

No.

22-5331

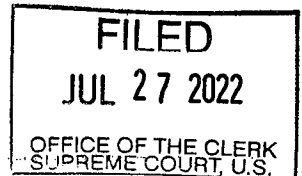
ORIGINAL

**In The
Supreme Court of the United States**

MARK ANTHONY WILLIAMS 389129
Petitioner,

Vs.

MICHIGAN
Respondent,



ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN SUPREME COURT

Mark Anthony Williams 389129
IONIA MAXIMUM CORRECTIONAL FACILITY
1576 W. BLUEWATER HIGHWAY
IONIA, MICHIGAN 48846

QUESTION PRESENTED FOR REVIEW

I. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE CONVICTION OF CSC 1ST DEGREE WHERE THERE WAS NO PROOF OF PENETRATION AS REQUIRED BY THE MICHIGAN SUPREME COURT IN VIOLATION OF DEFENDANT'S US CONST. XIV AMENDED RIGHT.

II. THE EVIDENCE PRESENTED AT TRIAL OR WHETHER THE LACK THEREOF, WAS INSUFFICIENT TO SUPPORT THE ABORTION CONVICTION IN VIOLATION OF THE DEFENDANT'S RIGHT TO DUE PROCESS UNDER THE U.S. CONST. XIV AMENDMENT

III. THE TESTIMONY OF THE PROSECUTOR'S "EXPERT" WITNESS, ANDREAS SULLIVAN, INADMISSIBLY VOUCHERED AND BOLSTED THE CREDIBILITY OF THE COMPLAINANT IN VIOLATION OF BECKLEY COURT PRECEDENCE AND VIOLATED THE DEFENDANT'S SIXTH AND FOURTEENTH AMENDED RIGHT TO A FAIR TRIAL, DEFENSE COUNSEL'S FAILURE TO OBJECT RENDERED INEFFECTIVE ASSISTANCE.

IV. THE DEFENDANT DENIED HIS RIGHT TO CROSS EXAMINE DR. ANGILLI WHEN HER REPORT THAT CONCLUDED THE COMPLAINANT WAS ABUSED AND HAD TERMINATED THE PREGNANCY WAS ENTERED INTO EVIDENCE THROUGH ANDREA SULLIVAN VIOLATING THE DEFENDANT'S CONFRONTATION CLAUSE. TRIAL COUNSEL'S FAILURE TO OBJECT RENDERED INEFFECTIVE ASSISTANCE IN VIOLATION OF DEFENDANT'S SIXTH AMENDMENT RIGHT.

V. THE DEFENDANT SENTENCED UNDER FALSE INFORMATION DUE TO THE PROBATION DEPARTMENT'S FAILURE TO CALCULATE HIS PRV AND OV SCORE IN DEFENDANT'S PSI REPORT IN VIOLATION OF HIS RIGHT TO DUE PROCESS? DID DEFENSE COUNSEL FAIL TO CHALLENGE THE INACCURATE GUIDELINES RENDERING INEFFECTIVE ASSISTANCE.

VI. THE DEFENDANT DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO: (A) COUNSEL FAILURE TO INVESTIGATE AND PREPARE A SUBSTANTIAL DEFENSE, (B) COUNSEL WITHHELD IMPEACHABLE DISCOVERY MATERIAL, (C) COUNSEL FAILED TO EFFECTIVELY CROSS-EXAMINE THE PROSECUTOR'S WITNESSES, (D) COUNSEL CONCEDED TO THE DEFENDANT'S GUILT IN FRONT OF THE JURY AT CLOSING ARGUMENT.

VII. WAS THE DEFENDANT DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO: (A) COUNSEL FAILURE TO INVESTIGATE AND PREPARE A SUBSTANTIAL DEFENSE, (B) COUNSEL WITHHELD IMPEACHABLE DISCOVERY MATERIAL, (C) COUNSEL FAILED TO EFFECTIVELY CROSS-EXAMINE THE PROSECUTOR'S WITNESSES, (D) COUNSEL CONCEDED TO THE DEFENDANT'S GUILT IN FRONT OF THE JURY AT CLOSING ARGUMENT?

VII. THE SUBSTANTIAL ISSUES RAISED IN DEFENDANT'S 6.500 MOTION ALL HAVE A CUMULATIVE EFFECT ON THE OUTCOME OF DEFENDANT'S TRIAL AND DIRECT APPEAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS EVEN IF THE TRIAL COURT CONSIDERS THEM TO BE HARMLESS.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	2,3
TABLE OF AUTHORITIES.....	5,6,7
CITATION OF OPINIONS.....	8
JURISDICTION.....	8
MICHIGAN STATUTE INVOLVED.....	9
STATEMENT OF CASE.....	15
REASONS FOR GRANTING THE WRIT OF CERTIORARI.....	16
CONCLUSION.....	40
CERTIFICATE OF SERVICE.....	41
LIST OF APPENDIX.....	41

List of Appendix

Appendix A: State Court of Appeal’s Order Denying Appeal

Appendix B: State Supreme Court’s Order Denying Appeal

Appendix C: Lower State Court Opinion and Order Denying Relief of Judgment

Appendix D: Petitioner’s 6.500 Motion for Relief from Judgment

List of Parties Involved Pursuant to USSC Rule 12.6

1. Mark Anthony Williams 389129 The Petitioner.
2. Michigan Attorney General Dana Nessel the Respondent for the State.

TABLE OF AUTHORITIES

SUPREME COURT CASES

Brookhart v. Janis, 384 US 1, 8, 86 S.Ct. 1245,1249,161 Ed.2d 314 (1966).....	Pg. 32
Brookhart v. Janis, 384 US 1, 8, 86 S.Ct. 1245,1249,161 Ed.2d 314 (1966).....	Pg. 32
Glover v. United States, 531 US 198;121 S. Ct. 696; (2001).....	Pg. 23
Jackson v. Virginia, 443 US 307; 99S.Ct. 2781	Pg. 16
Jones v. Barnes, 463 US 745, 749; 103 S. Ct. 3308; 77 L.Ed. 2d 987 (1983) .	Pg. 34
Kunho Tire Co. Ltd. v. Carmichael, 526 US 137, 158, 119 S. Ct. 1167; 143 L ed 2d 238....	Pg. 20
Melendez -Dias, 557 US at 311, 129 S.Ct. 2527	Pg. 22
Strickland v. Washington, 466, US 668; 104 S.Ct. 2052 (1984).....	Pg. 21,26
United States v. Brown, 138 US App. DC. 398, 428 F2d 1100	Pg. 32

FEDERAL CASES

Wiley v Sowders, 647 F. 2d 642; 1981 US App Lexis 13929	Pg. 33
United States v. Brown, 138 US App. DC. 398, 428 F2d 1100	Pg. 32
United States v. Deitz, 577 F.3d 672,697 (6 th Cir 2009)	Pg. 37
United States v. Hernandez, 227 F. 3d 686,, 697 (6 th Cir 2000)	Pg. 37

STATE CASES

People v Ackley, 497 Mich 381; 870 NW2d 858 (2015).....	Pg. 27
People v Callon, 256 Mich. App. 312, 329; 662 NW2d 501.....	Pg. 19
People v Carines, 460 Mich 750, 752-753; 597 NW2d 130.....	Pg. 21

People v Carines, Hemphill, 439 Mich 576 (1992).....	Pg. 23
People v Conner, 209 Mich. App. 419, 423; 531 Nw 2d 734.	Pg. 21
People v Crawford, 458 Mich. 376, 383 (1998).....	Pg. 19
People v Crook, 123 Mich App. 500, 503 (1983)	Pg. 17
People v Crook, 123 Mich App. 500, 503 (1983)	Pg. 23
People v Degraffenreid, 19 Mich App. 702, 713; 173 NW2d 317.....	Pg. 21
People v Degraffenreid, 19 Mich App. 702, 713; 173 NW2d 317.....	Pg. 21
People v Del Cid, 2020 Mich. App. Lexis 1460.....	Pg. 20
People v Ginther, 390 Mich. 436, 443; 197 NW2d 281 (1973)	Pg. 26
People v Harmon, 248 Mich App. 522;640 NW2d 314 (2004).	Pg. 23
People v Hubbard, 156 Mich App. 712, 714; 402 NW2d 79 (1986).....	Pg. 25
People v La Vearn, 448 Mich. 207, 213 (1995)	Pg. 26
People v Le Blanc, 465 Mich. 575,579 (2002).....	Pg. 26
People v Lukity, 460 Mich. 484, 488 (1999).....	Pg. 19
People v McDaniel, 469 Mich. 409, 412 (2003)	Pg. 19
People v McGraw, 484 Mich. 120.....	Pg. 25
People v Peterson, 450 Mich. 349 (1995).	Pg. 20
People v Pickens, 446 mich 298, 359.....	Pg. 20
People v Pickens, 446 mich 298, 359.....	Pg. 20
People v Reed, 198 Mich App. 639, 646; 499 NW2d 441 (1993)	Pg. 34
People v Smith, 243 Mich App. 657, 682;625 NW2d 46 (2000).....	Pg. 21
People v Smith, 243 mich. App. 657, 682; 625 NW2d 46 (2000)	Pg. 37
People v Thorpe, 504 Mich. 230, 934 NW2d 693, 2019 Mich. lexis 1258,.....	Pg. 20,22

People v Timmons, 300 Mich. 653; 2 NW2d 804.....	Pg. 21
People v Tinsky, 394 Mich. 108 (1975),	Pg. 18
People v Wolf, 440 Mich. 508, 513-514; 489 NW2d 748(1992).....	Pg. 16
People v. Beckley, 434 Mich. 691; 456 NW2d 391	Pg. 20
People v. Ewing, 48 Mich App. 657; 211 Nw 2d 56.....	Pg. 21
People v. Kimble, 470 Mich. 305, 689 NW2d 669 (2004).....	Pg. 23
People v. Kirkdall, 391 Mich. 370 (1973).....	Pg. 16

STATUTES

MCL §750.520.....	Pg. 8
MCL §750.14.....	Pg. 8

CONSTITUTIONAL PROVISIONS

Mich. Const 1963, Art 1, §17 & 20	Pg. 35
US Const, AM XIV.	Pg. 35
US Const, AM V.	Pg. 35
US Const, AM VI.	Pg. 35

CITATION OF OPINION BELOW

The Michigan Sixteenth Judicial Court issued an order and opinion in *People v. Williams*, 2016-003545-FH (unpublished). The Michigan Court of Appeals issued an order denying his application for leave to appeal in Case # 358088, (December 29th, 2022 (unpublished). The Michigan Supreme Court issued order denying the Petitioner Leave to Appeal in *case* # 163944 (May 3rd, 2022) (unpublished) See Appendix A-D.

JURISDICTION

A petition for a Writ of Certiorari to review a judgment in any civil or criminal case entered by a State Court of last resort or Federal Court of Appeals is timely when filed with the Clerk of the USSC within 90-days after entry of the judgment. See USSC R. 13.1. The Michigan Supreme Court denied the Petitioner's State Appeal on May 3rd, 2022. Petitioner is within the 90 days allowed. On June 27th, 2017.

Mr. Williams was convicted of three counts of first degree criminal sexual conduct (CSC), contrary to MCL 750.520b(1)(b), and abortion , contrary to MCL 750.14. On June 27th 2027, the court sentenced Defendant to 30 to 50 years on the CSC convictions and 2-4 years imprisonment on the abortion conviction.

MICHIGAN STATUTES INVOLVED

§ 750.520

Short title.

Sec. 1.

This act shall be known and may be cited as the “Criminal Sexual Conduct Authority”.

§ 750.14

Short title.

Sec. 1.

This act shall be known and may be cited as the “Criminal Abortion Authority”.

STATEMENT OF CASE

Petitioner submits his original handwritten statement of facts in his 6.500 Motion for Relief from Judgment as his Statement of Case on these issues below;

On August 30, 2016, the Defendant, Mark Anthony Williams (hereafter the Defendant) was charged in a (4) count indictment for: (3) Counts CSC, 1st Degree (13-16 years old, Relationship) and (2) Count of Abortion for alleged sexual abuse against his step daughter, Daemonea Branch (the Complainant), in Macomb County.

On August 31, 2016, the court appointed Donald Teichman Jr. as counsel to represent the Defendant in the matter. Prior to the start of trial, counsel for the Defendant filed several motions, including a motion to appoint expert witness Dr. Steven Miller, which was granted by the court.

On April 17, 2017, Mr. Teichman filed a motion to withdraw as counsel due to the Defendant retaining attorney Jeffery Weberman (big mistake), and on April 19, 2017, Mr. Weberman filed a motion for substitute counsel as appearance.

On May 9, 2017, trial commenced and a jury was selected and sworn in. Opening statements were then presented by the prosecution (IX, 28-37). Counsel for the Defendant reserved his opening statement until after the Prosecution presented its proofs (IX, 37).

During a preliminary proceeding at trial, Weberman requested the court to allow him to speak with the Defendant "off the record" to discuss trial strategy (IX, 37-38). (The Defendant questioned counsel's readiness and trial strategy concerning his defense, alibi witnesses, presenting expert witness Dr. Miller, and using impeachment/discovery material to challenge the credibility of the Complainant.)

Thereafter the Prosecution called Officer Kelly Davis, of the Warren Police Department, as its first witness. Officer Davis testified that on May 4, 2016, she was dispatched to the Centerline Police Department in order to take a possible CSC report from the complaining witness. (IX, 48). Officer Davis stated that upon meeting the complaining witness, she appeared to be anxious and nervous, and that while being interviewed, she became more comfortable, thereby giving officer Davis the impression that the complaining witness was sincere in her accusations (IX, 50). On cross-examination, Officer Davis admitted she had no special training in helping to determine if someone is telling the truth. (IX, 51)

Note: (I) refers to trial testimony taken on May 9, 2017. (IX) refers to trial testimony taken on May 10, 2017. (II) refers to trial testimony taken on May 11, 2017. (IV) refers to trial testimony taken on May 12, 2017. (V) refers to trial testimony taken on May 16, 2017 (VI) refers to trial testimony taken on May 17, 2017. (VII) refers to testimony taken at sentencing on June 27, 2017.

Ms. Daemonica Branch, the complaining witness in the matter, testified that she is the Defendant's stepdaughter, and has known him since she was four years old when the Defendant began to date her mother (Tabitha). (II, 61). She indicated that when she was seven years old and living in the city of Detroit, the Defendant pulled her pants down while they were "play fighting" and put his mouth on her vagina. (II, 66-68). Ms. Branch further testified that when she was 12, and living in the City of Detroit, the Defendant sexually penetrated her vagina with his penis for the first time. (II, 70). She stated that the sexual interaction between her and the Defendant continued for several years, including when she and the Defendant moved to the city of Warren. (II, 77). Ms. Branch indicated that the Defendant would ejaculate on her back, except on one occasion, when she was sixteen years old. (II, 82-83). Following that occasion, she stated that the Defendant purchased a home pregnancy test for her, and upon taking the test, found out that she was pregnant. (II, 87-88). She stated the Defendant began to call abortion clinics, only to be told that he needed to get his wife's permission, since Ms. Branch was a minor and not her blood relative. (II, 91). She stated that the Defendant began to look online for abortion pills and made her use Google, on her cellular phone, to look up abortion options as well. (II, 99). She indicated that the Defendant eventually was able to find abortion pills on the internet, and ordered them using a credit card, at a cost of three hundred and ten dollars. (II, 106). She noted that once the pills arrived in the mail, the Defendant instructed her to take one orally, and at the same time, he placed the other pill inside her vagina. (II, 110).

Ms. Branch testified that on February of 2016, she made the decision to run away from home, ending up at her Uncle Michael Wall's home. (II, 121). She stated that the next day after leaving, she called her mother and asked her to meet her. (II, 124). When her mother arrived, she told her what had allegedly been occurring with the Defendant. (II, 124). She noted the following day, she went and reported what had occurred to the Detroit Police Department, and eventually to the Warren Police Department. (II, 126). Ms. Branch admitted to not knowing what the Defendant ordered concerning the abortion pills. (II, 137).

On cross-examination, Ms. Branch admitted to not liking the Defendant. (II, 167). She stated that prior to her alleged pregnancy she never skipped school nor did she skip school to attend her biological father's court date. (II, 168-170). Ms. Branch denied having an imaginary friend and being diagnosed with a mental disorder when she was younger. (II, 172).

Mr. Robert Williams, the Defendant's brother, testified that in June of 2016, he was contacted by the Warren Police Department. (III, 10-11). He stated in the summer of 2015, he received a call from the Defendant asking him about the name of a pill Mr. Williams' significant other had used to end a pregnancy; and that the Defendant told him he needed the pills for the complaining witness. (III, 11-14). Mr. Williams later stated the Defendant did not talk him about having sex with Daemonica. (III, 17).

On cross-examination, Mr. Williams admitted that when he was first contacted by the Warren Police Department, he had told them that he didn't know anything about the allegations levied against the Defendant, only to change his story the second time he spoke with the interviewing officer. (III, 21). He also admitted that he was around the Defendant and his family quite often and never once saw the Defendant act inappropriately with the complaining witness. (III, 22).

Ms. Ariel Robinson testified that she is a friend and classmate of the complaining witness, (III, 27).

Ariel stated that the complaining witness was missing a lot of school in 2016 but did not miss much in 2015, (III, 29). She further stated that after the complaining witness moved in with her, they were on the front porch of the home when the Defendant and his wife pulled up, and that the Defendant yelled out "in due time" towards the complaining witness and then drove away. (III, 33).

On cross-examination, Ms. Robinson admitted that she did not care for the Defendant. (III, 36).

Morkel Williams, the Defendant's son, was asked if he knew the difference between the truth and a lie and answered "no", (III, 41). He was asked what did he see between the Defendant and his sister, Daemontica, and spontaneously responded "my dad touched my private parts", (III, 45). An objection was made by defense counsel, and following a discussion with the parties, the Court held that any evidence of prior similar acts had to be related to the complaining witness. (III, 47-48) 

Marshay Williams, the Defendant's six-year-old daughter, was asked by the Court if she knew the difference between telling the truth and telling a lie and answered "no", (III, 58). She testified that she saw the Defendant and the complaining witness standing in the complainant's bed room. (III, 63). After several leading questions by the prosecution, Marshay stated she once saw the Defendant touch the complaining witness's private parts with his hand. (III, 67-68).

Dr. Anne Schneider, an OB/GYN doctor with St. John Hospital and Medical Center, testified that she was hired as an expert witness by the prosecution, and in that capacity, reviewed the police report taken after the Warren Police Department's interview of the complaining witness. (III, 77). She stated she was provided information that the complaining witness was given a drug called Misoпростол a/k/a Cytotec 200 milligram, which is used to help a uterus contract, and to deliver pregnancy, or induce a miscarriage. (III, 79-80). She further stated that there are different ways to administer the drug, and they include placing the pill directly inside a woman's vagina and/or taking orally. (III, 82)

Dr. Schneider explained that side affects of taking the drug include pain, cramping and bleeding. (III, 86). On cross-examination, Dr. Schneider admitted that she was unable to determine if in fact Misoprostol had been administered to the complaining witness. (III, 87). D

Ms. Andrea Sullivan, an assistant nurse with Children's Hospital of Michigan, was used as a substitute to testify in place of Dr. Angelilli who conducted a physical examination on the complaining witness. (II, 42). Ms. Sullivan testified that on August 2, 2016, she took part in the examination of the complaining witness done at the 'Kids Talk Clinic' associated with Children's Hospital. (III, 92). She admitted that Dr. Angelilli's report stated that the complaining witness was severely and chronically abused over a ten-year period. (III, 102). She testified that she was present for the physical examination of the complaining witness, and the examination was not able to determine whether the complaining witness had been sexually assaulted or even ever had sexual intercourse. (III, 104).

Ms. Candace Cooper, a forensic interviewer with the Kids Talk Children's Advocacy Center, testified that she conducted forensic interviews with the complaining witness, Markel Williams, and Marshay Williams. (III, 116). Ms. Cooper stated that all three individuals made disclosures regarding the defendant. (III, 118). On cross-examination, defense counsel only asked nine questions to Ms. Cooper. (III, 122-123).

Detective Jim Twardesky, of the Warren Police Department's special victims unit, testified that he is the Officer in Charge of the Defendant's case and that he took part in the initial interview when the Defendant was first brought in. (III, 142). Det. Twardesky indicated that as part of his investigation, he was provided a thumb drive by Ms. Ebony Walls, which contained a possible credit card statement for the purchase of the abortion pill allegedly used by the complaining witness. (III, 145). He explained that he could not verify that the credit card statement was relevant to the purchase of the abortion pill, while also stating that he couldn't confirm that it was not the credit card used. (III, 145).

On cross-examination, Det. Twardesky admitted that there was no physical evidence showing that the complaining witness was ever sexually assaulted, became pregnant or ever had an abortion. (IV, 28). He further admitted that no evidence of a pregnancy test or castor oil being used, purchased, or owned was found during the search of the Defendant's home. (IV, 28). He also acknowledged that during the course of the investigation, no one was ever able to find a search history on a computer or a phone, showing that an Internet search for abortion pills had occurred. (IV, 30). Moreover, Det. Twardesky admitted that the Defendant, in his interview with him, stated that the complaining witness had a history of accusing people of "things" (IV, 36).

Following the testimony of Det. Twardesky, counsel for the Defendant motioned the court for a Directed Verdict (IV, 48). Which the trial court subsequently denied (IV, 49). Counsel for Defendant then presented his opening statement to the jury. (IV, 55-60).

Thereafter, Ms. Tabitha Barton was called to the stand to testify on behalf of the Defendant. Ms. Barton testified that she is married to the Defendant and is the mother of the complaining witness. (IV, 65). She stated that she has never observed any inappropriate contact, nor did she ever suspect any between the Defendant and the complaining witness. (IV, 66-67). She indicated that on February 5, 2016, the complaining witness had skipped school to attend a court hearing involving her biological father, and when Ms. Barton found out, she confronted the complaining witness, who became very upset, went to her room, and eventually that night, climbed out the window and ran away from home. (IV, 70). She further stated that when she found out that her daughter ran away, she contacted the Detroit Police Department, and soon thereafter received a call from her sister letting her know that the complaining witness was at their home. (IV, 71).

Ms. Barton was asked whether she had any knowledge of her daughter being pregnant or whether she ever saw a pregnancy test in the house, and she responded no on both instances. (IV, 71). She further denied ever seeing castor oil or any type of abortion pill in the home, as well as any type of proof of purchase for either item. (IV, 72). Moreover, she stated neither herself nor the Defendant had a gun in their home and that she never saw the Defendant use a gun. (IV, 72). Ms. Barton indicated the complaining witness had an imaginary friend named Jeremy, and that, in her opinion, had a mental health issue. (IV, 74). She also stated that on one occasion, she had an argument with the complaining witness and during the course of the argument, the complaining witness yelled out "I'm going to take away everything you love", and that Ms. Barton believes he meant the Defendant, when she said that. (IV, 78).

The Defendant took the stand on his own behalf. He testified that he is the stepfather to the complaining witness, and that he has been part of her life since she was five years old. (V, 39). He stated that at the time he has known the complaining witness, she has had tendencies to get in trouble, including but not limited to telling lies, acting out and smoking marijuana. (V, 41). He further stated that on February 5, 2016, the complaining witness skipped school without his or her mother's permission, and when they found out, Ms. Barton confronted the complaining witness, which resulted in an argument between the two. (V, 53). He noted that the complaining witness was very angry with her mother, Ms. Barton, and that on February 5, 2016, the complaining witness climbed out of her bedroom window and ran away from home. (V, 43). The Defendant further testified that after the accusations were made against him, he spoke to the Warren Police Department, and asserted that he felt bullied by the detectives interviewing him. (V, 46). He noted that the admission he made was a result of this bullying, and that the real story was that the complaining witness came into his room, tried to cross over him in the bed, and in doing so

her hand went on his inner thigh, which caused the Defendant to push her off, causing the complaining witness to fall to the floor. (V, 47). Moreover, he denied that any penetration had ever occurred and added that he has never had any sexual intent with the complaining witness in the time he has known her. (V, 49). He further denied ever touching her inappropriately, getting her pregnant, forcing her to drink castor oil, ordering abortion pills or forcing the complaining witness to take said pills. (V, 53).

Following his testimony, the Defendant rested his case. (V, 113). Closing arguments were presented by the prosecution (V, 114-127, 143-147) and counsel for the Defendant (V, 127-143). During defense counsel's closing argument, he stated that there was no physical evidence to support the allegations (V, 138) but mentioned that the "demonstration" from the video was evidence of guilt, conceding to Mr. Williams' guilt. (V, 146).

During jury instructions, the court instructed the jury that it may consider the claimed acts of sexual misconduct against his minor children, which he is not on trial for, in deciding if he committed the allegations against the complaining witness. (V, 157).

Following jury instructions, the Defendant was found guilty of three counts Criminal Sexual Misconduct 1st Degree (Relationship) and one count of Abortion, Causing Miscarriage. (VI, 6-7). The Defendant was thereafter sentenced to 30 to 60 years on the Criminal Sexual Conduct, 1st Degree (Relationship) convictions, and two to four years on the Abortion conviction, all to be served concurrently to one another. (VII, 14-15).

The Defendant filed a timely notice of appeal, and the Michigan Court of Appeals affirmed the conviction on March 28, 2019. The Defendant was represented by appellate counsel David Herskovic (P68897). The Defendant filed leave to Appeal in the Michigan Supreme Court and on September 10, 2019, the Supreme Court affirmed the conviction. (Docket #159561)

Verdict

On June 27th, 2017,, Mr. Williams was convicted of three counts of first degree criminal sexual conduct (CSC), contrary to MCL 750.520b(1)(b), and abortion , contrary to MCL 750.14.

Sentence

On June 27th 2027, the court sentenced Defendant to 30 to 50 years on the CSC convictions and 2-4 years imprisonment on the abortion conviction.

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully requests based upon the grounds hereafter, this Honorable Court **GRANT** the within writ and reverse the judgment of the court below. The petition for a Writ of Certiorari should be granted as Petitioner was denied his Federal Constitutional Rights.

ARGUMENT I

I. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE CONVICTION OF CSC 1ST DEGREE WHERE THERE WAS NO PROOF OF PENETRATION AS REQUIRED BY THE MICHIGAN SUPREME COURT IN VIOLATION OF DEFENDANT'S US CONST. XIV AMENDED RIGHT.

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500 Motion for Relief from Judgment on this issue below;.

Standard Of Review:

Questions of law regarding sufficiency of evidence are reviewed de novo. People v. Wolf, 440 Mich. 508, 513-514; 489 NW2d 748 (1992); Jackson v. Virginia, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979).

"The sufficiency evidence requirement is a part of every criminal defendant's due process rights". People v. Wolfe, supra.

Discussion:

During trial, the prosecutor witness, nurse Andrea Sullivan ("expert witness") testified that she and Dr. Angililli conducted a physical examination on the complaining witness and were not able to determine whether the complainant had been assaulted or had any sexual intercourse. (III, 104).

Outside of the complainant's testimony, there was no physical evidence presented to support the sexual allegations made against the Defendant. There were three expert witnesses that testified at trial (Dr. Ann Schneider, Andrea Sullivan, and Candace Cooper) and neither were able to confirm any evidence of sexual intercourse such as whether the complainant's hymen was obliterated which would have revealed whether or not the complainant was still a virgin. Surely one could safely conclude that if a female had been sexually assaulted for ten years starting at the age of seven years old by an adult male that nurse Andrea Sullivan and Dr. Angililli would have been able to at least determine that the complainant has had sexual intercourse.

The Michigan Supreme Court stated in pertinent part: "Proof of rape requires the showing of penetration." (People v. Kirtoll, 391 Mich. 370 (1973) (Headnote 4)).

After multiple forensic interviews and examinations, no proof of sexual intercourse, or rape, has been found. The prosecutor has failed to meet this requirement of the Michigan Supreme Court and has thus failed to provide sufficient evidence to support the conviction of Criminal Sexual Conduct in the first degree against the Defendant.

ARGUMENT II

II. THE EVIDENCE PRESENTED AT TRIAL OR WHETHER THE LACK THEREOF, WAS INSUFFICIENT TO SUPPORT THE ABORTION CONVICTION IN VIOLATION OF THE DEFENDANT'S RIGHT TO DUE PROCESS UNDER THE U.S. CONST. XIV AMENDMENT

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500

Motion for Relief from Judgment on this issue below;

Standard Of Review:

The Defendant incorporates the standard of review in issue I for the sake of not being repetitive.

Discussion:

The prosecutor charged the Defendant with Abortion against complainant for an alleged pregnancy beginning in April through June in 2015, over a year before any investigation or accusations of criminal sexual conduct ever occurred.

The complainant testified that she was impregnated by the Defendant in May 2016 (II, 173), where she alleged that the Defendant would step on her stomach, force her to drink castor oil, and eventually ordered an abortion pill online from an unknown website, where upon their arrival, the Defendant administered the pills to her. (II, 110).

The prosecutor introduced into evidence a flash-drive that allegedly contained the Defendant's credit card statement through Detective Jim Twardesky's testimony. Det. Twardesky stated that he received a thumb drive from Ebony Walls (complainant's Aunt), which contained a "possible" credit card statement for the purchase of the abortion pills allegedly used by the complaining witness. (III, 145). Twardesky explained he could not verify that the credit card statement was relevant to the purchase of the abortion pill.

Det. Twardesky admitted that there was no evidence showing that the complaining witness was ever sexually assaulted, became pregnant or ever had an abortion. (IV, 28)

Twardesky further admitted that no evidence of a pregnancy test or carter oil being used, purchased or owned was found during his investigation. (IV, 28) He also acknowledged that during the course of the investigation, no one was ever able to find a search history on a computer or phone, showing that an internet search for abortion pills had occurred. (IV, 30)

During closing, the prosecutor mentioned having a "screen shot" of the web purchase which the People did not intend on submitting, but was consistent with the fact that some time close to the alleged pregnancy, a purchase for \$305 was made in March. (V, 125) Yet the purchase for \$305 is not consistent with the complainant's testimony as she alleged that the Defendant impregnated her in May 2016. Even if that was a misstatement, the People's theory is that the complainant was pregnant between April through June 2015. Surely the Defendant's purchase of whatever he may have spent \$305 dollars on could not have been for abortion pills for the Complainant a whole month before she were to know she would become impregnated.

The Defendant's conviction concerning the Abortion charge violates the Michigan Supreme Court's ruling in the Tinsky Court. In Tinsky, the Michigan Supreme Court said:

"A defendant could not be convicted of abortion with respect to a woman who was not pregnant." (Emphasis added). People v. Tinsky, 394 Mich. 108 (1976).

There was no evidence to support the conviction of Abortion against the Defendant where there was clearly no evidence that the complainant had ever become pregnant a year before she made the first (false) allegations of Sexual misconduct against the Defendant.

ARGUMENT III

III. THE TESTIMONY OF THE PROSECUTOR'S "EXPERT" WITNESS, ANDREAS SULLIVAN, INADMISSIBLY VOUCHERED AND BOLSTED THE CREDIBILITY OF THE COMPLAINANT IN VIOLATION OF BECKLEY COURT PRECEDENCE AND VIOLATED THE DEFENDANT'S SIXTH AND FOURTEENTH AMENDED RIGHT TO A FAIR TRIAL, DEFENSE COUNSEL'S FAILURE TO OBJECT RENDERED INEFFECTIVE ASSISTANCE.

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500

Motion for Relief from Judgment on this issue below;

Standard of Review:

"The admission or exclusion of evidence rests in the sound discretion of the trial court, and the trial court's exercise of discretion will not be overturned on appeal absent an abuse of discretion." *People v. Crawford*, 458 Mich. 376, 383 (1998).

However, where the decision involves a preliminary question of law, which is whether a rule of evidence precludes admissibility, the question is reviewed *de novo*. *People v. McDaniel*, 469 Mich. 409, 412 (2003).

Accordingly, where such preliminary questions of law are at issue, it must be borne in mind that it is an abuse of discretion to admit evidence that is inadmissible as a matter of law. *People v. Lukity*, 460 Mich. 484, 488 (1999).

The plain error standard of review applies to the improper opinion testimony, to which defense counsel did not object at trial. *People v. Callon*, 256 Mich. App. 312, 329; 662 N.W.2d 501 (2003).

Discussion:

The Defendant was on trial for sexual accusations levied against him by the Complainant's witness. As such, during trial, the prosecutor called Andrea Sullivan, the nurse employed at 'Kids Talk Clinic' associated with Children's Hospital, who participated in conducting a physical examination with Dr. Angililli (or Angiline) where they both made a report concerning the results of the Complainant's physical condition.

During direct exam, the prosecutor questioned Ms. Sullivan with Dr. Angililli's examination report which concluded that the Complainant had been severely abused over a ten-year period and that the complainant's pregnancy had been terminated at some point. (III, 102).

The prosecutor invited the inadmissible testimony of the so-called expert witness, though the trial court never properly admitted Ms. Sullivan as an expert under MRE 702, which bolstered and gave veracity to the Complainant's testimony in violation of the Beckley Court threshold, as affirmed in the Peterson Court, which states:

"(1) an expert witness may not testify that the sexual abuse occurred, (2) an expert may not vouch for the veracity of a victim, and (3) an expert may not testify whether the defendant is guilty."

(See, *People v. Beckley*, 934 Mich. 691; 456 NW 2d 391 (1990); *People v. Peterson*, 450 Mich. 349 (1995).)

The testimony of Ms. Sullivan, through the introduction of Dr. Angililli's examination report, bolstered the complainant's credibility of the sexual abuse and alleged pregnancy where there was no physical evidence to support the conclusion, and thus pierced the veil of improper vouching.

Where there are no physical findings, a physician may not testify that the complainant suffered possible pediatric sexual abuse or other phrases indicating a conclusion as to the likelihood that such abuse actually occurred. However, a medical expert may offer the opinion that a lack of physical findings does not affirmatively establish that no abuse occurred. (*People v. Del Cid*, 2020 Mich App Lexis 1460; See also, *People v. Thorpe*, 504 Mich. 230, 934 NW2d 693, 2019 Mich Lexis 1258 (In a child sexual abuse case, the trial court's admission of expert testimony that vouched for the complainant's credibility was plain error that affected defendant's substantial rights because there was no physical evidence and the trial was a true credibility contest.) (Emphasis added).

Furthermore, the prosecutor failed to request the admission of Ms. Sullivan as an expert witness, and the trial court abused its discretion by failing to its obligation to properly admit Ms. Sullivan as an expert witness under MRE 702.

MRE 702 imposes an obligation on the trial court to ensure that any expert testimony admitted at trial is reliable. While the exercise of this gatekeeper role is within a court's discretion, a trial judge may neither abandon this obligation nor perform the function inadequately. (*Kumho Tire Co. Ltd. v. Carmichael*, 526 US 137, 158-159; 119 S.Ct 1167; 143 L Ed 2d 238)

The trial court's error in abandoning its obligation to ensure that Andrea Sullivan's testimony was properly admitted and reliable, along with the prosecutor introducing the inadmissible testimony of Dr. Angililli's report through Ms. Sullivan which bolstered and vouched for the credibility of the complainant, violated the Defendant's right to a fair and impartial trial under the Sixth and Fourteenth Amendment.

Defense Counsel's failure to object to the clearly improper testimony of Ms. Sullivan constituted as ineffective assistance where, had counsel objected to the improper vouching, the jurors would not have been able to consider the improper testimony and the outcome would have been different.

IV. THE DEFENDANT DENIED HIS RIGHT TO CROSS EXAMINE DR. ANGILLI WHEN HER REPORT THAT CONCLUDED THE COMPLAINANT WAS ABUSED AND HAD TERMINATED THE PREGNANCY WAS ENTERED INTO EVIDENCE THROUGH ANDREA SULLIVAN VIOLATING THE DEFENDANT'S CONFRONTATION CLAUSE. TRIAL COUNSEL'S FAILURE TO OBJECT RENDERED INEFFECTIVE ASSISTANCE IN VIOLATION OF DEFENDANT'S SIXTH AMENDMENT RIGHT.

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500 Motion for Relief from Judgment on this issue below;

Standard Of Review:

Constitutional questions regarding Confrontation rights are reviewed de novo. See *People v. Cooner*, 209 Mich. App. 419, 423; 531 NW2d 734 (1995); *People v. Smith*, 243 Mich. App. 657, 682; 625 NW2d 46 (2000). While the issue was not preserved at trial, and therefore reviewed for plain error, *People v. Carines*, 460 Mich. 750, 752-753; 597 NW2d 130 (1999), a criminal defendant's right to be confronted with witnesses and right to be present at every stage of the trial may not be presumed from a silent record. *People v. Ewing*, 48 Mich. App. 657; 211 NW2d 56 (1973). Counsel's consent does not overcome a defendant's rights, and certain rights are so essential to Due Process that no lawyer can waive those rights for a defendant. *People v. Timmons*, 300 Mich. 653; 2 NW2d 804 (1942); *People v. Degraffenreid*, 19 Mich. App. 702, 713; 173 NW2d 317 (1969).

Claims of ineffective assistance of counsel are reviewed de novo. *People v. Pickens*, 446 Mich. 298, 359 (1994). To establish a claim that a defendant was denied his constitutional right to the effective assistance of counsel, he must show that his attorney's representation fell below an objective standard of reasonableness. Further, a defendant must affirmatively demonstrate a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1994).

Discussion:

The Defendant was not afforded his right to confront Dr. Angilli whose examination report concerning the complainant (Daemonica Branch) was introduced at trial through nurse Andrea Sullivan who testified, in the form of an expert witness, that Dr. Angilli's report determined that Daemonica had been "severely and chronically" abused over a ten-year period, and at some point, terminated her pregnancy. (III, 102).

The examination report drafted by Dr. Angilli was a product of the Warren Police investigation for sexual abuse which constituted as "testimonial statements" that gave the Defendant the right to confront and cross-examine Dr. Angilli.

The prosecutor cross-examined Ms. Sullivan with Dr. Angillilli's report confirming that it determined that the complainant was abused and terminated her pregnancy at some point which vouched for the veracity of the complainant's testimony though Ms. Sullivan testified that there was no physical evidence of any sexual intercourse.

A document created solely for an evidentiary purpose made in aid of a police investigation ranks as testimonial for purpose of the Confrontation Clause. *Melendez-Diaz*, 557 U.S. at 211, 129 S.Ct. 2557, 174 L.Ed. 2d 314 (forensic reports available for use at trial are "testimonial statements" and certifying analyst is a witness for purpose of the Sixth Amendment)

In *People v. Thorpe*, the Michigan Supreme Court stated: "In a child sexual abuse case, the trial court's admission of expert testimony that vouched for the complainant's credibility was plain error that affected defendant's substantial rights because there was no physical evidence and the trial was a true credibility contest. Since there were no witnesses to the alleged assaults and no inculpatory statements, defendant has shown that it was more probable, than not that a different outcome would have resulted without the expert's improper testimony that the complainant suffered probable pediatric sexual abuse. *People v. Thorpe*, 504 Mich. 230, 934 N.W.2d 693; 2019 Mich. Lexis 1258.

The trial was strictly a credibility contest as there was no physical evidence to support the sexual abuse or pregnancy allegations by the Complainant just as the 'lead' investigator Del Twardesky testified to at trial.

Ineffective Assistance of Counsel

Defense Counsel's failure to object the improper introduction of Dr. Angillilli's report, which the Defendant was not afforded the opportunity to confront and challenge at any pretrial stage, rendered counsel ineffective under the *Strickland* standard because any competent attorney would have known that the improper introduction of the testimonial statement would not only constitute as improper vouching, but would also violate the Defendant's Confrontation Clause. Had the improper vouching been objected to and not introduced at trial, the jurors would have not been able to consider the persuasive improper expert testimony and the outcome could have been different.

ARGUMENT V

V. THE DEFENDANT SENTENCED UNDER FALSE INFORMATION DUE TO THE PROBATION DEPARTMENT'S FAILURE TO CALCULATE HIS PRV AND OV SCORE IN DEFENDANTS PSI REPORT IN VIOLATION OF HIS RIGHT TO DUE PROCESS? DID DEFENSE COUNSEL FAIL TO CHALLENGE THE INACCURATE GUIDELINES RENDING INEFFECTIVE ASSISTANCE.

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500 Motion for Relief from Judgment on this issue below;

Standard Of Review:

The court is to conduct a de novo review of the record to determine whether the presentence report was reasonably updated. *People v. Crook*, 123 Mich. App. 500, 503 (1983). A failure to prepare a reasonably updated report is not subject to a harmless error analysis. *People v. Triplett*, 407 Mich. 510, 515; 287 NW2d 165 (1980). Moreover, there is no need to object at sentencing to preserve a challenge to the failure to prepare legally sufficient presentence report. With limited expectations, this legal requirement may not even be explicitly waived by a criminal defendant. *People v. Hemphill*, 439 Mich. 576 (1992).

Unpreserved guidelines-scoring issues may be reviewed for plain error, *People v. Kimble*, 470 Mich. 305, 278-79, n 7; 689 NW2d 669 (2004), or as ineffective assistance of counsel, *People v. Harman*, 498 Mich. App. 520; 690 NW2d 314 (2001) see also *Glaver v. United States*, 531 US 198; 121 S. Ct 696; 198 L Ed 2d 604 (2001) (Strickland prejudice prong satisfied where failure to object leads to higher guidelines range).

Discussion:

On the day of sentencing, Defense Counsel informed the Defendant that he went over the PSI report and that all the information was accurate. Counsel never went over the PSI report concerning the guideline scoring of 225 to 375 months, nor did counsel ever explain how the probation department came up with that score. (see Guideline Score Sheet from PSI Report attached as Exhibit 3)

At sentencing, the court asked defense counsel, Mr. Weberman, if he had an opportunity to review the presentence report with Mr. Williams (the Defendant) (VII, 4) Mr. Weberman stated he did and only had one correction to make. Weberman mentioned that the

"first degree has a life sentence with a 25-year minimum sentence," that's for under 13 and that it does not apply to this case. The prosecutor agreed with counsel. (VII, 5) Weberman then stated: "other than that, I have no additions or deletions or corrections". (VII, 5)

The court then stated: "Crimes of criminal sexual conduct first degree is a life sentence with a 25-year minimum, which would be calculated, et cetera, think we should cross the whole sentence out?"

Weberman stated: "I'm fine with that, your Honor."

The Court: "And that's the language in the report."

Weberman: "I'm not sure if the recommendation would have been any different without that."

The Court: "Okay"

Mr. Kolodziej: "And I agree, your Honor" (VII, 5-6)

Defense counsel failed to object to the fact that the Probation Department never calculated the PRV's or OV's to show exactly how they determined the Defendant's guideline score to be 225 to 375 months.

The following is how the correct scoring of the Defendant's PRV's and OV's should have been calculated:

PRV 1 -	75 pts
PRV 2 -	0 pts
PRV 3 -	0 pts
PRV 4 -	0 pts
PRV 5 -	0 pts
PRV 6 -	0 pts
PRV 7 -	20 pts
Total	95 pts

OV 4 -	10 pts
OV 10 -	10 pts
OV 11 -	50 pts
Total	70 pts

(The remaining offense variables would be scored at zero points)

The above calculation (which is accurate) would place the Defendant's guideline range at 171 to 285 months (Class A chart) which places the Defendant in a lower guideline bracket. The Defendant was sentenced to 30 years (360 months) as his minimum which is 75 months over his max (285 months) rendering his sentence invalid especially where the trial court failed to give any reason as to why it would sentence the Defendant outside his guideline range.

A court must have substantial and compelling reasons to depart from the statutory sentencing guidelines. MCL 769.34(3)

A defendant is entitled to be sentenced according to accurately scored guidelines and on the basis of accurate information. A sentence is invalid when a sentencing court relies on inappropriate guideline range. "A sentence that is outside of the appropriate guidelines sentence range, for whatever reason, is appealable regardless of whether the issue was raised at sentencing, in a motion for

resentencing, or in a motion to remand. (People v. McGraw, 484 Mich. 120)

Moreover, the Defendant was denied his right to a legally sufficient Presentence Report which should have depicted the PRV and OV scoring to reflect exactly how the Probation Department calculated the Defendant's guidelines at 225 to 375 months. The Defendant was not able to adequately challenge the guidelines due to not knowing how the Probation Department conjured up those numbers, as that still remains the issue as of date.

Defense counsel failed to investigate the guideline scoring made by the Department because any competent attorney would have at least noticed that there was no PRV or OV calculations conducted in the PSI report to explain how the Defendant's guidelines were 225 to 375 months. Had counsel investigated and objected to the erroneous guidelines and insufficient PSI report, the Defendant would not have been sentenced 75 months outside of his true guideline range.

"A defendant is entitled to have his counsel prepare, investigate, and present all substantial defenses." People v. Hubbard, 156 Mich. App. 712, 714; 402 NW2d 79 (1986)

Counsel's failure to investigate the Defendant's guidelines so that he may prepare and raise a substantial defense against the erroneous score in the PSI report denied the Defendant his right to effective assistance of counsel.

If the trial court finds that the PSIR contains inaccurate or irrelevant information, the report "shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections." MCL 777.14 (6).

Alternatively, if the trial court determines that it did not take the challenged information into account in sentencing, that information must be deleted from the report. See MCR 6.425(e) (a)(c).

ARGUMENT VI

VI. THE DEFENDANT DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO: (A) COUNSEL FAILURE TO INVESTIGATE AND PREPARE A SUBSTANTIAL DEFENSE, (B) COUNSEL WITHHELD IMPEACHABLE DISCOVERY MATERIAL, (C) COUNSEL FAILED TO EFFECTIVELY CROSS-EXAMINE THE PROSECUTOR'S WITNESSES, (D) COUNSEL CONCEDED TO THE DEFENDANT'S GUILT IN FRONT OF THE JURY AT CLOSING ARGUMENT.

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500 Motion for Relief from Judgment on this issue below;.

Standard Of Review :

Questions of ineffective assistance of counsel are governed by a mixed standard of review. First, where the trial court finds certain facts in relation to a claim of ineffective assistance of counsel, those findings are reviewed for clear error MCR 2.613 (c); *People v. LeBlanc*, 463 Mich. 575, 579 (2002). Second, whether the facts establish ineffective assistance of counsel involves a question of constitutional law, which is reviewed de novo, *Id.*

The test for determining ineffective assistance is twofold: whether "counsel's performance was deficient," and if so, whether his or her "deficient performance prejudiced the defense." *People v. LeVeaux*, 448 Mich. 207, 213 (1995); *Strickland v. Washington*, 466 U.S. 668, 684-685, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674 (1984). Included in this Motion for Relief from Judgment is a request for an evidentiary hearing to develop this claim. MCR 6.508 (c); *People v. Ginther*, 390 Mich. 436, 443; 197 NW2d 281 (1973).

Discussion:

A). Counsel Failed To Investigate And Prepare A Substantial Defense

During the pretrial stages, Defendant's former defense counsel, Donald Teichman, motioned the Court for funds to appoint expert witness Dr. Miller to explain the pitfalls of forensic interviewing.

The trial Court granted the said motion and Mr. Teichman began consulting with Dr. Miller to prepare a defense against the multiple expert witnesses that the prosecutor intended to produce at trial.

Sometime in April 2017, the Defendant retained Jeffery Weberman and on April 19, 2017, Mr. Weberman filed to appear in the trial court just 20 days before trial was to begin.

Before trial, Mr. Weberman paid a visit to the Defendant where counsel informed that he would consult with Dr. Steven Miller to pick up where Mr. Teichman left off in order to prepare a defense against the prosecutor's expert witnesses. Mr. Weberman also stated that he would file a motion for continuance to postpone the trial date set for May 9, 2017, in order to preserve more time to prepare an adequate defense. The one and only visit with Weberman lasted for less than an hour.

Note: See, Affidavit of Mark A. Williams attached as Exhibit 1 in support of Ineffective Assistance of Counsel claims.

On the day of trial, Mr. Weberman spoke with the Defendant in the "bull-pen" area where they had a brief moment to discuss trial strategy, though it was discussed in front of other inmates. Mr. Weberman informed the Defendant that he received the video footage of Robert Williams (Defendant's brother) admitting that he knew the complainant (Daemonea) was fabricating the allegations against the Defendant and that she was using the same story that his wife Ebony Wells shared with the complainant in the past concerning her childhood encounters of sexual abuse.

On the second day of trial, as soon as the Court went on record, defense counsel asked the Court if he could speak with the defendant in private before they proceeded (it, 2). During that quick moment of conversation, the Defendant asked counsel if he had consulted with defense expert witness Dr. Miller and if he would be calling him in to challenge the prosecutor's expert witnesses testimony.

Mr. Weberman explained that he decided not to call Dr. Steven Miller as a witness for the defendant without explaining the trial strategy to such a bizarre decision.

The prosecutor presented three expert witnesses (Dr. Ann Schneider, Andrea Sullivan, and Candice Cooper) while defense counsel presented no expert witness, which the Court had previously provided funding for the Defendant to prepare a defense, and counsel was unprepared to bring any adversarial challenge.

To further show that defense counsel's failure to consult with Dr. Miller rendered him unprepared, the prosecutor attempted to introduce "other acts" evidence after Markel Williams (Defendant's son) testified that his dad "touched his private parts." When Counsel objected to not being notified as to the latitude of the witness' testimony, the prosecutor stated that the Defendant was notified due to the prosecutor furnishing the forensic interviews in the original discovery that was provided to expert witness Dr. Miller which Counsel elected not to use (III, 47-48).

In *People v. Ackley*, 497 Mich 381; 870 NW2d 858 (2015), the three-year-old daughter of defendant's girlfriend died while in defendant's care. At trial, the defendant argued that the child's death was the result of her fall from the bed, while the prosecution presented experts who testified that the child died from an abusive head injury that was caused by non-accidental shaking, blunt force trauma or both. Defense counsel was initially given \$1,500 to retain an expert witness. He engaged one expert witness who specifically told him that he did not believe the defense theory was possible and gave him the name of another expert who would support defendant. Defense counsel never contacted the other expert or any other expert. The defendant was found guilty. On appeal, he argued his trial counsel was ineffective for failing to "meaningfully challenge the prosecution's expert testimony regarding the cause of the child's death." *Id.* at 384-385. Defense counsel testified at the evidentiary hearing, that he only contacted one expert who indicated that he was "not the best person" for the defense. *Id.* at 385. The court held "defense counsel's failure to attempt to engage a single expert witness to rebut the prosecution's expert testimony," and his failure "to consult an expert with the scientific training to support the defendant's theory of the case, fell below an objective standard of reasonableness, and created a reasonable

probability that this error affected the outcome of the defendant's trial." Id. at 383.

It further held that:

In this case making such "substantial contradiction in a given area of expertise," counsel's failure to engage "expert testimony rebutting the state's expert testimony" and to become "versed in [the] technical subject matter" most critical to the case resulted in two things: a defense theory without objective, expert testimonial support, and defense counsel insufficiently equipped to challenge the prosecution's experts because he possessed only Dr. Hunter's reluctant and admittedly ill-suited input as his guide. [Id. at 293].

Similarly, defense counsel here failed to engage or consult with Dr. Miller or any expert witness "versed in the technical subject matter" of forensic interviews with children, to rebut the prosecution's expert testimony. Counsel was retained in less than a month before trial and failed to motion for a continuance in order to consult with Dr. Miller or any expert so that he could prepare to bring forth a meaningful adversarial challenge to the prosecutor's three expert witnesses.

The failure to properly articulate the basis for an expert and failure to consult, seek other resources, or call an expert amounted to ineffective assistance of counsel and was outcome determinative.

The prosecutor presented three medical experts most of whom presented testimony that was heavily laden with medical terminology and complex processes. The three expert witnesses for the prosecution were Dr. Ann Schneider, Andrea Sullivan, and Candice Cooper. Defense Counsel only cross-examined Dr. Ann Schneider with (5) questions, Andrea Sullivan with (4) questions, and Candice Cooper with fifty (9) questions, totalling only 18 questions between three expert witnesses in a very complex, credibility contest, of a trial concerning sexual abuse of a child. Counsel was ineffective in his cross-examination of these witnesses due to his failure to consult Dr. Miller or any other expert witness who could have raised a better defense against the prosecution's experts.

B). Counsel Withheld Impeachable Discovery Material

As previously mentioned, on the first day of trial, before the proceading commenced, defense counsel spoke briefly with Defendant whom he acknowledged receiving a video recording of Michael Walls (Tabitha's brother) admitting that [he] was aware that the complaining witness (Daemona Branch) was using his wife's (Ebony Walls) story of experiencing sexual abuse as a child and was "using detailed pieces of Ebony Walls experience to fabricate the sexual allegations against the defendant."

Robert Williams was the prosecution's witness who testified that he received a call from the Defendant asking him about the name of a pill that his wife (Mrs. Williams) used to end a pregnancy; and that the Defendant needed the pills for the complaining witness because "he got down" with Daemona. Robert Williams then contradicted himself stating that the Defendant did not speak to him about having sex with Daemona (III, 17, see statement of facts), and further admitted to changing his story

when he spoke to investigators the second time he was interviewed. (II, 21, see statement of facts)

During a trial proceeding, counsel mentioned being provided a video "at the last second" by Defendant's family that he wanted to use when the prosecutor spoke on terms of the People's discovery request from the defendant:

Mr. Kotadziey: "In terms of the People's discovery request for discovery from defendant, we have reason to believe that there might be some recordings, audio or sound, or other documents that might be used, whether it's in the case of chief of the defendant or used to impeach the People's witnesses. Counsel has indicated that there are no other documents or recordings, and I would just ask that -- nothing has been turned over at this point and there are no such recordings."

Mr. Weberman: "There might be. As I told you in chambers, I was provided at the last second by my client's family with one video I might like to use. I can have it by the end of the day today."

The Court: "Okay. And then we'll decide whether or not it's admissible, relevant, so on and so forth." (II, 41)

Defense counsel admitted to possessing the video which consisted of exculpatory evidence, or at the least impeachment material, which he not only informed the Court that he planned on using if admissible, but also the Defendant who relied on counsel to, at some point during trial, produce the video of Michael Walls admitting that he knew the complaining witness (Daemiana) was lying about the sexual allegations.

"Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." People v. Rokey, 337 Mich. App. 74, 76, 661 NW2d 887 (1999). Defense counsel's failure to present certain evidence will only constitute ineffective assistance of counsel if it deprived defendant of a substantial defense. People v. Dunigan, 299 Mich. App. 579, 589, 831 NW2d 843 (2002). "A substantial defense is one that might have made a difference in the outcome of the trial." People v. Chapa, 283 Mich. App. 360, 371, 776 NW2d 68 (2009), quoting People v. Kelly, 186 Mich. App. 524, 526, 465 NW2d 569 (1996).

Defense counsel had received the video evidence from Defendant's wife (Tabitha Burton) weeks before trial began and failed to admit the recording that was detrimental to undermining both Robert Williams and the complaining witness' credibility especially due to the fact there was absolutely no physical evidence to support the allegations of sexual abuse rendering the trial a pure credibility contest. An argument could have been made for admission of the recording in whole or in part under MRE 803(5). Under that exception to the hearsay rule, "statements of the declarant's then-existing state of mind, emotion, sensation, or physical condition can be admitted, MRE 803(5). Defense counsel failed to move for its admission and unreasonably relied on the acquiescence of the prosecutor such performance was deficient.

C). Counsel Failed To Effectively Cross-Examine The Prosecutor's Witnesses

1) Failure to effectively cross-examine Key witness Daemonica Branch.

Through-out the course of trial, the prosecution theorized (through testimony) that the complaining witness' absence of school was circumstantial evidence to prove that Daemonica missed school because she was pregnant by the Defendant which explained her unexcused absence.

Daemonica testified that she never skipped school before the alleged pregnancy, (II, 168), * that she did not skip school to attend her biological father's criminal court date on February 5th, 2017, and that neither her mother or Defendant confronted her about skipping school that day of her father's court date. (II, 169). She further testified that the principal called her parents alleging that she had missed school that day and that her mother and the Defendant had got on her case about it (II, 169-170). Counsel asked Daemonica was the real reason she ran away from home was because they were getting on her case about skipping school, she answered no. Counsel then asked did she and her mother get into a fight before she ran away, she stated "no, I didn't get into a fight with my mother." (see, II, 170).

Lead Detective Jim Twardesky testified that he checked the school records for Lincoln High School where Daemonica went to school and that the attendance records reflect that Daemonica missed a "significant" amount of school in April, May, and early June around the time she alleged to have been pregnant. (see, III, 148-151)

Tabitha Barton (Daemonica's mother) testified that on February 5, 2016, the complaining witness had skipped school to attend a court hearing involving her biological father, and when Ms. Barton found out, she confronted the complaining witness, who became very upset, went to her room, and eventually that night, climbed out the window and ran away from home (IV, 70). She also stated that on one occasion, she had an argument with Daemonica and during the course of the argument, Daemonica yelled out "I'm going to take away everything you love," and that Ms. Barton believes she meant the Defendant when she said that.

The Defendant testified that on February 5, 2016, Daemonica skipped school without his or her mother's permission, and when they found out, Ms. Barton confronted her, which resulted in an argument between the two. (V, 53)

Before trial began, discovery material was provided to counsel which consisted of a CPS (Child Protective Services) report and the police report consisting of the complainant's initial statements to Detective Howlett of the Warren Police Department. (See page 11-12 of Police Report attached as Exhibit 8)

According to the police report, Daemonica advised Det. Hewlett that she and her mother, Tabitha Barton, were arguing about her biological father Maurice Branch because Tabitha does not want her to see or talk to Maurice. (see page 11 of Police Report)

Daemonica further advised that Maurice had a court date on February 23, 2016 that she attended without her mother's permission at which time Tabitha was contacted by the school, advising that she was absent. (see pg 12 of Police Report attached as Exhibit 2)

For whatever unexplainable reason, trial counsel failed to point out the inconsistencies in the complaining witness trial testimony and to develop the point that her trial testimony was contradictory to her initial statement to the police.

Counsel's failure to effectively cross-examine the key witness with the impeachable material prejudiced the defendant's defense theory which was the complainant fabricated the allegations against him due to the fact Daemonica and her mother (Tabitha) got into a heated argument because Tabitha found out that she had skipped school without Tabitha's permission and Daemonica was very upset and threatened Tabitha by stating: "I'm going to take away everything you love," and shortly after, ran away from home and began to spread false accusations of sexual abuse.

During her testimony, Daemonica clearly denied skipping school to attend her father's court date or having an argument with her mother that day before she ran away. Complainant's statement to the police was clearly inconsistent with her trial testimony and counsel's decision to not use the police report to point out complainant's inconsistencies was of no trial strategy and effected not only the Defendant's defense theory but also the outcome of his trial where if the jurors would have been able to weigh the complainant's credibility against the inconsistencies of her trial testimony, at least one juror may have discredited Daemonica's theory and found the defendant not guilty.

2.) Failure To Effectively Cross-Examine Markel Williams

During trial, the prosecutor called the Defendant's seven-year-old son, Markel Williams, to testify as to the knowledge that he may have concerning the sexual abuse allegations between his father and his sister (Daemonica).

When the prosecutor questioned Markel Williams as to what he saw between the Defendant and his sister, Markel spontaneously responded "My dad touched my private parts." (III, 45)

During the course of the investigation, long before trial, CPS and the Warren Police Department worked hand-to-hand in conducting an investigation of the alleged sexual abuse allegations between the Defendant and complainant. On May 10, 2016, CPS agent, Christin Seay, reported a successful visit with Markel Williams at his elementary school where she was able to conduct an interview with him. During the interview, Mx. Seay reported that

Markel was able to explain what private parts are and "denied that anyone has ever touched him on any of his private parts" (See, page 6 of CPS report where the symbol is affixed as Exhibit 4). The same CPS report was provided to defense counsel who, again, for some unexplainable, non-strategical reason, failed to utter the report to point out the inconsistencies in the young child's testimony from what he originally reported to the authorities. Counsel's failure to effectively cross-examine Markel by exposing the inconsistencies in his statements severely prejudiced the Defendant due to the fact, during jury instructions, the Court instructed the jury that it may consider the claimed acts of sexual misconduct against his minor children (Markel and Marzhoy witnesses) which he was not on trial for, in deciding if he committed the allegations against the complaining witness. (T.V. 157)

Since the jurors were allowed to consider the "other bad acts" including Markel's testimony of his father touching his private parts, counsel's failure to expose his prior statement made to CPS that no one touched his private parts effected the outcome of Defendant's trial where had the jury been made aware of the prior inconsistent statement, they would have been able to weigh it against Markel's credibility and possibly, at least one rational juror, could have found Defendant not guilty due to the inconsistencies.

D) Counsel Conceded To The Defendant's Guilt In Front Of The Jury At Closing Argument.

During defense counsel's closing argument, Mr. Weberman stated that there was no physical evidence to support the allegations (V. 138), but then turned around and stated, before the jury, "Now, the demonstration, those are evidence of guilt" (see, V. 146)

Trial counsel conceded that the demonstrations in the interrogation video when Det. Jim Thundersky interviewed the Defendant as he explained certain incidents he encountered with the complainant were evidence of guilt. Trial counsel's statement of the video being evidence of guilt completely undermined the Defendant's defense that after multiple hours of being interrogated, he felt intimidated and bullied by the investigators in this case, which is the cause of why he reacted a certain way during that interrogation.

The United States Supreme Court said:

"An attorney may not admit his client's guilt which is contrary to his client's earlier entered plea of 'not guilty' unless the defendant unequivocally understands the consequences of the admission."

Brinkhart v. Davis, 384 US 1, 8, 86 S. Ct. 1245, 1249, 16 L. Ed. 2d 314 (1966)

"Counsel may believe it tactically wise to stipulate to a particular element of a charge or to issues of proof. However, an attorney may not stipulate to facts which amount to the 'functional equivalent' of a guilty plea." *United States v. Brown*, 138 US App. DC 398, 438 Fed 1100 (DC in 1970).

A criminal defendant has a constitutional right to expect during trial that his attorney will, at all times, support him, never desert him, and will perform with reasonable competence and diligence. (Wiley v. Saunders, 647 F.2d 642; 1981 US App Ltrs 13929). Defense counsel in this case fell short of this modest standard.

Trial counsel's bolotoring of the Defendant's guilt fell clearly below the professional standard of competent counsel and highly prejudiced the outcome of Defendant's trial due to the fact any one of the jurors could have decided that they were not persuaded by the video evidence of the interrogation where Defendant demonstrated or expressed certain acts and disregard it as un-credible evidence.

ARGUMENT VII

VII. WAS THE DEFENDANT DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO: (A) COUNSEL FAILURE TO INVESTIGATE AND PREPARE A SUBSTANTIAL DEFENSE, (B) COUNSEL WITHHELD IMPEACHABLE DISCOVERY MATERIAL, (C) COUNSEL FAILED TO EFFECTIVELY CROSS-EXAMINE THE PROSECUTOR'S WITNESSES, (D) COUNSEL CONCEDED TO THE DEFENDANT'S GUILT IN FRONT OF THE JURY AT CLOSING ARGUMENT?

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500 Motion for Relief from Judgment on this issue below;

Standard Of Review:

"An appellate attorney's failure to raise an issue may result in counsel's performance falling below an objective standard of reasonableness if that error is sufficiently egregious and prejudicial." *People v. Reed*, 198 Mich. App. 639, 646; 499 NW2d 441 (1993), *aff'd* 499 Mich. 375; 535 NW2d 496 (1995). Appellate counsel is not required to argue every conceivable issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 749; 103 S. Ct. 3308; 77 L. Ed. 2d 987 (1983). Appellate counsel's selection of which issues to raise on appeal are matters of professional judgment and presumed to be trial strategy that this court will not second-guess. *People v. Reed*, 499 Mich. 375, 391; 535 NW2d 496 (1995).

Discussion:

Shortly after his conviction, the Defendant filed a timely notice of appeal and request for counsel. The court appointed David Herskovic as appellate counsel to represent the Defendant on his direct appeal. Mr. Herskovic had set up a video conference with Defendant where they both discussed issues and concerns in the matter of this case.

Mr. Herskovic stated to the Defendant that he had spoke with Mr. Teichman (Defendant's first trial counsel) whom he had received a lot of information from and believed the Defendant to be innocent. Appellate counsel informed Defendant that he has never seen a case where a person was convicted for abortion with no evidence of any pregnancy, and that he was going to raise the issues concerning insufficiency of the evidence to support the convictions of CSC 1st degree and Abortion. Appellate counsel further advised Defendant that he noticed the PSI report did not contain the Defendant's DV or PRV scores and would raise that in his Brief.

During the remainder of the visit, Defendant expressed that he wanted counsel to raise ineffective assistance of counsel for failing to investigate and consult with an expert witness to bring forth an adversarial challenge to the prosecutor's expert witnesses, failure to effectively cross-examine the Complainant and his son, Markiel Williams, with the impeachable evidence that was available to trial counsel in the discovery material, and challenge trial counsel's statement at closing when he conceded to the Defendant's guilt by stating in front of the jury that the demonstrations presented by the prosecution were evidence of Defendant's guilt.

The Defendant further advised Mr. Herkovic that he suffers from a learning disability and really depended upon him to raise the issues they discussed in his brief. due to the fact the Defendant was a layman to the law and lacked the mental ability to draft a Standard 4 Brief.

Before their meeting ended, appellate counsel noted that he also felt that Defendant's Right to Confront Dr. Angilli, whose examination report was introduced through the prosecutor's witness Andrea Sullivan, was violated and that Dr. Angilli's report inadmissibly bolstered the credibility of the complainant by concluding that the complainant was abused for ten years and terminated her pregnancy.

A short time later, after their meeting, the Defendant received, by mail, appellate counsel's brief that was filed on his behalf in the Court of Appeals where he saw that Mr. Herkovic raised the following issues:

1. Trial Counsel's Failure To seek Permission From The Court To Question The Complaining Witness Regarding Her Previous Accusations of Sexual Misconduct Against Other People, When Doing So Was Permitted Within The Michigan Rules of Evidence Denied The Defendant His Due Process Right To A Defense, In Addition To The Right To Effective Assistance Of Counsel, Pursuant To US Const, AM XIV; Const. 1963, Art 1, §17, 26
2. The Prosecutor Committed Prosecutorial Misconduct In Making Reference To Both Jerry Sandusky And Other High Profile Sexual Assault Cases In His Closing Arguments Which Deprived The Defendant Of A Fair Trial And Due Process Of Law Pursuant To US Const, Amend V, XIV; Const 1963, Art 1, §17.
3. The Defendant Was Denied His Due Process Right To A Fair Trial By Both The Prosecutor's Inclusion Of Prior Bad Acts Evidence And By The Court's Failure To Provide A Limiting Instruction To The Jury, Pursuant To US Const, AMS V, XIV; Const 1963, Art 1, §17
4. The Prosecutor Denied The Defendant A Fair Trial By Denigrating Defense Counsel And Witnesses Favorable To The Defendant. The Error Was Plain, And Defense Counsel Was Ineffective For Failing To Object Pursuant To US Const, AMS V, VI, XIV; Const 1963, Art 1 §17, 26

Appellate counsel failed to raise the more obvious substantial issues: raised in Defendant's 6.500 motion, which he assured the Defendant that he would, causing the risk of the sufficient issues to be considered permanently waived by the court and prejudicing the outcome of Defendant's direct appeal, due to the fact had appellate counsel raised said issues

"in this 6.500 motion, the Court of Appeals could have made a decision to vacate or remand the case for new trial, or at the very least, resentencing. And even if the Court of Appeals would have still affirmed the conviction, the issues raised herein would have at least been preserved for Habeas review and Defendant would have not had to wait his, or this Court's, time having to bring in this 6.500 motion.

Appellate counsel's false promise to raise the more substantial issues raised herein this 6.500 motion and then failing to do so prejudiced the Defendant's direct appeal where there was no competent strategy into leaving the issues out causing them to be considered waived and unpreserved. Where, had counsel raised the substantial issues, the outcome of Defendant's direct appeal would have been different, especially considering the issue of Defendant's right to Confront Dr. Angillilli being violated and trial counsel rendering ineffective assistance where he failed to investigate any trial strategy to challenge the prosecution's expert witnesses and then conceded to defendant's guilt at closing.

For the above mentioned reasons, the Defendant has show "cause and prejudice" pursuant to M.C.R. 6.508(D)(1)(a), where appellate counsel has failed to raise the more obvious substantial issues herein this 6.500 motion which he actually acknowledged these issues with the Defendant during the time of his representation in the case. The Defendant relied on appellate counsel to keep his word and raise said issues set forth in the Motion For Relief of Judgment because, as appellate counsel was aware, the Defendant was not only a layman of the law but was also not competent enough to draft a Standard 4 Brief and raise the issues himself due to his learning disability in which Defendant received Social Security Disability (SSD) income for in the world.

ARGUMENT VIII

VII. THE SUBSTANTIAL ISSUES RAISED IN DEFENDANT'S 6.500 MOTION ALL HAVE A CUMULATIVE EFFECT ON THE OUTCOME OF DEFENDANT'S TRIAL AND DIRECT APPEAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS EVEN IF THE TRIAL COURT CONSIDERS THEM TO BE HARMLESS.

Due to time constraints, Petitioner submits his original handwritten Argument in his 6.500 Motion for Relief from Judgment on this issue below;

Standard Of Review:

Constitutional questions regarding Due Process are reviewed de novo.
People v. Smith, 243 Mich. App. 657, 682; 625 NW2d 96 (2000);

Discussion:

The Defendant contends that all the substantial issues that he raises in this 6.500 motion were so prejudicial that even if the Court renders them to be harmless the cumulative effect was so egregious that they prejudiced the Defendant's outcome at trial and on appeal violating his right to a fair trial.

The cumulative effect of errors that are harmless by themselves can be so prejudicial as to warrant a new trial. *United States v. Hernandez*, 837 F.3d 686, 697 (6th Cir. 2016). To warrant a new trial, however, the cumulative effect of the errors must have "deprived the defendant of a trial consistent with constitutional guarantees of due process." *Id.*; see also, *United States v. Dettz*, 577 F.3d 672, 697 (6th Cir. 2009) (holding that cumulative error exists when "the combined effect of individually harmless errors is so prejudicial as to render a defendant's trial fundamentally unfair").

The combined effect of the issues raised such as:

- A. Trial Counsel's failure to object to inadmissible expert witness testimony that bolstered and vouched for the credibility of the Complainant.
- B. Trial Counsel's failure to object to Dr. Angililli's "testimonial" examination report being introduced at trial by the prosecution without affording the Defendant an opportunity to Confront and cross-examine Dr. Angililli.
- C. Trial Counsel's failure to investigate a defense by not consulting with defense expert witness Dr. Steven Miller in order to bring forth an adversarial challenge to the prosecution's three expert witnesses.

- D. Trial counsel's failure to challenge inaccurate information contained in the Defendant's PSI report which caused him to be sentenced outside of his true guideline range.
- E. Trial counsel conceding to Defendant's guilt during closing argument by admitting evidence of guilt.
- F. Appellate Counsel's failure to raise the substantial issues mentioned in this 6.500 motion though he acknowledged the issues and promised Defendant that he would on his direct appeal Brief.

The above issues mentioned, including the ones not mentioned but were raised in this 6.500 motion, all had an egregious cumulative effect on the outcome of the Defendant's trial, and the failure of appellate counsel to raise the issues prejudiced the outcome of Defendant's direct appeal piercing the veil of his right to Due Process secured by the Fourteenth Amendment. The cumulative effect of errors mentioned have reached the level of a manifest injustice meeting the standards of "cause and prejudice" under M.C.R. 6.508(b) warranting a new trial at the least.

CONCLUSION

For the above reasons Mr. Williams requests that this Honorable Court grant his Petition for a Writ of Certiorari reverse Michigan Supreme Court's decision.

DECLARATION OF SERVICE

The petitioner certify under 28 USC 1746 that a copy of this document was served to all parties by U.S. Mail.

SUBMITTED BY:

Mark Anthony Williams 389129
IONIA CORRECTIONAL FACILITY
1576 WEST BLUEWATER HIGHWAY
IONIA, MICHIGAN 48846

DATE: _____, 2022