

No. 21-6017

In The
Supreme Court of The United States

Charles Louis - Petitioner

vs.

Walter Berry, Warden - Respondent

Motion For leave To File the Petition For Rehearing
Out of Time

United States Court of Appeals For The Eleventh Circuit
(Name of Court That Last Ruled On The Merits of Petitioner's Case)
From Petition For Writ of Certiorari

Pro Se Petitioner: Charles Louis

GDC# 1142262

Baldwin State Prison

P.O. Box 218

Hardwick, Ga. 31034

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Questions Presented

Does a petitioner's showing of actual innocence of the crimes he was charged with in an indictment allow this Court to grant his Motion For Leave To File the Petition For Rehearing Out of Time?

When a petitioner's showing of cause to not being able to not file a timely Petition For Rehearing due to circumstances beyond his control allow this Court to grant his Motion For Leave To File the Petition For Rehearing Out of Time?

Facts Presented

Petitioner shows why this Court should grant his Motion For Leave To File The Petition For Rehearing Out of Time. due to reasons beyond his control.

Petitioner was hospitalized in Baldwin County Hospital on January 20, 2022 due to him having Covid and was transferred from the hospital January ²²25, 2022 to Augusta State Medical Prison in Augusta Georgia by ambulance due to petitioner still being on Oxygen for further medical treatment. see Petitioner's Sworn Affidavit attached 3

Petitioner did not return to Baldwin State Prison until March 10, 2022 and was not given his legal mail, January ^{at}18, 2022, letter from this Court until March 15, 2022 by prison mail room Officer. see Attachment 1.

Petitioner responded to this Court's January 18, 2022 letter on March 22, 2022 within the allotted 15 days to respond from date he received this Court's letter on March 15, 2022 by placing same in his prison Mail Box on March 22, 2022 in an envelope addressed to Supreme Court of The United States and a copy to counsel for respondent see Attachment 2.

Conclusion

Petitioner believes he has established cause for the late filing and it should be excused due to matter's beyond his control.

Petitioner prays this Honorable Court grant his Motion For Leave To File the Petition For Rehearing Out Of Time.

This Honorable Court should grant petitioner's Writ of Certiorari due to Brady violations, Prosecutorial Misconduct, 6th and 14th Amendment violations of the United States Constitution and his showing of his actual innocence.

Respectfully submitted this 12th day of May 2022.

Charles J. Louis

Pro Se Petitioner: Charles J. Louis, CJL

GDC# 1142262

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PETITION FOR A REHEARING

United States Court of Appeals For The Eleventh Circuit
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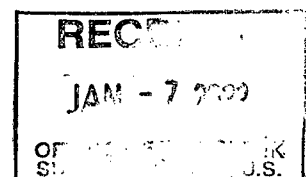
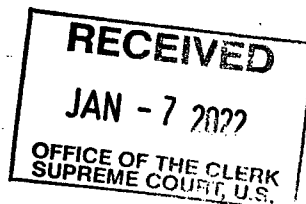
PETITION FOR A REHEARING of
PETITION FOR WRIT OF CERTIORARI

Charles Louis, GDC# 1142262

Baldwin State Prison

P.O. Box 218

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QUESTIONS PRESENTED

- 1) Would it be an injustice should Petitioner be incarcerated for the remainder of his life when Petitioner has made showings of actual innocence?
- 2) Is Petitioner entitled to Judicial review and relief upon his showings of actual conflict and abandonment of appellant counsel?
- 3) Does Petitioner's 1. showings of Brady violations and 2. Prosecution's knowing use of False testimony to gain a conviction entitle Petitioner to Judicial review and relief?

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No. 21-6017

Grounds For Rehearing

In Petitioner's Writ of Certiorari to The Supreme Court of The United States No. 21-6017 Appendix I the Final Report and Recommendation In The United States District Court For The Northern District of Georgia Newnan Division Habeas Corpus Civil Action No. 3:20-cv-0019-TCB-RGV Document 25 the court agreed with Petitioner that his charges, in his indictment, regarding penile-anal penetration for his charges of aggravated child molestation and aggravated sexual battery did not occur when the court stated in regard to the alleged victim's medical records on page 6 lines 8-10 "Although these records show that the victim denied both "penile-anal penetration," [Doc. 1-9], and ~~further that the medical examination was~~ ^{OK} "penile-vaginal penetration," [Doc. 1-9], and further that the medical examination was normal." ... Clearly shows Petitioner's actual innocence and the court should have reversed petitioner's convictions for the prosecutor's knowing use of false testimony when the alleged victim testified, T.T. page 73 line 8, 16-18, "He only put his penis inside my anus everytime." "That's all he ever did everytime." She never testified that Petitioner "rubbed his penis against her bottom."

findings noted to the hymen" and "Rectum: No lesions, tearing, scarring or acute findings noted to the rectum."

1) Petition for writ of certiorari Attachment 16 Transcript of forensic interview of the alleged victim C.P., 1 of 3 received by Petitioner on April 15, 2021, showing she is being coached by other people in the room.

2) a) Petitioner has shown by the preponderance of evidence that his appellant attorney of record Ms. Tamara Jacobs has abandoned Petitioner on his appeal and Ms. Jacobs never filed the brief in Petitioner's appeal through his writ of certiorari Attachment 1 "October 23, 2006 letter from the Court of Appeals of Georgia Clerk stating "Ms. Tamara Jacobs is Petitioner's Attorney of Record in that Court."

b) Petition for writ of certiorari Attachment 2 "Court of Appeals of Georgia Summary page, Attorney Register: Attorney's For the Appellant: Ms. Tamara Jacobs." Petitioner never had any reason to believe Ms. Jacobs was no longer representing Petitioner on his appeal and no withdrawal or substitution of counsel was filed.

c) Petition for writ of certiorari Attachment 5 "September 5, 2006 letter to the Clerk of The Court of Appeals of Georgia by Petitioner's appellant Attorney Ms. Tamara Jacobs re: motion for continuance of time in which to file brief." Attachment 10

September 5, 2006 Motion For Continuance to the Court of Appeals of Georgia to submit an adequate brief by Petitioner's appellant Attorney Ms. Tamara Jacobs." Ms. Tamara Jacobs never consulted with Petitioner about his appeal and Ms. Jacobs never filed the brief.

d) Petitioner shows attorney Joseph Saia has an actual conflict through Petitioner's writ of certiorari Attachment 3 "July 29, 2005 Summons In The Juvenile Court of Fayette County Georgia showing Joseph Saia, Attorney For mother Teresa Lewis and Petitioner Charles Lewis as a party to that case with Petitioner's alleged victim C.P. as a victim in that case also." Attorney Joseph Saia filed the brief in Petitioner's appeal. Mr. Saia never consulted with Petitioner about his appeal and Mr. Saia is not Petitioner's Attorney of record in Petitioner's appeal. Attorney Joseph Saia made no attempt to have an Attorney client relationship with Petitioner and Petitioner had no reason to believe Mr. Saia represented him.

3) a) Petitioner shows Brady violations through his writ of certiorari Attachment 11 "October 8, 2008 letter to Petitioner from his former trial Attorney James E. Bischoff, re: 3 Forensic interview tapes of the alleged victim C.P.", in which Mr. Bischoff states "However I know I don't have the Video Tapes."

b) Petition for writ of certiorari Attachment 12 "February 20, 2020 letter to Petitioner from Attorney James E. Bischoff Assistant Public Defender with the Griffin Judicial Circuit Public Defender's Office re: 3 Forensic interview tapes" which he states in lines 13 and 14 "Also this office does not have any video tapes / DVD's as part of your case" How can the attorney brief Petitioner's appeal without review of the records? and Attachment 14 "June 28, 2001 fax letter from Jack E. Farrar, PH. D, re: C.P. I am concerned that there are 2 video tapes ^{also} ~~the~~ which the DA has not given us."

c) Petitioner shows Prosecution's knowing use of false testimony to gain a conviction through Petitioner's writ of certiorari Attachment 4 "Sworn Affidavit of Jordan Louis showing Petitioner was falsely accused by Jordan's mother Teresa Denise Louis" with attached Exhibits D, H, I, J, K that show the alleged victim C.P. denies Petitioner's charges of penile-anal penetration and her medical examination is normal showing no lesions, tearing, scarring, or acute findings noted to the rectum." and Attachment 15 "July 28, 2014 letter and Sworn Affidavit of Jennifer Louis showing Petitioner was falsely accused by her step mother Teresa Denise Louis of the accusations Petitioner was charged with to keep Petitioner from gaining

custody of his Sons Jordan Louis and Dylan Louis From Teresa Denise Louis because of her neglect and drug abuse for which our Sons were taken away from her by the Court and Department of Family and Children's Services in Fayette County Georgia and again in Walton County Georgia see Attachment 3 also.

d) Petitioner shows through his Writ of certiorari Appendix I Document 25 In The United States District Court For The Northern District of Georgia Newnan Division Final Report And Recommendation United States Magistrate Judge Russell G. Vineyard acknowledged the alleged victim C.P.'s medical records show she denied both penile-anal penetration and penile-vaginal penetration on Doc. 25 page 6 lines 8, 9 and 10 states "Although these records show that the victim denied both "penile-anal penetration," [Doc. 1-4], and "penile-vaginal penetration," [Doc. 1-9], and "Further that the medical examination was normal," [Doc. 1-8; 1-10], they also note that the victim reported that petitioner "rubbed his penis against her bottom" ... see also Trial Transcript page 73 line 8, 16-18 where the alleged victim C.P. testified "He only put his penis inside my anus everytime" "That's all he ever did everytime yet her medical examination was normal and shows she denied penile-anal penetration and she never testified petitioner rubbed his penis

against her bottom or inappropriately touched her in any manner.

e) Petitioner's petition for writ of certiorari Attachment 16

Transcript of Forensic Interview of the alleged victim C.P will show that she denied that petitioner touched her in any manner and she never touched petitioner and that petitioner never used any foreign object on her.

Case Citations of Authority

1) In *Murray v. Carrier*, 477 U.S. 478, 485, 496, 106 S.Ct. 2639, 91 L.Ed. 2d. 397 (1986) and *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed. 2d. 808, 811 (1995), "Fundamental miscarriage of Justice" "(1) (a claim that a constitutional error has caused the conviction of an innocent person requires a petitioner to support the allegations with new reliable evidence; (2) the quintessential miscarriage of justice < pg. 811 > is the execution of a person who is entirely innocent; *Murray v. Carrier*, 477 U.S. 478, 496 [9] "However, as we noted in *Engle*, "in appropriate 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 125, 171 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 may grant the writ even in the absence of a showing of cause for the procedural default." see also *Goldstein v. State*, 283 Ga. App. 1, 640 S.E. 2d. 599 (Nov. 1, 2006).

In *McQuiggin v. Perkins*, 569 U.S. 383, 386, 133 S.Ct. 1924, 1928

185 L.Ed. 2d. 1019, 1027 (May 28, 2013) cited by *Brown v. Sec. Fla. Dept. of Corr.*, 580 Fed. App'x 721, 727, HN67 (11th Cir. Sept. 9, 2014) in *McQuiggin*, *supra*, [386] Opinion; Justice Ginsburg, "This concerns the 'actual innocence' gateway to Federal habeas review applied in *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 100 L.Ed. 2d. 808, 811, [7] (1995) and further explained in *Houze v. Bell*, 547 U.S. 518, 126 S.Ct. 2064, 165 L.Ed. 2d. 1 (2006) In these cases, a convincing showing of actual innocence enabled habeas petitioner to overcome a procedural bar to consideration of the merits of their constitutional claims."

2) In *Edwards v. State*, 336 Ga. App. 595, 784 S.E. 2d. 924, 926, 929 (March 30, 2016)... "counselor would have an actual or a potential conflict of interest 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... [929] the record showed at least a serious potential for a conflict of interest, which 'ethically barred defense counsel from representing Edwards.' see also *Wood v. Georgia*, 450 U.S. 261, 271, 101 S.Ct. 1097, 67 L.Ed. 2d. 220, N. 4 (1981).

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." see also *Mickens v. Taylor*, 535 U.S. 162, 171-172, 122 S.Ct. 1237, 152 L.Ed. 2d. 291 (March 27, 2002).

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 U.S.C.S. Supreme Court Rule 9(2); Georgia Court of Appeals Rule 9(d)(1) and (2); *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 ~~be relieved or not~~ ^{or} withdraw from a case without leave of the Court granted by Order."

3) In, *D. A.'s Office v. Osborne*, ^{see} 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)."

In, *Brownlow v. Schofield*, 277 Ga. 237, 587 S.E. 2d, 647 (2003). "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 (O.C.G.A. 17-6-4) and *Kyles v. Whitle*, 514 U.S. 419, 433-434 (April 19, 1995); *Wearry v. Cain*, 136 S.Ct. 1002, 194 L.Ed. 2d, 78 (March 7, 2016).

In, *Banks v. Dretke*, 540 U.S. 668 (Feb. 24, 2004) Lexis 837, at *47-*49. "It has long been established that the prosecution's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." "If it was reasonable for Banks to rely on the prosecution's full disclosure representation, it was also appropriate for Banks to assume that his prosecutors would not stoop to improper litigation conduct to advance prospects for gaining a conviction." (540 U.S. at 694). see also *Holsomeback v. White*, 133 F. 3d 1382 (11th Cir. Jan. 26, 1998) and *Darst v. The State*, 323 Ga. App. 614, 764 S.E. 2d 865 (July 16, 2013).

In, *Dean v. Williams*, Lexis 161075 (11th Cir. Nov. 21, 2016) (1) Background: (1) "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 perjury 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 (1959).

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.

Conclusion

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

Respectfully submitted this 23rd day of December 2021,

Charles J. Louis, CJL

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