

IN THE SUPREME COURT OF THE UNITED STATES

**David Lawrence Dixon - PETITIONER**

VS.

**State of West Virginia - RESPONDENT**

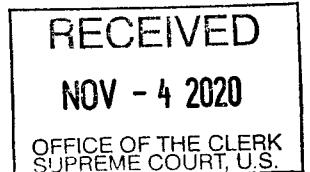
ON PETITION FOR AN ORDER FOR REHEARING

West Virginia Supreme Court of Appeals

**PETITION FOR AN ORDER FOR REHEARING**

*No. 19-8806*

David Lawrence Dixon, #3570828  
Mount Olive Correctional Complex  
One Mountainside Way  
Mount Olive, West Virginia  
25185



Comes now your Petitioner, David Lawrence Dixon, *pro se*, and pursuant to Rule 39 and Rule 44 of the Supreme Court Rules moving this Honorable Court to order a rehearing on the decision made in originally denying the petition for a writ of certiorari.

Your Petitioner does so aver that his request is not being made to vex any party seeking to embrace the outcome of this case. To the contrary, the only active party herein is your Petitioner.

In support of his petition for rehearing, Petitioner will rely on the salient facts of this case by first announcing that this case is not a case of first impression. Petitioner's petition for a writ of certiorari contained grounds and/or issues that are constitutionally recognized, and therefor, is outcome determinative, furthered by This Court's precedents on issues of great public concerns.

Jackson v. Virginia 443 US 307, 61 L Ed 2d 560, 99 SCT 2781, reh den (US) 62 L Ed 2d 126, 100 S Ct 195 (1079), Brady v. Maryland 373 US 83, 10 L Ed 2d 215, 83 SCT 1194 (1963), Agus v. Whitaker 748 Fed Appx 151748 Fed. Appx. 151; 2019 US App LEXIS 15775019 U.S. App LEXIS 1577 (2019) Also, see Franks v. Delaware, 438 U.S. 154, 164-71, 98 S. Ct. 2674 57 L. Ed.2d 667 (1978) concerning police officers making false and perjured statements or omissions in an attempt to establish "probable cause." See also, Holmes v. Kucynda, 321 F. 2d 1069, 1083 (11<sup>th</sup> Cir. 2003). Petitioner also references Flippo v. West Virginia, 528 U.S. 11, 14, 145 L. Ed. 2d 16, 20, 120 S. Ct. (1999), State v. Flippo, 212 W. Va. 560, 575 S.E. 2d 170, 2002 W. Va. LEXIS 208 (2002) (Frank's Rule). And the admonishment announced in the case of United States ex rel. Darcy v. Handy, post, "While the Court stands ready to correct violations of constitutional rights, it also holds that 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the results set aside, and that it be sustained not as a matter of speculation, *but as a demonstrable reality*'" 351 U.S. 454, 462, 100 L. Ed 1331, 1338, 76 S. Ct. 965 (1956).

The issues that Petitioner refers to are; faulty DNA evidence, identifying the wrong race of a suspect, the State destroying the evidence before the Defendant can request separate testing, and based on that “spoilage of evidence”, the Defendant - with not comparable evidence to test - will not be able to utilize the exculpatory value of the evidence that was present before it was destroyed.

Due to the open-ended “*fallacies*” of both the lower W. Va. State Courts involved in this case; (i.e. Rule 10(b) and (c), and the “look through approach” offered in *Wilson v. Sellers* 584 US\_\_\_\_, 138 Ct\_\_\_\_, 200 L Ed 2d 530, 2018 US LEXIS 2496 (2018)) And the United States District Court for the Southern District of West Virginia - Beckley and Bluefield divisions, reluctance on a § 2254, Petitioner entreats to This Court under Rule 20.1 and 28 U.S.C. 1651 (a), for the following reasons;

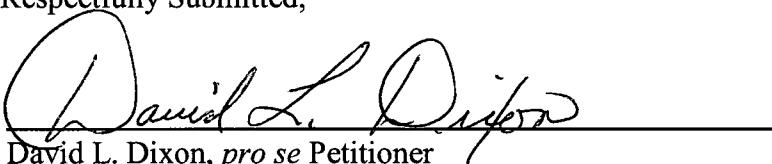
- a. the West Virginia Supreme Court of Appeals will no longer address claims of actual innocence due to faulty, incorrect DNA evidence used in trial, contrary to the numerous “remedies” the aforementioned State’s highest Court has created, and;
- b. This Honorable Court is Petitioner’s last resort and final hope, made so by the Fourth Circuit of Appeals reversing an Order of a U.S.D.C. to reflect dismissal “without” prejudice, but only to have his subsequent § 2254 petition dismissed on the “second or successive” petition, as according to Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts. This has woefully taken place two times in the seventeen years of delays caused by the State Court and its inadequate remedy. (See exhibit A)

All post conviction remedies created by the West Virginia Supreme Court of Appeals are

now available to a distinctive class of petitioners who do not have "antiquated" evidence tested by the West Virginia State Police Crime Laboratory - Serology Division in their case, since this Agency announced in Petitioner's trial in open court, they no longer perform tests as were used in Petitioner's 1995 investigation. With the lack of a purported response from the Respondent in this case, a petition for rehearing should be issued on that ground also, for your Petitioner has only habeas court judge's tirade to go by.

Wherefor, your Petitioner respectfully request that this Court grants him a rehearing, or in its discretion, any relief deemed appropriate under Rule 20.

Respectfully Submitted,



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David L. Dixon  
David L. Dixon, *pro se* Petitioner

IN THE SUPREME COURT OF THE UNITED STATES  
WASHINGTON, D.C.

DAVID L. DIXON,  
Petitioner,

v.

Civil Action No: 19-8806

State of West Virginia,  
Respondent.

**CERTIFICATE**

I, David Lawrence Dixon, do hereby certify that the grounds that I am raising to this Honorable Supreme Court are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. The claim at issue is concerning the D. N. A. evidence utilized to convict your Petitioner. The West Virginia Supreme Court has previously indicated that they would no longer consider any D. N. A. evidence from this time period, claiming that overwhelming claims involved Fred Zane. The West Virginia Supreme Court absolutely should consider everything involving the State Police Department, being that they are to be the guardian angels that insure that their charges are treated justly. As such, it becomes the duty of this Honorable Court to do the same on a grander scale as the highest Court in the Land. The dereliction of duty in preserving evidence falls on the shoulders of the misconduct of the Police. Also see Stone v. Powell, 428 U.S. 465, 486, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976) concerning the deterrence of unconstitutional conduct by state actors and the fact that anything gathered therein should be excluded.

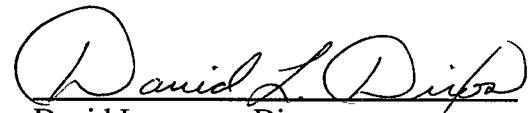
Your Petitioner cites Franks v. Delaware, 438 U.S. 154, 164-71, 98 S. Ct. 2674 57 L. Ed.2d 667 (1978) , concerning the law enforcement agents creating "probable cause" in order to

arrest and question. Also, Flippo v. West Virginia, 528 U.S. 11, 14, 145 L. Ed. 2d 16, 20, 120 S. Ct. (1999), State v. Flippo, 212 W. Va. 560, 575 S.E.2d 170, 2002 W. Va. LEXIS 208 (2002) (Frank's Rule) are cited in order to demonstrate a mirrored similarity. Flippo is the standard for analyzing D. N. A. cases in West Virginia and it becomes improper for the West Virginia Supreme Court to refuse to use it in reviewing your Petitioner's case.

To be frank, your Petitioner was originally identified as caucasian through the D. N. A. examination process. The Petitioner's brother was eliminated as a suspect at the same time because of ethnicity. Your Petitioner would like to notify this Honorable Court that I am African American.

**Certification of Fact**

Your Petitioner certifies that the petition for rehearing is presented in good faith and not for delay. The assertions herein are true and factual to the best of my knowledge and signed under penalty of perjury this 17<sup>th</sup> day of November, 2020.



David Lawrence Dixon

**Additional material  
from this filing is  
available in the  
Clerk's Office.**