pursuant to the Right to Petition the Government for Redress of Grievances Clause of the 1<sup>st</sup> Amendment to have the facts and issues he presents to a court for redress, actually addressed, and if the court violates this right, what remedy does Justise have?

2. **(Issue of First Impression)** Whether a court commits slander by stating that Justise took a position or made an argument that makes Justise look guilty, when Justise never took that position or made that argument.

3. **(Issue of First Impression)** Whether a court is permitted to make up their own facts for this case, that is not supported by the record, or advanced by either party of the case.

4. **(Issue of First Impression)** If a court publishes a decision that is riddled with false statements that makes Justise look guilty, when he is not, whether that is libel, slander and/or defamation, and what remedy does Justise have to correct that error.

5. Whether Former prosecutor Michelle Wall, who forced a 13 year old child witness to lie on the stand, and under oath during trial, should have been called as a witness?

6. Whether Michelle Wall violated *Brady* by not informing the defense that she instructed a child to lie on the stand, and whether Wall destroyed exculpatory evidence, showing that Justise is actually innocent of all charges.

7. Whether Justise should have been allowed to question the alleged victims Aunt, Ashley Jackson, on what the alleged victim told her during a phone conversation.

8. Whether newly discovered evidence shows that Justise is actually innocent, along with corroborating evidence.

9. Whether DB's testimony is worthy of credit.

## **List of Parties**

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

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### **Opinions Below**

This decision has been published.

### **Jurisdiction**

This Court has jurisdiction to hear this cause because the Indiana Supreme Court denied hearing this case on January 23<sup>rd</sup>, 2020.

### **Statement of the Case**

In 2015, Justise was contacted by relative Nick Warren, and informed that he (Warren) had a conversation with the alleged victim in this case, DB, who informed him that Justise never molested her, or touched her sexually. DB further informed Warren that she was willing to do anything she had to do in order to get Justise out of prison. DB signed an affidavit acknowledging that Justise never touched her sexually.

Justise immediately filed his petition for post-conviction relief. In 2017, Justise learned that Michelle Wall, the then prosecutor on the case, forced DB to testify falsely, by ordering DB to lie on the stand when DB asked Wall “what if I made the story up?” Justise filed an amended petition, including this claim. DB also asked about the multiple phone calls she had with Justise that was recorded while he was in the Marion County Jail, and Wall told her not to worry about those. (Discussed *infra*.)

The trial court ruled against Justise, never addressing the crux of the petition, which was the actions of Michelle Wall. Justise appealed to the Indiana Court of Appeals, the appeals court never addressed any of the issues that Justise presented to the court for review. Indeed, the court never even mentions the name of Michelle Wall, or anything she done in this case.

Justise filed to transfer the case to the Indiana Supreme Court, and that court denied the request to transfer the case. Justise then Petitioned the United States Supreme Court for certiorari.

### **Reasons for Granting the Petition**

#### This Court Has Not Addressed the Right-to-Petition Clause

Justise contends that he has a right to petition the government for redress of grievances. He contends that right means that issues and facts presented to courts for review must be addressed by the court. In this case, the Indiana Court of Appeals has completely failed to

address a single issue that Justise has presented for review, resulting in a completely innocent man remaining in prison. In addition, the Court of Appeals has made up their own issues and arguments that make Justise appear guilty, when he is not, while falsely stating that these false issues was presented by Justise. They were not. The Indiana Court of Appeals sits as the court of corrections for Indiana.

The crux of Justise's appeal revolves around a former prosecutor named Michelle Wall forcing a 13 year old child to take the stand, and under oath tell a lie that she was molested. This child was 15 years of age when she lied under oath, at the direction of former prosecutor Michelle Wall, who is currently a public defender.

The Appeals Court never mentioned the crux of this appeal. That is the fact that Michelle Wall forced a child to get on the stand and lie, told this same child not to worry about recorded phone calls that Wall destroyed in order to help obtain the conviction against Justise, and failed to turn over to the defense the exculpatory information that DB told Wall "what if I made the story up?" In the direct appeal of this matter, Justise alleged that in 2006, while in the Marion County Jail (MCJ), Justise made 40 phone calls, totaling five hundred and four (504) minutes, to Shawnta Winston.<sup>1</sup> (See App. of direct appeal, 333) Of these calls, the State contended that twenty five (25) phone calls, totaling three hundred and thirty two (332) minutes were never recorded due to a hardware malfunction. The State contended that the "recording simply do not exist." (Appellee brief of direct appeal p. 13) They did exist. The twenty five phone calls the State contends were missing were the calls in which DB stated that she made the story up, and she apologized several times for lying.

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<sup>1</sup> Alleged victim DB joined in on approximately 27 of these phone calls.

Detective Norris stated that he listened to all the phone calls. Tr. 280. Detective Norris made a phone list that had 40 phone calls listed on it. *See Appendix from Direct Appeal*, 333. This is the list he would have used to tell if he listened to all the phone calls, because Walls list was not yet made. *See Walls phone list, Appendix from Direct Appeal* 334)(Both logs located in Appendix F)

When pressed about the missing phone calls, Norris stated “the State was provided with every phone call that was downloaded by me.” TR. 282. This is meaning that the State (Wall) destroyed the missing calls, and not him.

In 2017, Justise learned from DB that on the day of the child hearsay hearing, in the hallway outside the Courtroom, DB told the prosecutor Michelle Wall, “what if I made the story up,” and was basically told by Wall to lie anyway. Being aware that those phone calls were recorded, DB asked about the phone calls, and was told not to worry about “those.” Wall never stated that the calls were not recorded. Had the calls not been recorded, that would have been the time to inform DB, and the defense. Instead, the defense first heard the false story of the calls not being recorded over 2 years later, after constantly requesting this information from day one.

Justise contended that by Wall not informing the defense of DB’s statements/comments, this violates *Brady v. Maryland*, 373 U.S. 83 (1963). To prevail on a *Brady* claim, a defendant must establish: (1) that the prosecution suppressed evidence; (2) that the evidence was favorable to the defense; and (3) that the evidence was material to an issue at trial. *State v. Hollin*, 970 NE.2d 147, 153 (Ind. 2012)

Here, there can no question. (1) Wall, nor any member of the prosecution did not inform the defense of DB statements outside the courtroom about making the story up, and the recorded phone calls; (2) this evidence was certainly favorable to Justise as he was claiming to be

innocent, and this is an admission of lying by DB; and (3) the evidence was certainly favorable to Justise as it completely kills the prosecution's entire case.

In addition, the government violates a defendant's due process rights when it obtains a conviction through the knowing use of false testimony. *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959). A defendant seeking a new trial based on perjured testimony has the burden to show that "(1) the prosecution's case included perjured testimony; (2) the prosecution knew, or should have known, of the perjury; and (3) there is a likelihood that the false testimony affected the judgment of the jury." *United States v. Coleman*, 914 F.3d 508, 512-13 (7th Cir. 2019)

Here, Michelle Wall ordered DB to lie on the stand. The trial court refused to call Wall as a witness to answer for this. There is a ton of corroborating evidence (discussed *infra*) that Wall forced DB to lie on the stand, and the court didn't even mention the name Michelle Wall in its decision. The Court of Appeals held that this claim (corroborating evidence) is barred by *res judicata*. The issue presented by Justise was never addressed by the court, thus it is not barred by *res judicata*. Justise specifically presented the issue that he made several phone calls to the alleged victim, and that those phone calls were recorded. In those phone calls, the alleged victim admitted that she made the story up, and that Justise never laid a hand on her. (See Appellate Brief of direct appeal, page 7-8, 20) A panel of the Court of Appeals concluded that Justise raised the issue that "he received a telephone call from D.B. where she admitted that she made up the molestation allegation because she was jealous of his girlfriend" and that the phone call should have been recorded. (MD of direct appeal, page 5)

Justise never alleged that he received a phone call from anyone. It is impossible, as far as Justise knows, to get a phone call while in the Marion County Jail, and thus Justise would not

make this an issue. The Court came up with this own their own, and in the process, failed to address the issue that Justise was actually presenting. Accordingly, this issue cannot be *res judicata* if the court never addressed it, which it did not.

This conduct of not addressing actual issues, and making up their own issues, Justise contends, violates the right to petition clause. It does no good to have a right to petition the government for redress of grievances if the government can simply ignore the grievances presented to it for redress.

No person in the United States would ever expect to bring an action before a court, and the court never addresses the issues brought before the court, and instead, rule on issues not before the court for review.

#### Some Corroborating Evidence Also Not Addressed by the Court

Justise had alleged that he made 40 phone calls, totaling 504 minutes worth of phone calls. Justise contended that the State destroyed 332 minutes worth of phone calls in an effort to hide DB admitting that she made the allegations up. The State contended that the phone calls were simply never recorded. In support of their clearly false theory, the State presented testimony from expert witness Buzz Michaels. State's expert witness Buzz Michael, Keeper of inmate phone records, stated that "phone calls that are downloaded are done so in read only format to ensure their integrity. Tr. 131. Michaels also stated that read only format means "they can see them, they can listen to them, but they can't alter them. And whenever they burn them to a CD, the CD...the volume is closed so nothing can be *added* or taken away from the CD." Tr. 131.

Not only does the two call logs not match, but not a single phone call match. That is because the calls were altered by Wall. According to Michaels, no one can alter them. Since

these calls were altered, the only explanation is that Wall altered them. In addition, the original CD that had the read only format calls is missing. It is no longer around.

The Appeals Court failed to address how the State's witness stated something *can't* happen that *did* happen. Only Wall could have altered this CD with exculpatory evidence on it. This, at least, deserves some discussion, but it received not even a consideration. This was the State's expert witness the Appeals Court refused to address. Justise contends that this violates the right to petition clause of the U.S. Constitution. Justise contends that the right to petition mandates, at a minimum, that issues presented to the court for review means that the court must at least address the issues presented for review.

The Appeals Court Did Not Address Strong Corroborating Evidence  
Supporting DB's Testimony and Incorrectly Stated  
Demonstrable Facts

The Appeals Court barely mentioned that DB had testified at the evidentiary hearing that she made the story up, and did not tell the truth at trial. The Appeals Court somehow concluded that DBs testimony was merely impeaching. This is absolutely impossible as DB's testimony completely destroyed her previous testimony. DB testified at trial, being forced to do so by former prosecutor Michelle Wall that Justise fingered her vagina and placed his penis in her butt cheeks. Tr. 66-67. DB now states that Justise never touched her vagina, or placed his penis in her butt cheeks, or ever touched her inappropriately. (EH 8).<sup>2</sup> DB also states that prosecutor Michelle Wall told her testify falsely on the stand. There is no way possible that this information is "merely impeaching." The Indiana Supreme Court decided long ago that *evidence* which destroys or obliterates the testimony upon which a conviction was obtained is not appropriately considered as merely impeaching evidence. *Wilson v. State*, 677 NE.2d 586, 588 (Ind. App.

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<sup>2</sup> Evidentiary Hearing Transcripts.

1997) Add to that the fact the prosecutor told the alleged victim to lie, there should be no way this is considered merely impeaching. This aspect should have been addressed. Instead, the appeals court stayed away from anything regarding Michelle Wall, as if protecting her. It should also be noted that Wall was forced to resign from the Marion County Prosecutor's Office for what former counsel to Justise Diane Able called "acts of dishonesty."

As pointed out above, the government violates a defendant's due process rights when it obtains a conviction through the **knowing use of false testimony**. *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

In this case, the prosecution ordered child witness DB to lie on the stand, after DB told Michelle Wall, "what if I made the story up" and Wall responded to DB "you need to say what you told me last time we spoke." Wall told DB to say the lie she stated when they last spoke, and completely ignored DB telling Wall that she made the story up. Wall thus definitely knew that she was using perjured testimony, and a panel of the Appeals Court did not address this extremely important issue, thus allowing perjured testimony to be used to obtain a conviction. Additionally, Wall failed to inform the defense of this conversation. Again, this is clearly a *Brady* violation, in addition to prosecutorial misconduct. Had the jury known of this information, undoubtedly Justise would not have been convicted. Justise contends that the right to petition mandates that this issue be addressed.

In addition to the above, the Appeals Court failed to even mention some more of the overwhelming evidence that corroborates DBs testimony. For example, the trial court held that DB told Forensic Child Interviewer Linnette Garcia the same story that she told at trial, which was that Justise placed his penis in her vagina, which is untrue. DB actually stated at trial that Justise never placed his penis in her vagina. TR. 66-67. Also, the appeals court held in their MD

of the direct appeal that Justise never placed his penis in her vagina. That issue has never been addressed by the court, even though that is demonstrably presented. DB spent a large amount of her time discussing whether the penis was soft or hard when it entered her vagina. After it was established that he penis never entered her vagina at all, and that is the version the appeal court went with. The appeals court never addressed the differences of stories, but Justise contends they have a judicial duty to address.

Some of the differences are, DB was asked at trial “was his penis soft or something else”? DB’s response was “*I don’t know.*” Tr. 95-96. DB next stated that she never said that the penis wasn’t hard, and then stated: “no, I probably has said that, ‘yes it was hard.’” Tr. 98. DB went as far as saying that deposition was wrong because she never stated what the deposition stated she said. Tr. 99.

In another deposition DB had stated that the penis was soft when it entered her. Tr. 99. (This is after she has stated that the penis never entered her, and a panel of the Appeals Court concluded that the penis never enter her in its MD) When confronted with this change of stories, DB abandoned both stories of the penis being hard and soft, and stated the penis was in-between soft and hard. Tr. 96-97.

On cross, DB was asked again whether the penis was soft or hard. DB’s response was “I really don’t know. It had to be either one. I think it was hard, soft, I don’t know.” TR. 96. This is after DB stated that penis was hard, then it was soft, then stated that she didn’t say either one, she stated it was in-between soft and hard. DB clarified that she knew the difference between a soft and hard penis. TR. 96-97. There is certainly no clear story here, and all of the testimony about the penis being hard, soft or in-between is for the penis entering her vagina, something the Appeals Court held *didn’t* happen in its MD, and something DB said didn’t happen at trial, but

stated to Garcia it did happen. This is a major story change that was never addressed by the Appeals Court. Now it is known that Michelle Wall forced DB to testify, it is clear as to why DB's testimony changed so much, she was being forced to testify falsely, and didn't want to testify at all. The trial Court somehow conclude that DB's testimony was "clear, consistent and detailed," but never mentioned how any of it was. The Court presented not one example of what was clear, consistent or detailed, and the Appeals Court never addressed this issue.

In short, the Appeals Court never addressed any of the corroborating evidence listed in either the Appellate brief, the Appellant's Reply Brief, or the Petition for Rehearing. Justise contends the 1<sup>st</sup> Amendment requires this to be addressed.

#### The Appeals Court Failed to Address Demonstrably False Facts

The Indiana Court of Appeals stated the facts of this case were:

On June 21, 2206, twelve year old DB spent the night at the home of Justise, her father, and Shawnta Winston, her father's girlfriend. Justise and DB watched a movie, and DB fell asleep on a pallet on the floor in an upstairs bedroom. She awoke in the middle of the night when she felt Justise "feeling on her." Tr. P. 63. Justise had pulled up D.B.'s shirt and bra and was touching her breast with his lips. Justise told DB to go downstairs with him, and she did. Justise bent DB over one of the living room couches, removed her pants, and rubbed his penis against the cheeks of her buttocks for two to three minutes. Justise then moved DB to another couch where he got on top of her and tried to place his penis inside her vagina. There was no penetration. Justise then placed DB on his lap, placed his finger inside her vagina, and moved it around in circles. Justise told DB that it was going to "tingle a little bit." Tr. P. 71. Justise raised DB off his lap and told her to "remember that this never happened." Tr. P. 72. DB went upstairs and cried.

A few days later, DB told both her Aunt, Ashley Jackson, and Winston what had happened. When DB confirmed to her mother what had occurred, DB's mother contacted the Indianapolis Metropolitan Police Department. DB was interviewed at Child Protective Services and examined by Methodist Hospital Sexual Assault Nurse Linda Kelly. Kelly noticed that DB showed notches or clefts on her hymen that could have been caused by something inserted into her vagina.

In October 2006, the State charged Justise with two counts of child molesting as class A felonies, three counts of sexual misconduct with a minor as class B felonies, child molesting as a class C felony, and two counts of sexual misconduct with a minor as class C felonies. Justise represented himself at the October 2008 trial. The State introduced evidence recordings of telephone calls between Justise and DB, which were recorded while Justise was incarcerated in the Marion County Jail. In one of the phone calls, DB confronted Justise about touching her and placing his finger in her vagina. She told him that she wasn't lying and quoted his comment to her that his finger would "tingle a little bit." MD.

There are several errors with this version of facts, the most obvious is these facts are incorrect, and the Court made no attempt to correct these facts, even after it was pointed out to the Court. The court stated that "a few days later, DB told both her aunt, Ashley Jackson, and Winston what had happened.

That is incorrect. DB informed Ashley Jackson, her aunt, that Justise "never touched" her, and Ashley Jackson was present at trial ready to testify to that fact.<sup>3</sup> Justise had asked Jackson "did she at any time say that I licked her breast," and Jackson responded "no." Tr. 310-311. The State objected on grounds that Justise didn't lay proper foundation by asking DB first. TR. 311. That objection was sustained. TR. 311-312. Justise couldn't thus asked Jackson what DB had said about being fingered. Had Jackson wanted to testify that DB told her that Justise *did* touch her, the State would not have objected as that would have helped their case. In addition, Denise Taylor, mother of DB, called Jackson and threatened her not to come to court to testify. Taylor, who wanted Justise in prison for matters unrelated to DB, lied with a straight face, and stated that she did not call Jackson. TR. 126. Jackson stated that Taylor did call her, but once again the State objected and that matter could not be fully discussed. TR. 311-12. Since proper

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<sup>3</sup> The Appeals Court stated this was "according to Justise." Another misrepresentation making Justise seem guilty by attempting to make an unsupported statement. This was according to Jackson, not Justise.

foundation was laid, Justise should have been able to cross-examine Jackson on the conversation she had with DB, as the State agrees Justise should have been able to.

Further, the appeals court held that Nurse Kelly noticed that DB showed notches or clefts on her hymen that could have been caused by something inserted into her vagina. That statement is incomplete. Nurse Kelly stated:

that can be a normal variant or it can  
be...could have been caused by  
something being inserted into the  
vagina. TR. 261

To be clear, there is absolutely no medical evidence that Justise ever touched DB, but the Appeals Court decision makes it look like there is medical evidence to support that Justise inserted his penis into the alleged victim, when he didn't.

This appears to make Justise look guilty, by stating that the notches comes from something being inserted into DB's vagina. The Appeals Court intentionally left off the normal variant part, and did not address it in their MD, even after being told about it in multiple briefs.

Additionally, the statement of facts held that Justise removed DB's pants. DB had testified that she didn't know how her pants got off. TR. 66. That part of her testimony never changed like her other testimony did.

The statement of facts is not in accordance with the record, and makes Justise look like he is guilty when he is not. DB never told Ashley Jackson that Justise touched her; Nurse Kelly also stated that the notches on DB's hymen could have been caused by a normal variant; and DB never stated that Justise removed her pants.

Justise contends that this is also slander, and because the decision was published, libel. Courts are not permitted to basically lie and say false facts and made up facts are accurate, and present this false facts to the public as being the truth when they are demonstrable false.

Because the court didn't address the incorrect facts they presented, Justise contends this violates the right to petition clause. A court must address issues presented to it for review.

The Appeals Court Also Failed to Address the Denial of  
A Substantial Constitutional Right, the Right  
To Confrontation and Cross-Examination

While this issue was raised on direct appeal, the issue was not addressed, and thus *res judicata* is not implicated. The Appeals Court never addressed this issue during direct appeal, completely ignoring it. During Post-Conviction Relief proceedings, the Court somehow reached the conclusion that this claim was barred by *res judicata*. Justise tried to question Jackson, the alleged victims aunt on her conversation with DB, and the State objected on grounds that Justise didn't lay a proper foundation. TR. 311. The state agreed that Justise should have been able to cross-examine Jackson on what she was told by DB. (Appellee brief of direct appeal, page 19-20)(Appendix D) Justise laid proper foundation to impeach DB's testimony, and accordingly, should have been allowed to do so. The state reached the wrong conclusion in stating that the court "actually never precluded Appellant from questioning Jackson about her conversation with D.B." (Appellee brief of direct appeal page 19) The trial court did deny Justise the right to question Jackson about being fingered or his penis in her vagina, stating the court would have to shoot down that request. TR. 321-22. Jackson would had testified that right after the allegation was made, she spoke with DB. DB told her that she was not molested, that Justise's penis never touch her (and she never seen it), and Justise never touched her vagina, or touched her sexually.

The state agrees that Justise should have been able to question Jackson on the issues discussed. Proper foundation was laid, and Justise should have been able to question Jackson, the alleged victims Aunt. This case turned exclusively to credibility. The state admits that DB testified about being fingered (Appellee brief 20) The State concludes, incorrectly, that the court

allowed Justise to question Jackson (AKA Aunt Bear) about being fingered. *Id.* Justise had argued that he did question DB about being fingered, TR 321, and the trial court would not allow him to ask Jackson about it, stating that the court would have to shoot down that request. TR. 322. Justise had argued that DB did mention being fingered, and a penis in her vagina, and the court denied the request to question Jackson. TR. 321-22.

Additionally, DB testified about the penis. TR. 84, and Justise should have been able to question Jackson about that as well. Justise was not allowed to ask about the penis on the vagina. TR. 322. The State has conceded that Justise should have been allowed to question Jackson about the penis as well. (Appellee brief 20) He was not allowed. TR. 322. The State's conclusion that trial court "actually never" precluded Justise from questioning Jackson on her conversation with DB is incorrect. He was denied. The Indiana Court of Appeals, which sits as the court of corrections, never so much as mentioned this issue, aside from the incorrect conclusion that it was barred by *res judicata*.

The Indiana Court of Appeals has a History of Not  
Addressing Claims Presented to it  
For Review

One good example of the Court of Appeals of Indiana not addressing claims presented to it for review, and completely ignoring precedents set by the United States Supreme Court, started in Sullivan Superior Court.

In February 2010, Justise had filed a lawsuit in the Sullivan Superior Court. He alleged a complete denial of access to the courts, by Jerry Houston, a DOC official in charge of the prison law library at the Wabash Valley Correctional Facility, by refusing to give Justise pen, paper, any research materials at all such as case laws, statutes books etc. Justise also alleged that he was in the process of completing his direct appeal, and that he would need access to the courts.

Justise also alleged several other constitutional violations, listed below. The Court dismissed his case, calling it frivolous, and stating that Justise didn't provide sufficient copies for the court to serve the complaint. Houston had refused to give Justise the correct amount of copies, so Justise had to mail in the incorrect amount of copies. Justise sent the correct amount of copies after showing Houston what the Court stated about insufficient copies. Judge Springer treated the complaint like it was a new complaint, and called it frivolous, though it was not. The Court gave a list of things that Justise needed to do in order to file suit, which comes down to Justise needed to win the entire case in the initial filing. The Court held that Justise:

- (a) failed to provide proof to the court that he exhausted his administrative remedies before filing the action;
- (b) failed to alleged facts sufficient to prosecute the action against the named defendants pursuant to IC 34-13-3-5(c);
- (c) failed to establish liability given the qualified immunity that may protect the named defendants;

The Court then went on to discuss what the Court can and cannot do. The Court stated:

- (a) The Court cannot order the DOC to provide certain research materials to the Plaintiff;
- (b) the court cannot order Plaintiff to receive additional research time due to incarceration in segregation;
- (c) the court cannot order the DOC to purchase books for the law library that the law library should have.

The Court went on to say "There is no constitutional right to research materials or research time, and Plaintiff's attempts to characterize the same as limiting his right of access to the Courts would fail."

The Court further made sure that Justise would not ever file another complaint in that courtroom, by imposing unwarranted and unnecessary procedures in place before filing in that courtroom. (See Decision by the Court, Appendix E.)

To be clear, because of this action by the Court, Justise was never able to appeal his criminal conviction under *Justise v. State*, 49G02-. Justise has a conviction that was never able to be challenged on appeal.

When trying to appeal this decision, the prison officials that were being sued held up copying the legal pleadings for a month and a half, making the pleading late. All request for a belated appeal were denied. It was explained to the Trial Court and the Indiana Court of Appeals the merits of the case, and the Court of Appeals and Trial Court failed to address any of the issues Justise presented for review. Justise explained the following:

(1). The Denial of Access to the Courts

1. Justise had alleged that there are no proper cross-reference materials in the law library, such as any digest, CJS, Indiana Law review, etc. The Trial Court deemed this claim to be frivolous. In *Corgain v. Miller*, 708 f.2d 1241 (7<sup>th</sup> Cir. 1983), the magistrate found that the prison law library at USP-Marion contained no digest. *Id.* at 1249. The magistrate concluded that the library system at USP-Marion was inadequate to provide the petitioners with meaningful access to the courts, which imposed their sentences because the petitioners had no way of finding citations to State law materials they needed in order to take advantage of the library system. The Petitioners, the Court stated, needed started volumes, such as State digest, to allow them to locate citations. *Id.* Since a library is the system that WVCF has selected to provide access to the courts, the 7<sup>th</sup> Circuit has concluded that State digest would be needed. *Id.* at 1250. The Appeals Court failed to address this issue.

2. Justise had also alleged that deadlines dates are ignored, and that legal pleadings were intentionally lost by staff, causing actions to be dismissed or delayed. The Trial Court held this claim to be frivolous. When any inmate, shows that an actionable claim which he desired to

bring has been lost or rejected, or that the presentation of such a claim is currently being prevented, because the capability of filing suit has not been provided, he demonstrates that the State has failed to furnish "adequate law libraries or adequate assistance from persons trained in the law," *Bounds v. Smith*, 430 US 817, 828,(1977) See also *Lewis v. Casey*, 518 U.S. 343, 356 (1996) Justise showed that he missed deadlines that resulted in his direct appeal being dismissed by the Court of Appeals. There is no way this claim can be frivolous. The Appeal Court failed to address this issue.

3. Justise had also alleged that Sark had read his legal pleadings, several times, and decided what he could and couldn't have copied, and mailed, even though all of it was going to a court. Justise had alleged that Sark refused to copy his legal pleading addressed to a judge, because it was "too personal." Sark also read a letter addressed to his attorney T.R. Fox, and Sark refused to allow Justise to mail it out, stating that it too, was too personal. The Trial Court ruled this claim frivolous. Prisoners are entitled to unobstructed and confidential communications with the courts and with attorneys and their assistants. *Procunier v. Martinez*, 413 U.S. 396, 419-22 (1974) Regulations and practices that unjustifiably obstruct the availability of...access to the courts are invalid. *Procunier*, at 419. The trial court ruled this issue to be frivolous. The Appeals Court failed to address this issue.

4. Justise had also alleged that the defendants charged Justise for legal services, even though he is literally indigent, and legal services are supposed to be free of charge. The Trial Court held this claim to be frivolous. *Indiana Code § 11-11-7-2*. "Legal correspondence Materials and services provided to indigent confined persons" states: The department shall provide an indigent confined person with free stationery, envelopes, postage, and notarial services for legal correspondence. The US Supreme Court has also stated that indigent prisoners

are entitled to free legal needs and services. The trial Court held this claim to be frivolous. The Appeals Court failed to address this issue.

5. Additionally, Justise had alleged that the defendants were responsible for his direct appeal being dismissed. Defendant in that complaint, Jerry Huston, had tried to argue with Justise explaining that the Indiana Court of Appeals was wrong in their legal conclusion, and he refused to allow Justise to comply with the order from the Indiana Court of Appeals. This, of course, caused an appeal to be dismissed. The Trial Court held this claim to be frivolous. Where limitations on library use prevent filing of briefs in time for the court's consideration, those limitations are sufficiently prejudicial to sustain an access-to-courts claim. *DeMallory v. Cullen*, 885 F.2d 442, 449 (7<sup>th</sup> Cir. 1988) The Appeal Court failed to address this issue.

6. Justise had also alleged that his legal work had been destroyed, by deleting it off the computer system that he was forced to store his legal work on. This prevented Justise from being able to timely file for his direct appeal. The Trial Court held this claim to be frivolous. Seizure or deprivation of a prisoner's legal papers may violate the Constitution. *Brownlee v. Conine*, 957 F2d 353, 354 (7<sup>th</sup> Cir. 1992); *Stringer v. Thompson*, 537 F.Supp. 133, 137 (N.D. Ill 1982). See also *Chavers v. Abrahamson*, 803 F. Supp. 1512, 1514 (E.D. Wis. 1992)(deprivation of legal materials denies court access only if they are "crucial or essential to a pending or contemplated appeal.")

7. In addition, Justise had also alleged that he was allowed only one hour a week of research time in the law library, and that time included document preparation. The Trial Court held this claim to be frivolous. In *Cruz v. Andrade*, 627 F,2d 710, (5<sup>th</sup> Cir. 1980) the plaintiffs contended at trial that their access to the library was inadequate because they were only allowed to visit the library once a week for about two or three hours, the lower court held that this was

sufficient. “We have some reservations about whether this amount of time is adequate to do meaningful legal research.” See *Williams v. Leake*, 584 F.2d 1336 (4th Cir. 1978). The defendants, in that case, realizing that three hours a week was insufficient, expanded the law library hours on their own. *Id.* at 720. Justise was receiving a third of that amount of time.

8. Lastly, Justise had sought to timely file his direct appeal. Because of the above listed violations, he was unable to do so. The Trial Court deemed this claim of not being able to file his appeal as of right as frivolous. The U.S. Supreme Court has made clear that Justise has a right to a direct appeal. *Evitts v. Lucy*, 469 US 387, 396 (1985)(stating that a criminal appeal is an appeal “as of right”)

Also, *Indiana Code* § 35-38-4-1 confers a right to a criminal appeal upon Justise. If this right is denied, this could never be a frivolous matter. This issue was explained thoroughly to the Indiana Court of Appeals, and they never addressed it. The Indiana Court of Appeals regularly ignores issues that is being presented to it for review.

#### (2). Justise Did Not Have to Prove Exhaustion

The Trial Court held that Justise’s failed to “provide proof to the Court that he has exhausted his administrative remedies before filing this cause of action. Plaintiff must have complied with the grievance process as a prerequisite to filing a lawsuit for claims of constitutional violations.” Exhaustion is an affirmative defense with the burden of proof on the defendants. *See Jones v. Bock*, 549 U.S. 199, 212, (2007). Additionally, the U.S. Supreme Court held: We conclude that failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specially plead or demonstrate exhaustion in their complaints. Justise pointed this out to the Indiana Court of Appeals, and they failed to address the issue.

(3). Justise Did Not Have to Prove Defendants Were Not Entitled To Qualified Immunity

The Trial Court also held that Justise failed to establish that the Defendant would not be entitled to qualified immunity. In *Crawford-El v. Britton*, 523 U.S. 587 (1998) the U.S. Supreme Court held that “qualified immunity is an affirmative defense and that the burden of pleading it rests with the defendant.” Justise did not have to prove that the defendants were not entitled to qualified immunity. Citing *Jones*, inmates are not required to specially plead or demonstrate exhaustion in their complaints. *Jones*, 549 U.S. at 212. Justise presented this to the Court of Appeals, and they failed to address it.

(4). The Court Held That it Cannot Order The DOC to Provide Research Materials or Research Time

The Trial Court held that it cannot order the DOC to give Justise research materials and research time. The U.S. Supreme Court has held: It is for the courts to remedy past or imminent official interference with individual inmates' presentation of claims to the courts. *Lewis v. Casey*, 518 US 343, 349 (1996). It was for The Trial Court to cure the violations alleged in the complaint. Justise presented this to the Indiana Court of Appeals, and they failed to address it.

(5). There is a Clear Constitutional Right to Research Materials and Time

The Trial Court also held that there is no constitutional right to research materials or time. The U.S. Supreme Court has consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them. *Bounds v. Smith*, 430 U.S. 817, 824 (1977)

Additionally, the 7<sup>th</sup> Circuit has stated: In our adversary legal system, few things can be as prejudicial as the denial of basic legal resources. In essence, when an inmate complains of prison rules that substantially and continuously limit his or her access to legal materials and counseling, the complaint carries an inherent allegation of prejudice. *DeMallory*, 885 F.2d 442, 449 (7<sup>th</sup> Cir. 1988). Materials are an essential part of research materials that Justise had a right to.

Also, as stated *supra* as far as time in Law Library for research, the 4<sup>th</sup> Circuit has stated: We have some reservations about whether this amount of time is adequate to do meaningful legal research." *Cruz*, 627 F.2d at 720. Clearly, Justise has a right to research time, as well as materials. Justise pointed this out to the Indiana Court of Appeals, and they failed to address any of it. The Court never mention a single issue that was presented to it for review.

Whether Former Prosecutor Michelle Wall Should Have Been  
Called as Witness to Testify and Whether Her  
Conduct Violates *Brady*

Justise attempted to call Michelle Wall as a witness to question her about telling DB to lie on the stand, not to worry about recorded phone calls that Wall destroyed, and how it is possible that she made a phone call log list with different times on it than the list made by Detective Norris, from a read only formatted disc, something that State expert witness Buzz Michaels states cannot happen. Justise also wanted to question Wall on where the original CD that the phone calls were downloaded to disappeared to. This was important since the Appeals Court quoted only 1 out of 26 phone calls in their findings of facts were they state DB confronted Justise, stating Justise said it would "tingle" a little. They never mentioned the 25 phone calls were DB admitted making up the story. This also violated the doctrine of completeness by not mentioning the calls that Wall destroyed.

The trial court didn't allow Wall to be called as a witness to the evidentiary hearing. The Appeals Court didn't address this issue at all in their MD. With all of these allegations, and with substantial proof of Wall's guilt, Wall should have been called as a witness to testify. There is no one else that stated that the original CD that the calls were downloaded to is now missing except Wall. Additionally, no one else except Wall told a 13 year old child to lie on the stand, and not to worry about the recorded phone calls in which the 13 year old admitted she made the story up, and the Appeals Court mentions the only negative phone call, but not the 25 positive phone calls.

Justise contends that by Wall intentionally destroying the recorded phone calls in which DB admitted in 25 phone calls that she made the story up, and apologized several times for doing so violates *Brady*, supra. Justise further contends that by Wall not informing the defense of the conversation held in the hallway outside the courtroom right before the child hearsay hearing, in which DB told Wall "what if I made the story up" also violates *Brady*. Justise also contends that by Wall forcing a 13 year old child to lie on the stand under oath, and obtain a conviction based on known perjured testimony violates *Napue*, supra. This information, taken either together or separate, shows that Justise is innocent and should not be prison.

Newly Discovered Evidence Proves that Justise is  
Innocent, and DB is Worthy of Credit

Justise presented newly discovered evidence to the trial court and the Appeals Court. Neither court addressed the issues that Justise presented. While the appeals court held this argument was barred by *res judicata*, they never addressed a single issue presented by Justise. Additionally, since this information was not known to Justise during his direct appeal, and certainly not presented by Justise, there is no way this could be barred by *res judicata*. The evidence presented above details that Justise is actually innocent, and since former prosecutor Michelle Wall forced DB to lie on the stand, there is no way that DB's testimony is not worthy

of credit, especially with all of the corroborating evidence listed above that supports DB testimony.

It is important to note, that the other alleged victim, TN, in which Justise was also charged, first stated to DB during a conversation in which DB asked TN to lie and say that Justise had sex with TN that DB wasn't going to get TN caught in DB's "lies." App. 75 and 85. TN then later went on, and aided DB in her lies, by lying herself. TN stated that Justise had sex with her and ejaculated on the couch. The couch was tested for semen, and came back negative for semen from Justise. App. 77. (Semen was found, but it was not from Justise). Additionally, TN stated that Justise had sex with her in the upstairs bathroom and ejaculated on the bathroom floor. The floor was tested via luminal, and again, no semen was found at all. App. 79. This shows conclusively that TN was lying, and trying to aid her cousin DB "in her lies."

There would be no need in TN telling that she wasn't going to get her caught up in her lies if she was telling the truth. Most importantly, TN *did* get caught in lies from two different test performed. The Court of Appeals didn't hesitate to state that Justise was charged with nine (9) sex offenses, but failed to mention that 6 charges were dropped from failed test confirming Justise was not guilty. This is, again, only mentioning the negative.

DB states the only reason she told this story was out of anger towards Shawnta Winston, Justise's ex-girlfriend, and that she simply wanted Winston "gone," and that is why she made up this story. DB has openly admitted that she was jealous of Justise's girlfriends, TR. 112, and that she wanted Justise all to herself as "his daughter." TR. 113-114. She further stated that she didn't tell Shawnta that she was touched sexually until *after* Justise had instructed Shawnta to tell DB to stop calling Justise's house<sup>4</sup> looking for Justise. TR. 83-84. DB was asked why she picked

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<sup>4</sup> Justise was told that DB was calling the house over a dozen times a day looking for him.

then to tell Shawnta she was touched sexually, and DB responded “Uh, I really don’t know, you know.” TR. 84. To corroborate this, State’s witness Shawnta Winston testified that DB was “competitive” with her for time spent with Justise. TR. 329. Winston stated that if she kissed Justise, DB would want to kiss Justise as well. TR. 329. Winston further testified that while riding in the car with DB and Justise, she had leaned over to kiss Justise and that made DB cry.<sup>5</sup> TR. 329-30 DB didn’t like Winston, told Winston this story in hopes that Winston would simply leave Justise. DB had no clue that the police would get involved, or that all that has happened would happen. DB is now trying to correct this. The Court of Appeals never addressed this issue.

Additionally, Mildred Patterson testified that when Justise and DB came to visit her, that DB ran and jumped on Justise’s lap, and Justise told her to get off of his lap. DB had “got mad, pouted and went out” the door. TR. 352-53. Ms. Patterson also testified this is normal behavior when DB can’t get her way. TR. 354. Lastly, Ms. Patterson testified that DB always wanted to be around Justise. TR. 355.

Vonda Goodman, AKA “Termite” also testified to these events about DB. TR. 360-61. It is also worth noting that Justise has *not* been able to speak with DB. All of this information is coming directly to DB from family members. Because when Justise seen DB, it was in open court with people around during the Evidentiary hearing,<sup>6</sup> Justise was not able to speak with DB about this case. This is *all her doing*.

This entire case is based on a made up story by two (2) girls. DB was 15 years of age when she was forced to testify falsely. To say that DB is an extremely jealous daughter would be an understatement. DB is mentally challenged and didn’t realize the implications of her actions. The State objected when Justise tried to bring up DB’s mental state. She was 24 years of age

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<sup>5</sup> This confirms that DB is more than extremely jealous.

<sup>6</sup> Court staff, prosecutors and member of audience.

when she testified at the evidentiary hearing and told the truth. The State dropped the charges involving TN but refuses to acknowledge the facts regarding DB.

### **The United States Supreme Court Should Decide this Issue**

Justise is an innocent man sitting in prison for a crime he didn't commit because former prosecutor Michelle Wall decided she was going to send Justise to prison for whatever her personal reasons against Justise was. Justise has tried everything possible to prove his innocence and obtain his release from prison, but the courts are not addressing the issues that he is presenting. This appears to be a way that innocent men and women remain in prison.

Justise is contending that the 1<sup>st</sup> Amendment to the United States Constitution, the Right to Petition the Government for Redress of Grievances Clause means that courts are obligated to at least address the issues that is presented to them for review.

In addition, Justise is requesting this court provide instruction of what an individual is supposed to do if that right is violated and the issues presented to a court is not address by the court. Additionally, does that obligation change from a trial court to a court of corrections, such as the Court of Appeals of Indiana? Does this right supersede any of the immunities enjoyed by Judges that prevents suits from being filed against Judges that violates this 1<sup>st</sup> Amendment right? What remedies are available to a person who's right to petition the government for redress of grievances are available once that right is violated.

Also, if Judges make false statements, and contend that the convicted party states claims that convicted party never stated, that appear to make the convicted guilty party look guilty, is slander and/or defamation. If this is printed in a published case, whether that is libel.

The Seventh Circuit has stated: there are few cases construing the right-to-petition clause. *Hilton v. City of Wheeling*, 209 F3d 1005, 1007 (7<sup>th</sup> Cir. 2000) Justise is requesting that this court

construe this clause. The closest Justice can find that defines this clause does not address the issue that Justice is presenting to this court. The Seventh Circuit has held “persons in prison, like other individuals, have the right to petition the Government for redress of grievances which, of course, includes access of prisoners to the courts for the purpose of presenting their complaints.” *Bridges v. Gilbert*, 557 F3d 541, 553 (7<sup>th</sup> Cir. 2008)

No person would ever expect to file claims with a court of law, and that court not address the claims presented to it for review. This is a right, and should be made the law of the land from this Court.

### **Conclusion**

Wherefore, since this case involves issues of importance, in that, whether the 1<sup>st</sup> Amendment Right to Petition Clause requires courts to address issues actually presented to them for review, and forbids them making up their own facts; and whether by misstating facts and issues, claiming that the convicted party presented these issues to the court for review, when the charged party did not, and these issues make the charged party appear to be guilty, this is slander, defamation, and/or libel, Justice humbly request this court accept review of this case, and all other relief just and proper in the premises.

Respectfully Submitted



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Charles E. Justice Sr.

**Proof of Service**

I certify that a copy of the foregoing Motion for Leave to Proceed in Forma Pauperis and Petition for a Writ of Certiorari has been served upon the parties listed below by U.S. mail, first class postage, prepaid on this

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