22-6357

No.

IN THE

SUPREME COURT OF THE UNITED STATES

CLIFTON RAYE (Pro se)

Petitioner-Appellant

VERSUS

WARDEN, TIM HOOPER
LOUISIANA STATE PENITENTIARY

Respondent-Appellee

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES FIFTH CIRCUIT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

Prepared By:

	CAMP C – LITIGATION TEAM
	DR. ERIC M. DENET, PH.D., TH.D., DIV.D., C.ED.D. #380958 CAMP C WOLF–4 CERTIFIED PARALEGAL / OFFENDER COUNSEL III

CLIFTON RAYE #708973 (Pro se)
CAMP C WOLF 4
LOUISIANA STATE PRISON
ANGOLA, LOUISIANA 70712

QUESTION(S) PRESENTED

1. Was Petitioner's rights under 6th Amendment to the United States Constitution violated when trial counsel was ineffective?

2. Did the State and Federal courts error in denying Petitioner's writs when there was a clear showing that trial counsel was ineffective?

3. Based on the cumulative effect of trial counsel's errors, did trial counsel meet the standard provided for the 6th Amendment of the United States Constitution effective assistance of counsel?

4. Did the United States Fifth Circuit Court of Appeal failed to address the claims of ineffective assistance of counsel at trial when trial counsel failed to object to a fatally defective indictment?

LIST OF PARTIES

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

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

CLIFTON RAYE #708973 (Pro se)
CAMP C WOLF 4
LOUISIANA STATE PRISON
ANGOLA, LOUISIANA 70712

TIM HOOPER, WARDEN
ADMINISTRATION BUILDING
LOUISIANA STATE PRISON
ANGOLA, LOUISIANA 70712

PAUL D. CONNICK, JR.
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GRETNA, LOUISIANA 70053

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

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

[X] reported at Raye v. Hooper, Warden, No. 22-30140 (U.S. 5th Cir 2022; 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[ ] is unpublished.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

[X] reported at Raye v. Vannoy, Warden, No. 21-354 (E.D. La. 3/7/2022); 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 _____to the petition and is

[X] reported at Raye v. Cain, Warden, 308 So.3d 1148 (La. 1/20/21); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____court appears at Appendix _____To the petition and is

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

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was October 4, 2022.

[X] 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 _____. A copy of that decision appears at Appendix _____.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. __A____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment to the United States Constitution – due process

6th Amendment to the United States Constitution – effective assistance of counsel

14th Amendment to the United States Constitution – equal protection / due process

Louisiana Constitution (1974) art. 1 § 13

STATEMENT OF THE CASE

Clifton Raye was charged by a grand jury Bill of Indictment with two counts of Aggravated Rape in violation of ***LSA-R.S. 14:42***, and two counts of Sexual Battery, in violation of ***LSA-R.S. 14:43.1***, and one count of Oral Sexual Battery, in violation of ***LSA-R.S. 14:43.3***. He pled not guilty September 27, 2013. A motion to elect a bench trial was filed June 6, 2014. March 1, 2016, Mr. Raye was round guilty as charged. March 10, 2016, Mr. Raye was sentenced to serve life on counts one and two, twenty-five (25) years on count three and ten (10) years on counts four and five. All sentences to be served without benefit of parole, probation or suspension of sentence. A Pro-se application for post-conviction was filed on December 20, 216. An out-of-time-appeal was granted. On May 31, 2017, the Louisiana Appellate Project was assigned and began preparing a brief for Mr. Raye. Louisiana Appellate Project attorney completed and filed an appeal brief on Mr. Raye's behalf, on October 17, 2017. The Louisiana Fifth Circuit Appellate Court affirmed Mr. Raye's conviction and sentences. ***State v. Raye***, 17-130 (La. App. 5 Cir. 10/25/17) 230 So.3d 659. Mr. Raye's Writ of Certiorari was filed in Louisiana Supreme Court on November 22, 2017, same was denied on June 15, 2018 (No. 2017-KO-1966). Mr. Raye filed his Pro se application for post-conviction relief on August 15, 2019, which was denied on February 12, 2020. Mr. Raye filed for Supervisory Writs in the Louisiana Fifth Circuit Court of Appeals which was denied April 23, 2020, (No. 20-KH-114).

On May 11, 2020, Mr. Raye sought relief in the Louisiana Supreme Court, same denied on January 20, 2021. On February 17, 2021, Mr. Raye filed application for habeas corpus relief pursuant to ***28 U.S.C. § 2254*** after exhausting all State remedies. On September 30, 2021,

magistrate judge recommended that Mr. Raye's habeas petition be dismissed with prejudice. The Unites States District Court judge agreed with the Magistrate Judge's Report and Recommendation. The Court further denied COA (Certificate of Appealability). On May 21, 2022, Mr. Raye timely filed ***Notice of Appeal*** which was granted.

Mr. Raye timely filed a Certificate of Appealability to the United States Fifth Circuit Court of Appeal. On October 7, 2022, the U.S. Fifth Circuit Court of Appeal denied COA.

Petitioner now files a Writ of Certiorari to this Honorable U.S. Supreme Court seeking to overturn the lower courts decision.

STATEMENT OF THE FACTS

Clifton Raye was the husband to Evangeline Raye and step-father to Five (5) children plus two others besides, one daughter with Evangeline Raye and a son from a previous marriage. Prior to report of the instant case, Mr. and Mrs. Raye informed one of his step daughters (Saquetta Williamson) she could no longer reside at the family residence, and while still offshore, informed that Saquetta had to be gone before he retumed. Prior to his return home, Saquetta informed Mrs. Raye that she (Saquetta) had previously come home to find Mr. Raye and his daughter C.R. locked in his bed room. Suspecting that something was going on, she called her sister Sequence Davis.

Sequence and Saquetta decided, rather than confront CR on the day of suspicion, they waited until the family went to Lafayette and when Mr. Raye was offshore. While in Lafayette, Sequence asked CR "If her dad was ever touching her"? After disclosing to Saquetta what C.R. responded, Sequence again confronted C.R. to inform C.R. of an alleged account of something happening to herself by Mr. Raye, effectively coercing C.R.'s disclosure ("so then I told her").

Sequence then informed Saquetta of what C.R. disclosed. After meeting with other siblings, days later, Mrs. Raye was informed of the allegations who then informed Mr. Raye who denied all allegations.

Sequence Davis reported the incident to a co-worker, who informed Department of Child and Family Services (DCFS), The DCFS met with C.R. and her family on April 10, 2013, after interviewing C.R. and family, a Jefferson Parish Patrol Deputy was notified and upon arriving, interviewed C.R., her mother (Evangeline) and D.C.F.S..worker (Tracey Jackson) who thereafter, informed Detective Ronald D. Ray.

Mrs. Raye was directed to bring C.R. to children's hospital for examination, wherein a follow-up visit was scheduled for April 27, 2013, at Audrey Hepburn Care Center, for forensic examination with (Nurse Practitioner) Anne Troy. May 2013 C.R. was interviewed at Jefferson Parish Child Advocacy Center.

On June 3, 2013, following his observation of C.R.'s CAC interview, Detective Ronald D. Ray prepared an affidavit for an arrest warrant for Mr. Raye's arrest.

REASONS FOR GRANTING THE PETITION

It is axiomatic that both the United States and Louisiana Constitutions guarantee defendants in a criminal prosecution the fundamental right to effective assistance of counsel through the ***Sixth*** and ***Fourteenth Amendment*** to the United States Constitution and ***Louisiana Constitution (1974) art. 1 § 13.***

This right is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive Due Process of Law in an adversarial system of justice. *See* ***U.S. v. Cronic***, 466 U.S. 648, 658, (1984), *also* ***Lockhart v. Fretwell***, 506 U.S. 364, 369, 113 S.Ct. 836, 838, 122 L.Ed.2d 180 (1993).

The ***Sixth Amendment*** requires more than an appointment of counsel, the right guarantees a defendant "*Assistance*" of Counsel at his trial. *See* ***U.S. v. Ash***, 413 U.S. 300, 309, 93 S.Ct. 2568, 2573, 37 L.Ed.2d 619 (1973). *See also* ***Avery v. Alabama***, 308 U.S. 444, 460, 60 S.Ct. 321, 322, 841 L.Ed 377 (1940). The ***Sixth Amendment*** "is meant to assure fairness in the adversary criminal process." ***U.S. v. Morrison***, 499 U.S. 361, 364 101 S.Ct. 665, 667, 66 L.Ed.2d 564 (1981). Further, the Supreme Court has held that "The benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied on as having produced a just result." *See* ***Strickland v. Washington***, 466 U.S. 668, 686, (1984). Under the ***Strickland*** standard, Ineffective Assistance of Counsel is established when the defendant shows that (1) trial counsel's performance was deficient, *i.e.*, that he or she made errors so egregious that they failed to function as the "Counsel guaranteed the defendant by the ***Sixth Amendment***," and (2) the deficient performance prejudiced the defendant enough to deprive him of Due Process of Law. *Id.* at 687. Specifically, "The defendant must show that there is a reasonable probability

that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Lead defense counsel, Edwin Wayne Walker's ineligibility to practice law in the State of Louisiana, during Mr. Raye's prosecution in violation of his ***Sixth*** and ***Fourteenth Amendment*** rights. Mr. Raye / Petitioner retained Mr. Walker's services (Wayne E. Walker) Bar #8749 as lead defense counsel on or about April 2013, extending through March 10, 2016. On July 2, 2013, Mr. Walker introduced William Murphy Doyle as his law partner to assist in Mr. Raye's preliminary and bond reduction hearing, also conducted on July 2, 2013, Mr. Walker was not present. Mr. Raye was allegedly "Arraigned" on September 27, 2013, records determine that only William Doyle appeared as counsel, William Doyle on multiple occasions advised that "He was not my Attorney" but only doing (Wayne) a favor. Mr. Raye concedes, he only retained Mr. Walker's services for or in the amount of Fifteen Thousand Dollars ($15,000). This issue conflicted with the level of representation Mr. Doyle would provide, namely, Mr. Raye was denied his right to discover evidence (DVD) offered by prosecution. Wherein, Mr. Doyle advised that he was not being compensated nor did Mr. Walker provide funds to obtain copy of evidence. (p.14 habeas petition) Nevertheless, the record identified Mr. Doyle as counsel throughout pre-trial proceedings merely as standby counsel.

Mr. Raye proceeded to trial was found guilty and sentenced to Two (2) life sentences and Forty-five (45) years in prison. In efforts to obtain his attorney's files, Mr. Raye contacted the Louisiana Bar Association as well as Louisiana Attorney Disciplinary Board Office of the Disciplinary Counsel (LBA)(LADB)(ODC). The LBA and ODC initial response to Mr. Raye's inquiry was that "There's no Attorney listed by the name Edwin Wayne Wallker" (APCR Pp.

13-14)(Habeas Application P.9). Mr. Raye requested an evidentiary hearing in conjunction with request for post-conviction relief. . .to further. . .an opportunity to establish facts relevant to support the instant claim. In response to Mr. Raye's Application for Post Conviction Relief, the State presented a "Certificate" (Habeas Application P.9). Mr. Raye filed a formal complaint against Mr. Walker with the LADB-ODC. The complaint was dismissed for failure of Mr. Walker to respond, Mr. Raye appealed the dismissal which was also denied. Mr. Raye appealed to the Louisiana Supreme Court for relief, requesting Mr. Walker's Attorney files associate with his case and the full disclosure of Mr. Walker's status as an attorney in Louisiana, along with all available complaints, disciplinary actions and disciplinary proceedings taken against Mr. Walker for non compliance with rule of professional conduct, Louisiana Supreme Court denied relief.

It is inexplicable and unacceptable that the State and Federal District Courts would not grant an evidentiary hearing or to grant Petitioner's request to have Mr. Walker status and disciplinary reports disclosed to Mr. Raye or to the court's for in-camera inspection to determine the fullness of Mr. Walker's status as an Attorney during Mr. Raye's case.

The "Certificate" provides that Mr. Walker violated Rules of professional conduct, and those Rules declared that Mr. Walker was "Not in good standing" an "Ineligible" to the practice of law in Louisiana. The Rules for attorney disciplinary enforcement requires notice to be give to clerk of courts, judges in all jurisdictions as well as to existing clients, partners and to the general public for protection of the integrity of legal profession, clients and public against such instances as this one. The certificate standing alone is sufficient to debate whether or not Mr. Raye claim that Mr. Walker's ineligibility to practice law, violated his 6th Amendment right to

Effective Assistance of Counsel, and Mr. Raye's ***Fourteenth Amendment*** right to Due Process of Law, and to counsel for his defense. Mr. Raye's habeas petition provided Exhibits supporting all complaints and appeals to LBA, LADB-ODC and to Louisiana Supreme Court.

CLAIMS FOR REVIEW

1. It is debatable whether or not Clifton Raye/Petitioner, received Constitutionally deficient assistance of counsel prior to and at his trial where counsel:

   A) Proceeded to represent Mr. Raye in pre-trial and trial proceedings without first being authorized to practice law in Louisiana.

   B) Failed to investigate and obtain all available evidence in the possession of the state.

   C). Failed to effectively confront and cross-examine state witnesses S.W., S.D. and C.R.

   D) Failed to put forth any defense.

   E). Failed to timely object to hearsay testimony.

   F). Failed to put the states case to any meaningful testing.

LAW AND ARGUMENT

CLAIM ONE (SUB-CLAIMS)

I.

It is debatable whether or not Mr. Raye received Constitutionally deficient assistance of counsel at trial where counsel: (1) failed to investigate and obtain all available evidence in possession of the State, (2) failed to adequately confront and cross-examine State's witnesses S.W., S.D. and C.R. (3) failed to put forth a defense (4) failed to timely object to hearsay (5) failed to put the State's case to any meaningful adversarial testing.

Petitioner presents that the above referenced issues are repetitive of claims two and three, and are thoroughly argued in those claims. Therefore, Petitioner requests permission to refer to claims two and three for this courts resolution in the above claims, in effort to save repeating.

II.

A Certificate of Appealability should have issued because it is debatable whether or not Mr. Raye received Constitutionally deficient assistance of counsel at trial where counsel: failed to object to evidence insufficient to sustain conviction.

The Due Process guarantee "That no one shall be made to suffer the onus of a criminal conviction except upon sufficient proof defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offenses." ***Jackson v. Virginia***, 443, U.S. 307, 319 (1979). A."Defendants conviction is Constitutionally infirm and must be vacated if attacked on a federal habeas corpus petition where no rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *See* ***Bowen v. Kemp***, 832 F.2d 546 (11th Cir. 1987).

The relevant law at issue is: ***LSA-R.S. 14:41, LSA-R.S. 14:42, LSA-R.S. 14:43.1***, and ***LSA-R.S. 14:43.3***. There can be no valid conviction (Verdict or Sentence) without a legal and sufficient indictment. *See* claim "IV" Defective Indictment".

Although trial counsel is typically afforded leeway in making tactical decisions regarding trial strategy, counsel cannot be said to have made a tactical decision without first investigations and procuring information necessary to make such a decision. *See* ***Riley v. Payne***, 352 F.3d 1313, 1324 (9th Cir. 2003). Counsel's failure to obtain and investigate all known and available evidence in possession of the State and to familiarize himself with the facts and law relevant to Petitioner's case allow the State's evidence to go unchallenged at trial, ultimately leading to Petitioner being convicted upon; a defective indictment, hearsay, prosecutor misconduct.

Nevertheless, Petitioner contend that absent the errors, the evidence is insufficient to sustain his conviction. It's worth mentioning that counsel entirely failed to put forth any defense, even considering the State presented, no eye witnesses, no DNA or scientific evidence, no physical evidence, and the victims initial disclosure to S.W. (*See* "Affidavit p.3 of 3) contradicts the disclosure to S.D. (Tr. p. 243) also, the time period between the initial disclosure to S.W. and the first government authority (DCFS) was 15 days.

Most worthy to be mentioned is the medical Files/Records, not due to a lack of due diligence reveal previously undisclosed material, impeaching evidence, which also violates ***Brady v. Maryland***, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Considering the following undisclosed evidence, it is against the interest of justice to conclude that absent the errs, the evidence presented at trial, challenged by a competent defense attorney, would still

have been sufficient to sustain conviction.

FEBRUARY 2021 UNDISCLOSE EVIDENCE

- Responding Detective - Jean Lincoln
- Identity of anonymous caller - "Andrea" (Family member)
- Victim's Recent Examination by Family Physician
- Victim's Statement To Nurse Troy Concerning S.D. Allegation Against Petitioner.
- Negative Test Results Of DNA And Sexual Assault Exams
- Victim's Denial Of Sexual Assaultive Behavior
- Victim's Brother, And Two (2) Sisters Being Examined By Deputy Brent Baldassaro (Contrary To Trial Testimony)

Though repetitive, Petitioner argues the urgency of the this court to consider the totality of all withheld evidence in resolving the instant claim of insufficiency of evidence to sustain conviction, because of the following, it is evident that the outcome of Petitioner's trial would have been different so much so, that no rational trier of fact would have found guilty, beyond a reasonable doubt. The State's case proceeded with only weakly supported circumstantial evidence, where state witness S.W. the alleged to have observed suspicion of sexual nature between Petitioner and C.R. S.W. testified at trial, that, instead of speaking to C.R. personally, she contact S.D., C.R.'s eldest half-sister, and they decided to wait and it would be S.D. to whom C.R. would speak. The states (Theory) as presented at trial, was that on March 30, 2013, (Easter Sunday) C.R. made an initial disclosure of sexually assaultive behavior committed upon herself by Petitioner. *See* (Tr. p.69) Although forced by coercion, C.R.'s initial disclosure, March 26, 2013, to the DCFS worker, was approximately 13 to 15 days.

Also, the prosecutor elicited "Hearsay" from S.W., where she testified that C.R. made the initial disclosure in the presence of both S.D. an S.W. However, S.D. nor C.R. gave any testimony corroborating this occasion, more so, S.W. testified that C.R. disclosed to both S.D. and S.W. acts of oral sex committed to and C.R. Petitioner. The testimony of neither C.R. nor S.D. confirm such behavior. S.D. testified that She asked C.R. if her dad was ever "Touching" her. To this question C.R. initially replied "No". However, after S.D. effectively coerced with (undisclosed) to the court or defense, claims of alleged abuse committed upon S.D. by Petitioner. C.R. testified conceding to S.D.'s question. Importantly, the time between S.W.'s observation and disclosure was five days. Three more days later, S.D. told E.R. that C.R. told S.D. that Petitioner "Touched" her (C.R.). In light of Detective Ronald Ray's "Affidavit Report" and the (undisclosed) medical reports which was disclosed in February 2021, introduced to the District Court on habeas review in support of his claim #3 "Prosecutor Misconduct", (Withholding Affidavit Report). The State's theory fails to prove the offenses of 2-counts (Aggravated Rape), 2-counts of (Sexual Battery) and 1-count of (Oral Sexual Battery). The recently disclosed medical records provides impeaching evidence of deputy Baldassaro's trial testimony, discloses parties involved in prosecutions case that were not disclosed to defense at or prior to trial, namely: "Andrea" S.W., S.D., E.R. and C.R.'s cousin, whom the state concealed identity, also an undisclosed (Detective, Jean Lincoln) who performed all preliminary matters prior to Detective Ray's assignment to the case. The records also provides impeachment evidence against the states theory that C.R. was not coerced into disclosure.

The record provide scientific evidence that C.R. was previously treated by family physician for an infection that was determined to be the possible result of poor hygiene (Toilet

Paper). Ultimately, the reports reveal that C.R. underwent extensive scientific testing and it was determine negative for sexual abuse. The report also discloses a time period of a month and one half between C.R.'s initial exams, and nurse Anne Troy's. Although C.R. testified to alleged accounts of sexual abuse, the recent disclosed medical records reveal that C.R.'s disclosure was forcibly obtained and tainted by her eldest sister S.D. by allegations of other crimes committed by Petitioner.

Allegation that the prosecution knew of but withheld from the defense even under order of the court (Request for Bill of Particular) (Tr. Pp. 41-47). Petitioner's trial was fundamentally unfair, as he was firstly, denied the effective counsel envisioned by the Sixth Amendment by counsel failure to obtain state evidence, investigate allege evidence (State witnesses, medical and scientific, as well all available reports in possession of the state concerning Petitioner's guilt or innocence) and to use all such in Petitioner's defefense, as counsel completely failed to challenge the state's case when questioned concerning penal-vaginal intercourse, C.R. replied "I don't remember." "I don't know how old I was". (Count #2) there is no evidence or offense for (Count #4)), count #1 and count #2 co-exist, however, no evidence proves ***LSA-R.S. 14:42*** (victim under 13) the victim stated "I don't know how old I was." The date in "Caption" are allegations (Must Prove).

Considering the magnitude of withheld evidence (Medical Record)the interest of justice requires all evidentiary hearing to resolve the facts stated in the reports for determining whether or not Mr. Raye was denied his 6th and 14th Amendment rights to Effective Assistance of Counsel, prior to and at trial, in that the state violated ***Brady*** Rules of disclosure, as such denied Petitioner 6th Amendment right to notice of charges, to confront and cross-examine his accuser

and to put up a defense against all charges raised against him.

The failure of counsel to object to sufficiency of evidence to sustain conviction on record, failed to give the trial court a through review of all facts surrounding the case, likewise failing to give the prosecution to resolve the issues or answer why it did not return the request for bills of particulars, allowed the state to fill in the elements of the alleged offenses as trial proceeded, rather than ensure a fair trial through compliance with well established state and federal law.

The District Courts presumption of correctness that Mr. Raye's claim "is a reassertion of his claim asserted on direct appeal is err. Mr. Raye's instant claim is one of Ineffective Assistance of Counsel, which the state agree, is better brought on an application for post-conviction. Mr. Raye's claim is in no relation to that which was brought on direct appeal.

III.

> It is debatable whether or not Mr. Raye received Constitutionally deficient assistance of counsel at trial where counsel: failed to object to prosecutor misconduct.

Due Process requires that the prosecution disclose evidence that is both favorable to the defendant and material to guilt or punishment. ***Brady v. Maryland***, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). ***Brady*** requires the prosecution to disclose evidence when it is of such substantial value to the defense that elementary fairness requires it to be disclosed even without a specific request; ***U.S v. Agurs***, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); "and extends to all evidence known not just to the prosecution but" to the others acting on the governments behalf in the case.

The failure of the prosecution to answer and to return a requested bill of particulars

resulted in Petitioner (1) being tried, convicted and sentence upon a fatally defective indictment (2) denied the ***Sixth*** and ***Fourteenth Amendment*** rights to notice of the charges against him,, right to confront and cross-examine his accuser, and to Due Process of Law, when the prosecution withheld its evidence from defense. Petitioner received open-file discovery on December 4th an d 10th, 2013, however, on March 2014, well after an otherwise insufficient open-file discovery Petitioner filed and was granted an order requesting prosecution to return a bill of particulars or give reason to the contrary. Unfortunately, defense counsel failed to put the issue before the trial court before or at trial. In the instant claim, Petitioner argues that the prosecution withheld Detective Ronald D. Ray's "Affidavit for Warrant of Arrest Report". Petitioner contends that the report undermines confidence in the outcome of his trial. Petitioner presents that during collateral proceeding (post-conviction) he obtained Detective Ray's report, wherein it informs that contrary to the states theory at trial, which was that the victim C.R. made an initial disclosure of sexually assaultive behavior to her eldest sister S.D. that for the past two years defendant Petitioner committed oral sex upon the victim and forced the victim to perform oral sex upon defendant-Petitioner, as well as other inappropriate behavior (Tr. p.69). However, the affidavit report informs as follow: . . . This time (The victim's older half sister came home) and began looking for the victim which interrupted this activity. Later (that day), the older sister (question) the victim) as to why she was in her fathers room with the door locked and closed (and it was then) that (the victim made the initial disclosure)(Appendix "G" Application for Post Conviction Relief page 3 of 3).

At trial, S.W. testified that "She did not speak to C.R. on the day of suspicion, but rather called S.D., and they agree to wait until Petitioner went to work and the family to Lafayette and

it would be S.D. who would speak to C.R.". The inference drawn from S.W.'s trial testimony (not speaking to C.R.) and the report (C.R. making initial disclosure to S.W.) implies (1) S.W. lied about C.R. non-disclosure to S.W., (2) the disclosure by C.R. to S.W. was not one of sexual abuse, if so, there would have been no need for S.D. to wait to question C.R. about it, it would have been S.W. whom presumably disclosed the behavior. Nevertheless, we can only speculate as to what C.R. and S.W. disclosed because the report was not turned over to defense nor could the court consider the materiality of the evidence when considering C.R. and S.W.'s credibility. The report was material to guilt or innocence, because C.R. testified at trial that she said No! when ask by S.D. if "her dad been touching her" this would be the second time C.R. was questioned and she denied any happening to herself by Petitioner.

It was not until C.R. was forced by coercion that she made a disclosure to S.D., this too, the prosecution knew of but withheld. (*See* Newly Disclosed Medical Records). The prosecution elicited testimony from S.W. known to be Hearsay, because S.W. testified that she did not speak to C.R. prior to the visit to Lafayette, nor does C.R. or S.D. testify at trial that S.W. was a part of C.R.'s disclosure to S.D., therefore, S.W.'s trial testimony that C.R. disclosed acts of oral sexual behavior committed upon C.R. and C.R. upon Petitioner is Hearsay. The report could have been used to impeach S.W.'s testimony, had it been disclosed.

The substance of C.R. and S.W. conversation violated Petitioner's right to adequately confront C.R. and S.W. on the issues as well as denied him effective cross-examination.

Then again, how could defense challenge the issue, when it was never disclosed. Non-disclosure of prosecution evidence violates ***Brady***, and Petitioner's rights to Due Process ***Sixth***, ***Fourteenth Amendment*** rights to the United States Constitution.

Detective Ronald D. Ray observed the live interview of C.R. while being interviewed at the Child Advocacy Center (Tr. Pp. 9-100, 103, 220).

Prosecution knew of S.D.'s coercion (Medical Records) but failed to disclose it. (Disclosure Requested in Request for Bill of Particulars. Tr. Pp. 41-47).

Prosecution denied C.R. was coerced (Tr. 251, 261, 262, 264)., and capitalized on it through the testimony of S.D. "It happened (To Me)(Tr. Pp. 159, 161-2)

The actions of the District Attorney's Office for and in the Twenty Fourth Judicial District for the Parish of Jefferson, does not reflect the fundamental fairness envisioned by the *Sixth* and *Fourteenth Amendments* of the United States Constitution, neither was defense counsel's performance in failing to object to the prosecution's misconduct, counsel's incompetence allowed the State's case to proceed un-investigated, and completely unchallenged. Petitioner's conviction was based on evidence known to the State to be false and/ or misleading. The prejudice incurred by Petitioner was a conviction for alleged crimes that had not been legally disclose to Petitioner for preparing a defense, inability to defend against said allegations due to nondisclosure, inability of the trial court to consider the full effect of the undisclosed evidence before reaching a verdict, the inability of the trial court to apply credibility to the State witnesses in light of the undisclosed evidence, (impeaching) and (material) to guilt or innocence. ***Giglio v. United States***, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

Petitioner has made the required substantial showing pursuant to ***28 U.S.C. § 2253*** for obtaining a Certificate of Appealability so as to receive further review of his claims.

IV.

It is debatable whether or not Mr. Raye received Constitutionally deficient assistance of counsel at trial where trial counsel: failed to object to a fatally defective indictment.

Petitioner contends that his trial counsel's failure to secure his *5th*, *6th* and *14th Amendment* rights, by failing to object to an indictment that factually failed to charge an offense and moving to dismiss said indictment.

Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "Ineffective Assistance of Counsel is established when the defendant shows that (1) trial counsel's performance was deficient, *i.e.*, that he or she made errors so egregious that they failed to function assessing the *Sixth Amendment* guaranteed the defendant: (2) the difficult performance prejudiced the defendant enough to deprive him of Due Process of Law. *Id.* at 687. Specifically, "the defendant must show that there's a reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different. *Id.* at 694. Petitioner's indictment's failure to charge any offense rendered the trial to be without subject matter jurisdiction of the case (Power or authority to adjudicate the case).

In a habeas corpus proceeding pursuant to *28 U.S.C. § 2254* where a Petitioner claims that he was tried, convicted and sentenced upon a defective grand jury indictment such a claim rests on the Constitutional guarantee that:

> **"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." U.S.C.A. Amendment (Fifth)**

As a general rule, an indictment passes Constitutional muster If it contains all the essential elements of offense, and fairly informs a defendant of the charges against which he must defend and secondly, to enable him to plead an acquittal or conviction in bar of future prosecutions for the same offense. ***Hamling v. United States***, 418 U.S. 87, 117 (1974). The due

process clause protects a person conviction "Except upon proof beyond a reasonable doubt of every element of the crime charged." To define a crime the indictment must set forth "Every Fact that is by law a basis for (imposing) or increasing punishment." ***Apprendi v. New Jersey***, 530 U.S. 466, 501 (2000) (Thomas, J. Concurring) "and requires arrest of judgment if the indictment does not charge an offense" Fed. R. 34(a). *See also*, ***Russell v. United States***, 369 U.S. 749, 82 S.Ct. 1038, (U.S. Dist. Col. 1962)

Petitioner's indictment is fatally defective, because it fails to ensure that a properly instituted grand jury found probable cause that a person, identified by name or nick-name or other (known) name or initials we injured, failed to set forth sufficient facts constituting the criminality of the offense failed to set forth any section or sub-section of the charged statute upon which to prosecute – failed to protect against double jeopardy in (Count Three). Petitioner was allegedly indicted on September 26, 2013, and arraigned the following day 9/27/2013. However, Mr. Raye was not read the charges made in the indictment, during the alleged arraignment. Mr. Raye indictment read as follows:

> **On the 26 day of September 2013, the grand jurors of the State of Louisiana duly empaneled and sworn, in and for the body of the Parish of Jefferson, in the name and by the authority the said State, upon their oath, presents that one: Clifton Raye late of the Parish of Jefferson, on or between July 6, 2010, and July 5th in the year of our Lord Two Thousand Twelve with force of arms, in the Parish aforesaid, and within the jurisdiction of the Twenty-Fourth Judicial District Court of Louisiana in and for the Parish aforesaid, violated *LSA-R.S. 14:42* in that he did commit Aggravated Rape upon known juvenile, (DOB 07/6/1999) to wit; Oral Sexual Intercourse;**
>
> **Count 2) and the District Attorney further gives the court to understand and be informed that on or between July 6, 2010, and July 5, 2012, the said Clifton Raye violated *LSA-R.S. 14:42* in that he did commit Aggravated Rape upon known juvenile, (07/06/1999); to wit; penile vaginal and/or penile anal sexual intercourse;**

Count 3) and the District Attorney further gives the court to understand and be informed that on or between July 6, 2010, and July 5, 2012, the said Clifton Raye violated *LSA-R.S. 14:43.1* in that he did commit Sexual Battery upon known juvenile, (DOB 07/06/1999); wherein the juvenile was under the age of Thirteen, and the victim is not the spouse of the defendant and is under the age of Fifteen years and is at least three years younger than the defendant;

Count 4) and the District Attorney further gives the court to understand and be informed that on or between July 6, 2012, and March 21, 2013, the said Clifton Raye violated *LSA-R.S. 14:43.1* in that he did commit Sexual Battery upon known juvenile, (DOB 07/06/1999); and the victim is not the spouse of the defendant and is under the age of Fifteen years and is at least three years younger than the defendant;

Count 5) and the District Attorney further gives the court to understand and be informed that on or between July 6, 2012, and March 26, 2013, the said Clifton Raye violated *LSA-R.S. 14:43.3* in that he did commit Oral Sexual Battery upon known juvenile, (DOB 07/06/1999); and the victim is not the spouse of the defendant and is under the age of Fifteen years and is at least three years younger than the defendant;

The state proceeded by way of ***LSA-La. C. Cr. P. art 465*** (Short Form Indictment). ***LSA-La. C. Cr. P. art 465(39)*** requires at a minimum "(Aggravated Rape) - A.B. committed Aggravated Rape upon C.D." ***LSA-La. C. Cr. P. art 473*** (Identification of Victim) "when the name of the person injured is substantial and not merely descriptive, such as when the injury is to the person, as in murder, Rape, or Battery, the indictment shall state the true name of the victim or the name, application, or Nickname by which he is known. Petitioner contends that, since the indictment identified a (Known) juvenile, the true name, nickname or other known name" "***SHALL***" have been set forth, it has been consistent practice in Louisiana courts that when an alleged minor has been identified as an alleged victim their initials has satisfied ***LSA-La. C.Cr.P. Art. 465(39)***, and ***LSA-La. C.Cr.P. Art 473***. consequently, the State's failure to

return a valid indictment (bearing the name or initials) of the alleged victim, violated Petitioner's right to have a grand jury find probable cause that a (Person was in fact injured.

The same goes for ***LSA-La. C.Cr.P. Art 464*** which requires that the indictment "***Shall***" be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It "***Shall***" state for each count the official or customary citation of the statute which the defendant is alleged to have violated. In the instant case, the indictment entirely fails to present any particular act allegedly committed by Petitioner which constitute any of the offenses charged in the indictment.

Petitioner was charged, tried, convicted and sentenced for (Aggravated) Rape, listed as, ***LSA-R.S. 14:42***. However, ***LSA-R.S. 14:42*** has multiple (Aggravating Factors) and it is Petitioner's Fifth Amendment right, to have a grand jury find probable cause that Petitioner has allegedly committed any or all listed factors. Falling under ***LSA-R.S. 14:42.***

The Relevant Statutes Reads As Follows:

LSA-R.S. 14:41 (Rape)

A. Rape is the act of analyze, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent.

B. Emission is not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, however, slight, is sufficient to complete the crime.

C. For purposes of this sub-part, "Oral Sexual Intercourse" means the intentional engaging in any of the following act with another person:

1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender.

2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.

LSA-R.S. 14:42 (Aggravated or "First Degree" Rape)

A. Aggravated or First Degree Rape, is a rape committed upon a person Sixty-five years of age or older or where the analyze, oral or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:

(1) Victim resists, but resistance overcome by force.

(2) Resistance prevented by threats of great and immediate bodily harm ...

(3) Because the offender is armed with dangerous weapon.

(4) Victim under Thirteen

(5) Two or offenders...

(6) Victim suffers from a physical or mental infirmity.

LSA-R.S. 14:43.1 (Sexual Battery)

A. Sexual Battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing when any of the following occur.

(1) The offender acts without consent of the victim.

(2) The victim has not yet attained Fifteen years of age

(3) The offender is Seventeen years of age or older and the following exist:

C. (1) Whoever commits the crime of Sexual Battery shall be punished . . . for not more than ten years.

(2) Whoever commits the crime of Sexual Battery on a victim under the age of Thirteen years . . . shall be punished by imprisonment at hard labor for not less than Twenty-five years not more than Ninety-nine years at least Twenty-five years ... shall be served without benefit . . .

LSA-R.S. 14:43.3 (Oral Sexual Battery)

> A. Oral Sexual Battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim when any of the following occurs:
>
> (1) ... Under Fifteen years ...

A thorough review of the indictment the applicable law and facts relevant to Petitioner's ***Fifth Amendment*** right to have a grand jury pass upon all the essential elements of the charged offenses before returning indictment for prosecution, and his trial counsel was ineffective, that is to say, "his performance fell below reasonable standards of a professional attorney" when he failed to object to an indictment which failed to identify the victim, in accordance with ***LSA-La. C.Cr.P. Art 465(39)*** and ***Art. 473***, failed to set forth any section(s) or sub-sections) identifying the aggravating factors which was relied upon for prosecution, failed to set forth any particular acts allegedly committed by Petitioner which constitute the criminality of the charged offenses failed to protect Petitioner from double jeopardy. As stated in Petitioner's request for habeas relief on Count #3, the charge is duplicitous, it is unclear on what provision the state would proceed, whether ***LSA-R.S. 14:43.1A(2) or C(2)***, both provisions has very distinctive punishments. Likewise, Petitioner's ***Sixth Amendment*** rights were violated in that he did not "Enjoy the right . . . and" to be notified of the nature and cause of the accusation against him. The district court's explaining away" the defects of Petitioner's indictment is one of the very purposes in which the ***Fifth Amendment*** requirement of a grand jury, serves to "protect." "Speculation of the minds of the grand jury." "A cardinal Rule is to view the ***Fifth***

Amendment clause in question in context in which it occurs and in its cluster of individual guarantees." *U.S. v. Balsys*, 524 U.S. 666, 673 (1998). Viewed as a whole, the *Fifth Amendment* is specifically, designed to protect personal rights, not the government.

Counsel's less than professional performance prejudiced Petitioner, in that he was charged, tried, convicted and sentenced to serve the rest of his natural life in prison, without the prosecution having opportunity to amend the indictment or the trial court having opportunity to dismiss the indictment, given that the prosecution failed to answer defense request for Bill of Particulars, something that the district court did not take into account. The request for Bill of Particulars was filed and granted well after the indictment was returned and open-file discovery conducted, nor was Mr. Raye advise of any charges at arraignment. Against attorney's request, indictment was not read in open court at arraignment.

The district court's presumption of correctness to the state courts resolution to this claim was an unreasonable err. The State's Fifth Circuit Court of Appeals did not review the instant claim on its merit, but merely stated that "Patent Error" was not found. Likewise, the Louisiana Supreme Court necessarily adopted that conclusion, *No Reason Was Given*. The federal courts concluded that when the highest state summarily denies a claim, and no reason is given, the habeas court must look to the last state court which review the claim on its merits, the district court has looked to the Louisiana Fifth Circuits opinion on the instant claim, however, neither considered the merits of the claim. In adopting the Louisiana Fifth Circuits reasoned decision, the district court necessarily adopted ***LSA-La. C.Cr.P. Art 920(2)*** "Patent Error Review", procedures in pertinent part provides: (2) "An error that is discoverable by a mere inspection of the pleading and proceedings and without inspection of the evidence", ...though such evidence

be in the record, *See* ***State v. Oliveaux***, 312 So.2d 337, 339 (La.1979): We have determined the record in a criminal case includes the caption, the statement of time and place of holding court, the indictment or information and the endorsement thereon, the arraignment. The plea of the accuser, the mentioning of the impaneling of the jury, the verdict, and the judgment, ***State v. Palmer***, 251 La. 759, 206 So.2d 485 (1968); ***State v. Sanford***, 248 La. 630, 181 So.2d 50 (1965); the Bill of Particulars filed in connection with a short form indictment or information . . . . Therefore, a mere inspection of Petitioner's indictment would have revealed no alleged victim was identified (person) by name or otherwise (initials), no elements (Statutory Definition) or (Plain Language), facts constituting criminality of the offenses, no age element (Aggravating Factor nor Sub-Section). Petitioner indictment set forth "Sentencing factors" not elements, as required by the ***Fifth Amendment*** right to have a grand jury find all essential elements of the charged offenses before returning indictment for prosecution.

Consequently, there was no meaningful review in accordance with ***LSA-La. C.Cr.P. Art 920***. Further, there was no (Bill of Particulars) provided, no (Reading of the Charges at Arraignment), no (Reasons Supporting the Trial Courts Verdict nor Sentence).

The district court cites ***Lee v. Vannoy***, No. CV 19-12280, 2020 WL 3513743, at 12 (E.D. La. June 1, 2020) in distinguishing Petitioner's claim/case. On the issue of "Defective Indictment" ***Mr. Lee*** challenged the form and sufficiency of his indictment and that it was not returned into open court, however, the State Court record provided that ***Mr. Lee's*** indictment was returned in open court, also unlike ***Lee***, where the aggravating statute did not apply, Petitioner has the right to be informed by the grand jury of which Sub-Section of ***LSA-R.S. 14:42, 14:43.1*** and ***14:43.3*** he would have to defense against. Petitioner's indictment did not meet the requirements of ***La. C.Cr.P. Art. 465(A)(39)*** as ***Mr. Lee*** did. Petitioner was not

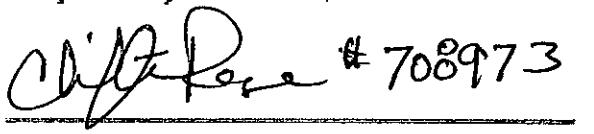
provided a requested Bill of Particulars as ***Mr. Lee*** did, Petitioner's charges were not read in open court at arraignment. Petitioner was not provided the identity of the victim in accordance with ***465(A)(39)***. Nor did the trial court make any definitive findings of any or all sections and/ or all Sub-Section relevant to Petitioner's guilt or punishment. Therefore, ***Lee v. Vannoy***, is inapplicable in distinguishing Petitioner's case/claim.

It is well-established in federal as well as state law, that invalid indictments "On its face", that is to say, an indictment which fails to set forth all essential elements of the charged crime is defective. *See*, ***Russell v. United States***, 369 U.S. 749, 82 S.Ct. 1038, (U.S. Dist. Col. 1962), ***U.S. v. Cook***, 17 Wall 174, 175 (1872); ***U. S. v. Cruikshank***, 92 U.S. 542, 559, (1875); ***U. S. v. Carroll***, 105 U.S. 611, 613 (1881); ***State v. Dubon***, 142 La. 919, 922, 77 So. 791, 792 (1918); ***State v. McDonald***, 178 La. 612, 620, 152 So.2d 308, 310 (1934); ***State v. Soileau***, 173 La. 531, 534, 138 So. 92, 93, (La. 1931), and any judgment may be arrested, even after verdict, anything further would be pure speculation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



CLIFTON RAYE #708973 (Pro se)

Date: December 7, 2022