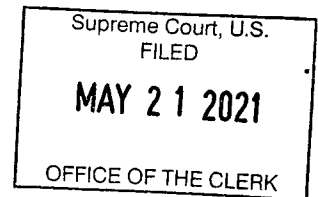


No. **20-8141**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



PAUL CASTONGUAY — PETITIONER
(Your Name)

vs.

DOUG PETERSON,
THE STATE OF NEBRASKA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NEBRASKA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

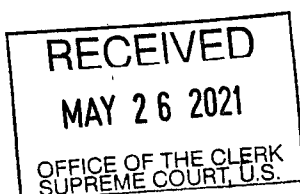
PETITION FOR WRIT OF CERTIORARI

PAUL CASTONGUAY
(Your Name)

2725 N. Hwy. 50; P.O. BOX 900
(Address)

Tecumseh, Nebraska 68450-0900
(City, State, Zip Code)

(402)335-5998
(Phone Number)



QUESTION(S) PRESENTED

- I. WHETHER THE STATE COURTS ERRED AND ABUSED THEIR DISCRETION BY DEPRIVING AND DENYING THE DEFENDANT OF HIS STATUTORY RIGHTS TO DNA TESTING TO A CHARGE OF FIRST DEGREE SEXUAL ASSAULT WHEN THE STATE COURTS USES DEFENDANT'S NO CONTEST PLEA AGAINST DEFENDANT TO DENIED THE DEFENDANT DNA TESTING PER FEDERAL AND STATE CONSTITUTION.
- II. WHETHER THE STATE COURTS ERRED AND ABUSED THEIR DISCRETION TO DENY [A] DEFENDANT TO DNA TESTING ON EXISTING DNA EVIDENCE THATS BEEN CONCEALED AND HINDERED FROM DEFENSE SINCE 2008. PER THE FEDERAL AND STATE CONSTITUTION.
- III. WHETHER THE STATE COURTS CAUSED INFRINGEMENT TOWARD THE DEFENDANT RIGHT TO DUE PROCESS CLAUSE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE FEDERAL AND STATE CONSITUTION TO THE UNITED STATES CONSTITUTION OF AMERICA TO ARTICLE I, SECTION 3 OF THE NEBRASKA CONSTITUTION. PER FEDERAL AND STATE CONSTITUTION.

LIST OF PARTIES

[X] 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:

THE STATE OF NEBRASKA

DOUG PETERSON ATTORNEY GENERAL

RELATED CASES

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984)

Giglio v. United States, 405 U.S. 150, 153-154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)

Giles v. Maryland, 386 U.S. 66, 100, 87 S.Ct. 793, 810, 17 L.Ed.2d 737 (1967),
at 99-101, 87 S.Ct. 809-810

McDaniel v. Brown, 558 U.S. 120, 130 S.Ct. 665, 175 L.Ed.2d 582 (2010)

Schmidt v. State, 909 N.W.2d 778 (2018), NO. 15-1408

Smith v. Cain, 565 U.S. 73, 132 S.Ct. 627, 181 L.Ed.2d 571 (2012), NO. 10-8145

United States v. Agurs, 427 U.S. 97, 112, 96 S.Ct. 2392, 2401, 49 L.Ed.2d 342 (1976)

United States v. Houston, 648 F.3d 806, 813 (9th Cir. 2011)

Weeks v. State, 140 S.W.3d 39 (2004)

Williams v. Illinois, 567 U.S. 50, 132 S.Ct. 2221, 183 L.Ed.2d 89 (2012), NO. 10-8505

State v. Harris, 296, Neb. 317, 893 N.W.2d 440 (2017)

RELATED CASES CONTINUE

State v. Pratt, 20 Neb.App. 434,824 N.W.2d 393 (2013)

State v. Ruff, 256 S.W.3d 55 (2008), NO. SC 88936

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3,4
STATEMENT OF THE CASE	5,6,7,8, 9,10
REASONS FOR GRANTING THE WRIT	11,12
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A NEBRASKA COURT OF APPEALS

APPENDIX B DOUGLAS COUNTY DISTRICT COURT

APPENDIX C NEBRASKA SUPREME COURT

APPENDIX D N/A

APPENDIX E DOUGLAS COUNTY DISTRICT COURT

APPENDIX F NEBRASKA COURT OF APPEALS

APPENDIX G UNIVERSITY OF NEBRASKA MEDICAL CENTER

APPENDIX H REPOSENSE LETTER FROM THERESIA M. URICH DEPUTY COUNTY ATT.

APPENDIX I BRIEF OF APPELLANT

APPENDIX J OPPOSITION OF OBJECTION FILED BY DEFENDANT

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Brady v. Maryland, 373 U.S. 83,83 S.Ct. 1194,10 L.Ed.2d 215 (1963)	3,6,12
Jenkins v. Scully, 1992 WL205685 (W.D.N.Y.1992)	5,12
Kennedy v. Louisiana, 554 U.S. 407,128 S.Ct. 2641,171 L.Ed.2d 525 (2008); NO. 07-343	6
McDaniel v. Brown, 558 U.S. 120,130 S.Ct. 665,175 L.Ed.2d 582 (2010); NO. 08-559,555 U.S. 1152,129 S.Ct. 1038, 173 L.Ed. 468 (2009)	8
Riofta,	12

STATUTES AND RULES

18 U.S.C.A. 3600	3,4,10
Neb.Rev.Stat. §29-4116 (Reissue 2020),	3
Neb.Rev.Stat. §29-4117 (Reissue 2020),	3,11
Neb.Rev.Stat. §29-4123 (6),(Reissue 2020),	5,12
Neb.Rev.Stat. §29-4116 through §29-4125 (Reissue 2020) .	3

OTHER

U.S. Const.Amend. 5th., and 14th.	3,5,6,9,11,12
Laws 2001 LB 659	11
NE.R.PLDG. 6-1112	9
Article I, Section 3 of the Nebraska Const.	5,6

TABLE OF AUTHORITIES CITED CONTINUED

CASES	PAGE NUMBER
Skinner v. Switzer, 562 U.S. 407,128 S.Ct. 1289, 179 L.Ed.2d 233 (2011), NO. 09-9000,	7
United States v. Agurs, 427 U.S. 97,96 S.Ct. 2392, 49 L.Ed.2d 342 (1976),	12
United States v. Sherrod, 446 F.Supp.3d 385 (2020), NO.04-CR-20001	4
Weeks v. State, 140 S.W.3d 39 (2004), NO. SC85448, SC85552	6,12
State v. Crumpton, 181 Wash.2d 252,332 P.3d 448 (2014), NO. 88336-0	12
State v. Winslow, 274 Neb. 427,740 N.W.2d 794 (2007) ..	3,6,12

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 _____ 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 United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; 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 C 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 NEBRASKA SUPREME court appears at Appendix 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 _____.

☐ 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 April 8, 2021.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 following Statutory and Constitutional Provision are involved in the case.

U.S. Const. Amends., 5th. & 14th.

No Courts should deny or deprive any person of life, liberty, or property, without Due process to equal protection of law under Constiutional Amendments of there Fifth, and Fourteenth Amendments of the Federal or State Constitution to the United States Constitution of America.Id. Brady v. Maryland, 373 U.S.83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

18 U.S.C.A. 3600 (1)(II)(2)(3)(B)(6)(B)(8)(B)(ii);(Reissue 2016), along with Section 29-4117 and 29-4120 through 29-4125 et seq., (Reissue 2020).

In General. A conviction based on a No-Contest Plea is subject for review as Involuntarily which a defendant does not waive his/her DNA based on a No-Contest plea. Pursuant to section 29-4116 et seq., (Reissue 2020). i.e. State v. Winslow, 274 Neb. 427,740 N.W.2d 794 (2007). Where, the court must set aside the plea as it raise a Constitutional question of the court's ruling.If the defendant is found not guilty or is otherwise entitled to be discharged, the court must sign a judgment, and the Clerk must enter it.

Section 18 U.S.C.A. 3600 authorizes this court on the issue of an order of DNA Testing to a Federal or State prisoner who is in custody in violation of the Constitution and Statutory right or with the laws involved in there State is warranted DNA Testing to determine whether there is a reasonable probability that the defendant

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED CONTINUE

did not commit offense for which he been convicted, as necessary to authorize DNA Testing of the evidence collected for the Courts to consider how beneficial DNA Testing results would impact the evidence against the defendant as a whole. 18 U.S.C.A. 3600 (a)(8). See: United States v. Sherrod, 446 F.Supp.3d 385 (2020), Case No. 04-CR-20001.

STATEMENT OF THE CASE

Petitioner (Castonguay "herein"); filed a Motion For DNA Testing On Existing DNA Samples That's In The Possession Of The STATE since (2008); along with a Motion For Leave To File And Submit The Victim DNA Test Results As Exhibit To Support The Motion For DNA Testing verifying that the STATE hindered and concealed Brady, material from the defense showing the DNA Findings that's been withheld from the defense along with the defendant by not, "Disclosing relevant information pursuant to Neb.Rev.Stat. §29-4123 et. seq., Subsec. (6), See: Jenkins v. Scully, 1992 WL205685 (W.D.N.Y.1992),(prosecutor withheld exculpatory evidence from defendant's trial proceedings by violating Federal and State Constitution of the Fifth and Fourteenth Amendments to Article I, Section 3 of the Nebraska Constitution). The State of Nebraska charged the Petitioner with First Degree Sexual Assault after the petitioner entered a No- Contest Plea (13) Months later in his case been filed on Information filed on (September 29,2008).

STATEMENT OF THE CASE CONTINUED

Where, the district court erred and abused their discretion by denying the defendant of his right to due process under the Federal and State Constitution to the Fifth, and Fourteenth Amendments to Article I, Section 3 of the Nebraska Const., by denying the defendant right to DNA Testing on the ground that the district court Judge used the Defendant's No-Contest Plea against him to prevent the defendant to DNA Testing. i.e. Weeks v. State, 140 S.W.3d 39 (2004), NO. SC85448, SC85552, State v. Winslow, 274 Neb. 427,740 N.W.2d 794 (2007), Kennedy v. Louisiana, 554 U.S. 407,128 S.Ct. 2641,171 L.Ed.2d 525 (2008), NO. 07-343, and Brady v. Maryland, supra. The district court caused infringement toward defendant right by violating his due process clause to equal protection of law, pursuant to Federal and State Constitution of the Fifth and Fourteenth Amendments. When the petitioner (Filed) a Notice of Intent to Appeal and Notice

STATEMENT OF THE CASE CONTINUED

of Appeal when the Petitioner mailed the appeal to the district court. Where, the Honorable Thomas A. Otepka, had placed the Defendant's appeal into [a] "SubFile Folder", that had caused the Defendant's appeal not, being filed with the Nebraska Court of Appeals. Thereafter, the Nebraska Court of Appeals entered an Order Dismissing Defendant's appeal on (February 23, 2021); for lack of jurisdiction on the ground the appeal was not timely filed within the (30) days. See: ("Attached-Appendix A"). Petitioner, further asserts the Statement of the Case here that the State of Nebraska continued to deny the Defendant of DNA Testing. i.e. Skinner v. Switzer, 562 U.S. 407, 128 S.Ct. 1289, 179 L.Ed. 2d 233 (2011); NO. 09-9000. Where, there was Existing DNA Evidence that was collected from the victim A.C. in this case. Where, the State prosecutor deliberately withheld the only DNA Evidence and NOT, "Disclosing the only piece of Evidence", verifying theres "NO MALE DNA PROFILE", found the the Medical Examination of the victim and/or from the medical Experts Report verifying theres "NO MALE DNA PROFILE", that did not implicate [any] Male DNA found from the alleged sexual assault. Nevertheless

it did not, implicated the Defendant of committing the sexual assault against the victim. The Medical Expert could NOT, identified any Male DNA due to the absence of [a] Male DNA Profile that could NOT, be determined or identified. Id. McDaniel v. Brown, supra. (even in absence of specific request, prosecution has Constitutional duty to turn over all exculpatory evidence that would raise reasonable doubt about the Defendant's guilt or innocence). Where, the State had NO Physical DNA Evidence from the Defendant to determine his guilt or his innocence or any comparison with the victim's DNA. Where, the DNA Samples was collected from the victim in (2008), but the samples did not, link the Defendant of committing the sexual assault. Due to the State prosecutor of withholding the DNA Evidence. There was absence DNA Evidence to determine [a] Finding from the Defendant to the victim's. Where, there was insufficient DNA Evidence to convict the Defendant of the alleged crime. McDaniel v. Brown, 558 U.S. 120, 130 S.Ct. 665, 175 L.Ed.2d 582 (2010); NO. 08-559, 555 U.S. 1152, 129 S.Ct. 1038, 173 L.Ed.2d 468 (2009).

Petitioner, further argue that the district court continued to abuse there discretion once the court entered an order giving the State (45) days to give a written response to defendant's motion for DNA Testing On Existing DNA Evidence. Where, the district court violated defendant's Fifth, and Fourteenth Amendments to the State and Federal Constitution to deny the defendant's right to Due Process by not, allowing defendant to (File); his Objection against the State's Response per NE.R.PLDG. §6-1112. This case is clearly [a] Miscarriage of Justice where, the State charged the Defendant to First Degree Sexual Assault by allegedly causing penetration of his victim by allegedly having a sexual relationship with the victim. Even with the fact that the State had caused prosecutorial misconduct by having full knowledge of the victim's test results from the DNA Report since (2008). Where, the DNA Evidence was collected from the victim of some DNA Samples that was secured by the Douglas County Sheriff's Office and with the specific evidence in question was

him of committing the
used the defendant's N
Statutory and Constitu
State, 140 S.W.3d 39 (C
274 Neb. 427, 740 N.W.
prosecutor failed to
withholding vital info
innocence. i.e. Jenkin
also see; section §29-
disclosure of the vict
as Brady v. Maryland,
(1963); requires the S
the due process clause
State Constitution tha
defendants favorable e
to punishment. Id. Uni
2392, 49 L.Ed.2d 342 (C
Petition that the Stat
NOT, Disclosing the DN
Defendant the right of
Scully, supra. Lastly,
victim's DNA Report/Re
Evidence in the contex
deciding the motion. R
see: State v. Crumpton
88336-0.

REASONS FOR GRANTING THE PETITION

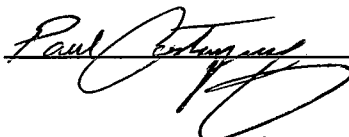
I. The State Courts denial of DNA Testing of [a] Defendant warrant this Court's attention:

First and foremost petitioner was denied his Constitutional and Statutory Rights to DNA Testing. When, the State was charging him with first degree sexual assault causing penetration of his victim. Where, the State caused infringement of the defendant's Constitutional rights to Federal and State Constitution to the Fifth, and Fourteenth Amendments by denying and depriving [a] defendant to DNA Testing by violating the Nebraska Laws 2001 LB 659 to Section §29-4117. (It is the Intent of the Legislature that wrongfully convicted persons have an opportunity to establish their innocence through deoxyribonucleic acid, DNA testing). The petitioner's "Appendixs", show clearly that the State Courts continued to deny the petitioner to DNA Testing on the Existing DNA Evidence that was collected by the victim's rape kit by taken DNA Samples from the victim back in (2008). Along with (Attached "Appendix G"); verifying the DNA Report from the Medical Examiner who initially conducted the examination of the victim and with the expert findings shown there was "NO MALE DNA PROFILE", found during his examination due to the fact the investigator officer failed to obtain [a] DNA Sample from the Defendant to compare it with the DNA of the victim for comparison. Reason for granting the Petition is clearly outweighed the preponderance of the evidence in this case. That, the State of Nebraska denied the defendant to DNA Testing before charging the defendant with first degree sexual assault. Where, theres NO DNA Evidence from the defendant to link

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: May 20th, 2021