No. 20-7740

ORIGINAL

Supreme Court, U.S.
FILED

APR 08 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Jason Robert Vickers — PETITIONER
(Your Name)

vs.

Kenneth Diggs — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court, Western East District of N.C.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Robert Vickers - 1484158
(Your Name)

P.O. Box 460
(Address)

Badin, NC, 28009
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Police Reports are often embellished in order to charge and/or indict a person with a harsher crime. If a criminal defendant is indicted on a particular offense, but the elements of that crime and the evidence do not support that offense, can a defendant challenge the indictment and/or conviction after a coerced guilty plea?

2. Many innocent people are essentially blackmailed into pleading guilty to crimes they did not commit. If a criminal defendant pleads guilty to a felony does it preclude him or her from presenting new evidence exonerating them of the crime and are they entitled to an evidentiary hearing on the matter?

3. The systemic destruction of potentially exculpatory evidence after a criminal defendant's conviction continues to be a due process violation for many innocent prisoners. DNA testing is conclusive and when a State has a clear statutory duty to preserve physical evidence after a conviction, and it impunitively destroys that evidence, does that constitute bad faith and if it does what is the remedy?

4. The Public Defender's Office is routinely appointed to represent indigent criminal defendants and is often overwhelmed with clients. Does it constitute ineffective assistance of counsel when a defendant is coerced into pleading guilty when, had counsel produced a proper defense at trial, a different outcome would likely have occurred?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State v. Vickers, No. COA17-1216, 2018 WL 3734373 (N.C. App. Aug. 7, 2018)

State v. Vickers, 371 N.C. 574, 819 S.E. 2d 387 (2018)

State v. Vickers, No. COA18-35, 2018 WL 4441289 (N.C App. Sep. 18, 2018)

State v. Vickers, 371 N.C. 790, 821 S.E. 2d 171 (2018)

Vickers v. Diggs, No. 5:19-HC-2300-BO (U.S. Dist Ct., Eastern Dist. of N.C., Nov. 17, 2020)

Vickers v. Diggs, No. 20-7758 (U.S. Ct. App., 4th Cir. Feb. 26, 2021)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

[✓] reported at No. 20-7758 (4th Cir. Feb. 26, 2021); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

[✓] reported at No. 5:19-HC-2300-BO (U.S. Dist. Ct., Nov. 17, 2020); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A, B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Wake County Superior Court court appears at Appendix A, B, C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was February 26, 2021.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 26, 2021, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

[✓] For cases from **state courts:**

The date on which the highest state court decided my case was 2018. A copy of that decision appears at Appendix A, B, C.

[ ] A timely petition for rehearing was thereafter denied on the following date: 2018, and a copy of the order denying rehearing appears at Appendix A, B, C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States 5th, 6th, 8th and 14th Amendments.

N.C. Gen. Stat. § 15A-268

N.C. Gen. Stat. § 15A-269

N.C. Gen. Stat. § 15A-1411 et seq.

28 U.S.C. § 2254

18 U.S.C. § 3006A (a)(2)(B)

28 U.S.C. § 2244 (d)(1)

STATEMENT OF THE CASE

On August 19, 2014, a grand jury indicted Petitioner for first-degree sexual exploitation of a minor and sexual offense with a child under N.C. Gen. Stat. § 14-27.4A(2013). On November 2, 2015, Petitioner pled guilty to first-degree sexual exploitation of a minor and first-degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1)(2013). The Honorable W. Osmond Smith III entered judgment on the plea, consolidated the offenses, and sentenced Petitioner to 144-233 months in prison. (Ex. D).

On April 11, 2017, Petitioner filed a motion to locate and preserve evidence and a motion for post-conviction DNA testing in the trial court. On June 30, 2017, the Honorable Donald W. Stephens entered an order denying the motion for post-conviction DNA testing. Petitioner filed a written notice of appeal and on August 7, 2019, the N.C. Court of Appeals affirmed the trial court's denial of that motion. (App. A).

On October 2, 2017, Judge Stephens entered an order denying Petitioner's motion to locate and preserve evidence. Petitioner filed a written notice of appeal from that order denying his motion to locate and preserve evidence on October 16, 2017. On September 18, 2018, the N.C. Court of Appeals dismissed as moot Petitioner's appeal to the order denying his motion to locate and preserve evidence. (App. B).

On October 26, 2018 and December 12, 2018, the Supreme Court of North Carolina denied discretionary review of the decision of the N.C. Court of Appeals, respectively, for further review of Petitioner's motions to locate and preserve evidence and post-conviction DNA testing. (App. A, B).

On February 20, 2019, Petitioner filed a motion for appropriate relief with the trial court. On May 2, 2019, the Honorable Paul C. Ridgway entered an order denying Petitioner's MAR. On July 11, 2019, the N.C. Court of Appeals denied Petitioner's

petition for writ of certiorari. On September 27, 2019, the Supreme Court of North Carolina dismissed Petitioner's petition for discretionary review. (App. C)

On November 5, 2019, Petitioner filed a petition for writ of habeas corpus with the United States District Court, Eastern District of North Carolina. On November 17, 2020, the Honorable Terrence W. Boyle dismissed Petitioners' petition for writ of habeas corpus and denied a certificate of appealability. On December 22, 2020 the Petitioner was granted leave to proceed in forma pauperis by the United States Court of Appeals for the Fourth Circuit. On February 26, 2021, the U.S. Court of Appeals denied Petitioner's certificate of appealability and dismissed his appeal. The mandate took effect on March 22, 2021. (App. D)

REASONS FOR GRANTING THE PETITION

On July 24, 2013, Petitioner began a relationship with Kristen Solomon, mother of the alleged victim of these crimes. During this relationship, Petitioner cheated on Ms. Solomon and maintained contact with several women. He also exchanged provacative photos with these women. The contents of these interactions are well-documented and included in Petitioner's motion for appropriate relief (MAR). The ensuing fallout between Petitioner and Ms. Solomon show a detailed chain of events leading up to, and after, this alleged sexual abuse. Additionally, Petitioner maintained a contemptuous relationship with Roger Solomon, Ms. Solomon's ex-husband and father of the alleged victim. This bears critical attention because, as the facts will show, the entire accusation, charge, and conviction thereof of Petitioner is baseless and stems from Ms. Solomon's outrageous uncorroborrated accusations; a jealous retalliatory attack, blown completely out of proportion, aimed at Petitioner and encouraged by the State, to wit:

On March 27, 2014, Ms. Solomon goes to her place of work and informs her boss, Martha Corral, that she found a video on Petitioner's Google Plus account of the Petitioner sexually abusing her daughter. (Ex. A p. 2). Ms. Corral contacted the Cary Police Department and officers were dispatched to her place of work. (Ex. A p. 2). The officers transported Ms. Solomon, along with her Toshiba laptop computer, to the Police Department for a further investigation. (Ex. B p. 31)

While at the Police Department, Ms. Solomon showed Detective Mike Lindley a 15-20 second video of a close-up image depicting a hand pulling aside a child's underwear and exposing her vagina. (Ex. B p. 17). No penetration is seen in the video. (Ex. B p. 1). Ms. Solomon informed Detective Lindley that the Petitioner had used her Toshiba laptop and that he had left his Google Plus account logged in so she decided to snoop through his

photos and videos. (Ex. B p. 17). She told Detective Lindley that she linked this incriminating video to the Petitioner and her daughter based on Petitioner's "fingers" and her daughters "underwear." (Ex. B p. 17). Detective Lindley seized the Toshiba laptop computer. (Ex. B p. 17).

Later that evening, Detective Lindley, along with two other officers, confronted Petitioner at his residence. (Ex. B p. 18). Ms. Solomon, whom lived with the Petitioner, answered the door and allowed the investigators inside. (Ex. B p. 18). Once inside, Detective Lindley accused Petitioner of having child pornography on his Gmail account, to which the Petitioner emphatically denied. (Ex. B p. 18). Petitioner became irritated and told the investigators to leave his apartment. (Ex. B p. 19). Instead, he was placed in handcuffs and told to be quiet or go to jail for obstruction of justice. (Ex. B p. 19). During this time, Ms. Solomon came from the back bedroom with a black LG cell phone and informed officers that that was the cell phone used to take the compromising video. (Ex. B p. 2). After several minutes, Detective Lindley ordered the Petitioner to vacate the premise while a search warrant was obtained to search Petitioners apartment. (Ex. B p. 20).

Seven items of evidence were seized from Petitioners apartment; four (4) cell phones, two (2) SD memory cards, and one (1) computer tower. (Ex. B p. 20-21). After being examined by investigators, none of the seized devices contained child pornography or the video Ms. Solomon showed Detective Lindley on her Toshiba laptop. (Ex. B p. 22, 27-28). Moreover, after two (2) search warrants obtained in this investigation, Detectives never could find the underwear and/or bedding depicted in the disputatious video and never would compare conclusively that the arm, hand, and fingers in the video were the Petitioners. (Ex. B p. 20, 25).

A child medical evaluation (CME) was conducted on the alleged victim. (Ex. C). During the CME, the alleged victim stated that the Petitioner did "something bad." (Ex. C p. 9). She stated that this happened on her mom's bed and that her mom was "half-awake," and kept moving her from one side of the bed to the other while Petitioner kept following her. (Ex. C p. 9-10). Ms. Solomon allegedly kept telling the Petitioner to "leave her alone." (Ex. C p. 10).

Another incident allegedly occurred on the couch while Ms. Solomon was again present. (Ex. C p. 10). In this incident, Ms. Solomon allegedly walks into the room while Petitioner was sexually abusing her daughter and says "what are you doing?" (Ex. C p. 10). The alleged victim stated that she said "he keeps touching me." (Ex. C p 10). Ms. Solomon contends that she does not remember or know about these events. (Ex. C p. 8). More importantly, there is no testimony by the alleged victim of penetration or inserting any object into her vagina and there are no reports or evidence from the medical experts that performed the CME suggesting penetration of any kind. (Ex. C p. 9-10, 22-23).

After the CME, detectives at the Cary Police Department set out to obtain an arrest warrant charging the Petitioner for these crimes. (Ex. B p. 10). As stated above, there are no reports, testimony, or evidence suggestive of penetration, which is a necessary act to charge and/or convict the Petitioner of a first-degree sexual offense. However, Detective Lynne Brawn chose to incessantly and deliberately use the phrase "DIGITAL PENETRATION" throughout her report to enhance the charge to a class B-1 felony. (Ex. B p. 10-11). Boz Zellinger, the Assistant District Attorney that prosecuted this case, used this false police report to obtain an indictment against the Petitioner and later convict Petitioner of these crimes. (Ex. D p. 1, 13).

Three (3) months later, Petitioner was arrested in his home state of Florida and was expedited to North Carolina where he was held on a secure bond in the amount of $1.5 million. (Ex. B p. 24). Unable to afford bail, he sat in the Wake County Detention Center for sixteen (16) months awaiting trial. Public Defenders Michael Howell and Caroline Elliot were appointed to represent the Petitioner. (Ex. D p. 14).

Prior to, and after his arrest, Petitioner maintained contact with Ms. Soloman. (Ex. E). She was insistent that Petitioner committed these crimes when he was drunk and that he must not remember. All the while accusing Petitioner of being a liar and a cheater and to enjoy his freedom while he can. (Ex. E p. 13). Petitioner has attached emails, text messages and letters to and from Ms. Solomon to support his claim. (Ex. E). She was manipulating the Petitioner and lying to investigators. Ultimately, Ms. Solomon lost custody of her daughter due to her tumultuous relationship with Petitioner and her poor choices therefrom. (Ex. F).

Prior to trial, Petitioners counsel was alotted $18,500.00 from the Wake County Superior Court to pay for investigations in his defense. $12,500.00 for Mr. Charles Kelly, a computer forensic investigator, $3,000.00 for Mr. Randy Montague, a private investigator, and $3,000.00 for Dr. H.D. Kirkpatrick, a psychologist. Petitioner has attached all records and reports pertaining to these experts with this petition. (Ex. A, G, H).

The most important documents supplied by the Petitioner are the reports supplied by Mr. Charles Kelly of Keystone Forensic Investigations, LLC. (Ex. H). These reports show that on December 3, 2013, the date of this alleged incident, the Petitioner was nowhere near the alleged victim. This will be explained in great

detail below, however, Petitioner will show that he was nowhere near the alleged victim for several days prior to this date. Regardless of the statements from the prosecution, courts, or Respondent thus far, the forensic evidence in this case does not lie and it is factually impossible for the Petitioner to have committed these crimes. Ms. Solomon was the only other person with the password to Petitioner's Google Plus account. The fact that her Toshiba laptop computer is the only device linking this video to Petitioner's Google Plus account and <u>not</u> Petitioner's cell phones or computer is extremely important. (See Ex. B). Petitioner has argued since day one that it is not him nor the alleged victim in this video, that she was coached an outrageously preposterous story by her parents, and other than this unbelievable accusation, there simply is no evidence linking the Petitioner to these crimes.

Petitioner will show that trial counsel witheld these reports prior to his coerced plea agreement. Thus, this evidence falls within the purview of "new evidence," as ascribed in N.C. Gen. Stat. § 15A-1415(c) and Petitioner should have received, at a minimum, an evidentiary hearing. Furthermore, during the investigation counsel uncovered a thumbprint image of another video on Ms. Solomon's Toshiba laptop computer. (See Ex. J p. 32). This thumbprint image was chronologically in order with the video seen by the Police Department. Therefore, it would have to have been uploaded at or near the same time as the compromising video. However, this thumbprint image shows a different child with different underwear and bedding than the video that the Petitioner is convicted of manufacturing. Ms. Solomon downloaded these videos from the internet and uploaded them to Petitioner's Google Plus account.

As the record shows, just one (1) week prior to his trial date, Petitioner was arraigned in Wake County Superior Court and pled not guilty. (Ex. D p. 15).

He was, for all intents and purposes, led to believe by trial counsel that the case was set to go to trial and Petitioner was prepared to defend himself of these charges. However, just one day prior to trial, counsel reversed stance and insisted that Petitioner must plead guilty, going so far as to contact Petitioners parents convincing them to coerce the Petitioner to plead guilty. (Ex. K). All the while trial counsel had ample evidence exonerating Petitioner yet proceeded to browbeat him into pleading guilty. Petitioner has supplied sworn affidavits from his parents along with dozens of pages of correspondence to trial counsel supporting his claim of ineffective assistance of counsel. (See Ex. L).

As this case amply demonstrates, state and federal post-conviction rules have become tools to preclude substantive review of criminal convictions in every conceivable way. Our courts aggressively apply these procedural rules in a rigid and often perverse manner to shield claims of constitutional error from review. The result is that our criminal justice system has become incapable of offering any meaningful assurance that it operates fairly or dependably.

The post-conviction review process should be a mechanism for ensuring that police, prosecutors, judges, clerks and others in the criminal justice system act legally. "If the government, police and prosecutors could always be trusted to do the right thing, there would have never been a need for the Bill of Rights." United States of America v. Dist. Ct. for Central District of California, 858 F.2d 534 (9th Cir. 1998). The abuse of power by such players is not easily internally identified. The suppression of exculpatory evidence by state officials, and misconduct by police and prosecutors have frequently resulted in the wrongful conviction of innocent people, like the Petitioner. These constitutional violations cannot be brought to light and rectified without meaningful

collateral review.

A thorough and detailed examination of this case, including of the application of the MAR and federal habeas corpus (FHC) statutes is required by this Court to see if that application withstands constitutional muster. Ensuring that these sorts of claims are reviewed on the merits is important not only to innocent, wrongfully convicted and sentenced prisoners, but also to society at large, which relies on those with power to exercise it lawfully and responsibly. State and FHC judges frequently attempt, and often succeed in their efforts to shield illegal conduct by State officials in criminal cases from scrutiny by barring review to indigent prisoners with procedural or other preclusion laws. (See N.C. Gen. Stat. § 15A-1411 et seq.)

The importance of maintaining a just system requires a full merits review of constitutional claims that involve the fundamental rights of criminal defendants, particularly when they have submitted unrebutted testimony and proof of their innocence. Indifference to the plight of the wrongfully condemned ultimately breeds contempt for the rule of law. We have invested billions of dollars in "corrections" while simultaneously embracing a bewildering resistance to correcting fundamental violations of clearly established constitutional rights. As a result, too many innocent and wrongly convicted men and women are now locked down in jails and prisons where they should not be. Petitioner is one of these individuals.

Petitioner's entire MAR, firmly grounded in due process violations, was summarily denied without an evidentiary hearing or any supporting factual findings. This happened even though the claims in Petitioner's MAR are based on precedents firmly established by this Court, the United States Court of Appeals for the Fourth Circuit, the Supreme Court of North Carolina, and the North Carolina Court of Appeals. The failure of Judge Ridgway to

Conform his order to the controlling legal precedents of these Courts, to the Constitution of the United States, the North Carolina Constitution, and the Federal and North Carolina General Statutes raises the specter of whether the MAR and FHC petitions were considered by an "impartial and disinterested tribunal" in accordance with Marshall v. Jericho, 446 U.S. 238, 242, 64 L.Ed. 2d 182 (1980).

In Marshall, the Court articulated the importance of having a neutral judge deciding vital issues. The Court stated:

The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done... by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. Id. at 242.

Marshall was a civil case, yet the emphasis on the necessity of preserving the "appearance and reality of fairness" applies with more force in criminal matters. As this Court stated in Offutt v. United States, 348 U.S. 11, 99 L.Ed. 11 (1954), "justice must satisfy the appearance of justice."

Assistant District Attorney Boz Zellinger abdicated his duty to truth as a prosecutor. He deceptively misled the grand jury with false evidence to procure an indictment against Petitioner. The indictment was fatally flawed then later amended after Petitioner's conviction. Judge Ridgway acted with bias. The questions before the Superior Court pertained to issues of fact, not issues of law. In Petitioner's FHC petition, these issues were presented to the Federal District Court where Judge Boyle mistakenly agreed with every

false and slanderous statement presented by the Respondent (the government). Without an evidentiary hearing the interpretation of the evidence presented by the Petitioner has been ignored and mischaracterized. This case shines a glaring light on the corruption of the government. Judges protecting lawyers and protecting the very system that is designed to incarcerate innocent men and women without investigation. Where women are encouraged and enabled to accuse any man they feel has wronged them with outrageous crimes, all for political theatre. Examination of these issues alone, has the potential to breath life and truth into this case, and to reinvigorate other cases involving defendants similarly situated, so that justice can be done now, and in the future, if it has not been done in the past.

The facts of this case are incontestable. Respondent, the State Government, has supplanted its own language, twisted the truth, and outright lied to every court thus far, causing the courts to further prejudice the Petitioner in the denials of his motions, petitions, and appeals therefrom.

Petitioner argues in his MAR and FHC petition that the State indicted him under a statute, used for repeat offenders and the most heinous of sexual offenses, that has been found to be, in part, unconstitutional. (See N.C. Gen. Stat. § 14-27.4A (2014)). The indictment, which was never challenged by trial counsel or explained to the Petitioner in any way, shape, or form, was amended after his guilty plea to reflect the lesser included offense, N.C. Gen. Stat. § 14-27.4(a)(1)(2014). (Ex. D p. 1) The fact that Petitioner's initials are signed next to the amendment on the indictment does not mean that it was done voluntarily and knowingly. Counsel simply told Petitioner to put his initials there as many of the documents shoved in front of him that day. The colloquy between the Prosecutor, the Judge and Defense Counsel can be found in

the transcript of proceedings and it is clear that after Petitioner pled guilty there was confusion as to the indictment. Petitioner's entire plea was predicated upon the fact that, if convicted at trial, he would face a minimum of twenty-five (25) years in prison and a maximum of life without parole. (Ex. M).

In order to charge and/or convict a person of a first-degree sex offense, there must be an actual "sexual act" to have occurred. (See N.C. Gen. Stat. § 14-27.20(4)(2016)). As argued in his MAR and FHC petition, there are no claims by the alleged victim, no claims by the medical professionals that performed the CME, and there simply is no evidence of "penetration." (Ex. C)

To the contrary, "sexual contact" means: (i) touching the sexual organ, anus, breast, groin, or buttocks of any person..." (See N.C. Gen. Stat. § 14-27.20(5)(2016)). Petitioner points to the CME and shows that every word, phrase, or sentence that involves this alleged sexual abuse is described with the word "TOUCHING". (emphasis added). This fact is irrefutable and the indictment and prosecution of Petitioner for a crime that did not happen is an outrage. It was trial counsel, not the Petitioner, who stipulated to these false facts at the plea hearing. (Ex. M).

The only evidence presented by the State to support "digital penetration," can be found in a typed "Trauma Narrative," prepared by therapist Luz de la Serna, purporting to be the alleged victim. This typed document, neither signed nor dated, is extremely prejudicial to the Petitioner in that it asserts a rather contradictory outline than what was told during the CME. The "therapy sessions" attached hereto show that the alleged victim does not remember any sexual abuse unless her mother is in the room to remind her what to say. (Ex. N). The fact that Luz de la Serna praises the alleged victim for remembering alleged instances of sexual abuse at the hands of

the Petitioner and chastens her for not remembering any abuse, all the while bilking Medicaid and repeatedly stating that this child is "normal, happy, and outgoing," yet suffers from "post-traumatic stress disorder," is extremely perverse.

After careful review of the "therapy sessions," this Court will be able to discern the level of inconsistency that fatally flaws this case. It is evident that the alleged victim is unable to maintain accusatory integrity without the help of her mother and the encouragement of Luz de la Serna. This Court's review of the "therapy sessions" will be painful to read as they demonstrate just how much damage has been inflicted upon this child through this "treatment," aptly referred to as "psychoeducation." As a direct result, the alleged victim has been irreparably scarred.

As shown, the only legitimate act to have occurred worthy of the State to charge Petitioner with the sexual abuse of the alleged victim is while her mother was there and the Police Department incessantly chose to use the phrase "digital penetration" to enhance the charge to the harshest class B-1 felony. No reasonable person could believe that, of all the opportunities, Petitioner chose to molest this child in front of her mother, record the molestation, and upload this recording to his Google Plus account which the mother had the password to and monitored daily due to Petitioner's infidelity.

The new evidence in this case centers around the video of this alleged crime uploaded to Petitioner's Google Plus account and the factual impossibility of the Petitioner being the perpetrator. Neither the trial court nor the U.S. District Court have allowed the Petitioner an evidentiary hearing on the matter. Without an evidentiary hearing, the fact finding process in this case has become nothing more than the opinion editorial worthy of a Hollywood tabloid. Nevertheless, the Respondent (the State),

has somehow convinced the U.S. District Court that this crime occurred at 10:50 PM instead of 4:50 PM, which does not exonerate the Petitioner. This is the same Respondent that could not extract discovery documents that were filed with Petitioner's original MAR in Wake County Superior Court. In that court, the new evidence was not allowed because of Petitioner's guilty plea. Now, the U.S. District Court has become the fact finder, not the trial court, without an evidentiary hearing nor discovery.

For reference purposes, Petitioner's Exhibit J (Background Dates), prepared by Mr. Howell (trial counsel), gives intimate and extensive insight to the facts of this case. The prosecutor asserts that: "this video appeared to have been taken on December 3 of 2013. And technically it wasn't on the Toshiba laptop. It appeared that it had been automatically uploaded from an LG phone, automatically uploaded from the defendant's LG phone to the defendant's Google Plus account, and that was corroborated by looking at other files that had similar names, and chronologically it appeared to belong to this defendant. On that date, the State's evidence would show that that's when that video was created, on December 3, when this child was around 7 years old." (Ex. M).

The files uploaded to Petitioner's Google Plus account during this time frame all begin with the acronym "CAM," and are followed sequentially by a number in the order the video was uploaded, such as 204, 205, 206, etc.. CAM_204, for example, was uploaded to Petitioner's Google Plus account on 1 December 2013 at 3:43 AM EST, and was the last in a sequential series of pictures and videos uploaded at that specific time. (Ex. J). To be clear, none of the pictures or videos uploaded prior to or with this upload contained child pornography of any kind whatsoever.

Chronologically, CAM_205 and CAM_206 were uploaded to Petitioner's Google Plus

account on 3 December 2013 at 4:50 pm EST. (Ex J) CAM_205 contains the "15-or-20 second video," described by the prosecutor at Petitioner's plea hearing. (Ex. M). This video was found exclusively on Petitioner's Google Plus account and on Ms. Solomon's Toshiba laptop. Petitioner contends that he has never touched nor used Ms. Solomon's Toshiba laptop and, technically, the Toshiba laptop is the only digital device seized by the Police Department that contains this video. (See Ex. B).

Additionally, a thumbprint image labelled CAM_206 was found on Ms. Solomon's Toshiba laptop dated 22 February 2014. (Ex J p. 32). This thumbprint image shows a "sleeping girl... no panties and vagina visible... different sheets." Detectives apparently do not know about this thumbprint image, it is not in any of their reports. However, as explained above, it is chronologically impossible to have been taken by the Petitioner due to the creation and upload date of 3 December 2013 and it is unequivocal that it is not the alleged victim in either video. Petitioner contends that Ms. Solomon uploaded these disgusting videos to Petitioner's Google Plus account and on February 22, 2014 She logged in to her Toshiba laptop and deleted CAM_206 from Petitioner's Google Plus account. That is why there is a thumbprint image found on her hard drive.

With regard to the destruction of potentially exculpatory evidence. The trial court asserted that the devices allegedly used to commit these crimes were not ordered to be retained and that Petitioner's argument was misplaced. (See App. A). Petitioner submits Exhibit O which clearly states that the destroyed evidence was ordered to be returned to the Police Department. The ensuing cover-up of the destruction of this evidence has been argued throughout Petitioner's motions and petitions. Ultimately, Petitioner has shown bad faith on the part of the Police Department in accordance with Arizona v. Youngblood, 488 U.S. 51, 58 (1988).

Finally, Petitioner contends that he received ineffective assistance of trial counsel due to the failure of counsel to proceed to trial and the coercion of the guilty plea. In letters sent to Mr. Howell, Petitioner asserts that "there is no plea offer or reduced charge that I am going to agree to..." (Ex. L p. 1). Petitioner was atomite about going to trial and counsel received $18,500.00 from the trial court. Why the last-minute reversal is a mystery, there has never been an evidentiary hearing to determine counsel's reasoning. There are so many unanswered questions and Petitioner submits the arguments in his MAR and FHC petitions apply fully to this petition and should be viewed accordingly. Additionally, the following cases are relevant to this case:

Schlup v. Delo, 513 U.S. 298 (1995)
House v. Bell, 547 U.S. 518 (2006)
Cuyler v. Sullivan, 466 U.S. 335 (1980)
Hill v. LocKhart, 474 U.S. 52 (1985)
Strickland v. Washington, 466 U.S. 668 (1984)

Petitioner submits that the Police Department falsified the Police Report essentially charging him with a crime that does not exist; the indictment is fatally flawed. He further contends that he was entitled to an evidentiary hearing after presenting new evidence that was suppressed from him before the guilty plea. The Police Department unlawfully destroyed his evidence after his conviction preventing Petitioner from testing for DNA or any other evidence that could exonerate him. Lastly, Petitioner received ineffective assistance of counsel due to the culmination of counsel's blatant errors mentioned herein and throughout Petitioner's MAR and FHC petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jason R Vann

Date: 4-5-21