

No.
21-7516

ORIGINAL

In The

Supreme Court of The United States

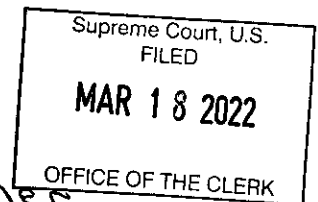
Delroy T. Booth

Petitioner

v.

Warden Berry

Respondent



On Petition For Writ of Certiorari
To The Georgia Supreme Court

Petition For Writ of Certiorari

Delroy T. Booth
Pro se, Petitioner
Baldwin State Prison
P.O. Box 218
Hardwick, Georgia 31034

1. Did the Georgia Superior Court abuse its Discretion By Denying Petitioner's Motion to vacate, set aside, or correct Sentence?
2. Did the Georgia Supreme Court Have Jurisdiction to Review Petitioner's appeal From the Denial of the Georgia Superior Court Denying Petitioner's Motion to vacate, etc.?
3. Did the Georgia Supreme Court abuse its discretion By Denying Petitioner's Application for discretionary appeal Review of the Appeal From the motion to vacate, etc.?
4. Would Petitioner's motion to vacate, etc., qualify to Be a extraordinary motion For new Trial Based on newly Discovered evidence?
5. Is Petitioner's Motion to vacate, set aside, or correct Sentence motion considered to be an authorized attempt to challenge Petitioner's convictions?
6. Does the Due Process requires that an Honorable Judge Possess neither actual nor apparent Bias when commenting and Stating Personal opinion about DNA evidence?
7. IF actual or apparent Judicial Bias exists, Does 28 U.S.C. 144 and 455 Provide Mechanism For a Judge's Recusal?
8. Does section 455 (a) Require Recusal If a Judge's impartiality may Be reasonably questioned?
9. Does section 455 (b)(1) Require recusal If a Judge has a Personal Bias or Prejudice about DNA evidence Being Presented To a Jury

9. By a Defense Expert Witness in Forensic DNA analysis?
10. Upon Finding that an Honorable Trial Judge issued an erroneous recusal Decision, can the United States Supreme Court vacate the State Court of last resort and the trial Court's Judgment?
11. When the Court denies a direct appeal, Do appellants Remain Free to Initiate a habeas corpus Proceeding to resolve their ineffective assistance Claim?
12. Failure to raise an ineffective assistance of Counsel Claim on Direct Appeal, Does that Bar the Claim From Being Brought in later Collateral Proceedings?
13. Was Trial counsel ineffective For Failing to object to the Trial Court's Bias comments on DNA evidence in the face of Petitioner's Defense DNA Expert Witness while testifying on the Witness stand?
14. Was Petitioner's Trial Counsel ineffective For Failing to Put in a Motion For a mistrial after the trial Court made the Bias comments on DNA evidence in the Face of the Defense Expert DNA Witness and The Jury?
15. Was Petitioner's Trial Counsel Failure to object and Put in a Motion For a mistrial Constitutionally ineffective?
16. Can Petitioner's appellate counsel Number Two Be held liable For ineffective assistance For Failing to Raise the Judicial Misconduct and ineffective assistance of Trial Counsel grounds on Direct Appeal Phase?
17. May a Petitioner establish Constitutionally Inadequate Performance If He shows that appellate counsel omitted significant and obvious Issues while

17. Pursuing issues that were clearly and significantly weaker?
18. The right to a fair trial, Is that guaranteed to State Criminal Defendants
By the Due Process clause of the Fourteenth Amendment?
19. While the Constitution guarantees a fair trial through the Due Process clauses,
Does it Defines the Basic elements of a fair trial largely through the
Several Provisions of the Sixth amendment?
20. Does a criminal Defendant need to show that counsel's deficient conduct
was more likely than not altered the outcome in the case?
21. Are cases involving sixth amendment deprivations subject to the
general rule that Remedies should Be tailored to the injury suffered from
the constitutional violation and should not unnecessarily infringe on competing
Interest?
22. Was Petitioner's Appellate Counsel Number Two Failure to Argue and
raise the Judicial Misconduct and ineffective assistance of Trial counsel
grounds on Direct appeal Below the standards of reasonably competent
Performance?
23. Can a reviewing court grant relief for Plain error even if the error
was not raised and preserved at trial or sentencing?
24. In an appeal based on Plain error, Does the Defendant Bears the Burden
to show there was an error, that is clear or obvious, and Affected the
Defendant's substantial rights?
25. If the Defendant can satisfy those three Requirements for Plain error,
Is relief available if the court determines that the error seriously

25. Affected the Fairness, Integrity, or Public Reputation of Judicial Proceedings?
26. When the Defendants rights or objections were waived, They will not Be Reviewed For Plain error, But those that were merely Forfeited can they Be reviewed For Plain error?
27. Are Appellate courts more likely to Find Plain error IF the error at Trial affected the Defendant's constitutional Rights?
- * End of questions Presented Section *

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:

RELATED CASES

Ground one Newly Available Evidence -
Cobell v. Norton, 334 F.3d 1128, 1144-45 (D.C. Cir. 2003)

Ground Two Newly Available Evidence -
U.S. v. Rodriguez, 627 F.3d 1372, 1380 (11th Cir. 2010)

Ground Three Newly Available Evidence -
Ramchair v. Conway, 601 F.3d 66, 72-77 (2d. Cir. 2010)

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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 _____ 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 _____ 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 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 Georgia Superior Trial 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 2-22-2022
A copy of that decision appears at Appendix A.

☐ 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

Georgia Constitutional Provisions -

Article VI, Section VI, Paragraph III of The Georgia Constitution...

The Georgia Supreme Court has Jurisdiction over this matter under Article VI, Section VI, Paragraph III of the Georgia Constitution, as this was an appeal From an order Dismissing the Application For Discretionary Appeal Review. Petitioner was appealing to the Georgia Supreme Court a Georgia Superior Court order Dismissing Pro se Motion of a motion to vacate, set aside, or correct sentence By a Person in custody and Brief In support of this motion with newly Available evidence. Petitioner's Pro se motion was Denied in a Georgia Superior Court in a Murder case in which a sentence of Death.... could Be imposed. See O.C.G.A. 16-5-1(d), see also Neal vs. State, 290 Ga 563, 569-572, 722 S.E. 2d 765, 770-73 (2012) (Hunstein, C.J. Concurring). The Georgia Supreme Court abused its Discretion By Denying Petitioner's Application For discretionary appeal review, From an order Dismissing Petitioner's Pro se Motion to vacate, etc., In a Georgia Superior Court. Most importantly The Georgia Supreme Court has Jurisdiction to Review Petitioner's Appeal From the Denial of the motion to vacate, etc., with newly available evidence Because the Georgia Supreme Court Denied Petitioner's Direct appeal in August 2017, Booth vs. State, 301 Ga. 678 (2017). The grounds that were raised In 2017 in the Georgia Supreme Court Did not have any arguable Basis grounds for an appeal to Be successful on Direct Appeal Phase. These three grounds of newly available Evidence that Petitioner has Discovered in the Motion to vacate, etc., has an Arguable Basis with some Powerful law and cases to support this Motion To vacate

etc., Petitioner can show and Demonstrate that the Writ will Be in aid of this court's appellate Jurisdiction, that exceptional circumstances warrant the Exercise of the court's discretionary Powers, and that Adequate relief cannot be obtained in any Form or From any court. The motion to vacate, etc., was Filed in DeKalb county superior court on 1-5-2022 and the trial court Dismissed Petitioner's Pro se Motion on 1-28-2022, The trial court and the Georgia Supreme court abused its discretion on Plain error Review Because Petitioner's Motion To vacate, etc., has newly available evidence that consist of Trial errors and other violations of the united states Constitution, Because Petitioner's convictions was obtained in violation of the law. The Georgia Supreme court Justices Denied the application For discretionary Appeal Review and Dismissed the Application on 2-22-2022, Again Petitioner can show and Demonstrate that the Writ will Be in aid of this court's appellate Jurisdiction, That exceptional circumstances warrant the Exercise of the court's discretionary Powers, and that adequate relief cannot Be obtained in any Form or From any other court.

This is what Petitioner stated in the Georgia Supreme Court From The topic of Discussion: Motion to vacate, set aside, or correct Sentence By a Person in custody and Brief in support of this Motion with newly available Evidence.

Pursuant To The Law: Mandatory Disqualification or Recusal

Due Process Requires that a Judge Possess neither actual nor apparent Bias. If actual or apparent Judicial bias exists, 28 U.S.C. 144 and 455 provide mechanisms for a Judge's Recusal. Section 455 (a) requires recusal if a Judge's impartiality may be reasonably questioned *see *Sao Paulo vs. Am. Tobacco Co.*, 535 U.S. 229, 233 (2002). While 455 (b) (1) Requires Recusal if a Judge has a Personal Bias or Prejudice, *see *Cobell vs. Norton*, 334 F.3d 1128, 1144-45 (D.C. Cir. 2003). * Upon Finding that the Trial Judge issued an erroneous recusal decision, the Appellate court may vacate the trial court's Judgment. *see *Liljeberg vs. Health Servs. Acquisition Corp.* 486 U.S. 847, 862-64 (1988). *

Here, Ground one of newly Available Evidence:
Judicial Misconduct -

Judicial Misconduct By making Bias comments on the evidence. The trial court Judge made Bias comments on the evidence in the Face of a Defense expert's Testimony. Here, the trial court Judge Stated his Personal opinion about how the (GBI) Georgia Bureau of Investigation Standards are higher than the (FBI) Federal Bureau of Investigation standards on DNA Testing (Through questioning) that the Standards that should Be Applicable are Today's standards, not the Standards that are currently evolving, the trial court Stated his Personal opinion in the Face of a Defense Expert Forensic DNA Analysis while Testifying about his Expertise. The Trial court

Commented on the evidence By also stating that the G.B.I.'s Standards could and will Be higher than the F.B.I.'s Standards For DNA Testing. Most importantly, Those Bias comments on the DNA evidence By the Trial Court was Plain error Because the Jury was Convinced By the Trial Court's Bias comments on DNA evidence, and Those PreJudiced improper comments on the DNA evidence could not have Been Removed From the Jury Minds. No curative Instructions to the Jury once the trial court made the Bias comments on the DNA evidence in the Face of the Defense Expert. No objection or Effort to Put in a Motion For a Mistrial Because of the Bias comments on DNA evidence. The Jury heard the State's DNA GBI Forensic Analysis Testimony (Trial Transcript Page 837-848). Then the Jury heard the Defense DNA Expert (Trial Transcript Page 933-974). The State's GBI Forensic DNA Analysis goes to the heart of the State's evidence, which centered around the scientific validity of DNA evidence. This was Plain error By the trial court Because Petitioner's Defense Expert Witness in Forensic DNA Analysis was Defending Petitioner to clear Petitioner's name From the Allegations of Aggravated Sodomy, In which on that charge the Jury Aquitted Petitioner, and Petitioner was Found guilty By the Jury on the Aggravated Sexual Battery Allegation. The Defense Expert DNA witness States:

Copy of Trial Transcript - * Partial Copy *

Dr. Greg Hampikan:

Page 933 - could get measureable DNA From one cell, but generally want at least 100 cells.

Page 937 - Sperm cells can be differentiated from non-sperm cells.

Page 946 - Frequency statistics are calculated differently at different labs, and can vary wildly - up to a Billion times variation.

* Page 947 * - Court emphasizes that GBI standards are higher than FBI - That Future goals Don't matter.

Page 949 - Mr. Booth's sperm cell DNA Found in Rectal swabs (Page 969)

Page 950 - Pubic sample sperm cells are probably from just one man (Page 952, 971) Page 951 not Mr. Booth (952)

Page 951 - Sperm internally less significant because harder to wash. External sperm is more significant, Report Failed to signify that male sperm from outside the body was not Mr. Booth (Page 976 Report Failed to discuss differential extraction (so saying Mr. Booth could not be excluded made it appear he could not be excluded as having contributed the sperm.))

Page 957 - About 1/3 of Innocence Project DNA tests confirm guilt.

Page 958 - DNA evidence can be found 48 hours to one week after sex, (Page 959 Profile weakens as time goes on).

Page 964 - I published a study of 194 DNA exonerations. 5% of them used fingernails to exonerate (Page 977 other cases did not have fingernail evidence to exonerate with).

Page 974 - My Bill will probably be \$5,000 to \$7,000 for all services since 2009. * End of Partial Trial Transcript *

Here, the trial court erred by making bias comments on the

DNA evidence in the face of the Defense Expert Witness Testimony. It is not a secret that DNA evidence carries great weight with Jurors: DNA evidence is viewed by Jurors as being qualitatively different from other traditional forms of evidence with a special aura of credibility. * see Hon. Donald E. Shelton, twenty-first century Forensic Science challenges for Trial Judges in Criminal Cases: Where the Polybutadiene meets the Bitumen, 18 Widener, L. J. 309, 377 (2009). * Even our Nation's highest court recognizes that DNA testing is powerful evidence, and given the persuasiveness of such evidence in the eyes of the Jury, It is important that DNA be evidence presented in a fair and reliable manner. * see McDaniel v. Brown, 558 U.S. 120, 136, 130 S.Ct., 665, 175 L. Ed. 2d 582 (2010) citing Dist. Attorneys office for third Judicial Dist. vs. Osborne, 557 U.S. 52, 62, 129 S.Ct. 2308, 174 L. Ed. 2d 38 (2009). * Because of the weight that Jurors tend to give DNA evidence, There is a reasonable probability that the trial court bias comments on the DNA evidence presented by the Defense Expert Witness in Forensic analysis was plain error and therefore the outcome of Petitioner's trial would have been different if the Due Process violation by the Trial court would not have occurred. And most importantly The Georgia Supreme Court abused its Discretion by Denying Petitioner's Application for discretionary Appeal Review for Plain error. Petitioner should be granted a new Trial.

* This is an excellent case to support this newly available Evidence ground: Cobell v. Norton, 334 F.3d 1128, 1144-45 (D.C. Cir. 2003) (Judge's impartiality reasonably questioned because Judge engaged

In ex Parte Communications and stated opinion about Case.)

* Newly Available Evidence Ground Two *

Ineffective Assistance of Trial Counsel -

Pursuant To The Law:

When the court denies a direct appeal, Appellants Remain Free to Initiate a Habeas Corpus Proceeding to resolve their ineffective assistance claim.

* see Mercedes Mercedes v. U.S., 428 F.3d 355, 360 (1st Cir. 2005). U.S. vs. Oladimeji, 463 F.3d 152, 154 (2d Cir. 2006). U.S. vs. Gambino, 788 F.2d 938, 950 (3d Cir. 1986). U.S. vs. Matzkin, 14 F.3d 1014, 1017 (4th Cir. 1994). U.S. vs. Garcia-Jasso, 472 F.3d 239, 245 (5th Cir. 2006). U.S. vs. Agboola, 417 F.3d 860, 864-65 (8th Cir. 2005). U.S. vs. Henry, 472 F.3d 910, 914- (D.C. Cir. 2007). *

Failure to Raise an Ineffective Assistance of Counsel claim on Direct Appeal Does Not Bar the claim from Being Brought in later Collateral Proceedings. * see Massaro v. U.S. 538 U.S. 500, 509 (2003). Johnson v. U.S., 313 F.3d 815, 817 (2d Cir. 2002). U.S. v. Davies, 394 F.3d 182, 188 (3d Cir. 2005). Ballinger v. U.S., 379 F.3d 427, 428 (7th Cir. 2004).

Pursuant To The Law:

To prevail on a claim of Ineffective assistance, a Defendant must Prove both that the Performance of his lawyer was Deficient and that he was Prejudiced By this Deficient Performance. To Prove that the Performance of his lawyer was Deficient, The Defendant

must show that the lawyer performed his duties at trial in an objectively unreasonable way, considering all the circumstances, and in the light of prevailing professional norms. And to prove that he was prejudiced by the performance of his lawyer, the defendant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. This burden is a heavy one.

Here, no rule of completeness argument, no hearsay/confrontation objection to prior difficulty evidence, no mistrial motion when the trial court made the bias comments on the DNA evidence in the face of the defense expert witness, no objection to the bias comments on DNA evidence by the trial court. There was evidence that the jurors heard the substance of the prejudiced comments on the DNA evidence by the trial court in the face of the defense DNA expert while he was testifying on the witness stand, with the state and jury being in his presence in the courtroom. * See trial transcript pages 933-974. *

Trial counsel performance was deficient for failing to object to the prejudiced comments made by the trial court on the issue of DNA evidence while the defense DNA expert was on the witness stand testifying about his expertise on DNA in the presence of the jury.

Trial counsel performance was deficient and he was ineffective

For Failing to move For a mistrial or otherwise Properly Challenge the Fact that the trial court made Bias comments on the DNA evidence in the Face of the Defense DNA expert witness and in the Presence of the Jury. *See Trial Transcript Pages 933-974*

Trial counsel Performance was deficient For Failing to cross-Examine Any of the State's GBI DNA expert witnesses on the topic of Discussion of Scientific validity of DNA, which opened a door For the State and the Trial court to violate Petitioner's rights at trial in the Presence of the Jury.

Trial Counsel's Performance was deficient and he was ineffective For No rule of completeness Argument For admitting Petitioner's Full Exculpatory Statement to various Police officers.

Trial Counsel Performance was deficient and he was ineffective For No Hearsay / confrontation objection to prior difficulty evidence that a 911 caller said he heard a male Assaulting a female. But excited utterance anyway?

Trial Counsel Performance was deficient and he was ineffective For Failing to object to the Aggravated Assault instruction which Adds or Actually does cause Bodily Injury, when Indictment Alleged only is likely to. No objection By Trial Counsel.

Trial counsel Performance was deficient and he was ineffective

For Failing to Challenge the Fact that the Written Jury Instructions Were Provided to the Jury, But not Provided to Defense Counsel, or Made a Part of the Record. No effort to challenge these Facts.

* Trial Counsel's Response Completed on 5/9/2014 *

1. Counsel Just did not think about the rule of completeness Argument or the insufficiently tailored Aggravated Assault Jury Instruction.
2. Counsel did not think the 911 call was objectionable, and thought candle stick could be synonymous with candle.*

* The Second Prong of ineffective assistance of counsel is the Defendant Must Demonstrate that there is a Reasonable Probability that the trial Result would have Been Different if not For the Deficient Performance.*

Here, If trial counsel would have objected to the Bias Comments on DNA evidence By the trial court when the Defense Expert Forensic DNA analysis was Testifying about his expertise on DNA and Presenting evidence in his testimony. Trial Counsel could have Requested a motion For a mistrial Because of the Bias comments on DNA evidence By the trial court in the presence of the Jury, and most importantly in the Face of the Defense Expert Forensic DNA Analysis while he was Testifying on the witness stand About His expertise.

Second, The Defense Expert Forensic DNA Analysis Clearly Knows his Expertise in Forensic DNA Because Petitioner was Aquitted By

The Jury on the Charge of Aggravated Sodomy, which was a Sexual Allegation charge. The Defense Expert witness was gonna clear Petitioner's name on the other Sexual Allegation charge which was Aggravated Sexual Battery, But Because of the Bias comments on DNA evidence By the trial Court which was done in the Face of the Defense Expert witness. Those Bias comments on DNA evidence By the trial Court Persuaded and convinced the Jury about the trial Court's opinion about DNA evidence From a State's GBI DNA Expert witness. Those Bias comments By the trial Court on DNA evidence was a violation of the Due Process and Plain error Because those Bias comments was spoken in the Face of the Defense Expert witness and the Jury. Once the Jury heard the Bias comments on DNA evidence By the Court, It was too late to Remove the improper impression From their minds. Most importantly, Trial counsel was prejudiced For Failing to object and Putting in a motion For a mistrial For the Bias comments on DNA evidence By the trial Court in the Face of the Defense Expert Forensic DNA Analysis while Testifying on the witness stand. The State's GBI Forensic DNA witness Statement / Report goes to the Heart of the State's evidence, which centered around the Scientific validity of DNA evidence. The State took Advantage of the Bias comments on DNA evidence in their Second closing Arguments. * see Second closing Arguments made By the State * Petitioner has Demonstrated To this Court the trial counsel's Performance was Deficient and he was ineffective and there is a

Reasonable Probability that the trial result would have been Different
If not for the Deficient performance. Therefore, Petitioner should be
granted a new Trial.

* This is an excellent case to support this newly Available Evidence ground
see U.S. v. Rodriguez, 627 F.3d 1372, 1380 (11th Cir. 2010) Plain error
review Because Defendant Failed to object to Judge's comments during
Trial.)

Pursuant To The Law: If an objection is untimely, any appeal based on that
objection is subject to Plain error Review. see Jones v. U.S., 527 U.S.
373, 388 (1999).

* Newly Available Evidence ground Three: *

Ineffective Assistance of Appellate Counsel number Two

At Petitioner's Motion For new Trial and Amended Motion For New Trial,
Appellate Counsel was told to raise the ineffective Assistance of Trial
Counsel and the Judicial Misconduct ground. Appellate Counsel number
Two has shown Prejudice in her Decision not to raise the two newly
Available Evidence grounds which has an Arguable Basis For an appeal
to be successful. Petitioner's First appellate Counsel could not Represent
Petitioner through the direct Appeal Phase Because Appellate Counsel
number one and Petitioner's Trial Counsel were "co-workers" that worked
In the same office, and that was a "Conflict of Interest". Appellate
Counsel number one wanted to raise the Judicial Misconduct and the
Ineffective Assistance of Trial Counsel grounds, But couldn't

Because of the "Conflict of Interest" situation. Then appellate counsel number two decides to show Bias once Petitioner's case was Transferred From Dekalb County Public Defender's office to her office which is the Georgia Public Defender's standard counsel office. When Appellate counsel number two Received Petitioner's case once it was Transferred to her office, It came with the client's Complaint Form with some helpful sources to raise the Ineffective Assistance of Trial Counsel and Judicial Misconduct ground. Appellate counsel number two Failed to raise the successful grounds on appeal, and decides to show Bias in her Decision at Petitioner's Motion For new Trial and Amended Motion For new trial Hearing By adding new grounds and Failing to raise the successful grounds on Direct Appeal which has an Arguable Basis. At Petitioner's Motion For new Trial and Amended Motion For new Trial Hearing, Appellate counsel number two Raised these Three grounds: 1. The trial court erred by Failing to stop the State From making improper Argument, 2. The Testimony From two of Mr. Booth's ex-girl Friends was inadmissible to Prove intent. 3. The Aggravated Assault charge should Be vacated. Also Appellate counsel number Two intended to call a witness to testify at the Motion For new Trial and Amended Motion For new Trial Hearing. That witness was Dr. Barbara Liewellyn, a Forensic DNA Consulting, Inc. Appellate Counsel number Two Strategy of getting this Forensic DNA consulting witness to testify at Petitioner's motion For new Trial and Amended Motion For new Trial Hearing Failed. The Honorable Judge Stated these words in his order: In the Defense's Motion For

New Trial, Booth stated that he Planned on calling Dr. Barbara Liewellyn, an Independent Forensic DNA consultant, to testify about the science Behind the state's inferences. However, there is no need for an expert to testify on whether she Finds the Prosecutor's Inferences valid or Reasonable. The State is Permitted to make inferences from the evidence introduced at trial. Dr. Liewellyn would have served the same Purpose as the Defense's original witness By Testifying how the number of points in a DNA sample is not Indicative of when it was left and thus cannot Be timestamped. The state acknowledged DNA cannot Be time stamped and made acceptable Inferences from there. The scientific validity was something that should have Been Brought up on cross-Examination instead of a Motion for new Trial. *End of order* Here, Appellate Counsel number two knew her Independent Forensic DNA consultant was not gonna Be able to testify at Petitioner's Motion for new Trial and Amended Motion for new Trial Hearing. This court is probably saying: What evidence do you have to Back that Statement up? Well, Appellate Counsel number two specializes in DNA cases on Direct appeal. *See Disharoon v. State / McIntyre v. State, 291 Ga 45, 727 S.E.2d 465 (2012). Butler v. The State Court of Appeals, 319 Ga. App. 350, 734 S.E.2d 567- (2012). Appellate Counsel number two name: Margaret E. Flynt.* Here, Appellate Counsel number two Has shown Bias in her

Decision By Failing to raise the two most important grounds to raise on Petitioner's Direct appeal, and those two grounds are Judicial Misconduct and Ineffective Assistance of Trial Counsel once Petitioner's case made it to her office Because of the "Conflict of Interest" situation. Had Appellate Counsel number two raised these two newly Available evidence grounds Judicial Misconduct and ineffective Assistance of Trial Counsel, Petitioner's Direct Appeal Phase outcome would have Been Different Basis, therefore Petitioner should Be granted a new Trial and Petitioner's convictions should Be vacated.

* This is an Excellent case to support this newly Available Evidence ground: *Ramchair v. Conway*, 601 F.3d. 66, 72-77 (2d. cir. 2010). (Counsel's Failure on appeal to raise Argument For Mistrial was ineffective Because Argument had good chance of winning as defendant's right to Fair Trial was clearly violated.) *

Pursuant To The Law:

Plain Error - A Reviewing Court may grant relief For "Plain Error" even if the error was not raised and Preserved at trial or Sentencing. Fed. R. crim. P. 52(b), * see also *Puckett v. U.S.*, 556 U.S. 129, 133 (2009) (Plain error Review applies to claims that government Failed to meet its obligations under Plea agreement,). see *U.S. v. Olano*, 507 U.S. 725, 731 (1993) (Plain error Review Provides Court of Appeals limited Power to correct errors that were not Timely Raised

In Trial court.) * In an appeal Based on "Plain error", the defendant Bears the Burden to show 1. there was an error, 2. that is clear or obvious, and 3. Affected the defendant's substantial rights. * See U.S. v. Olano, 507 U.S. 725, 731 (1993). * Even if the defendant can satisfy these three Requirements, relief is only available if the Court determines that the error seriously affected the Fairness, integrity, or Public reputation of Judicial Proceedings. * See Olano, 507 U.S. at 732 (quoting U.S. v. Atkinson, 297 U.S. 157, 160 (1936), see U.S. v. Marcus, 560 U.S. 258, 262 (2010) (Appellate Court should exercise plain error review discretion only if the error seriously affects the Fairness, integrity or Public reputation of Judicial Proceedings.)) * Rights or objections that were waived will Not be reviewed for plain error, but those that were merely forfeited, may be reviewed. * Forfeiture is defined as the Failure to make the timely Assertion of a right. Olano, 507 U.S. at 733. A right is forfeited if Counsel fails to raise the Argument, where as a right is waived if it is intentionally relinquished or abandoned by a Defendant. See Puckett v. U.S., 556 U.S. 129, 138 (2009). See Fed. R. Crim. P. 52 (b) (A plain error that affects substantial rights may be considered even though it was not Brought to the Court's attention.) See also Johnson v. U.S., 520 U.S. 461, 465 (1997). (Failure to assert right usually results in forfeiture, But Plain error rule mitigates). * In Brecht v. Abrahamson, 507 U.S. 619 (1993), The Supreme Court held that the Proper Standard for Collateral review of Constitutional trial errors was not the reasonable doubt Standard Applied in cases on direct review, but rather the Kotteakos Standard Applicable to nonconstitutional trial errors. Id. at 637-38. Thus, Instead of only demonstrating a reasonable Possibility the trial error Contributed

To the verdict. Chapman, 386 U.S. at 24, a defendant must show that the error had substantial and Injurious effect or Influence in Determining the Jury's verdict; Kotteakos v. U.S. 328 U.S. 750, 776 (1946) The Court determined that this Standard, which imposes a higher Burden on habeas Petitioner's, better serves States interests in the Finality of their Criminal Judgments. Brecht, 507 U.S. at 637. * Here, The Georgia Superior Trial Court abused its discretion By Dismissing Petitioner's Motion to vacate, Set aside, or correct sentence with newly available Evidence, Appendix and The Georgia Supreme Court abused its discretion By denying discretionary Review For Plain error and other violations to the United States Constitution that occurred at Petitioner's Trial. Appendix Therefore, Petitioner should Be granted a new Trial and Petitioner's convictions should Be vacated, Reversed, and Remanded.

REASONS FOR GRANTING THE PETITION

1. Petitioner Has Been waiting Patiently For nine years to raise these three newly available Evidence grounds Because Appellate counsel Teams up with the Attorney general of the state of Georgia.
2. Petitioner's Fourteenth Amendment Due process, And sixth Amendment to the united states constitution was violated During Petitioner's Actual Trial, and throughout Petitioner's Appeal Process.
3. The Georgia Superior Trial Court abused it's discretion By Dismissing Petitioner's Plain Error Motion to vacate, set Aside, or correct sentence. The Georgia Supreme court abused it's Discretion also By Denying Petitioner's discretionary Appeal Review Application For "Plain Error".

In conclusion, Petitioner's Fourteenth Amendment Due Process violation and sixth Amendment Ineffective Assistance of Trial Counsel and Ineffective Assistance of Appellate counsel took Place During Petitioner's Actual Trial and Appeal Process; Therefore Petitioner's convictions should Be reversed, vacated, and Remanded Back to the Trial court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Delroy T. Booth

Date: 3-16-2022