

No. 21-6169 ORIGINAL

Supreme Court, U.S.
FILED

OCT 28 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD S. YAAG — PETITIONER
(Your Name)

vs.

RENEE BAKER, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT OF NEVADA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONALD S. YAAG
(Your Name)

L.C.C. 1200 Prison Road
(Address)

Howe, Lock, NV 89419
(City, State, Zip Code)

775-273-4237
(Phone Number)

QUESTIONS PRESENTED

(1) Whether Material exculpatory evidence Proving Petitioner was in a California Prison at the time false allegations were lodged against him reflects actual innocence of sexual assault?

(2) Whether Petitioner's Trial Counsel's own admission of his failures to exercise due diligence by failing to Present exculpatory evidence that would have exonerated him, "ineffective assistance of Counsel?"

(3) Whether Trial Court and the Federal Court's failure to hold an evidentiary hearing as to Petitioner's actual innocence, when Petitioner possessed the material evidence a violation of the Canon Codes and abuse of Powers, a violation of the 6th and 14th Amendment?

(4) Whether the state and Trial Judge responsible for knowing providing defendant with a Public defender whom conspired together with each other to keep out concrete evidence, a violation of Petitioner's 14th Amend?

(5) Whether the trial Judge's and Federal Judge's Speculative theory in changing the testimony and trial strategy, "stating" C/A could have been mistaken in her testimony an abuse of discretion - and changed the trial proceedings?

LIST OF PARTIES

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

[x] 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:

Office of The Attorney General
Aaron Ford
100 N Carson Street
Carson City, NV
89701
For The State of Nevada

RELATED CASES

Donald S. Yaag V Renee Baker; 3:14-cv-00295 MMD-WGC

Donald S. Yaag V Renee Baker; 9th Cir: 2017/55

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

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

☒ reported at S.Ct. of Nev.; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Aug/16/2021.

☐ 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: Aug/16/2021, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including January/21/2021 (date) on Dec/09/2020 (date) in Application No. 20 A 1755.

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

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (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

- (1) I was not given proper notice of the crimes charged against me in violation of the (Fifth), (Sixth), and (Fourteenth) Amendments.
- (2) I was denied my right to Effective Assistance of Counsel Guaranteed by the (Sixth Amendment).
- (3) The Trial Judge, and State's Prosecutor violated my (Sixth) and (Fourteenth Amendment) of the U.S. Constitution. The State's Prosecutor and Trial Judge are the Government officials whom provided the Public defender to Counsel me in which were ineffective.
- (4) NRS 34.900-34.990 - Actual Factual Innocence
- (5) 28 U.S.C. § 2253(c) Section 2253(c)(2) Requires a Habeas Petitioner (must seek) a [C.O.A.] before appealing an adverse Judgment. Section 2253(c)(2) further — Provides that a [CoA] may issue "IF the Applicant made a substantial showing of the denial of the Constitutional right. A district Judge must issue a C.O.A. or State why a [CoA] should not issue.

STATEMENT OF THE CASE

(1) Petitioner was convicted by way of A Jury Trial of S/A in 2009 on Counts 4, 7, 8, 9, 11, 15, 16, 18/19. The alleged Victim C/A gave false Testimony as to being sexually assaulted by Petitioner in 2004 To FEB. 2006. These false allegations were simply conjured up due to the facts "I Told A.A. THAT C/A. WAS HAVING SEXUAL INTERCOURSE WITH HER BROTHER FRIENDS, AND Jealousy with my new Relationship with ROSANNA KING. The False allegations were the Product of Manipulation and Coercion by C/A's Mother and the State's Prosecutor. The Prosecutor's Case was C/A's False and non-credible testimony, "To include C/A's testimony as to being Certain and Pretty Positive "That she was eleven (11) Years old when the alleged sexual behaviors supposed to have happened. See: APPENDIX/EXHIBIT-D lines (1-5). "Here the court and A Jurist of Reason could surely find it debatable that the State's Prosecutor relied on C/A's testimony as to being eleven (11) Years old when the alleged sexual acts were suppose to have happened. C/A never said a word here, "about being twelve (12) Years old. It would be totally unconstitutional and a Mis carriage of Justice for A Reviewing Court to Change the theory of the State's Case once it has been tried by a Jury as is the issues in Yaag's Case. Yaag has documented Proof that he never committed any sexual acts upon C/A. When she was (11) Years old OR Period, "because Yaag was incarcerated in A California Prison in 2004 when C/A was (11) Years old. The Prosecutor's Knowledge that Yaag was incarcerated in a California Prison during the time span of C/A's accusations of sexual Assaults, "is a violation of Yaag's (14th) amendment right to Due Access of Law, equal, fair Treatment and Protection. The Prosecution's actions Violated also the canon codes of Judicial ethics."

1 The state knowingly and intentionally used Perjured Testimony From
2 C/A, and wrongfully subjected Yaag to a fundamental miscarriage
3 of Justice and unreliable trial. See: Mooney v. Holohan, 294 U.S. 103 (1935).
4 "Please" see also Petitioner's Motion for Reconsideration and Re—
5 consideration en banc filed in the (9th) circuit on (August/05/2021);
6 Case number 20-17155; "In which the (9th) cir. never considered. The (9th)
7 cir. also fail to provide any significant details and or explain how Yaag
8 fail to make a Prima Facie showing of a Constitutional violation. The
9 (9th) cir. also fail to show or prove that in light of the Concrete exculpatory
10 evidence, "Petitioner did not establish that a Jurist of reason would find
11 it debatable, The evidence clearly reflects that Yaag was incarcerated
12 in a California state Prison during the time frame of the state's case and
13 testimony of the state's star witness, "C/A". The State should be
14 made to prove their case beyond a reasonable doubt, "not just given
15 an illegal pass to subvert the law and blatantly violate Yaag's
16 Constitutions, "especially violating his Due Process and rights to
17 effective assistance of Counsel. Legal authorities are sworn under
18 oath of office To uphold The Constitutions of the United States,"
19 its Statutes and Treaties, "Not to abuse their powers, and destroy-
20 Peoples lives at will, for their on greed and Political gain. Actions and
21 Inactions of such authorities and supporters are not for the Peoples.
22 Authorities that does indulge in such evil acts, and are allowed
23 to get away with such actions because of the evil within, "are
24 placing themselves above the Creator of laws and will one day
25 themselves be Judged for their evils," Now that's A true fact. See:
26 Petitioner's Motion for Reconsideration and Reconsideration en banc -
27 Marked Appendix C, Case No. 20-17155 (9th) cir. "Filed August/05-
28 2021) at Page (7)", incorporated as a whole in support of the petition

1 For a writ of certiorari to the United States Supreme Court -
 2 Due to counsel's failures to raise clearly merited out meritorious
 3 issues on direct appeal constituted ineffective assistance of
 4 counsel. The evidence by way of authentic documentation and
 5 affidavits of Petitioner's incarceration in a California State Prison
 6 are meritorious issues, and entitles Petitioner to relief because
 7 Petitioner was incarcerated in a California Prison during the time
 8 frame of the allegations brought against him. See: Douglas V
 9 Wainwright 714 F.2d 1532 (11th Cir. 1983) The Supreme Court,
 10 although cautioning that it would not always be true, "instructed
 11 that where a constitutional violation has probably resulted in
 12 the conviction of one who's actually innocent, a federal habeas
 13 court may grant the writ even in the absence of a showing
 14 of cause for a procedural default. The Supreme Court in Smith V.
 15 Murray, 477 U.S. 527, 537, 106 S.Ct. 2661-68, 91 L.ed 2d 434
 16 (1986), did imply that the actual innocence exception may apply to non-
 17 capital sentencing cases. The Court went further to state, "we
 18 reject the suggestion that the principles of Wainwright V.
 19 Sykes, Petitioner's authentic documentation showing that he
 20 could not have committed the crimes charged by the state's -
 21 prosecution entitles Yaa3 to relief, and it will be a miscarriage
 22 of Justice if due process is not offered and Yaa3's constitutional
 23 violations are not reversed, which is extremely prejudicial. To simply
 24 ignore a clear issue of substantial evidence that is relevant to Yaa3's
 25 actual, factual innocence, would largely reflect on the public and would
 26 further represent a broken judicial system that's unfair and unreliable
 27 in the interest of the public safety. Even the Federal Judge, Miranda
 28 Du, Chief Justice violated the Canon codes of Judicial Ethics, while

1 reviewing Petitioner's Petition for a writ of habeas corpus. Petitioner
 2 Presented evidence that he was incarcerated in a California Prison
 3 From DEC 2002 TO July 23rd 2005 at that Point the Judge was illegally
 4 Changing C/A's Trial Testimony of 2004 at Eleven (11) years old To —
 5 December (2005), "When Yaag was NOT ? in Prison. The Judge
 6 "Stated" "C/A could have been mistaken and Petitioner could have
 7 committed the alleged sexual assault when he was not in Prison"
 8 between July/2005 and December/2006, "which is a violation of MY
 9 (14)th amendment which governs the laws of due Process Rights.
 10 "Furthermore", "C/A never testified to the time Frame that Judge
 11 Miranda Du IS speaking of - [C/A testified in 2004 I'm certain]
 12 This case went to trial, and was governed by a Jury. The Federal
 13 Judge Miranda Du does not have Jurisdiction nor The Power to
 14 Change A witness(es) Testimony To maintain A wrongful conviction
 15 and or deny Petitioner relief based off her own assessments "IF
 16 rulings such as this was allowed, "A Federal Judge or higher
 17 Court can Change a Jury's verdict and the theory of the —
 18 State's Case at will. Only the Trial Court has the authority
 19 to set aside a Jury's verdict, IF execution of that Jury's
 20 verdict was wrong in the eyes of the Trial Judge. C/A's testimony
 21 lines up with counts [4, 7, 8, and 9] and Proves Petitioner's —
 22 Innocence because Petitioner was incarcerated in a California
 23 Prison during the allegation to Count [4, 7, 8, and 9]. The Federal
 24 Judge Miranda M. Du herself admitted that Pursuant to the Reliable
 25 evidence" although Chief Justice Mirandam Du quoted: Petitioner
 26 is trying to obtain reliable evidence) (unquote): "Petitioner did obtain (C
 27 reliable evidence)". The Judge also stated herself that if I was —
 28 incarcerated from (December/20/2002) until (July/23/2005) These —

1 incidents could not have happened, "IF I were incarcerated- See; Court
2 order dated: [11/10/16], Case No 3:14-cv-00295-MMD-WGC. The -
3 Judge was wrong for Speculating and or Changing The Theory
4 of the case and C/A's testimony, "stating that the incidents
5 could have happened at a different time other than that which C/A did
6 testify to, "and she could have been mistaken. It was not the Judge's
7 Job or duty to Change or assume C/A's testimony was or should
8 have meant something other than what C/A testified to. Now that
9 Yaag has obtained documented proof and or evidence that proves
10 Yaag's actual innocence, and Yaag was in a California Prison.
11 Yaag's Verdict was the results of a Faulty Jury Verdict.
12 Yaag is entitled to an Evidentiary Hearing. See: Kyle J. -
13 Rodney V. Timothy FILSON - United States Court of Appeals
14 For The Ninth Circuit 916 F.3d 1254; 2019. Petitioner's claims
15 are substantial and meritorious. Petitioner has provided evidence
16 that he was incarcerated in California during the Nevada
17 states case of C/A and C/A's Testimony and the Counts of
18 (4, 7, 8, and 9) which the Jury convicted me on as well as the
19 age of C/A relevant to the case as a whole was [11]. This
20 Conviction should be set aside and/or at least an Evidentiary
21 hearing, should be provided with the new evidence. A C.O.A
22 should be granted for further Briefing, dismissal of this case/
23 conviction or other appropriate Procedures that this Court may
24 deem necessary. In Rodney V. Filson (2019). The Panel vacated the
25 district court's denial of Nevada State Prisoner Kyle J Rodney's
26 Prose 28 U.S.C. § 2254 habeas corpus Petition and remanded back
27 for the district Court to conduct an analysis of the -
28 substantiality of Rodney's case and claims of (IAC) and pursuant-

1 to Martinez V. Ryan 566 U.S. 132 S.Ct. 1309-182 L.Ed.2d-
 2 272 (2012). Plaintiff's Case, Just like Rodney V. Filson (2019)-
 3 "Should be remanded". Without allowing discovery, holding
 4 an evidentiary hearing especially in light of the new exculpatory
 5 evidence that actually proves Petitioner's Innocence would be
 6 Prejudicial and a MisCarriage of Justice. Petitioner has-
 7 made a Prima Facie showing that there are violations of his (5th),
 8 (6th), and (14th) amendment rights. "Further", "Being that the State
 9 withheld this exculpatory evidence from the Jury which could
 10 have vindicated Petitioner, and definitely would have resulted
 11 in a different outcome at trial. Please see, also Appendix C.
 12 Petitioner's Motion to the 9th Circuit Filed (August/05/2021). In
 13 Joe L. Lambright V. Terry Stewart U.S.Ct. of Appeals 9th Cir.
 14 220 F.3d 1022; 2000 U.S. App. Lexis 18948. The Court stated that
 15 the Petitioner need only make a substantial showing that they
 16 were denied a Constitutional right, which could be made by-
 17 showing that reasonable Jurist could resolve the issues in a
 18 different way, and or different manner. Using that standard the
 19 court granted the [C.O.A.] With the new evidence Petitioner is
 20 entitled to a [C.O.A.] or dismissal of this conviction. The State
 21 also violates my First Amendment by keeping the exculpatory
 22 evidence from the Jury. "Further", as previously stated, "The State-
 23 violated the canon codes of Judicial ethics. Petitioner has definitely
 24 shown that it is debatable that a reasonable Jury could resolve
 25 the outcome of Petitioner's trial in a different manner. A lay
 26 person could find C/A's testimony debatable, and would have found
 27 Xaa9 Not guilty based on this evidence.

28 (2) TRIAL COUNSEL'S OWN ADMISSION OF HIS FAILURES TO —

1 EXERCISE DUE DILIGENCE REFLECTS INEFFECTIVE ASSISTANCE
 2 OF COUNSEL BY COUNSEL'S OWN ADMISSION OF HIS FAILURES
 3 To exercise due diligence and how he dropped the ball.
 4 Please See: Exhibit 9 of Appendix C as well, "dated [July 12/2017]
 5 A correspondence document between Yaag's Federal Attorney ("
 6 C.B. Kirschner) and Yaag's Trial Attorney Martin Hart) whom
 7 Telephone number reflected during that time frame was -
 8 (702) 380-4278; "Petitioner's trial Counsel was ineffective
 9 Pretrial and throughout the entirety of the trial and direct
 10 appeal. Being that Hart Fail to exercise due diligence Petitioner
 11 Suffered a disadvantage at a fair trial from such denial of
 12 effective Counsel. Also Petitioner's fourteenth Amendment rights
 13 were violated by the Court and the state's Prosecutor," Being that
 14 they were the Judicial Powers whom Presented and or assigned
 15 Martin Hart to the case in the first instance. The Court was wrong
 16 for denying Petitioner's habeas Petition and failing to hold an —
 17 evidentiary hearing. The district Ct. also retested Petitioner's
 18 claims of ineffective assistance of Counsel and actual innocence
 19 without obtaining or reviewing the record of the relevant
 20 Proceedings in State Court See: Brendan Nasby v. EK McDaniel -
 21 United States Court of Appeals For the Ninth Circuit 853 F.3d
 22 1049; 2017 U.S. App'x 6127. In the Case Summary of the Nasby
 23 case which is relevant to Petitioner's Case it starts by stating:
 24 in order to provide adequate habeas review as contemplated by
 25 AEDPA, 28 U.S.C. § 2254(d) the Court was required to review the
 26 state court record. A remand was required because the district Court
 27 did not Perform the independent review of any basis of the state
 28 Court's decision, Judgment was vacated and remanded. In —

1 Hamilton V. Alabama - 368 U.S. 52, 7 L.ed 2d 114, 82 S.Ct. 157 (1962) an
2 arraignment is a critical stage in a criminal proceeding which the
3 accused under Federal constitutional law is entitled to Counsel, "and
4 if the accused is without Counsel at the arraignment he may obtain
5 relief from his conviction without showing that he suffered a dis-
6 advantage from such a denial. Also see: White V. Maryland 373 U.S.,
7 59, 10 L.ed 2d 193, 83 S.Ct. 1050 (1963) United States V. Hammonds,
8 425 F.2d 597 (D.C. Cir. 1970). Trial Counsel's Failure to appear at the
9 arraignment compounded with other errors constitute ineffective
10 assistance of Counsel. In Coleman V. Alabama, 399 U.S. 126 (L. Ed 2d 387,
11 90 S.Ct. 1979 (1970). The Supreme Court found that a preliminary hearing -
12 is a critical stage of criminal proceeding where the right to Counsel
13 attached. The guiding hand of Counsel at the preliminary hearing and
14 throughout all phases of a trial is essential to protect the rights
15 of the indigent accused against an erroneous or improper prosecution.
16 "First", The lawyer's skilled examination and cross examination of -
17 witnesses may expose fatal weaknesses in the state's case that
18 may lead the magistrate to refuse to bind the accused
19 over; "Second", In any event the skilled interrogation of -
20 witnesses by an experienced lawyer can fashion a vital -
21 impeachment tool for use in cross examination of the state's
22 witnesses at trial. "Third", Trained Counsel can more effectively
23 discover the case the state has against his client and make
24 possible the preparation of a proper defense to meet that case
25 at trial. "Fourth", Counsel can also be influential at the preliminary
26 hearing in making effective arguments for the accused. Without -
27 an effective Counsel, "The accused does not have the guiding hand."
28 This is the exact and or similar issues in Petitioner's case.

1 Petitioner's trial counsel admitted to Petitioner's Federal lawyer
 2 ("C.B. Kirschner"), that he dropped the ball, he blew this case
 3 and that he should have raised holy hell "for failing to establish
 4 a defense as to Petitioner being incarcerated in California State
 5 Prison on the dates charged in the charging document. The State's
 6 arguments and the state's star witness C/A's testimony and the
 7 counts [4, 7, 8, and 9], "in which I was convicted on by a Jury. According-
 8 to the record," Trial counsel Hart stated that he was willing to
 9 fall on his sword regarding this issue and is willing to
 10 testify. See Exhibit 9 at Appendix C. Counsel confessed to being
 11 ineffective and failing to exercise due diligence. Sparrman V. Edwards,
 12 26 F. Supp. 2d 450 (E.D.N.Y. 1997). Trial Counsel's failure to use
 13 discovery tools, witnesses that would have impeached C/A, "use
 14 the discovery tactics to achieve exculpatory evidence and
 15 failing to cross examine victim(s) about inconsistencies —
 16 In her statements to Police Detective and her trial testimony —
 17 Counsel's actions and inactions constituted ineffective —
 18 assistance of counsel. If trial counsel "Martin" Hart had
 19 undergone discovery he would have been equipped with the
 20 necessary documents and complete information from vital
 21 witnesses that would have found C/A's testimony and A/A's
 22 statements to be false and non credible. Failing of counsel
 23 to do so was extremely prejudicial to petitioner and denied
 24 a fair trial. Due to Petitioner's demonstration and Trial Counsel's
 25 own admission to dropping the ball and willing to fall on his
 26 sword pursuant to his own incompetence, "This Court should
 27 find that Counsel was indeed incompetent, unreasonable and
 28 outright fail to exercise due diligence guaranteed to each —

1 by the Premised Protection under the (5th), (6th) and (14th) Amendment
2 of the United States Constitution.

3 (3) THE TRIAL JUDGE & FEDERAL JUDGE, AS WELL AS THE
4 STATE'S PROSECUTOR AND TRIAL COUNSEL VIOLATED
5 THE CANON CODES OF JUDICIAL ETHICS: These codes
6 are for members of the Judiciary that are adopted by the American
7 Bar Association and are sworn to uphold the Tenets of the
8 United States it's Statutes, Constitutions and Treaties, State
9 and Federal Constitutions. It is the standards of Professional
10 conduct expected of lawyers in their relationship with the
11 Public, The legal system and with the legal Profession - The Court
12 by the (14th) Amendment violated Due Process of law for failing to
13 at least hold an evidentiary hearing once it found that there
14 were genuine issues as to Petitioner's Actual Innocence, and
15 realization that the State's Case failed and the State's
16 star witness, C/A had actually provided false testimony.

17 Yaag has acquired a variety of documented Exhibits and
18 Prison records that Yaag himself did not have at Preliminary or
19 Trial. This evidence would have vindicated Petitioner, No —
20 reasonable Jury would have violated Petitioner's Constitution, nor
21 would the Jury have convicted on the State's Charges had they
22 known Petitioner was incarcerated during the time frame of C/A's —
23 testimony given at trial. The Judge abused it's Powers, The State's
24 Prosecutor was vindictive. Both officials were under oath of
25 office and had knowledge of the evidence favorable to the
26 defense/Petitioner that would have led to a different outcome, more-
27 likely than not, A not guilty verdict would have resulted, because
28 the evidence would have reflected that Petitioner was incarcerated —

1 In A California State Prison, "which is in conflict with C/A testimony,"
 2 and the prosecutors' case which was presented to the Trial Jury with
 3 the exclusion of the evidence that should have been entered into
 4 the trial. The state's Prosecutor, Trial Judge and Trial Counsel
 5 conspired together with a meeting of the minds to suppress the
 6 evidence reflecting that Yaag was without a doubt in Prison in —
 7 California during the time frame Yaag was charged for in the —
 8 indictment and or Information charging document. Note: Counsel
 9 Martin Hart should be charged with ineffective Assistance of Counsel
 10 due to the incompetent role that he played, "knowingly and intentionally
 11 conspired with the Trial Judge and State's District Attorney in keeping
 12 out the facts that shows Yaag was imprisoned in California and failed
 13 to achieve those documents personally for the defense. See Exhibit
 14 (9) of Appendix-C. See: also Murray V. Carrier - 477 U.S. 478, 91 L. Ed
 15 2d 397, 106 S.Ct. 2639. The United States Court of appeals for the
 16 Fourth Circuit(D) reversed the Judgment of the District Court, holding
 17 that an act or omission by counsel which shows ignorance or
 18 oversight may satisfy the "cause" requirement of Wainwright V.
 19 SYKES; On Certiorari, The United States Supreme Court reversed
 20 the Judgment of the Court of Appeals and remanded with instructions
 21 to dismiss the Petition for habeas corpus Unless it is determined
 22 that the statement at issue contain material that would establish
 23 the accused's actual innocence. Yaag has presented documented
 24 proof that he was in California Prison From DEC 2002 To July 23rd 2005
 25 See: Exhibits 1-8 OF Appendix-C. See: also Brady V. Maryland, 373
 26 U.S. 83 (1963). Had this evidence and facts been presented to the Jury,
 27 it would have proven that Yaag could not have committed any -
 28 sexual Acts upon C/A as were testified by C/A. and relevant to -

1 grounds 4, 7, 8, 9 See: Turner V. United States - 137,
2 S. Ct 1885 (2017). The overriding concern of Brady's rule that
3 the government's withholding of material exculpatory evidence
4 violates due process, is with the Justice of the finding of
5 guilt and that the Government's interest in a Criminal Prosecution
6 is not that it shall win a case But, "that the Justice shall be
7 done. Here the undisclosed evidence was merely cumulative
8 and not material. As stated previously, The state's star witness
9 C/A testified to events that took place when she was (11) ~~ELEVEN~~
10 years old relevant to particular events. C/A testified without
11 any other exculpatory or substantial evidence. Please see:
12 Appendix C page 12-13 filed (Aug/05/2021). The trial Court and -
13 or the Federal Court Judge violated the codes of Judicial Conduct
14 for failing to hold an evidentiary hearing as to Petitioner's
15 actual innocence claims, pursuant to the facts that Petitioner(s)
16 presented authentic and documented documents to the Trial Court
17 during Federal Review and to the federal Court itself, also to the
18 Ninth Circuit Court of Appeals and now to the United States Supreme
19 Court Pursuant to NRS 34.900 To NRS 34.990, The (6th) and (14th)
20 amendment, that clearly demonstrates that petitioner was in a -
21 California State Prison from DEC 2002 To July 23rd 2005 C/A was (11) ~~ELEVEN~~ -
22 years old relevant to counts 4, 7, 8, 9 in which
23 he was convicted on by A Jury according to the changing
24 documents by the state's prosecutor. This clearly could not
25 have happened while petitioner was incarcerated. The trial Judge
26 can not legally change the theory of the case trying to
27 preserve the conviction, Now that Yang has proven that he could
28 not have committed any sexual assault. The same applies to the -

1 Chief Federal Judge Miranda M. Du. Please see: Appendix C Filed
 2 August/05/2021 with Exhibits 1-8 attached documented evidence
 3 that Proves Petitioner was in Prison in California during the time
 4 Frame that the state's Prosecutor surrounded it's Case in Chief.
 5 Yaag was in Prison relevant to the time frame in which C/A -
 6 testified to, "A relevant to the age of (11) ELEVEN" in which the
 7 State Presented to the Jury as well as to the Justice of the
 8 Peace. All The above demonstrations is incorporated together as a
 9 Whole and including relevant Counts 4, 7, 8, 9. "Altogether"
 10 the make up of The state's Case Case is false and has been
 11 Proven to be by the documented and Authentic evidence that Yaag
 12 has Presented, Exculpatory evidence that Yaag himself did not
 13 have access to during Preliminary and through the duration of
 14 his trial. All of the above evidence is the overall Circumference
 15 of Yaag's illegal sentence.

16 (4). THE STATE AND TRIAL JUDGE ARE RESPONSIBLE- FOR KNOWINGLY
 17 Providing Yaag with a Public defender whom Conspired together
 18 with each other to keep out concrete and documented evidence
 19 that would have Vindicated Yaag. The documented evidence reflects
 20 that Yaag was incarcerated and could not have committed any
 21 Sexual Acts upon C/A when she was (11) ELEVEN years old, as
 22 C/A testified to and the state's Charging document reflects
 23 to, and the counts (4, 7, 8, 9,) that the Jury convicted Yaag
 24 on. This is a Prime example of the Trial Judge's and the state's
 25 act of providing me with Counsel that were clearly Ineffective in
 26 Yaag case. "Further", Counsel Martin Hart admitted to being
 27 ineffective, which proved to be extremely Prejudicial to Yaag. See -
 28 Exhibit (9) at Appendix C. These actions and inactions by said -

1 Parties Violated Plaintiff's (6th) Amendment rights to effective
2 assistance of Counsel, And Plaintiff's (14th) Amendment right to
3 due Process of law, equal fair treatment and Protection.
4 The Trial Judge, Trial Prosecutor and Trial Counsel also Violated
5 Rule(s) 16 of the (Fed R. Civ Procedure). Yaag's rights under BRADY -
6 V. Maryland, 373 U.S. 83, 83 S. Ct. 1194 and Sixth amendment right
7 to establish a defense. The Judge, Prosecutor and Yaag's
8 Counsel was aware of Yaag's incarceration in California, and
9 had documented evidence to prove his innocence but denied Yaag
10 from presenting this to the Jury. See: Rule 278-45, "Ruining Pre-
11 venting discovery violated Yaag's (6th) amendment. U.S. V. Stever,
12 603 F. 3d 747 CA 9 (2010). The Prosecution and Trial Judge
13 knew that Counsel's siding with the State to keep out the
14 documented evidence of Yaag's incarceration in a California
15 Prison, "Violated Yaag's (6th and 14th) amendment, causing
16 the State to be at fault for failing to protect Yaag's U.S.
17 Constitution. Yaag had a right to effective and competent
18 Counsel and Due Process of law. ("Martin Hart"), "Yaag's Trial-
19 Counsel admitted to dropping the ball. See Exhibit (9) of
20 Appendix C. See: also Tate V. Wood 963 F 2d 20 (CA 2 1992). Due
21 Process Clause forbids a State from Convicting a Person of
22 a crime without proving the elements of that crime beyond a
23 reasonable doubt. Yaag has demonstrated that the State
24 fail to prove it's case beyond a reasonable doubt. Bunkley V.
25 Florida, 538 U.S. 935, 155 L. Ed 2d 1046, 123 S. Ct. 2020 (2003).

26

27

28

Prejudice Standard for I.A.C. Claims
- Strickland V. Washington - 104 S. Ct. 2052 (1984) -

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1 accordingly, the appropriate test for Prejudice finds its roots in
2 the test for materiality of exculpatory information not disclosed
3 to the defense by the Prosecution, United States v. Agurs, 427 U.S. at
4 104, 112-113, 96 S.Ct. at 2397, 2401 - and in the test of/for materiality
5 of testimony made unavailable to the defense. The Court can't now
6 claim that Counsel's actions for not preparing to obtain the
7 documents that reflecting Yaag was incarcerated was a strategic
8 act because Marvin Hart himself admitted he dropped the ball, and
9 should have raised Holy Hell about those issues of Yaag being
10 incarcerated therefore making the state's case unreliable and
11 C/A's testimony unreliable, "as well as the Jury's verdict.
12 The state's case and Yaag's conviction is the results of
13 lies, manipulations, fraud and Perjury.

14 (5) WHETHER THE TRIAL JUDGE'S AND FEDERAL JUDGE'S RULINGS
15 SPECULATIVE AND ARBITRARY. For example, "after Petitioner
16 finally tracked down the documented evidence that clearly vindicates
17 him Per C/A's testimony and the state's false case. The fact(s) that
18 the state's case charged Yaag with counts 4, 7, 8, 9,
19 and Yaag was convicted by a Jury after C/A's testimony
20 claiming Yaag had molested her from 2004
21 when she was (11) ELEVEN years old. To further inflame
22 the Jury and Prejudice Yaag, "The state produced pictures of
23 the alleged victim when she was (10) AND (11) ELEVEN C/A at
24 age 10 was absolutely irrelevant because C/A's testimony
25 did not match with age 10. This again was an attempt by
26 the state to play upon the passion of the Jury. The Public
27 Point here is, "This case went to Trial, Yaag was convicted
28 on counts 4, 7, 8, 9 by a Jury, C/A's —

1 testimony allegedly supported those Counts. The State's
2 arguments and the charging document displayed C/A was 5-
3 (11) ELEVEN years old from 2004 AT (11) "Now"
4 that Yaag has demonstrated his actual/factual innocence
5 by presenting the documented, exculpatory material evidence
6 that was not readily available to Yaag himself, not even at
7 preliminary nor Trial. Yaag was not aware of the state's
8 nor his trial counsel's knowledge of this vital evidence.
9 The State, Trial Judge and Federal Judge Miranda M. Du
10 makes an unconstitutional ruling by simply stating
11 that C/A could have (been mistaken) about the time frame See: Ex G
12 of the alleged incidents. This type of speculative behavior
13 by the trial and Federal Judge changes the whole theory of
14 the state's case and the jury's verdict was established upon
15 false testimony and manipulations by the state's prosecution.
16 Petitioner's case should be dismissed with prejudice and or the
17 C.O.A. should be issued. This is a violation of the canon
18 codes of judicial ethics. The trial and Federal Judge are
19 displaying the job of the state's prosecutor and the jury,
20 being that Yaag's conviction arrived from a jury verdict.
21 See Appendix-C and Exhibits [1-8] of the Appendix C^{" "}, reflecting
22 Yaag's incarceration in California during the theory of the
23 state's case and testimony of C/A, relevant to the time-
24 frame charged by the state's prosecutor. This action by the
25 state trial judge and Federal judge creates a miscarriage of
26 justice. Yaag conviction should be set aside and or dismissed.
27 Yaag is actually innocent of the crime charged. If one is -
28

1 actually innocent of the sentence imposed. A federal habeas
 2 court can excuse the procedural default to correct a
 3 fundamentally unjust incarceration. Dugger v. Adams,
 4 489 U.S. at 401, 411 n.6 109 S.Ct. 1211, 1217 n.6 103 L.Ed.2d
 5 435 (1989). In Kuhlmann v. Wilson, 477 U.S. 436, 91 L.Ed.
 6 2d 364, 106 S.Ct. 2616 (1986) a four Justice panel of the Supreme
 7 Court suggested that the ends of Justice will be fulfilled,
 8 when the Courts set aside, issue the C.O.A. and or at least
 9 hold an evidentiary hearing on the claims. The Trial Judges
 10 and The United States District Judge Miranda M. Du's -
 11 actions and inactions violates my (6th and 14th)
 12 Amendment rights. The Judicial Parties changed the
 13 theory of my Yaag's case, "which had already been -
 14 decided by a Jury. The above named Judicial Parties violates
 15 Yaag's Constitutions," without providing me the compulsory -
 16 process owed to me by the (6th) amendment. No evidentiary
 17 hearing, no witnesses was provided, in which Yaag did
 18 discuss with Martin Hart Yaag's Trial counsel. Due to
 19 the fact that the trial Judge and The U.S. District Judge
 20 Miranda M. Du. changed the theory and structure of
 21 my case which was tried by a Jury. The state and or
 22 the federal Judge should at least have held an evidentiary
 23 hearing to discuss the issues in full. The court's failure to
 24 do so created a miscarriage of Justice and subjected Yaag to
 25 prejudicial issues. The Judges had no Jurisdiction to change
 26 the structure nor theory of Yaag's case without an evidentiary
 27 hearing, compulsory process and due process of law, especially
 28 since the disposition of Yaag's case are the result of an unfair-

1 Trial, "especially being that the record reflects that Yaag
2 Presented claims of actual innocence. Yaag's case
3 Should be set aside and or dismissed with prejudice in its
4 entirety or at least hold a serious Evidentiary hearing
5 with Pro Bono Counsel to represent Yaag.

7 REASONS FOR GRANTING THE PETITION

8 The decision of the lower court is erroneous and is
9 of National Importance that the Supreme Court review
10 and decide the questions involved. The decisions of the
11 U.S. District Court and the (9th) Circuit Court of Appeals is
12 in conflict with the decisions of other appellate courts.
13 In Strickland v. Washington 104 S.Ct. 2052 (1984) accordingly,
14 the appropriate test for Prejudice finds its roots in the test
15 for materiality of exculpatory information not disclosed by
16 the Prosecution, United States v. Agurs, 427 U.S. at 104, 112,
17 113, 96 S.Ct. at 2397, 2401-2401. The defendant must show
18 that there is a reasonable Probability that but for Counsel's
19 unprofessional errors, and blatant Failures to exercise due
20 diligence the result of the Proceedings would have been
21 different. Yaag has demonstrated Just that. Please see
22 Exhibit 9 at Appx-C Trial Counsel admits that he dropped
23 the ball and Trial Counsel knew his Client had been locked
24 up in A California Prison during the time frame of the
25 State's case and C/A's testimony. This alone is a strong
26 Probability sufficient to undermine Confidence in the out-
27 Come. Petitioner has clearly made A Prima facie showing
28 throughout the record, reflecting that Yaag was-

1 incarcerated in a California state Prison during the state's
 2 charging document and or time frame of the state's case
 3 and testimony of C/A and relevant Counts 4, 7, 8, 9, AT
 4 (11) ELEVEN, "That a Jury falsely convicted Yaag on Pursuant
 5 to the state's falsely presented case. Further, "The Trial
 6 Judge falsely sentenced Yaag on false testimony. Yaag
 7 has demonstrated that, "in light of all the evidence, it is more
 8 likely than not that no reasonable Jury would have convicted
 9 Yaag had they known about the documented papers proving
 10 that Yaag was incarcerated in California during the time
 11 frame and arguments of the state's case. See Schup Delo-
 12 513 U.S. 298, 327 [.] The district court fail to address Yaag's
 13 Actual/Factual innocence. [In this case the Judgment [
 14 of the Court of appeals was reversed. See also House v
 15 Bell; [547 U.S. 518, 165 L. Ed 2d 1, 126 S. Ct. 2064 (2006) In -
 16 this case, House put forward substantial evidence pointing
 17 to a different suspect, The Court concluded that this is
 18 the rare case where, "had the Jury heard all the conflicting
 19 testimony it is more likely that no reasonable Jury viewing
 20 the record as a whole would lack reasonable doubt (meaning)"
 21 the Jury would not lack in reasonable doubt, they would -
 22 have considerable reasonable doubt that Yaag was guilty.
 23 House satisfied the gateway standard set forth in
 24 Schup and may proceed on remand. It is clearly demonstrated -
 25 that the state's case was falsely presented and allowed to
 26 proceed to trial on false testimony and false pretense. Yaag
 27 was in California, and definitely could not be in two places
 28 at one time. The state has an obligation to prove that -

1 "Xaag can be in two places at one time," A Jury would find that to be absurd
 2 and impossible. Xaag has Presented new evidence that no Jury has heard
 3 which reflects Xaag's actual Innocence and Factual innocence. A Justice
 4 system creates a national issue if it's found that official under oath of
 5 office ignores the facts of evidence and or tangible evidence that's-
 6 exculpatory," and would have Vindicated a defendant. The fact that Petitioner
 7 has obtained this evidence finally, which discredits C/A's testimony and the state's
 8 case, "Reflecting that the state failed to Prove it's Case beyond a reasonable doubt. The-
 9 state's Case was not Credible. C/A's testimony was that she was eleven years
 10 old when the alleged incidents took place, C/A stated that she was Certain that she was
 11 (11) years old see EX-D line 1. She went on further to say she was Pretty Positive
 12 that she was (11) yrs old. See: EX D line 4. C/A testified in (2004). The Jury was charged
 13 with convicting Xaag on counts 4, 7, 8, & 9. Xaag is Presently incarcerated on
 14 counts that he is actually innocent of. [The state's reliance on false evidence to
 15 secure a conviction and constituted a due Process violation. In Miller V. Pate, 386 US.
 16 1 (1967). The Prosecution argued heavily that the shorts were stained with the victim's
 17 blood. During Habeas Proceedings, It was determined that the stains on the shorts
 18 were actually Paint. It was established that the Prosecution had known at the
 19 time of trial that the shorts were stained with Paint. The Higher Court held, The State
 20 deliberately misrepresented the truth. This court also held that the (14th) Amendment
 21 cannot tolerate a state criminal conviction obtained by the knowing use of
 22 false evidence. (This is the issue with what happened with Xaag) The state knew
 23 Xaag was incarcerated in a California Prison at the time frame of the states
 24 case and Xaag's conviction is illegal, C/A's testimony is false. Napue V. Illinois,
 25 360 US 264 (1959). Brady V. Maryland, 373 US 83 (1963); Giglio V. United States, 405
 26 US 150 (1972). Xaag has Proven actual, Factual Innocence although there is a
 27 6 month window which does not outweigh the Extreme testimony by C/A
 28 and the Prosecution's extreme Arguments surrounding the year 2004

1 and due to the facts that Yaag has proven that majority of the
 2 state's case and C/A's testimony was false and misrepresented to
 3 the Jury," by Yaag presenting the newly presented evidence e.g., The
 4 documented files from the California State Prison reflecting that Yaag
 5 was indeed incarcerated in the state of California and could not have -
 6 committed the alleged crimes presented in the state's case and C/A's
 7 false testimony, presented to the Jury. Yaag was Prejudiced by the
 8 manipulative actions and inactions by the State, using false evidence
 9 in Yaag's trial to obtain an illegal conviction, "constituting an unfair -
 10 trial. The state fail to prove that Yaag was guilty of the remaining
 11 months," which constitutes spillover(s) and would violate Due Process
 12 of law as well as Compulsory Process, and Petitioner's right to Counsel
 13 and a Speedy Trial, Being that this case requires dismissal and/or to
 14 be set aside should the State attempt to charge Yaag on the remaining
 15 6 Months, which requires a new trial and would be a miscarriage of
 16 Justice to do otherwise. Pursuant to 21 U.S.C § 2254(d)(1) [spill over].
 17 See: Lindstadt V. Keane United States Court of Appeals for the 2nd
 18 Circuit - 239 F.3d 141; 2001 U.S. App. Lexis 80 - The Prosecution argues -
 19 that, since the factual errors in the testimony bear upon the first incident
 20 of alleged abuse, (the December 1985 episode) and not to the second (the March (C-
 21 1988 episode), the Jury could have still found Lindstadt guilty on the count -
 22 relating to the second incident for which he received the same concurrent -
 23 sentence). Although Counsel's errors bears directly only on Counts 1 - the Count -
 24 that overturns fewer than all criminal counts must consider the Spillover
 25 effect on the remaining counts. See, e.g., United States V. Morales, 185 -
 26 F.3d 74, 82 (2d Cir-1999) - Three factors guide the factors presented relevant
 27 to the inquiry on impermissible spillover: (1) whether the evidence on the breached
 28 counts was inflammatory and intended to incite or arouse the Jury to convict -

1 the defendant on the remaining counts; [Any Jurist of reason could] E
2 find it debatable that Yaag's entire Trial Procedures was inflammatory
3 and tended to incite or arouse the Jury to convict Yaag because Yaag
4 has presented documented evidence that he was incarcerated in a California
5 state Prison from 12-2002 to July 23rd 2005 and could not have committed the
6 alleged crimes presented in the state's charging document. (2) Whether the
7 evidence on the vacated counts was similar to or distinct from that required
8 to prove the remaining counts; and (3) the strength of the government's case
9 on the remaining counts. In Yaag's instant case, the state's case and its
10 evidence, which was C/A's false testimony only was weak in the start
11 of trial to finish. "Yaag has proven this by presenting the documented
12 evidence reflecting that Yaag was incarcerated in California during the
13 time frame of Yaag's case with the state. United States v Naiman, 211-
14 F.2d 40, 50 (2d Cir. 2000). {239 F.2d 2063}. The Court (reversed) the decision -
15 of the District Court and remanded for the entry of judgment
16 conditionally granting the writ and ordering Lindstadt's release
17 unless the state provides him a new trial within 90 days. The -
18 mandate will issue forthwith.

19 CONCLUSION

20 Petitioner has demonstrated Actual/Factual Innocence by presenting new evidence that shows
21 Yaag was in a California Prison during the time frame of the state's case, which was
22 the false testimony by C/A, the state's star witness. C.O.A. should issue. Dated: This
23 27th Day of OCT 2021. SIS: Donald Syng name: Donald S. Yaag #1034734

24

25 PROOF OF SERVICE

26 I certify that I presented above documents for mailing by L.C.'s Free Staff Law Clerk

27 Postage Prepaid. Addressed As Follows: [REDACTED]

28 Clerk: Supreme Court of The United States, Washington -

1- DC 20543 & Aaron D. Ford, Nevada Attorney General

2 100 N-Carson Street

3 Carson City, Nevada-89701

4

5

6 Signature: Donald S. Young

7 Name: Donald S. Young #1034734

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