No. 20-918 ORIGINAL

FILED
SEP 03 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In re Johnathon Kelly – PETITIONER,

VS.

UNITED STATES OF AMERICA – RESPONDENT(S).

ON PETITION FOR A WRIT OF MANDAMUS

On Appeal from the United States Court of Appeals Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

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Question(s) Presented

1. Does the petitioner's "Wrongfully Excluded" actual innocence evidence allow the petitioner to gain review of his actual innocence claim under the "wrongfully excluded" evidence Standard of review described in Schlup V. Delo, 513 U.S. 298?

2. Could any reasonably minded jurist agree, or either debate if whether the facts supporting the petitioner's ineffective assistance of counsel claim demonstrates that the appointed counsel's deficient representation "Probably Resulted" in the conviction of an actually innocent person, Pursuant to Bousley V. United States, 523 U.S. 614?

3. Does the "Newly Discovered" evidence clause of Title 28 U.S.C. section 2244(b), Title 28 U.S.C. section 2255(h), Title 28 U.S.C. section 2241, and Federal rules of Civil Procedure Rule 60(b) unconstitutionally restrict the actual innocence inquiry to "Newly Discovered" evidence considerations, when Well established Supreme Court rulings require "Wrongfully Excluded" evidence to also be considered in determining innocence?

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:

Anand, Justin S., United States Magistrate Judge

Coppedge, Susan, former Assistant United States Attorney

Horn, John A., former United States Attorney

Kruger, Mary F., Assistant United States Attorney

McReynolds, Jule Jr., former Attorney for defendant Appellant

Moultrie, Richard, Assistant United States Attorney

Pak, Byung J., United States Attorney

Ross, Eleanor L., United States District Judge

Sam-Buchanan, Yonette, Assistant United States Attorney

Sommerfield, Lawrence R., former Assistant United States Attorney

United States of America, Appellee

TABLE OF CITED AUTHORITIES

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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 A 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 B 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 ______ 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 ____________________ 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.

JURISDICTION

[✓] For cases from federal Carts:

The date on which the United States Court of Appeals decided my case was July 30, 2020

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on July 30, 2020, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this court is invoked under 28 U.S.C. section 1651(a), and 28 U.S.C. section 2403(a)

Constitutional and Statutory Provisions involved

Sixth Amendment of the United States Constitution

Title 28 U.S.C. section 1651(a)

Title 28 U.S.C. section 2244(b)(3)(E)

Title 28 U.S.C section 2244(b)

Title 28 U.S.C section 2255(h)

Title 18 U.S.C section 2423(a)

Title 18 U.S.C section 1591(a)(b)(2)

SUMMARY OF THE CASE

I. A writ of mandamus is needed because the Eleventh Circuit has dishonored Federal law causing an innocent man to be deprived of a lawful review of his actual innocence claim

Pursuant to Title 28 U.S.C. section 1651(a), the issue before this Honorable court is that the accused has asked the Eleventh Circuit to invoke the miscarriage of justice exception to his procedurally barred actual innocence claim, pursuant to the "wrongfully excluded" evidence standard of review described in Schlup V. Delo. The accused is a Pro Se petitioner that carefully litigated that he was seeking review of actual innocence evidence that was "Wrongfully excluded" rather than "Newly Discovered." The accused humbly asked the Eleventh Circuit during a first section 2255 proceeding, and during a request for leave to file a second 2255, to apply the Schlup V. Delo Standard of review which states:

> " The emphasis on actual innocence allows reviewing tribunals to also consider the probable force of relevant evidence that was either 'excluded' or unavailable at trial; the habeas court 'must' make its determination concerning the petitioner's innocence in light of all of the evidence - and evidence claimed to have been 'wrongfully excluded.'" (Schlup V. Delo, 513 U.S. 298, 327, 115 S.Ct 851, 1951 (1995)).

The accused is relying on this ruling to assert that the facts, that have been presented to the Eleventh Circuit, has proven that the Government appointed counsel did abandon the accused, resulting in the actual innocence evidence being "wrongfully excluded." The Eleventh Circuit has unlawfully dismissed the accused's actual innocence claim, by twice limiting their determination concerning the accused's innocence evidence to the "Newly Discovered" evidence inquiry. The records proves that the Eleventh Circuits scope of review was limited based on their ruling specifically stating that no "Newly Discovered" evidence

Supports an actual innocence claim, which means the Eleventh Circuit did not inquire into the "excluded" evidence as Federal law requires. The Eleventh Circuit has endorsed a miscarriage of Justice by using a limited inquiry into "Newly Discovered" evidence only, in disregard of the fact that the accused did litigate specifically that the evidence to be reviewed was "excluded" from the records due to ineffective assistance of Federally appointed counsel. The accused is humbly asking this Honorable Court for an evidentiary hearing to prove his innocence; because according to Schlup V. Delo, "excluded" evidence is "New Evidence."

(A). A writ of mandamus is appropriate because the accused has no other available remedy to pursue his right to prove his innocence

In respects to the first prong of the writ of mandamus Inquiry, the accused has exhausted all of his remedies during two habeas proceedings with the Eleventh Circuit. The first habeas proceeding ended with the Magistrate Judge issuing a Report and Recommendation [Docket 105], that suggested the accused's actual innocence claim be dismissed because no "New Evidence" was presented that might Support a claim of actual innocence. The accused timely filed objections [Docket 108] that explained specifically that the accused was seeking review of evidence that was "Wrongfully Excluded" pursuant to the Schlup V. Delo standard of review. Consequently the District Judge entered an order to adopt the Magistrate Judge's Report and Recommendation over the accused's specific objections (Docket 113).

On November 5, 2018 the accused timely filed a motion for a Certificate of Appealability, with the Eleventh Circuit Appeals Court, to ask the Appeals Court to review the accused's "wrongfully excluded" evidence pursuant to the Schlup V. Delo Standard of review, to determine if it was possible for a jurist of reason to debate the correctness of the District Court's ruling. On January 24, 2019 the Appeals Court determined that the accused did not show reasonable diligence. On February 19, 2019 the accused timely filed a petition for a Panel Rehearing. On April 11, 2019 the panel, of two Judges, determined that the accused did not make a meritorious arguement. The accused "untimely" filed a Petition for Certiorari; and due to a misunderstanding of the weekends being included in the computation of the deadline to file a petition for Certiorari, the accused was unable to gain review of his actual innocence claim from this Honorable Court.

The accused filed a second application with the Eleventh Circuit District Court in May 2020, pursuant to Magwood V. Patterson, 561 U.S. 320, 335 (2010), to complain that the District Court did not give the accused a "full and fair" opportunity to raise a credible actual innocence claim due to the District Courts refusal to grant an evidentiary hearing to inquire into the accused's "Wrongfully excluded" evidence. The District Court maintained their original ruling by determining that the accused did not show any "New Evidence" and that the accused needed authorization to file a second application.

In July 2020, the accused asked the Eleventh Circuit Appeals Court for leave to file a second section 2255 motion pursuant to title 28 U.S.C. section 2244(b) and Title 28 U.S.C. section 2255(h). The accused carefully explained how the actual innocence evidence has been recklessly disregarded from the very first day this case began, and on page 13 of the accused's request for leave, the accused concluded the discussion of Federally appointed cansel's deficient representation by clearly stating that ineffective assistance of cansel caused the accused's actual innocence evidence to be "excluded."

Consequently the Court of Appeals refused to apply the "Wrongfully

Excluded" evidence inquiry to the accused's actual innocence evidence by refusing to look beyond the "Newly Discovered" evidence inquiry. The Eleventh Circuit's limited scope of review resulted in the dismissal of an actual innocence claim that was supported by highly reliable evidence, in which no reasonable jurist would have voted to convict the accused in light of the "excluded" evidence, and because the "excluded" evidence was "excluded" it is "New evidence."

This is an extraordinary circumstance because in view of Title 28 U.S.C. section 2244(b)(3)(E) the accused is barred from challenging the Eleventh Circuits erroneous ruling with a Petition for Certiorari. In view of the Eleventh Circuit's ruling being inconsistent with what Federal law requires to be performed in actual innocence cases, the accused's only alternative to correct this miscarriage of justice is to humbly ask this Honorable Court for a Writ of Mandamus, in order to grant a "full" review of the accused's actual innocence evidence, so that a complete miscarriage of justice does not continue to cause an innocent person to continue to suffer an unlawful conviction. A writ of mandamus is consistent with the Supreme Court decision that stated:

> "Today, however, the Court obliquely but unmistakably pronounces that a successive or abusive petition "must" be entertained and may not be dismissed so long as the petitioner makes a 'sufficiently persuasive' showing that a fundamental miscarriage of Justice has occured.... [I]f a petitioner such as Schlup presents adequate evidence of innocence the petitioner should be allowed to pass through the gateway and argue the merits." (Schlup V. Delo, 513 U.S. 298, 344).

Regarding the ruling in Schlup V. Delo, this is an extraordinary circumstance because the accused has made a "sufficiently persuasive" showing that the fundamental miscarriage of Justice exception should be invoked by litigating, through the briefs of each habeas proceeding that: 1 Highly reliable evidence - which if true - proves that in light of all of the evidence not one jurist acting reasonably would vote to convict the accused; and 2 the actual innocence evidence is supported by substantial showings that constitutional error in the accused's plea colloquy has "probably resulted" in the unconstitutional conviction of the accused. In view of these facts, and in view of Federal law that governs actual innocence claims, the Eleventh Circuit did not resolve the accused's actual innocence claim according to the "full" actual innocence Standard of review. Now the accused has no other choice but to rely on this Writ of Mandamus to seek this Honorable Court's blessing in allowing an actually innocent person to gain a lawful review of a credible actual innocence claim.

B. The need for a Writ of Mandamus is clear and indisputable

In respects to the second prong of the Writ of Mandamus inquiry, the accused asserts that the need for a writ of mandamus is clear because the decision in Schlup V. Delo is a Prima facies case. Because the accused's ineffective assistance of counsel claim and "wrongfully excluded" evidence is far more persuasive than the ineffective **assistance** claim that Schlup presented, the accused in the present case under **consideration** is without a doubt qualified to pass through the gateway and have his actual innocence claim resolved in the same manner as Schlup's case was resolved.

In Schlup V. Delo, Schlup presented only three items of evidence that involved sworn statements of several eyewitnesses that were not involved in the crime in which Schlup was wrongfully accused of. The Supreme Court decided that "Those statements may be unreliable, but 'if they **are** true... it surely cannot be said that a **juror** conscientiously following the Judge's instructions requiring proof beyond a reasonable doubt would vote to convict.'" (Schlup V. Delo 513 U.S. 298)

Regarding the present case under consideration in **this** petition the accused has presented fifteen forms of reliable evidence that are confessions from the accuser's own mouth that must be true. These statements should exonerate the accused from any criminal accusations against him. Clearly, if the third party evidence was declared, by the Supreme Court to be sufficient to entitle relief to Schlup, then it lawfully follows that the fifteen forms of evidence involving confessions, made by the accuser herself, entitles the accused an opportunity to obtain review of his actual innocence claim.

In Schlup V. Delo, Justice Heaney determined that "Schlup's ineffective assistance of counsel claim was substantial.... Schlup's trial counsel failed to conduct individual interviews.... In fact, counsel apparently failed to conduct individual interviews with any of the potential witnesses to the crime." Justice Heaney further determined that "Schlup's counsel was ineffective, even though counsel allegedly had reviewed 100 interviews conducted by prison investigators.... Counsel's review of the interview transcripts - rather than demonstrating counsel's effectiveness - made counsel's failure to conduct his own interviews even more troubling." (Schlup V. Delo, 513 U.S. 298, 312-313).

Regarding the present case under consideration in this petition, the accused has presented reliable Court transcripts to prove the accused had a strong desire to present the text message transcripts to the Court, in order to prove to the Court that the accuser's inadverted confessions contradict the accuser's accusations. What is troubling is that the lawyer, that the Government appointed to represent the accused, ignored the accused's strong desire to present the reliable evidence to the Court. In view of the exculpatory value of the text message evidence, being said to involve the accuser's own confessions, federally appointed counsel should have investigated the evidence and presented it to the Court. The records prove counsel did not do a single task aside from presenting a plea deal to the accused. Like Schlup, the accused's ineffective assistance of counsel claim is substantial; and it is indisputable that the accused qualifies for the same relief as Schlup.

In Schlup V. Delo, Justice Heaney determined that "Schlup had presented truly persuasive evidence of actual innocence and the District Court should have therefore addressed the merits of Schlup's constitutional claims." Justice Heaney concluded that "Schlup's case should be remanded to the District Court to conduct an evidentiary hearing, and if appropriate to address the merits of Schlup's constitutional claims." (Schlup V. Delo, 513 U.S. 298, 312-313).

In respects to the ruling in Schlup, the accused in the present case under consideration in this petition is asking this Honorable Court to remand this case back to the District Court to conduct an evidentiary hearing. Based on the facts and circumstances described in this petition, it is an established fact that a failure to entertain this actual innocence claim will result in a fundamental miscarriage of justice, and the need for this writ of Mandamus is clear and indisputable.

C. The Writ of Mandamus is appropriate under the circumstances

In respects to the third prong of the writ of mandamus inquiry, this writ is appropriate because; due to the statues of Title 28 U.S.C. section 2244(b); Title 28 U.S.C. section 2255(h); Title 28 U.S.C. 2241; and Rule 60(b) of Federal rules of Civil Procedures all relying on the language of "Newly Discovered" evidence as a threshold inquiry before actual innocence claims can be considered in the lower Courts, the "full" standard of review in the Supreme ruling of Schlup V. Delo is being unconstitutionally ignored. In view of the "Wrongfully excluded" evidence inquiry that "must" be considered in the determination of actual innocence evidence, the statues that limit the threshold inquiry of actual innocence to the "Newly Discovered" evidence inquiry are unconstitutional, because the statues can not restrict what Federal Law requires to be done in the intrest of justice. Consequently the limited threshold inquiry of these statues unconstitutionally deprives innocent people of an opportunity to gain liberty. According to Schlup V. Delo "excluded" evidence that "was not presented at trial" is considered "New evidence."

No matter what statue the accused uses to file his actual innocence claim under, the accused is at risk of facing the same limited review that over looks "Wrongfully excluded" evidence. No matter how many times the accused humbly asks the Eleventh Circuit to apply the "full" actual innocence standard of review, the Eleventh Circuit has repeatedly ignored the request. This is an extraordinary situation because the Eleventh Circuit's ruling that the accused did not present any "Newly Discovered evidence" proves that the Eleventh Circuit has dishonored the accused's request to invoke a lawfully required Standard of Review.

It is not clear if the Eleventh Circuit is unfamiliar with the "Wrongfully excluded" evidence clause that the Supreme Court decided "must" be used in cases where actual innocence evidence is claimed to be "excluded," or if the Eleventh Circuit is being vindictive toward the accused due to the nature of the allegations, but in either situation a mistake has been made, and the accused has no other alternative but to rely on this Honorable Court's Authority to invoke the "full" actual innocence Standard of review in the intrest of justice. This Honorable Court's discretion can be guided by the Supreme Court ruling in Sawyer V. Whitley that stated:

"Although we have frequently recognized the State's strong interest in finality, we have never suggested that that interest is sufficient to 'outweigh the individuals claim to innocence.' To the contrary the actual innocence exception manifest our recognition that the criminal justice system occasionally errs and and that when it does finality 'must' yield." (Sawyer V. Whitley, 505 U.S. 333, 364, 112 S.Ct 2514).

Regarding the ruling in Sawyer V. Whitley, this Writ of Mandamus is appropriate to reach the ends of justice.

This writ is equally appropriate because Court records reveal that the actual innocence evidence was truly "Wrongfully excluded" from the very first day this case began; because the accused has been diligently trying to present his evidence to the Government by: ① Asking Georgia Bureau of Investigations Agent Sara Thomas to review the text messages inside his cell phone to prove the accuser's accusations are false; In fact Agent Thomas has testified that, on the day this case began, she observed the accused desperately banging on the window of the holding cell-begging Agent Thomas to record his statement (See Docket 38 page 111), (See also Government's Exhibit 6); ② the accused asking two lawyers to present the text messages to the Court; and ③ the accused asking the District Judge, during a hearing, to delay the trial because the accused was 6 days away from total and had not been provided with any of the evidence involved in the case. The accused explained to the District Judge that the specific evidence that would prove his innocence was text messages. Nobody made sure that the text messages were presented to the Court which caused the evidence to be "Wrongfully excluded."

By instructing the Eleventh Circuit to grant an evidentiary hearing the meaning of actual innocence will not be altered, and actual innocence will remain a rare and extraordinary remedy as the Supreme Court stated:

> "The consideration of a broader array of evidence however does not modify the essential meaning of innocence.... The petitioner does not meet the

threshold requirement unless the petitioner persuades the District Court that in light of the New Evidence, no jury acting reasonably would have voted to find the petitioner guilty beyond a reasonable doubt." (Schlup V. Delo, 513 U.S. 298, 327).

The new "excluded evidence" of the accuser's own text message confessions contradicts the accuser's accusations and are a testament that no jury in America would read the text message transcripts and find the accused guilty, because the accuser's own words cast extreme doubt on the potential for these accusations to be true. Under no circumstances can the accused be found guilty beyond a reasonable doubt, because their is no reason to doubt what the accuser has confessed.

REASONS FOR GRANTING THE PETITION

II. The accuser's inadverted confessions prove that the accused is actually innocent of the offense conduct described in the accused's indictment

These are the fifteen forms of evidence that exposes the accuser confessing to her independent desire to engage in conduct that evidence proves the accused "did not condone." This evidence proves the accused is actually innocent of any conduct related to Title 18 U.S.C section 2423(a) and Title 18 U.S.C section 1591(a)(b)(2). This evidence was not presented at trial and was not presented to the Court at all. In view of Supreme Court law this actual innocence claim is credible.

"To be credible a claim of actual innocence must be based on reliable evidence not presented at trial." (Calderon V. Thompson, 523 U.S. 538, 559, 118 S.Ct, 1489 (1998));

1489 (1998)); (Quoting Schlup V. Delo, 513 U.S. 298, 324).

(A.) The accuser inadvertedly confesses that the accused never stopped urging the accuser to avoid prostitution

(1.) The clearest text message sequence that shows the accused **specifically** telling the accuser to avoid prostitution is found in a text message where the accuser informs the accused that an individual requested the accuser to come to his residence for a legal escort encounter, but when the accuser arrived at the residence, with the accused, the individual decided he did not want to pay for a legal escort encanter - but instead the individual wanted sex in exchange for his money. The accused felt as if the individual tricked the accuser into coming to the residence, and the accused **advised** the accuser to, "Tell him you are not trying to get played and to put your money in your hand... If he can't do that then 'Let's Go.'" (See JK Phone Page 00218 messages 690-693 of the **appendix**).

The signifigance of this text message is that the accused was made aware of the offer for the accuser to engage in prostitution, but it was the accused that urged the accuser to "Let's Go." What this proves is the accused could not have held the "intent" to "cause" the accuser to engage **in** prostitution because under no circumstances does a person with the "intent" to "Cause" someone to engage in prostitution tell them to "Let's Go" when the opportunity for prostitution is available. Under no circumstances does a person, with the "intent" to "cause" a person to engage in prostitution, urge a person to turn down money offered for sex. The evidence proves the accused clearly advised the accuser to avoid the potential prostitution encounter by saying "Let's Go."

(2) The clearest text message that demonstrates the accuser possibly engaging in prostitution, as a motivation of her own "intent," is the fact that after the accused urged the accuser to "Let's Go" the accuser insisted, "I didn't want to lose the money... I'm handling it." (See JK Phone page 00175 messages 1264-1267 of the appendix). The thrust of the accuser's reply is that the accuser is **seen** acknowledging the urges of the accused to "Let's Go" but instead the accuser made a decision that was motivated by her own "intent" to ignore the urges of the accused.

The accuser's reply definitively excludes the accused from being held accantable for the clear decision making of the accuser; because clearly the accuser's own words of "I'm handling it" means whatever course of action the accuser decided to take after the accused urged the accuser to "Let's Go" is a conduct the accused did not motivate or encourage. In view of these facts the accused should not be convicted for the conduct, because the accuser has confessed that her personal motivation for ignoring the urges of the accused was because she "Didn't want to lose the money."

(3) Text messages further prove that the accused did not have the "intent" to "Cause" the **accuser** to engage in prostitution because the accused was stranded out of town, with no money, at the time the accuser's offer for prostitution took place. Every **text** message sent by the accused, on the day the accuser was urged to "Let's Go," was a text message in which the accused was asking family

and friends for financial support to make it back home. (See JK Phone Pages 00217-00219 of the appendix). Throughout these text messages the accused is seen doing everything in his power to get the necessary money to make it back home without relying on prostitution.

What this text message evidence proves is, if the accused had the "intent" to "cause" the accuser to engage in prostitution, under no circumstances would the accused urge the accuser to turn down an offer for prostitution while being in desperate need for money. In fact the circumstances of being stranded, and in desperate need of money, and still being willing to urge the accuser to avoid prostitution, shows the accused much rather relied on other ways to get money than to "cause" the accuser or any female to engage in prostitution.

The thrust of this excluded evidence is that the accused can not be legally convicted for conduct that the accuser confesses to "insisting" on engaging in as a result of ignoring clear urges for the accuser to avoid prostitution. According to Title 18 United States Code Section 2423(a) a conviction under this statue requires proof that "intent" to offer a minor for prostitution is apparent. Due to the text messages proving the accused never held the required "intent" the accused can not be charged with this conduct, and the absence of "intent" refutes the section 1591(a)(b)(2) count in view of the accuser's own word confessing that she was the "cause" of her own choice by stating "I'm handling it" because she "Didn't want to lose the money."

4. Another text message that demonstrates the accused urging

the accuser to avoid prostitution is seen during a sequence of text messages that took place after the accuser caused the accused to be arrest in Louisianna due to the accuser's false accusations. It should be noted that these text messages are very vulgar but are highly relevant to demonstrate the accused's long held instructions for the accuser to avoid prostitution. The accused was very upset with the accuser for causing him to get locked up, while the accused was still stranded out of town and stated that: "I'd rather have a ho that snitch than a ho that has '100 boyfriends.'" (See JK Phone page 00228 message 1057 of the appendix).

In the same text message sequence the accused showed his resentment of the accuser's eagerness to be persuaded by men to participate in prostitution by stating, "I tried to boss [yo] lame ass up but all you want to do is fuck niggas that sound sexy." (See JK Phone page 00228 message 1059 of the appendix). In the same text message sequence the accused tried to encourage the accuser to pursue an alternative lifestyle to prostitution by asking, "So do you want to keep letting these niggas fuck [u] and lock [u] out or is [u] riding with me?" (See JK Phone page 00228 message 1062 of the appendix).

The signifigance of [JK Phone page 00228 messages 1057 and 1059 and 1062] is that the accused was very upset with the accuser and still was able to rebuke the accuser's choice to have "100 boyfriends." Under no circumstances does a person with the "intent" to "cause" a person to engage in prostitution discourage the person from sleeping with multiple men.

Regarding [JK Phone page 00228 messages 1059 and 1062] it is clear that the accused was saying these hurtful things because he was very disappointed that he had been trying to encourage the accuser to change her lifestyle, and chose a lifestyle that did not put her at risk of being a victim of rape or any other traumatic event. The accused has proven that it was his "intent" to help the accuser change by asking, "So do [U wana] keep letting these niggas fuck [U]...or is [U] riding with me?" Under no circumstances does a person with the "intent" to "cause" a person to engage in prostitution try to persuade a person to stop having sex; especially not after the person has caused the accused to be arrested. The accused regrets the vulgar nature of the text messages but his "intent" was never to "cause" anyone to engage in prostitution, because clearly he was against sex acts altogether.

(B). Excluded evidence proves the accuser confesses that the accused did have a legal business intent

(1). The clearest evidence to show the accuser confessing to knowing the accused held a "legal business intent" is a statement from the accuser's March 19, 2013 recantation letter in which the accuser wrote, "I Knew he had his own 'business.'" (See Government's Exhibit 10 page GBI 000371 of the appendix). It should be noted that the accuser's statement is an inadverted confession that was made freely by the accuser, and this confession was "wrongfully excluded" due to counsel refusing to present it to the courts.

(2). The accused made an innovative decision to "filter through" the Escort category of the website involved in this case to generate customers that were content with supporting females that offered legal escort encounters. Text messages in the accuser's phone prove that the website actually generated clients that were willing to participate in legal escort encounters because one internet user contacted the accuser by text stating, "Hi I'm in town for the weekend would you like to go to dinner?" (See R.W. Phone Page [This text message is available on Compact DISK]).

The signifigance of this text is that the likelihood of the accused using this legal website to opperate a "legal Escort Company" is very reasonable to believe based on legitimate requests for legitimate services being evident in the text messages. The accused came up with the idea to form a "legal Escort Company" because he Knew that Escort Companies are legalized throughout the United States.

The accused explained to Agents during the audio Statement that he encouraged the "legal escort" profession to females and Prostitutes as a way to help provide a legal and safe alternative way of making money instead of engaging in prostitution. The accused used his talents as a screenwriter, songwriter, and aspiring music producer to help market and promote the females to the world as aspiring actresses, aspiring music artist, aspiring music Video/Concert dancers, and aspiring models.

The following text messages prove that the accused constantly advised females that his plan was to promote the females as "Ladies" that are aspiring entertainers, working as escorts until their entertainment careers launched. This form of promotion was to encourage internet users to support the legitimate cause of the females advertisements.

(3) Another text message that proves the accused had a legal business intent is a text message in which the accuser states, "I want to be the 'Lady' that you 'Keep asking for.'" (See JK Phone Page 00151 message 376 of the appendix). The thrust of this text message is that the accuser confesses that the accused "Keeps asking" the accuser to be a "Lady" not a prostitute. The accuser confesses the accused's "strong intent" for the accuser to be a "Lady" by specifically

confirming that the accused "Keeps asking for" the accuser to be a "lady" not a prostitute. Under no circumstances does a person with the "intent" to "cause" a person to engage in prostitution "Keep asking" them to conduct themselves like a "lady." The accuser's text message best support the fact that the accused consistenty encouraged the accuser to be a lady to prevent the accuser from tarnishing her ability to market herself as an aspiring entertainer, and to promote herself as a classy representative of the legal escort company that she has confessed to Knowingly being apart of.

(4.) Another text message that shows the accuser confessing that the accused had a legal business intent is a text message where the accuser asks, "Why do I need professional pictures?" (See JK Phone Page 00155 messages 530 and 537 of the appendix). The signifigance of this text message is that the accuser acknowledges that it was the accused who held the motivation to provide professional pictures opposed to the suggestive photos sent to the cellphone of the accused, by the accuser.

What this proves is that the accused did not intend to promote prostitution because under no circumstances will professional pictures benefit the promotion of prostitution over suggestive photos. However the use of professional photos would serve to enhance the promotion of the "legal" business "intent" that the accuser confesses the accused was establishing.

(C.) Excluded text messages prove the accuser confesses to being Adamant about performing her own methods of getting money.

(1.) The clearest text message sequence that shows the accuser insisting to engage in conduct that was not the motivation of the accused is a text message by the accuser that states, "I have been asking you to go to Macon 'this whole week' maybe if you sent me where I know I can get 'my money' then maybe you wouldn't be in a bad mood....let me do [WTF] you brought me here to do and stop wasting both our time and my potential.... I just don't want anybody wasting my time, you know I can get this money but you are not putting me in the situation I need to be in to get where I need to be." (See JK Phone Page 00160 messages 694-704 of the appendix).

The signifigance of the accuser's text messages is that the accuser is seen confessing that she was "Adamant" about using her own methods of getting money. What this proves in combination with all of the accuser's text messages, is that the accuser confesses that the conduct that she "insisted" on engaging in was "not condoned" by the accused. The text messages solidifies this fact because the accuser has made it known that the accused "keeps asking for" the accuser to be a "lady" while the accuser keeps "insisting" on being taken to cities of her choice to engage in conduct of her choice, and most importantly the accuser is seen "insisting" on having "100 boyfriends" even though the evidence proves the accused rebuked the accuser's desire to sleep with multiple men.

No evidence is more compelling than the accuser's own confession of: "I didn't want to lose the money" so "I'm handling it," after the accuser was clearly told by the accused to "Let's Go."

In view of all of the evidence presented it is undeniable that the accused consistently urged the accuser to avoid prostitution. The accused can not be convicted of promoting prostitution in light of the accuser's own text messages proving that prostitution was not one of the accused's motives for traveling or using the internet advertisements. No juror would convict the accused in light of all the evidence.

(D) Excluded text messages prove the accused held his legal business intent until his arrest in this case

(1) On January 8, 2013 the accused expressed his desire to continue his legal business by asking the accuser, "Are you coming back to be CoCo?" (See JK Phone Page 00234 message 1314 of the appendix). The accuser's text message reply proves she agreed to the accused's legal business intent by replying, "Yes" (See JK phone Page 00195 message 2093 of the appendix).

The signifigance of this text message sequence is that: The accused held the legal business intent to continue marketing the accuser in the same way that famous Urban Model / Reality Television Star CoCo Chenille was marketed until the day the accused was arrested in this case, and most importantly the accused re-presented this legal business intent to the accuser just days after the accuser caused the accused to get arrested due to the accuser's false complaints to the Louisiana Police. What this proves is that even after the accused was arrested, for the false complaints made by the accuser, the accused is seen - in evidence - clearly expressing his intent to remain professional and conduct a legal business venture. In view of the accuser's own confessions proving that there was no criminal conduct that occured by the accused, the accused should be pardoned from this unlawful conviction; with a proper showing that constitutional error "Probably resulted" in the conviction of the accused.

III. Constitutional Error probably resulted in the conviction of one who is actually innocent

Ineffective assistance of Counsel caused the accused's actual innocence evidence to be "Wrongfully excluded." Appointed Counsel's refusal to present the accused's evidence to the court, as the accused requested counsel to do, caused the accused to enter an undesired guilty plea. The accused's actual innocence claim should be reviewed in light of the Supreme Court decision that States:

> "Petitioner's [Procedurally barred] claim may still be reviewed in this collateral proceeding if he can establish constitutional error in his plea colloquy has 'probably resulted' in the conviction of one that is actually innocent - If, that is, he can demonstrate that no reasonable juror would have convicted him." (Bousley V. United States, 523 U.S. 614, 623 (1998)).

Regarding Bousley V. United States, the accused in the present case under consideration is asserting that constitutional error "has resulted" in the conviction of one who is actually innocent; but-in the very least-the facts of this case sufficiently indicate that appointed counsel's deficient representation did "probably result" in the accused entering an undesired plea. The fact that the accuser's Statements to Authorities have been deemed reliable enough to support a conviction of the accused, a reasonable jurist would likely conclude that the accuser's text messages and recantation statements are reliable enough to vote not to convict the accused due to the volumes of confessed falsehoods.

(A.) Court transcripts and Audio Statements prove that the accused's requests to present evidence were rejected by counsel which caused the accused's actual innocence evidence to be Wrongfully Excluded

(1). Evidence of reliable Court records prove that from the very first day of this case the accused has been diligently and desperately trying to produce defense evidence, to the Court, to prove his innocence. In violation of the Sixth Amendment of the United States constitution, each of the counsels that represented the accused refused to present the text messages to the court that the accused declared, in his Day one statement [Goverment's Exhibit 6], and inside of court transcripts, would prove his innocence.

Court transcripts from May 6, 2014 proves that the accused declared to the United States District Judge that text messages, and other evidence existed that would prove the accused's defense. This transcript was developed 6 days before this case was scheduled for trial. The accused requested to speak to the District Judge because the accused's original counsel was ineffective for refusing to produce the discovery evidence to the accused, and the accused wanted to remove his original counsel from the case due to finacial issues. This May 6, 2014 transcript shows that the District Judge ordered an appointed counsel to represent the accused on the same day. The accused is declaring that the same complaints that were made to the District Judge during this transcript, the accused shared them with the appointed Counsel on the same day this transcript was developed.

Specifically the May 6, 2014 transcript shows the accused telling the District Judge: "In general, my concerns, I have had defenses that I would like to have been raised which are located inside of 'text messages' and 'internet websites'." (See Docket Entry 74 page 13).

Specifically the May 6, 2014 transcripts show the accused telling the District Judge: "And it's hindered me through each phase of this case, 'the suppression hearing,' the meeting with the prosecutors, I mean, I can't make an intelligent decision or make an intelligent defense because I have not been able to review 'those emails' 'those ads' and things of that note." (Docket 74 page 14). The District Judge found retained counsel to be ineffective for failing to provide the accused with any evidence. On the same day the accused told federally appointed counsel everything that was conveyed to the District Judge regarding the duties the accused desired for his retained counsel to perform.

Appointed counsel for the accused did provide all of the evidence to the accused. The accused located the exonerating evidence and presented the evidence to appointed counsel. The accused asked appointed counsel to present the evidence to the Court. Appointed counsel refused to present the evidence to the cart. In violation of the accused Sixth amendment right, appointed counsel abandoned the accused. The accused honestly admits to knowing the evidence existed from the very first day of his arrest in this case, because the accused wants the Court to know that Court records proves the accused did make multiple refrences to the evidence, and expressed to five Government officials that the text message evidence was "wrongfully excluded." In regards to this conduct the Supreme Court held that:

> "Where the alleged error is a failure to investigate or discover potential exculpatory evidence, the determination of whether the error prejudiced the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that the discovery of the evidence 'likely' would have changed the outcome of trial." (Citing Hill V. Lockhart, 474 U.S. 59, 106 S.Ct 366 (1985)).

Due to the Government relying on the accuser's statements to determine if Hotels, internet advertisements, and condoms were used, by the accused, to facilitate prostitution, the accuser's contradicting text message "confessions" would have "likely" changed the outcome of trial-because the accuser's confessions would be credible enough to refute the accuser's own accusations. Appointed Counsel's obvious failure to present the evidence to the court caused the accused to plead guilty rather than go to trial. Appointed Counsel's deficient representation "probably resulted" in the conviction of one who is actually innocent.

(B). Appointed counsel's refusal to file for a suppression hearing to suppress the use of false testimonies caused the accused to unwillingly plead guilty

(1). The May 6, 2014 transcript proves that it was the desire for the accused to have a second suppression hearing, and that the accused likely expressed this desire to appointed counsel. The accused told the District Judge that the first suppression hearing took place without the accused having any evidence made available for him to suppress or to use to refute the accusations.

Specifically the accused expressed to the court that: not having the evidence "took a toll on slowing down the evidence process-- or I think it's the evidence hearing process. It did not allow us to address certain issues that I felt like, well, based on what he told me, what I felt like should have been addressed then during that point in time." (See Docket 74 page 21).

The accused explained to appointed counsel that a suppression hearing was needed to show that the accuser's accusations are clearly contradicted by her own confessions. Appointed counsel was asked by the accused to use the accuser's March 19, 2013 recantation letter, that the accuser claimed was her way of being completely honest, to show that the accuser defied belief. The controversy surrounding the accuser's March 19, 2013 statement was that the accuser was suggesting that she willingly engaged in prostitution because: "I wanted to leave I wanted to quit but in his eyes I was his now."

See Government's Exhibit 10 page GBI000372 and GBI000373 of the appendix). Inside the same letter the accuser places this statement in conflict by stating, "I wasn't being held against my will at all." (See Government's Exhibit pages GBI 000371).

Appointed Counsel was told by the accused that text messages resolves this conflict, and exposes the accuser's own words contradicting her accusations. Through the text messages the accused is seen repeatedly reminding the accuser that she could leave if she was not happy being involved in the legal business of the accused. (See JK Phone Page 00116 message 14); (See also JK Phone page 00184 message 1613); (See JK Phone Page 00225 message 937-939 of the appendix). Each of these text messages prove that the accused made sure the accuser was aware that she could leave when ready. The most specific text message of this trio is [JK Phone Page 00116 message 14] because the accused states, "[Y] have the extra stress trying to keep somebody around who don't want to stay. [Ima] get both of [yall] where [yall] need to go and [ima] start over." Clearly the accused never considered the accuser to be "his" as the accuser suggested.

In regards to the accuser's credibility the accused provided appointed counsel with the location of evidence that shows the accuser clearly confessing to purposely devising plans to manipulate authorities to respond to her. Text messages prove the accuser was bragging about how she skillfully manipulated the Louisiana police by using false sex trafficking complaints, by confessing: "I thought about 'everything I did' and 'how I would do it.' You going to jail was not apart of the 'plan'... you can play mind games 'so can I.'" (See JK Phone Page 00188 messages 1769-1773 of the appendix). The accuser has confessed that she deliberately took time to think about "everything" she would say and do to manipulate authorities. The accuser's confessions diminishes her credibility and the credibility of the accusations because the accuser has confessed to having motives for making false accusations to Authorities on January 3, 2013 and January 9, 2013.

The accused asked appointed counsel to review the suppression hearing transcript to discover, that the Agents knew that the accuser has confessed, that she strategically manipulated authorities on January 3, 2013. Agent Green was asked "Why did the accuser lie to Authorities on January 3, 2013?" Agent Green replied, "She knew that by saying those things police would respond faster." (See Docket 38 page 135). Appointed counsel knew, or should have known, due to his duty to review the statements, that the accuser had a history of lying to authorities, and should have used a suppression hearing to "try" to remove the false statements from the record.

Specifically, appointed counsel should have used the fact that the accuser lied to authorities on January 3, 2013 and brags about it through text messages; Then on January 9, 2013 the accuser lied to Corporal Paquette, and confesses that she lied to avoid being charged with marijuana that was found during the traffic stop (See Government's Exhibit 10 page GBI 000371 of the appendix); Then on January 9, 2013 the accuser lied to Georgia Bureau of Investigations Agent Green; and confesses that she lied to "make sure he stayed in jail" (See Government's Exhibit 10 page GBI 000371 of the appendix); Then on February 26, 2013 the accuser lied to FBI Agent Whiteman and GBI Agent Green during her second statement to investigators; and Then the accuser lied on March 19, 2013 to Investigators by providing a recantation letter that the accuser swore was her way of "telling the whole truth" (See Government's Exhibit 10 pages GBI 000371, GBI 000372, GBI 000374 of the appendix). It should be noted that three times the accuser tried to persuade agents that she was being honest in her letter, but placed her accusations in conflict.

Counsel should have de-certified the case as ready for trial, and moved for a suppression hearing to present the five false statements the accuser placed on the records.

A suppression hearing was vital because appointed cansel would have been able to establish that the accuser has confessed to Knowing exactly what Kind of lies to tell in order to manipulate authorities in Louisiana; the accuser has confessed to Knowing exactly what Kind of lies to tell in order to avoid being charged with marijuanna possession; and most alarming the accuser has confessed to Knowing exactly how to make her lies severe enough to "Keep" the accused in jail. These statments along with the evidence that the accused asked his appointed counsel to review and present during a suppression hearing could have earned the accused an aquital. In view of cansel's deficient representation the Supreme Court has stated that;

> "If cansel's conduct at trial, viewed in context of the totality of circumstances falls below the range of competency generally demanded of attorneys in criminal cases a conviction obtained through such a trial unconstitutionally deprives the defendant of liberty." (Citing McMann V. Richard, 397 U.S. 759, 771, 90 S.Ct (1970)).

Regarding the ruling in McMann, appointed cansel in the present case under consideration was asked during the plea hearing, on June 30, 2014 "Have you reviewed the evidence' and 'evaluated the legality of any statements, confessions, or any other evidence' that the Government has obtained?" (See Docket 78 page 19). Appointed Cansel replied falsely by saying "Yes." (See Docket 78 page 19). The records of the Cart, and the facts presented in this petition prove that appointed cansel did not review the evidence, because if appointed cansel had reviewed the evidence he would have seen the volumes of exonerating evidence available. The totality of appointed counsel's deficient representation unconstitutionally deprived the accused of liberty, because appointed counsel abandoned his duty to provide adequate assistance to the accused by refusing to present exonerating text messages, to the Cort, that could prove the accused's innocence. The accused reluctantly signed a guilty plea, because after the accused informed investigators, and informed the district Judge, and informed both of his counsels—that text message evidence could prove his innocence—it was apparent that nobody was ever going to present the exculpatory evidence to the Court. Consequently appointed counsel's abandonment of the accused "probably resulted" in the conviction of an actually innocent man and an evidentiary hearing is needed. in the intrest of Justice, because the Government appointed an ineffective counsel.

IV. Based on all of the evidence no reasonable juror would convict the accused

A reasonable jurist would see the facts of this case and conclude that the accuser's text messages represent confessions that contradict the accuser's account of events. The jurist would reason that all of the text messages refutes the accusations. A jurist of reason would assess all of the evidence presented in this petition and determine that it is doubtful that the accused "intended" to "cause" the accuser to engage in prostitution based on the evidence proving that:

1) The accused did urge the accuser to "Let's Go" when he knew the accuser was offered money for sex—and the accused made these urges during a time when he was stranded out of town with no money—but instead of the accused encaraging the accuser to accept the prostitution offer—the accused relied on other means to get the money he desperately needed, which proves without a doubt that the accused did not have the criminal intent required to convict him of "any count" of his indictment;

(2) The accuser's own text message reply proves that it was her "plan" to ingnore the accused's urges for the accuser to "Let's Go" because the accuser "insisted" that "I'm handling it" because "I didn't want to lose the money;"

(3). The accused specifically expressed his "intent" to encourage the accuser to avoid prostitution by giving the accuser an ultimatum for her to choose if she wanted to contiue letting men have sex with her "or" ride with the accused (re-stating JK Phone 00228 message 1062 of the appendix);

(4). The accused specifically expressed his "intent" to encourage the accuser to avoid prostitution by advising the accuser that she should not be sleeping with multiple men or having "100 boyfriends;"

(5). The accuser has confessed to knowing the accused held a legal business "intent;"

(6). The accuser has confessed in text messages to having her own agenda to make money using her own methods, and the accuser is seen-in text messages-rebuking the accused for "not allowing" the accuser to engage in conduct that the accuser is seen-in text messages-demanding the accused to condone;

(7). The accuser's credibility has been diminished by her own proven false statements to authorities on January 3, 2013; twice on January 9, 2013 the accuser made false statements; on February 26, 2013; and on March 19, 2013; and

(8). The accuser's credibility has been diminished by her own text messages showing the accuser boasting about being a strategic manipulator of Authorities to gain sympathy.

A reasonable jurist would listen to the judge's instructions and be compelled to consider that: in order to find the accused guilty of any offense under title 18 U.S.C section 2423(a) it must be proven "beyond a reasonable doubt" that the accused did have the "intent" to offer the accuser for prostitution. A reasonable jurist would see the accuser's text messages, in combination with the accused text messages, to conclude that based on the accuser's own words claiming the responsibility for her actions, "without a doubt" the accused "did not have the intent" required to convict him under this statue.

A reasonable jurist would listen to the Judge's instructions and be compelled to consider that: in order to find the accused guilty of any offense under title 18 U.S.C. section 1591(a)(b)(2) it must be proven "beyond a reasonable doubt" that the accused transported the accuser Knowing or in reckless disregard of the fact that the accuser would be "caused" to engage in prostitution. A reasonable jurist would review the text messages and conclude that "without a doubt" the accused pleaded with the accuser to "be a lady" and "remain professional" and to "Let's Go" when the accuser was in the presence of an offer for prostitution. A jurist of reason will determine that based on the accuser clear statement of "I didn't want to lose the money" and "I'm handling it" that the accused did not "cause" the accuser to "insist" on possibly engaging in prostitution, and because the accuser was "adamant" about ignoring the accused's desire for the accuser to "Let's Go" no jurist acting reasonably would say the accused was the "cause" for the accuser rebellious decisions.

A jurist of reason will not be able to discredit any of the accuser's own text message confessions, and in light of all of the evidence no jurist conscientously following the Judge's instruction requiring proof beyond a reasonable doubt would vote to convict the accused. A reasonable Jurist could easily determine that, based on the text messages, the accused is "without a doubt" innocent, but in any event - at the very least - the evidence does sufficiently cast "a reasonable doubt" concerning the accuser's accusations being reliable.

The accused will use the court records, the text messages, and the accuser's recantation letter to reveal to the Jury that: this is not a case about sex trafficking, but a case about a 17 year old female that was afraid because she caused the accused to be arrested on January 3, 2013 by making false complaints to the Louisiana Police - and because the accuser subsequently **became** involved in a traffic stop with the accused on January 9, 2013, in which the accuser was afraid to go to jail for the drugs that were present during the traffic stop - and because the accuser was even more **afraid** that by deciding to tell police that the drugs belonged to the accused, that the accused would be caused to go to jail a second time on the account of the accuser, and the accuser was afraid that the **accused** would possibly seek revenge if the accused was released from jail.

In the accuser's recantation letter, the accuser has confessed these facts by stating: ⓐ "I only told because I didn't want weed charged on my record;" and ⓑ "I had to make sure he stayed in jail." The accuser was also operating under the fear of being far away from home and needing to convince her parents to help her get home, a second time, in which "she Knew" she could gain sympathy by making false claims of being Kidnapped and forced into prostitution. The totality of the circumstances proves this is a case about the accuser fearing that her family would resent her for choosing to travel with the accused a second time after their efforts to buy the accuser a bus ticket from Louisiana to Alabama just 6 days earlier. Due to these fears the accuser has the hidden motive of making herself look like a victim to avoid letting down the people who have stepped up to support her.

The accused will remind the Jury that the presence of Hotel, and internet advertisements, and condoms, are not elements of a crime based on the fact that the evidence proves the accused did not have the "intent" to use any of these items to facilitate prostitution. Due to the evidence showing the accuser confessing that she was not forced to travel, and was not "caused" to engage in prostitution - **and the** accuser being 17 years old and has expressed her consent that she willingly traveled to these places, and prostitution was not a motivation of the accused — it makes it legal for the accused to rent hotels while traveling in the states mentioned; as long as criminal activity was not the purpose for using those location.

Regarding the presence of Condoms the accused will present the Jury with text message evidence in which the accused **states**: "Oh yeah the reason I always wear a condom is [cuz] I fucked [U] **once** raw and I been burning every since." (See **JK** Phone page 00228 message 1058 of the appendix). Although it was morally wrong for the then 29 year old accused to have consentual sex with the then 17 year old accuser, a reasonable jurist would see that the presence of condoms were being used for safe, consentual sex and can not be assumed to be elements of a crime.

Evidence proves criminal activity was not the interest of the **accused** in using hotels, condoms, or the internet, and in light of all of the evidence no reasonable jurist would find the accused guilty "beyond a reasonable doubt" because there is no reason to doubt what the accuser **clearly confesses** to be a case of the accuser "insisting" on using her own mind to choose to engage in conduct that evidence proves the accused "did not condone." In view of the fact that text message confessions proves the accused is innocent. The section 2423(a) and the section 1591(a)(b)(2) charges do not apply to the accused, because the accused cannot be convicted for conduct that he did not participate in at all.

A jurist of reason would be given 2 prima facies cases to prove that minor females have been known to have motives for making false accusations of sex crimes to authorities. In the United States V. Fahra, case the Sixth Circuit disposed of a sex trafficking case that involved a minor accuser that made volumes of false statements, and a lead investigator that was found to have lied to the Courts by determining that Fahra should be aquitted because the accuser defied belief. (See United States V. Fahra, 2016 U.S. App Lexis 4174, FED Appx: 012 N (6th Circuit)). A reasonable jurist would determine that the accused in the petition under consideration is similarly circumstanced to Fahra's case and would resolve the case under consideration by voting to aquit.

Another case a reasonable jurist would be introduced to is Holiday V. Kelley, which involves a minor that accused her Grandfather of of rape. It was determined by the evidence that the minor "had a motive" for telling lies which was to move back to her Mother's home, a more permissive enviornment. The evidence proved the minor was not credible because: She recanted her story more than once; "She lied frequently in the past;" and Rape Kit proved she was still a virgin. (See Holiday V. Kelley, 637 Fed. Appx. 264, 2016 U.S. App Lexis 3177 (8th Circuit). Regarding these two cases a jurist of reason would see that minors "do lie" when it comes to these types of cases, and would question the credibility of the accusations against the accused-in light of the accuser's confessed motives-to determine it is highly likely the accused is innocent.

A reasonable jurist would be reminded of the prima facies comparison that was made on pages 8-10 of this petition, and determine that the accused's Actual innocence claim is similarly circumstanced to Schlup's actual innocence claim, and a reasonable jurist would vote to resolve the case under consideration in this petition in the same manner that the case of Schlup V. Delo was resolved.

The petitioner has met his burden of producing clear reliable evidence that was "wrongfully excluded" from the records, and has proven that in light of all of the evidence no reasonable jurist can find him guilty "beyond a reasonable doubt." This reliable evidence has been supported by a substantial showing that constitutional error in the accused's plea colloquy "probably resulted" in the conviction of an actually innocent person. Based on the foregoing discusion an evidentiary hearing is required to resolve this actual innocence claim. This Honorable Court's assessment can be guided by the decision of Schlup V. Delo which stated that:

> "While the United States Supreme Court, in conformity with it's treatment of claims which have been procedurally defaulted in State Court, has held that a federal habeas corpus court may not ordinary reach the merits of successive or abusive claims absent a showing of 'cause and prejudice'.... thus explicitly tying the miscarriage of justice exception to innocence accomodates both (1) the systematic intrest in finality, comity, and conservation of resources; and (2) 'the overriding interest in doing justice in the extraordinary case.'" (Schlup V. Delo, 513 U.S. 298).

This is an extraordinary case where an innocent man has been unlawfully convicted, and unlawfully denied a "full" and "fair" habeas proceeding. In the interest of justice this writ is needed to keep an innocent man from being in prison unconstitutionally.

V. Conclusion

The accused is a pro se petitioner and pursuant to Haines V. Kerner 404 U.S. 519, 520, 92 S.Ct (1972) is asking this Honorable Court not to hold the accused to the same stringent standards that formal pleadings drafted by lawyers are held to. This is not an attempt to point the finger at prosecutors. The accused is aware that by law the prosecutors are obligated to make sure that any possible sign of guilt is addressed. The petitioner is sensitive to the nature of the offense and the need to protect society from people who commit these types of offenses, because as a child the accused was a victim of sexual assault, (See Georgia Bureau of Investigation Case files); (See also Pre-Sentencing Report). therefore the accused can appreciate the prosecutors efforts to protect the accuser and society; but now that the facts are in plain view, the accused deserves justice.

The accused no longer desires to form a legal Escort Company, but instead the accused has used his incarceration developing more respectful Non-Profit businesses to help Men and Women succeed in life.

Respectfully Submitted on this day of 2020.

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