

UNITED STATES SUPREME COURT

DONALD LEE KISSNER,
Petitioner,

Case No. 22-7573

VS.

MATT MACAULEY,
Respondent.

PETITION FOR REHEARING
Pursuant to Rule 44

NOWCOMES, Donald L. Kissner, Petitioner,
In Pro Se, Respectfully moves this Honorable
Court to Rehear Honorable Court's denial
of Oct. 2, 2023 and states the following in
support thereof:

1. The language of the Thirteenth Amendment
is clear in it's meaning that the incarceration
of the innocent is prohibited under the

constitution, and the laws of the united states, which shall be made in pursuance thereof, Thus, any court, Prosecutor, or defense counsel who knowingly aids in the incarceration of an innocent person is is fact subject to a criminal conviction under the laws of the united states. see e.g., 18 U.S.C § 241; 18 U.S.C § 242; 18 U.S.C § 1512; 18 U.S.C § 2071; Mich. comp. L 750.122; Mich. Comp. L 750.411a(1)(b); Mich. comp. L 750.479c(1)(c); Mich. comp. L 750.478; Mich. comp. L 750.483 a(5)(a), (b), and (1)(a).

2. On Oct. 6, 2008 Judge Lostracco conducted an evidentiary hearing that he ordered on August 15, 2008. People vs. Kissner No. 2004-993-FH. See APPENDIX-A. Judge Lostracco failed to follow Mich. R.T.R 6.505(A). All court's after that failed to remand to correct the fatally defective evidentiary hearing. see People vs. Kissner, 2009 Mich. App. Lexis 2921; 488 Mich 852 (2010). Mr. Kissner had "no" notice of ordering an evidentiary hearing, could not call any witnesses to the hearing, did not get to question either trial or appellate counsel

at the hearing, and what was called an evidentiary hearing was held via a telephone call.

The court's violated Mich. Ct. R 6.505(A); People vs. Edwards, 461 Mich 958 (2000); People vs. Page, 463 Mich 1008 (2001); People vs. Willis, 472 Mich 873 (2005); People vs. Sanders, 497 Mich 978, 979 (2015), etc cases; Ky. Rule. crim. Proc 11.42(5) (2011); La. Code Crim. Proc. Ann, Art. 930.7(c) (2008).

3. The Eastern District Judge Goldsmith was asked in Three motions to conduct an evidentiary hearing pursuant to Rules Governing habeas corpus 8(c); 28 U.S.C § 2254(e)(2)(A)(ii), and § 2254(e)(2)(B). Judge Goldsmith denied these request and "used" the "fatally defective evidentiary hearing from Judge Lostracco in the state court to deny writ of habeas corpus". Judge Goldsmith thereby violated (a) 28 U.S.C § 2254(b)(1)(B)(i), and (ii), and (b) united states constitution Article I,

Section 9, clause 2; *United States vs. Hayman*, 342 U.S. 205, 223 (1952); *In re Reno*, 283 P.3d 1181, 1200 (Cal. 2012).

4. Both the state and Federal courts divested Mr. Kissner from properly presenting the "evidence" that shows "he is factually-actually innocent of the case". see e.g., *Reed vs. Texas*, 140 S.Ct. 686, 689-690 (2020); *McQuiggin vs. Perkins*, 569 U.S. 383 (2013); *House vs. Bell*, 547 U.S. 518 (2006); *Dretke vs. Haley*, 541 U.S. 386 (2004); *Schlap vs. Delo*, 513 U.S. 298 (1995); *Sawyer vs. Whitley*, 506 U.S. 333 (1992); *Henry vs. Collins*, 506 U.S. 390, 404 (1992). See also: *Burrell vs. Stephenson*, 2022 U.S. App. Lexis 35720 *4; *Williams vs. Birkett*, 895 F.Supp.2d 864, 865-871 (E.D. Mich. 2012); *Ata vs. Scutt*, 662 F.3d 736, 741-743 (6th. Cir. 2011); *Robertson vs. Simpson*, 624 F.3d 781, 782-786 (6th. Cir. 2010); *Cleveland vs. Bradshaw*, 760 F.Supp.2d 751, 771-772 (N.D. Ohio. 2010)

5. "... such unprofessional errors and omissions by defense counsel constitutes an

ineffective assistance of counsel claim and as such warrants an Evidentiary hearing to resolve the factual disputes." see e.g., *Valentine vs. United States*, 488 F.3d 325, 332-333 (6th Cir. 2007); *Griffin vs. United States*, 330 F.3d 733, 739 (6th Cir. 2003); *Holmes vs. United States*, 876 F.2d 1145, 1147 (11th Cir. 1989); *United States vs. Millen*, 760 F.2d 1116 (11th Cir. 1985).

In *Brown vs. AG of N.M.*, 2023 U.S. Dist. Lexis 25497 * 10, states:

"The court can hold an evidentiary hearing 28 U.S.C. § 2254; *Townsend vs. Sain*, 372 U.S. 293, 312 (1963). To warrant such a hearing, The Petitioner must show that the hearing held in state court was not fair or adequate."

Every circuit has followed this standard. see *Teti vs. Bender*, 507 F.3d 50, 60-61 (1st Cir. 2007); *Nicholas vs. Smith*, 204 F.3d 29, 31-32 (2nd Cir. 2000); *Palmer vs. Hendricks*, 592 F.3d 386, 392-393 (3rd Cir. 2010); *Juniper vs. Zook*, 876 F.3d 551, 563-564 (4th Cir. 2017); *United States vs. Batamule*, 823 F.3d 237, 248-249 (5th Cir. 2016); *Kerr vs. Thurmer*, 639 F.3d 315, 331 (7th Cir. 2011); *Middleton vs. Roper*, 759 F.3d 831, 831-832 (8th Cir. 2014); *Jurado vs. Davis*, 12 F.4th 1084, 1102 (9th Cir. 2021).

6. Mr. Kissner has presented to the state court in 2008 documents which showed that he was at a different place than the scene of the crime. That he could not have committed the crime. The Trial court Judge Lostracco order an evidentiary hearing on August 15, 2008 to be held on Oct. 6, 2008 That is 15 years old today. "BUT" failed to notice that it didn't ~~show~~ send "notification to Mr. Kissner; failed to appoint counsel pursuant to Mich. Ct. R 6.505(A); failed to have trial or appellate counsel's for questioning; failed to allow Mr. Kissner to have witnesses for questioning; and 'CALLED MR. KISSNER OVER TELEPHONE' to hear his claims".

Thus, this was a "defective evidentiary hearing" and violated

Equal Protection of Court Rules to Mr. Kissner when all courts failed to apply Mich. Ct. R 6.505(A) to his case or remand it back for a new evidentiary hearing. see APPENDIX-B.

7. Mr. Kissner has requested help from a number of people, Petition's for extraordinary writs, writ for Superintending Control. see EXHIBITS-APPENDIXS-I through to Y. EXHIBITS-APPENDIXS-A through to Y may be highlighted.

8. I am factually - Actually innocent of this crime, I have been trying

to show this for years now. I have been denied proper court proceedings, defective evidentiary hearings, ineffective counsels, bias judges who have failed to hold proper hearings and call witnesses. "An investigation into an 'Arson of a State Police Post conducted by the state' Police out of that Post."

Affidavits and other people says that the detectives demanded them to say that I committed the crime. Testimony leaving out the Dirty cop in the Post, "AND DON'T FORGET I WAS

AT A DOCTOR'S APPOINTMENT
FOR MY MENTAL HEALTH
TREATMENT IN EAST LANSING
AT 8:00AM SO HOW DID I
START THE FIRE AT 7:45 AM
IN OWOSSO, MI?"

Mr. Kissner lived at 1753 S. Leland
Rd, The state Police building was at
Benington Rd, The Doctor's appointment
was in East Lansing Dr. Mike B. Vanderwell.
Mr. Kissner could not drive! Jeff L.
Space or Faythe E. Space would drive
me around.

9. "NO ONE" placed me at the scene
of the crime! "NO EVIDENCE" placed
me at the scene! Defense counsel

Douglas E. Corwin, Jr, Presented at trial "false day Alibi", failed "SCAN" and Questioned a witness as to her being sexually assaulted by Mr. Kissner, however, NO charge was ~~ever~~ ever made!

10. The following has done everything they can to keep anyone from hearing the truth. Judge Lostracco, Det/Sgt Mark Pendergraft, Det/Sgt Steve Harshberger, Det/Sgt Tim Coolidge, defense counsel Douglas E. Corwin, Appellate Counsel Gall Rodwin, and Judge Mark A. Goldsmith.

"NO ONE WANTS THE TRUTH OUT!"

Sgt. Gregory Proudfoot, Sgt. Lenny Jaskulka.

WHEREFORE, Donald L. Kissner,
Petitioner, In Prose, Respectfully
Request that this Honorable
Court Rehear it's denial of
Oct. 2, 2023 As he is actually-
factually innocent.

Date.
10-10-2023

Respectfully submitted

Donald L. Kissner #383562
Petitioner In Prose
Macomb Corr / Fac
34625-26-Miller Rd
Lenox Twp. MI 48048

**Additional material
from this filing is
available in the
Clerk's Office.**