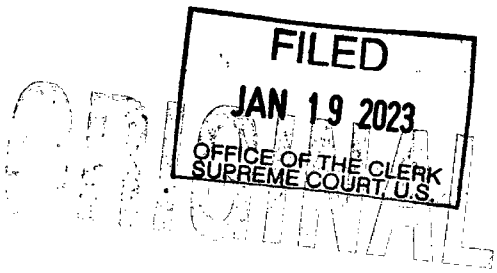
CAUSE NO. 22-6913



IN THE

SUPREME COURT OF THE UNITED STATES

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§

EX-PARTE ROBERT B. READ, JR.

ON PETITION FOR WRIT OF HABEAS CORPUS
FROM THE 366th JUSICIAL DISTRICT COURT OF
COLLIN COUNTY, TEXAS

PETITION FOR WRIT OF HABEAS CORPUS

Pro-Se

QUESTIONS PRESENTED

1) Did the United States Constitution allow the trial court implied subject-matter jurisdiction to try Petitioner for the indicted Felony One Offense?

2) Did the Collin County, Texas - 366th Judicial District Court deprive Petitioner Read of his sixth Ammendment Right, as guaranteed by the United States Constitution, to compel witnesses in his favor under the "Plain Error" Rule?

3) Did the Collin County, Texas - 366th Judicial District Court violate Petitioner Read's right to a Speedy Trial for all indicted charges by operation of law?

4) Did the Collin County - 366th Judicial District Court abuse it's discretion by allowing the state to utilize Texas Rules of Evidence In violation of Ex Post Facto law (U.S. Constitution, Art. 1 Sec. §9) Resulting in harm & Prejudice to Petitioner (Defendant) Read?

LIST OF PARTIES

All parties do not appear in the caption of the case on the Cover Page. A list of all Parties to the Proceedings in the Court whose Judgment is the subject of this petition are listed as follows:

PRESIDING JUDGE: Honorable Don Jarvis (Visiting Judge)

PROSECUTORS: Assistant Dist Atty.'s Shannon Miller SBOT: 24019729
Crystal LeVonius SBOT: 24042411
2100 Bloomdale Rd., McKinney, TX 75071

DEFENSE COUNSEL: Howard Shapiro SBOT: 18110800
Todd Shapiro SBOT: 24027852
The Shapiro Law Firm West 15th Street
P.O. Box 861720
Plano TX 75086-1720

TEXAS DEPARTMENT OF CRIMINAL JUSTICE INSTITUTIONAL DIV.
BOBBY LUMPKIN, DIRECTOR
Huntsville, Texas

Robert B. Read, Jr. Pro Se Petitioner
TDCJ-ID #1568901
Wynne Unit
810 FM 2821
Huntsville, TX 77349

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

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Petitioner Read respectfully prays that a Writ of Habeas Corpus Issue to Review, Void and Vacate the Judgment Below:

The Judgments of Aggravated Sexual Assault of a Child AND Indecency with a Child By Contact, From the 366th Judicial District Court of Collin County, Texas, Trial Cause No. 366-81170-06, The State of Texas-v-Robert B. Read, Jr.

JURISDICTION

The date on which the state court issued it's judgment in this instant case was 13 March 2009.

The jurisdiction of this court is invoked under 28USC §1651(a) 2241, 2242, 2254(b) and Supreme Court RUle 20.4(a). 28 USC §1651 states:

> "The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law."

> 28 USC §2241 States in Pertinent part: (a) Writs of Habeas Corpus may be granted by the Supreme Court or any Justice thereof...

(b) The Supreme Court , any Justice therof, may entertain an application for a Writ of Habeas Corpus and may transfer the application for hearing and determination to the District Court having jurisdiction to entertain it within the Petitioner's residing county.

(c) The Writ of Habeas Corpus shall not extend to a prisoner unless it is necessary to bring him into court to testify.

Supreme Court Rule 12.7 states: "In any document filed with this court, a party may cite or quote from the record even if it has not been transmitted to this court."

28 USC 2242 States:
"Application for a Writ of Habeas Corpus shall be in writing, signed and verified by the person for whose relief it is intended or by someone acting in his behalf. It shall allege the facts concerning the Petitioner's commitment or detention, the name of the person who has custody over him and by virtue of what claims or authority if known"
It may be amended or supplemenatd as provided in the Rules of Procedure applicable to Civil Actions.

If addressed to the Supreme Court, a Justice thereof, it shall state the reasons for not making petition to the District Court of the district in which Petitioner is held.

28 USC §2254 states in pertinent part:

(a) The Supreme Court, a Justice thereof shall entertain a petition for a Writ of Habeas Corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the United States Constitution or laws or treaties of the United States.

(b)(1) A Petition for a Writ of Habeas Corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that:

(i) There is an absence or available state corrective process; or

(ii) Circumstances exist that render such process ineffective to protect the rights of the Petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS

FEDERAL CONSTITUTION

Article III, § 2 "In all cases affecting..., those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

FEDERAL STATUTES

28 USC § 2241(c) "The writ of Habeas Corpus shall not extend to a prisoner unless (5) it is necessary to bring him into court to testify."

28 USC § 2254(b)(1) "A petition for a Writ of Habeas Corpus on Behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that:

(B)(i) "There is an absence of available state corrective process; Or;

(B)(ii) Circumstancesexist that render such process ineffective to protect the rights of the petitioner.

STATEMENT OF THE CASE

On the 25th of May 2006, Robert Read, Jr. was indicted by the Collin County Grand Jury.. Read was initially charged with a 2nd degree felony about 1 July 2005 and aproximately six months later he was informed a new-additional 1st degree Felony.was charged although he was never arrested nor arraigned before a judge or magistrate for this charged crime.

Read was convicted by jury on 13 March 2009 in violation of TX Penal Code 22.021 (a)(1)(B). The jury assessed Forty-Years confinment in the Texas Dept. of Criminal Justice (40-Yrs) in count one to run consecutively with convictions on counts 3 &4 assessed at 20-years (Twenty) each, these to run concurrent with each.

Statement of the Case Continued

Bobby Lumkin, Director of Texas Department of Criminal Justice/Institutional Division, Has custody of the Petitioner pursuant to a judgment and sentence from the 366th Judicial District Court of Collin County, Texas, In Cause No. 366-81170-06 styled; The State of Texas-v-Robert B. Read, Jr., The Fifth Court of Appeals of Texas Affirmed his conviction on 27 July 2010, App. #05-09-00413-CR. Petitioner's Petition for Discretionary Review was refused on 2 February 2011 #PD-1072-10. Petitioner filed a state application for a* Writ of Habeas Corpus on 5 April 2012 and denied by the Texas Court of Criminal Appeals on 19 February 2014. Read filed a second Writ on 25 July 2016 with uew grounds for relief #WR-80,769-02, and was denied by the court in September 2016. Petitioner Read filed a Federal Petition for Habeas Corpus on 18 July 2014, [§2254] in the Eastern District Court for Texas, Cause No. 4-14-cv-00144 and was denied as untimely on 1 February 2017 by Judge Amos Mazzant.

Read now files this Writ of Habeas Corpus with the United States Supreme Court which invokes original jurisdiction.

REASONS FOR GRANTING THE PETITION

1) This is a plea to the Jurisdiction. Petitioner Reas would ask the court to consider the following facts:

   (a) A plea to the Jurisdiction is a dilatory plea which is defined as: "A plea that does not challenge the merits of a case, but seeks to Delay or Defeat the Action on Procedural grounds."

   (b) A Writ of Habeas Corpus may be used to obtain review of the Jurisdiction of a court that has imposed a criminal sentence.

   (c) This Court's holding is that "Subject-Matter Jurisdiction is a courts Statutory or Constitutional Power to Adjuidicate a case. U.S.-v-Cotton 535 U.S. 625 (2002)

* WR# 80,769-01

REASONS FOR GRANTING PETITION
CONTINUED

(d) Subject Matter Jurisdiction is defined as: "Jurisdiction over the nature of the case and type of relief sought; to the extent to wich a court can rule on the conduct of persons or the status of things."

Petitioner will show that even if he does not come within the provisions of 28 USC § 1651(a) - 2241 - 2242 or 2254(b), Exceptional circumstances do warrant the Exercise of the Court's Discretionary Powers and that adaquate relief can not be obtained from any other court with regard to the claims raised herein in which Petitioner Read contends the Federal Constitution did not grant the trial court Implied Subject-Matter Jurisdiction, especially in light of the following facts that can be proven and are irrefutable.

Herein, Read is in compliance with the requirements of 28 USC § 2241 & 2242 that require a statement for the "Reasons for not making application/petition to the District Court in the district where Petitioner is held." (See: Forward (i-ii) and the US District Court, Sherman Division Docket sheet provided in appendix) Sherman Div. Judge Amos Mazzant has ruled that any further motions or petitions made to the court are considered "Moot".

Relief is sought from a judgment of a state court and Petitioner Read has set out specifically how he has exausted all available remedies in state and federal court jurisdictions. (See: Collin Co. District Court docket sheet in appendix)

Within the content of this application, Read will show that a series of extroadinary abuses of his constitutional rights have the cumulative effect of a showing of "Exceptional Circumstances"

As stated in Rule 24, Briefs on the Merits in General, "At the Court's option, however, the Court may consider a "Plain Error" not among the Reasons to Grant the

Reasons to Grant Petition [Continued]

Record and otherwise within it's jurisdiction to decide; Petitioner Read asserts "Plain Error"

Applicant contends in his first issue, the trial court was not entitled to adjudge his case-in chief due to lack of subject-matter jurisdiction regaridng the Felony-One indictment as the indictment charges lacked probable cause evidence nor was there a valid criminal complaint to validate such charge/indictment.

State witness Detective Jeff Rich testified at trial he did not see any evidence of a Felony-One offence and charged the defendant with a F-2 charge of Indecency with a Child only. (SEE: RR Vol. 3, Pg 64, Lines 16-19) As Rich was the only witness at the 25 May 2006 grand jury hearing, it is evident from the record there exists conflicting testimony.

State witness Michelle Schuback, The 1 June 2005 forensic examiner of the complanant, also testified at trial she saw no evidence of the element of Penetration which is indicitave of a Felony-One offense. (SEE: RR Vol. 4, Pg 117 Lines 18-20 and Pg. 133)

Also at trial the alledged victim testified she spoke to no one regarding the charged crime until about one week prior to the 9 March 2009 trial; almost three years following the May, 2006 indictment! (SEE: RR Vol 3, Pg 239 Lines 17-22, Pg 245, Lines 7-13, Pg 275 Lines 1-2).

[SEE: Excerpts from trial record of testimonies given] Apendix-

Facts Leading to the Felony-One Charge/Indictment

1) Petitioner Read was arrested on/about 12 July 2005 and charged with a Felony-Two offense (SEE: Warrant issued 29 June 2005) Apendix-). He surrendered himself to the Collin County Sheriff with a $10,000 bond in hand and released that day.

2) On/about 11 January 2006, a notice* was sent to Read's old address for a grand jury hearing set for the 31st of that month. This document was only recently discovered and was never delivered to petitioner as there was no forwarding address.

* Felony Two Offnese Only

A short time later, Read was notified there had been an addeded Felony-One offense.

3) Read was never arrested for this offense nor was he arraigned in court or admonished by a judge or magistrate.

4) To this date, no state official or office has been able to produce either a probable cause affidavit, information or valid criminal complaint to justify the Felony-one charge/indictment, although Read can show due diligence in his efforts to obtain such documents. Furthermore, all of Read's motions to the various courts for production of relavant documents have been explicitly or implicitily denied.

It is clear from the record itself, the Collin County Criminal District attorney, John Roach, Sr., employed the now unlawful (in Texas) "Key Man" system of jury selection to insure the indictment. It is well known in the Republican stronghold of the Collin Justice community, jury shopping and fabrication of offenses were de facto policy of the Roach, Sr. office of District Attorney.

This court should take notice of the case of former Collin District Judge Suzanne Wooten (democrat) who was victimized by this system and Roach, Sr. in particular. She was falsely charged and was the subject of five (5) grand juries ordered by Roach, Sr. until an indictment was secured. She was later exonerated on appeal and filed a federal law suit against Roach and Collin County. (SEE: 4:18-cv-00380 filed in the Eastern Dist. Court - Texas, Sherman Division) A $600,000 settlement in her favor was reached on 13 January 2022. (SEE: D Magazine article in appendix)

It is clearly evident from the trial record and exhibits attached hereto, the Collin D.A. Roach, Sr., fabricated the existance of probable cause evidence in order to deceive the grand jury panel into beliving such evidence was available to justify handing-down a True Bill of Indictment for the charges presented.

Roach, Sr. fabricated this unfounded charge (F-1) to gain a tactical advantage at trial. This prosecutional misconduct resulted in extreme prejudice to applicant Read and violated his right to due process of law - A Fundemantal Miscarriage of Justice

is evident in Applicant Read's case.

Applicant requests this honorable court consider the following case laws which are well in line with his instant case:

In Bank of Nova Scotia -v- United States, 487 U.S. 250, 108 S.Ct. (1988), this Court decided: "Where prosecutorial misconduct occurred in the context of grand jury proceedings, indictment dismissed when misconduct substantially influenced the grand jury's decision to indict." Miller-v-Wainright 798 F.3d 426 (11th Cir. 1986) "Since the court knows of two versions of testimonies given under oath, it is quite apparent that the grand jury testimony cannot agree with both." This court concluded: "Since neither the state or federal court has reviewed this evidence, the case must be remanded to the district court to consider the claim involving grand jury testimony under the correct standard".

Appicant has demonstrated a "particularized need" for the production of grand jury testimony throughout the entire appeal process, only to be denied by state and federal courts. Clearly, his due process rights have been thus denied as he is unable to provide the proof necessary to meet this burdon, ie., the trial court and the Collin Co. District Attorney are both withholding likely exculpatory evidence in Read's favor. (SEE Also: Dennis v. United States, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed. 2d 973 (1966) Proctor & Gamble v. U.S. .78 S.Ct. 986 (1958). Wisconsin v. Shaffer 565 F.2d 961, 966 (7th Cir. 1977).

Following the testimonies of Det. Rich, M. Schuback and the complaintant herself, it became abundantly obvious there was no probable cause evidence of the Felony One offense that would justify this charge being brought forth to the grand jury for it's consideration. This court should ask itself why would two seasoned prosecutors allow for this revealing testimony to percolate in the minds of the jury panel unchallenged? It seems logical that if the prosecution was in posession of such evidence, such evidence would have been produced for jury examination at trial.

Furthermore, it is clear from the record, at this stage of the trial, the defense counsel also remained silent. This court should ask itself WHY, a seasoned-retained counselor fail to recognize the situation and, at the very least, motioned the court for production of * Det. Rich's prior statements made at the grand jury hearing of 25 May 2006. Was counsel unaware of Tx Rules of Evidence 615(f)(3) which allows for production of prior statements made to a grand jury panel?

The defense attorney should have motioned the court to conduct an in-camera review of the entire grand jury proceedings.

Petitioner Read contends the record itself shows it is more likely than not the court would have granted a mistrial and quashed the Felony One Indictment upon review and motion by the defense.

It should be abundantly clear Read was bereft of counsel at that critical stage of trial. SEE: Mickens v. Taylor, 535 U.S. 162 (2002) Olden v. U.S. 224 F.3d 561, where counsel absense at critical stage of proceedings stated 6th Ammendment claim.

Prior testimonies as noted herein were most indicative of a "particularized need" for review/disclosure of grand jury proceedings (transcribed record) in accord with Tx Code of Criminal Procedure Art. §20.02(d) and Federal precedent as enumerated on page -13- .

Herein, petitioner Read has provided this honorable court with clear and convincing evidence from the trial record and exhibits attached in the Appendix to this writ the state did not have probable cause evidence to charge Read with the Felony One offense. The indictment was secured by fraud (prosecutorial misconduct) and should be considered a void conviction as matter of law.

(SEE: Actual trancribed testimonies from the Reporter's Record in Appendix) Also:: Supplement Page 15A.

* The Court will please take notice, Det. J. Rich was the only witness indicated on the True Bill of Indictment.

FELONY ONE INDICTMENT COULD HAVE BEEN SET ASIDE

Petitioner retained counsel on 6 June 2006 shortly following notice of the indictment and order for first apperance in court set for 8 June. At this point any competent defense attorney would have reviewed all charging instruments including probable cause affidavits, arrest warrant, CRIMINAL COMPLAINT(s) and any other reports from investigating police officers.

Tx Code of Criminal Procedure Art. §15.26 states: "The arrest warrant any affidavit presented to the magistrate in support thereof is public information. The magistrate's clerk shall make a copy of these documents and deliver to the clerk of the court for public inspection." T.C.C.P. Art. §21.22 states: "Information Based Upon Complaint; No information sheall be presented until affidavit has been made by a credible person charging the defendant with an offense." This also is to be filed with the clerk of the court for public inspection; to include defense attorney.

Tx Code of Criminal Procedure Art. §27.03 affords a defense attorney the opportunity to motion the trial court to set aside an indictment as follows: "A motion to set aside an indictment or information may be based upon the following: (1) That it appears from court records the indictment was not found by at least nine jurors, or that the information was not based upon a valid complaint." TCCP Art §27.04 "An issue of fact arising upon a motion to set aside an indictment or information shall be tried by a judge without a jury."

The question for this honorable court to consider is why a seasoned-skilled defense attorney fail to recognize there was no probable cause affidavit, information nor criminal complaint for a Felony One offense. Petitioner contends he was befeft or counsel at this critical stage of trial.

Again, no official nor office in the state of Texas has been able to locate a probable cause affidavit, charging instrument for F-1 offense, information or a valid criminal complaint. [SEE: Clerk's letter 9/28/22 in Appendix]

WHC PAGE 15-A

Supplement to Question One

Excerpts from Reporter's Record Volume #3 10 March 2009

Trial Court No. 366=81170-06

Cross Examination of Detective Jeff Rich by Howard Shapiro, Counsel for Defense

Q. "Well, the indictment alleges four counts. The first count is aggravated sexual assault. There is a difference between that offense and what he was arrested for, is there not?" A. "Yes, there is." Q. "When you did your investigation, the offense was for indecency with a child, which is a second degree felony." A. "OK" Q. "Aggravated sexual assault is a first-degree felony." A. "Thats correct"

Page #62, Lines 11-22 .

Continued Pgs. 63, 64 Q. "Indecency with a child basically means that there was no penetration; is that correct"? A. "That's correct, sir." Q. And in this case, it's alleged with Mr. Read's finger." A. "That's correct." Q. "Nothing in any interview you saw says that, does it?" A.*Non-responsive answer. Lns. 12-23

Q. Well, it's not in any interview [with complainant] you've seen, is it?" A. "No"

Q. "And Michelle Schuback's interview, it's not there, is it? A. "No"

*Spectulative answer proven to be false

Cross examination of forensic interviewer, Michelle Schuback by Shapiro:

Reporter's Record Vol #4 Pg. 133 Lines 2-11

Q. "And the sexual abuse she described was touching, simply touching, no penetration. You understand what all these terms mean for this courtroom, dont you?" A. "Yes, I do." Q. "Okay. It was simply touching. I dont want to say simply, but thats what she described. She didn's describe any - any penetration with the finger or anything else. A. "No, she described touching and exposure."

Driect questioning of complainant by prosecutor R.R. Vol #3 Pgs 239-275

Q. "As a matter of fact, did you even talk to me [Prosecutor] about anything as to what happened until last week?" A. Until last week--I dont think we talked about it prior." P. 273 Lns. 7-10

Question number two for this court's consideration: Did the Collin County 366th Judicial District Court deprive Petitioner Read of his sixth ammendment Right guaranteed by the U.S. Constitution to compel witnesses in his favor?

The "Plain Error/Fundemental Error Rule states a reviewing court may grant relief for plain error (sometimes called Fundemental Error) even if the error was not raised was not raised at trial preserved at trial.

Plain Error is clear and obvious in Read's case and affected his substantial rights. Here petitioner infra will meet the burdon of of persuasion for issues under this type of error, Read herein will show clear and convincing evidence of Plain or Fundemental error this court may rely upon to justify it's exercise of discretion to grant relief to petitioner.

This honorable court should find error that seriously affected the fairness, integrity and public reputation and went to the foundation of his case. This right was essential to Read's defense and the fundemental error in this case will be found by this court to be of such demension that it can not be said it was possible for Read to have had a fair trial.

Herein, petitioner will show he was denied his right to compel witnesses in his favor due to counsel's failure to produce Mr. James Lauderdale, a 30-year veteran detective of the Dallas Police Dept. and demonstrated expert in the field of suspect interogation and administer of polygraph examinations. (SEE: Lauderdale Resume in Appendix)

Herein, Read will show this expert was prepared to testify on

his behalf as to his professional opinion Read is truthful in his denial of guilt and to his credibility as a witness at trial. There can be no doubt the testimony of this seasoned police detective with impressive credentials, would have made a strong impression on the minds of the jury. His testimony would most likely have created a strong element of reasonable doubt as to the guilt of petitioner Read.

Petitioner asks this court to consider the fact the state put on five (5) expert witnesses to Read's NONE. All state witnesses were expertly prepared pre-trial and delivered convincing testimonies as well as extraneous-prejudicial evidence of a here-say element and bolstered the creditility of the child "victim".

It can hardly be said there was adversarial balance within the content of this trial as Read's whisper of innocence was overwhelmed by the state's shout of guilt! Clearly, Petitioner Read was bereft of counsel at this critical stage of trial.

Petitioner/defendant Read was ** afforded any meaningful witnesses in his favor at trial. This is a situation in which testimonial evidence is obviously of such substantial value to the defense that elementary fairness requires such to be presented for jury consideration. Such disclosure is critical to the vigorous defense stragety and should have been presented even without a specific request.

The holding in Brady v. Maryland Indicates that implicit in the requirements of materiality is a concern that the supression of Lauderdale's testimony and the favorable results of Read's polygraph exam results might have affected the outcome of his trial. Thus the validity of the guilty verdict is in doubt.

Petitioner requests this court to consider a very similar Texas case regarding convicted murdered Hannah R. Overton, adjudicated on appeal in the TX Court of Criminal Appeals, Habeas Writ No. WR-75, 804-02, decided 17 September 2014. The Court of Appeals concluded as follows: Opinion - "We believe that Dr. Moritz's [Expert] credibility combined with his testimony, would have had a strong impact on the jury and sufficiently (Continued Page 18)

** [not]

undermines the outcome of the trial. But for the defense failure to present Dr. Moritz's testimony to the jury in some way, there is a reasonable probability that the outcome of Appellant's trial would have been different. Both prongs of the Strickland test have been established."

As in petitioner Read's case, counsel failed to bring forth this critical expert and the conviction was reversed and remanded for a new trial. Overton was later acquited of the charge and set free.

When the reliability of a given witness may be a critical determative of guilt or innocence, non-disclosure of evidence affecting credibility of that witness justifies a new trial. SEE: Agurs v. U.S. 427, 97, 99 Led 2d 342.

In Brady, suppression of evidence favorable to the accused, as in petitioner Read's case, violates due process where evidence is material either to guilt or to punishment irrespective of good or bad faith of prosecution (Constitutional Ammendment Fourteen). Herein, as obvious, petitioner's due process rights were egregiously violated and harm & prejudice are evident.

Petitioner asserts the "plain error" rule which encompasses those errors which are obvious and affected his substantial rights. When left uncorrected these will result in an affront to the integrity and reputation of judicial proceedings. This principal asserts that an appeals court can reverse a judgement because of an error in the proceedings even if the error was not presented during the plea.

It is difficult to immagine the unassailable credentials of Expert wintess Mr. James Lauderdale (SEE: Resume in Appendix) would not have had a profound impact on the jury. Lauderdale was prepared to testify that if Applicant had come before him as a suspect in Dallas County, and there being no physical evidence of a crime nor a credible witness, he would not have forwarded a criminal charge to the district attorney for prosecution. The jury's orderly process was thus interrupted by the failure to present this expert's testimony and favorable results of Read's polygraph test. SEE: Read's Affidavit in Appendix. This honorable court should conclude that applicant Read simply had NO adequate-prepared defense whatsoever, and he was effectively bereft of counsel at all critical stages of trial.

Petitioner requests the court take notice of his Affidavit contained in the Appendix attached hereto. As sworn to therin, Petitioner's counsel rightly advised him properly that the results of the polygraph test, if negative, could be used by the prosecution against him at trial. Clearly, there must h ave been at the very least a verbal agreement with the prosecution to admit the results of the exam into evidence, in favor to either side or not.

When petitioner inquired of counsel as to the absence of Mr. Lauderdale at trial, he was informed the visiting judge would not allow this witness as he was not privy to any pre-trial agreement. In retrospect, the judge would only rule on matters of witness/evidence admission in pre-trial hearings to consider suppression motions by either party to the proceedings. Petitioner requests this Court to take notice there was no such hearing or ruling contained in the reporters record or notated in the trial docket as attached hereto in Appendix.

Petitioner requests this Court to consider the case of Huston v Lockhart 982 F.2d 1246, wherein the trial counsel's failure [as in Read's case] to put in writing or on the record in the presence of the judge, the prior stipulated agreement to allow Huston's polygraph test results, constituted ineffective assistance of counsel. Also, by not having the partie's stipulation of the polygraph results admitted into evidence also constituted I.A.T.C. and required an evidentiary hearing.

Murray v. Carrier, 477 U.S. 478; contends that cause can be established if some interference by officials failed to present this evidence during trial proceedings and the alleged errors undermined the accuracy of the guilt or sentencing determination.

In Schlup v. Delo, the supporting-reliable evidence, whether it be exculpatory scientific evidence, trustworthy or critical evidence that was not presented at trial will support his constitutional claim of innocence.

Petitioner further requests this Court to consider his probative force of this relevant and material to his steadfast claim of innocence evidence that was excluded/suppressed at trial. In light of this evidence no rational juror would have found him guilty beyond a reasonable doubt.

SEE: McCoy v. Norris, 958 Fed.Supp. 420, Government's failure to disclose results of polygraph test violated Brady. Also, U.S. v. Chandler, 950 Fed.Supp 1545.

This honorable court is well aware that in such cases where a defendant is charged with the sexual violation of a child, such charges are inherently inflamitory and repellant to the jury when presented by the prosecution. In such cases, human nature overcomes reason and the burdon of proof immediatly goes to the defendant who must now satisfy the inflamed jury members of his innocence! This presumption of guilt is practically impossible for any defendant to overcome and his only reasonable defense demands the assistance of an expert to challenge the veracity of the prosecution's case-in-chief.

It should now be abundantly clear to this honorable court, Read was denied his only viable defense in the suppression of this witness/evidence and his sixth ammendment to the U.S.Constitution were clearly violated. The question this court must now ask-is why would a skilled & seasoned attorney fail to subpoena/present Mr. James Lauderdale, a prepared witness, to appear in the defense of his client? SEE: The S.Ct. decision in Hinton v. Alabama, decided 24 Feb. 2014, wherein counsel failed to present an expert witness although funds were available to hire such as in Read's case. Hinton received a new trial where he was exhonerated.

Petitioner Read requests this court to consider the inconsistencies and systematic denial of due process that are evident throughout his entire trial and appellant procedure. Fundamental unfairness is evident where a defendant is required to prove his innocence at trial and then faced with the massive burdon of proof required of him in an effort to acquire relief in habeas post-

conviction proceedings. In this case, the state/court countered every one of Read's grounds of constitutional violation with "Applicant failed to provide a preponderance of evidence to support his claims" in his first application for a state writ of habeas corpus (Ar. §11.07 T.C.C.P.). The Court of Criminal Appeals of Texas refused to review and rule on the merits of claims presented and simply accepted the opinion of the trial court (prosecution), and issued a ruling of "denied without written order". All subsequent motions and writs have been likewise denied or dismissed with no review or ruling on their merits.

This honorable Court can easily determine applicant has diligently persued his post-convictions rights and has exausted all state and federal remedies as is evident with a cursory review of the court dockets provided in the appendix.

There exists fundamental unfairness where appellant is required to show a preponderance of evidence and the appeals court refuses to provide the documents motioned for nor the required by law evidentiary hearing. Both of these motions were submitted with Read's habeas writ that was submitted to the Texas Court of Criminal Appeals on 5 April 2012 and denied without written order on 19 Feb 2014. In summary, applicant Read has no further recourse and appeals to this honorable U.S. Supreme Court as the final arbiter for his justice.

SUMMARY NOTE: Consider a lesson to be learned from Lindstadt v. Keane, 239 F.3d 191 (2nd. Cir. 2001) and Pavel v. Hollins, 261 F.3d 210 (2nd. Cir. 2001)

"When a defendant is accused of sexually abusing a child and the evidence is such that the case will turn on accepting one party's word over the other's (as in Read's case) the need for defense counsel to, at a minimum, consult with an expert to become educated about the 'vagaries of abuse indicia' is critical."

QUESTION THREE: DID THE STATE OF TEXAS AND THE 366th JUDICIAL DISTRICT COURT OF COLLIN COUNTY VIOLATE PETITIONER READ'S RIGHT TO A SPEEDY TRIAL AS GUARANTEED BY THE SIXTH AMMENDMENT OF THE U.S. CONSTITUTION BY OPERATION OF LAW?

Procedural History: Peritioner Read surrendered his self to the Collin Co. Sheriff upon learning of the warrant issued for his arrest on 12 July 2005. He was released that day on presenting and bering held to bond in the amount of $10,000.

Tx code of Criminal Procedure Art. §32.01 states: "When a defendant has been arrested or held to bail, the prosecution, unless otherwise ordered by the court, for good cause, supported by an affidavit, shall be dismissed and the bail discharged , if indictment be not presented to defendant on or before the last day of the next term of the court after his admission to bail or on or before the 180th day after admission to bail, whichever date is later."

In Read's case the indictment was not handed down until the third term of the court and aproximately 318-days later; a clear violation of the code and in clear violation of his right to speedy indictment/trial.

The Texas code is also clear that a defendant must motion the court for dismissal prior to the indictment date. SEE: Schroeder v. State, 307 S.W. 3d578 (TX APP. Beaumont, 2010).

Government misconduct is evident in this case as there was no notice given to Read in time for him to obtain counsel. He was also denied opportunity to challenge the jurry array as provided for in T.C.C.P. Art. §19.27 and this was critical as the Collin County grand jury system relied heavily upon the "Key Man" system of jury selection. The grand jury hearing was held in complete secrecy and there is no notice to be found by the County Clerk nor the Collin District Attorney office. There can be no excuse as the prosecutor was well aware of Read's address as it is

evident as printed on the top portion of the True Bill of Indictment. SEE: Copy in Appendix) The prosecutor's office was also well aware of Read's business address as this is the location of the first attempt of arrest. The only copy of notice was discovered by diligent search and found in posession of the Collin District Attorney's office. This notice indicates a Felony Two charge only and was sent to Read's prior address where he had not resided in over a year and only now was discovered.

Federal law is clear in that to show an unconstitutional pre indictment delay, a party must establish two elements: 1) The government intended to delay obtaining indictment for the purpose of gaining some tactical advantage over the accused in the contemplated prosecution or for some other bad faith purpose, and, 2) That the improper delay caused actual and substantial prejudice to his defense. SEE: U.S. v. Seale, 600 F. 3d 473 (5th Cir. 2020) and U.S. v. Crouch 84 F. 3d, 1497, 1523 (5th Cir. 1996) US v Jimenez, 256 F.3d 330, 345 (5th Cir. 2001)

It is clearly evident from the record and as is question One herein, the state's delay was purposful to gain time to fabricate the Felony One charge which evidently took place some time following the January 2006 Felony Two notice for grand hearing. Furthermore, it can hardly be said this machination by the Collin Prosecutor did not cause substantial prejudice to Read's defense. Harm and prejudice are most evident from the record and stated events. The element of penetration required in the Felony One charge/indictment as presented to the trial jury, served to inflame the emotions to a greater level than the F-2 charge which included "touching" only. This fact along with Read being presented to the court as charged, cemented the the burden of proof from the state to the defendant. Clearly, Read has satisfied both prongs of the above stated requ irements to show violation of his 6th Ammendment right to speedy trial and, again, he was befeft of counsel at this critical stage of trial. Read was deprived of his due process rights (14th Ammendment) and a fundemental miscarriage of justice is evident.

QUESTION FOUR: DID THE COLLIN COUNTY 366th JUDICIAL DISTRICT COURT ABUSE IT'S DISCRETION IN ALLOWING THE STATE TO UTILIZE TX RULES OF EVIDENCE IN VIOLATION OF EX POST FACTO LAW (U.S. CONSTITUTION ART. §1 Sec. 9) RESULTING IN HARM & PREJUDICE TO APPLICANT (DEFENDANT) READ?

Texas code and Rules of Evidence that were in effect at the time of the charged offense and at the time of trial, Rule 404(b) and T.C.C.P. art. §38.37, both prohibited the use of extraneous offense testimony during the guilt-innocence phase of trial, to show "Character in Conformity" with the charged crime.

TX Code of Criminal Procedure Art. §38.37 was changed and codified by the TX Legislature as it reorganized Sub. §2 which now authorized certain extraneous crimes in the guilt-innocence stage of trial, for any bearing that extraneous evidence may have on relevant matters including character of the defendant or that defendant acted in conformity with the charged offense. (Senate Bill 12 signed into law on 1 September 2013) This Bill effectively trumps the limiting use of such extraneous offense testimony as provided by TX R. Evid. 404(b).

This new law was placed in effect several years after Read's alledged criminal acts. The new rule does, however, contain limitations in that the trial judge is required to hold a pre-trial hearing to determine if the porfferred testimonies are relevant and can be proven beyond a reasonable doubt. Also, as in the previous rule, the state must give 30-day notice to the court/defense prior to trial.

For this honorable court to appreciate the magnitude of this Ex Post Facto violation as to it's unfair and prejudicial effect, Petitioner will ask this court to consider the "Discovery Agreement" as exibit in the appendix, whereby Petitioner Read unknowingly forfited his rights to "Notice" as required by both Rule 404(b) and CCP §38.37 in effect at that time. Was counsel unaware that an open file policy is insufficient to provide notice of intent to introduce extraneous offense acts? SEE: Hayden v. State 66 S.W. 3d 269 (Tx Crim App 2001) Buchanan v State

Buchanan v. State, 911 S.W. 2d 11 (TX. Crim. App. 1995). Furthermore, this agreement gave the prosecution Carte Blanche to offer into testimonial evidence that was used to persuade the jury of Read's propensity to act-out such vile offenses against children in general, all unopposed by trial counsel.

Not only could this harmful witness testimonies been eliminated in pre-trial hearings to suppress such, but also it is clear from the rules that the defendant is entitled to limiting instructions by the court at the time of each testimony. Rankin v. State, 974 S.W. 2d 11, 707 (Tx Crim App 1996). The defense counsel was neglegent in not making motion for such jury instruction, and the judge should have sua sponte instructed the jury as necessary.

It is clear from the record that trial counsel allowed such false and prejudicial testimony in the case of Read's 20-yr old daughter Rebekah: RR Vol. 4, Pg. 82-89 wherein she testified her dad (defendant) was doing something strange with his hands while driving her (in the back seat) down the highway, clearly indicating masterbation (in motion?). Also further testimony in Vol.6, Pg. 87, Lns. 12-15.

Within the testimony of Read's daughter Sarah Read White, Vo. 4, Pgs 38-54 she testified to bolster the credibility of her sister, Abigail, (Complainant) and to the general bad character and violent nature of her father (defendant). Again, in Vol. 6, Pgs 18-25, she claimed the defendant Read had exposed himself to her at age 3 or 4 while living in Virginia; hardly reliable! Petitioner had no counsel at this critical stage of trial as there was no cross examination of this witness... Vol. 4, Pg. 54 Ln. 4.

Read's son, Benjamin Read, Vol. 4, Pgs. 5 -37, was allowed to bolster the credibility of complainant and had no direct knowledge of the alledged crime in question. And again, there was no motion for limiting instructions to be given to the jury and the trial judge was neglegent in this duty as well.

The next state witness, offered as "expert" by the state, Michelle Schuback, was the forensic interviewer of the "victim" that took place on 1 June 2005. By the TX Code of Criminal Procedure Art. §38.072, this witness did not qualify as an "outcry witness as the alledged crime was not reported by the "victim" within the 1-year time limit per code. RR Vol. 4, Pgs. 90-129.

Prior to trial, the court is required to hold a reliability hearing outside the presense of the jury to determine witness reliability/qualifications (Sub (2)(b)(2) Sub (b) "A statement that meets the requirements of Sub (a) is not inadmissible because of the heresay rule if: (1) On or before the 14th day prior to the date of the proceeding, the party intending to offer the statement: (A) Gives notice to the adverse party of intention to do so. (B) Provides the adverse party with the name of the witness. (C) Provides the adverse party with a written summary of the statement.

Due to the provisions of the "Discovery Agreement" of 8 June 2006, none of the above rules regarding qualifications of outcry witness, reliability and terms of notice were provided to the court or defense. Therefor, this state "expert" was allowed to give damaging testimony that served only to bolster her own and the credibility of the complainant all unobjected to by counsel and served only to prejudice and harm defendant/petitioner Read; all in violation of the heresay rules. Here again, petitioner was bereft of counsel contrary to his 6th ammendment rights. The harm & prejudice caused by this reckless agreement is evident within the above trial record account.

From the record, Vol. 6, Pgs 57-66, regarding the testimony of Charles Read, petitioner's step-son, it was not possible he could qualify as a "fact witness" due to the fact he was called from Virginia where he had resided long before the child complainant was born. Here again, another state witness was permitted to give damaging character testimony that was unrelated to the criminal acts and

in violation of Texas Rules of Evidence in effect at that time. Petitioner Read here again was bereft of counsel at this critical stage of trial.

Possibly the most damaging and uncorrected testimony was given by state expert and investigating officer Jeff Rich who is also the only witness recorded on the True Bill of Indictment.

In Reporter's Record Vol. 3, Pg. 57 Ln. 14-16, Rich gave false testimony stating: "In fact, the Collin County Deputy that attempted to locate and arrest him [Read] he fled" Rather than correct the record, counsel cemented this false idea in the minds of the panel by responding Ln. 18 "He Fled" (A) Ln. 19 "Thats correct"

Any rational juror could only conclude Read was/is guilty as an innocent person would not flee from arrest. Such an action is tantamount to an admission of guilt. Inference of guilt in this case is no less damaging than Rich stating suspect Read had made a confession (verbal) of guilt!

Counsel was well informed previously that petitioner was out of town on business when the deputy came to his Farmer's Branch office to make the arrest, and when Read was informed of the warrant for his arrest, he surrendered himself to the Collin Co. Sheriff with the required $10,000 bond in hand. The jury panel never heard this correction and this false and misleading testimony alone was sufficient for a finding of guilt. Here again, petitioner was bereft of counsel at this most critical stage of trial.

In conclusion, any reasonable jurist should easily be able to determine from the record, petitioner was severely prejudiced by the prosecutor's use of Texas Rules not in code at time of trial. What rational jury member would not conclude guilt when defendant's own family members witness against him and with the idea in mind of his supposed "flight from justice"? Clearly and convincingly, Ex Post Facto violation of Art. 1, Sec. 9. of the US Constitution is in evidence.

In support of other grounds presented herein, petitioner cites Jackson v. Virginia 99 S.Ct. 2781, "The question whether a defendant has been convicted upon inadequate evidence is central to the basic questions of guilt/innocence. The constitutional necessity of proof beyond a reasonable doubt is not confined to those who are morally blameless." Also in Jackson: "The due process of the 14th ammendment protects a defendant in a criminal case against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime in which he is charged."

CONCLUSION

Petitioner Read has provided this honorable court with clear and convincing evidence of due process violations, extreme prejudice and lack of counsel, all contrary to his rights guaranteed by the 5th - 6th & 14th ammendments to the US Constitution. If the facts persented herein are determined by this court to be true, relief as requested is justified.

Furthermore, many cases in support of his various claims could have been cited within the content of this application for writ of habeas corpus. Petitioner asserts the facts of record should supply this court with adaquate evidence and information to support his requested relief.

Under 28 USC §2241(c)(5) This court should grant this writ as it is necessary that petitioner Read be brought before the court and allowed to further develope the record and if the additional evidence be presented, no rational trier-of-the facts would convict petitioner for the unwarranted charged element of "penetration"

Furthermore, under 28 USC §2254(b) this writ should be granted as under §2254(b)(1)(B)(i)there exists an absence of available state corrective process.

This court ruled in Felker v Turpin 518 US 651, that issuance of the writ of habeas corpus is justified if the requirement that there is "exceptional circumstances" is met alone. Read has herein met such requirements.

Petitioner Read asks this honorable court to consider that in the state of Texas, officials who are endowed with the authority to make law, enforce such laws, deliver indictments, convict and pronounce judgment are all elected to their respective offices by the citizenry. With rare exception, these officials run election (re-election) campaigns on the "Tough on Crime" platform.

In Texas, elected appellate judges are reticent to grant relief in even the most obvious and flagrant abuse of the constitutional rights of the accused; this in fear of the appearance of being "soft" on convicted felons. Therefor, most all applications for habeas or direct relief are denied of dismissed "without written order" nor upon a fair review or ruling on the merits presented. Instead of dispensing justice in a fair and equitable manner, these elected judges practice the "politics of preservation of office".

It seems most apparent, the legislative and judicial branches of Texas Government are working in concert with the demands of the "Texas Prison Industrial Complex" to provide a continous supply of free labor.

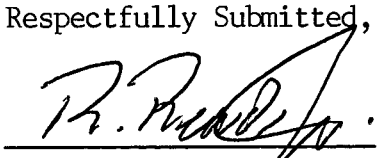
In the State of Texas, rogue prosecutors and criminal district attorneys are at liberty to deny a defendant of his basic rights and due process of law. Where deliberate indifference by the courts give support to de facto policies allowing for individual liberties to be trampled upon without fear of accountability, either civil or criminal, due to immunity laws.

Petitioner asks this court to recognize he was/is a victim of the above system and has suffered for the past 13+ years as a result; his trial and conviction were unlawfully obtained as is his present incarceration.

With the forgoing facts and issues considered, Petitioner Read humbly begs this Honorable Court to exercise it's discretionary powers and grant this writ of habeas corpus .

Finally, Petitioner asks this Court to consider it's opinion/ruling in the 2005-2007 case of Gross v Dretke, 126 D. Ct. 729, (Remand on Cert) "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficient. The greatest danger to liberty lurks in the insidious encroachment by men of zeal, well meaning, but without understanding. Our court is the potent, the omni-present teacher. If zealous men and women are denying TEXAS prisoners it's teachings of liberty or due process, this Court should review with authority the legal-Constitutional issues raised by this prisoner. I therefore dismiss (e.g. the TX Attorney General's motion to dismiss Cert.) and defer to my prior dictum." The above is a fair example of how the court has previously held in contempt the un-fair and un-constitutional practices of the Texas Judicial System in general.

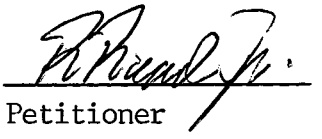
Respectfully Submitted,



Robert B. Read, Jr.
TDCJ-ID #1568901
John Wynne Unit
Huntsville, TX 77349

PRAYER

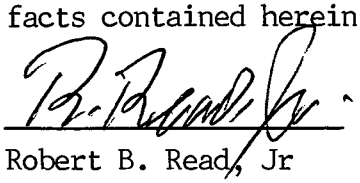
Petitioner Read prays this Honorable Court make notice and reviews all claims as presented in this Petition for Writ of Habeas Corpus and Grants the petition and any other relief necessary to satisfy the ends of Justice. It is so Prayed.



Petitioner

UNSWORN DECLARATION

I, Robert B. Read, Jr., being presently incarcerated in the TX Department of Criminal Justice, J. Wynne Unit, located in Huntsville / Walker County, Texas, do hereby swear and affirm, under penalty of perjury, that the forgoing Writ with all facts contained herein, are true and correct to the best of my knowledge and belief.



Robert B. Read, Jr

DATE: [redacted] 15 February 2023