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20-8385  
NO.: \_\_\_\_\_

FILED  
JUN 17 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

Samuel Jackson - Petitioner;

v.

State of Indiana - Respondent;

**PETITION FOR WRIT OF CERTIORARI**

**Attorney for Petitioner:**

Samuel Jackson #913731  
Petitioner / *Pro se*  
Pendleton Correctional Facility  
4490 W. Reformatory Road  
Pendleton, Indiana. 46064-9001

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SUPREME COURT, U.S.

## **QUESTIONS PRESENTED**

*I. Whether the Petitioner's **due process rights** were violated in violation of the 5<sup>th</sup> Amendment, and 14<sup>th</sup> Amendment to the United States Constitutional, and under Article One of the Indiana Constitution, Sections 12 & 13 when he was denied an Evidentiary Hearing to further the record of prior counsel's actions and or inactions?*

### **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:

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**IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari 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 reporter; 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- is unpublished.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 reporter; or,
- is unpublished.

For cases from **state courts**:

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

- reported at \_\_\_\_\_; or,
- has been designated for publication but is not yet reporter; or,
- is unpublished.

The opinion of the Indiana Court of Appeals appears at **Appendix B** to the petition and is-

- reported at \_\_\_\_\_; or,
- has been designated for publication but is not yet reporter; or,
- is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States court of appeals decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_.

- 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: \_\_\_\_\_, 20\_\_\_\_\_, 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 \_\_\_\_\_, 20\_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_\_, in Application No. \_\_\_, and a copy of the order granting said extension appears at Appendix \_\_\_\_.

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 the 13<sup>TH</sup> day of May, 2021.

A copy of that decision appears at **Appendix A**.

- No petition for rehearing was timely filed in my case.
- A timely petition for rehearing was denied on the following date: \_\_\_\_\_, 20\_\_\_\_\_, 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 \_\_\_\_\_, 20\_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_\_, in Application No. \_\_\_, and a copy of the order granting said extension appears at Appendix \_\_\_\_.

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

## **CONSTITUTIONAL PROVISIONS AND STATUTES**

### **Amendment 5**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### **Amendment 14**

**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

Petitioner was indicted and found guilty by a jury for the crimes of Murder, Count I, a class A felony, Residential Entry, Count II, a class D felony and also a habitual offender. The trial court sentenced Jackson to sixty five (65), count I, three (3) years, count II, count I and II to run concurrent to each other and thirty (30) years enhancement due to habitual offender findings the totality of ninety five (95) years. That trial counsel, Donald C. Swanson Jr., who also represented Jackson on appeal, raised five issues to the Appellant Court from which upheld Jacksons conviction on the 4<sup>th</sup> day of December, 2001, *Jackson v State*, 758 N.E.2d 1030 (Ind. Ct. App. 2001).

On the 12<sup>th</sup> day of April, 2012, Jackson filed a Petition for Post-Conviction Relief with the Allen County Superior Court from which ordered the case to be submitted by affidavit. Jackson requested a continuance for the purpose of preparing his case by affidavit, from which the court granted on the 23<sup>rd</sup> day of August, 2012. On the 16<sup>th</sup> day of March, 2017, Jackson amended his petition and requested an evidentiary hearing to be held in the matter, from which the court granted setting the hearing for the 2<sup>nd</sup> day of June, 2017, and then rescheduled for the 4<sup>th</sup> day of August, 2017, from which Jackson was present and represented by public defender counsel, Jonathan O. Chenoweth. During the course of that hearing, Jackson personally objected to the representation by the public defender for failing to present prior counsel as well as other evidence and argue the raised issues from Jackson's petition within the hearing.

That upon that personal objection by Jackson, counsel withdrew and Jackson preceded pro se with no further legal representation. See Appx. Ex K. On the 16<sup>th</sup> day of February, 2018, Jackson moved for the PCR court to set an evidentiary hearing on the matter while also requesting the issuance of subpoenas for prior counsel, Appx. Ex N and Appx. Ex O. On the 20<sup>th</sup>

day of February, 2018, the State, David H. McClamrock, again requested the case to be submitted by affidavit pursuant to Ind. Rule 1, sec. 9(b) and State law, Appx. Ex Q, from which was granted the 1<sup>st</sup> day of March, 2018, by the Honorable John F. Surbeck. Appx. Ex R. On the 23<sup>rd</sup> day of April, 2018, Jackson requested Leave to Amend Petition, Appx. Ex S, raising 8 ineffective assistance of appellant counsel issues and 9 ineffective assistance of trial counsel issues which the court granted on the 4<sup>th</sup> day of May, 2018. Appx. Ex T.

On the 25<sup>th</sup> day of May, 2018, Jackson requested multiple subpoena duces tecum, accompanied with affidavits, of prior trial and appellant counsels client file records as well as all correspondence, visitation, phone, billing, and e-mails related records associated with Jackson and his case from which the PCR court denied on the 7<sup>th</sup> day of June, 2018. Appx. Ex U, V, W, X and Y. On the 10<sup>th</sup> day of August, 2018, Jackson would request depositions of prior counsel from which the court allowed the State to respond. Appx. Ex Z and AA. On the 27<sup>th</sup> day of August, 2018, Jackson requested clarification of stay of proceedings setting forth his confusion as well as reasoning for an evidentiary hearing being required in his case. Appx. Ex BB. On the 30<sup>th</sup> day of August, 2018, the State responded to Jackson's request for deposition of prior trial counsel further explain the PCR court's decision to dispense with the submission of affidavits in this case for an evidentiary hearing by the Honorable John F. Surbeck due to the compelling reasoning by Jackson's. Appx. Ex CC. On the 5<sup>th</sup> day of October, 2018, Jackson moved to set this matter for an evidentiary hearing. Appx. Ex DD. On the 29<sup>th</sup> day October, 2018, Jackson filed his potential exhibit list in preparation of that hearing. Appx. Ex EE.

On the 22<sup>nd</sup> day of January, 2019, a new judge, the Honorable David M. Zent, rescinded the previous order of Judge John F. Surbeck for an evidentiary hearing and again ordered the case to be submitted by affidavit in spite of Jackson not being afforded his discovery by prior

counsel. Appx. Ex FF. On the 31<sup>st</sup> day of January, 2019, Jackson would file his request for the court to reconsider its ruling for the case to be submitted by affidavit file stamped on the 8<sup>th</sup> day of February, 2019. Appx. Ex GG. Also on the 8<sup>th</sup> day of February, 2019, the court would enter another order cancelling the previous scheduled evidentiary hearing. Appx. Ex HH. On the 11<sup>th</sup> day of February, 2019, the court reiterated its ruling of the 22<sup>nd</sup> day of January. Appx. Ex II. On the 18<sup>th</sup> day of February, 2019, the court set forth a scheduling order from which the parties had to submit their cases. Appx. Ex JJ.

On the 1<sup>st</sup> and 11<sup>th</sup> day of March, 2019, Jackson requested continuances due to prior counsel failure and or refusal to provide requested discovery, Appx. Ex KK and LL, resulting the court granting a 90 day extension for Jackson to submit his case. Appx. Ex MM. On the 25<sup>th</sup> day of March, 2019, Jackson again petitioned to court for permission funds to depose prior counsel putting forth a 6 page argument, Appx. Ex NN and OO, from which the court denied. Appx. Ex PP. on the 8<sup>th</sup> day of May, 2019, the court issued another continuance for the case to be submitted by affidavit setting the new date for the 6<sup>th</sup> day of November, 2019. Appx. Ex QQ. Jackson on that same day would also request the court leave to depose counsel by affidavit setting forth several pages of questions for counsel to answer, Appx. Ex RR, from which the court granted. Appx. Ex SS. On the 21<sup>st</sup> day of May, 2019, the court issued another order reiterating the 6<sup>th</sup> day of November, 2019, deadline. Appx. Ex TT.

On the 25<sup>th</sup> day of July, 2019, Jackson again requested the court to reconsider setting the matter for an evidentiary hearing in that prior counsel was still not cooperating with his discovery requests from which will prevent Jackson from carrying his burden set forth by *Strickland v Washington*, 466 U.S. 668, 687-88 (1984). Appx. Ex WW. That the court would issue an order denying Jackson request for an evidentiary hearing on the 8<sup>th</sup> day of August, 2019.

Appx. Ex XX. On the 23<sup>rd</sup> day of August, 2019, Jackson would then file a Motion to Compel Attorney to Produce requesting the court to order Jackson's prior counsel to answer Jackson's discovery requests / interrogatories. Appx. Ex YY, (sec. 3 and 4). On the 27<sup>th</sup> day of August, 2019, the court **did not** order prior counsel to produce his answers as requested by Jackson, but issued an order to the public defender's office to provide Jackson with *those portions of the defendant's file which are discoverable*. Appx. Ex ZZ. On the 29<sup>th</sup> day of August, 2019, Jackson filed a motion to clarify the court error as well as setting forth the possible consequence on appeal if Jackson was to be continually denied the requested evidence from prior counsel. Appx. Ex AAA. As a result the court issued another order on the 3<sup>rd</sup> day of September, 2019, reiterating the 6<sup>th</sup> day of November, 2019, deadline, Appx. Ex BBB, as done in Appx. Ex TT. Jackson requested another continuance for 60 days due to prior counsel still refusing to provide any discoverable material as requested, Appx. Ex CCC, from which the court granted. Appx. Ex DDD.

On the 20<sup>th</sup> day of September, 2019, Jackson filed another motion for the court to reconsider prior ruling discovery for the Petitioner due to prior counsel sabotaging his case by his refusal to provide requested responses and discoverable evidence to Jackson's case and cause. Appx. Ex EEE. The PCR court granted this request, however, prior counsel still would not provide any evidence to Jackson leaving Jackson with no choice but to continue his case without that relevant testimony / evidence / affidavits and also the PCR court's refusal to allow an evidentiary hearing for that needed evidence.

On the 20<sup>th</sup> day of April, 2020, Jackson filed his Findings of Fact and Conclusion of Law referring to the evidence that he *thought* was available in the record and pointing out what evidence was precluded. Appx. Ex FFF. The error that Jackson made was that he was not

apprised by his PCR counsel and or the PCR court that the *record of proceedings / record on appeal* was entered in as an exhibit which allowed Jackson to assume that the record was not before the court, and by doing so, Jackson did not properly refer to the full trial record as he should have. On the 7<sup>th</sup> day of April, 2020, the State tendered their findings of facts and conclusion of law. The trial court filed their finding on the 20<sup>th</sup> day of July, 2020, denying Jackson relief from which he now appeals. Appx. Ex C.

### **REASONS FOR GRANTING THE WRIT**

*I. Whether the Petitioner's due process rights were violated in violation of the 5<sup>th</sup> Amendment, and 14<sup>th</sup> Amendment to the United States Constitution, and under Article One of the Indiana Constitution, Sections 12 & 13 when he was denied an Evidentiary Hearing to further of the record of prior counsel's actions and or inactions?*

#### i. Due Process Rights

The first step in any substantive due process claim is to identify "the interest said to have been violated" and determine whether it is fundamental. *Christensen v. Cty. of Boone, Ill.*, 483 F.3d 454, 462 (7th Cir. 2007). In this case, the interest to have been violated is Jackson's 5<sup>th</sup> and 14<sup>th</sup> Amendment due process right to a fundamentally fair and full trial *from which he could present discoverable evidence without obstruction*.

Because a state trial court's evidentiary rulings . . . turn on state law, these are matters that are *usually* beyond the scope of federal habeas review." *Perruquet v. Briley*, 390 F.3d 505, 511 (7th Cir. 2004). However, a state defendant does have a Fourteenth Amendment due process right to a fundamentally fair trial." Id. Erroneous evidentiary rulings can only deny an individual the right to a fundamentally fair trial. But every evidentiary challenge is not a due process claim. The petitioner has to "draw enough of a connection between his right to due process and the trial court's . . . evidentiary . . . errors to render his claim cognizable on habeas review." *Perruquet v.*

*Briley, supra*, at 512. In this case, Jackson is not seeking habeas review pursuant to 28 USC § 2254 but federal review pursuant to 28 U.S.C. § 1257(a) which should not bear any difference in this case. And that review should be for the determination of whether Jackson's Fourteenth Amendment due process right to a fundamentally fair trial were violated.

As stated in the Statement of Case, Jackson first filed his Post-Conviction petition on the 12<sup>th</sup> day of April, 2012. This filing would eventually result in Jackson petition being reviewed by the Indiana Public Defenders Office from which represented Jackson in an evidentiary hearing on the 16<sup>th</sup> day of March, 2017, to which Jackson was present for. With Jackson being afforded an evidentiary hearing, Jackson's 5<sup>th</sup> and 14<sup>th</sup> Amendment rights of due process are triggered.

However, Jackson's public defender first failed to subpoena Jackson's trial and appellant counsel for the hearing and then failed to argue all the issues, or at least the most meritable ones, that Jackson raised in his petition. This alarmed Jackson to such a degree that he objected and asserted himself on the record in fear that his case was being sabotaged of the issues presented but not argued by counsel. Jackson knew and understood that he cannot and will not succeed on Post-Conviction to the two prong standard of *Strickland* without having counsel account for what he or she did or did not do and why. *Strickland v. Washington, supra*, at 687-88. More specifically, *Strickland* establishes that ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. Counsel must account for these actions or no ineffectiveness claims could ever be granted.

Accordingly, the trial court continued the initial evidentiary hearing, due to the fact that the post-conviction counsel failed to subpoena prior counsel and argue raised issues, so that

Jackson may have that opportunity to present prior counsel to the fact finder for a more true and proper determination of those facts **which now extended Jacksons 5<sup>th</sup> and 14<sup>th</sup> Amendment rights to those future proceedings**. Unfortunately the future proceedings did not allow Jackson the opportunity to discover and or present the evidence necessary to determine whether prior counsel was ineffective pursuant to Strickland in that he was precluded from such evidence by prior counsel not responding to discovery requests from Jackson as well as the trial court.

The state court then made evidentiary findings without holding the secondary evidentiary hearing while (1) knowing that Jackson was not afforded any evidence from prior counsel although requested many times and (2) denied an opportunity to present evidence and live testimony because of the preclusion resulting in findings that **clearly resulted** in an **“unreasonable determination”** of the facts. The United States Supreme Court in *Townsend v. Sain*, 372 U.S. 293, 313, 9 L.Ed2d 770, 785, 83 S. Ct. 745 (1963) stated, “the opportunity to be heard, to argue and present evidence, must never be totally foreclosed. See: *Frank v. Mangum*, 237 US 307, 345-350, 59 L. Ed. 969, 987-989, 35 S. Ct. (dissenting opinion of Mr. Justice Holmes).” With the obstruction by prior counsel refusal to present his affidavit / testimony and or the trial court for not allowing Jackson the subpoena power for the presentation of that evidence from prior counsel, which only the prior counsel can account for, Jackson cannot establish the material facts for a proper determination of ineffectiveness. This is exactly what the post-conviction court did to Jackson with material facts in dispute denying due process which is **unconstitutional**. *Townsend* also admonished the lower federal courts to exercise caution before dismissing petitions, especially ones prepared without legal assistance that instead might be amended to state valid grounds for relief, *Sanders v. United States*, 373 U.S. 1, 83 S. Ct. 1068, 10 L. Ed. 2d 148, at 19 (1963). If, for any reason not attributable to the inexcusable neglect of

petitioner, see *Fay v Noia*, 9 L. ed. 2d 868, (Part V), evidence crucial to the adequate consideration of the constitutional claim was not developed at the state hearing, a federal hearing is compelled.

In this case, Jackson alleged ineffective assistance of counsel raising issues of material facts. An evidentiary hearing is required when an issue of material fact is raised even if it is unlikely that Petitioner will produce evidence sufficient to establish his claim. *Albright v. State*, 463 N.E.2d 270 Ind.,; (1984), *Bailey v. State* , 447 N.E.2d 1088, (1983), Ind. However, when the petition conclusively demonstrates that petitioner is entitled to no relief, a hearing on the matter is unnecessary and the petition may be denied without further proceedings. *Colvin v. State*, 441 N.E.2d 1353 (1982), Ind.; *Baker v. State* 411, 355 N.E.2d 251, 265 Ind. (1976); See Ind. R.P.C.R. 1, 4(e). Jackson was **not** allowed to have the evidentiary where his trial counsel was presented to the fact finder, after the withdrawing of the inadequate post-conviction counsel, in the expansion of the record of the facts concerning counsel's ineffective representation and or to question other key witnesses. Jackson was prevented from presenting live testimony under oath, and was prejudiced when the trial court denied him an evidentiary hearing preventing him from creating a record to carry his burden of proof required in post-conviction proceedings violating Jackson's right to due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendment of the United States Constitution.

## ii. Post-Conviction Rule 1 (9) (b)

Additionally, Jackson personally objecting and attempt to argue his other issues raised in his petition from which counsel was failing to argue, the PCR court granted Jackson a continuance so that he may subpoena prior counsel for a full and fair evidentiary hearing. However, Jackson's post-conviction counsel would immediately withdraw from the case

following the hearing forcing Jackson to proceed *pro se*. At that time, the State would then petition the court for the case to be submitted by affidavit pursuant to Post-Conviction Rule 1 (9) (b) which states in relevant part:

*(b) In the event petitioner elects to proceed pro se, the court at its discretion may order the cause submitted upon affidavit. It need not order the personal presence of the petitioner unless his presence is required for a full and fair determination of the issues raised at an evidentiary hearing. If the pro se petitioner requests issuance of subpoenas for witnesses at an evidentiary hearing, the petitioner shall specifically state by affidavit the reason the witness' testimony is required and the substance of the witness' expected testimony. If the court finds the witness' testimony would be relevant and probative, the court shall order that the subpoena be issued. If the court finds the proposed witness' testimony is not relevant and probative, it shall enter a finding on the record and refuse to issue the subpoena. Petitioners who are indigent and proceeding in forma pauperis shall be entitled to production of guilty plea and sentencing transcripts at public expense, prior to a hearing, if the petition is not dismissed. In addition, such petitioners shall also be entitled to a record of the post-conviction proceeding at public expense for appeal of the denial or dismissal of the petition.*

First, Jackson wishes to point out that Indiana's Post-Conviction Rule 1 (9) (b) is unconstitutional in that (1) opens the door for 5<sup>th</sup> and 14<sup>th</sup> Amendment violations of due process, as well as (2) it created and allows a bias double standard. In the Indiana Court of Appeals opinion, the court cited that *pro se* litigants are held to the same standard as trained counsel and are required to follow procedural rules. Citing *Evans v State*, 809 N.E. 2d 338, 334 (Ind. Ct. App. 2004) also *Zavodnik v Harper*, 17 N.E. 3d 259, 266 (Ind. 2014). However, trained counsel would not and does not submit post-conviction arguments for their client's by affidavit, they always elect to present their arguments in person directly to the court. Nor are those attorneys forced to present their cases by affidavit to the court even though they are in a much better position to obtain the evidence needed as well as their arguments than any *pro se* litigant ever could be. This section of the rule allows a bias double standard and loop hole for prosecutors and post-conviction court to abuse the constitutional rights of the prisoner litigant by forcing prisoner litigant to submit their cases by affidavit even though *Strickland* requires counsel to account for

what they did and why. In reality, no one wants to sit through a hearing where a prisoner has no idea, or very little of an idea of what he is doing and or how to get the evidence needed for a proper finding. Regardless, Jackson stated the reasons for an evidentiary hearing being absolutely necessary and for him to be present for that hearing to the state court because (1) counsels refusal to follow discovery rules as well as the court orders, and (2) Jackson would not be able to meet the *Strickland* standard if he is denied that evidence from prior counsel on the issues raised. Accordingly, the first post-conviction court judge decided to dispense with the submissions of affidavits in the case and give Jackson his hearing as he requested in that it was necessary and *required for a full and fair determination of the issues raised*. However, the judge who granted the evidentiary hearing, Judge Surbeck, Jr., would later withdraw and a new Judge, Judge David M. Zent, who took over the case on the 22<sup>nd</sup> day of January, 2019, would then undue the previous judge's ruling setting the matter to be done again by affidavit. This would again prompt Jackson to again reargue why an evidentiary hearing was necessary to meet the *Federal Standard of Strickland, supra*, from which Jackson was not successful in securing. This bias double standard that Indiana's Post-Conviction Rule 1 (9) (b) has created and or allowed does not allow the pro se prisoner litigant a fair opportunity and or option to present his case and argument as trained attorneys do, and as such, prejudices pro se litigants while also violating their constitutional rights.

iii. Point: pg. 11, waived arguments

The Indiana Court of Appeals also creates an additional bias double standard in their opinion against Jackson in citing that:

*"Jackson fails to cite to the record or develop an argument with respect to the issues raised on appeal, those issues are waived. See **Cooper v State**, 854 N.E. 2d 831 n. 1 (Ind. 2006)."*

This was the issue Jackson argued from the start, both to the post-conviction court as well as the Indiana Court of Appeals, when the post-conviction court order the case to be done by affidavit where Jackson specifically stated that he would not be able to carry his burden because of counsel's refusal to provide his testimony as well as the PCR court refusal to prove and evidentiary hearing. It is impossible for Jackson to provide citation to the record when he is not allowed to create and or extend that very record much less provide a viable cogent argument to the issues raised when the evidence necessary for that determination is *precluded* due to no fault of Jackson. In fact, Jackson's findings of fact specifically state on the issues raised that he was precluded from the evidence for that issue as well as Jackson's second issue on appeal being all about the preclusion of that evidence:

*"Whether Post-Conviction Relief Court abused its discretion in denying the Petitioner an evidentiary hearing and or granting the multiple motions to compel to obtain evidence to support his claims when the opposing party refused to abide by rules of discovery"*

Jackson complained about being precluded from the evidence by prior counsel as well as the PCR court, raises that preclusion on appeal, and still gets the unfair opinion by both reviewing courts as well as a waiver of issues due to that preclusion that cannot be afforded to Jackson. Again, violating Jackson's right to due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendment of the United States Constitution.

iv. Point: pg 14, specific claim required factual determination

Lastly, the Indiana Court of Appeals cites that Jackson does not point to any specific claim in his petition that required a factual determination. This cannot make sense in that all of Jackson's issues on his petition was for the purpose of a factual determination once the evidence was present. The problem in this case is that Jackson was not allowed to discover that evidence from prior counsel on any of his issues much less present them to the court with his argument of

why and or why not his issues fails and or succeeds. Jackson was only able to present his affidavit to the issues raised while understanding that (1) his affidavit was not in any response to the testimony evidence given by prior counsel; and (2) was completely insufficient for a findings of ineffectiveness. If the pro se litigant, a state prisoner, can understand these two points, our state court as well as all reviewing court must see and understand the same.

### CONCLUSION

The petition for a writ of certiorari should be granted. The Indiana Courts has departed from clearly established United States Supreme Court precedent concerning Petitioner being deprived an evidentiary hearing to litigate his constitutional claims of ineffective assistance of counsel in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and this case remanded for further proceedings and for any and all other just relief this Court deems necessary.

Executed on: June 15, 2021,

Respectfully submitted,

  
Samuel Jackson  
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Petitioner / *pro se*