NOT FOR PUBLICATION

FILED

JUN 10 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LYLE MARK COULTAS, Plaintiff-Appellant, v. CARROLL TICHENOR, Individually and in his Official Capacity as a Yamhill County Prosecutor; et al., Defendants-Appellees.	No. 19-35421 D.C. No. 3:19-cv-00021-HZ MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, Chief Judge, Presiding

Submitted June 2, 2020**

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

Lyle Mark Coultas appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging fraud on the court. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

App A

dismissal on the basis of res judicata. *Stewart v. U.S. Bancorp.*, 297 F.3d 953, 956 (9th Cir. 2002). We may affirm on any basis supported by the record, *Thompson v. Paul,* 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

Dismissal of Coultas's action to set aside a prior judgment for fraud on the court was proper because Coultas failed to allege facts sufficient to state a claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief); *see also Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir. 2003) ("Fraud on the court requires a grave miscarriage of justice." (citation and internal quotation marks omitted)).

We reject as unsupported by the record Coultas's contentions regarding judicial misconduct.

All pending motions are denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 18 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LYLE MARK COULTAS, Plaintiff-Appellant, v. CARROLL TICHENOR, Individually and in his Official Capacity as a Yamhill County Prosecutor; et al., Defendants-Appellees.	No. 19-35421 D.C. No. 3:19-cv-00021-HZ District of Oregon, Portland ORDER

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Coultas's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 26) are denied.

No further filings will be entertained in this closed case.

App. A

Appendex A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 29 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LYLE MARK COULTAS,

Plaintiff - Appellant,

v.

CARROLL TICHENOR, Individually and in his Official Capacity as a Yamhill County Prosecutor; et al.,

Defendants - Appellees.

No. 19-35421

D.C. No. 3:19-cv-00021-HZ
U.S. District Court for Oregon, Portland

MANDATE

The judgment of this Court, entered June 10, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

Appendex A

Appendex B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

LYLE MARK COULTAS,

Plaintiff,

v.

CARROLL J. TICHENOR, Individually and in his Official Capacity as a Yamhill County Prosecutor; YAMHILL COUNTY DISTRICT ATTORNEY'S OFFICE; STEVEN PAYNE, Individually and in his Official Capacity as an Oregon State Police Crime Laboratory Detective; OREGON STATE POLICE,

Defendants.

No. 3:19-cv-00021-HZ

OPINION & ORDER

Lyle Mark Coultas
PO Box 434
Gaston, OR 97119

Pro Se Plaintiff

Andrew Hallman
Assistant Attorney General
Department of Justice
1162 Court Street NE

Appendex B

Salem, OR 97301

Attorney for Defendants

HERNÁNDEZ, District Judge:

Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983. For the reasons set forth below, the Court dismisses Plaintiff's Complaint for failing to state a claim upon which relief may be granted.

BACKGROUND

Plaintiff alleges he was falsely accused of child molestation in 2001. During trial on those charges, the police and prosecutor committed fraud upon the trial court and violated his right to due process. He asks this Court to vacate his criminal convictions and award him various fees, expenses, compensatory damages, and punitive damages totaling $100,000,000.

STANDARDS

Dismissal is appropriate if a plaintiff fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Plaintiff's complaint should not be dismissed for failure to state a claim, however, unless it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 558 (9th Cir. 1995).

Dismissal for failure to state a claim is a ruling on a question of law. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Review is limited to the contents of the complaint and its exhibits, *id.*, as well as matters properly subject to judicial notice. *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). Allegations of fact in the complaint must be taken as true and construed in the light most favorable to plaintiff. *Parks School of Business, Inc.*, 51 F.3d at 1484.

B

From the facts alleged, the court also must draw all reasonable inferences in plaintiff's favor. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

DISCUSSION

I. Res Judicata

On May 8, 2018, Judge Mosman issued an order dismissing Plaintiff's complaint in the case of *Coultas v. Tichenor et al.*, 3:18-cv-596-MO. *Coultas v. Tichenor*, 2018 WL 2287023 (D. Or. May 8, 2018). Judge Mosman concluded that Plaintiff's complaint was barred by the doctrine of res judicata. Specifically, he found that Plaintiff had litigated the same claims, against the same defendants, twice before: in *Coultas v. Payne, et al.*, Case No. 3:11-cv-00045-AC and *Coultas v. Payne, et al.*, Case No. 3:12-cv-01132-AC. In the first case, Judge Acosta ultimately dismissed the claims against the same defendants based on Eleventh Amendment immunity, failure to state a claim, and the statute of limitations. *Coultas v. Payne et al.*, No. 3:11-cv-00045-AC, ECF Nos. 44, 100, 137. The Ninth Circuit Court of Appeals affirmed that decision on April 9, 2018. *Coultas v. Payne*, 699 F. App'x 749 (9th Cir. 2017) (Mem). In the second case, Judge Acosta determined, in part, that claim preclusion barred the relitigation of these issues and dismissed the case with prejudice. Findings and Recommendation, *Coultas v. Payne, et al.*, Case No. 3:12-cv-01132-AC, ECF 55.

Plaintiff has now filed a new complaint before this Court. The complaint names the same defendants and recites the same facts and allegations as the case previously before Judge Mosman. Indeed, the complaint reads almost verbatim. Thus, Defendants moved to dismiss to the complaint based on Judge Mosman's order and the doctrine of res judicata. In response, Plaintiff argues—as he did before Judge Mosman—that the case has never been heard and decided on the merits. He also argues that the new complaint identifies new harms that could not

B

have been raised in prior litigation. Specifically, he notes that (1) ORS § 166.255 went into effect on January 1, 2019 and prohibits him from owning a firearm, and (2) in January he was ordered to pay to remain on the sex offender registry.

Plaintiff's arguments are without merit. First, in an order denying Plaintiff's motion for re-consideration, Judge Mosman explained that although Judge Acosta did not reach the underlying facts of Plaintiff's claim, there was still a final judgment on the merits. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002) (dismissal for failure to state a claim under Rule 12(b)(6) is a final judgment on the merits). Judge Mosman explained that "[i]t is a misconception of res judicata to assume that the doctrine does not come into operation if a court has not passed on the 'merits' in the sense of the ultimate substantive issues of a litigation." *Angel v. Bullington*, 330 U.S. 183, 190 (1947).

Second, Plaintiff has not identified new claims that could not have been raised in the prior litigation. A plaintiff may avoid res judicata by alleging "a new set of facts giving rise to a new claim." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 322 F.3d 1064, 1079 (9th Cir. 2003). Plaintiff cannot simply allege a new or more severe injury stemming from the same underlying conduct. *Id.* at 1079 n.12. Here, while Plaintiff may have identified new injuries—the inability to own a gun and the cost of sex offender registration—these injuries arise from the exact same conduct already litigated in the first case before Judge Acosta. Plaintiff has not identified any new acts that occurred after the last date alleged in the prior litigation.

The Court therefore follows the order issued by Judge Mosman on May 8, 2018 in the case *Coultas v. Tichenor et al.*, 3:18-cv-00586-MO and dismisses the complaint with prejudice.

B

II. Attorney Fees

Based on the record, the Court declines to award attorney fees. However, the Court notes that this is Plaintiff's fourth case raising the same claims, and the third case in which these claims were dismissed because of claim preclusion. Plaintiff is advised that a new suit, based on the same claims, may result in an order imposing the pre-filing review of any future cases filed in this district. *See Harry and David v. Pathak*, 2012 WL 1309181, *2 (D. Or. Feb. 9, 2012) (citing *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1061 (9th Cir. 2007) ("A district court may enjoin a vexatious litigant under the All Writs Act, 28 U.S.C. § 1651(a), by issuing a[] pre-filing order requiring the litigant to seek permission from the court prior to filing any future suits.")).

CONCLUSION

The Court GRANTS Defendants' motion to dismiss with prejudice. The Court DENIES Defendants' request for attorney fees.

Dated this 23 day of April, 2019.

Marco Hernández

MARCO A. HERNÁNDEZ
United States District Judge

B

Appendex C

LYLE MARK COULTAS
P.O. BOX 434 GASTON, OREGON 97119
503-431-1839

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

LYLE MARK COULTAS,
Plaintiff,
vs.

CARROL TICHENOR, Individually and in his Official Capacity as a Yamhill County prosecutor; **YAMHILL COUNTY DISTRICT ATTORNEY'S OFFICE; STEVEN PAYNE,** Individually and in his Official Capacity as an Oregon State Police Crime Laboratory Detective; **OREGON STATE POLICE;**

Defendants.

CIVIL CASE NO:
No. 3:19-cv-00021-HZ

PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff asks the District Court to reconsider its Opinion and Order Dated April 23, 2019 as the District Court misrepresented the facts of Plaintiff's case as well as the law as Ordered by the United States Supreme Court.

District Court Judge Marco A. Hernandez stated on page 4 of his Opinion and Order "Plaintiff has not identified new claims that could not have been raised in the prior litigation". As clearly pointed out in Plaintiff's "NEW" Complaint, HB4145 took effect January 1, 2019 and did not exist when Plaintiff previously filed a complaint. In the past several years Plaintiff has purchased several rifles, shotguns and handguns and went through State and Federal background checks. HB4145 now makes it a crime for Plaintiff to posess the firearms he legally purchased.

Appendex C

The **UNITED STATES SUPREME COURT** clearly stated in ***Lawlor v. National Screen*** **Service Corp., 349 U.S. 322 (1955),** res judicata does not bar a suit, **even if it involves the same course of wrongful conduct as alleged earlier,** so long as the suit alleges new facts or a worsening of the earlier conditions.

The District Court completely ignors the **UNITED STATES SUPREME COURT'S** ORDER stating "even if it involves the same course of wrongful conduct" as alleged earlier. It simply does not matter how many times a case is litigated as long as there are new facts or a worseing of the earlier conditions that could not have been addressed previously, as Plaintiff has presented in his complaint.

District Court Judge Marco A. Hernandez has misrepresented the law as determined by the **UNITED STATES SUPREME COURT** in ***Lawlor v. National Screen*** **Service Corp., 349 U.S. 322 (1955).**

District Court Judge Marco A. Hernandez has misrepresented Facts in this case on page 3 of his Order and Opinion where he stated "In the first case, Judge Acosta ultimately dismissed the claims against the same defendants based on Eleventh Amendment immunity, failure to state a claim and the statute of limitations. # # # The Ninth Circuit Court of Appeals affirmed the decision on April 9, 2018."

Judge Acosta Dismissed Plaintiff's case based on his clear misrepresentation of Heck V. Humphrey. The Ninth Circuit Court vacated Judge Acosta's Dismissal of Plaintiff's case and then Ordered Judge Acosta to examine Plaintiff's claims against the defendants for any inconsistencies. Judge Acosta simply Dismissed Plaintiff's case a second time but added several more misrepresentations. The second time Plaintiff went to the Ninth Circuit Court is when the Ninth Circuit Court upheld Judge Acosta's dismissal of Plaintiff's case.

C

District Court Judge Marco A. Hernandez has misrepresented Facts in this case on page 2, "He asks this Court to vacate his criminal convictions and award him various fees, expenses, compensatory damages, and punitive damages totaling $100,000,000". **In Plaintiff's Complaint Plaintiff clearly stated,**"The criminal charges against Plaintiff should be vacated for Fraud on the Court, as well as everything associated with, and attributed to those charges for Fraud on the Court." **Plaintiff never mentioned** "award him various fees, expenses, compensatory damages, and punitive damages totaling $100,000,000". The only time Plaintiff mentioned any fees was in Plaintiff's reply where Plaintiff stated "Lastly, Any request by Defense for Attorney Fees should be Denied and Plaintiff should be Awarded Attorney Fees because the Defendant's did, in fact, violate the law and Plaintiff's Rights."

District Court Judge Marco A. Hernandez has misrepresented Facts and the law in this case and reconsideration should be granted. If reconsideration is denied Plaintiff will file an Appeal with the Ninth Circuit Court based on misreresentations of law and facts by District Court Judge Marco A. Hernandez.

The **UNITED STATES SUPREME COURT** clearly stated in ***Lawlor v. National Screen* Service Corp., 349 U.S. 322 (1955)**, res judicata does not bar a suit, **even if it involves the same course of wrongful conduct as alleged earlier,** so long as the suit alleges new facts or a worsening of the earlier conditions.

Because this case "IS" specifically about fraud on the court Plaintiff contends that "IF" this case was ever heard and decided on the merits then Plaintiff's convictions would have already been vacated as stated and **"ORDERED"** by the United States Supreme Court; ***Hazel-Atlass Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944)*. No court has the lawful authority to validate a void order.**

> (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated **"a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."**

C

"Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit **"fraud upon the court" vitiates the entire proceeding.** The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929)

("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) (**"It is axiomatic that fraud vitiates everything."**); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American

Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, **when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.**

In U.S. law, a "false statement" generally refers to the United States federal false statements statute, contained in 18 U.S.C. § 1001. Most commonly, prosecutors use this statute to reach cover-up crimes such as perjury, false declarations, and obstruction of justice and government fraud cases.

The statute criminalizes a government official who **"knowingly and willfully"**:

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or,
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Neither the Defense Counsel or the Defendant's have ever made any attempt to deny Plaintiff's claims raised in Plaintiff's complaint and Neither the Defense Counsel or the Defendants have ever even remotely sugested Plaintiff's claims were, in any way, untruthful.

No court has the lawful authority to validate a void order. U. S.v. Throckmorton, 98 U.S. 61, 25 L.Ed 93 (1878); Hazel -Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct .997 (1943); Root refining Co. v. Universal Oil Products Co., 169 F.2d 514 (1948); In re Garcia, 109 B.R . 335 (N.D. Illinois, 1989); Schwarz v. Schwarz, 27 Ill.2d 140, 188 N.E.2d 673 (1963), Dunham v. Dunham, 162 Ill. 614 (1896); Skelly Oil v. Universal Oil Products Co. 338 Ill.App. 79, 87 (1st Dist. 1949).

C

No court has the lawful authority to validate a void order.

When any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

It is axiomatic that fraud vitiates everything

Fraud upon the court" vitiates the entire proceeding

A decision produced by fraud upon the court is not in essence decision at all, and never becomes final

Fraud on the court is a crime deemed so severe that it has no statute of limitations

The **UNITED STATES SUPREME COURT** clearly stated in ***Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955)***, res judicata does not bar a suit, **even if it involves the same course of wrongful conduct as alleged earlier,** so long as the suit alleges new facts or a worsening of the earlier conditions.

District Court Judge Marco A. Hernandez has misrepresented material facts in this case as well as the United States Supreme Court law. Any Order or Judgment produced by fraud is not a valid Order or Judgment. No court has the lawful authority to validate a void order and that includes the District Courts of Judge Hernandez, Judge Mosman and Judge Acosta.

No court has the lawful authority to validate a void order.

For the reasons stated herein the District Court should reconsider the Courts Opion and Order to Dismiss Plaintiff case.

DATED this 30th Day of April, 2019.

Respectfully Submitted

Lyle M. Coultas Pro-Se

Appendex D

Scheduling Orders/Judgments/Other Orders

3:19-cv-00021-HZ Coultas v. Tichenor et al **CASE CLOSED on 04/23/2019**

APPEAL, L[redacted]s, PROSEPTY, TERMINATED,

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 5/22/2019 at 5:29 PM PDT and filed on 5/22/2019

Case Name: Coultas v. Tichenor et al

Case Number: 3:19-cv-00021-HZ

Filer:

WARNING: CASE CLOSED on 04/23/2019

Document Number: 16(No document attached)

Docket Text:

ORDER: Plaintiff's Motion for Reconsideration [11] is denied. "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). The Court has reviewed Plaintiff's motion. Plaintiff correctly argues that the Court mistakenly stated, in the background section of the opinion, that Plaintiff requested 100 million dollars in damages in his complaint. However, this fact does not alter the Court's conclusion that the case was properly dismissed with prejudice or result in a decision that was manifestly unjust. Reconsideration is not warranted on any other ground raised by Plaintiff. Ordered by Judge Marco A. Hernandez.*(Mailed to Pro Se party on 5/22/2019.)* (jp)

3:19-cv-00021-HZ Notice has been electronically mailed to:

Andrew D. Hallman andrew.hallman@doj.state.or.us, debbie.sword@doj.state.or.us, lisa.r.schnelle@doj.state.or.us

3:19-cv-00021-HZ Notice will not be electronically mailed to:

Lyle Mark Coultas
PO Box 434
Gaston, OR 97119

Appendex D

psychologically traumatized by what happened, that she was committed to the children's psychiatric ward in Providence Hospital as a result of the sexual abuse, the physical touching, and the pornography.

This had an impact on her that was devastating. She is still in counseling. Her counselor will come and offer the medical reports and exhibits from the doctor from the psychiatric ward as well as her own counseling that this child was so traumatized that she was thinking very seriously, had ideations of suicide, and the pornography was the main factor that influenced her and kept her from reporting a hopeless situation she didn't know what to do with.

What we are intending to show is that the defendant was showing the pornography as a way of gauging the results and the actions of the children to see who he would next victimize. It shows that there was a plan, there was a motive, that there was an intent that none of these touchings that are alleged, whether it's sex abuse in the first degree or third degree are accidental. The one in the third degree is a rubbing on the buttocks while the child is sleeping. The same child was one that was shown pornography. The same child was one that was shown at a time when she was with the other girls at this birthday party a

by the defense, some from the friends, people that have known the defendant. And, again, they should be considered by the Court. But each one of these individuals were not present in the court. They did not hear the evidence. And they did not hear what this jury heard. And the jury came back with unanimous findings.

I have had a request by the husband of one of the jurors that they were not going to be present. They were not going to be able to be present. The juror wanted to be present for this because she has also gone through a psychological adjustment because of what she's heard and what's been presented and seen the reactions of the children, and she's a nurse, and she stated through her husband that she has on her own provided counseling to some of the other jurors because of the impact that this case had on them.

They were so impressed with the type of testimony that in almost all of the counts they were unanimous in their findings that the defendant sexually abused and molested these children, either by content or the subject matter that was shown to them or, in fact, physically touching them.

The State feels, Your Honor, that this is a particularly aggravated case because of the nature of

trial and the things that were coming up. It's had a tremendous impact on her that she's going to need to go through some fairly extensive counseling.

Each of these children have been subjected to the type of pornographic materials on the computer and the things that were shown here in the court that they should never have had to undergo at any time, and that because of the defendant's actions and the necessity to do this to prove the actions and the things that he committed, they were again required to go through and see this pornographic material again on the witness stand, which was something that was distasteful and unpleasant to go through, but something that they nevertheless went through to make sure this individual does not do this again to other people.

Each of these children testified -- they described the circumstances in which that they were subjected to the abuse. Each of them described how they were not willing to disclose this. They weren't making any disclosure until one child came home from the February party down there and told her mother, and this started everybody going through and starting to disclose it.

I have read the letters that were submitted

Appendex F

INDEX OF STATE's EXHIBITS

STATE v. COULTAS
CR 01-0164

All Admitted

STATE'S EXHIBIT 1 -	Juliette's House Video Tape of Donna Countas Interview
STATE'S EXHIBIT 2 -	Juliette's House Medical Examination of Donna Coultasby Dr. Moore
STATE'S EXHIBIT 3 -	Juliette's House Interview of Donna Coultas by Michele Warner
STATE'S EXHIBIT 4 -	Caitlin Fricker's Counseling Records
STATE'S EXHIBIT 5 -	Caitlin Fricker's Medical Records From Providence Hospital
STATE'S EXHIBIT 6 -	Images of Interest from Defendant's Computer Pages 1 to 71
STATE'S EXHIBIT 7 -	Images of Sailor Moon Characters
STATE'S EXHIBIT 8 -	Simpson Lumber Company Firewood Cutting Permit (Permit @ p. 55)
STATE'S EXHIBIT 9 -	Photo of Defendant with Elk & Rifle (Elk Yahoo @ p. 44)
STATE'S EXHIBIT 10 -	Photo of Defendant in Plaid Shirt (Grizly me @ p. 46)
STATE'S EXHIBIT 11 -	Photo of Defendant in T – Shirt (Picture 1 @ p. 56)
STATE'S EXHIBIT 12 -	Advertisements for Teenage Sex [(O1(3) p. 1); (O1(1)1 p. 1); (12(1)1 p. 2); (Ars_petite1(1) p. 41); (DST(3)1 p. 44); (Live_Teen-Stiffy p. 50); (Logo 2x2(1) p. 50); (Russianteens p. 61); (Teenswtoys p. 66); (Teen01 p. 66); (Teensexmailer002_01 p. 66); (Teenblowjob(1) p. 66); (Txoo007 p. 69)]
STATE'S EXHIBIT 13 -	14 Pictures of Young a Girl in Provocative Poses by Bed [(1Smil(1) p. 3 & p. 5); (4Smil(1) p. 8); (3Smil(1) p. 6); (9Smil(1) p. 11); (5Smil(1) p. 9); (7Smil(1) p. 10); (13Smil(1) p. 2); (6Smil(1) p. 10); (10Smil(1) p. 2); (8Smil(1) p. 11); (15Smil(1) p. 3); (11smil(1) p. 2); (14Smil(1) p. 3); (12Smil(1) p. 2)]
STATE'S EXHIBIT 14 -	11 Pictures of Various Young Girls in Provocative Poses [(Cover p. 43); (Animate_01(1) p. 41); (Animate_03(1) p. 41); (Jen2(1) p. 48); (Jen(3)1 p. 48); Jen 4(1) p. 49); (Rabbit1(1) p. 58); (Rabbit2(1) p. 58); (Rabbit5(1) p. 58); (Rabbit5(1) p. 58); (Rabbit13(1) p. 58)]
STATE'S EXHIBIT 15 -	Two Photos of Britney Spears
STATE'S EXHIBIT 16 -	Donna Coultas' Counseling Records – Patti Bailey
STATE'S EXHIBIT 17 -	Pornographic Pictures Shown to Girls off of Computer
STATE'S EXHIBIT 18 -	Steiler - Fricker E Mail
STATE'S EXHIBIT 19 -	Poster From DJ Bedroom Wall

Admitted

Appendex F

Appendex G

Hon. James R. Hargreaves

Senior Circuit Judge
State of Oregon

May 15, 2007

Mr. Frank E. Stoller
Attorney at Law
P.O. Box 459
Dundee, Oregon 97115

Mr. W. Douglas Marshall
Assistant Attorney General
Department of Justice
1162 Court Street N.E.
Salem, Oregon 97301-4096

Re: Coultas v. Jean Hill
Malheur 06-04-5061-M

Dear Counsel

Despite the plethora of issues raised in the 125 page Petition, there are only a handful of core issues that merit addressing. These fall into four general categories:

1. The handling of the issues surrounding the allegations of sexual abuse of Petitioner's daughter that were alleged to have taken place in his pickup;
2. The computer report;
3. Comments on the credibility of witnesses by another witness;
4. Appellate counsel's failure to address the issue of the comments on the credibility of witnesses by other witnesses as plain error.

1. Allegations of sexual abuse in the pickup

It is my opinion from a review of the record that trial counsel made at least two highly significant errors regarding this issue. The first was in not moving for a judgment of acquittal as to these allegations based on the failure of the State to prove venue. It is crystal clear from reading the argument of the Prosecutor to the jury that *he* knew he had a venue problem. There is no other reason he would have argued to the jury that venue had been established because the trips in the pickup began and ended in the county. To me this clearly establishes he knew he had not proven venue where the acts actually occurred. There is no reason that trial counsel should not have known this as well.

While I found no evidence in the record that Petitioner's contention in his deposition that he only drove with his daughter in another county was ever conveyed to trial counsel, the simply fact that the abuse was alleged to have occurred in a moving vehicle should have been sufficient to put trial counsel on notice that there might be a venue issue present. As indicated above, the Prosecutor figured it out. If trial counsel had done an adequate job of

34932 Danstrom Road, Creswell, OR 97426
Telephone/Fax 541-895-3038 Email: jrhdks@hotmail.com

Appendex G

4. Appellate counsel's failure to address the issue of the comments on the credibility of witnesses by other witnesses as plain error

As state above, if it was prosecutorial misconduct for the Prosecutor to ask; and if it would have been error for the court to overrule an objection if made by trial counsel; and if it was error on the part of the trial judge not to stop that line of inquiry sui sponte, I don't see how adequate appellate counsel could have chosen to not raise this issue as plain error.

Based upon the foregoing, it is the finding of the Court that trial counsel was inadequate in representing the Petitioner and that this inadequate representation requires that the conviction be reversed and the case remanded for a new trial.

Very Truly Yours,

James R. Hargreaves
Senior Judge

34932 Danstrom Road, Creswell, OR 97426
Telephone/Fax 541-895-3038 Email: jrhdks@hotmail.com

G

Appendex H

Encase Examination Report
Review of Lyle Coultas evidence based on P.I. Peter Constantine's Affidavit
OSP 01-143930

I have conducted an additional examination based on this information and based on information found within the affidavit from Peter J. Constantine, an independent computer forensic examiner hired by Mr. Coultas's council.

My first steps in this exam were to collect all digital evidence and open them within a controlled environment using Encase, a well known and established computer forensic tool. I read through Mr. Constantine's affidavit and created a keyword list of the names of the images there were either marked by or shown to the witnesses involved in this case.

Mentioned on page 5 of 6 of my original report dated 7/9/2001, the initial installation date of the computer operating system from evidence item E1 drive 1 of 2 hereafter referred to as HD1, was 1/30/2001. At the time of my initial exam this date was not that significant and any reader may not have realized its importance.

On 1/30/2001 the computer seized from Mr. Coultas's house had a new installation of Microsoft Windows 98. The significant dates in question are February 2nd, 3rd or 4th 2001, just three days since the installation occurred. I again reviewed all evidence using Encase 4.22a, conducting multiple sorts by Last Access Date, Creation Date and Last Written Date. My findings corroborate what Mr. Constantine also found, that the files of significant value in this case could not be found on HD1 or the drive 2 of 2, hereafter referred to as HD2, based on the current state of Mr. Coultas's computer hard drive.

Of significant value however are the floppy diskettes seized (See scenario #2) and examined during my initial examination and metadata found in the SYSTEM.DAT file of the registry (See scenario #1.)

I reviewed Mr. Constantine's affidavit and again reviewed my original computer examination report. I created a keyword list of file names that the witnesses viewed and either identified or not identified but was used in this investigation.

I searched all the floppy diskette images and both hard drives seized during this case. The result of this searched revealed data contained in "slack" space of FDD 42, 48, 68 and 164. These are new findings from FDD 42 and 164.

What these findings show is that the images the witnesses saw were in the possession of Mr. Coultas; however existed prior to the current installation found on HD1 (see pages 12 - 15, items 1 through 4.)

I used a tool from Access Data, Inc. called Registry Viewer which I am licensed to use. Using Encase 4.22a I copied out

Appendix I

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

THE STATE OF OREGON, Plaintiff, v. LYLE MARK COULTAS, Defendant.	No. CR01-0164 STATE'S REPLY TO DEFENDANT'S SUPPLEMENTAL MEMORANDUM

The State, by and through Carroll J. Tichenor, Deputy District Attorney, counsel assigned to the case of ***State v. Coultas,*** CR01-0164, responds to the Defendant's Supplemental Memorandum.

As stated in the State's Supplemental Reply To Defendant's Motion For A New Trial, the defendant has failed to present any information upon which he is entitled to a new trial. The last access dates furnished by Detective Payne of the Oregon State Police during the hearing on the defendant's motion for a new trial, serve only to confirm what Detective Payne represented to me during the pre-trial preparation for this case. That was that the last access dates only pertain to the information available on the computer at the time it was examined. The available last access dates do not reveal any information about files on floppy disks or on CDs.

The defendant's argument that evidence that was admitted during the trial was irrelevant is not a basis for a new trial. Any failure to object during trial cannot now be made the basis for a new trial. If objections were made and overruled, this is similarly not a basis for a new trial.

The State continues to assert that the pictures of the Sailor Moon cartoon characters that were identified by the witnesses were relevant to establish the type of materials that they were

DISTRICT ATTORNEY
Yamhill County Courthouse
McMinnville, Oregon 97128 (503) 472-9371

Appendix I

shown and that items similar to what they were shown was found on the defendant's computer. The State did not make any representation that the exact pictures presented in court were the same ones that were shown. It was clearly represented that those items used in court were printed documents from some of the files contained on the defendant's computer. The testimony in court revealed that the defendant had a great deal of additional sexual related materials that were not in the defendant's house when it was searched.

It is the State's position that there is no new information bearing on the defendant's motion for a new trial in the Defendant's Supplemental Memorandum. The State persists in its requests that the court deny the defendant's motion for a new trial.

DATED:November 30, 2002

Carroll J. Tichenor, 64-109
Deputy District Attorney

A copy of this document has been mailed to defendant's attorney of record.

DISTRICT ATTORNEY
Yamhill County Courthouse
McMinnville, Oregon 97128 (503) 472-9371

I