ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

No.: 22-6780

ANTHONY L. LARKINS
Petitioner

Versus

TIM HOOPER, Warden
Louisiana State Penitentiary
Respondent

PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT TO THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

From Denial of COA in the United States Fifth Circuit Court of Appeal, No. 22-30612, on appeal from Denial of COA in the United States District Court, Western District of Louisiana, Case No. 5:20-CV-1368, Judge Elizabeth E. Foote

Respectfully submitted, *pro se*, this 6th day of February, 2023.

Anthony L. Larkins #419715
M.P. - Spruce 1
LA State Prison
Angola, LA 70712

TABLE OF CONTENTS

page

IN FORMA PAUPERIS
AFFIDAVIT
COVER PAGE
TABLE OF CONTENTS i
INDEX OF EXHIBITS AND APPENDICES ii
TABLE OF AUTHORITIES iii
INTERESTED PARTIES vi
QUESTIONS OF LAW PRESENTED vii
PETITION FOR WRIT OF CERTIORARI 1
OPINIONS BELOW 2
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
STATEMENT OF THE CASE 3
ISSUES PRESENTED 5
STATEMENT OF TIMELINESS 6
STATEMENT OF THE FACTS 7
ASSIGNMENT / SPECIFICATION OF ERROR 9
ARGUMENT 11
1 11
2 14
3 15
4 22
CONCLUSION 23
CERTIFICATE OF SERVICE 25
EXHIBITS AND APPENDICES

INDEX OF EXHIBITS AND APPENDICES

EXHIBITS AND APPENDICES

Exhibit A	11/14/22	United States Fifth Circuit Court of Appeal Denied COA
Exhibit B	10/28/22	Application for COA in the United States Fifth Circuit Court of Appeal

Appendices Contained within Exhibit B:

Appendix A	09/19/22	U.S. District Court Denied Habeas Petition
Appendix B	09/02/22	Court Docket Sheet
Appendix C	03/22/22	Magistrate's Report and Recommendation (R&R)
Appendix D	04/07/22	Objection to Magistrate's R&R
Appendix E	09/27/22	NOI, IFP, and Motion for COA
Appendix F	09/28/22	U.S. District Court Denied COA
Appendix G	09/28/22	U.S. District Court Granted In Forma Pauperis

TABLE OF AUTHORITIES

page

CONSTITUTION

Louisiana Constitution, Article 1, § 2.....10-11, 14, 16, 20
Louisiana Constitution, Article 1, § 3.....16, 20
Louisiana Constitution, Article 1, § 16.....11
Louisiana Constitution, Article 1, § 17.....16, 20-22
Louisiana Constitution, Article 1, § 22.....14
United States Constitution, Amendment 5.....11, 16, 24
United States Constitution, Amendment 6.....16, 24
United States Constitution, Amendment 8.....16, 20
United States Constitution, Amendment 13.....19-20
United States Constitution, Amendment 14.....11, 14, 16, 24
United States Constitution, Article III, § 2.....2

CODE

28 U.S.C. § 1254(1).....2
28 U.S.C. § 1291.....23
28 U.S.C. § 2253.....23
28 U.S.C. § 2254.....1-2
La. C.Cr.P. Art. 929.....10
La. R.S. 14:2.....19
La. R.S. 14:42.....3, 16-18, 20-22
La.C.Cr.P. Art. 782.....16, 18, 20-22

FEDERAL CASES

Anderson v. Calderon, 232 F.3d 1053 (9th Cir. 2000) 19
Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) 21
Barefoot v. Estelle, 463 US 880, 103 S.Ct. 3383, 77 L.Ed.2d 185 (1982) 23
Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) 15
Cullen v. Pinholster, 563 U.S. 170, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011) 9
Doggett v. United States, 505 U.S. 647, 112 S. Ct. 2686, 120 L.Ed.2d 520 (1992) 14-15
Dolan v. Dretke, 168 Fed.Appx 10 (5th Cir. 2006) 7
Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) 5
Flanagan v. Johnson, 154 F.3d 196 (5th Cir. 1998) 6
Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) 17
Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) 19
Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) 5
Hernandez v. Thaler, 630 F.3d 420 (5th Cir. 2011) 5
Hohn v. United States, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998) 2
Howland v. Quarterman, 507 F.3d 840 (5th Cir. 2007) 7
Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) 23
Johnson v. Quarterman, 479 F.3d 358 (5th Cir. 2007) 5
Kennedy v. Louisiana, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008) 16, 18
McNeil v. United States, 508 U.S. 106, 113 S.Ct. 1980, 124 L.Ed.2d 21 (1993) 5
Melancon v. Kaylo, 259 F.3d 401 (5th Cir. 2001) 5
Phillips v. Donnelly, 216 F.3d 508 (5th Cir. 2000) 6-7
Roberts v. Cockrell, 319 F.3d 690 (5th Cir. 2003) 6
See, Houser v. Dretke, 395 F.3d 560 (5th Cir. 2004) 24
Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969) 15
United States v. Ewell, 383 U.S. 116, 86 S.Ct. 773, 15 L.Ed.2d 627 (1966) 15
United States v. Kayode, 777 F.3d 719 (5th Cir. 2014) 5
Varnado v. Cain, [2003 U.S. Dist. Lexis 3351 (E.D.La. 2003).] 6

STATE CASES

Larkins v. Vannoy, 2020 WL 5793543 (La. 09/29/20)....4
State ex rel Morgan v. State, 2015-0100 (La. 10/19/16), 217 So.3d 266....19
State ex rel. Tassin v. Whitley, 602 So.2d 721 (La. 1992)....10
State v. Chism, 591 So.2d 383 (La. App. 2 Cir. 1991)....9
State v. Chism, 591 So.2d 383 (La. App. 2 Cir. 1991)....11
State v. Goodley, 398 So.2d 1068 (La. 1981)....21
State v. Holmes, 263 La. 685, 269 So.2d 207 (1972)....17
State v. Kennedy, 803 So.2d 916 (La. 2001)....13
State v. Laprime, 437 So.2d 1124 (La. 1983)....9, 11
State v. Larkins, 243 So.3d 1220 (La.App. 2 Cir. 2017)....3-12
State v. Larkins, 253 So.3d 154 (La. 2018)....3
State v. Lott, 325 So.2d 576 (La. 1976)....17-18
State v. Lott, 535 So.2d 963 (La. App. 2 Cir. 1988)....9, 11
State v. Mayo, 2014-1296 (La. App. 3 Cir. 6/3/15), 165 So.3d 436....19
Williams v. State Dept. of Health and Hospitals, 95-0713 (La. 1/26/96), 671 So.2d 899....16

OTHER

Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)....2
Black's Law Dictionary, 6th Edition, (St. Paul, Minn. West Publishing Co., 1990) p. 717....20

INTERESTED PARTIES

Anthony L. Larkins, *pro se* Petitioner herein, certifies that the following persons have an interest in the outcome of this cause. These representations are made in order that the Justices of this Honorable Court may evaluate possible disqualifications or recusal.

Tim Hooper, Warden
Administration Building
Louisiana State Penitentiary
Angola, Louisiana 70712

James Stewart, District Attorney
1st Judicial District
501 Texas Street, 5th Floor
Shreveport, LA 71101-5408

Anthony L. Larkins #419715
M.P. - Spruce 1
LA State Prison
Angola, LA 70712

There are no other parties to this action within the scope of Supreme Court Rule 29.1.

Respectfully submitted, *pro se*, this 6 day of January, 2023.

Anthony L. Larkins #419715
M.P. - Spruce 1
LA State Prison
Angola, LA 70712

QUESTIONS OF LAW PRESENTED

1. WHETHER THE TRIAL COURT FAILED TO CONSIDER ISSUE OF IMPEACHED TESTIMONY, STANDING ALONE, BEING UNCONSTITUTIONALLY USED TO OBTAIN CONVICTION?

2. WHETHER PETITIONER'S RIGHTS TO DUE PROCESS AND A SPEEDY TRIAL WERE VIOLATED WHEN PETITIONER WAS TRIED ON STALE CHARGES OVER TEN YEARS OLD?

3. WHETHER PETITIONER WAS DEPRIVED OF MANDATORY JURY TRIAL, UNANIMOUS JURY VERDICT, AND MANDATORY ASSISTANCE OF COUNSEL WHEN HE WAS GIVEN A JUDGE TRIAL AND REPRESENTED HIMSELF IN A CHARGED CAPITAL OFFENSE. THEREFORE, LOUISIANA REVISED STATUTE 14:42(D)(2)(B) IS UNCONSTITUTIONAL BECAUSE IT REMOVES THE PROCEDURAL SAFEGUARDS GOVERNING CRIMES CONSIDERED SERIOUS ENOUGH TO CARRY THE DEATH PENALTY?

4. WHETHER THERE WAS INSUFFICIENT EVIDENCE TO PROVE PETITIONER WAS GUILTY BEYOND A REASONABLE DOUBT? (Direct Appeal Claim).

IN THE

SUPREME COURT OF THE UNITED STATES

No.: _____

ANTHONY L. LARKINS
Petitioner

Versus

TIM HOOPER, Warden
Louisiana State Penitentiary
Respondent

PETITION FOR WRIT OF CERTIORARI IN THE
UNITED STATES SUPREME COURT TO THE
UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

From Denial of COA in the United States Fifth Circuit Court of Appeal, No. 22-30612, on appeal from Denial of COA in the United States District Court, Western District of Louisiana, Case No. 5:20-CV-1368, Judge Elizabeth E. Foote

MAY IT PLEASE THE COURT:

NOW COMES, Anthony L. Larkins, *pro se* Petitioner, suggesting to this Honorable Court that a Writ of Certiorari should issue relative to the Fifth Circuit's opinion denying a Certificate of Appealability [COA] to review the denial of his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, and allow his claims to proceed on appeal.

OPINIONS BELOW

The opinion of the United States Fifth Circuit in this case is unreported, and is reproduced in the appendices hereto. (Exhibit A). The decision of the United States District Court in this case is unreported, and is reproduced in the appendices hereto. (Appendix A, contained within Exhibit B).

JURISDICTION

Jurisdiction is conferred upon this Honorable Court pursuant to the United States Constitution, Article III, § 2, and 28 U.S.C. § 1254(1). Further, the United States Supreme Court has jurisdiction to review decisions of Courts of Appeals denying certificates of appealability under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). *Hohn v. United States*, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and 28 U.S.C. § 2254, as amended by the AEDPA.

Specifically, Mr. Larkins has been denied procedural due process and access to the courts by denial of Habeas Corpus Relief and COA. The federal district court has misapplied 28 U.S.C. § 2254, which has been sanctioned by the Fifth Circuit Court of Appeal.

STATEMENT OF THE CASE

On October 17, 2013, a Caddo Parish Grand Jury filed a Bill of Indictment charging Anthony L. Larkins, date of birth December 14, 1979, with aggravated rape for allegedly engaging in sexual intercourse with D.W., without lawful consent because D.W. was under the age of thirteen, in violation of La. R.S. 14:42.

On October 23, 2013, after waiving formal arraignment, Anthony L. Larkins, *pro se* Petitioner, entered a plea of not guilty and elected to be tried by the court. A *pro se* bench trial followed on August 30, 2016. Mr. Larkins elected to represent himself at trial. Subsequently, a verdict of guilty as charged was rendered on September 08, 2016.

On September 19, 2016, the trial court sentenced Mr. Larkins to life imprisonment at hard labor. On October 18, 2016, Mr. Larkins filed a Motion to Reconsider Sentence. The record does not reflect a ruling on the motion. On October 18, 2016, Mr. Larkins filed a notice of appeal. The appeal was granted on October 18, 2016.

On March 10, 2017, Louisiana Appellate Project attorney Douglas Lee Harville, Bar #27235, filed an appellate brief on behalf of Mr. Larkins. The State filed a Brief on the Merits on March 30, 2017.

On September 27, 2017, the Second Circuit Court of Appeal Affirmed Mr. Larkins's conviction and sentence, and remanded for instruction on sex offender registration. (Before: Pitman, Cox, and Bleich (*Pro Tempore*), JJ.). (Docket No. 2017-KA-51,540). *State v. Larkins*, 243 So.3d 1220 (La.App. 2 Cir. 2017).

On October 26, 2017, Mr. Larkins electronically filed an Application for Certiorari or Review in the Louisiana Supreme Court, which was denied on September 28, 2018. (Docket No. 2017-KO-1900). *State v. Larkins*, 253 So.3d 154 (La. 2018).

On November 12, 2019, an Application for Post Conviction Relief was notarized and filed by

mailbox rule. On January 10, 2020, the 1st Judicial District Court denied Mr. Larkins's Application for Post Conviction Relief. On January 31, 2020, Mr. Larkins filed his Notice of Intent to Seek Supervisory Writs with the district court.

An Application for Supervisory Writ of Review was timely filed on February 03, 2020, which was denied by the Second Circuit Court of Appeal on March 11, 2020. Before Williams, Garrett, and Cox, JJ. (Docket No. 2020-KH-53560).

On March 23, 2020, an Application for Writ of Certiorari or Review was electronically filed in the Louisiana Supreme Court. On September 29, 2020, the Louisiana Supreme Court denied writs. (Docket No. 2020-KH-00610) *Larkins v. Vannoy*, 2020 WL 5793543 (La. 09/29/20).

Mr. Larkins timely filed his Petition for Habeas Corpus in the U.S. District Court on October 21, 2020. (Appendix B, Doc. #1)[1] A Magistrate's Report and Recommendation (R&R) was filed on March 29, 2022 recommending the case be denied and dismissed with prejudice. (Appendix C).

On April 07, 2022, Mr. Larkins filed an Objection to Magistrate's Report and Recommendation. (Appendix D).

On September 19, 2022, the U.S. District Court Denied, and Dismissed with Prejudice, Mr. Larkins' Petition for Writ of Habeas Corpus. (Appendix A).

On September 27, 2022, Mr. Larkins simultaneously filed a Notice of Intent to Appeal, a Motion for COA, and an Application for In Forma Pauperis. (Appendix E).

On September 28, 2022, the U.S. District Court Denied COA, (Appendix F), and Granted In Forma Pauperis on Appeal. (Appendix G).

On October 28, 2022, Mr. Larkins filed an Application for COA in the United States Fifth Circuit Court of Appeal. (Exhibit B).

On November 14, 2022, the United States Fifth Circuit Court of Appeal Denied Mr. Larkins'

1 Appendices cited - Appendix A through Appendix G - are contained within Exhibit B.

Application for COA. (Exhibit A).

The instant Application for Certiorari, timely follows. Mr. Larkins remains in custody at the Louisiana State Prison at Angola, Louisiana, Tim Hooper, Warden.

Mr. Larkins is an indigent prisoner and is proceeding *pro se,* therefore he asks that his efforts herein be liberally construed as he has made a good faith effort to follow form. *United States v. Kayode*, 777 F.3d 719, 741, n. 5[2] (5th Cir. 2014).

ISSUES PRESENTED

1. THE TRIAL COURT FAILED TO CONSIDER ISSUE OF IMPEACHED TESTIMONY, STANDING ALONE, BEING UNCONSTITUTIONALLY USED TO OBTAIN CONVICTION.

2. PETITIONER'S RIGHTS TO DUE PROCESS AND A SPEEDY TRIAL WERE VIOLATED WHEN PETITIONER WAS TRIED ON STALE CHARGES OVER TEN YEARS OLD.

3. PETITIONER WAS DEPRIVED OF MANDATORY JURY TRIAL, UNANIMOUS JURY VERDICT, AND MANDATORY ASSISTANCE OF COUNSEL WHEN HE WAS GIVEN A JUDGE TRIAL AND REPRESENTED HIMSELF IN A CHARGED CAPITAL OFFENSE. THEREFORE, LOUISIANA REVISED STATUTE 14:42(D)(2)(B) IS UNCONSTITUTIONAL BECAUSE IT REMOVES THE PROCEDURAL SAFEGUARDS GOVERNING CRIMES CONSIDERED SERIOUS ENOUGH TO CARRY THE DEATH PENALTY

4. THERE WAS INSUFFICIENT EVIDENCE TO PROVE PETITIONER WAS GUILTY BEYOND A REASONABLE DOUBT. (Direct Appeal Claim).

---

2 [FN 5] See, e.g., *McNeil v. United States*, 508 U.S. 106, 113 S.Ct. 1980, 124 L.Ed.2d 21 (1993) (acknowledging that the Supreme Court has "insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed") (citing *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). See also *Hernandez v. Thaler*, 630 F.3d 420, 426 (5th Cir. 2011) ("The filings of a federal habeas petitioner who is proceeding *pro se* are entitled to the benefit of liberal construction."); *Johnson v. Quarterman*, 479 F.3d 358, 359 (5th Cir. 2007) (Briefs by *pro se* litigants are afforded liberal construction...."); *Melancon v. Kaylo*, 259 F.3d 401, 407 (5th Cir. 2001) (reasoning that the *pro se* habeas petitioner's argument that he should not be punished for the improper setting of the return date should be construed as a request for equitable tolling, despite his failure to "explicitly raise the issue of equitable tolling").

STATEMENT OF TIMELINESS

The Louisiana Supreme Court denied review on direct appeal on September 28, 2018. Therefore, on December 27, 2018, Mr. Larkins's conviction became final for purposes of the AEDPA when the 90 day period for seeking relief in the United States Supreme Court expired. *Roberts v. Cockrell*, 319 F.3d 690 (5th Cir. 2003).

The one-year period began to run on December 28, 2018, the day after Mr. Larkins's conviction became final. See *Flanagan v. Johnson*, 154 F.3d 196, 202 (5th Cir. 1998). Three-hundred twenty (320) days elapsed until Mr. Larkins filed his Application for Post Conviction Relief, and tolled the one-year limitation period, leaving forty-five (45) days until expiration of the one-year period, to wit:

On November 12, 2019, Mr. Larkins filed his original Application for Post Conviction Relief and Memorandum in Support. On January 08, 2020, the District Court denied Mr. Larkins's Post Conviction Relief Application.

On February 3, 2020, Mr. Larkins filed his Application for Supervisory Writ of Review in the Fifth Circuit Court of Appeal. On March 11, 2020, the Second Circuit Court of Appeal denied Supervisory Writ of Review. (Docket No. 2020-KH- 53560).

On March 23, 2020, Mr. Larkins filed an Application for Writ of Certiorari or Review in the Louisiana Supreme Court. On September 29, 2020, the Louisiana Supreme Court denied writs. (Docket No. 2020-KH-00610).

Mr. Larkins filed his Petition for Habeas Corpus in the U.S. District Court on October 21, 2020, within the forty-five (45) days left on the one-year limitation period, and was therefore timely. *Varnado v. Cain*, [2003 U.S. Dist. Lexis 3351 (E.D.La. 2003).] citing *Phillips v. Donnelly*, 216 F.3d 508, 511 (5th Cir. 2000).

The U.S. District Court Denied his Petition for Writ Habeas Corpus on September 19, 2022, and a Notice of Intent to Appeal was filed on September 27, 2022.

On October 28, 2022, Mr. Larkins timely filed his Application for Certificate of Appealability (COA) in the United States Fifth Circuit Court of Appeal. (Exhibit B), which was denied on November 14, 2022. (Exhibit A).

The instant Application for Writ of Certiorari is being filed within the 90 days allowed and is therefore timely.

Mr. Larkins has been timely filed in all courts throughout the case at bar, and shows he has diligently pursued his right to Federal Habeas Corpus Review. *Howland v. Quarterman*, 507 F.3d 840 (5th Cir. 2007); *Dolan v. Dretke*, 168 Fed.Appx 10 (5th Cir. 2006) (citing *Phillips v. Donnelly, supra*).

STATEMENT OF THE FACTS

D.W., who was born on January 15, 1997, testified that Anthony L. Larkins, forced D.W. to perform oral sex on Mr. Larkins. This allegedly occurred while Mr. Larkins was watching D.W. and D.W.'s siblings while D.W.'s mother worked. This allegedly occurred while D.W. was attending second or third grade at Sunset Acres Elementary School. (R. pp. 232-233). At that time, Mr. Larkins, Mr. Larkins' son, D.W., D.W.'s mother, and D.W.'s other siblings lived together.

D.W. claimed that Mr. Larkins also had D.W. and his sister perform sexual acts on one another in Mr. Larkins' presence, touching one another in the master bedroom and possibly other places in the home. Further, D.W. claimed that his sister was present some of the time when D.W. performed oral sex on Mr. Larkins. (R. pp. 232-233). D.W. could not remember if these alleged acts occurred in just the master bedroom or in other places.

Although D.W. allegedly reported these incidents to his aunt, and even though Children's Services allegedly became involved, no arrests were made at the time of these alleged incidents. Moreover, D.W.'s mother, years later, allowed Mr. Larkins to move back in with D.W. and the rest of her family.

D.W.'s sister testified that Mr. Larkins allegedly made D.W. touch Mr. Larkins' penis and perform oral sex on Mr. Larkins. She claimed this allegedly occurred in the bedroom while their mother was at work. (R. pp. 251-252). She also testified that Mr. Larkins allegedly would try to make D.W. and her touch each other or to have sex with each other in the living room and that he would spank them if they refused. She claimed to have reported these incidents to her mother. She testified that her brother was 5 years old at the time of the incident (R. pp. 251-252), which means that she would have been 4 years old when this incident allegedly happened.

D.W.'s mother let Mr. Larkins move back in repeatedly after these allegations. In fact, D.W.'s mother and Mr. Larkins had a child together after the alleged molestation of D.W. Eventually, D.W.'s sister allegedly had sex with Mr. Larkins in exchange for money. When her mother discovered text messages concerning this alleged sexual activity, Mr. Larkins was arrested and this case followed.

D.W.'s mother had a mental breakdown shortly before moving in with Mr. Larkins at his Sunset Acres home, where the alleged molestation of D.W. occurred. (R. pp. 273). D.W.'s mother claimed that D.W. reported to her that Mr. Larkins tried to make D.W. perform oral sex on Mr. Larkins. This reporting allegedly occurred after she and her family moved out of Mr. Larkins's home because of disagreements over Mr. Larkins "whooping the children". According to D.W.'s mother, only D.W. made these allegations. The mother also stated that her son told her the Mr. Larkins "tried to make them suck his private." (R. pp. 277-278).

The mother never made a formal accusation to this alleged 2003 incident, and never gave a statement to police other than an interview over the cell phone. She also testified that she always asked her kids if anything was happening to them, and they always said "no." (R.pp. 291-292).

ASSIGNMENT / SPECIFICATION OF ERROR

The ruling complained of in the instant application, is an erroneous interpretation and unreasonable application of established law, and departs from the legal precedents set by the United States Supreme Court and the Louisiana Supreme Court. The ruling improperly "confronts the set of facts that were before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 131 S.Ct. 1388, 1399, 179 L.Ed.2d 557 (2011).

Further, Mr. Larkins did properly invoked the post conviction articles, and did meet the initial requirements of identifying with factual specificity, constitutional claims which would entitle him to post conviction relief. He was therefore entitled to an evidentiary hearing, with discovery and appointment of counsel, to properly develop his claims and present them to the court.

The state district court erred by misquoting the standards of law (Federal and State), for example, in the District Court's ruling, it states that, "In the absence of internal conflict with physical evidence, the testimony of one witness if believed by the trier of fact, is sufficient support for a requisite factual conclusion."

First, this is a misquote. The actual verbiage states, "In the absence of internal contradiction or irreconcilable conflict with physical evidence, the testimony of one witness --if believed by the trier of fact -- is sufficient support for a requisite factual conclusion." In general, testimony alone can be proof of a fact.

Secondly, in this case, there *are* internal contradictions and irreconcilable conflicts in the testimony of the witnesses, and the law clearly shows that such testimony is impeached testimony. Impeached testimony, as a general rule, cannot stand alone to convict. *State v. Chism*, 591 So.2d 383, 386 (La. App. 2 Cir. 1991), citing *State v. Laprime*, 437 So.2d 1124 (La. 1983); *State v. Lott*, 535 So.2d 963 (La. App. 2 Cir. 1988).

The state district court erred by erroneously requiring Mr. Larkins to fully prove his claims in

his PCR application, and summarily dismissing the PCR without an evidentiary hearing. Mr. Larkins has stated valid claims which, if proven, would entitle him to post conviction relief. He is therefore entitled, according to the law and due process, to an evidentiary hearing in order to do just that.

Further, higher state courts have departed from the proper judicial proceedings or so abused their power, or sanctioned such a departure or abuse by the lower court, sanctioned by the federal courts, as to call for an exercise of this Court's authority to grant federal habeas corpus relief.

The higher state courts have apparently failed to review the record in this case in its entirety. Had they adequately reviewed the entire record, the courts would have seen that the trial court made erroneous rulings contrary to United States Supreme Court precedent and other supporting case authority. The state courts have deviated from clearly established law, sanctioned by the federal courts, and warrants this Honorable Court's granting of Certiorari.

The Louisiana Constitution, Article 1, § 2 provides that every person is guaranteed an adequate remedy by due process of law and justice, which is to be administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights. In order to fulfill that guarantee to individuals seeking habeas corpus relief under the post conviction procedures, our legislature has fashioned a rule which provides for an evidentiary hearing to resolve factual disputes that are sharply contested. La. C.Cr.P. Art. 929, Official Revision Comment, in pertinent part: "If a factual issue of significance to the outcome is sharply contested, the trial court will not be able to resolve the factual dispute without a full evidentiary hearing."

Clearly, Mr. Larkins has shown sharply contested facts between the State and himself. La. C.Cr.P. Art. 929; *State ex rel. Tassin v. Whitley*, 602 So.2d 721, 722-723 (La. 1992). Mr. Larkins shows that he was denied an evidentiary hearing, notwithstanding the fact that he showed record evidence to support this request. In *Tassin*, the Louisiana Supreme Court held that: "The trial court must be sensitive to the petitioner's right to have fair determination of the factual basis of his claim." *Id.* at 724.

This Honorable Court should grant habeas corpus relief to Mr. Larkins, or at least call for an evidentiary hearing to give Mr. Larkins a fair opportunity to properly present his claims.

ARGUMENT

1. THE TRIAL COURT FAILED TO CONSIDER ISSUE OF IMPEACHED TESTIMONY, STANDING ALONE, BEING UNCONSTITUTIONALLY USED TO OBTAIN CONVICTION.

Since this case received a judge only trial, the finder of fact in this case was a trained jurist. Therefore, considerations of constitutional due process and a fair trial were not honored by the judge in this case, and prejudiced Mr. Larkins at his trial. United States Constitution, Amendments 5 and 14; Louisiana Constitution, Article 1, §§ 2 and 16.

While the credibility of a witness is a matter for the finder of fact, once impeached, that witness's testimony becomes suspect under the law and must be corroborated in order to be convincing evidence of guilt or innocence. This is especially true where the credibility of the witnesses is paramount to the outcome of the case.

Impeached testimony, as a general rule, cannot stand alone to convict. *State v. Chism*, 591 So.2d 383, 386 (La. App. 2 Cir. 1991), citing *State v. Laprime*, 437 So.2d 1124 (La. 1983); *State v. Lott*, 535 So.2d 963 (La. App. 2 Cir. 1988).

Both reports of abuse occurred after D.W.'s mother became upset with Mr. Larkins. Testimony by D.W.'s mother established that in the first report, the one that involved the allegations in this case, occurred after she removed her family from Mr. Larkins's home because of disagreements over Mr. Larkins "whooping" the children. According to D.W.'s mother, only D.W. made these allegations. The mother also stated that her son told her the Mr. Larkins "tried to make them suck his private." (R. pp. 277-278). This was alleged in 2003, and their mother refused to press charges. She also told the police

in 2007 that she would not pursue charges, and the police testified that the case was "exceptionally cleared" meaning that the "complainant chooses not to pursue charges."

Testimony also established that the police were called the last time (2013) because D.W.'s sister (also with the initials "D.W.") was allegedly being paid by Mr. Larkins for having sex with him. Again, this came about after disagreements with the mother of the alleged victims, who allegedly seen a text message to the boyfriend of D.W.'s sister stating that she was having sex with Mr. Larkins for money. Her phone was confiscated, but no copy of the alleged text messages were ever produced. These allegations were not pursued, but were used to resurrect the 2003 allegations.

As to the 2003 allegations, the detective specifically testified that the charges were "exceptionally cleared," that the detective never looked for the Mr. Larkins, the complainant did not want to pursue charges, and he had no notes on the case and the case file was gone. (R.pp. 298-301).

D.W., his sister, and his mother gave materially inconsistent testimony about the allegations of sexual abuse by Mr. Larkins. They also gave materially inconsistent testimony about who reported the alleged sexual abuse and to whom the reports allegedly were made.

D.W., who was born on January 15, 1997, testified that Anthony L. Larkins forced D.W. to perform oral sex on Mr. Larkins. This allegedly occurred while Mr. Larkins was watching D.W. and his siblings while D.W.'s mother worked. This allegedly occurred while D.W. was attending second or third grade at Sunset Acres Elementary School. (R. pp. 232-233). At that time, Mr. Larkins, his son, D.W., D.W.'s mother, and D.W.'s other siblings lived together.

D.W. testified that Mr. Larkins "forced" him to perform oral sex on the Mr. Larkins. (R.pp. 232-233). However, Corporal Saiz of the Shreveport Police Department testified at trial that D.W. told him and another officer that Mr. Larkins "would give him money and gifts in exchange for performing oral sex on him." *State v. Larkins*, 243 So.3d 1220, 1222 (La.App. 2 Cir. 2017).

D.W.'s sister testified to witnessing alleged sexual abuse of D.W. by Mr. Larkins. However, she

would have been 4 years old when this happened, and D.W. would have been 5 years old. (R. pp 251-252). Therefore, according to D.W.'s sister, D.W. would have been in kindergarten when the sexual abuse allegedly occurred. This contradicts D.W.'s testimony that he was in second or third grade when the alleged sexual abuse occurred. (R.pp. 232-233).

According to D.W.'s mother, only D.W. made these allegations. (R. pp. 277- 278). This contradicts the testimony of D.W.'s sister, who claimed she reported the alleged sexual abuse to her mother.

Additionally, at the Preliminary Hearing in this case, Detective Jeff Allday testified that D.W.'s sister told him that: "the only thing she remembers is Mr. Larkins forcing her and her brother 'DW' to touch each other's genitals." (R. pp. 6-7).

Therefore, there were inconsistencies in the mother's testimony and the alleged victims' testimonies sufficient to show impeachment of these witnesses. There were irreconcilable conflicts in testimony regarding the alleged sexual abuse of D.W. by Mr. Larkins, and there were irreconcilable conflicts in testimony regarding the reporting of this alleged sexual abuse.

In *State v. Kennedy*, 803 So.2d 916 (La. 2001), in Justice Traylor's dissenting opinion, it is stated that the Louisiana Supreme Court has found that, "The victim's testimony, standing alone, can prove that the act occurred, . . ." but is qualified in FN9, "However, we have also ruled post-trial that impeached testimony of a witness, standing alone, cannot prove the offense."

The record shows that the trial testimony of the accusing witnesses is impeached testimony. Since their testimony is the only evidence against Mr. Larkins, it is clearly insufficient, standing alone, to sustain this conviction and violates Mr. Larkins's constitutional rights to Due Process and to a fair trial.

2. PETITIONER'S RIGHTS TO DUE PROCESS AND A SPEEDY TRIAL WERE VIOLATED WHEN PETITIONER WAS TRIED ON STALE CHARGES OVER TEN YEARS OLD.

Mr. Larkins contends that he was prejudiced at his trial when he was tried on stale charges over ten years old, which denied him his rights to due process and a speedy trial under the United States Constitution, Amendment 14, and the Louisiana Constitution, Article 1, §§ 2 and 22.

In *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 120 L.Ed.2d 520 (1992), the case arose from a delay of 8.5 years - 6 of which the accused had spent in the country living a normal life - between indictment and arrest. This, the court held, violated his constitutional right to a speedy trial. Going through the four factors (one and four tending to merge together), the court noted that, where as long as 8.5 years goes by, "the presumption that pretrial delay has prejudiced the accused intensifies over time."

In Mr. Larkins's case, similar to *Doggett*, Mr. Larkins was accused in 2003, and was not aware of unresolved charges against him. However, in 2013, he was tried on these charges from 2003.

In the *Doggett* case, the government simply failed to arrest Doggett for 6 years, and the "Government's lethargy" in seeking him out must count as negligence, and must be counted against the prosecution. On the third element of the test, the lower courts had found as a matter of fact that Doggett did not know about the charges against him, and these facts cannot now be challenged by the government. He cannot therefore be faulted for failing to demand a speedy trial. The case ultimately came down to the magistrate's finding that there is no showing of prejudice from the delay. The high court disagreed and, for various reasons, found a presumption of prejudice. Stating that one year is generally deemed sufficient for a presumption of prejudice to arise, the court ruled that in this case prejudice will be presumed, here the time being six times the minimum amount -- and the court held that far shorter delays have been deemed "extraordinary."

The Supreme Court found that a defendant may invoke due process to challenge delay both

before and after official accusation, and stated:

> We have observed in prior cases that unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by diminishing memories and loss of exculpatory evidence. *Barker*[3], 407 U.S., at 532, 92 S.Ct., at 2193; see also *Smith v. Hooey*, 393 U.S. 374, 377-379, 89 S.Ct. 575, 576-578, 21 L.Ed.2d 607 (1969); *United States v. Ewell*, 383 U.S. 116, 120, 86 S.Ct. 773, 776, 15 L.Ed.2d 627 (1966). Of these forms of prejudice, "the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." 407 U.S., at 532, 92 S.Ct., at 2193. Doggett claims this kind of prejudice, and there is probably no other kind that he can claim, since he was subjected neither to pretrial detention nor, he has successfully contended, to awareness of unresolved charges against him.

Doggett v. United States, supra, at 505 U.S., at 654, 112 S.Ct., at 2692.

Further, the Court has held that: "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Id.* at 505 U.S. 655, 112 S.Ct. 2692. That is because "*Barker* explicitly recognized that impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" *Id.*

Mr. Larkins would have faced trial more than ten years sooner had the State not been negligent in pursuing this case. Therefore, Mr. Larkins is entitled to a presumption of prejudice, which violated his constitutional rights to due process and a speedy trial.

3. PETITIONER WAS DEPRIVED OF MANDATORY JURY TRIAL, UNANIMOUS JURY VERDICT, AND MANDATORY ASSISTANCE OF COUNSEL WHEN HE WAS GIVEN A JUDGE TRIAL AND REPRESENTED HIMSELF IN A CHARGED CAPITAL OFFENSE. THEREFORE, LOUISIANA REVISED STATUTE 14:42(D)(2)(B) IS UNCONSTITUTIONAL BECAUSE IT REMOVES THE PROCEDURAL SAFEGUARDS GOVERNING CRIMES CONSIDERED SERIOUS ENOUGH TO CARRY THE DEATH PENALTY.

3 *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)

La. R.S. 14:42(D)(2)(b) is unconstitutional because it violates the Louisiana Constitution, Article 1, §§ 2, 3, and 17(A); La.C.Cr.P. Art. 782, and the United States Constitution, Amendments 5, 6, 8, 13, and 14, where it removes the procedural safeguards governing crimes considered serious enough to carry the death penalty, and empowers the State to deprive a defendant of his right to a unanimous jury verdict in charged capital offenses.

According to the Louisiana Supreme Court, to successfully challenge the constitutionality of a statute, the party attacking the statute has a three tier burden: 1) the plea of unconstitutionality must first be raised in the trial court; the plea of unconstitutionality must be specially pleaded; and 3) the grounds outlining the basis of unconstitutionality must be particularized. *Williams v. State Dept. of Health and Hospitals*, 95-0713 (La. 1/26/96), 671 So.2d 899, 901-902. For the following reasons, La. R.S. 14:42(D)(2)(b) must be declared unconstitutional as applied.

Mr. Larkins was indicted by a Caddo Parish grand jury with one count of aggravated rape[4] of a child under the age of thirteen, alleged to have been committed in the year 2003. In *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008), the United States Supreme Court declared La. R.S. 14:42(D)(2) to be unconstitutional. *Id.*, 554 U.S., at 421, 128 S.Ct., at 2650-51; La. R.S. 14:42.

Through many revisions of the statute, La. R.S. 14:42 began to allow the death penalty for the first degree rape of a child under a certain age. See, La. R.S. 14:42 (1995 Amendment; *Acts* 1997, No. 757; *Acts* 1997, No. 898; *Acts* 2003, No. 795, § 1). Although the 1995 Amendment properly gave juries the authority to determine if a person convicted of first

4 See *La. R.S.* 14:42(A)(4); cf. *La. R.S. Ann.* 14:42 (2015, No. 184,§ 1), the words "first degree." were substituted for the word "aggravated."

degree rape of a child should die if convicted of his or her crime, it also impermissibly gave district attorneys power to control the constitutional scheme if the State chose not to seek the death penalty. It may be considered mercy for a district attorney, or his representative, to not seek the death penalty; however, it may also be construed as lessening the State's burden in procuring a unanimous verdict where one is required by the constitution in charged capital offenses.

In other words, neither the state or federal constitutions grant district attorneys the power to determine whether a charged offense is capital or not based on his or her decision whether to seek the death penalty or not. Whether an offense is a capital one is determined by the offense charged. The Louisiana Constitution does not make a distinction between charged capital offenses *or* cases that may be capital, and are not, simply because the district attorney is not seeking the death penalty.

Although La. R.S. 14:42(D)(2) has been declared unconstitutional by the United States Supreme Court, it is still law in Louisiana - even if it is unenforceable. This dilemma is not a unique one in the state and it has been addressed by the Louisiana Supreme Court in *State v. Lott*, 325 So.2d 576 (La. 1976).

In *Lott*, the Louisiana Supreme Court discussed *State v. Holmes*, 263 La. 685, 269 So.2d 207 (1972), and considered the effect of Louisiana's procedural law in the wake of the United States Supreme Court's decision that made the death penalty unconstitutional as it was then applied. See, *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972). The *Lott* Court said:

> In *Holmes* we held that *Furman* did not change the classification of crimes in Louisiana, in spite of the unenforceability of the death penalty, and those crimes which the legislature had classified as capital offenses must continue to be tried by a jury of twelve, all of whom must

concur to render a verdict.

State v. Lott, supra.

In other words, although the United States Supreme Court has already declared La. R.S. 14:42(D)(2) unconstitutional in *Kennedy v. Louisiana, supra,* that ruling is not sufficient to remove the procedural safeguards created to protect the rights of one charged with a capital offense as defined by Louisiana legislators. Similar to the defendant in *Lott*, Mr. Larkins was also "tried for a crime that the legislature had classified as capital. Therefore, he was entitled to the safeguards afforded a defendant in a capital case." *State v. Lott, supra.*

La. R.S. 14:42, in relevant parts, provides that:

> A. First degree rape is a rape committed upon a person sixty-five years of age or older or where the anal, 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:
>
> (4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.
>
> D. (1) Whoever commits the crime of first degree rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.
>
> (2) However, if the victim was under the age of thirteen years, as provided by Paragraph (A)(4) of this Section:
>
> (a) And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of Code of Criminal Procedure Art. 782 relative to cases in which punishment may be capital shall apply.
>
> (b) And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The provisions of Code of Criminal Procedure Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

Allowing district attorneys to determine what offenses are capital or not circumvents a criminal defendant's state and federal constitutional right to a unanimous verdict in an otherwise capital case.

Additionally, the phrase "relative to cases in which punishment is necessarily confinement at hard labor shall apply" must also be addressed. It is an undisputed and well-settled fact that a life sentence in Louisiana is equivalent to death by incarceration. *Cf. State ex rel Morgan v. State*, 2015-0100 (La. 10/19/16), 217 So.3d 266, 270; *Graham v. Florida*, 560 U.S. 48, 82, 130 S.Ct. 2011, 2034, 176 L.Ed.2d 825 (2010).

In fact, in *State v. Mayo*, 2014-1296 (La. App. 3 Cir. 6/3/15), 165 So.3d 436, the defendant, convicted of first degree rape of a child under the age of thirteen and sentenced to the mandatory life imprisonment, failed to convince the Third Circuit Court of Appeal that he did not deserve "to die in prison[.]" *Id.*, at 439. Like the defendant in *Anderson v. Calderon*, 232 F.3d 1053 (9th Cir. 2000), once Mr. Larkins was convicted of the first degree rape under Louisiana law, he was only "eligible for the two most severe penalties we have. Either he [could] be imprisoned in State Prison for the rest of his natural life with no possibility of parole ever....[to] die in prison. Or he can be put to death [by lethal injection]. Those are the only two choices we have[.]" *Id.*, at 1080.

The United States Constitution, Amendment 13, in pertinent part, provides:

> **Section 1.** Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

La. R.S. 14:2, in pertinent parts, provides:

> A. In this Code the terms enumerated shall have the designated meanings:

> (4) "Felony" is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

"Hard labor" is legally defined as "A punishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary for serious crimes, or for misconduct while in prison." BLACK'S LAW DICTIONARY, 6TH EDITION, (St. Paul, Minn. West Publishing Co., 1990) p. 717.

Construed in the light of the United States Constitution, Amendments 8 and 13, Mr. Larkins's non-unanimous conviction for first degree rape and the resultant life sentence at "hard labor" egregiously violates both the state and federal constitutions in that it denies due process and equal protection. The sentence committing Mr. Larkins, as a slave, to the Louisiana Department of Corrections at hard labor by a non-unanimous jury for the remainder of his natural life, is in violation of the United States Constitution, Amendment 8 because it is cruel and unusual punishment.

Under the Louisiana Constitution, Article 1, §§ 2, 3, and 17(A), and La.C.Cr.P. Art. 782(B), La. R.S. 14:42(D)(2)(b) is unconstitutional because, first:

The meaning and interpretation of the Louisiana Constitution, Article 1, § 17 has not changed and, in pertinent parts, provides:

> Section. 17 **(A) Jury Trial in Criminal Cases.**
> A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict ... Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury.

The language found in the Louisiana Constitution, Article 1, § 17 is clear. If a criminal defendant *may* be punished by death in a criminal case, it is a *capital* offense. The Article

does not allow district attorneys to arbitrarily decide that the punishment for first degree rape is no longer capital because they are not seeking the death penalty.

Secondly, the meaning and interpretation of La.C.Cr.P. Art. 782 has not changed, and provides, in pertinent part, that:

> A. A case in which punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict.

This Article further exposes the illegality and unconstitutionality of La. R.S. 14:42(D)(2)(b). The unconstitutional revision must be struck down for at least three reasons: (1) it deprived Mr. Larkins of his state and federal right of due process; (2) it deprived Mr. Larkins of his state and federal right of equal protection because it allowed him to be tried and convicted by a judge rather than a jury, on a less than unanimous jury verdict, and sentenced to serve the remainder of his life in prison at hard labor - as a slave - until he dies; and (3) it violates the Louisiana Constitution, Article 1, § 17(A) and La.C.Cr.P. Art. 782. Because the revision of La. R.S. 14:42 affected the framework within which Mr. Larkins's trial proceeded and was not "simply an error in the trial process itself," *Arizona* v. *Fulminante*, 499 U.S. 279, 309-310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), it is a structural error and deifies harmless-error analysis.

In *State* v. *Goodley*, 398 So.2d 1068, 1070-1071 (La. 1981), the Louisiana Supreme Court explained the reasoning behind creating procedural safeguards in capital cases:

> This determination is not based on an after the fact examination of what crime the defendant may be eventually convicted of, nor is it based on an after the fact examination of what sentence he receives. Rather, the scheme is based on a determination by the Legislature that certain crimes are so serious that they require more strict procedural safeguards than other less serious crimes. It was determined that in charged capital offenses a unanimous verdict for conviction, not just sentencing, is

> necessary and there is no attendant provision giving the state the authority to alter that scheme on its own motion by simply stipulating that the death penalty will not be sought in a certain case.

Additionally, the "more strict procedural safeguards" includes a mandatory set of two counsels for the defense; one for the guilt phase, and one for the penalty phase of the trial. This is because it has been found that one counsel can not do both of these jobs and render effective assistance of counsel.

The record in this case clearly shows that Mr. Larkins was not given the mandatory jury trial, with a mandatory unanimous verdict, and was not appointed a set of two counsels for his defense, in a charge the Louisiana lawmakers deem a capital offense.

Again, the U. S. Supreme Court has already declared La. R.S. 14:42(D)(2) unconstitutional, therefore, the so-called attendant provision has no power. After considering the express language found in Article 1 § 17 of the Louisiana Constitution and La.C.Cr.P. Art. 782, it becomes clear that the language of La. R.S. 14:42(D)(2)(b) is unconstitutional as applied.

4. THERE WAS INSUFFICIENT EVIDENCE TO PROVE PETITIONER WAS GUILTY BEYOND A REASONABLE DOUBT. (Direct Appeal Claim)

D.W., his sister, and his mother gave materially inconsistent testimony about the allegations of sexual abuse by Petitioner, Anthony L. Larkins. They also gave materially inconsistent testimony about who reported the alleged sexual abuse and to whom the reports allegedly were made.

Testimony by D.W.'s mother established that in the first report, the one that involved the allegations in this case, occurred after she removed her family from Petitioner's home because of disagreements over Petitioner spanking the children. Testimony also established that the police were

called the last time because D.W.'s sister allegedly was having sex with Petitioner. That is, both reports occurred after D.W.'s mother became upset with Petitioner.

Accordingly, there was insufficient evidence to prove Petitioner was guilty beyond a reasonable doubt. There were irreconcilable conflicts in testimony regarding the alleged sexual abuse of D.W. by Petitioner, and there were irreconcilable conflicts in testimony regarding the reporting of this alleged sexual abuse. Moreover, the conduct of D.W.'s mother defies logic if she credited the report of sexual abuse.

Thus, at trial, there was, at least, one reasonable theory that should have precluded the trial court from finding Petitioner guilty. Accordingly, these facts and the remaining evidence introduced at the trial of this case, when reviewed under the *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), standard, were insufficient to prove all of the elements of aggravated rape beyond a reasonable doubt. Accordingly, Petitioner's conviction must be reversed, a judgment of acquittal should be entered, and his sentence should be vacated.

CONCLUSION

Wherefore, Mr. Larkins prays this Honorable Court will issue a Certificate of Appealability in accordance with 28 U.S.C. § 1291 and 28 U.S.C. § 2253, which gives this Court authority to entertain this appeal and to issue a COA.

Mr. Larkins has raised substantial issues regarding constitutional violations that makes his State conviction and sentence unconstitutional and worthy of Federal Habeas Corpus Relief. Mr. Larkins states that he has pointed to enough procedural errors in the lower courts, and enough questionable law and facts to warrant a COA, where the issues can be decided by a panel of judges - whether Mr. Larkins has made a "substantial showing of the denial of a federal right." *Barefoot v. Estelle*, 463 US 880, 893, 103 S.Ct. 3383, 77 L.Ed.2d 185 (1982).

Mr. Larkins has shown, on the record before this Honorable Court, that he has satisfied the COA standard with respect to averring a facially valid constitutional claim. U.S. Constitution, Amendments 5, 6, and 14. *See, Houser v. Dretke*, 395 F.3d 560, 562 (5th Cir. 2004).

Finally, Mr. Larkins contends that his Application clearly meets the requirements of the U.S. Supreme Court in order to proceed, and that these issues could be resolved in a different manner by jurist of reason. Therefore, the requested COA should be issued by this Honorable Court.

Respectfully submitted, *pro se*, on this 6th day of February, 2023.

Anthony L. Larkins #419715
M.P. - Spruce 1
LA State Prison
Angola, LA 70712