No. 21-6017

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
JUL 23 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Charles Louis — PETITIONER
(Your Name)

vs.

Walter Berry, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles Louis, GDC# 1142262
(Your Name)

Baldwin State Prison, P.O. Box 218
(Address)

Hardwick, Ga. 31034
(City, State, Zip Code)

(Phone Number)

Questions Presented

1) Did the majority below err in applying this Court's decision in Schlup v. Delo and Kyles v. Whitley to hold that Petitioner's compelling new evidence, though presenting at the very least a colorable claim of actual innocence, was as a matter of law insufficient to excuse his failure to that evidence before the Georgia Courts -- merely because he failed to negate each and every item of circumstantial evidence that had been offered against him at the original trial?

2) Is there a reasonable probability that, given the cumulative effect of the Brady and Napue/Giglio violations in Mr. Louis' case, the outcome of the trial would have been different?

3) Should this Court grant certiorari, vacate the Court of Appeals opinion, and remand to the Court of Appeals or trial court for consideration of Mr. Louis' argument of,

a) ineffective assistance of trial counsel, appellate counsel and state habeas counsel,

b) conflict of appellant counsel,

c) and abandonment of appellant counsel of record, under Martinez v. Ryan, United States v. Cronic and Maples v. Thomas?

4) Is there a reasonable probability that, given the cumulative effect of prosecutorial misconduct and use of false testimony in Mr. Louis' case, the outcome of the trial would have been different?

5) Did it amount to clear or obvious error, given the cumulative effect of erroneous improper jury charges and instructions and biased trial judge, was Mr. Louis denied due process?

QUESTION(S) PRESENTED

1) Did it violate petitioner's constitutional rights when the court's below Failed to address the merits of petitioner's claims of constitution rights violations and failed to follow stare decisis?

2) Does petitioner have viable actual innocence claims that that amount to constitutional right's violations?

3) Does the attorney of record have to sign the brief in an appeal?

4) Did it amount to constitutional rights violations when the attorney who filed a brief in petitioner's appeal simultaneously in a similarly situated case represents the mother of petitioner's alleged victim?

5) Does petitoner's Brady claims of the prosecution withholding evidence amount to constitutional rights violations?

6) Does petitioner have viable claims of having a biased trial judge that amounts to constitutional rights violations when the judge resigne's under investigation of sexual harressment?

7) Did it violate petitioner's constitutional rights when the prosecution requested a specific trial judge?

8) Did it violate petitioner's constitutional rights when the trial judge was not the assigned judge to petitioner's case?

9) Does the alleged victim being coached as petitioner alleges violate petitioner's constitutional rights?

10) Did the trial judge violate petitioner's constitutional rights by giving improper and erroneous jury charges and instructions as petitioner alleges?

11) Did it violate petitioner's constitutional rights by the prosecution's knowing use of false testimony?

12) Did it violate petitioner's constitutional rights by the perjury testimony from prosecution witnesses?

13) Does petioner's claims of abandonment of his appellant counsel of record amount to constitutional rights violations?

14) Does petitioner's claims of conflict of appellant counsel amount to constitutional rights violations?

15) Does petitioner's claims of ineffective assistance of appellant

counsel amount to constitutional rights violations?

16) Does petitioner's claims of ineffective assistance of trial counsel amount to constitutional rights violations?

17) Did it violate petitioner's constitutional rights by the prosecution's failure to disclose that the investigating officer had adverse disciplinary history?

18) Can the prosecuting investigating officer use an alias name on her applications and affidavits to obtain warrants?

19) Did it violate petitioner's constitutional rights when the prosecution suppressed evidence from the jury material to the question of innocence?

20) Must petitioner's attorney of record file the brief in his appeal or can anyone?

21) Did it violate petitioner's constitutional rights when his appellant attorney failed to consult or confer with petitioner?

22) Did it violate petitioner's constitutional rights when the prosecution failed to disclose to the jury the forensic interview tapes that show the

alleged victim denied the allegations and she was being coached?

23) Did it violate petitioner's constitutional rights when his trial attorney fails to provide petitioner with copy of discovery or any other records?

24) Does it violate petitioner's constitutional rights when his trial attorney fails to investigate?

25) Did it violate petitioner's constitutional rights when his trial attorney presents no defense?

26) Did it violate petitioner's constitutional rights when his trial attorney leaves the responsibility to interview potential witnesses up to petitioner's 17 year old son?

27) Did it violate petitioner's constitutional rights when his trial attorney fails to utilize an expert witness in a sodomy case with no signs of anal penetration?

28) Did it violate petitioner's constitutional rights when his trial attorney fails to utilize an expert witness to show the forensic interviews of the alleged victim was tainted?

29) Does it violate petitioner's constitutional rights when his trial attorney fails to object to erroneous and improper jury charges and instructions?

30) Did it violate petitioner's constitutional rights when the trial judge gave the charges and instructions "you should find and believe beyond a reasonable doubt that this defendant did..."?

31) Does it violate petitioner's constitutional rights that his trial attorney failed to have recorded and transcribed jury voir dire, opening statements, closing arguments, bench conferences and pre trial inst.?

32) Did it violate petitioner's constitutional rights that the trial judge failed to give any charge and instructions to count 4 of the indictment?

33) Did it violate petitioner's constitutional rights when the trial judge gave jury recharge and instructions outside the presence of petitioner?

34) Did it violate petitioner's constitutional rights when the trial judge's instructions and charges ~~tak~~ ok took away the issue of a child victims lack of consent?

35) Did it violate petitioner's constitutional rights by the trial judge's failure to give a charge and instruction to count 1 of not guilty?

36) Did it violate petitioner's constitutional rights when the trial judge gave charge and instructions to sexual battery not charged in the indictment?

37) Did it violate petitioner's constitutional rights when the trial judge gave charge and instructions to aggravated battery not charged in the indictment?

38) Did it violate petitioner's constitutional rights when the trial judge erroneously gave charge and instructions on entire O.C.G.A. § 16-6-4 not as charged in the indictment?

39) Did it violate petitioner's constitutional rights when his appellant attorney did no investigation?

40) Did petitioner receive a fair trial and appeal with all of the above constitutional rights violations?

41) Does any or all of the above entitle petitioner to review and relief?

LIST OF PARTIES

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

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

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Table Of Authorities Cited

Cases:

U.S. v. Dunnigan, 507 U.S. 87, 113 S.Ct. 1111, 122 L.Ed. 2d. 445 (Feb. 23, 1993)
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Freund v. Butterworth, 165 F. 3d. 839, $\boxed{3↑}$ (11th Cir. June 22, 1999)
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U.S. v. Vaquero, 997 F. 2d. 78, 89-91 (5th and 11th Cir. July 26, 1993)
Virgin Islands v. Zepp, 748 F. 2d. 125, 127, 131, 135-137 [** 2], $\boxed{2*}$ (

Chevron Corp. v. Donziger, 2013 U.S. Dist. Ct. Lexis 72232 (may 17, 2013)
4 Walls Las Vagas, Inc. v. Mark Triebwasser, dba Stagel, Inc., et. al., 2013 U.S. Dist. Ct., E. Dist. Cal. Lexis 90145, No. 2:12-cv-2746-KJN (June 26, 2013)
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Tolbert v. State, 298 Ga. 147, 150, N.4, 780 S.E. 2d. 298 (2015)
Washington v. Hopson, 299 Ga. 358, 788 S.E. 2d. 362 (July 5, 2016)
Watson v. The State, 297 Ga. 718, 777 S.E. 2d. 677 (315 Ga. 385) (Sept. 14, 2015)
White v. State, 291 Ga. 7, 8, (2), 727 S.E. 2d. 109 (2012)
Williams v. Moody, 287 Ga. 665, 697 S.E. 2d. 199 (July 5, 2010)

Brown v. State, 277 Ga. App. 396, 626 S.E. 2d. 596 (2006)
Chapman v. State, 217 Ga. App. 264, 457 S.E. 2d. 206 (1995)
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Frady v. State, 245 Ga. App. 832 (2000)
Goldstein v. State, 283 Ga. App. 1, 7-8 (3) (b), 640 S.E. 2d. 599 (2006)
Harris v. The State, 252 Ga. App. 849, 557 S.E. 2d. 452 (2001)
Laster v. State, 340 Ga. App. 96, 99, 796 S.E. 2d. 484 (2017)
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State v. Michaels, 642 A. 2d. 1372 (N.J. 1993)
State v. Spears, 98 P. 3d. 560 (Ariz. Ct. App. 2004)
Williams v. State, 157 Ga. App. 494, 277 S.E. 2d. 781 (1981)

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2 L.Ed. 2d. 1575
3 L.Ed. 2d. 1991

Uniform Rules For Superior Court's Georgia Rule 4.3 (2) and 4.3 (4)

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31 Ga. St. U. L. Rev. 25 (2014)
86 Cornell L. Rev. 33, 34, 47 (2000)

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Appendix J: 04/13/2020 Order granted petitioner's request for ninety-day extention of time to file his response to respondent's motion to dismiss Civil Action File No.3:20-cv-0019-TCB-RGV United States District Court N.D. Georgia.

Appendix K: 01/31/2020 Order granted petitioner leave to proceed in forma pauperis Civil Action File NO. 3:20-cv-0019TCB-RGV United States District Court N.D. Georgia.

Appendix L: 01/29/2020 Order transfered petition to N.D. Georgia United States District Court Middle District of Georgia.

Appendix M: 02/18/2019 Order dismissing petitioner's Motion For Reconsideration Case NO. S16H1277 Supreme Court of Georgia.

Appendix N: 01/07/2019 Order dismissed applicant's appeal Case NO. S16H1277 Supreme Court of Georgia.

Appendix O: 12/18/2015 Habeas Corpus Final Order Civil Action NO. 13-cv-46410 Superior Court of Baldwin County Georgia

Appendix P: 04/17/2007 Order denying appeal Appeal NO. A07A0004, A07A0005 Court of Appeals of Georgia.

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, B, C to the petition and is

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

The opinion of the United States district court appears at Appendix E, F 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 M, N 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 Superior Court of Baldwin County, Georgia, St. Hab. court appears at Appendix O to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was March 30, 2021.

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

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 07/2021, and a copy of the order denying rehearing appears at Appendix A.

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

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

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was ~~Feb.~~ Jan. 07, 2019. A copy of that decision appears at Appendix ~~A~~ N.

[✓] A timely petition for rehearing was thereafter denied on the following date: Feb. 18, 2019, and a copy of the order denying rehearing appears at Appendix M.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Fourth Amendment,

United States Constitution Fifth Amendment,

United States Constitution Sixth Amendment,

United States Constitution Fourteenth Amendment,

U.S.C.S. Supreme Court Rule 9(2),

U.S.C.S. 2254 Rule 6,

18 U.S.C.S. 1621,

Federal Rules of Criminal Proceedure Rule 33,

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United States Court of Appeals for the 11th Circuit Rule 46-11,

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Georgia Court of Appeals Rule 2(a); Rule 9(d)(1) and (2),

Georgia Uniform Rules for Superior Court's Rule 4.3(2) and 4.3(a),

2 L.Ed. 2d 1575 and 3 L.Ed. 1991,

Formal Advisory Opinion 10-1, at 293 Ga 397, 744 S.E. 2d. 798 (2013).

Case No______________

Case Citations of Authority

Abandonment of Counsel:

In, Maples v. Thomas, 565 U.S. 266, 271-272, 283, 286, 132 S.Ct. 912, 924, 181 L.Ed.2d. 807, 808, 816 (Jan. 18, 2012)... for the lawyer he believed to be vigilantly representing him had abandoned the case without leave of Court, without informing Maples they could [816] no longer represent him, and without securing any recorded substitution of counsel. We agree, Abandoned by counsel.... Satisfied that the requisit cause has been shown, we reverse the Eleventh Circuit's judgment. see also, Griffin v. United States, 109 F.3d. 1217, 1219 (7th Cir. 1997); Smith v. Robbins, ante, p. 259, 120 S.Ct. 746, 145 L.Ed.2d. 756 (Jan. 19, 2000); Roe v. Flores-Ortega, 528 U.S. 470, 482, 484, 490, 120 S.Ct. 1029, 145 L.Ed. 2d.985 (2000); Jowers v. State, 260 Ga. 459, 396 S.E. 2d. 891, HN 27 [*462] (Oct. 18, 1990); Penson v. Ohio, 488 U.S. 75, 77-79, 81, 88-89, 109 S.Ct. 346, 102 L.Ed. 2d. 300 (1988).

Attorney of Record:

In, Becker v. Montgomery, A.G. of Ohio, et. al., 532 U.S. 757, 763, 121 S.Ct. 1801, 149 L.Ed. 2d. 983 (May 29, 2001) Rule 11(a)'s first sentence states the signature requirment: "Every pleading, written motion and other paper shall be signed by at least one attorney of record in the attorney's individual name." see also, Russell v. The State, 267 Ga. 865, 868, 485 S.E. 2d. 717, 718 (April 28, 1997); Georgia Court of Appeals Rule

2(a); Rules for The United States Court of Appeals for The Eleventh Circuit Rule 46-11; Federal Rules of Civil Proceedure Rule 26(g)(2) and(3); and Rule 11(a); Georgia Court of Appeals Rule 2(a) subsection (1) and (2).

Withdrawl or Substitution of Counsel:

In, 4 Walls las Vegas, Inc. v. Mark Triebwasser, dba Stage 1, Inc. et. al., 2013 U.S. Dist. Ct. E. Dist. Cal., Lexis 90145, No. 2:12-CV-2746-KJN (June 26, 2013) Order: Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon motion and notice to the client and all other parties who have appeared... . The authority and duty of the attorney of record shall continue until relieved by Order of the Court... . Even in cases where another attorney is proposed to be substituted for the withdrawing attorney, court approval is none the less required. see also, Uniform Rules for the Superior Court's Rule 4.3 (2) and 4.3(a); Georgia Court of Appeals Rules-Rule 9(d)(1) and (2); Capps v. State, 223 Ga. App. 518, 478 S.E. 2d. 390, 392 (1996); U.S.C.S. Supreme Court Rule 9(2); Williams v. State, 157 Ga. App. 494, 277 S.E. 2d. 781 (1981); and In, Chevron Corp. v. Donziger, 2013 U.S. Dist. Ct. Lexis 72232 (May 17, 2013) Opinion: "An attorney who has appeared as attorney of record for a party may be relieved or displaced only by Order of the Court and may not withdrawl from a case without leave of the Court granted by Order.

Duty To Consult:

In, Roe v. Flores-Ortega, 528 U.S. 470, 479-482, 489-490, 120 S. Ct. 1029, 145 L.Ed. 2d. 985, 998, 1003 (2000) However, Counsel does have a Constitutional duty to consult with the defendant about an appeal, when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal or (2)...); see also, Garcia v. United States, 278 F.3d. 134, 137-139 (2nd Cir. 2002).

In, Strickland v. Washington, 466 U.S. 668, 688-689, 104 S.Ct. 2052, 80 L.Ed. 2d. 674 (1963) We explicitly noted that a lawyer has a duty "to consult with the defendant on important decisions". cited from Roe, supra, at 489. and In, Strickland supra, at 688-689 "The decision to appeal is one such decision. see also, Pequero v. United States, 526 U.S. 23, 30-31.

Conflict of Counsel:

In Mickens v. Taylor, 535 U.S. 162, 171-172, 122 S.Ct. 1237, 152 L.Ed. 2d. 291 (March 27, 2002) [171] in the remand instructions directing the trial court to grant a new revocation hearing if it determines that "an actual conflict of intrest existed." Wood, 450 U.S. at 273, without requiring a further determination that the conflict adversely affected counsel's performance -- as opposed to a mere theoretical division of loyalties. It was shorthand for the statement in Sullivan that "a defendant who shows that a conflict of intrest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. see also, Freund v. Butterworth, 165 F.3d. 839, [37] (11th Cir. June 22, 1999) Of course a petitioner would never actually need to prove both. As the majority acknowledges, our rule is that once the petitioner "proves that the subject matters of the present and prior representations are "substantially related," 'the court will irrebuttably presume that relevant confidential information was discovered during the former period of representation.'" see also, Duncan v. Merrill Lynch, Pierce, Fenner + Smith, Inc, 646 F. 2d 1020, 1028, HN13↑ (5th Cir. Unit B, June 1981). see also, Virgin Islands v. Zepp, 748 F. 2d. 125, 127, 131, 135-137, [**2] [2]; Cuyler v. Sullivan, 446 U.S. 335, 344, 348, 100 S.Ct. 1708, 64 L. Ed. 2d. 333 (1980); United States v. Meehan, 741 Fed. Appx. 864, 873 (July 11, 2018, 3rd Cir.); Perillo v. Johnson, 79 F. 3d. 441, 447-449 (5th Cir. 1996); Formal Advisory Opinion, 10-1, 293 Ga. 397, 744 S.E. 2d. 798 (2013); McCorkle v. United States, 325 Fed. Appx. 804 (11th Cir. April 28, 2009), HN1-A; and In, Christeson v. Roper, 574 U.S. 373, 135 S. Ct. 891, 190 L.Ed. 2d. 763 (Jan. 20, 2015), [*379] "Unwaivable ethical and legal conflict prohibit counsel from litigating these issues in any way."

In, United States v. Vaquero, 997 F. 2d. 78, 89-91 (5th and 11th Cir., July 26, 1993) Under the Sixth Amendment, if a defendant has a Constitutional right to counsel, he also has a corresponding right to representation that is free from any conflict of intrest. see also, Holloway v. Arkansas, 435 U.S. 475, 485-486, 98 S.ct. 1173, 55 L.Ed. 2d. 426 (1978); Wood v. Georgia, 450 U.S. 261, 271, 101 S.Ct. 1097, 67 L.Ed. 2d. 220 (March 4, 1981); United States v. Carpenter, 769 F. 2d. 258, 263 (5th Cir. 1985) citing Mitchell v. Maggio, 679 F. 2d. 77, 79 (5th Cir. 1982).

IN, Edwards v. State, 336 Ga. App. 595, 784 S.E. 2d. 924, 926, 929 (March 30, 2016)... counseler would have an actual or a potential conflict of intrest under ethical standards set forth in the Georgia and American Bar Rules of Professional Conduct. In unrelated proceedings, he had previously represented the mother of the alleged molestation victim, ..., and that counsel was concerned he was ethically prohibited from using that information for the benefit of Edwards defense [929] the record showed at least a serious potential for a conflict of interest, which "ethically barred defense counsel from representing Edwards." see also, Burger v. Kemp, 483 U.S. 776, 783, (III), 107 S. Ct. 3114, 97 L. Ed. 2d. 638 (1987); Tolbert v. State, 298 Ga. 147, 150, N. 4, 780 S.E. 2d. 298 (2015); Wood v. Georgia, 450 U.S. 261, 271, 101 S.Ct. 1097, 67 L.Ed. 2d. 220, N. 4 (1981). and IN, United States v. Henry, 307 Fed. App'x. 331, HN 2 (11th Cir. Jan. 13. 2009) When a witness at trial was defended by an attorney representing the defendant against charges related to an identical crime the attorney has an actual conflict of interest. see also, Smith v. Robbins, 528 U.S. 259, 120 S. Ct. 746, 145 L. Ed. 2d. 756 (2000); Williams v. Moody, 287 Ga. 665, 697 S.E. 2d. 199 (July 5, 2010).

IN, Illinois v. Somerville, 410 U.S. 458, 464, 93 S. Ct. 1066, 35 L. Ed. 2d. 425 (1973) (manifest necessity for mistrial where verdict of conviction could be reached but would have to be reversed on appeal due to obvious procedural error). Because a trial under these circumstances would have been inconsistent with the public interest in a fair trial, conducted in accordance with ethical standards, designed to end in a just judgment.

In, Mickens v. Taylor, 535 U.S. 162, 189, 122 S.Ct. 1237, 1253, 152 L.Ed.2d. 291 (March 27, 2002) Dissent Opinion of Justice Stevens, Third, it is the only remedy that is consistent with the legal profession's historic and universal condemnation of the representation of conflicting interests without the full disclosure and consent of all interested parties. [13] The Court's novel and [**1253] naive assumption that a lawyer's divided loyalties [*189] are acceptable unless it can be proved that they actually affected counsel's performance is demeaning to the profession. see also, Mickens, supra, 535 U.S. at 191, Dissent of Justice Souter, [*191] citing Holloway, supra, at 491 and Wood, supra, at 272 N.18. Id at 614 In the one case in which we have devised a remedy for such judicial dereliction, we held that the ensuing judgment of conviction must be reversed and the defendant afforded a new trial... . Three are on point, Holloway v. Arkansas, supra.; Cuyler v. Sullivan, supra.; and Wood v. Georgia, supra.. see also, Mickens, supra, Dissent of Justice Breyer with whom Justice Ginsburg joins, citing United States v. Cronic, 466 U.S. 648, 657-658, 104 S.Ct. 2039, 80 L.Ed.2d. 657 (1984) (explaining the need for categorical approach in the event of "actual breakdown of the adversaril process"). Fulminate, supra., 499 U.S. 279, 310. This appearance, together with the likelihood of prejudice in the typical case, are serious enough to warrant a categorical rule or a rule that does not require proof of prejudice in the... .

Brady:

IN, Milke v. Ryan, 711 F. 3d. 998, 1019 (9th Cir. 2013) The Ninth Circuit concluded the prosecution had failed to turn over all "impeachment evidence" regarding the credibility of Detective Armando Saldate, a crucial witness in Milke's criminal proceedings. cited from Milke v. City of Pheonix, 2020 Lexis 202655 (Oct. 29, 2020) [**58] III. Conclusion: Milke is entitled to habeas relief, ... the district court shall order Milke released unless the state notifies [**59] the petitioner within 30 days that it intends to retry Milke, and actually commences Milke's retrial within 90 days, see also, Milke v. Mroz, 236 Ariz. 276, 239 P. 3d. 656, 668 (Ariz. Ct. of App. 2014) The instances of nondisclosure, and the duration of nondisclosure meant the state had engaged in egregious prosecutorial misconduct, Id. at. 667, see also, Peace/Law Enforcement Code of Conduct, Standards of Conduct, Professional Image.

IN, Brownlow v. Schofield, 277 Ga. 237, 587 S.E. 2d. 647 (2003) (O.C.G.A. 17-6-4) Failure to disclose evidence may require reversal even if cumulative. Prosecutor failed to reveal evidence to defense that the alleged victim had given a non verbal denial of one of the acts charged. see also, Jamison v. Collins, 100 F. Supp. 2d. 647 (U.S. Dist. Ct., S. Dist. Ohio, May 10, 2020) (Outcome); Kyles v. Whitley, 514 U.S. 419, 433-434, 115 S. Ct. 1555, 131 L. Ed. 2d. 490 (April 19, 1995); Wearry v. Cain, 136 S. Ct. 1002, 194 L. Ed. 2d. 78, Lexis 1654 (March 7, 2016) (Reversed); U.S.C.S. 2254 - Rule 6 Discovery; United States v. Agurs, 427 U.S. 97, 107 (1976).

In, D.A's Office v. Osborne, 557 U.S. 52, 61, 174 L.Ed. 2d. 38, 47 (March 2, 2009) The Court of Appeals affirmed, relying on the prosecutorial duty to disclose exculpatory evidence recognized in Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed. 2d. 40 (1987) and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d. 215 (1963). While acknowledging that our precedents "involved only the right to pre-trial disclosure," the Court concluded that the Due Process Clause also "extends the goverment's duty to disclose (or the defendant's right of access) to post conviction proceedings," 521 F.3d. at, 1128. Although Osborne's trial and appeals were over, the Court noted that he had a "potentially viable" state constitutional [2009 Lexis 16] claim of "actual innocence," Id., at, 1130, and relied on the "well-established assumption" that a similar claim arose under the Federal Constitution, id, at, 1131; cf. Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed. 2d. 203 (1993). The Court held that ~~these~~ one these potential claims extended some of the State's Brady obligations to the postconviction contex. (Rendered the trial fundamentally unfair) (Structural Error).

Ineffective Assistance of Trial and Appellant Counsel's:

In, Holsomback v. White, 133 F. 3d. 1382 (11th Cir., Jan. 26, 1998) The failure of a sodomy defendant's trial counsel to interview a physician regarding the significance of the lack of medical evidence of sodomy constituted ineffective assistance of counsel and warranted a writ of habeas corpus. and In, Darst v. The State, 323 Ga. App. 614 (July 16, 2013),

[17] Ga. (2)↑ [*624] Under these circumstances, we conclude that Ga.(2) trial counsel's failure to enlist the services of an expert witness constituted deficient performance. see also, Goldstein v. State, 283 Ga. App. 1, 7-8 (3)(b), 640 S.E.2d. 599 (2006); White v. State, 291 Ga. 7, 8 (2), 727 S.E. 2d. 109 (2012); McCoy v. Louisiana, 138 S.Ct. 1500, 200 L.Ed. 2d. 821, [2] (May 14, 2018); Roe v. Flores-Ortega, 528 U.S. 470 (Feb. 23, 2000) citing Strickland v. Washington, 466 U.S. at 689-690 and Cuyler v. Sullivan, 446 U.S. at. 344. see also, Towers v. State, 260 Ga. 459, 396 S.E.2d. 891 (1990).

In, Darst v. The State, 323 Ga.App. 614, 746 S.E. 2d. 865 (July 16, 2013) Judgment Reversed: Overview: Defendant contended that his trial counsel provided ineffective assistance by failing to obtain certain records concerning the victim, to present expert testimony, and to object to certain testimony. The appellate court agreed,... Similarly, the expert's opinion that the childern's behavior around defendant was inconsistent with their reports that he molested them was almost entirely dependent on the expert's review of the records at issue. Further, a second expert's opinion about the many factors that may have improperly influenced the children's memories and in her opinion, reduce reliability of the forensic interview statements and trial testimony supported defendant's contention that the children's allegations were not credible (fabracated). Thus, defendant met his burden of demonstrating that, absent counsel's errors, there was a reasonable probability that the outcome would have been different. [*42] ("[W]ith rare exceptions, where a defendant was deprived of effective assistance of counsel[,] but the evidence was nevertheless sufficient to convict, the proper remedy is to reverse [the] defendant's conviction and remand the [*42] matter for a new trial."). see also, Green v. State, 291 Ga. 287, 288-289(1), 728 S.E. 2d. 668(2012).citing United States v. Cronic, 466 U.S. 648 (1984) and Cuyler v. Sullivan, 446 U.S. at 344.

In Evitts v. Lucey, 496 U.S. 387, 395, 397, 105 S.Ct. 830, 83 L.Ed. 2d. 821 (Jan. 21, 1985) [*395] As we have made clear, HN8 the guarantee of counsel "cannot be satisfied by mere formal appointment," Avery v. Alabama, 308 U.S. 444, 446 (1940). "That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. at 658; see also, Mc Mann v. Richardson, 397 U.S. 759, 771, N.14 (1970) ("It has long been recognized that the right to counsel is the right to effective assistance of counsel"). ; Cuyler v. Sullivan, 446 U.S. at, 344. Last term, we emphasized this point while clarifying the standards to be used in assessing claims that trial counsel failed to provide effective representation. see United States v. Cronic, 466 U.S. 648 (1984); and Strickland v. Washington, 466 U.S. at [**836] supra. HN9 Because the right to counsel is so fundamental to a fair trial, the Constitution [****19] cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits. see also Smith v. Robbins, 528 U.S. 259, 269 (Jan. 19, 2000).

In, Tate v. Howerton, 290 Ga. 636 (Feb. 27, 2012)*8. Judgment vacated and case remanded with discrection. (290 Ga. 636) Opinion: The record show's and the state concedes that Tate raised claims of ineffective assistance of counsel based on counsel's.... The habeas Court, however, failed to address these claims in it's order denying relief. Accordinaly, the Order of the habeas court is hereby vacated and the case [290 Ga. 637] remanded for the habeas court to consider these claims. The habeas court may conduct another hearing and shall issue an order including findings of fact and conclusion of law upon which it's decision is based. The habeas court is also directed to include the requirments for appealing it's order. see also. Capote v. Ray, 276 Ga. 1, 2, 577 S.E. 2d. 755 (2002); Francis v. Spraggins, 720 F. 2d. 1190 (11th Cir., 1983); cert. denied, 470 U.S. 1059, 105 S.Ct. 1776, 84 L.Ed. 2d. 835 (1985); Silva v. Woodford, 279 F. 3d. 825 (9th Cir., 2002); Holmes v. South Carolinia, 126 S.Ct. 7272, 164 L.Ed. 2d. 503 (2006).

<u>Improper + Erroneous Jury Charge and Instructions:</u>

In, Woods v. State, 244 Ga. App. 359, 535 S.E. 2d. 524 (2000) Is error to charge jury crime may be committed by either of two methods when indictment charges one specific method. see also, Dukes v. State, 272 Ga. 845, 537 S.E. 2d. 556 (1995); Garceau v. Woodford, 275 F. 3d. 769

(9th Cir., 2001); Cage v. Louisiana, 498 U.S. 39 (1990). and In, Skillern v. State, 240 Ga. App. 34, 521 S.E. 2d. 844 (1999) Without a limited instruction directing jury to consider only manner charged in indictment reversal is required when the trial court erroneously gave the charge and instructions on the entire O.C.G.A. 16-6-4. Due process requires trial court's jury charge and instructions to correspond to language of indictment. see also, Cockerham v. Cain, 283 F. 3d. 657 (5th Cir., 2002); James v. Kentucky, 466 U.S. 341, 104 S.Ct. 1830, 80 L.Ed. 2d. 346 (1984); Sullivan v. Louisiana, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed. 2d. 182 (1983) State statute did not take precedent over constitutional law and judge had to give requested charge and instructions.

In, Duncan v. State, 342 Ga. App. 530, 541, (6), 804 S.E. 2d. 156 (2017) (reversing conviction when an instruction "effectively relieved the state of it's burden to prove [consent] as an essential element of the crime" of aggravated sexual battery and therefore was not harmless. see also, Laster v. State, 340 Ga. App. 96, 99, 796 S.E. 2d. 484 (2017) citing Johnson v. State, 283 Ga. 59, 61, 230 S.E. 2d. 869 (1976); see also, Madison v. State, 329 Ga. App. 856, 866-867 (Nov. 20, 2014); Harris v. State, 273 Ga. 608, 610, (2), 543 S.E. 2d. 716 (2001); Croft v. State, 2018 Ga. App. Lexis 598 (Oct. 23, 2018); Watson v. State, 297 Ga. 718, 720-721, 777 S.E. 2d. 677 (2015) which held that O.C.G.A. 16-6-22.1 (d), the sexual battery statute, "requires actual proof of the victim's lack of consent, 'regardless of the victim's age,'" and overruled cases including Haynes v. Engle.

..., that portion of the charge nonetheless amounted to "clear or obvious error" under the second prong of the plain error test.

In, Paul v. State, 272 Ga. 845, 537 S.E. 2d. 58 (2000) It is improper for judge to express or suggest his opinion. see also, Chapman v. State, 217 Ga. App. 264, 457 S.E. 2d. 206 (1995); Snowden v. Singletary, 135 F.3d. 732 (11th Cir., 1998); Brown v. State, 277 Ga. App. 396, 626 S.E. 2d. 596 (2006) and Harris v. The State, 252 Ga. App. 849, 557 S.E. 2d. 452 (2001) Charging the jury they could consider [witness] credibility in sofar as it may ligitimately appear is error.

Actual Innocence:

In, Murray v. Carrier, 477 U.S. 478, 496, [9], 106 S.Ct. 2639, 91 L.Ed.2d. 397 (1986) However, as we noted in Engle, "in approoriate cases" the principles of comity and finality that inform the concepts of cause and prejudice "must yield to the imperative of correcting a fundamentally unjust incarceration." 456 U.S, at 135, 71 L. Ed. 2d. 783, 102 S. Ct. 1558. We remain confident that, for the most part, "victims of a fundamental miscarriage of justice will meet the [477 U.S., 496] cause and prejudice standard." ... Accordingly, we think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court my grant the writ even in the absence of a showing of cause for the procedural default. see also, Schlup v. Delo, 513 U.S. 298, 115 S.ct. 851, 130 L.Ed. 2d. 808, 811 (1995); Brown v. Sec. Fla. Dept. of Corr., 580 Fed. App'x 721, 727, HN6 (11th Cir., Sept. 8, 2014).

Perjury/False Testimony:

IN, Dean v. Williams, Lexis 161075 (11th Cir., Nov. 21, 2016) (i) Background: (ii) Petitioner's due process rights have been violated because his conviction relies on perjured testimony. The trial court's decision to deny Petitioner a new trial because the victim has not been convicted of violate Petitioner's due process rights because the judiciary of authority failed to grant relief. id. at. 13-14. see also, Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed. 2d. 1217 (1959); McMillian v. Johnson, 878 F. Supp. 1473 (11th Cir., M.D. Ala., 1995); Childers v. Floyd, 608 F. 3d. 776 (11th Cir., 2010).

IN, 3 L.Ed. 2d. 1991 - Due Process - Perjured testimony: See Also - Fed. R. Crim. Pro. Rule 33; [a] Introduction; general rule: This annotation supplements the one in 2 L.Ed. 2d. 1575, and is identical in scope therewith. The rule states in the original annotation - that the due process of law which is protected from state and federal infringment by the Fourteenth and Fifth Amendment's respectively, is denied by conviction of crime following a trial in which perjury testimony on a material point was knowingly used against the accused, at least where it appears that the accused suffered prejudice by virtue of the use of such testimony, finds support, express or implied, in each of the cases discussed herein. see also, Giglio v. United States, 450 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d. 104 ( ); Davis v. Singletary, 853 F. Supp. 1492 (11th Cir., M.D. Fla., 1994); United States v. Silveira, 297 F. Supp. 2d. 349 (Nov. 19, 2003).

IN, Robinson v. Arvonio, 513 U.S. 1186, 115 S.Ct. 1247, 131 L.Ed. 2d. 129

(1995) Accused attorney did not waive right to complain, about prosecutor's error in failing to correct perjured testimony of prosecution witnesses by failing to call error to attention of court. and In, Washington v. Hopson, 299 Ga. 358, 788 S.E. 2d. 362 (July 5, 2016) Judgment Reversed: Case summary: prosecutor allowed the victim to testify despite knowing that she was lying, ...

In, United States v. Dunnigan, 507 U.S. 87, 113 S.Ct. 1111, 122 L.Ed. 2d. 445 (Feb. 23, 1993) and 18 U.S.C.S. § 1621, Perjury generally - Whoever (2) in any declaration, certificate, verification, or statement under penalty of periury as permitted under section 1746 of title 28 U.S.C., willfully subscribes as true any material matter which he does not believe to be true: is guilty of perjury... see also Frady v. State, 245 Ga App. 832 (2000).

In, Vol. 2 Chapter 17: 17.08 [2]
Witness use of alias. In many instances, witnesses who testify in criminal trials will at some time in there past have used names different from their own...., it may be significant insofar as it amounts to a misrepresentation by the witness as to information concerning himself. This rule applies in all cases where a false name is given, regardless of whether the name is a fictitious one or a real one adopted without permission.
Old
~~Bar~~ Forensic Interview Techniques Tainted:

In, Michaels v. McGrath, 531 U.S. 1118, 1119, 121 S.Ct. 873, 148 L.Ed. 2d. 780, 781 (Jan. 16, 2001) Reversed because "investigative techniques were improper." As the Court noted, even respondents apparently realized that their interrogation techniques "cause certain children to use their imaginations and stray from reality" [781][2-3]. see also, State v. Michaels, 642 A. 2d. 1372 (N.J. 1993); State v. Spears, 98 P. 3d. 560 (Ariz. Ct. App. 2004) (highly suggestive interrogation techniques can distort child witnesses' recollection of events). Michaels, supra, (highly suggestive and improper questioning of three-year old required retrial and full hearing into questioning techniques. see also, 31 Ga. St. U. L. Rev. 25 (2014), "an illegal and unlawful custom and policy directly related to the interview of alleged child victims in any case of child deprivation. Enacted S.B. (Senate Bill) 365 April 13, 2014 and H.B. (House Bill) 2014 H.B. 479 Act 105 abruptly eliminated abruptly eliminated all 159 county protocol committes in the State of Georgia and subsequent Legislation changed the landscape of child abuse investigations 2013 S.B. 365 at p. 34 sec. 2-4. see also, Barlow v. State, 270 Ga. 54 (Sept. 14, 1998) Reversed because "trial court errored when it refused to permit defendant to introduce expert evidence concerning the techniques used by a police detective in a videotaped interview of the alleged victim." Allowing a non offending caretaker to be present for the interview of a child victim the interview technique was flawed and highly suggestive and coercive. see also, Kennedy v. Louisiana, 554 U.S. 407, 444, 445 (June 25, 2008) and 86 Cornell L. Rev. 33, 34, ~~??~~ 47 (2000), Ceci + Friedman, The Suggestibility of Children: Scientific Research and Legal Implications, (there is "strong evidence that children especially young children, are suggestible to a significant degree -- even on abuse-related questions.")

Invalid Illegal Sentence:

In, State v. Allmond, 225 Ga. App. 509 (1997) The Georgia Court of Appeals held, notwithstanding the sentence Reform Act of 1994, 'that the provisions of the first Offender Act would be still available to the sentencing court,' which would mean that a person who committed a serious violent felony could be sentenced to less than the minimum mandatory ten-year sentence with probation. see also, Watson v. The State, 297 Ga. 718, 777 S.E. 2d. 677 (315 Ga. 385) (sept. 14, 2015); and In, Mullins v. State, 134 Ga. App. 234 (1), 244, 214 S.E. 2d. 1 (1975) In addressing the matter of invalid sentence, the same court held that "a sentence which is not authorized by law is a nullity." ; and In, Mouldin v. State, 139 Ga. App. 13, 227 S.E. 2d. 862 (1976) In the case at bar, moreover the trial court errored in sentencing. (Thus, the trial judge abused his discretion in sentencing defendant to the maximum sentence); and In, The State v. Riggs, 799 S.E. 2d. 770 (May 1, 2017) Under O.C.G.A. 17-16-6.2 (b) Holdings: A defendant convicted of a sexual offense must receive a split sentence that is, a sentence that includes a mandatory minimum term of imprisonment followed by an additional probated sentence of at least one year.

Trial Errors:

In, Smith v. Robbins, 528 U.S. 259, 269 (Jan. 19, 2000)... The District Court ordered California to grant respondent a new appeal within 30 days or else release him from custody. 4k The Court did not decide whether a District Court's award of relief was proper because counsel had failed to brief the two arguable issues that the district court identified. The Ninth Circuit remanded, however, for the District Court to consider respondent's 11 claims of trial error. 152 F.3d. at. 1069. The Court reasoned that if Robbins prevailed on any [23] of these claims, it would be unnecessary to order the California Court of Appeals to grant a new direct appeal. We granted certiorari. 526 U.S. 1003 (1999).

In, Gunn v. Newsome, 881 F.2d. 949 (11th Cir., Aug. 7, 1989) Outcome: The Court affirmed the district court's and panel's decisions granting appellee petitioner's writ of habeas corpus, unless the state retried him within 120 days. The jury instruction had unconstitutionally shifted the state's burden, and the error was not harmless. see also, Knox v. Collins, 999 F. 2d. 824 (5th Cir., 1993); 928 F. 2d. 657.

In, Stroup v. Purden, 104 Ga. 721, 30 S.E. 948 (1898) (habeas corpus is proper for remedy of person convicted in court presided over by usurper). see also State Post Conviction Remedies & Relief Vol. 1 - 2013 - 2014 - 13:40 Georgia Habeas Corpus Act Under Georgia Code 9-14-1 (c); 9-14-40 to 9-14-53 Grounds for Review of convictions and sentences - Unauthorized judge presided over the proceedings. (5) An usurper or an unauthorized judge presided over the proceedings in the convicting court in which the petitioner was convicted.; see also Black's Law Dictionary - Usuper, N. - one who seizes power or property without right; as the usurper of a throne.; V., said of seizures of power, position, rights, functions, etc..

Facts

Statement of Case

1) The Court's below failed to follow their own precedent and precedent established by the United States Supreme Court on petitioner's United States Constitution Rights, Fourth, Fifth, Sixth, and Fourteenth Amendment's violations and the Court's below failed to address the merits of petitioner's United States Constitution Rights claims and petitioner's motion for reconsideration to the Georgia Supreme Court was not late as suggested not by the prison mail box rule.

2) a) Ms. Tamara Jacobs was appointed by the Griffin Judicial Public Defender's Office to handle petitioner's appeal. July 13, 2006.

b) Letter to petitioner October 23, 2006 from The Court of Appeals of Georgia Office of The Clerk stating in part "Until such time as Ms. Tamara Jacobs files a motion for Permission to ~~withdraw~~ Withdraw as your Counsel in this Court, and until such time as this Court grants that motion, Ms. Jacobs shall be deemed your counsel of record." No motion for permission to withdraw was filed or granted in petitioner's appeal for Ms. Jacobs. see Attachment 1.

c) Court of Appeals of Georgia case number A07A0005 Appeal Summary Page showing - Attorney Register: Attorney for Appellant: "Ms. Tamara Jacobs of Lindsey + Jacobs". It does not show no other attorney to substitute for or replace Ms. Jacobs as petitioner's attorney for petitioner's appeal. see Attachment 2.

d) Motion for Continuance Filed September 5, 2006 in the Court of Appeals of Georgia by petitioner's appellant counsel Ms. Tamara Jacobs stating in part # "7. The undersigned needs to review the transcript and confer with appellant prior to submitting a brief on appeal." and # "8. It would violate Appellant's State and Federal due process rights, as well as his right to adequate counsel, for the undersigned to draft an appeal without proper research and investigation." No Attorney nor anyone else confer or consult with petioner about his appeal prior to submitting a brief on appeal. see Attachment 5.

e) Ms. Tamara Jacobs remained petitioner's only attorney of record in petitioner's appeal in The Court of Appeals of Georgia. see Attachment's 1, 2.

f) The only attorney of record in petitioner's appeal Ms. Tamara Jacobs never Filed the brief in petitioner's appeal. see Attachment 1, 2.

g) Ms. Tamara Jacobs never consulted or confered with petitioner about his appeal nor did anyone else.

h) Ms. Tamara Jacobs never filed a motion to withdraw nor a motion to substitute counsel in petitioner's appeal nor did anyone else.

i) Petitioner had no reason to believe that Ms. Jacobs was no longer representing petitioner on his appeal for the lawyer Ms. Jacobs petitioner believed to be vigilantly representing him had abandoned the appeal without leave of court. see Attachment's 1, 2, 5.

3) a) Attorney Joseph Saia is not petitioner's attorney or attorney of of record in petitioner's appeal. see Attachment's 1,2,5.

b) No motion for substitution of counsel of Ms. Tamara Jacobs was was filed nor served on petitioner. see Attachment's 1,2,5.

c) Attorney Joseph Saia never consulted or confered with petitioner regarding petitioner's appeal or anything.

d) Petitioner never had reason to believe that Joseph Saia was petitioner's appellant attorney and made no attempt to have any type of attorney client relationship with petitioner. see Attachment's 1, 2, 5.

e) Attorney Joseph Saia had a non waiveable actual impermissible conflict in that in a substantially related simularly situated case while petitioner's appeal was pending prior to a brief being filed Saia represented Teresa Denise Louis the outcry and material witness in petitioner's criminal trial from which petitioner appealed. see Attachment 3.

f) Teresa Denise Louis is also the mother of petitioner's alleged victim C.P.. see Attachment 3

g) Petitioner's alleged victim C.P. is also a victim in that case where Saia represented her mother Teresa Denise Louis. see Attachment 3

h) Petitioner Charles Louis is also a party to that case in which Saia represent's the mother Teresa Denise Louis, the outcry and material witness for the prosecution in petitioner's criminal trial from which he appealed, of petitioner's alleged victim C.P.. see Attachment 3.

i) Because of Saia's conflict Saia was precluded from raising the grounds of perjury/false testimony of Teresa Denise Louis and C.P. the grounds of Brady violations the grounds of actual innocence and the grounds of innneffective assistance of trial counsel John A. Beall, IV.

j) Because of Saia's conflict Saia was precluded from raising the grounds ~~made~~ are that Teresa Denise Louis made the false allegations and planted the idea in her daughter C.P.'s, petitioner's alleged victim, mind to keep petitioner from getting custody of their two son's J.L and D.L. in the depravation case that was pending in which Saia represented the mother Teresa Denise Louis of petitioner's alleged victim C.P. and petitioner also was a party to that case.

k) Due to Saia's conflict no other atterney within the Griffin Judicial Circuit Public Defender's office was allowed to represent the petitioner in his appeal. see Attachment 1, 2, 3, 5.

4) a) The prosecution in petitioner's criminal trial failed to turn all impeachment evidence regarding the credibility of investigating Officer Ivory Renee (James) McCollum that will show she made false accusations against others and McCollum's mendacity and disregard for constitutional rights and had adverse disciplinary history from on or about 05/26/2000 through on or about 07/02/2003. see Attachment 17.

b) The prosecution in petitioner's criminal trial failed to turn over/disclose to the defendant that it's witness prosecuting Officer Ivory Renee (James) McCollum used the alias names of Renee James when she submitted her applications and affidavits to obtain warrants and on the warrants for petitioner's arrest and used the alias name of Renee McCollum when she testified at petitioner's criminal trial in order to conceal her true legal name/identity to conceal from the defense that she had adverse disciplinary history from on or about 05/26/2000 through on or about 07/02/2003, see Attachment's 17, 18.

c) The prosecution failed to provide the 3 forensic interview tapes of petitioner's alleged victim C.P. to petitioner's trial attorney John A. Beall, IV and to petitioner's appellant attorney Ms. Tamara Jacobs which obstructed petitioner by state officials from pursuing errors and tainted forensic interviews of his alleged victim C.P. at trial and on appeal and during habeas corpus proceedings to show C.P. was being coached by her mother Teresa Denise Louis who was present during the forensic interviews and the mother was the ~~prosecut~~ prosecutions outcry and material witness in petitioner's criminal trial. see Attachment 16. Petitioner was able to obtain 1 (one) forensic interview of the 3 on 04/15/2021.

d) The prosecution failed to disclose and suppressed evidence from the jury in petitioner's criminal trial evidence material to the question of guilt and innocence the medical exam reports of petitioner's alleged victim C.P. that show "the detective states that Charlē denies penil-anal penetration" an element of all of petitioner's charges and exam was normal, showing no signs of anal penetration or vaginal penetration. see Attachment's 4 Exhibit's D, H, I, J, K.

e) The prosecution failed to disclose and suppressed evidence from the jury that will show that the Mother Teresa Denise Louis of petitioner's alleged victim C.P. and outcry material witness for the prosecution in petitioner's criminal trial that Miss Louis falsely accused petitioner of the same alegations/acts against petitioner's son J. L. who denied those alegations. see Attachment's 4.

5) Petitioner's trial attorney rendered ineffective assistance when:

a) Petitioner had requested from his trial attorney John A. Beall, IV a copy of discovery and everything that was filed in petitioner's case prior to trial and after trial. Beall refused to provide petitioner with a copy of discovery or anything else pertaining to petitioner's case. When petitioner's Mother Ms. Joan Henley reminded Beall prior to trial that petitioner needs a copy of discovery and everything else filed in petitioner's case. Beall's response was he doesn't need that that's irrelevant. After several years of Beall refusing to give petitioner any records petitioner filed a grievance with the State Bar of Georgia and in Beall's response he claimed he retained those records because he was pre and post trial representation. After several months of correspondence between the State Bar and petitioner the State Bar told Beall he will give petitioner his file. This is when petitioner first discovered that Beall and the prosecution withheld from the jury and from petitioner the initial medical exam report's of the alleged victim C.P.

that shows "the detective state's Charlé denied penil-anal penetration" one of the main element's in all of petitioner's charges in this case and and her exam was normal showing no signs of anal penetration. Petitioner also then discovered that his trial attorney John A. Beall, IV and his appellant attorney's Darrell Reynolds and Ms. Tamara Jacobs did not have the 3 forensic interview tapes of the alleged victim C. P.'s forensic interviews or the prosecuting investigator Ivory Renee (James) McCollum's personel file or P.O.S.T. records that show's she had adversed displinary history made false accusations against others and her mendacity and disregard for constitutional rights from on or about 05/26/2000 through on or about 07/02/2003. Also the fact that she used alias names of Renee James and Renee McCollum to hide her true legal name, her first name Ivory, to hide the fact that she had adverse displinary history. The 3 forensic interview tapes will show petitioner's alleged victim C.P. being coached. see Attachment's 18, 17, 16, 4 Exhibit's D, H, I, J, K.

b) Petitioner's trial attorney John A. Beall, IV never investigated petitioner's case and never interviewed any witnesses other than 2 rebuttal witnesses. Beall left the investigation and responsibility to interview potential witnesses up to petitioner's 17 year old son Christopher Louis and Beall admitted to this fact in his response to petitioner's State Bar Grievance.

c) Petitioner's trial attorney John A. Beall, IV failed to utilize an expert witness for the fact that there was no sign of anal penetration when the main element of all of petitioner's counts/charges was the allegations of penil anal penetration and the absence of facts that are prerequisite for the sentences given to petitioner.

d) Petitioner's trial attorney John A. Beall, IV and petitioner's appellant attorney's Darrell B. Reynolds and Ms. Tamara Jacobs failed to obtain the alleged vitim C.P.'s pediatrician's records, psychiatric records to show how she manipulates and lies, her school disciplinary records to show how she would lie on the teacher's and others and student's to get them into trouble.

e) Petitioner's trial attorney Beall failed to enlist and utilize an expert to show the forensic interview's were tainted and that the alleged victim C.P. was being coached. see Attachment 16.

f) Petitioner's trial attorney Beall failed to have the jury voir dire, opening statements, closing arguments, bench conferences, and pretrial instructions to rebutal witnesses Ms. Joan Henley and Ms. Evelyn Vercher recorded and transcribed to allow petitioner due process and equal protection to be able to challenge and raise trial court errors and the instructions to petitioner's two rebutal witnesses that they could not elaborate on anything and could only answer yes or no when testifying. Beall also failed to have recorded and transcribed the jury recharge and instructions and failed to object when petitioner was not present in the court room because he had been taken back to the jail for lunch. There is no waiver consented to by petitioner not to be present. see T.T. p. 159 line 2-13 and p. 160 line 20-22. see Attachment 19.

g) Petitioner's trial attorney Beall failed to object to erroneous and improper jury charge's and instruction's when 1) the trial court's instruction's and charge's erroneously took away the issue of a child victim's lack of consent from the jury. see T.T. p. 180-197. 2) the trial erroneously gave the charge and instructions on the entire O.C.G.A. 16-6-4. see T.T. p. 190 line 8-17. 3) the trial court gave the charge's and instruction's that "you should find and believe beyond a reasonable doubt that this defendant did...". The jury most likely believed they should find and believe defendant guilty. see T.T. p. 192 line 7-8, p. 182 line 5, p. 180-197 to all counts. 4) failed to give a charge to count 4. see T.T. p 180 and 181. 5) the trial court failed give a charge and instructions to not guilty on count 1 only gave charge if you believe he's guilty... you write guilty. see T.T. p. 193 and 194. 6) the trial court gave improper charge of sexual battery not charged in the indictment. see T.T. p. 190 line 24-25 and p. 191 line 1-21. 7) the trial court gave improper charge of aggravated battery not charged in the indictment. see T.T. p. 191 line 13-21. Petitioner's trial attorney allowed the trial court to violate petitioner's constitution rights as he also did.

h) Petitioner had a biased judge because his trial Judge Johnnie to resign under investigation of sexual harrassment. see Attachment's 8, 9.

Petitioner's trial Judge Johnnie L. Caldwell admitted to the allegations of sexual harrassment in a television interview which caused his abrupt resignation while being investigated by the Judicial Qualification's Commission. see Attachment 9 Exhibit 12.

6) a) The Fayette County District Attorney's Office requested the Fayette County Superior Court Clerk's Office (trial court clerk) to place the petitioner's case on Judge Caldwell's callender. Petitioner's case was assigned by Order to Judge Christopher Edwards and there is no order changing the assigned judge from Judge Christopher Edwards in petitioner's case. The District Attorney's Office and the Clerk knew or should have known you are not allowed to select the judge you want to hear the case.

b) Petitioner was denied his right to speedy trial when he had written his attorney twice and requested his attorney make a demand for a speedy trial and his attorney failed to. There is no written waiver.

c) The main element in all of the petitioner's charges is penil anal penetration and the alleged victim testified "he put his penis inside my anus every time" "that's all he did every time". see J.T. p 73 Line 8, 16-18 + p 74 + 81. The medical reports of the alleged victim C.P. shows no sign's of anal penetration and in those report's "the detective states Charlé denied penil anal penetration". see Attachment's 4 Exhibits. C.P. never testified the petitioner touched her or rubbed his penis on her anywhere and she denied this in the one forensic interview that petitioner was not able to obtain until April 15, 2021. Although petitioner was charged indicted and convicted of child molestation by rubbing his penis on the alleged victim C.P. and enticing a child for indecent purposes to commit the act of child molestation the alleged victim C.P. never testified to the petitioner rubbing his penis anywhere on her or touching her anywhere. The alleged victim C.P. denied this in the one forensic interview that petitioner was able to obtain April 15, 2021 which also show's C.P. being coached. see Attachment 16; 4 with Exhibits D, H, I, J, K.

7) Petitioner' appellant attorney failed to investigate obtain and raise any of the above in 1) through 7) thereby violating the petitioner's Constitution Rights which prejudiced the petitioner.

REASONS FOR GRANTING THE PETITION

To deprive petitioner of his only effective remedy would not only be contrary to the rudimentary demands of justice but destructive of a constitutional guaranty specifically designed to prevent injustice to a petitioner who has shown that he is actually innocent of the alleged crimes charged.

The United States Court of Appeals for the 11th Circuit has entered a decision of important federal question's in petitioner's case that is in conflict with the decisions of other appellate courts and the 11th Circuit's precedence and revelant decisions of The Supreme Court of The United States, as set forth in petitioner's Case Citation of Authority page through , and has so far departed from the accepted and usual course of judicial proceedings for failing to address the merits of this petitioner's Constitution Rights violation's claims.

Not only did the court below fail to address the merits of the petitioner's claims of Constitution Rights violations it is of such national importance of having The Supreme Court of The United States decide the questions of the magnitude of Constitution Rights violations in this petitioner's case not only for this petitioner but for others who are or may become similarly situated as to call for an exercise of The Supreme Court's supervisory powers.

The one forensic interview recording of the alleged victim C.P. will show that she denied petitioner had rubbed his penis on or against her, petitioner's charges in his indictment count's 1 and 2, and will show C.P. was being coached. The medical exam reports will show "the detective states Charlé denied penil anal penetration" and her exam was normal showing no signs of anal penetration petitioner's charges to count's 3, 4, 5 and 6 of his indictment. Petitioner was not able to receive a copy of the forensic interview until April 15, 2021, Petitioner request his case be sent back to the trial court for further determination of actual innocence.
see Attachments 16; 4 with Exhibits D, H ; 15 and

CONCLUSION

The petitioner prays that the Justice's of this Honorable Court review the petitioner's claims of Constitution Rights violations and actual innocence and The petition for a writ of certiorari should be granted.

Respectfully submitted,

[signature]

Date: ______________

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