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No

ORIGINAL

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED
STATES

In re JONATHAN E. MANWELL

PETITION/WRIT

Jonathan E. Marwell, 964587

E.C. Brooks Correctional Facility

2500 South Sheridan Drive

Muskegon Heights, MI 49444

QUESTION(S) PRESENTED

I. DOES PETITIONER HAVE A CONSTITUTIONAL RIGHT TO LOCATED AND CONFIRMED EXCULPATORY FORENSIC EVIDENCE, TRANSCRIPTS AND DOCUMENTS NECESSARY FOR A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE AND ADEQUATE DEFENSE AND AN ADEQUATE AND EFFECTIVE APPEAL. ESPECIALLY WHERE HE WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO AN IMPARTIAL TRIBUNAL, COUNSEL OF CHOICE, CONFRONTATION, AND EFFECTIVE ASSISTANCE OF COUNSEL THROUGHOUT BOTH OF HIS TRIAL AND APPELLATE PROCEEDINGS.

Petitioner answers, "Yes."

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:

Pursuant to Rule 17, a copy of this Writ must be served upon the Governor and the Attorney General of the State:

Governor Gretchen Whitmer

Attorney General Dana Nessel

No. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

In re JONATHAN E. MANWELL

WRIT

Petitioner, Jonathan E. Marwell, prays that this Court reviews the issue and question presented herein as an extraordinary writ of mandamus, 28 USC § 1651 (a).

Submitted by:
Jonathan E. Marwell

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JURISDICTION

Pursuant to Rule 17, an extraordinary writ in aid of this Court's appellate jurisdiction shall be filed in accordance with Rule 20 in that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or in any other court.

28 USC § 1651(a). Such jurisdiction is sought.

Article III of the United States Constitution; 28 USC § 1251;

United States Constitution, Amendment 11.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

Fourteenth Amendment. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Jonathan E. Marwell, had two cases brought against him due to the same allegations of sexual abuse made by his alleged daughter, Destiny Marwell, on March 18, 2015. The first case was held in the 16th Judicial Circuit Court, Macomb County, Family Division, Case No. 15-0074 NA, Referee Linda Harrison presiding, to allegedly terminate Petitioner's parental rights.

The second is the criminal case, which came two months later, and after the termination case had lost its merit. It too was held in the same Macomb County court, Case No. 15-2139 FC, Hon. Richard Caretti presiding.

Most importantly, both cases had the exact same prosecutor; specifically, former Macomb County Prosecutor, Eric J. Smith, who has since had both state and federal charges brought against him. Smith has pleaded guilty in federal court and has been sentenced to prison. State charges still pending.

By the time the criminal case made it to trial, the allegations against Petitioner went from every year Destiny was in his custody, ages 12 to 16, save for age 15, to only ages 15 and 16 once foster care learned that Destiny went to the gynecologist at age 14, where her prior abuse had again been disclosed. Because the original allegations were changed to mere "talks," Petitioner has since been acquitted of those.

Although the new allegations were never legally admissible, and have been proven false by three of the original investigators during the criminal trial, Petitioner has been convicted to the allegations of age 15 - the year that the "incidents stopped." Consequently, he has been sentenced to the top end of his guidelines, with no criminal history, for refusing non-reporting probation and taking the matter to trial.

Weeks after being acquitted of the original allegations by a jury in the criminal court, Petitioner was retried on those same allegations in the termination court, and found guilty after a bench trial, Hon. Mark Switalski presiding.

Because said prosecution was allowed to divide the case into the two said parts, Petitioner now requires the exculpatory forensic evidence, court and prosecution files, the transcripts from the termination case, and an impartial Court of Law in order to present the matter as a whole. Where prosecution's "conflicting accounts" will demonstrate the intentional fraud which led to Petitioner's conviction. What is more, even with Eric J. Smith removed from office, the State seems to be protecting him, and continues this fraud.

This Court is now required to please grant Petitioner access to the said evidence, transcripts and documents; without which the matter will never be fully presented to be weighed on its merits.

BACKGROUND

Termination Proceedings.

After Petitioner's alleged daughter, Destiny, went to school on March 18, 2015, where she alleged two to three years of sexual abuse, she and her two younger siblings, Caleb and Annaleigh Berry,

were removed from Petitioner's home and care. Due to the nature of the allegations, Destiny was subject to both a SANE forensic medical examination and a Care House forensic interview. Forensics which are exculpatory and, therefore, withheld by the State. (See Appendix A and C).

With the said forensics withheld, proceeding began in March, 2015, to allegedly terminate Petitioner's parental rights. But several problems soon arose: By state statute once children have been removed from their home the state has 63 days to fully adjudicate its claims.

Immediately, the fact that Petitioner and his, now, wife, Chastity Maxwell, had been reporting the similar abuse of Destiny's siblings for years. Allegations entered in the 3rd Judicial Circuit Court, Wayne County, just eight (8) days prior to Destiny's original allegations. (See Appendix B)

In Macomb County, Destiny's appointed counsel, guardian ad litem, Janet Szpond (P43281), requested that Destiny's siblings be evaluated by an expert: neuropsychologist, Doctor Patrick Ryan.

(Transcript withheld).

On April 27, 2015, Doctor Ryan's evaluation concluded that Destiny's siblings were in no risk of harm under Petitioner's care. Thus, Referee Harrison found the matter to be without merit (facts omitted from the transcript). That same day it was said that all three of the children's birth certificates were received by the court (Termination Proceedings (TP) 4/27/15 p. 8-9). Therefore, the fact that no father is listed on Destiny's birth certificate was known by the court and all parties. Moreover, unbeknownst to Petitioner then, Szpond was aware that Destiny's "Care House" forensic interview had, in fact, been "completed": Id. 14.

(See Appendix C).

With opposite allegations, which contradicted the findings of Doctor Ryan, the termination case was moved to Referee Transit, June 2, 2015. (Transcript withheld). But these discrepancies were found by Hon. Mark Switalski, who warned Petitioner not to say a word on record because of how easy it would be to get and enter his record into the criminal court.

A requirement which now seems to be an unsurmountable feat.
(Transcript withheld).

Criminal Proceedings.

In the interim, with the forensics and all other evidence withheld, Petitioner was criminally arraigned on a 4th Degree Criminal Sexual Conduct (CSC-4th), misdemeanor, May 20, 2015. A charge which, alone, dismissed 99% of the allegations, which carried a 25-year to Life mandatory minimum by statute.

After Petitioner learned that forensics had been done, and that Doctor Ryan had confirmed Destiny's abuse, and thereby the reported abuse of her siblings, Petitioner released retained counsel, Steve M. Kaplan (P33036), refused non-reporting probation, and withdrew his nolo-contendere plea (Criminal Proceedings (CP) 8/20/15, all; CP, 8/25/15, p. 24). A legal feat which destroyed prosecution's case.

On January 14, 2016, prosecution amended the Information, moving the age of alleged abuse from 12 to 13, to avoid said statute.

(CP, 1/14/16, p. 5). That Amended Felony Information is still requested and required to demonstrate how drastically the Information was allowed to change without challenge. (Information withheld).

CRIMINAL TRIAL

The allegations given by Destiny at both the preliminary exam and at trial were proven false during trial by three of the original investigators; namely, CPS worker, Jennifer Raleigh, who conducted the forensic interview at the school; Officer Jean Reid and Detective John Henry Newman III, both from the City of Warren. Raleigh stated that, though Destiny alleged that abuse occurred on March 17, 2015, that abuse did not happen. "But that is why we have a forensic interview protocol" (CP, 5/19/16, p. 73). She further stated that due to the nature of the allegations a medical had to be done, per Department of Health and Human Services regulations. Id. 74.

The jury was made to believe that there are no forensics, no experts, and no other evidence of any kind. Facts known to be false by all.

The result was Petitioner being acquitted of everything he was arrested for, while being convicted of age 15 allegations. The one and only year "nothing happened" based upon "no evidence". But what Petitioner was sentenced to are unsupported allegations concocted by Hon. Caretti and stipulated to by the courts counsel, Azhar H. Sheikh (P52365).

TERMINATION TRIAL

Weeks after Petitioner's criminal conviction, Doctor Ryan testified in the termination proceedings. Here, Doctor Ryan finally became aware of the fact Petitioner had been reporting the abuse of all three children, not perpetrating the crimes. But prosecution misrepresented the criminal conviction in order to sway the doctors beliefs. Nevertheless, the doctor remains completely unaware of the forensics he was employed in order to withhold, Destiny's medical history, et cetera. Hence, Doctor Ryan's testimony would have violated the Michigan Supreme Court's holdings in Thorpe and Harbinson, had the doctor been invited to the criminal trial.

The termination court's counsel, Kare Russell (P32146), made it known that she was able to get Doctor Ryan to admit that he does not know who committed the crimes, only that they were done. Russell also included the fact that she was present throughout the criminal proceedings, and witnessed first had all the reversible error (TP, 6/29/16, p.28-34). Yet no objections exist on the criminal record. Sabotage.

DIRECT APPEAL, TERMINATION

The termination case was the first to be appealed, COA No. 333860/333870. Frank Fronczak (P29184) was appointed, and to date Petitioner has never had any contact with him. In fact, though several requests for files and transcripts were sent, Petitioner has no idea what was even filed in that matter. Only recently has Petitioner's retained private investigator, Scott Lewis, made contact. Come to find out, Fronczak was suspended from practice.

No further appeal has been filed, because Petitioner needs nothing but files and transcripts from that redundant case.

DIRECT APPEAL, CRIMINAL

Since 2016, the criminal case has falsely been kept in direct appeal, COA No. 333916, MSC No. 162238 (after remand). After filing for discovery in the Eastern District Federal Court, Case No. 1:19-cv-12517, the State pulled Petitioner's case back under the pretense of decisions made by the Michigan Supreme Court in Therpe and Harbinson. Cases where it was held that experts may only opine on physical evidence and a complainant's medical history. But, again, all evidence and experts were kept from this case.

Throughout the appellate proceedings, however, Petitioner made several attempts to obtain the required materials, all to little avail. In the first meeting with appointed appellate counsel, Robyn Frankel (P43629), Petitioner requested help in obtaining the said forensics and the transcripts from the termination case. In a letter, dated February 9, 2017, Frankel stated that Fronczak had not replied to the request, and Russel convinced her to stop any/all investigations. Petitioner then demanded Frankel to withdraw; enter Dona Carron (P44436). Another unwanted attorney, who

to do anything. To make matters worse, four of Petitioner's motions for remand were rejected by the Court of Appeals because Carron refused to withdraw. Sabotage.
(See Appendix D).

POST-CONVICTION ATTEMPTS FOR DISCOVERY, TRANSCRIPTS, ETC.

On April 25, 2017, Petitioner received a response to his requests for transcripts from the County Clerk, Karen Spangler, stating that in a search back to 1980 there is no record of him in the 16th Judicial Circuit Court. Yet the following day the same request was fulfilled for the Court of Appeals. (See Appendix E).

On June 25, 2017, Petitioner's wife sent the court a request for transcripts. To which a, July 24, 2017, response stated that the termination matter had been "resolved through the Court of Appeals" and to have Petitioner "contact prior counsel", Fronczak.
(See Appendix F and G).

In a letter dated August 10, 2017, it seems Dana Carron was able to locate some of the required transcripts, but to no avail.

(See Appendix H).

On April 5, 2018, Petitioner submitted yet another request for the required transcripts, which worked for the criminal trial transcripts but not for the termination transcripts.

(See Appendix I).

The State Court Administration Office was contacted; however, all they could suggest was "there are legal steps that can be taken to compel public officials to fulfill their legal responsibilities."

May 15, 2018. (See Appendix J).

A response from the trial court after Carron withdrew, June 28, 2018, again instructing Petitioner to contact Franczak. Thankfully, the witness list proving Eric J. Smith was, in fact, aware of his expert, Doctor Ryan, months prior to the criminal trial was enclosed. (See Appendix K).

Because the termination court was aware of the fraud the entire time, Petitioner motioned the criminal court for the required materials. His motions were denied, August 10, 2018.

(See Appendix L).

Due to the continued confusion of the criminal court, Petitioner filed a motion for reconsideration. With excerpts of the trial transcript submitted for clarification, the trial court admitted that Petitioner was able to "cite multiple conflicting accounts by multiple [prosecution] witnesses". Nonetheless, that motion was also denied, October 15, 2018.

The motions were appealed, COA No. 345620, MSC No. 151946. (See Appendix M).

SUPERINTENDING CONTROL

A writ for superintending control was filed in the Court of Appeals, COA No. 341965, in attempts to force the Macomb County Court into compliance with both state and federal law. The writ was denied, May 29, 2018; and filed in the Mich. Supreme Court, MSC No. 157985, where it was, again, denied, February 4, 2019. Then after receiving new evidence supporting his claims (the affidavit of Sarah Hoff), Petitioner filed for reconsideration, which was denied, May 28, 2019. (See Appendix N)

PRIVATE INVESTIGATOR

Zealous, with prosecution ordered to answer his application for leave to appeal by the Michigan Supreme Court, Petitioner retained a private investigator, namely, Scott Lewis, to help obtain the required materials, again to little avail. The same excuses came from the Macomb County Court, and the record of confession in the 3rd Judicial Circuit Court, Wayne County, was said to be lost with the sudden death of a court reporter. An excuse which does not comport with current Michigan Court Rules.

(See Appendix O)

With Lewis's help, however, Petitioner's wife was able to obtain copies of two withheld transcripts from the court, and make a back alley deal with a former court employee to obtain some of the termination trial transcripts.

FREEDOM OF INFORMATION ACT

Still in need of materials to prove his claims, Petitioner drew up Freedom of Information Act requests for his wife to serve upon the

37th Precinct, Warren; the Macomb Prosecutor's Office; and the Macomb County Jail. Of which, the only response came from the 37th Precinct, which only contained the original case report and Felony Information. (See Appendix Q)

CRIMINAL APPLICATION FOR LEAVE TO APPEAL

On July 1, 2020, with briefs filed, the case was remanded back to the Court of Appeals; all other motions denied. (See Appendix R).

After remand, another application for leave to appeal was timely filed in the Michigan Supreme Court, where it was placed in abeyance by order of the Court, April 2, 2021, pending a decision in *People v. Hawkins*, Docket No. 339020. *Hawkins* was vacated May 28, 2021. (See Appendix U).

OTHER REQUESTS

Desperate, Petitioner reached out to Humanity for Prisoners. They too sent a FOIA request for the Prosecutor's File, which normally costs between \$100 and \$150. When the said office finally responded, they

wanted an unprecedented \$2,311.71 for said file. Sadly, Humanity for Prisoners cannot help with the withheld forensics.

(See Appendix S).

Relentless, Petitioner sought the help of Access Plus, as advised. Though willing to help, Access Plus is no more.

(See Appendix T).

Refusing defeat, Petitioner reached out to one of the two persons whom first found this matter to be without merit and actually tried to stop it. After explaining the situation, Petitioner selflessly, literally, begged for help. Weeks later, a package arrived containing more the Petitioner could ever hope for. Though he has now learned not to divulge pertinent information to the criminals he faces, Petitioner now has ample proof of fraud to move forward, eg, the second set of Amended Felony Information filed March, 2016. (See Appendix V).

Armed with evidence showing more evidence was known of and withheld, (transcript of the GAL stating Destiny's "Care House" forensic interview had been "completed"), Petitioner sent a written

request for the exculpatory evidence to Eric J. Smith's successor, Peter J. Lucido; to which there has been no response. Without a state court willing to compel discovery, the law has once again been rendered useless - if not completely redundant. (See Appendix W).

After it was learned that Eric J. Smith was being investigator, Petitioner reached out to the Attorney General, Dana Nessel, yet again. This time he sent his files to further prove the charges against Smith, rather than requesting help in his appeal. Petitioner was instructed to file his claims with the state's Conviction Integrity Unit (CIU). Recently, Petitioner received a response from the CIU, dated September 27, 2021, stating all the reasons they cannot and will not help. Instead of the Felony Information and its amended counterpart, the CIU has decided to go along with the Court of Appeals opinion, i.e., the presumption of correctness. (See Appendix X).

CURRENT AND PENDING

Once he learned that this Writ could be filed as an original action, Petitioner filed two other motions:

(1) A motion to stay the appellate proceedings and hold his application for leave to appeal in abeyance to afford this Writ time to produce the required materials was filed in the Mich. Supreme Court, MSC No. 162238.

(2) A motion to waive the fees of the transcripts required was filed in the termination court, case no. 15-0074NA. Noting that serving a writ of mandamus on the County Clerk would not help if the files do not exist, or if they do now exist but cost thousands of dollars at \$2.65 per page.
(See Appendix Y).

Currently, in another matter, Petitioner has a claim of denied access to the court filed in the Western Federal District Court, Case No. 1:21-cv-745, wherein he has requested the alternative relief of the materials sought herein.

(See Appendix Z).

To date there has been no further development in the trial court, the state Supreme Court, or the said federal court.

In sum, although supporting document to some factual allegations presented herein may not be included, Petitioner is in possession of many more supporting documents - which are available upon request. Emphasis has been given to the tenacity of Petitioner and his wife, Chastity, in their attempts to retrieve the evidence and records required to legally prevail. The other included information, even that which is noted in the appendices, is to demonstrate the need for said materials and, moreover, how the said materials would be necessary for this Court's, or any other court's, appellate jurisdiction.

Petitioner, Jonathan E. Maxwell, swears under the penalty of perjury that all factual allegations made herein are true and accurate, and properly presented to the best of his knowledge and information.

Omnia vincit amor.

REASONS FOR GRANTING THE PETITION

I. PETITIONER HAS A CONSTITUTIONAL RIGHT TO THE LOCATED AND CONFIRMED EXCULPATORY FORENSIC EVIDENCE, TRANSCRIPTS, AND DOCUMENTS NECESSARY FOR A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE AND ADEQUATE DEFENSE AND AN ADEQUATE AND EFFECTIVE APPEAL. ESPECIALLY WHERE HE WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO AN IMPARTIAL TRIBUNAL, COUNSEL OF CHOICE, CONFRONTATION, AND EFFECTIVE ASSISTANCE OF COUNSEL THROUGHOUT BOTH OF HIS TRIAL AND APPELLATE PROCEEDINGS.

APPLICABLE LAW

Evidence.

Criminal defendants do not have a general constitutional right to discovery. People v. Elston, 462 Mich 751, 765; 614 NW2d 595 (2000). And until recently, discovery under MCR 6.201 did not apply in misdemeanor cases. People v. Greenfield, 271 Mich App 422, 450 (2006). A criminal defendant does, however, have a

due process right to obtain evidence in the prosecutor's possession if the evidence is favorable to the accused and material to guilt or punishment. "Material" has been interpreted to mean exculpatory evidence that would reasonable doubt about the defendants guilt. See United States v. Agurs, 427 US 97, 104; 96 S. Ct. 2392; 49 L. Ed. 2d 342 (1976). Evidence is favorable to the defense when it is either exculpatory or impeaching. Giglio v. United States, 405 US 150, 154; 92 S. Ct. 763; 31 L. Ed. 2d 104 (1972), quoting Napue v. Illinois, 360 US 264, 269; 79 S. Ct. 1173; 3 L. Ed. 2d 1217 (1959). A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. United States v. Bagley, 473 US 667, 682; 105 S. Ct. 3375; 87 L. Ed. 2d 481 (1985). This standard "does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. . . . Kyles v. Whitely, 514 US 419, 434; 115 S. Ct. 1555; 131 L. Ed. 2d 490 (1995). The question is whether, in the absence of the suppressed evidence, the defendant "received a fair trial, understood as a trial resulting in a verdict worthy of

confidence." *Id.* Furthermore, the government is held responsible for evidence within its control, even evidence unknown to the prosecution. *Id.* 437; without regard to the prosecution's good or bad faith. *Agrus*, 427 US, at 110. Failure to produce evidence within a party's control, however, raises the presumption that, if produced, it would operate against him; and every intendment will be in favor of the opposite party. *Barringer v. Arnold*, 358 Mich 594, 601; 101 NW2d 365 (1960).

Transcript.

Although the Constitution does not require States to grant appeals as of right to criminal defendants seeking review, when a State offers an appeal, due process demands that such an appellate review be "adequate and effective." *Evitts v. Lucey*, 469 US 387, 392; 105 S. Ct. 830; 83 L. Ed. 2d 821 (1985). More specifically, this Court has adjudged that "adequate and effective appellate review" is impossible without a trial transcript or adequate substitute and that the State must provide trial records to

inmates unable to purchase them. Griffin v. Illinois, 351 US 12, 20; 76 S.Ct 585; 100 L.Ed.2d 891 (1956). As an inescapable corollary to Griffin, an inmate may not be unjustifiably denied access to an existing transcript which is necessary for effective judicial review. Ake v. Oklahoma, 470 US 68; 105 S.Ct. 1087; 84 L.Ed.2d 53 (1985). See also Mich. Court Rule 6.433.

Defense and Effective Appeal.

Not only does the Fourteenth Amendment grant the sovereign States access to the Bill of Rights, it provides the Due Process Clause and Equal Protection of Law. Due Process demands that a criminal defendant be given a meaningful opportunity to present a complete and adequate defense. California v. Trombetta, 467 US 479; 104 S.Ct. 2528; 81 L.Ed.2d 413 (1984). Denied the right to present a defense is not harmless error. Delaware v. Van Arsdall, 475 US 673, 681 (1986). A fundamentally fair trial and a complete defense requires the disclosure of exculpatory forensic evidence by the prosecution. Brady v. Maryland, 373 US 83 (1963).

And an effective appeal requires the most basic of tools: transcripts.

Ake, 470 US, at 77.

Impartial Tribunal.

The right to an impartial judge is so fundamental that without this basic protection, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.

Arizona v. Fulminante, 499 US 279, 310 (1991). Such structural error requires reversal without regard to the evidence in a particular case. Chapman v. California, 386 US 18, 23 (1967).

Counsel of Choice.

Denying a criminal defendant choice of counsel, ie, self-representation, is so fundamental that it is among few errors deemed structural. Forett v. California, 422 US 806, 820-21; 95 S. Ct. 2525; 45 L. Ed. 2d 562 (1975); McKaskle v. Wiggins, 465 US 168, 177 n.8; 104 S. Ct. 944; 70 L. Ed. 2d 122 (1984). And it is clearly established law that the choice between unprepared counsel and

self-representation is no choice at all. Pouncy v. Palmec, 846 F.3d 144 (6th Cir 2017).

Confrontation.

The right to Confrontation is violated where a criminal defendant is denied the to not only confront his accusers, but also expose them to meaningful Cross-Examination. Pointer v. Texas, 380 US 400; 85 S.Ct 1065; 13 L.Ed.2d 923 (1965).

Especially where Cross-Examination has been deemed "the greatest legal engine ever invented for the discovery of truth". California v. Green, 399 US 149, 158; 90 S.Ct. 1930; 26 L.Ed.2d 489 (1970).

Effective Assistance of Counsel.

The promise of Gideon, infra, that a criminal defendant has the right to counsel at trial - like the promise of Douglas, infra, that defendant has a right to counsel on his first appeal as of right - would be a futile gesture unless it comprehended the right to be effective assistance of counsel. Gideon v. Wainwright, 372 US 335;

83 S.Ct. 792; 9 L.Ed.2d 799 (1963); Douglas v. California, 372 US 353 (1963). See also Strickland v. Washington, 466 US 668; 104 S.Ct. 2052; 80 L.Ed. 2d 674 (1984); United States v. Cronie, 466 US 648, 104 S.Ct. 2039; 80 L.Ed. 2d 657 (1984).

DISCUSSION

The purpose of this Writ is to obtain: (1) the SANE medical forensics, conducted between March 18 and March 25, 2015, located at 36500 South Gratiot Avenue, Suite 201, Clinton Township, Michigan 48035, Turning Point SANE Program;

(2) The Care House forensic interview, conducted prior to April 3, 2015, confirmed on record April 27, 2015 and June 1, 2016, located at 131 Market Street, Mount Clemens, Michigan 48043;

(3) The Macomb County Court and Macomb County Prosecutor Files for both the criminal, case no. 15-2139 FC, and termination, case no. 15-0074 NA, cases; and

(4) The transcripts from the termination case, 15-0074 NA.

Cause.

In order to be eligible for said relief, Petitioner must demonstrate the need for such a request; how it would aid this Court with its appellate jurisdiction; that exceptional circumstances warrant its discretionary powers; and that adequate relief cannot be obtained in any other form or from any other court. Rule 20.

As previously demonstrated, Petitioner has exhausted every known remedy, all with little success. Because the facts and evidence; both presented and requested herein, should have prevented his criminal arraignment and, thus, his conviction, sentence, and need for appellate review, Petitioner believes that he is entitled to relief. Especially since all applicable state and federal rules, laws, and constitutional guarantees seem to be wholly in his favor.

No other relief will suffice. Every burden has been placed upon Petitioner from the very onset of this matter, while prosecution has been aided by the courts and the courts' appointed counsel.

After his pending appeal is exhausted, Petitioner will have few options: To advance in seeking post-conviction relief without the requested materials will prove equally redundant as all other proceedings have thus far. The only way to toll the one year habeas clock would be filing a motion for relief from judgment, pursuant to Mich. Court Rule 6.500 et seq.. Ironically, such a motion must be filed in the very court which continues to aid in this fraud by refusing to compel discovery of said evidence and by denying access to its files and transcripts. Chapman, supra.

When Petitioner filed for discovery under 28 USC § 2254 in the Eastern Federal District Court, the case was moved to the Northern Division (where he was being housed) without his knowledge or consent; Hon Thomas L. Ludington presiding. Research revealed that Hon. Ludington has not ruled in an inmates favor in some 4,000 cases. Knowing this to have the same result as the trial court, Petitioner requested that his entire filing be returned - to no avail.

This is also when the State court held Petitioner's application.

Filing another tort under 42 USC §1983 would take years to reconcile, without tolling the said habeas deadline. Even if Petitioner were to prevail, it would be too little too late.

Petitioner is alone fighting against stacks of professionals. He has filed in every other court that can obtain jurisdiction for the necessary materials. Time, options and finances have been exhausted fighting the circumvention of law. His conviction is of no consequence; there is much more at stake here. Therefore, Petitioner beseeches this Court to please reconcile this matter.

Prejudice.

Ever since Petitioner has falsely been deemed a rapist, there have been no rules; no laws; no constitutional rights. A fact that the State has monopolized on: One story after another; one lawyer after another; one court after another. Through it all, measures were taken by the State and its courts to keep the truth, the whole truth, and nothing but the truth off the record.

Because this matter was divided into the two said parts, the

can only be revealed by presenting both records together, in the same court at the same time. Unfortunately, everyone involved is aware of that, and those in possession of the evidence and the record do not want either exposed. Without evidence the State can rely upon beliefs. The belief that Petitioner is the "bad guy", who has reason to lie; and they are the "good guys". This was yet another tactic used during trial to sell fraud to the jury, while hiding all the true facts and evidence in plain sight. Strickland, supra.

The issue concerning the said evidence seems clear, it must be brought forward no matter where it leads. Petitioner knows the contents of the withheld forensics because that evidence is the only explanation as to how foster care was recorded knowing Destiny's "symptoms" April 3, 2015. And it is the only explanation as to how persons whom have never met Destiny's former step-father, David James Berry, could now have such a vivid and accurate description - beginning with his need for eyeglasses.

No matter where it leads, the evidence collected throughout

this matter corroborates all the evidence that has been in existence for years prior, due to the reported abuse. All of which is relevant, material, and therefore legally admissible. Petitioner is entitled to the said evidence. Brady, supra.

In his research, Petitioner found that the law states that a criminal defendant is entitled to "the transcript of the trial." However, the premise that "an inmate may not be unjustifiably denied access to an existing transcript which is necessary for effective judicial review"¹ seems much more comprehensive. Based on the latter, Petitioner believes he is entitled to the requested transcripts.

Petitioner believes that court files are Public Record and are not subject to the Freedom of Information Act (FOIA). Stated differently, if the files exist, the court must relinquish them. That would explain why the court's goto move for years has

¹ Ake, 470 US, at 76-77.

that the files do not exist or, when caught, could not be located due to some confusion. To end any and all confusion, Petitioner asks this Court to grant access.

The Prosecution File, however, is subject to FOIA, and must be released upon request. Michigan seems to have a problem with FOIA, as covered by local media. It seems that there is no limit on the "estimate" expense. So, when persons do not want documents released an absurd figure can keep them at bay. This tactic was also used against Petitioner when prosecution requested \$2311.71 for its file. Because of these continued tactics, Petitioner asks this Court to please grant access.

The evidence, transcripts and documents requested not only prove Petitioner's complete innocence, but how long it was known and by whom. But the reason Petitioner has fought so hard is not for his own sake, but rather the sake of his children.

You see, dear reader, just in the 15 months of said trial proceedings,

Doctor Ryan found that Destiny's IQ had dropped 16 points, which he deemed substantial. Ever since Petitioner's conviction, Destiny has suffered frequent seizures, which she had never experienced before. Meanwhile, her siblings have been placed at the very location of their reported abuse, with the person whose description can be found within the withheld forensics.

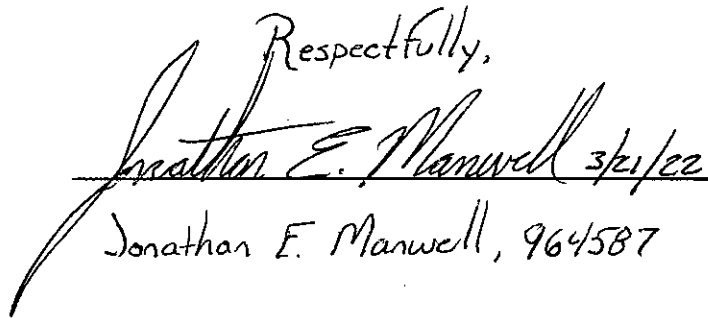
Statistical probability would strongly suggest that there is little to no chance Berry would stop with the reported abuse when those reporting it have been removed. For these reasons, Petitioner even offered to serve every day of his illegal sentence, without any further challenge, if the State would just use its evidence to save the children. The States response has been clear: It has continued with the fraud since it has a 99% chance of prevailing not by law, but rather the less than 1% chance anyone will enforce it.

What has been repeated proven is that, without the relief requested, Petitioner has no chance of prevailing.

CONCLUSION

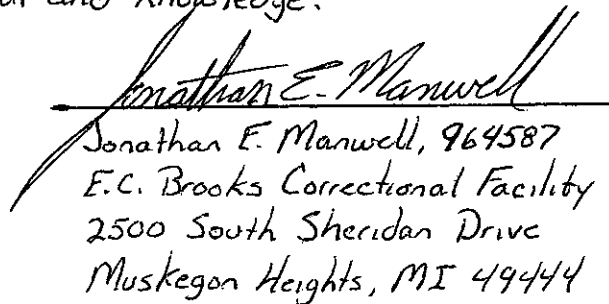
For these reasons and more Petitioner, Jonathan E. Manwell, asks this Court to please GRANT this writ and, thereby, access to the said exculpatory forensic evidence, the said court documents, prosecution's files, and the said transcripts necessary for appellate and other post-conviction review; and GRANT any other relief that this Court deems just given these circumstances.

Respectfully,


Jonathan E. Manwell, 964587

On this date I, Jonathan E. Manwell, do hereby swear under penalty of perjury that all statements made herein are true and accurate to the best of my information and knowledge.

Date: March 21, 2022


Jonathan E. Manwell, 964587
E.C. Brooks Correctional Facility
2500 South Sheridan Drive
Muskegon Heights, MI 49444