United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 29, 2020
Decided August 11, 2020

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-3335

SAMUEL LEE QUINN,
Petitioner-Appellant,

v.

RANDY PFISTER,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 16 CV 6249

Sharon Johnson Coleman,
Judge.

ORDER

Samuel Quinn has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Quinn's motion for appointment of counsel is also DENIED.

e.g., "Appendix A."

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SAMUEL LEE QUINN (N02809)	)	
	)	
Petitioner,	)	
	)	Case No. 16 C 6249
v.	)	
	)	Judge Sharon Johnson Coleman
FRANK LAWRENCE, Acting Warden,[1] Menard Correctional Center,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION AND ORDER

Pro se petitioner Samuel Quinn filed the present petition for a writ of habeas corpus under 28 U.S.C. § 2254(d)(1) bringing ineffective assistance of counsel and prosecutorial misconduct claims, among others. Because his habeas petition is untimely under 28 U.S.C. § 2244(d)(1), the Court does not reach the merits of his claims, but instead dismisses this action in its entirety and declines to certify any issues for appeal under 28 U.S.C. § 2253(c)(2).

Background

Quinn is serving two natural life sentences after being convicted of several counts of aggravated sexual assault. In his habeas petition, Quinn is only challenging his August 29, 2007, Cook County conviction that the Illinois Appellate Court affirmed on August 24, 2009. Quinn then filed a petition for leave to appeal ("PLRA") to the Illinois Supreme Court that was denied on November 25, 2009.

On November 2, 2010, Quinn filed a pro se post-conviction petition pursuant to the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1. After the Circuit Court of Cook County dismissed Quinn's post-conviction petition on December 14, 2010, he filed an appeal that the

[1] Because Frank Lawrence is the Acting Warden of Menard Correction Center where Quinn is incarcerated, the Court substitutes Lawrence as Respondent under Federal Rule of Civil Procedure 25(d).

e.g., "Appendix B."

Illinois Appellate Court affirmed on February 6, 2013. After the appellate court denied Quinn's petition for rehearing on April 9, 2013, Quinn did not file a PLA with the Illinois Supreme Court.

On June 15, 2012, Quinn filed a petition for relief from judgment under 735 ILCS 5/2-1401, that the circuit court, *sua sponte*, summarily dismissed on June 22, 2012. The Illinois Appellate Court, however, remanded the petition explaining that the circuit court erred by dismissing the petition without allowing the State thirty days in which to file a response. On remand, the circuit court appointed Quinn counsel, who then filed a supplemental petition. On February 11, 2016, the circuit court dismissed the § 2-1401 petition as untimely. The circuit court construed the supplemental petition as a third post-conviction petition and concluded that it was procedurally defaulted based on *res judicata*. Quinn appealed, and on June 19, 2018, the Illinois Appellate Court affirmed the circuit court's decision that the § 2-1401 petition was untimely.[2] Without considering the merits of Quinn's claims, the appellate court also concluded that Quinn's third post-conviction petition was barred by *res judicata* and lacked "arguable merit" in order to grant appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987).

In the interim, Quinn filed a successive post-conviction petition on August 2, 2013, while his § 2-1401 petition was pending. The circuit court summarily dismissed the August 2013 petition and the Illinois Appellate Court affirmed on August 12, 2015.

Legal Standard

"AEDPA establishes a 1-year period of limitation for a state prisoner to file a federal application for a writ of habeas corpus." *Wall v. Kholi*, 562 U.S. 545, 550, 131 S.Ct. 1278, 179 L.Ed. 252 (2011) (citing 28 U.S.C. § 2244(d)(1)(A)); *see Conroy v. Thompson*, 929 F.3d 818, 820 (7th Cir.

[2] With the assistance of the court's librarians, the Court has determined that the Illinois Appellate Court affirmed the circuit court's decision that the § 2-1401 petition was untimely on June 19, 2018, a fact of which the Court may take judicial notice. *In re Salem*, 465 F.3d 767, 771 (7th Cir. 2006) (courts may take judicial notice of other courts' dockets and opinions).

2019). The one-year period runs from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A); *Conroy*, 929 F.3d at 820. The one-year period is tolled when a petitioner's properly-filed application for post-conviction or other collateral relief is pending in state court. *Mayberry v. Dittmann*, 904 F.3d 525, 528 (7th Cir. 2018); 28 U.S.C. § 2244(d)(2).

Discussion

As a starting point, the Court turns to the date upon which Quinn's judgment became final under 28 U.S.C. § 2244(d)(1)(A). *See Gonzalez v. Thaler*, 565 U.S. 134, 149, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012) (conviction becomes final upon "the conclusion of direct review or the expiration of the time for seeking such review"). The Illinois Appellate Court affirmed Quinn's conviction and sentence on August 24, 2009, and the Illinois Supreme Court denied his PLA on November 25, 2009. Quinn's conviction became final when the time for him to file a petition for a writ of certiorari expired, which was 90 days after the denial of his PLA, namely, February 23, 2010. *See Mayberry*, 904 F.3d at 528. Quinn then had one year (365 days) from February 23, 2010 to file a timely habeas petition.

Pursuant to § 2244(d)(2), the limitations period is tolled during the pendency of a properly filed post-conviction petition. *See id.*; *Carpenter v. Douma*, 840 F.3d 867, 869 (7th Cir. 2016). Quinn properly filed his first post-conviction petition on November 2, 2010, and thus the limitations period ran for 251 days until that date. The time during the pendency of the first post-conviction petition remained tolled until the Illinois Appellate Court affirmed the circuit court on February 6, 2013. Quinn did not file a PLA concerning his first post-conviction petition. Thus, the limitations period continued to run on February 6, 2013, at which time Quinn had 114 days left of the one-year limitations period. Quinn filed the present habeas petition on June 15, 2016, which was well beyond the 114 days he had left.

Quinn's June 2012 petition for relief from judgment under § 2-1401 did not toll the limitations period because it was untimely, and therefore, not "properly filed." *Freeman v. Page*, 208 F.3d 572, 574 (7th Cir. 2000). Similarly, Quinn's third post-conviction petition was not properly filed because it failed to comply with state procedural requirements. *See Fernandez v. Sternes*, 227 F.3d 977, 978 (7th Cir. 2000). Quinn was not granted leave to file his second or successive post-conviction petition, therefore, it did not toll the limitations period. *See Martinez v. Jones*, 556 F.3d 637, 638-39 (7th Cir. 2009). Accordingly, Quinn's habeas petition is untimely, unless he can establish equitable tolling.

Federal courts apply equitable tolling if extraordinary circumstances beyond the petitioner's control prevented the timely filing of his habeas petition. *See McQuiggin v. Perkins*, 133 S.Ct. 1924, 1931 (2013); *Holland v. Florida*, 560 U.S. 631, 130 S.Ct. 2549, 2560, 177 L.Ed. 2d 130 (2010). A petitioner seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently; and (2) that some extraordinary circumstance prevented timely filing. *McQuiggin*, 133 S.Ct. at 1931. Equitable tolling is an "extraordinary remedy" and "is rarely granted." *Mayberry*, 904 F.3d at 529.

Construing his pro se filings liberally, *see Lund v. United States*, 913 F.3d 665, 669 (7th Cir. 2019), Quinn argues that his actual innocence excuses the late filing of his habeas petition. *See McQuiggin*, 569 U.S. at 392-93. As the Seventh Circuit teaches, "the actual innocence gateway is narrow," and thus Quinn's untimeliness "can be excused only if he 'presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.'" *Gladney v. Pollard*, 799 F.3d 889, 896 (7th Cir. 2015) (quotation omitted). Equally important, Quinn's actual innocence claim is viable only if he presents evidence the state courts did not previously consider. *Id.* Quinn has failed to

point to any new evidence the state courts did not consider, and thus his actual innocence claim does not toll the limitations period.

Certificate of Appealability

A habeas petitioner does not have the absolute right to appeal a district court's denial of his habeas petition, rather, he must first request a certificate of appealability. *See Miller-El v. Cockrell,* 537 U.S. 322, 335, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003). Quinn is entitled to a certificate of appealability only if he can make a substantial showing of the denial of a constitutional right. *Id.*; *Klikno v. United States*, 928 F.3d 539, 547 (7th Cir. 2019).

As the Seventh Circuit has held "[w]hether a given petition is timely is a question under § 2244, not under the Constitution, and therefore an error in treating a collateral attack as untimely is not enough to support a certificate of appealability." *Owens v. Boyd,* 235 F.3d 356, 358 (7th Cir. 2000) (collecting cases); *see also West v. Schneiter,* 485 F.3d 393, 395 (7th Cir. 2007) ("questions of statutory interpretation, such as whether the petition was timely, do not qualify for a certificate, because they do not concern the Constitution"). The Court thus declines to certify any issues for appeal pursuant to 28 U.S.C. § 2253(c)(2).

Conclusion

For these reasons, the Court dismisses petitioner's habeas petition brought pursuant to 28 U.S.C. § 2254(d) as untimely and declines to certify any issues for appeal under 28 U.S.C. § 2253(c)(2). Civil case terminated.

SO ORDERED

Sharon Johnson Coleman
United States District Judge

DATED: 10/16/2019

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 10, 2020

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-3335

SAMUEL LEE QUINN,
Petitioner-Appellant,

v.

GREG MORGENTHALER,
Respondent-Appellee.

Appel from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 16 CV 6249

Sharon Johnson Coleman,
Judge.

ORDER

On consideration of the petition for rehearing filed by Petitioner-Appellant on September 2, 2020, the judges on the original panel have voted to deny rehearing.

Accordingly, the petition for rehearing is **DENIED.**

e.g., "Appendix C."

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

January 28, 2021

By the Court:

No. 19-3335	SAMUEL L. QUINN, Petitioner - Appellant v. GREG MORGENTHALER, Respondent - Appellee
Originating Case Information:	
District Court No: 1:16-cv-06249 Northern District of Illinois, Eastern Division District Judge Sharon Johnson Coleman	

Upon consideration of the **MOTION TO RECALL MANDATE**, filed on January 21, 2021, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED.**

form name: **c7_Order_BTC**(form ID: **178**)

e.g., "Appendix D."

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 13, 2019

By the Court:

SAMUEL L. QUINN, Petitioner-Appellant,	] Appeal from the United] States District Court for] the Northern District of
No. 19-3335 v.	] Illinois, Eastern Division.]
FRANK LAWRENCE, Acting Warden, Menard Correctional Center, Respondent-Appellee.	] No. 1:16-cv-06249]] Sharon Johnson Coleman,] Judge.

ORDER

On consideration of the Jurisdictional Memorandum's filed by appellant on December 10, 2019,

IT IS ORDERED that this appeal shall proceed to a determination of whether a certificate of appealability should issue.

Briefing in this appeal remains SUSPENDED pending further court order.

e.g., "Appendix E."

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

SAMUEL LEE QUINN
PETITIONER,

V.

FRANK LAWRENCE, ACTING WARDEN;
MENARD CORRECTIONAL CENTER,
RESPONDENT.

CASE NO. 16 CV 6249

HONORABLE JUDGE
SHARON JOHNSON COLEMAN

MOTION FOR CERTIFICATE OF APPEALABILITY

NOW COMES SAMUEL QUINN, PETITIONER HEREIN, PRO-SE, REQUESTING THIS HONORABLE COURT TO GRANT CERTIFICATE OF APPEALIBILITY TO THE DISTRICT COURT'S DISMISAL OF PETITIONER'S HABEAS PETITION ON OCT. 16, 2019. IN SUPPORT THEREOF, PETITIONER REPRESENTS AS FOLLOW:

1. PETITIONER LIKE PERKINS, HOWEVER, ASSERTS NOT AN EXCUSE FOR FILING AFTER THE STATUTE OF LIMITATIONS HAS RUN. INSTEAD, MAINTAINS THAT A PLEA OF ACTUAL-INNOCENCE CAN OVERCOME AEDPA'S ONE-YEAR STATUTE OF LIMITATIONS. PETITIONER, THEREFORE, SEEKS AN EQUITABLE EXCEPTION TO § 2244(d)(1); NOT AN EXTENTION OF THE TIME STATUTORILY PRESCRIBED. SEE RIVAS, 687F.3d AT 547 (distinguishing from "equitable tolling" A PLEA TO OVERRIDE THE STATUTE OF LIMITATIONS WHEN ACTUAL-INNOCENCE IS SHOWN).

2. THE SUPREME COURT CLEARLY STATED IN PERKINS, a.) "MORE THAN 11 YEARS AFTER HIS CONVICTION BECAME FINAL;" "PERKINS FILED

e.g., "APPENDIX F")

his FEDERAL HABEAS PETITION; ALLEGING, INTER ALIA, INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. "TO OVERCOME AEDPA'S TIME LIMITATIONS, RELYING ON THE AFFIDAVITS, THE MOST RECENT DATED JULY 16, 2002, EACH POINTING TO JONES AS THE MURDERER; THE DISTRICT COURT FOUND THAT, EVEN IF THE AFFIDAVITS COULD BE CHARACTERIZED AS EVIDENCE NEWLY DISCOVERED, PERKINS HAD FAILED TO SHOW DILIGENCE ENTITLING HIM TO EQUITABLE TOLLING OF AEDPA'S LIMITATIONS PERIOD.' ALTERNATIVELY, THE COURT FOUND, "PERKINS HAS NOT SHOWN THAT, TAKING ACCOUNT OF ALL THE EVIDENCE, 'NO REASONABLE JUROR WOULD HAVE CONVICTED HIM.' THE SIXTH CIRCUIT REVERSED, "ACKNOWLEDGING THAT PERKINS PETITION WAS UNTIMELY AND THAT HE DID NOT DILIGENTLY PURSUED HIS RIGHTS,' THE COURT HELD THAT PERKINS ACTUAL-INNOCENCE CLAIM ALLOWED HIM TO PRESENT HIS INEFFECTIVE-ASSISTANCE OF COUNSEL CLAIM AS IF IT HAD BEEN FILED ON TIME,' IN SO RULING, 'THE COURT APPARENTLY CONSIDERED PERKIN'S DELAY IRRELEVANT TO APPRISAL OF HIS ACTUAL-INNOCENCE CLAIM. b.) "PERKINS WHO WAITED NEARLY SIX YEARS FROM THE DATE OF THE 2002 AFFIDAVIT TO FILE HIS PETITION,' MAINTAINS THAT AN ACTUAL-INNOCENCE PLEA CAN OVERCOME AEDPA'S ONE-YEAR LIMITATIONS PERIOD, "THIS COURT'S DECISIONS SUPPORT HIS VIEW." SEE McQUIGGIN V. PERKINS, 133 S.Ct. 1924, 1931 (2013). THE COURT ALSO HELD, "ACTUAL-INNOCENCE, IF PROVED, SERVES AS A GATEWAY THROUGH WHICH A PETITIONER MAY PASS WHETHER THE IMPEDIMENT IS A PROCEDURAL BAR, AS IT WAS IN SCHLUP AND HOUSE, OR, AS IN THIS CASE, EXPIRATION OF THE STATUTE OF LIMITATIONS,

3. PETITIONER'S ACTUAL-INNOCENCE PETITION AD-

dresses constitutional violations and fundamental miscarriage of justice claims. i.) Prosecutors knowingly use of false and perjured testimonial evidence, ii) Prosecutors in an motion-in-limine falsely claimed that on the date of the incident "no" police or doctor noted any mental illness of the victim (TR. C. 22-29; TR. R. pp-3) see also (Ex. "A" pgs. 1,3). b.) Prosecutors opening statement claims, " petitioner beat T.G. viciously knocking her unconscious and forcibly assaulting her for hours while she was going in and out of consciousness (BBB 6-7). See also (Ex "A" pgs. 1,5). c.) Prosecutors never attempted to correct T.G.'s false and perjured testimony at trial but encourage it, "waking up at 9:00 A.M. being beaten with hands, gun and bat knock unconscious and assaulted until approx. 5:30 - 6:15 P.M. Then waking up and escaping through six deadbolt locks (BBB. 28-34) see also (Exs. "A" 1,3-5, "I" 20-21). d.) Ineffective assistance of (tr & appellate) counsels for not investigating, preparing nor "any" adversarial testing at trial and factually incorrect closing argument see (Exs. "A" 2,5-7 "H" pgs. 1-3). e.) The Court's erroneous Rulings and opinions see (Ex. "A" pgs. 2, 7-9).

4. The Court stated, " Grant is entitled to a certificate of appealability only if he can make a substantial showing of the denial constitutional Right Id; (Order pg. 5). It's with

Out question that Petitioner's constitutional claims are unrefutable and absent these constitutional violations no reasonable juror would have convicted and Jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Slack, supra, at 484, 120 S.Ct. 1595,

5. The evidence petitioner relied on to support and substantiate Petitioner's claims of Actual-Innocence are 1.) Grand jury transcript (ex. "J"). 2.) Police and Medical Reports written the date of the incident (Exs. B, C+D); & Prosecutors Stipulations (Ex. "E"). Had the evidence in these documents been presented to the jury at trial showing, a.) T.G. was staying with a friend on California and Harrison for two weeks with the two girls she came from Milwaukee with. b.) on the day of the incident T.G. informed officers and Medical personels that nothing happen in the morning, most of the day and approx. 5:30-6 P.M. this incident suppose to have occurred. She never losted consciousness. See. (Exs. "A" pgs 4-6, "B", "C", "D", "E"). Afterward, leaving Petitioner's apartment by promising to prostitute and going to a neighbor to get cigarette and lighter. (Nurse Trimble's Report).

---

1. Petitioner is not in procession of a copy of Nurse Trimble's Medical Report at present time. But, included it in previous post-conviction Filing.

PETITIONER'S EVIDENCE ALSO PROVE that NO JUROR Would have CONVICTED PETITIONER ON the FALSE AND PERJURED TESTIMONY by T.G. Which IS CONTRADICTED FROM START to FINISH, "SEPARATING THE FIRST day With the two girls She CAME FROM MILWAUKEE With," WAKING up at 9:00 A.M BEING BEATEN AND KNOCKED UNCONSCIOUS FIVE DIFFERENT TIMES With HANDS, GUN AND BAT, NOT KNOWING What HAPPEN AND FOR HOW LONG, WAKING UP AND ESCAPING through SIX DEADBOLT LOCKS (BBB 28-34). THESE FALSE AND CONTRADICTED CLAIMS HAVE "NEVER" BEEN ADJUDICATED BY "ANY" COURT.

6. PETITIONER'S INITIAL POST-CONVICTION PETITION WAS DISMISSED BY THE CIRCUIT PARTIALLY CLAIMING THE FALSE AND PERJURED ISSUES WERE RES JUDICATA, Which the PROSECUTORS CLAIMED IN their RESPONSE to PETITIONER'S 2-1401 PETITION SEE (EX "K"). (NEITHER the CIRCUIT COURT NOR PROSECUTORS POINTED to "ANY" OPINIONS FROM A COURT)

7. The COURT STATED, "CONSISTENT With OUR PRIOR PRECEDENT AND the TEXT OF the HABEAS CORPUS STATUTE, WE REITERATE that A PRISONER SEEKING A COA NEED ONLY DEMONSTRATE "A SUBSTANTIAL SHOWING of the DENIAL of A CONSTITUTIONAL RIGHT," 28 U.S.C. § 2253(C)(2). A PETITIONER SATISFIES this STANDARD by DE-

MONSTRATING that JURISTS OF REASON could DISAGREE with the district COURT'S RESOLUTION OF his CONSTITUTIONAL CLAIMS OR that JURISTS could CONCLUDE the ISSUES PRESENTED ARE ADEQUATE to DESERVE ENCOURAGEMENT to PROCEED FURTHER. SLACK, SUPRA AT 484 120 S. Ct. 1595. Applying these PRINCIPLES to PETITIONERS APPLICATION, PETITIONER BELIEVE AS THE COURT CONCLUDED, "A COA should be ISSUED."

CONCLUSION

COA should be ISSUED by THIS HONORABLE COURT TO ASCERTAIN the MERITS OF PETITIONER'S ACTUAL-INNOCENCE CLAIMS FALSE AND PERJURED TESTIMONIAL EVIDENCE WAS USED to OBTAIN PETITIONER'S CONVICTION AND HAVE YET to BE ADJUDICATED by ((ANY)) COURT.

RESPECT SUBMITTED

Samuel Quinn

List of Exhibits

EXHIBIT "A"

PART III – PETITIONER'S CLAIMS

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the fact supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fai to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUI STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.

(A) Ground one: ACTUAL INNOCENSE, INSUFFICIENTCY OF EVIDENCE TO CONVICT AND NOT PROVEN
Supporting facts (tell your story briefly without citing cases or law):

GUILTY BEYOND A REASONABLE DOUBT. PETITIONER'S CONVICTION STEMS FROM VICTIM FALSE AND PERSURED TESTIMONY KNOWINGLY USED BY PROSECUTORS AT TRIAL CLAIMING 1.) T.G. WOKEUP AROUND 9:00 A.M. AND PETITIONER ASKED FOR ORAL SEX AND DEMANDED SEX. SHE REFUSED. PETITIONER THEN BEGIN HITTING HER WITH HIS FISTS, GUN AND MENTAL BAT. KNOCKING HER UNCONSCIOUS SEVERAL TIMES AND SEXUALLY ASSAULTING HER FOR HOURS WHILE UNCONSCIOUS. T.G. THEN WAKING UP THE LAST TIME AND ESCAPING THROUGH DEAD BOLT LOCKS. SEE (EX. G-2); (EX. H - 64-76) (EX. F - 1-2).

(B) Ground two: PROSECUTION KNOWINGLY USE OF FALSE AND PERSUPED TESTIMONIAL EVIDENCE. PRIOR TO TRIAL PROSECUTORS 1.) FILED A MOTION IN LIMIE TO PER THE DEFENSE FROM CROSS-EXAMINING T.G. CONCERNING HER MENTAL HEALTH. LYING IN IT'S MOTION TO THE COURT CLAIMING THAT ON THE DATE OF THE INCIDENT "NO" POLICE OR DOCTOR NOTED ANY MENTAL ILLNESS OF THE VICTIM (TR. C. 27-29; TR. R. PP-3) WHICH WAS ABSOLUTELY FALSE. INFACT, THE DISCOVERY TENDER TO THE DEFENSE INCLUDED A MEDICAL REPORT BY DR. NUSSBAUM THE TREATING PHYSICIAN IN THE EMERGENCY ROOM ON THE DAY OF THE INCIDENT WHO CLEARLY DIAGNOSED T.G. -

Exhibit "A"

(C) Ground three: INEFFECTIVE ASSISTANCE OF COUNSEL AND INCOMPETENCY OF APPELLATE COUNSEL
Supporting facts:

1.) PRIOR to TRIAL COUNSEL RECEIVED "ALL" DISCOVERY FROM THE PROSECUTION, WHICH INCLUDED POLICE AND MEDICAL REPORTS MADED THE DAY OF THE INCIDENT. THESE DOCUMENTS REVEALED PRIOR STATEMENTS MADED BY T.G. THE DAY OF THE INCIDENT AND OTHER TRIAL TRANSCRIPTS TESTIMONY BY T.G. WHICH COMPLETELY CONTRADICT HER TESTIMONY AT TRIAL ON MATERIAL ISSUES. (EXS. A, B, C, D) AS FAR AS BEING KNOCKED UNCONSCIOUS AND BEATEN WITH FISTS, GUN AND BAT FOR HOURS AND THAN ESCAPING THROUGH DEAD BOLT LOCKS. SEE (BBB: 28-34) (EXS. D, H.) THIS EVIDENCE

(D) Ground four: TRIAL COURTS JUDICIAL MISCONDUCT AND ERRONEOUS RULINGS, APPELLATE COURTS
Supporting facts:

ERRONEOUS OPINIONS 1.) PRIOR TO TRIAL PETITIONER CONTINUE TO ACKNOWLEDGE THE COURT THAT T.G.'S TESTIMONY WAS FALSE AND PERJURED KNOWLING USED BY PROSECUTORS. SEE (EX. H: 14-15, 19, 23, 25-26) THE TRIAL COURT RESPONDED: "WELL IF YOU GO TO TRIAL IN THE JOHNNY GRUENWELDER CASE, "YOU CAN CERTAINLY BRING IT IN." (EX. H: 23) 1.) THE TRIAL COURT RECEIVED THE STIPULATIONS BY BOTH PARTIES ACKNOWLEDGING CERTAIN OF RECORD AS TO T.G.'S PRIOR STATEMENTS "NOT EVER BEING UNCONSCIOUS, NO GUN OR TYING TO SHOOT HER AND THE TIMES OF

2. Have all grounds raised in this petition been presented to the highest court having jurisdiction?
YES (✓) NO ( )

3. If you answered "NO" to question (16), state briefly what grounds were not so presented and why not:

Exhibit "A"

(A) GROUND ONE - (RRR - 28-34). "ALL" REPORTS MADE ON OF THE INCIDENT (EXS. A, B, C) AS WELL AS PROSECUTORS STIPULATIONS (EXS. A. WW - 90, 157) THIS EVIDENCE "totally" CONTRADICT T.G.'s FALSE AND PERJURED TESTIMONY GIVE AT TRIAL AND HAVE YET TO BE ADJUDICATED BY "ANY" COURT, DENYING PETITIONER'S DUE PROCESS TO A FAIR TRIAL (PETITIONER BELIEVES THAT EVERY PARTY IS ENTITLED TO A FULL AND FAIR OPPORTUNITY TO LITIGATE EVERY ISSUE RELATE TO THE CONVICTION)

(B) GROUND TWO - THAT SAME DAY WITH "TANGENTIAL" (IS A DISTURBANCE IN THE ASSOCIATE THOUGHT PROCESS IN WHICH ONE TENDS TO DISGRESS READILY FROM ONE TOPIC UNDISCUSSION TO OTHER TOPIC THAT RISE IN THE COURSE OF ASSOCIATION) OBSERVED IN "bipolar disorder" SCHIZOPHRENIA AND CERTAIN TYPES OF ORGANIC DISORDER" SEE (STEDMEN'S MEDICAL DICTIONARY AT 1437) AND (EX. C 1). (THE APPELLATE COURT ALSO ACKNOWLEDGED THIS DIAGNOSIS OF DR. NUSSBAUM IN PETITIONER'S OTHER CRIME CASE PEOPLE V. QUINN, NO. 1-10-2468). 2.) BEFORE TRIAL PROSECUTORS ALSO STIPULATED TO EVIDENCE, a.) IF CALLED TO TESTIFY DR. NUSSBAUM WOULD TESTIFY THAT ON THE DATE OF AUGUST 23rd, 2001 HE SAW A PERSON BY THE NAME OF TANINY GRUENWELLER FOR A SEXUAL ASSAULT AND WOULD TESTIFY THAT SHE, MS. GRUENWELLER HAS PAIN AND INJURIES TO THE ABDOMEN AND CHEST WALL (ACCORDING TO THE PATIENT, THE OFFENDER ENTERED HER FROM BEHIND VAGINALLY AND SEXUALLY ASSAULTED THE PATIENT. SHE DENIES LOSS OF CONSCIOUSNESS (EX. D. WW-90). b.) IF CALLED TO TESTIFY OFFICER

Exhibit "A"

MUZUPAPPA AND DETECTIVE W. KERNAN THEY WOULD TESTIFY THAT TAMMY GRUENWELLER NEVER TOLD THEM THAT SAMUEL QUINN EVER DISPLAYED A GUN AND NEVER TOLD THEM THAT SAMUEL QUINN STRUCK HER WITH A GUN NOR TRIED TO PULL IT'S TRIGGER. FURTHER, OFFICER MUZUPAPPA WOULD TESTIFY THAT THE TIME OF THE INCIDENT BETWEEN TAMMY GRUENWELLER AND SAMUEL QUINN OCCURRED AT 18:15 HOURS, WHICH IS 6:15 P.M. AND THAT HE ARRIVED AT THE SCENE AT 18:45 HOURS, WHICH IS 6:45 P.M. (EX. A: WIN-117). 3.) OTHER EVIDENCE IN THE DISCOVERY HAS STATEMENTS MADED BY T.G. TO OFFICERS AND MEDICAL PERSONELS THE SAME DATE OF THE INCIDENT, a.) SHE SPENT THE NIGHT WITH PETITIONER WHICH WAS UNEVENTFUL AND IN THE MORNING AND MOST OF THE DAY, THIS AFTERNOON THE INDIVIDUAL DEMANDED SEX, SHE DENIES LOSS OF CONSCIOUSNESS, "NO" LOSS OF CONSCIOUSNESS"(NUSSBAUM'S REPORT EX. C-1) b.) SHE WOKE UP LATER IN THE DAY WHEN DEMANDED SEX, SHE WAS BEAT WITH FISTS AND BAT THROW HER ON THE BED FACE FIRST AND VAGINALLY PENETRATED FROM 5:30 - 6:10 P.M. LEFT THE APARTMENT BY PRO-MISING TO PROSTITUTE, CALLED POLICE, "POLICE DIDN'T BELIEVE ME I WAS RAPED"(NURSE TRIMBLE REPORT). C.) OFFENDER KNOCKED VICTIM DOWN ONTO THE BED AND PENETRATED HER VAGINALLY FROM BEHIND, AFTER FINISH OFFENDER REQUESTED HER TO PRO-

---

1. PETITIONER IS NOT IN PROCESSION OF A COPY OF NURSE TRIMBLE'S MEDICAL REPORT AT THIS TIME NOR DID PETITIONER INCLUDE "ALL" OF THE TRIAL TRANSCRIPTS (03-14309) BUT WILL SEND IT NEED BY THE COURT.

stitute to which she agreed to get out the apartment. (Detective Kernan's report Ex. B-3). d.) offender beat victim about the head and body with his fists and a baseball bat, "off. then beat victim over a bed and removed victim's underwear and penetrated victim's vagina with his penis. (officer Muzupappa's report Ex. A-1) 4.) It's not enough prosecutors lied to the jury in it's opening statements claiming petitioner beat T.G. viciously knocking her unconscious and forcily assaulting her while she was going in and out of consciousness (BBB-67). This evidence was presented to the jury after the same prosecutors stipulated that T.G. "never" loss consciousness see (Ex. D. KKK-90). But, prosecutors has continue to lie and further this false evidence to the court in petitioner's 2-1401 petition claiming petitioner's issues are unraised. Not in violation of petitioner's due process rights, petitioner has not shown due diligence. The claim is res judicata and has adjudicated by the circuit and appellate courts. Plus, T.G.'s testimony was not false and perjured and knowingly used by prosecution see (Ex. L-2-3, 6-14). These claim made by prosecutors are false and the prosecution can not point to "any" opinions by a court to substantiate these claims as noted by petitioner's 2-1401 counsel in his motion to dismiss answer. see (Ex. K-1.)

(C.) Ground three clearly shows had trial counsel investigated and prepared for trial a.) counsel would have filed a motion in line pre-

Stating Dr. Nussbaum's report diagnosing T.G.'s with bipolar the same day of the incident (Ex. C.1). Therefore, allowing the defense the opportunity to cross-examine to show how this illness "Tangential" may have affected her thought process that day and her credibility at trial. b.) Counsel would have objected to the court's erroneous Ruling not to Allow a consent defense simply because petitioner did not testify because that is an incorrect Ruling of law because the evidence for Consent could come from the prosecution evidence and that evidence was inconsistent and proves T.G. was "never" unconscious when she Claimed this alleged assault occurred. Simply put, If T.G. was "never" unconscious she should have been able to tell how and when and if it was consentual or not, as she false Made up the day of the incident. See (Nurse Trimble's report) (Exs. A,B,C). c.) Counsel did not put the prosecution case to "any" adversarial testing concerning this evidence because it "Totally" contradict T.G.'s "entire" trial testimony. See (Exs. I-1,4,6-11,13) (J-2-6). 2.) Appellate counsel failed to brief petitioner's meritorious claims on post-conviction Appeal concerning. a.) prosecutorial misconduct by using false and perjured testimony from the victim at trial, ineffective assistance of trial counsel for not properly investigating and preparing for trial by using other trial transcripts, stipulations (Exs. A. MM-90,114) and the reports Made the day of

the incident (Nurse Trimble's Report) (Exs. A, B, C). Also shows prosecutors used false evidence in it's motion in line to preclude the defense opportunity to cross-examine the victim concerning her mental health illness, see (Ex. I, 12) And prosecutor used perjured and its opening statements at trial, as noted above, see (BBB-2, 4)(Exs. 90, 114) stipulations prior. b.) Appellate counsel's false and misrepresentation of petitioner's claims in her Finley motion concerning the merit of the issues which were absolutely false and had "Nothing" to do with the material issues of petitioner's claims, see. (petitioner's initial and ss actual Innocense post-convictions petitions) (Exs. I, J). Deny petitioner relief on meritorious issues; "Miscarriage of Justice 1)

(D) Ground Four- the alleged incident, (Exs. D. WW-90, 114) Still the court allowed T.G. to convey this same false evidence to the jury without correct it. After trial petitioner again made the court aware of this false evidence, (Ex. H 4). When petitioner asked why these reports would not be allowed in to evidence which proves petitioner claims and makes a record for the reviewing court, The court responded, "It is not relevant at this point sir" see (Ex. H 49, 50).. 2.) petitioner argued these reports to the court before and after trial to show prosecutor's misconduct knowingly using this false and perjured testimony by T.G., denying petitioner's due process to

Exhibit "A"

A FAIR TRIAL AND COUNSEL'S INEFFECTIVENESS BY NOT PUTTING THE PROSECUTION'S CASE TO "ANY" ADVERSARIAL TESTING, DENYING PETITIONER SIXTH AMENDS. RIGHTS TO COUNSEL. THE TRIAL COURT ALSO DENIED PETITIONER'S RIGHT TO REPRESENT HIMSELF PRO-SE IN ORDER TO RECEIVE A FAIR HEARING ON A MOTION FOR NEW TRIAL BECAUSE OF COUNSEL'S INCOMPETENCY. 3.) THE COURT did NOT ALLOW THE REPORTS INTO EVIDENCE WHICH DENIED THE REVIEWING COURT A COMPLETE RECORD TO ADJUDICATE THE ISSUES FULLY, BUT, AFTER THE APPELLATE COURT'S ERRONOUS FINDING OF FACTS IN IT'S OPIONIONS SEE (EX. G. 2) THE TRIAL COURT IN PETITIONER'S INITIAL POST-CONVICTION PETITION DISMISSED SEVERAL ISSUES IN THE PETITION CLAIMING RES JUDICATA (PROSECUTORS KNOWINGLY USES OF FALSE AND PERJURED TESTIMONY BY T.B., INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT INVESTIGATING AND PREPARE FOR TRIAL USING THE EVIDENCE IN THE REPORTS FOR SEVERALS ISSUES) THE ISSUES WERE "NEVER" ADJUDICATED BY THE APPELLATE COURT MAKING THE TRIAL COURTS DISMISSAL OF PETITIONER'S INITIAL POST-CONVICTION PETITION DEFICIENT. 4.) THE TRIAL COURT AND "ALL" REVIEWING COURTS HAVE CONTINUE TO SUSTAIN PETITIONER'S CONVICTION WITH THIS FALSE AND PERJURED EVIDENCE. SEE (CIRCUIT COURT ORDER EX. F. 2-3) (APPELLATE COURT EX. G. 2). AND (APPELLATE COURT'S ORDER NO. 1-14-0444 1-11).

B.) THE APPELLATE COURT'S INITIAL OPIONION WERE "TOTALLY" INCORRECT (SEE APPELLATE COURT'S ORDER NO. 1-140444 1-11) AND (EX. G. 2) ONLY BECAUSE IT WAS NOT GIVEN THE COMPLETE RECORD ON

Direct Appeal because of the ineffective assistance of counsel at trial and judicial misconduct by trial court and now by incompetency of Appellate counsel. But, since petitioner's response to counsel's Motion to Withdraw. (Ex. I), petitioner for the first time has presented the Appellate court with a complete record of the evidence to adjudicate petitioner's claims for the sufficiency of evidence to convict and to show petitioner was not found guilty beyond a reasonable doubt. (As the Constitution requires) see. (Ex. I. 1-16).

C.) The Illinois Supreme Court. Refused to grant petitioner leave to file, Rejecting the opportunity to be the first court to Adjudicate petitioner's claims with a complete Record. Petitioner claims are not Resjudicata because "No" court has adjudicated petitioner's claims with the complete record evidense because they contradict the prosecution "entire" case, not finding petitioner's guilt beyond a Reasonable doubt or isufficiency of evidence violate petitioner's due process rights to a fair trial, as petitioner pleaded with the Illinois Supreme Court. see (Ex. J-4-10, 12-15), "No" court has adjudicate petitioner's issues as petitioner's 2-1401 counsel point out. see. (Ex. K-1). Common sense dictate that this false and perjured evidence has not been Adjudicated because "All" of the courts statements of facts Relied on the false testimonial evidence product at trail. See. (Exs. F, G, K H-5, L-11-13).

EXHIBIT [redacted] 1-2

West Suburban Hospital Medical Center
Austin/Oak Park/Illinois 60302
Telephone 708/383-6200 X6747

DEPARTMENT OF EMERGENCY MEDICINE
PHYSICIAN RECORD

Gruenweller, Tammy
AGE: 19 SEX: F
DATE: 08/23/01

ACCOUNT #: -35926286-
TIME SEEN: 2000

CHIEF COMPLAINT: Sexual assault

HISTORY: The patient is visiting from Milwaukee and stayed with a gentleman she did not know well who's name she can not recall. States that she went to the night club with him which was uneventful and in the morning and most of the day, this afternoon the individual demanded sex and she refused. She stated because she has a recent gun shot wound in the suprapubic region and the right shoulder and she was told not to have sex. The individual did not take no for an answer and assaulted her resulting in ecchymosis and pain over most of the body. She has pain in her eyes, nose, head, right forearm, right shoulder blade and some minor injuries to the abdomen and chest wall. He then, according to the patient, entered her from behind vaginally and sexually assaulted the patient. She denies loss of consciousness. No nausea or vomiting. There is pain across the bridge of her nose and her forehead, right shoulder blade and right forearm and across most of her torso. She has no nausea, vomiting. Some headache. No other complaints. No loss of consciousness.

PAST MEDICAL HISTORY: Bipolar.

MEDICATIONS: States she is not on medications.

SOCIAL HISTORY: She does drink and she does smoke. She denies any drug use. Denies any sexual intercourse with this individual in the past 72 hours.

Patient is brought in by Chicago Police. Rape kit was done.

PHYSICAL EXAMINATION: GENERAL APPEARANCE: Thin, blend female. Obvious ecchymosis with raccoon's eye over the bridge or her nose in the bilateral temples. HEENT: Normocephalic and atraumatic. No hemotympanum. NO Battle's sign. Patient is awake, alert and oriented to person, place and situation. Mildly anxious with mildly depressed mood. States that she has not slept for more than 2 hours in the past 2 weeks. Alert and oriented times four, but is easily distractible and tangential. NECK: Supple. No nuchal rigidity. No ecchymosis. No strangulation sign. Anterior neck is normal. No tracheal deviation. Moist mucous membranes. CHEST: Normal to inspection and palpation except for questionable ecchymosis of the right base of the ribs. No ecchymosis to the breasts. BACK: There is a 2 x 4-centimeter circular lesion on the right shoulder blade. No other ecchymosis, lesions or lacerations. HEART: S3, S4. LUNGS: Clear to auscultation and

D: 08/23/01 2053
T: 08/23/01 2130
TR: 06 DR. ID#: 1289

Gruenweller, Tammy
ACCOUNT #: -865941-
JOB ID#: 46808/23/2001 23:20

This physician report is part of an Emergency [illegible]

West Suburban Hospital Medical Center
Austin Boulevard at Park, Illinois 60302
Telephone (708) 383.6200 X6747

DEPARTMENT OF EMERGENCY MEDICINE
PHYSICIAN RECORD

percussion. No rales, wheezes or rhonchi. ABDOMEN: Soft and nontender. Bowel sounds present. No rebound or rigidity. No Murphy's sign. No Rovsing's sign. No McBurney's point tenderness. No Gray-Turner's. No Cullen's sign. No costovertebral angle tenderness. EXTREMITIES: Without clubbing, cyanosis, edema or deformity except for right forearm there is a raised ecchymosis approximately 2 x 2 centimeters. There is some mild ecchymosis not inconsistent with fingerprints on the thighs. GENITOURINARY/RECTAL: External genitalia and rectal area normal. No signs of lesions or tears. patient refuses rectal examination. Genitalia reveals any obvious signs of trauma. No signs of lacerations. There is a white fluid within the cul-da-sac, at the base of the cervix which was cultured and sent for seminal fluid analysis. Rest of evidence kit completed by nurse.

PLAN: Head CT, right forearm, electrolytes and facial bones done and are negative.

DIAGNOSES:

1. STATUS POST ASSAULT.
2. NON-CONCUSSIVE HEAD INJURY.
3. STATUS POST ALLEGED SEXUAL ASSAULT.
4. BIPOLAR DISORDER.

I reviewed the triage nurse report and the Visit History within WSHC computerized records.

ERIC B. NUSSBAUM, M.D.

D: 08/23/01 2053
T: 08/23/01 2130
TR: 06 DR. ID#: 1289

Gruenweller, Tammy
ACCOUNT #: -865941-
JOB ID#int6680 08/23/2001 23:20

This physician report is part of an Emergency Department record, and is not intended to stand alone.

Exhibit [illegible] 1-2

[redacted] 414-935-7213

GENERAL OFFENSE CASE REPORT
CHICAGO POLICE

Field	Entry
Primary Classification	CRIMINAL SEXUAL ASSAULT 0265 Aggravated - other
Secondary Classification	
R.D. No.	G 503 157 (G 23154 struck)
Address of Occurrence	5642 W DIVERSION
Type of Location	APARTMENT
Date of Occurrence	23 AUG 01 1815
Date/Time Arrived	23 AUG 01 1845
Location Code	09 0
Beat	2531 / 2531

VICTIM

No.	Name	Home Address	Sex/Race/Age	Home Phone	Business Phone	Time Avail.		
1	GRUENWELLER, TAMMY L	[redacted] Milwaukee Wisc.	F 2 19	262 [redacted] DISCONNECTED	—	ANY	NONE	K 022

ADDITIONAL VICTIMS: [redacted]

WITNESS

VICTIM

OFFENDER

No.	Name	Home Address	Sex	Race	Age	Height	Weight	Eyes	Hair	Compl.	Marks
1	SAM, NLM	5642 W DIVERSION APT 3 11 R	1		31	510	200	BRO	BRO	DARK	4th fl

Gave 1st Name — Gave Home Address

CIRCUMSTANCES

Object/Weapon: K Used
Unusual Characteristics of Offense: SEE NARRATIVE
Burglar Alarm: K NA
Safe Burglary Method: K NA
UNK

PROPERTY

X

NARRATIVE

EV 15744 EN summary: Victim stated to R/O's that the off. beat her about the head and body with his fists and a metal bat. The off then bent victim over a bed and removed victim's underwear and penetrated victim's vagina with his penis. The victim was unsure if off. ejaculated inside her. Victim suffered 2

POLICE PERSONNEL

Unit notified: AK U/L Person notified: HALVERSON, Arrived 23 AUG 01 1930
Officer notifying: R/O
Person notified: MUHAMMAD # 14678, Arrived 23 AUG 01 1925
J MUHAMMAD 7175 — [signature] — 23 AUG 01 2030
Sgt. McIlvene / 2605 — 23 AUG 01 2300

KERNAN 20578 022

AUG 0 8 2001

Exhibit [illegible] p 2-2

G - 503754

Black eyes and multiple bruises about the body. The victim was taken to West Suburban Hosp in [illegible] condition. The off. fled in [illegible] direction on Division. The victim stated she stayed at off. apt the night before. CFD 44 made the removal to West Sub. The victim also stated to R/O's the off. said to her "your my ho you will do whatever I say." Victim is being treated at West Suburban Hosp by Dr. Nussbaum

Notifications: at 2530 1440 hrs

E.T. 1400 hrs

Det. Kernan on scene at 5542

I HAVE REVIEWED THIS REPORT AND BY MY SIGNATURE INDICATE THAT IT IS ACCEPTABLE. | SUPERVISOR'S SIGNATURE: Sgt M[illegible] | DATE (DAY MO YR): 23 AUG 01

FOR USE BY BUREAU OF INVESTIGATIVE SERVICES ONLY

ORIGINAL INST. CODE: 1 CORRECT, 2 REVISED	REV. CODE	UCR METHOD CODE	METHOD ASSIGNED: 1 FIELD, 2 ADMIN, 3 SUMMARY	UNIT NO.	OFFICER ASSIGNED STAR NO.	DATE ASSIGNED	SUPV. STAR NO.	INVESTIGATIVE FILE: 1 YES, 2 NO	CLASSIFIED: 1 YES, 2 NO
OFFICER RE-ASSIGNED STAR NO.	DATE	STATUS: 0 PROGRESS, 1 SUSPENDED, 2 UNFOUNDED, 3 CLEARED CLOSED, 4 CLEARED OPEN, 5 EXC. CLRD. CLOSED, 6 EXC. CLEARED OPEN, 7 CLOSED-NON CRIMINAL			IF CASE IS CLEARED, HOW CLEARED (USE THIS BOX FOR SINGLE CLEAR UP OR FIRST CLEAR UP OF MULTIPLE CLEAR UP LIST): 1 ARREST & PROSECUTION, 2 DIRECTED TO FAMILY COURT, 3 COMPL. REFUSED TO PROSECUTE, 4 COMMUNITY ADJUSTMENT, 5 OTHER EXCEPTIONAL				ADULT / JUV
VICTIM IDENTITY: 1 CORRECT, 2 REVISED	VICTIM NO.	REVISED NAME			REVISED ADDRESS				REVISED PHONE NO.: HOME, BUSINESS

VALUE OF PROPERTY TAKEN/RECOVERED: 1 DNA, 2 VERIFIED, 3 CORRECTED. FILL IN THE FULL AMOUNT OF ONLY THOSE VALUES WHICH EITHER DIFFER FROM OR WERE NOT REPORTED ON THE REVERSE, THE NARRATIVE OR A SUPPLEMENTARY REPORT.

1 MONEY	2 JEWELRY	3 FURS	4 CLOTHING	7 OFFICE EQUIPMT.	8 TV, RADIO, STEREO	9 HOUSEHOLD GOODS	10 CONSUM GOODS	11 FIREARMS	12 NARCOTIC DRUGS	13 OTHER	14 NONE
T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T $ / R	T / R

SERIAL NOS. OTHER NOTIFICATION NOS: 1 DNA, 2 VERIFIED, 3 CORRECTED. LIST ALL CORRECTIONS & NEW OR ADDITIONAL NOS. OBTAINED

REMARKS (PERTINENT INFORMATION NOT ON ORIGINAL REPORT)

PREPARED BY - SIGNATURE	STAR NO.	DATE (DAY MO YR)	APPROVED BY - SIGNATURE	STAR NO.	DATE (DAY MO YR)

CHICAGO POLICE DEPARTMENT

CASE SUPPLEMENTARY REPORT   Exhibit D. 1-3

G503757

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

CaseId: [illegible]
SubId: [illegible]

SUSPENDED | **DETECTIVE SUP. APPROVAL COMPLETE**

Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification			IUCR Code
CRIM SEXUAL ASSAULT / Aggravated: Other	0265	CRIM SEXUAL ASSAULT / Aggravated: Other			0265
Address of Occurrence	**Beat of Occur**	**No of Victims**	**No of Offenders**	**No of Arrested**	**SCR No**
5642 W DIVISION ST	2531	1	1	0	
Location Type	**Location Code**	**Secondary Location**			
Apartment	090				
Date of Occurrence	**Unit Assigned**	**Date RO Arrived**	**Fire Related?**	**Gang Related?**	**Domestic Related**
23-AUG-2001 19:15 (7:15 p.m.)	2531	23-AUG-2001 19:45	NO	NO	NO

Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
KERNAN, William	20578	ARGENTINO, Kathleen	2531	KERNAN, William	20578
Date Submitted		**Date Approved**		**Assignment Type**	
11-OCT-2001 22:54		14-OCT-2001 19:06		FIELD	

THIS IS A FIELD INVESTIGATION SUSPENDED REPORT

VICTIM(S) :

GRUENWELLER, Tammy L
Female / White / 19 Years
DOB: 13-SEP-1981
RES: 2361 57th St
Milwaukee WI
414-643-6444
SSN: 396-88-8043

OFFENDER(S):

NLM, Sam
Male / Black / 31 Years
RES: 5642 W Division St
Chicago IL
DESCRIPTION: 5'10,200,Dark Complexion,

RELATIONSHIP TO VICTIM:
GRUENWELLER, Tammy Friend/Acquaintance

OTHER PROPERTY :

INV #: 2541357
Sexual Assault Kit

LOCATION OF INCIDENT :

5642 W Division St
Chicago IL
090 - Apartment

DATE & TIME OF INCIDENT : 23-AUG-2001 19:15

GAU CODE(S): Rape Incident

EXHIBIT - F

Chicago IR# 521355

INJURIES:

Victim sustained contusions to both eyes, bruising to body

TAKEN TO:

Transported to West Suburban Hospital by CFD Amb. #44
Treated by Dr. Nussbaum

WEAPON:

Aluminum baseball bat, hands & feet

LOCATION:

Residential Apartment; 5642 W. Division Apt. #311

DAY, DATE & TIME:

Thursday, 23-Aug-2001

MANNER / MOTIVE:

Victim spends night and day at offender's apartment. Offender wants to engage in sexual relations. Victim refuses. Offender beats victim and forces vaginal intercourse. / Sexual gratification

EVIDENCE:

Inventory # 2541357 / Sealed C.S.A. Kit
Submitted to Illinois State Police Division of Forensic Services for DNA workup

NOTIFICATIONS:

Area Five Detective Division / Det. Halvorsen

PERSONNEL ASSIGNED:

P.O. J. Muzupappa # 8175
Bt. 2531 / Preliminary Investigation

Det. W. Kernan #20578

DD 5542 / Follow up investigation

INVESTIGATION:

The reporting detective responded to a criminal sexual assault that had just occurred at 5642 W. Division. The preliminary investigating officer was at the scene and related essentially the same information as documented in the general offense case report. CFD Amb had transported the victim to West Suburban Hospital for treatment. #44.

The victim was interviewed and related the following in summary not verbatim.

GRUENWELLER, Tammy

stated she had come to Chicago from Milwaukee about two weeks ago with a female acquaintance. The victim was staying around the area of California and Harrison with people she had met. The acquaintance of the victim wanted to take up "whoring" but the victim refused and staid with other friends in the Chicago area. The victim stated she had met "Sam" and spent the night at his apartment. The following day, "Sam" wanted to have sex with the victim, which she refused. The offender beat the victim with his fist causing contusions to both the victim's eyes. The offender struck the victim about her body with an aluminum baseball bat. The offender stated to the victim "you are my whore and you are going to do what I want. The offender knocked the victim down onto the bed and penetrated her vaginally from behind. After the assault, the offender wanted the victim to whore for him to which the victim agreed to get out of the apartment. The victim then fled to a neighbor's apartment for assistance. The victim informed the reporting detective the offender's last name could possibly be QUINN.

The reporting detective did a computer search in the ICAM system for a possible offender with the name of Sam QUINN residing at 5642 W. Division. The results of this search came back with a Sam QUINN with an IR #521355.

The reporting detective has attempted to contact the victim for further investigation. The listed phone number in Wisconsin has been disconnected. The Chicago address given by the victim on an arrest report (3948 W. Diversey Av.) is the parking lot of the Walgreen's on the northeast corner of Pulaski and Diversey.

An evidence submission form was submitted to the Illinois State Police Division of Forensic Services requesting the Criminal Sexual Assault Kit be worked up for DNA.

A field investigation letter will be sent to the victim's listed address in Wisconsin requesting her to contact the reporting detective.

This case is SUSPENDED pending any new developments.....

Report of:
Detective William Kernan #20578

Exhibit E. 1-2

parties will be proceeding by agreed stipulation.

THE COURT: Again, the stipulation is something that is agreed upon by the parties.

MR. DRISCOLL: It will be stipulated by and between the parties, People of the State of Illinois, through their attorney, Richard A. Devine, through Assistants Thomas Driscoll and Scott Clark, through the Defendant, Samuel Quinn and his attorney, Luther Hicks, that if called to testify, Dr. Eric Nussbaum, N-u-s-s-b-a-u-m, would testify that he's a medical doctor employed at West Suburban Hospital Medical Center in Oak Park, Illinois. He would testify that on the date of August 23rd, 2001 he saw a person by the name of Tammy Gruenweller for a sexual assault and would testify that she, Ms. Gruenweller, has pain and injuries to the abdomen and chest wall. According to the patient, the offender entered her from behind vaginally and sexually assaulted the patient. She denies loss of consciousness.

So stipulated?

MR. HICKS: So stipulated.

MR. DRISCOLL: State would call Dr. Sheila

Exhibit E, 2-2

parties; the prosecution and the defense.

THE COURT: Ladies and gentlemen, a stipulation is something that's agreed upon between the parties.

MR. HICKS: Right. It's agreed between the People of the State of Illinois through Richard Devine, State's Attorney of Cook County, through his assistants, Thomas Driscoll and Scott Clark and the Defendant, Samuel Quinn through his counsel, Luther Hicks, his attorney that if Officer J., first initial, M-u-z-u-p-a-p-p-a, Star Number 3175 and Detective W. first initial, last name K-e-r-n-a-n, Star Number 20578 were called to testify in this case, they would testify that Tammy Gruenweller never told them that Samuel Quinn ever displayed a gun and never told them that Samuel Quinn struck her with a gun nor tried to pull its trigger. Further, Officer Muzupappa would testify that the time of the incident between Tammy Gruenweller and Samuel Quinn occurred at 18:15 hours, which is 6:15 p.m., and that he arrived at the scene of 5642 West Division at 18:45 hours, which is 6:45 p.m. So, stipulated?

Feb 16, 2006
Vol 2 of 3 (Appellate 12-3521)

Exhibit F.

BACKGROUND

In early August 2001, T.G., the victim, lived with her grandmother in Milwaukee. Two women offered to buy her bus ticket to Chicago if she would help them transport marijuana back to Milwaukee. She agreed and rode to Chicago with the two women. When they arrived, the two women asked the victim to prostitute with them to raise money for the drugs. T.G. refused and parted ways with the women. T.G. then met a man her age who gave her a ride to his apartment, fed her, and allowed her to take a shower. He gave her money and directions to the Greyhound bus station. She got lost on the way there and spent the next several nights in a park with men she knew from Milwaukee. She then stayed in the projects with several different women for two to three weeks. During this time she was using marijuana, cocaine, and heroin. She was kicked out after she drew the attention of police in the area.

T.G. began talking to a man named Red who she knew from the projects. Red introduced her to many people in Chicago, gave her money for a bus ticket, and told her a limo would take her to the bus station on August 23, 2001. On August 22, 2001, Red introduced T.G. to the petitioner and told her she could stay with him for the night before her bus trip the next morning.

T.G. and petitioner took a local bus to his apartment. When they arrived, a woman named Linda, who lived down the hall, brought over some cocaine and marijuana. T.G. asked petitioner for a clean shirt. She changed out of her dirty clothes and slept on the couch.

When she awoke the next morning, her clothes were gone. Petitioner asked her if she was going to have oral sex with him in exchange for allowing her to stay there. She

Exhibit F.

refused and petitioner began hitting T.G. He knocked her out by punching her. When she regained consciousness, T.G. noticed petitioner was not in the room with her. She ran towards the front door but heard little bullets drip on the floor and saw petitioner enter the room with a gun. He struck her with the gun on the head, dragged her across the room and attempted to shoot her but the gun jammed. He hit her on the top of the head again. T.G. managed to kick the gun out of petitioner's hand. He knocked her to the floor and retrieved a steel bat form his bedroom which had electrical tape on the head of it. He struck her in the arms and ribs with the bat. She was eventually knocked unconscious. When T.G. regained consciousness, she was on his bed and petitioner had his penis in her vagina. He hit her in the head with the bat again. When she woke up, she ran out and told Linda she had been raped. Linda called 911.

PROCEDURAL HISTORY

Petitioner filed a direct appeal in the Illinois Appellate Court, First Judicial District, alleging that (1) he was not proven guilty beyond a reasonable doubt; (2) the State falsely represented to the Court that T.G. did not exhibit signs of mental illness; (3) pre-trial and trial counsel were ineffective for failing to discover these misrepresentations; (4) the Court erred when it refused to instruct the jury on consent; and (5) the State made improper comments in closing. On August 24, 2009, the court affirmed petitioner's conviction and sentence *People v. Quinn*, 1-07-2515 (unpublished order under Rule 23) (2007).

ANALYSIS

The instant petition was filed on November 2, 2010 and is before the court for an initial determination of its legal sufficiency pursuant to Section 2.1 of the Post-

Exhibit G. 1

STATEMENT OF FACTS

The appellate court on direct appeal summarized the facts of this case as follows:

Prior to trial, the State moved to preclude the defendant from cross-examining T.G. on her mental health history, which included treatment for bipolar disorder. The State argued that because "none of the doctors or police who saw and spoke to [T.G.] on the day of her attack" noticed symptoms of mental illness, a cross-examination of her mental health history would be irrelevant to her credibility and thus inadmissible under. People v. Helton, 153 Ill. App. 3d 726, 733-34, 506 N.E. 2d 307 (1987). Neither the State nor pretrial defense counsel argued that the medical report written on the day of the incident by Dr. Eric Nussbaum, which noted T.G.'s history of bipolar disorder and listed bipolar disorder as a diagnosis, should be considered on the question of admissibility of T.G.'s mental health history. Judge Cannon granted the State's motion.

Trial Evidence

The case proceeded to jury trial on June 11, 2007, long before which pretrial defense counsel had been replaced with a public defender at the defendant's request.

T.G. testified that in early August 2001, she lived with her grandmother in Milwaukee. Two women offered to buy her a bus ticket to Chicago if she would help them transport marijuana back to Milwaukee. T.G. accepted the offer and rode the bus to Chicago with the two women. When they arrived, the two women asked T.G. to prostitute with them to raise money to purchase the marijuana. T.G. refused and the women parted ways.

Now alone, T.G. met a man approximately her age who gave her a free ride to his apartment, fed her, and allowed her to take a shower. The man then gave her fare for a local bus and directions to the Greyhound bus station.

T.G. testified that she got lost on the way to the Greyhound station. She decided to stay several nights in a public park with two men she knew from Milwaukee. She then stayed with several different women "in the different projects" in the city for two to three weeks. During this time, she was using cocaine, marijuana, and heroin. She wore out her welcome, however, after she attracted the attention of police to the area and officers performed searches on her and her female hosts.

Without a place to stay, T.G. asked for help from a man named Red whom she "had been talking to" since she began staying in the projects. T.G. testified that Red introduced her to different people in the Chicago area that allowed her to stay in their homes overnight. She also testified that Red bought her a bus ticket to Milwaukee and told her that a limo would take her to the bus station on August 23, 2001. On the evening of August 22, 2001, Red introduced T.G. to the defendant and told her that she could stay the night at the defendant's apartment before she left the next morning.

The defendant and T.G. rode a local bus to his apartment building at 5642 West Division in Chicago. When they arrived, a woman named Linda, who lived down the hall, brought cocaine and marijuana to the defendant's apartment and

shared it with T.G. and the defendant. T.G. asked the defendant for a clean shirt, which the defendant provided. T.G. changed into the shirt, placed her dirty clothes in the corner of the apartment, and fell asleep on the couch.

According to her testimony, T.G. did not discuss having sex with the defendant in exchange for staying at his apartment. The defendant did not attempt to have sex with her the night she arrived. T.G. added that she would not have gone with the defendant if he had said that he wanted to have sex.

When T.G. awoke on August 23, 2001, she noticed that her clothes were missing and asked the defendant where they were. T.G. testified that the defendant "asked me if I would give him [oral sex] for staying there and *** said I was going to [have sex with] him and I said no way." She then started "boxing" with the defendant, and the defendant hit her several times in the face with his fists, causing her to lose consciousness. T.G. testified that the defendant "knocked me out with just hitting me."

T.G. testified that when she regained consciousness, the defendant wasn't in the room with her. T.G. ran toward the front door, but she heard "little bullets drop on the floor" and saw the defendant enter the room with a gun. The defendant struck her with the gun in the back of the head, then dragged her across the room. He attempted to shoot her but the gun jammed. The defendant then "cracked" T.G. on the top of the head.

The defendant began fighting with T.G. again, and T.G. managed to kick the gun out of the defendant's hand. The defendant knocked T.G. to the floor and retrieved a steel bat from his bedroom, which "had electrical tape taped over the part where you hit the ball." T.G. testified that the defendant struck her with the bat in the arm and ribs. T.G. assumed the fetal position and covered her head, but was knocked unconscious when the defendant continued hitting her with the bat. When T.G. regained consciousness, the defendant tossed her on his bed. T.G.'s head hit the wall, knocking her unconscious again. The next time T. G. was conscious, the defendant had his penis inside her vagina. She testified that he hit her again on the back of the head with the bat, and she lost consciousness a fourth time.

When T.G. woke up, the defendant was in the bathroom. T.G. ran out the front door and knocked on Linda's apartment door. T.G. told Linda she had been raped, and Linda called 911.

Steven Schulz, a paramedic with the Chicago Fire Department, testified that he responded to Linda's 911 call at 6:30 p.m. When he arrived, T.G. was extremely upset. Schulz observed that T.G. had bruises on both eyes, her nose, and her left thigh, and had dried blood on her face. T.G. told Schulz that she had been beaten with fists and a bat and was forced to have sex.

Officer James Muzupappa testified that he was the first officer to arrive on the scene at 6:45 p.m. He interviewed T.G., who said she had been raped by a man named Sam and gave the defendant's address. Muzupappa did not attempt to go to that address; he testified that he believed the defendant had fled the scene. He did not attempt to secure the scene or search for the defendant at that time. After Muzupappa interviewed T.G., she was taken to the hospital by ambulance.

Exhibit "H"

you it's more the opposite if anything.

When the state's attorney submits to you how their evidence supports Tammy, because really, when you do come down to this, this evidence here is Tammy. Whether or not you believe her. Whether she's worthy of belief here. Under these circumstances.

Now, the evidence that supports her account, state indicates or stated to you is physical evidence. And that being injuries. Now, you will see the pictures. And state argued that you don't need to be a medical expert to say that these injuries were fresh. Well, did you hear from a medical expert to say these injuries were fresh? They can say that you don't need to be one. But they had a medical expert that testified today. They could bring in the doctor that examined her.

Did you hear any evidence from a medical professional that these injuries were fresh? That's the evidence you want to rely on. Police officer who can't remember how a form is that he fills out every day for 13 years. Well he can say something is fresh? And fire department guy, he can testify that something is fresh. He's not a trained medical person. The nurse didn't say it was fresh. We didn't hear from a

Exhibit "H"

doctor. To say that these injuries, that they tried to use from this machine and paraded before you and will hand back to you to say these are fresh.

Well, I submit you do need a medical expert to say whether something like that is fresh. Whether it's consistent with her account.

Let's get back to her account of this. Her account is that she was beaten with a baseball bat and pistol-whipped. For -- well it started in the early morning according to her when she woke up, soon afterwards. Police arrive at 6:45 p.m. X-rays were taken. She went to the hospital. Nurse testified x-rays were taken. Did she have any broken bones. After being beaten with a baseball bat. She testified now today well she's had this bump on her head. If a gun is being whipped on her head for who knows how long that it causes her to black out. Is there any injury of that, back of the head with a gun. The baseball bat to the ribs.

The fire department, ambulance driver who can testify to a fresh injury said there was no history of any back pain. But does the evidence that supports, that's the overwhelming evidence. Yes, there was semen. Okay. I told you that right off the bat.

Exhibit "H"

believe her testimony. If you do not believe her testimony, you cannot find, the only result that you can find is that Sam Quinn is innocent. And not guilty of these charges.

What is there about her testimony that is worthy of belief. She testified that she was hit with a gun. She remembers this so clearly. So clearly. And the state can characterize it as well let's forgive her because she forgot. That's not what she said. That is not what she said. They can characterize it however they want. Falls into the category of overwhelming.

She did not say, she said she didn't say that. That she did tell the police that there was a gun. It's not credible. The fact that Samuel Quinn's semen is present does not mean he caused injuries to her. She's on the street for weeks. Who knows how she got these injuries.

I submit her testimony isn't enough to convict Sam Quinn of anything. Her account of this is incredible. That this goes on for hours. But there's no other injury but these marks to her eyes and couple of bruises. You don't know how those injuries occurred other than the only evidence that's been presented from

Exhibit "H"

the state is her word. What else is there. Where is Linda. Did the police investigate Linda? They are there on the scene. They are told what apartment this occurred in. Do they go there? Do they make any attempt to go there? Do they find a witness who can say well yeah, she's there. This happened. Anybody? Anybody? Other than Sam, other than Tammy. No. No.

Consider this, police are there on the scene. There's a gun apparently because she told the police there was a gun. Did they make any attempt to go to the apartment to get the gun to stop this from happening elsewhere, a rapist on the street, do they make any attempt to knock on the door, to question someone there? Nothing. Do they ever come back.

Six years is what the state's attorney yelled about here. Six years, do they ever go to the apartment. The detectives assigned to this. No. What's there to corroborate this other than her. She's been impeached. Meaning it's been proven that she didn't say things that she's saying here in court. She didn't tell the officer about a gun. She didn't tell a nurse that she had lost consciousness. The nurse didn't see her lose consciousness and she can say on the witness stand I was in and out of it at the

Exhibit "H"

hospital, I was in and out of it. That's not what the trained medical professional said. The truth indicator. Truth indicator that Tammy was so frightened of Samuel Quinn.

Well, what about when she came over here if any of you noticed it. She's here standing looking at the video monitor. Five to six feet away from him. I didn't see her cowering then. I don't think any of you did. She didn't seem afraid over here. When she's right next to him. If anything, I submit that's more of a truth indicator than the act on the witness stand.

This case comes down to Tammy Gruenweller. Whether you believe her testimony. You have to separate the act of sex from the force. They are not one in the same. Because those pictures are not proof of anything against Samuel Quinn. There's no proof there. There's no proof that he forced her other than her word. And her word is not worthy of belief. It hasn't been backed up by anything other than the pictures. And the forensic investigator who came in and took those pictures didn't take pictures of any other injuries. If there were other injuries, he would have taken those pictures. Those are not consistent with what she said happened. Nothing is consistent

Exhibit "T"

Q Where did he hit you with the bat?

A All over.

Q Did he hit you in the back?

A Yeah, my back and my legs and I was just like laying in a ball in the fetal, you know, like all rolled up.

Q During that time did you remain conscious?

A Sometimes.

Q And what happened during other times?

A I was out. I wasn't awake.

Q What was the next thing you remember happening?

A I remember he was hitting me with the bat and then I remember blacking out during that. And then I remember being thrown onto the bed. When he threw me on the bed, I hit my head against the wall and I got knocked out. I woke up once while he was in me and like trying to struggle and he went and hit me on the back of the head again. I don't know what it was with at this time. I got knocked out again. The next time I woke up I guess he was in another room or something, but I went and

Exhibit "I"

got the other locks undone.

Q Sorry to do this, but let me back you up a little bit. You said at one point you woke up and he was in you?

A Yeah.

Q Can you explain for the purposes of the court what you mean by that?

A He had his penis in my vagina.

Q And you never agreed to this?

A No.

Q During part of the time that he had his penis in your vagina, were you unconscious?

A Yeah.

Q When you said you struggled to get up, were you able to get up?

A No.

Q And then eventually you said you woke up and where was the defendant?

A I guess he was in the bedroom. I don't know.

Q He wasn't in the room where you were?

A No.

Q What did you do at that point?

Exhibit "J"

IN RE: PEOPLE VS. SAMUEL QUINN

Tammy Grueneworld Court Reporter Jefferson Case

GJ# 704
ARR. DATE: 07-16-03
03 CR 14309

BEFORE THE GRAND JURY OF COOK COUNTY,

JUNE, 2003

TRANSCRIPT OF TESTIMONY TAKEN IN THE ABOVE ENTITLED MATTER ON JUNE 25, 2003.

PRESENT: MS. NANCY WILDER
ASSISTANT STATE'S ATTORNEY

REPORTED BY SANDRA A. BRENNAN
CERTIFIED SHORTHAND REPORTER
ILLINOIS LICENSE NO. 084-002944

LIST OF WITNESSES:

DETECTIVE KERNAN

EXHIBIT - G (1)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

SAMUEL QUINN,
PETITIONER-APPELLANT,

NO. 19-3335 V.

RANDY PFISTER
RESPONDENT-APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

NO. 16 CV 6249

SHARON JOHNSON COLEMAN,
JUDGE.

MOTION FOR RECONSIDERATION

NOW COMES SAMUEL L. QUINN, PETITIONER HEREIN, PRO-SE. REQUESTING THIS HONORABLE COURT TO RECONSIDER ITS ORDER DENYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL, NOTICE OF APPEAL FROM THE DENIAL OF PETITIONER'S PETITION UNDER 28 U.S.C. § 2254 AND APPLICATION FOR A CERTIFICATE OF APPEALIBILITY UNDER THE UNITED STATES SUPREME COURT'S HOLDING IN MCQUIGGIN V. PERKIN, 133 S. Ct. 1924, 1934 (2013). AS WELL AS VIOLATIONS OF PETITIONER'S DUE PROCESS OF LAW AND EQUAL PROTECTION 5TH, 7TH AND 14TH AMENDMENTS RIGHTS

IN SUPPORT THERECT, PETITIONER REPRESENT AS FOLLOW:

1. THE SUPREME COURT'S holding OF EQUITABLE EXCEPTION IN "ACTUAL INNOCENCE" PETITION, SEE MCQUIGGIN 133 S. Ct. AT 1924-5. Applys to HABEAS CORPUS PETITION. ESPECIALLY TO FIRST

P.O. "APPENDIX G"

FEDERAL HABEAS PETITIONS OF ACTUAL INNOCENCE, AS PETITIONER'S. WHERE PETITIONER'S CLAIMS SHOWS BY CLEAR AND CONVINCING FACTUAL EVIDENCE THAT PETITIONER IS ACTUALLY INNOCENCE AND THAT "NO REASONABLE JUROR WOULD HAVE CONVICTED PETITIONER IN LIGHT OF THE NEW EVIDENCE".

2. THERE IS "NO" AEDPA'S ONE-YEAR STATUTE OF LIMITATION APPLYED AS THE DISTRICT COURT DISMISSED PETITIONER'S ACTUAL INNOCENCE. SEE (DOC. #27 PGS. 2-5,) MCQUIGGIN, 133 S.CT. 1924-31. THERE IS NOW AN EQUITABLE EXCEPTION FOR ACTUAL INNOCENCE INNOCENCE PETITIONS TO HAVE THEIR CLAIMS HEARD ON THE MERITS TO DETERMINE IF THERE HAS BEEN A FUNDAMENTAL MISCARRIAGE OF JUSTICE. WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT. AS PETITIONER CLAIMS.

3. THE SUPREME COURT'S PRECEDENT HOLDING IN MCQUIGGIN, THAT ACTUAL INNOCENCE OVERCOMES THE ONE-YEAR AEDPA'S STATUTE OF LIMITATION IS BINDING ON FEDERAL DISTRICT COURTS AS WELL AS THIS HONORABLE COURT, THEREFORE, NOT APPLYING THE SUPREME COURT'S HOLDING OF THE EQUITABLE EXCEPTION IN "MCQUIGGIN" FOR ACTUAL INNOCENCE HABEAS CORPUS PETITIONS TO PETITIONER'S ACTUAL INNOCENCE PETITION, VIOLATES PETITIONER'S CONSTITUTIONALS DUE PROCESS AND EQUAL PROTECTION RIGHTS.

H. THEREFORE, FOR this HONORABLE COURT to STATE IN ITS ORDER, "This COURT has REVIEWED the FINAL ORDER of the district COURT AND the RECORD ON APPEAL" "WE FIND NO SUBSTANTIAL SHOWING of the DENIAL of a CONSTITUTIONAL RIGHT" IS DISINGENUOUS. FOR the District Court NOT to ADDRESS the MERITS IN PETITIONER'S ACTUAL INNOCENCE PETITION (DOC. #27 pg. 1) AS PRESCRIBED by the holding IN the SUPREME COURT'S PRECEDENT IN "McQUIGGIN" AND FOR NEITHER COURT to DETERMINE WHETHER A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN the CONVICTION of ONE WHO IS ACTUALLY INNOCENCE, IS the MOST SUBSTANTIAL SHOWING of the DENIAL OF A CONSTITUTIONAL Right by a COURT.

CONCLUSION

PETITIONER ASKS this HONORABLE COURT WHETHER OR NOT IF the UNITED STATES SUPREME COURT'S Holding of EQUITABLE EXCEPTION IN ACTUAL INNOCENCE OVERCOMES AEDPA'S ONE-YEAR STATUTE OF LIMITATION. IS McQUIGGIN V. PERKINS 133 S. Ct. 1924, 1934 (2013) BINDING ON the FEDERAL DISTRICT AS WELL AS this HONORABLE COURT.

WHEREFORE, PETITIONER RESPECTFULLY REQUESTS A RECONSIDERATION OF the OPINION.

Respectfully Submitted
Samuel Quinn
SAMUEL QUINN
#N-07306

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

No. 19-3335

SAMUEL LEE QUINN,
PETITIONER-APPELLANT,

V.

GREG MORGENTHALER,
RESPONDENT-APPELLEE.

APPEAL FROM THE UNITED STATE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

NO. 16 CV 6249

SHARON JOHNSON COLEMAN
JUDGE.

MOTION FOR REHEARING ENBANC

NOW COMES SAMUEL LEE QUINN, PETITIONER HEREIN, PRO-SE REQUESTING THIS HONORABLE COURT ENBANC TO RECONSIDER THE COURT'S ORDER DENYING REHEARING ON PETITIONER'S MOTION ON SEPT. 10, 2020. UNDER THE UNITED STATES SUPREME COURT'S HOLDINGS IN MCQUIGGIN V. PERKIN, 133 S. Ct. 1924, 1934 (2013), AS WELL AS THE VIOLATIONS OF PETITIONER'S EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE FIFTH, SEVEN AND FOURTEENTH CONSTITUTIONAL AMENDMENT RIGHTS. IN SUPPORT THEREOF, PETITIONER REPRESENT AS FOLLOWS:

P.S. Appendix H

1. The UNITED STATES SUPREME Court's holding EQUITABLE EXCEPTION IN MCQuiggin V. PERKIN, 133 S.Ct. At 1924-36. Actual Innocence, States, "PIEA of Actual innocence can OVERCOME ANTITERRORISM and EFFECTIVE DEATH PENALTY Act's (AEDPA) ONE-YEAR Statute of limitations FOR Filing habeas Petition; Miscarriage of Justice EXCEPTION SURVIVED PASSAGE OF ANTITERRORISM AND EFFECTIVE DEATH PENALTY Act (AEDPA); Abrogating ESCAMILLA V. JUNGWIRTH, 426 F. 3d 868, 28 U.S.C.A. § 2244 (d)(1)(D). "Actual INNOCENCE gate-Way Should open to REACH MERITS OF PROCEDURALLY BARRED CLAIM ONLY WHEN PETITION PRESENTS EVIDENCE OF INNOCENCE SO STRONG that the COURT CANNOT HAVE CONFIDENCE IN OUTCOME OF TRIAL UNLESS COURT IS ALSO SATISFIED that the trial WAS FREE OF NONHARMLESS CONSTITUTIONAL ERROR. SEE MCQuiggin at 133 S.Ct 1924-26.

2. The District Court's ORDER DISMISSING PETITIONER'S HABEAS PETITION WAS COMPLETELY ERRONEOUS, STATING, "BECAUSE his PETITION IS UNTIMELY UNDER 28

U.S.C. § 2244 (d)(1) the COURT does NOT REACH the MERITS OF his CLAIMS, but INSTEAD dismisses this ACTION IN it's ENTIRETY AND declines to CERTIFY ANY ISSUES FOR APPEAL UNDER 28 U.S.C. § 2253 (c)(2). SEE (DOC.# 27 pg 1) "QUINN ARGUES that his ACTUAL INNOCENCE EXCUSES the late FILING OF his HABEAS PETITION. SEE MCQUIGGIN 569 U.S. AT 392-93"). Which ARE totally CONTRARY to the SUPREME COURT's holding IN "MCQUIGGIN" OF EQUITABLE EXCEPTION, "NO" EQUITABLE tolling AND ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT's ONE-YEAR STATUTE OF LIMITATIONS NEEDED AS THE DISTRICT COURT EXPLAINED FOR MOST OF it's ORDER. SEE (DOC.# 27 2-5)

3. THE judges ON THE ORIGINAL PANEL WHO VOTED to DENY REHEARING ON PETITIONER'S MOTION, HAS EITHER MADE A DETERMINATION, a) THE DISTRICT AND HIS HONORABLE COURT ARE NOT BINDING BY THE UNITED STATES SUPREME COURT'S PRECEDENT HOLDING OF EQUITABLE EXCEPTION FOR ACTUAL INNOCENCE IN "MCQUIGGIN". b.) THE U.S. CONSTITUTION FIFTH, SEVEN AND FOURTEENTH AMENDMENTS

Due process of law and equal protection are not substantial showing of the denial of a constitutional right, c.) That petitioner only, is not entitled to the protections guaranteed by the Bill of Rights to equal protection and due process of law under the U.S. Constitution.

4. In either-way, petitioner is requesting this Honorable court enbanc for rehearing to determine 1.) If the supreme court's Holding of Equitable exception for actual innocence petitions in McQuiggin v. Perkin, 133 S.Ct. 1924, 1934 (2013) binding on the Federal District and this Honorable court. 2.) If Violation of petitioner's Due process of law and equal protection substantial constitutional violations. 3.) If there has been an abuse of discretion where a fundamental miscarriage of justice has probably resulted in the conviction of one who is actually innocence.

CONCLUSION

PETITIONER SINCERELY REQUEST this HONORABLE COURT to USE it's INHERENT POWER INVESTED IN it to CONDUCT A FAIR AND UNBIAS HEARING ACCORDING to the LAW.

WHEREFORE, PETITIONER RESPECTFULLY REQUEST REHEARING EN BANC.

RESPECTFULLY SUBMITTED

/s/ Samuel Quinn L.

SAMUEL QUINN L.

N-02809

APP. I.

1-6

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

NO. 19-3335

SAMUEL LEE GUINN,
PETITIONER-APPELLANT,

V.

GREG MORGENTHALER,
RESPONDENT-APPELLEE.

Appeal from the United State District Court for the Northern District of Illinois Eastern Division

No. 16 CV 6249

Sharon Johnson Coleman
Judge.

MOTION TO RECALL MANDATE

NOW COMES SAMUEL LEE GUINN PETITIONER HEREIN, PRO SE Requesting this Honorable Court to Recall it's Mandate of petitioner's Appeal for Rehearing to Reconsider Entered the Court's order denying Rehearing on Petitioner's Motion on Sept. 10, 2020 Under The United States Supreme Court's Precedent Holdings in "McGirt" 140 S.Ct. 1924, 1934 (2013) As Well as the Violations of petitioner's Equal protection and Due process of law under the Fifth, Seven and Fourteen Constitutional Rights. In Support Hereof, Petitioner Represent As Follows:

e.g. "Appendix I."

1. UNDER THE UNITED STATES SUPREME COURT'S HOLDING OF EQUITABLE EXCEPTION OF ACTUAL INNOCENCE IN "McQuiggin" 133 S.Ct. at 1924-26. THE COURT CLEARLY STATED "PLEA OF ACTUAL INNOCENCE CAN OVERCOME ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT'S (AEDPA) ONE YEAR STATUTE OF LIMITATIONS FOR FILING HABEAS PETITION; MISCARRIAGE OF JUSTICE EXCEPTION SURVIVED PASSAGE OF ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA); ABROGATING ESCAMILLA V. JUNGWURTH, 426 F.3d 868, 28 U.S.C.A. § 2244(d)(1)(D) "ACTUAL INNOCENCE GATEWAY SHOULD OPEN WHEN PETITION PRESENTS EVIDENCE OF INNOCENCE SO STRONG THAT THE COURT CANNOT HAVE CONFIDENCE IN OUTCOME OF TRIAL UNLESS COURT IS ALSO SATISFIED THAT THE TRIAL WAS FREE OF NONHARMLESS CONSTITUTIONAL ERROR.

2. THE DISTRICT COURT'S ORDER DISMISSING PETITIONER'S HABEAS PETITION WAS CONSISTENTLY ERRONEOUS AND AN ABUSE OF DISCRETION, STATING, BECAUSE HIS PETITION IS UNTIMELY UNDER 28 U.S.C. § 2244(d)(1) THE COURT DOES NOT REACH THE MERITS OF HIS CLAIMS, BUT INSTEAD DISMISSES HIS ACTION W

entirety and declines to certify any issues for Appeal under 28 U.S.C. § 2253(c)(2) see (Doc. #27 pg. 1) Quinn argue that his actual innocence excuses the late filing of his habeas petition. See McQuiggin 569 U.S. at 392-93. The Court's order dismissing petitioner's habeas petition was completely erroneous and totally contrary to Supreme Court's precedent in "McQuiggin" of an equitable exception. There's "No" need for equitable tolling of the anti-terrorism and effective death penalty Act's one-year statute of limitations needed. As this district court discussed for most of its order see (Doc. #27 2-5).

3. The judges on the original panel who voted to deny Rehearing on petitioner's motion for Rehearing has either made the determination that a) The District and this honorable court are not bound by the United States Supreme Court's precedent holdings of Equitable exception for Actual Innocence in "McQuiggin" b.) The U.S. Constitutional Fifth, seven and fourteen Amendments Due process of law and Equal protection

ARE NOT SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT OR C.) THAT PETITIONER ONLY IS NOT ENTITLE TO THE PROTECTIONS GUARANTEED BY THE BILL OF RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE U.S. CONSTITUTION.

4. IN EITHER WAY, PETITIONER IS REQUESTING THIS HONORABLE COURT ENDORSE ACCORDING TO THE LAW TO CONDUCT A REHEARING TO DETERMINE a.) IF THE SUPREME COURT'S HOLDING OF EQUITABLE EXCEPTION FOR ACTUAL INNOCENCE PETITIONS IN MCQUIGGIN V. PERKIN, 133 S. CT. 1924, 1931 (2013) BINDING ON THE FEDERAL DISTRICT AND THIS HONORABLE COURT. b.) IF VIOLATION OF PETITIONER'S DUE PROCESS OF LAW AND EQUAL PROTECTION SUBSTANTIAL CONSTITUTIONAL VIOLATIONS. c.) WHETHER THERE HAS BEEN AN ABUSE OF DISCRETION WHERE A FUNDAMENTAL MISCARRIAGE OF JUSTICE HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENCE.

5. THE COURT STATED IN MCQUIGGIN "A NON-AEDPA CASE, INCLUDED THE COURTS OF APPEALS "INHERENT POWER

to RECALL THEIR MANDATES subject to REVIEW FOR AN ABUSE OF discretion," Id. AT 549, 115 S. Ct. 1489; it STANDS ONLY for the proposition that the MISCARRIAGE-OF-justice EXCEPTION IS AN APPROPRIATE "MEANS OF CHANNELING" that discretion, Id; AT 559, 115 S. Ct. 1499 (quoting McCLESKEY, SUPRA, At 496, 111 S. Ct. 1464).

6. THERE'S A FUNDAMENTAL MISCARRIAGE OF JUSTICE AND ABUSE OF DISCRETION WHERE THE DISTRICT COURT (obligated by the LAW) REFUSES to APPLY THE LAW REQUIRED to Address the MERITS OF petitioner's claims AS SUBSCRIBED IN the precedent holdings by the SUPREME COURT IN "McCUGGINS" FOR ACTUAL INNOCENCE PETITIONS. THE NEW EVIDENCE SUPPORTING PETITIONER'S INNOCENCE HAS NOT BEEN ADJUDICATED OR ADDRESSED IN A COURT'S ORDER YET. BECAUSE THE EVIDENCE SHOWS CLEAR AND CONVINCINGLY THAT PETITIONER IS ACTUALLY INNOCENCE AND "NO" REASONABLE JUROR WOULD HAVE CONVICTED PETITIONER.

CONCLUSION

PETITIONER SINCERELY REQUEST HIS HONORABLE COURT TO USE THE INHERENT POWER INVESTED IN IT TO CONDUCT A FAIR AND UNBIAS HEARING ACCORDING TO THE U.S. CONSTITUTION AND JUDICIAL LAW.

WHEREFORE, PETITIONER RESPECTFULLY REQUEST REVERSING, RECALL OF PETITIONER'S REHEARING MOTION DENY BY THE ORIGINAL PANEL.

Respectfully Submitted
by Samuel Lee Gilyard
SAMUEL LEE GILYARD
P-02809

PROOF OF SERVICE

I SAMUEL LEE QUINN, PETITIONER, PROPER PLACED IN THE Big Muddy River Corr. Ctr. MAILING ROOM ON JAN. 13, 2021. PETITIONER'S NOTICE TO RECALL MANDATE, NINE COPIES FOR THE COURT, ONE COPY FOR APPELLEE ATTORNEY, ONE COPY FOR THE CLERK'S OFFICE AND ONE COPY FOR PETITIONER STAMPED FILED AND RETURNED TO PETITIONER AT SAMUEL L. QUINN N-62809 B.M.R.C.C. 251 N. IL. Highway 37 Ina, IL. 62846.

DECLARATION UNDER PENALTY OF PERJURY

I SAMUEL QUINN DECLARE THAT THE ABOVE STATEMENTS IN PETITIONER'S PETITION AND PROOF OF SERVICE ARE TRUE AND ACCURATE UNDER PENALTY OF PERJURY (IN CONFORMANCE WITH 28 U.S.C. § 1746).

JAN. 13, 2021

Respectfully Submitted

By: Samuel Quinn

SAMUEL LEE QUINN

APP. J.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

January 28, 2021

By the Court:

No. 19-3335	SAMUEL L. QUINN, Petitioner - Appellant v. GREG MORGENTHALER, Respondent - Appellee
Originating Case Information:	
District Court No: 1:16-cv-06249 Northern District of Illinois, Eastern Division District Judge Sharon Johnson Coleman	

Upon consideration of the **MOTION TO RECALL MANDATE**, filed on January 21, 2021, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED.**

form name: **c7_Order_BTC**(form ID: **178**)

e.g., "Appendix J."

APP. K

1-3

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Samuel Lee Quinn, (N02809),	)	
	)	
Petitioner,	)	
	)	Case No. 16 C 6249
v.	)	
	)	Judge Sharon Johnson Coleman
	)	
Randy Pfister,	)	
	)	
Respondent.	)	

ORDER

Respondent is ordered to answer the habeas corpus petition [1], or otherwise respond by September 7, 2016. Respondent's motion for leave to proceed *in forma pauperis* [3] is granted. The five dollar filing fee is waived. Respondent's motion for attorney representation [4] is denied without prejudice. The Clerk is instructed to alter the docket to reflect that Respondent is Randy Pfister, Warden, Stateville Correctional Center.

STATEMENT

Petitioner Samuel Lee Quinn, a prisoner confined at the Stateville Correctional Center, has brought this *pro se* habeas corpus action pursuant to 28 U.S.C. § 2254 challenging his 2007 aggravated criminal sexual assault conviction from the Circuit Court of Cook County. Pending before the Court are Petitioner's motion for leave to proceed *in forma pauperis* [3], motion for attorney representation [4], and the initial review of the habeas corpus petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. [1].

Petitioner's motion for leave to proceed *in forma pauperis* [3] is granted as Petitioner is impoverished. The five dollar filing fee is waived.

Petitioner's motion for attorney assistance [4] is denied as premature. Counsel is traditionally provided in a habeas corpus proceeding only if an evidentiary hearing is needed or if the interests of justice require. *See* 18 U.S.C. § 3006A(a)(2)(B); *Martel v. Clair*, 132 S. Ct. 1276, 1285 (2012); Rule 8(c), Rules Governing Section 2254 Cases. The Court must first consider Respondent's response to the habeas corpus petition before determining whether counsel is necessary.

Turning to the habeas corpus petition [1], Rule 4 requires this Court to examine the petition and supporting exhibits and dismiss a petition if it "plainly appears" that Petitioner is not entitled to relief. If the petition is not dismissed, then the Court orders Respondent to answer or otherwise respond to the petition. Petitioner alleges insufficient evidence to support the conviction,

knowing use of perjured testimony by the prosecution at trial, ineffective assistance of counsel, and use of perjured testimony before the grand jury. Petitioner has completed his state court proceedings and an affirmative defense is not present on the face of the petition. The Court shall leave it to Respondent to investigate any affirmative defenses he desires. Respondent is ordered to answer or otherwise respond to the habeas corpus petition.

Petitioner is instructed to file all future papers concerning this action with the Clerk of Court in care of the Prisoner Correspondent. In addition, Petitioner must send an exact copy of any filing to Chief, Criminal Appeals Division, Office of the Attorney General, 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. The original paper filed with the Prisoner Correspondent must include a certificate of service stating to whom exact copies were sent and the date of mailing. Any paper that is sent directly to the Judge or otherwise fails to comply with these instructions may be disregarded by the Court or returned to the Petitioner.

Date: June 21, 2016

/s/ Sharon Johnson Coleman
Sharon Johnson Coleman
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.1
Eastern Division

Samuel Lee Quinn

Plaintiff,

v.

Case No.: 1:16–cv–06249
Honorable Sharon Johnson Coleman

Randy Pfister

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, November 25, 2019:

MINUTE entry before the Honorable Sharon Johnson Coleman: Petitioner Samuel Lee Quinn's application for leave to proceed in forma pauperis on appeal [30] is granted. Mailed notice. (ym,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.