No. 22-7641

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CARL DEAN WYATT JR.,----- PETITIONER

vs.

SCOTT CROW ----- RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

-

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARL DEAN WYATT JR.,

DAVIS CORRECTIONAL FACILITY

6888 E. 133rd Road

Holdenville, Oklahoma 74848

N/A

(Phone Number)

QUESTION(s) PRESENTED

#1. Is it proper for the prosecution to withhold the fact that a deal has been made with the witness for their testimony against a defendant.

(PROPOSITION IV) SEE EXHIBIT A

#2. Why wasn't relief granted to Petitioner after the DNA results were released by the OSBI? (**SEE DNA TESTING RESULTS FROM SENIOR CRIMINALIST ANTJE STAMBAUGH AT THE OSBI)**

#3. Was it a denial of due process and a denial of fundamental right to prove actual innocence when Judicial Order was ignored that would have provided further evidence that Petitioner is in fact actually innocent of any crime claimed by the State. (**SEE JUDGE JONES DNA TESTING ORDER EXHIBIT C)**

#4. Would it be considered ineffective assistance of counsel that Petitioner's Appellate Counsel failed to file a Motion To Compel the State to have the co-defendants tested? Compelling the State to follow the order issued by the original Judge who ordered DNA Testing.

#5. Was it error for the Oklahoma Court of Appeals to not follow, or enforce the law under the 2013 Post-Conviction DNA Act?

#6. Petitioner's trial counsel Wayne M. Fournerat has been disbarred from the practice of law in the state of Oklahoma. Due to it was clear (according to Judge Twyla Gray) that Fournerat did not know the law. Petitioner went on trial four weeks before Glossip. How could he know the law in Petitioner's case and not know the law in Glossip?

22 § 1373.5. Powers of Court When Testing Results are Favorable to Petitioner - Orders When Results Are Favorable

A. **If the results of the forensic DNA testing** conducted under the provisions of this act **are favorable to the petitioner,** the **court shall schedule a hearing to determine the appropriate relief to be granted.** Based on the results of the testing and any other evidence presented at the hearing, **the court shall thereafter enter any order** that serves the interests of justice including, but **not limited to, any of the following:**

1. An order setting aside or vacating the judgment of conviction, judgment of not guilty by reason of mental disease or defect or adjudication of delinquency;

2. **An order granting the petitioner a new trial or fact-finding hearing;**

3. **An order granting the petitioner a new commitment hearing or dispositional hearing;**

4. **An order discharging the petitioner from custody;**

5. An order specifying the disposition of any evidence that remains after the completion of the testing;

6. An order granting the petitioner additional discovery on matters related to the DNA test results on the conviction or sentence under scrutiny including, but not limited to, documents pertaining to the original criminal investigation or the identities of other suspects; or

7. **An order directing the state to place any unidentified DNA profile or profiles obtained from post conviction DNA testing into Oklahoma or federal databases as allowed within applicable state and federal laws.**

On January 13, 2017 Petitioner filed a Post Conviction under the 2013 Post Conviction DNA Act. The Honorable Judge Glenn Jones appointed Petitioner counsel tentatively and ordered A Hearing For The Motion For DNA Testing filed by Petitioner on November 17, 2017. The Hearing was held January 29, 2018. The court found sufficient reason to Order DNA Testing over the objection of the State of Oklahoma. Judge Jones

found a reasonable probability that Petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution. 22 § 1373.4. On January 29, 2018 during the DNA Hearing the trial Judge asked questions of the State before issuing his ruling on whether to grant DNA testing.

1. Judge Jones: Does the State have an eye witnesses that can place the defendant at the scene?

2. The State of Oklahoma: Yes.

3. Judge Jones: Who?

4. The State of Oklahoma: McClendon.

5. Judge Jones: Besides McClendon the guy who was picked out of line up as the perpetrator.

6. The State of Oklahoma: No.

7. The State of Oklahoma: Catherine Fortune stated she heard the Petitioner's voice.

8. Judge Jones: Yeah but eight times she said she didn't recognize the voice and didn't think he did it. I can't disregard the eight times she said she didn't hear his voice and just go with the one time she stated she did.

9. Judge Jones: Does the State have any physical evidence?

10. The State of Oklahoma: No.

11. Judge Jones: Does the State have a weapon that connects the defendant?

12. The State of Oklahoma: No.

The State revealed that it did not have any evidence that connects, or otherwise

implicates Petitioner being involved in this crime. Petitioner attorney told Petitioner that the Judge wanted more than an uncorroborated claim/accusation of guilty from the trial prosecutor, Robert Bradly Miller, who this court knows very well. See, *Douglas v. Workman*, 560 F.3d 1156 (10th Cir. 2009).

The Judge was also aware that Petitioner's trial counsel had previously filed a motion to have the items tested, the motion was granted, but the State did not submit the so called evidence it had in it's possession for testing. Petitioner would contend that this was due to the fact that the prosecution knew full well that the so called evidence would exclude Petitioner beyond any reasonable doubt standard if it was revealed to a jury. *Shlup v. Delo*, **513 US 298, 130 L Ed 2d 808, 115 SCT 851 (1995).**

#8. What if Petitioner would have had adequate trial counsel? Petitioner's trial counsel has been disbarred and can't even practice law in the State of Oklahoma.

LIST OF PARTIES

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

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

RELATED CASES

GLOSSIP v. STATE OF OKLAHOMA 2001 OKLA.CRIM.APP LEXIS 22,2001 OK CR 21 72

OKLA. B.J. 2146, 29 P3D.597 (2001)

DOUGLAS v. WORKMAN 560 F.3d 1156 (10 th Cir. 2009)

POWELL v. WORKMAN

NAPUE v. ILLINOIS ,360 U.S.264, 79 S.Ct. 1173, 3 L Ed.2d 1217 (1959)

UNITED STATES v. BAGLEY, 473 U.S. 667,105 S.Ct. 3375,87 L.Ed.2d 481 (1985)

BRADY v. MARYLAND, 373 U.S. 83, 83 S. Ct. 1194,10 L.E.d 2d 215 (1963)

STRICKLAND v. WASHINGTON, 466 U.S. 668, 687,104 S.Ct. 2052,2064, 80 L.Ed. 2D 674 (1984)

UNITED STATES v. CRONIC 104 S.C.t.2039

GIGLIO v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

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STATEMENT OF THE CASE

On January 13,2017 Petitioner filed his fourth Post-Conviction. Motion for DNA testing, Motion for Evidentiary Hearing,Post-Conviction Application and Brief In Support under The 2013 Post-Conviction DNA Act §1373.2-1373.5. In November 2017, The Honorable Judge Glenn Jones appointed Petitioner counsel tentatively and set a January 29,2018 DNA Hearing. At the DNA Hearing over the objection of the State Judge Glenn Jones ordered DNA testing. The order read: Shall a profile be developed test all three co-defendants. Petitioner was tested only. On February 4, 2019 The Oklahoma State Bureau of Investigations (OSBI) released their DNA report stating that none Petitioner's DNA was found in the stocking cap or the bandanna. The DNA found under the victims fingernails was that of an unidentified males DNA. Once this information (the exclusion of Petitioner's DNA) was known by the State. The District Attoney's Office decided to defy Judge Jones DNA Testing Order and never test the remaining co-defendants. Five and One Half years later the remaining co-defendants remain untested. Petitioner swore if DNA testing was conducted, none of Petitioner's DNA would be in none of the States evidence. Once the DNA test was completed, as Petitioner proclaimed in the courtroom on January 29,2017. None of Petitioner's DNA was in any of the State's evidence. Petitioner refused to take plea deal all the years later. Due to he is

Actually and Factually Innocent.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL PROPOSITION I

Petitioner received ineffective assistance of appellate counsel, when appellate counsel refused to call a single witness at an Evidentiary Hearing granted by the trial court. When Petitioner originally filed his MOTION FOR DNA TESTING/ MOTION FOR EVIDENTIARY HEARING. Petitioner stated if the Trial Court would grant Petitioner an Evidentiary Hearing, Petitioner would call the witnesses that should have been called at trial. Thus, allowing Petitioner to prove his innocence. The trial Court granted Petitioner's Motion for An Evidentiary Hearing. However, Petitioner's Appellate Counsel refused to call a single witness that Petitioner wanted to call. Petitioner wrote the trial court notifying the trial court of Petitioner's disappointment with counsels representation before the Evidentiary Hearing. Due to, Appellate Counsel had stated there was no need to call witnesses due to they can't get passed the DNA not matching. Petitioner stated he understood that. However, he had witnesses that he wanted to call anyway.Appellate Counsel refused to even speak with a single witness that could have proven that Petitioner did not commit this crime. Simply stating: **"Your DNA doesn't match, they can't get passed that."** Petitioner refused to accept this lazy theory by Appellate Counsel. But went on the record at a Hearing For Re-Appointment of Counsel and addressed the court regarding his lack of representation by appellate counsel. This

Assistance of Appellate Counsel.

Appellate Counsel refused to even mention the stocking cap or the bandanna that did not contain any of Petitioner's DNA . Even though Petitioner instructed Counsel to do so. After the OCCA'S statement regarding the Court knowing that a number of things were sent to be tested, However all they had before them was the evidence regarding the fingernails. Petitioner immediately contacted Appellate Counsel and stated: I asked you to point out that none of my DNA was found in the stocking cap or the bandanna. But you refused. Now look. Appellate Counsel's only reply was: " I just thought that your exclusion from the fingernails was good enough." Appellate Counsel also thought that it would be a good idea not to call a single witness at an Evidentiary Hearing and ask the ADA to waive Oral Argument although the Judge had ordered Oral Argument. Petitioner truly received Ineffective Assistance of Appellate Counsel. Due to the conflict that existed between Appellate Counsel and Petitioner. Petitioner put these issues on the record on April 8, 2021 at the Re-Appointment of Counsel Motion Hearing where Petitioner went on the record and showed the Court proof of multiple lies Petitioner had caught Counsel in. An Petitioner made it perfectly clear that Petitioner wanted to call witnesses that would prove his witnesses. However, Counsel had refused to talk to a single witness. Appellate Counsel worked to keep Petitioner in prison. Due to Counsel was angry that Petitioner had fired Counsels

best friend. A lady Appellate Counsel stated she didn't really even know. And became angry at Petitioner for referring to his former counsel as her colleague. However, on a three-way call to the Innocence Project with Petitioner's brother, Petitioner was told that the Project couldn't speak with Petitioner due to he had counsel. But if Petitioner didn't mind, Who is your counsel? Petitioner replied Marva A. Banks. The Innocence Project replied: "What I can tell you is, our Clinical Professor here and Marva are BFF'S, they are like sister's, I mean very best of friends!" Petitioner thanked the lady at The Innocence Project and Immediately called his attorney and confronted her with the new information that Petitioner had regarding the multiple lies Counsel had told him. Appellate Counsel stated: **" I CAN STILL BE PROFESSIONAL."** Petitioner replied if you were being professional you would have been honest from the beginning. Now I know why your always angry and short with me. Petitioner went on record on April 8, 2021 at the Re-Appointment of Counsel Hearing and explained to the Court Petitioner's issues with Counsel. Petitioner was told to represent himself or keep counsel. Petitioner is not an attorney. Petitioner can read and write yes. But Petitioner is not an attorney. Therefore, Petitioner was forced to keep counsel.

PROPOSITION II
INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL COUNSEL ALLOWED THE STATE OF OKLAHOMA TO DEFY THE HONORABLE GLENN JONES DNA TESTING ORDER AND NOT HAVE THE CO-DEFENDANTS TETSED WHEN THE ORDER INSTRUCTED THE STATE OF OKLAHOMA TO TEST PETITIONER AND BOTH CO-DEFENDANTS SHOULD A DNA PROFILE BE OBTAINEDA DNA PROFILE WAS OBTAINED AND COUNSEL REFUSED TO HAVE EITHER CO-DEFENDANT TESTED ALTHOUGH PETITIONER BEGGED HER TO TEST BOTH CO-DEFENDANTS AS THE ORDER INSTRUCTED THE STATE OF OKLAHOMA TO DO

On January 29, 2018 a DNA Hearing was held in the chambers of The Honorable Judge Glenn Jones. At the conclusion of the Hearing Judge Jones ordered that DNA Testing be performed and that Petitioner be tested if a DNA profile could be developed. If Petitioner was excluded from the profile test the the co-defendants. On February 4, 2019 The (OSBI) Oklahoma State Bureau of Investigations released their report by Senior Criminalist Antje Stambaugh. Ms. Stambaugh did not find any of Petitioner's DNA in any of the State's evidence. Including the stocking cap and bandanna the State contended that Petitioner wore during the trial. However, an unidentified male's DNA was found on the victims fingernails. Senior Criminalist Antje Stambaugh compared the male profile that she found.

Appellate Counsel had acted and had the co-defendants tested for the DNA profile that was left behind and found twenty two years later. Petitioner has no doubt that he would have been exonerated. **See District Court Order filed February 2, 2018. A major theory for the State's case was that Mr. Franklin fought with the assailant. The new exclusion evidence undermines McClendon's entire testimony, and it places serious questions into the entire case that it was Petitioner who fought with the victim and shot Mr. Franklin. Once the DNA results were released the State attempted to change their theory that Petitioner was a mere participant. Instead, the State repeatedly told the jury that Petitioner was the shooter. (Tr.1052,155,1069-1070,1077)** Strickland v. Washington 104 S. CT. 2052,80 L.Ed 2d 674, 466 US 668 By Appellate Counsel allowing the State of Oklahoma to defy Judge Jones order, it was clearly prejudicial to Petitioner and meets both prongs of Strickland. The State of Oklahoma also knew this. This is the reason why the State of Oklahoma defied Judge Jones order of testing the remaining co-defendants once Petitioner was excluded. In all actuality according to the order, once the State knew that a DNA profile was obtained the State of Oklahoma was ordered to send all three samples to the OSBI. (**SEE JUDGE JONES ORDER EXHIBIT A)**The State of Oklahoma told the jury that Petitioner wore a bandanna over his face and a stocking cap on his head as a disguise. Had a violent struggle with the victim

before eventually shooting the victim. The State is committing *Brady/Giglio/Napue violations.* By continuing to defy the Court Order. It is the State of Oklahoma depriving Petitioner of his 14th Amendment rights. Petitioner has always maintained since the day that Petitioner surrendered himself to authorities that he was Actually and Factually Innocent. When Petitioner knew that the State of Oklahoma would contend that Petitioner wore these items that the State of Oklahoma had in their possession Petitioner requested that DNA Testing be conducted in 1997.On March 26, 1998 before the start of Petitioner's trial, The Honorable Daniel Jones granted the MOTION TO HAVE THE EVIDENCE TESTED. However, trial counsel Wayne M. Fournerat mislead Petitioner and stated that the Judge denied the motion. Therefore, the items would not be tested. Petitioner did not find out until 2018 that the trial judge actually granted the motion to have the items tested. Trial counsel just did not have any of the items that the State of Oklahoma would use at trial and contend that Petitioner wore tested. Trial counsel was ultimately disbarred from the practice of law in the State of Oklahoma. **DUE TO HE DID NOT KNOW THE LAW. See GLOSSIP V. STATE 2001 OKLA CRIM. APP. CR21, 72OKLA. 2146,29 P3d.597(2001).** However, the State of Oklahoma is willing to allow this conviction to stand. The State of Oklahoma knows that Petitioner did not have a fair trial. The DNA Evidence has now excluded Petitioner and Petitioner has documented proof that

the witnesses perjured themselves at the direction of corrupt former Assistant District Attorney Brad Miller. Who had also had his law license stripped away for six months being unethical and his actions in the Powell and Douglas cases. Former ADA David Prater sent a message through counsel at an July 2019 meeting with Petitioner's then counsel that Petitioner can take the deal that was offered or stay in prison. On June1, 2020 at a Status Conference Hearing, The State of Oklahoma went on the record after stalling and going mute for over Four Hundred days and offered Petitioner a plea deal formerly. If Petitioner would plead guilty The State of Oklahoma would modify Petitioner's sentence from: LIFE WITHOUT PAROLE AND 60 YRS C/S. TO LIFE WITH PAROLE AND SUSPEND THE 60 YEAR SENTENCE AND THE STATE WOULD NOT OBJECT TO PAROLE. Petitioner rejected this plea deal also. Due to Petitioner is Actually and Factually Innocent. Petitioner respectfully ask this court to consider these facts: Had the jury had known that the victim had another mans DNA under his fingernails after having a *violent scuffle* as the State refers to it with the true killer, but the Petitioner is excluded and the State has refused to test the man that was picked out of a line up and identified as the man State's witness Catherine Fortune saw, the jury would have acquitted Petitioner. It was clear deficient performance for appellate Counsel to show up to an Evidentiary Hearing and not mention the fact that the State of Oklahoma was defying a court order and had failed to have the co-

defendants tested. Even when the actual tester of the evidence was before Appellate Counsel on the stand at the Evidentiary Hearing testifying that had she'd been given the samples of the co-defendants, she could have compared it to the samples that she had from the victims fingernails. Appellate Counsel could have raised this issue to the Judge or requested a continuance until the co-defendants had been tested. Petitioner swore in his original **MOTION FOR DNA TESTING** that if the Court granted his motion and tested the items none of Petitioner's DNA would not be in any of the State's evidence. And as Petitioner has maintained, none of Petitioner's DNA was found in any of the State's evidence. This Court should know that Petitioner originally only requested that the stocking cap and bandanna be tested since those are the items the State contends Petitioner wore. While sitting at the DNA Hearing Petitioner had noticed that the Medical Examiner had clipped the victims fingernails. During most struggles that are violent struggles as the State contends occurred here. The victim scratches the perpetrator. Therefore, Petitioner asked his appointed counsel to request that the victims fingernails be tested. Counsel stated it was too late for all that. We're just dealing with the stocking cap and bandanna today. Petitioner then requested that counsel just ask the Judge, all he can say is no. However, Judge Jones thought that it was a great idea an agreed. The State then replied: How about we just test everything?! Judge Jones then replied: You can test something too if its relevant. Judge Jones then offered the

State an opportunity to test any evidence if the State wanted to test anything. The State declined to test anything. This Court should know that Petitioner went above and beyond to prove that Petitioner is **ACTUALLY AND FACTUALLY INNOCENT!** Now Petitioner is requesting fair and competent counsel be given to Petitioner so that Petitioner can prove his innocence by the testing of the New York Yankees Baseball cap. The newly elected District Attorney ran on being honest and transparent with the public and not like the previous District Attorney David Prater. Former D.A. David Prater defied The 2013 DNA Post Conviction Act.

22 § 1373.5. Powers of Court When Testing Results are Favorable to Petitioner - Orders When Results Unfavorable

A. **If the results of the forensic DNA testing** conducted under the provisions of this act **are favorable to the petitioner,** the **court shall schedule a hearing to determine the appropriate relief to be granted.** Based on the results of the testing and any other evidence presented at the hearing, **the court shall thereafter enter any order** that serves the interests of justice including, but **not limited to, any of the following:**

1. An order setting aside or vacating the judgment of conviction, judgment of not guilty by reason of mental disease or defect or adjudication of delinquency;

2. **An order granting the petitioner a new trial or fact-finding hearing;**
3. **An order granting the petitioner a new commitment hearing or dispositional hearing;**

4. **An order discharging the petitioner from custody;**

5. An order specifying the disposition of any evidence that remains after the completion of the testing;
6. An order granting the petitioner additional discovery on matters related to the DNA test results on the conviction or sentence under scrutiny

On January 29, 2018 The Honorable Glenn Jones ordered DNA Testing over the objection of the State of Oklahoma. The order read as follows: "Should a profile be obtained with respect to any of the items listed above, OSBI shall compare DNA profile to the DNA profile obtained from the existing known biological samples from each of the following individuals: a. Carl Dean Wyatt, Jr., DOB 7/27/78, DOC # 213750

b. Dwayne Eric Ackerson, DOB 7/14/78. DOC # 271731

C. Marcus McClendon, DOB 5/4/75, DOC # 216214"

No reference sample is currently available for Marcus McClendon. A Reference sample may be obtained at a later time should an unknown profile be developed.

The State of Oklahoma was present at this DNA Hearing and the state of Oklahoma undoubtedly received a copy of the DNA Order that stated if a profile was developed test the co-defendants. Petitioner was excluded from the DNA profile from the victims fingernails. The State even attempted to change their entire theory concerning Petitioner after the DNA results. A major theory for the State's case was that the victim fought with his assailant. The new exclusion DNA evidence undermines Mr. McClendon's entire testimony, and it places serious doubt on the State's theory that Petitioner kicked in the door to Ms. Fortune's home and fought with the victim then shot him. The State did not argue at trial that Petitioner was a mere principal participant as the State begin to do once the DNA results were released. Instead the State of Oklahoma repeatedly told the jury that Petitioner had a violent struggle with the victim and left covered in the victims blood after shooting the victim. (Tr. 1052, 155, 1069-1070,1077) During the closing arguments, the State reiterated the importance of the scuffle. (tr.447-448) However, DNA Report

Petitioner to commit this crime according to the State's theory.

Conclusion

Petitioner came and turned himself in to The Honorable Judge Virgil Black's Chamber's. Due to Petitioner is Actually And Factually Innocent of this crime. Petitioner's trial counsel is disbarred from practicing law in The State Of Oklahoma. And several cases were reversed before Wayne M. Fournerat's disbarment due to his ineffectiveness. As stated previously, Petitioner was not saying reverse Petitioner's case because all of the other cases that were reversed. But simply compare the cases that were reversed by the Courts to Petitioner's. Due to Wayne M. Fournerat's ineffectiveness. Petitioner request that this Court just consider the letter Fournerat wrote to Petitioner that Petitioner read onto the record after Petitioner stopped his trial because Petitioner knew Fournerat was working with the State to get Petitioner convicted. Consider when Petitioner was taken through the Judges Chamber's due to construction in front of the courthouse and the conversation Petitioner walked in on between Fournerat and The Trial Judge Daniel L. Owens. Where Judge Owens is scolding Fournerat for writing the letter that Petitioner had stopped his trial and read onto the record. Judge Owens stating "Never in a million years should you had wrote that letter." The conversation stopped when Petitioner was seen and looked at Fournerat and asked, "Your really selling me out aren't you?" It is telling that The Wisconsin Law Review wrote an article concerning Wayne M. Fournerat's inability to represent his clients. Also accused him of being amazingly inept. In which Fournerat agreed. He only took issue with the part of the article about him ripping off death row inmates families.(Copy of the article is attached See Exhibit N) Then why wouldn't Petitioner's case be considered by this Court and reviewed for ineffective assistance of trial counsel? Twenty two years later Petitioner was excluded from the

DNA profile. Had Fournerat had tested the items before trial as Petitioner requested he do, the Trial Court had granted the Motion For DNA Testing. All Fournerat had to do is have the items tested. If Fournerat would have completed the DNA Testing, Petitioner would have never been convicted. Petitioner had also **corrupt former ADA Brad Miller.** As the prosecutor on his case. This totally unethical prosecutor was also disbarred from the practice of law for 180 days for his actions in the Paris Powell and Yancy Douglas cases. The Justices in the Oklahoma Supreme Court in the minority felt Miller should be disbarred for life. The 10th Cir ruled Miller posed a threat to the entire judicial system. All the things Miller did in those cases, He did the same in Petitioner's case. Former ADA Brad Miller had a method of operation. Win at all cost. Justice is not important. Lie and put on perjured testimony if you need to. Petitioner has never stopped fighting for his freedom or maintaining he is Actually And Factual Innocence of this crime. Even requesting that DNA Testing be done. Declaring in open Court " When the DNA results come back, none of my DNA will be in any of their evidence." Thirteen months later the DNA results were back. And as Petitioner declared, none of his DNA could be found in any of the State's evidence. The State has offered Petitioner Plea Deals since the DNA results were released. **WHY?** Petitioner cannot bring himself to plead guilty to something he did not do! Why is the Oklahoma County D.A.'S Office calling The Department Of Corrections asking for a time audit of Petitioner's sentence??? (See Exhibit C letter to Petitioner where Appellate Counsel is stating Counsel was waiting for a disc from the State regarding time audit of Petitioner's sentence) Petitioner has rejected every deal that would have freed Petitioner. Due to Petitioner **Is Not Guilty!!!** Based upon the newly discovered exculpatory DNA evidence, **This Court should GRANT Petitioner a new trial or at the very least order a new Evidentiary Hearing and appoint effective counsel and allow Petitioner to cross examine**

witnesses who gave obvious inconsistent statements. Then allow Petitioner to call those witnesses that are favorable to Petitioner. In closing, why want the State of Oklahoma go and test McClendon and Ackerson? They are defying Judge Jones order!!! What part of if a profile is developed test Petitioner, If Petitioner is excluded test Ackerson and McClendon does the State of Oklahoma not understand? What evidence does this Court have that can even place Petitioner at this scene? Catherine Fortune? Petitioner addresses that perjured testimony in his original brief. And shows beyond a doubt that Catherine Fortune is blatantly lying. McClendon? The man that told multiple lies over and over again. Was let out and fled to New Jersey and had to be coerced back. (SEE PRELIMINARY HEARING TRANSCRIPT PAGE 74 LINES 21-25)

LINE 21 Mr. Ehler's: And the reason – Judge, I'll be right up front. The reason I believe we're going to call Ackerson is I believe that he's going to say that Marcus McClendon is the shooter. Saundra Gaddis already testified that the man in the plaid shirt with the baseball cap was the

(SEE PAGE 75 LINES 1-2)

LINE 1: Was the one with the gun, and I anticipate calling Mr. Ackerson with respect to that. Ackerson was willing to testify for Petitioner and state it was McClendon and not Petitioner and trial counsel nor Appellate Counsel never placed Ackerson on the stand at trial or the Evidentiary Hearing. This is a **FRAUDULENT** and unjust conviction! Everyone who has ever looked at the case knows it. The ADA on the case has spent time disbarred for unethical conduct. Petitioner's trial counsel is still disbarred. Judge Gray ruled in her opinion in Glossip that trial counsel did not know the law. As Petitioner stated previously, if he did not know the law in Glossip, How could he had known the law in Petitioner's case when Petitioner went on trial four weeks prior to the original Glossip trial? Did trial counsel know the law in Petitioner's case and forget it four weeks later leading up to Glosssip? Glossip was reversed due to the actions or lack thereof of his

order DNA testing only if the court finds: 1. A reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution. The Honorable Glenn Jones listened to the State of Oklahoma make their arguments and found that it was a reasonable probability that Petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution. On January 29, 2018 at the DNA Hearing, the trial Judge asked questions of the State of Oklahoma before ruling on whether to grant DNA testing.

#1. Judge Jones: Does the State have any eye witnesses that can place the defendant at the scene?

#2The State of Oklahoma: Yes.

#3Judge Jones: Who?

#4The State of Oklahoma: McClendon.

#5Judge Jones: Besides McClendon the guy who was picked out of line up as the perpetrator.

#6The State of Oklahoma: No.

The State of Oklahoma: Catherine Fortune stated she heard the Petitioner's voice.

Judge Jones: Yeah but eight times she said she didn't and didn't think he did it. I can't disregard the eight times she said she didn't hear his voice and just go with the one time she stated she did.

Judge Jones: Does the State have any physical evidence?

The State of Oklahoma: No.

Judge Jones: Does the State have a weapon that connects the defendant?

The State of Oklahoma: No.

These were the questions asked by the trial Court at the DNA Hearing.

The State of Oklahoma has absolutely no evidence that connects Petitioner to this crime. Judge

ignored the argument altogether. Petitioner pointed this out to the Trial Court in Petitioner's Reply To The State's Response. Where Petitioner state's to the Trial Court the State doesn't even address it because they can't. What is telling, is that the State didn't even address it in Petitioner's brief. But waited to see how the Trial Court would rule concerning the DNA Hearing. Once the Trial Court ruled that DNA testing would be done over the objection of the State, and Petitioner continued to ask what happened to McClendon? The State was told either they can turn it over or we'll file a motion and the Court will instruct the State to turn it over. It was only then that the State relented and turned over the D.A.'S notes regarding the true nature of McClendon's deal with the State. Petitioner prays this Court will ask Why did the State not even address Petitioner's claim of newly discovered evidence in Petitioner's brief and Petitioner's Reply To The State's Response. But the State felt the need to turn over the evidence (D.A.'S Notes) after the 2018 DNA Hearing. But didn't turn it over in 2001, 2003, 2005, 2007, (When I was in the Western District Court alleging the very violation but had no documented proof until now) 2011, 2017 only after it was raised once more during the DNA Hearing and Judge Jones didn't know what happened to McClendon either, that is when the D.A.'S Office finally came clean. (See letter from Petitioner's attorney discussing what the ADA stated to her after the DNA Hearing) In the D.A.'S notes dated January 20, 2000 the ADA writes she has no idea what to do with this (defendant) unclear as to Brad Miller's last rec.

See May 24, 2000 Brad Miller changed his rec to zero prison time for McClendon .

Petitioner filed a grievance to the Oklahoma Bar Association on Brad Miller . The grievance was filed in regards to his (Miller's) lying and misleading the jury about the deal he had made with McClendon. Former ADA Brad Miller was instructed to respond. Miller responded feigning ignorance. Simply stating I had left the D.A.'S Office nine months after Wyatt's case. And the

Courts had ruled the plea agreements were lawful. That is correct. This very Court did rule the deals were lawful. That's only because this Court did not know the true nature behind the deal. Nor did Petitioner. The State concedes there was no way Petitioner could have raised this issue on his first two appeals. Due to McClendon was not even sentenced until after the first two appeals had already been affirmed. However, through due diligence Petitioner could have found out about the true nature of the deal even though we were lying (Committing Brady/Napue/Giglio violations every step of the way) to Petitioner and the Court every time Petitioner raised it on appeal. And had no intentions of ever turning over this information until prompted by Judge Jones at The DNA Hearing. (Emphasis Added) The ADA would like to disregard that the 10th Cir has already ruled this type of misconduct by this same former ADA is unlawful. In Powell v. Workman and Douglas v. Workman the same ADA prosecuted all three cases and committed the same violations in all three cases. The Oklahoma county D.A.'S Office asserted Miller's actions were lawful. The 10th Circuit disagreed. It should also be noted that all three cases were in close proximity of each other. Miller feigned ignorance to The Bar Association concerning why McClendon had yet to serve the prison time he told the jury McClendon would serve. Only stating I left the D.A.'S Office shortly after Wyatt's trial. Once the D.A.'S Office released the D.A.'S notes, we see that Miller's fingerprints were all over this illegal deal. From Miller's calling the D.A.'S Office to Miller calling the Sentencing Judge to make sure McClendon didn't serve the sentence he told the jury that McClendon would serve immediately following the disposition of Petitioner's trial. Committing the same violation that he did in the Powell and Douglas cases with Derrick Smith. Clearly committing Brady and Napue violations. (See Miller's response to The Oklahoma Bar Association I) The 10th Cir has been clear. And previously ruled on Miller's actions. Miller has a long history of unethical violations. These

former ADA Brad Miller to make sure McClendon didn't serve no jail time. The entire time refusing to refund any of Petitioner's money he had given him the morning Petitioner had turned himself in. Following the 10th Cir Court of Appeals reversal in Douglas and Powell the Oklahoma Bar Association took action against Miller. Mr. Miller was suspended from the practice of law for 180 days for his concealing and misrepresenting a "deal" with Derrick Smith. A Napue Court held that due process is violated when the prosecutor allows false testimony to go uncorrected even if he did not solicit the testimony. In Petitioner's case, Miller was the perpetrator of the misrepresenting of the facts. The principle that a State may not knowingly use false evidence. ADA Jennifer Hensperger only turned over the D.A.'S notes regarding McClendon after Judge Jones wanted to know what happened to McClendon? ADA Hensperger had a duty to turn over this information years ago. After Petitioner was placed in the cell with Derrick Smith, Miller's key witness in the Powell and Douglas cases. Smith told Petitioner to look into the deals with McClendon. Derrick Smith confessed to Petitioner that he killed two people in Texas and told Brad Miller that if he didn't get me out of this, I would tell that I put them dudes (Powell and Douglas) on death row for you when I told you I didn't know if that was them. If he did that for me, he probably did the same thing for Marcus McClendon. Once the D.A.'S notes were released we see Brad Miller doing the exact same thing that Miller done in Powell in Douglas in Petitioner's case. Newly disclosed information about the plea agreement between Marcus McClendon and ASSISTANT DISTRICT ATTORNEY BRAD MILLER show that McClendon lied to the jury about the deal he was getting and the prosecutor let the lie go uncorrected in violation of the due process clause of the federal and state constitutions.

Following Judge Jones' DNA testing order, the State of Oklahoma disclosed information relevant to the third proposition in Petitioner's grounds raised. Petitioner raises the issue of prosecutorial

inculpatory evidence in light of the undisclosed evidence, there would not have been enough to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. One does not show a *Brady* claim is whether the evidence of his cooperation with the government prosecutor would have cast his testimony in such a different light that it undermines confidence in the verdict. Petitioner submits that it would have for several reasons. In *Weary v. Cain,*_ U.S._ , 136 S.Ct. 1002, 1006, 194 Led. 2D 78 (2016) the United States Supreme Court reiterated the long established test for materiality stating:

> To prevail on his *Brady* claim, Wearry need not show that he "more likely than not" would have been acquitted had the new evidence is sufficient to "undermine confidence in the verdict."

See also United States v. Bagley, 473 U.S 667, 105 S.Ct. 3375,87 L.Ed.2d 481 (1985) (holding that under *Brady v. Maryland* evidence that was withheld is material if there is reasonable probability had the evidence been disclosed to the defense the result of the proceeding would have been different.) In other words, Petitioner Wyatt does not have to prove by a preponderance of the evidence that the new evidence would have resulted in an acquittal, but rather that the new evidence undermines confidence in the outcome of the trial.

See also Youngblood v. West Virginia, 547 U.S. 867, 870, 126 S.Ct. 2188, 2190, 165 L.Ed. 2D 269 (2006).The facts of the *Brady* claim *in Wearry* are simular to the facts of this case. Wearry was convicted of first-degree murder. Initially, Wearry was implicated by a prison inmate named Sam Scott who, two years after the homicide, contacted the police claiming to have been friends with the decedent, claimed he had seen Wearry and some other men abduct, abuse and ultimately kill the decedent, and claimed to have overheard confession by Mr. Wearry. Following several different statements to law enforcement Scott testified against Wearry in a story that completely

differed from his original account. *Wearry,*___ U.S. At __, 136 S.Ct. At 1003.

The State's other key witness, Eric Brown, testified consistently with Scott's testimony that he had seen the decedent with Wearry and the others with someone who looked like the decedent. In opening statement the prosecution told the jury that Scott was serving time on an unrelated charge and that he "hasn't asked for a thing" for his testimony. *Id.* In closing, the prosecution told the jury that Brown had no deal on the table and was only testifying because the decedent's family "deserves to know." *Id.*

The Supreme Court found that *Brady* had been violated by the non-disclosure of three categories of evidence. First, the prosecution had not disclosed that multiple inmates had made statements that called into question witness Scott's testimony. Second,Brown had twice sought a deal to reduce his prison sentence and had been told by the police that they would speak to the DA "if he told the truth." Third, the prosecution had not turned over medical records of one of the alleged accomplices showing he would have been physically unable to do what Scott claimed to have seen him do in relation to the abduction of the decedent. *Id.* 1005-1006.

In addressing the *B*rady claim relating to the non-disclosure and misrepresentation of Brown's motivation to testify, the Court recognized that "...any juror who found Scott more credible in light of Brown's testimony might have thought differently had she had learned that Brown might have been motivated to come forward not by his sister's relationship to the victim's sister—as the prosecution had insisted in its closing argument---but the possibility of a reduced sentence on an existing conviction."*Id.* At 1007. The Court concluded that all of the undisclosed information could have resulted in a different outcome at trial stating. "Even if the jury-- armed with all this new evidence --- could have voted to convict Wearry, we have 'no confidence that it would have done so." Here, Marcus McClendon was the key witness for the State. Without him the State did

Grievance Filed to The Oklahoma Bar Association concerning defense witnesses Debra Guffin and Adaja Celestine) Appellate counsel Marva A. Banks knew of all of this The Court granted Petitioner's Motion For Evidentiary Hearing and wanted oral argument. Appellate counsel could've argued all of these issues. Ms. Banks asked the State to waive oral argument and let's just do written argument. This was ineffective assistance of counsel. Petitioner had a right to have witnesses called to prove his innocence. Petitioner is Actually and Factually Innocent of this crime. Adaja Celestine was readily available to testify and so was several other witnesses that were relevant to proving Petitioner's Actual Innocence claim. Appellate Counsel didn't call one witness and begged the State to not do oral argument. Petitioner noticed and so did Petitioner's family and friends who were present at the hearing that Ms. Banks has trouble speaking in open public settings. She appeared to not be prepared. The State agreed to not do oral argument. The ADA was due to have her baby within a couple weeks. Quoting ADA Jennifer Hensperger " My blood pressure is up and I'm having headaches. I really need to get to the doctor. That is fine with me." By counsel finding a way around not doing what the Trial Court had ordered, defrauded Petitioner of presenting his concrete evidence and refuting the State's case. The State could not get passed Petitioner's evidence. Counsel for Petitioner only stating "Your DNA has been excluded. There's no need for these witnesses."

PROPOSITION EIGHT
JUDICIAL ERROR ON BEHALF OF THE TRIALCOURT Conflict of Interest with Appellate Counsel Due Process Violation On Behalf Of Trial Court By Failure To Re-Appoint Counsel Once The Court Knew Beyond Doubt There Was a Conflict With Counsel.

Petitioner four months earlier attempted to have appellate Counsel removed as counsel for

Petitioner at a Hearing held on April 8, 2021. The Hearing was held due to Petitioner filed a Motion to the Trial Court For Re-Appointment of Counsel. Due to the conflict of interest that existed between counsel and Petitioner and her refusal to even speak with any witnesses. Petitioner told the Trial Court that Petitioner had witnesses that Petitioner wanted called for the upcoming Evidentiary Hearing on August 16, 2021. Petitioner further stated Petitioner did not just want to rely on the exclusion of the DNA from the victims fingernails. Petitioner also introduced evidence that counsel had been very deceptive with Petitioner. Petitioner also notified the Trial Court that Petitioner had two Pending grievances at The Oklahoma Bar Association on his Appellate Counsel. And Petitioner could no longer work with counsel. Counsel was caught lying to petitioner red handed. Petitioner's counsel Ms. Andrea Miller kept attempting to force Petitioner to plead guilty to the State's plea deal. Also allowing the State to stall until Judge Jones had retired. Then further allowing the State to stall until former Judge Kendra Coleman would be removed from the bench. Therefore, Petitioner stated to Ms. Miller that either you represent me or get off the case! I'm not guilty! I'm not pleading guilty! I wasn't there! Ms. Banks and Ms. Miller were and are best friends. Ms. Banks had gotten angry at Petitioner for referring to Ms. Miller as her colleague. Ms. Banks stated I really don't know her I have seen her around the office. She is not my colleague though. End oF Quote. Petitioner was later shocked to find out, while on a three-way call to The Oklahoma Innocence Project requesting extra help. Due to Ms. Banks was always complaining about her caseload and how petitioner's case might have to be pushed off to next year. The Innocence Project told Petitioner since he had counsel they couldn't speak with him. But was asked if you don't mind, Who is your counsel? Petitioner responded Marva A. Banks. The secretary then responded our Clinical Professor Ms. Miller and Marva are like best friends! They are sister's! They are BFF'S! They are besties! So, have Marva

to call us. At this time, Petitioner thanked her and immediately confronted Ms. Banks word for word with what the lady at the Innocence Project had told Petitioner. Also concerning Ms. Banks lying to Petitioner and stating she really didn't know Ms. Miller and had only saw her around the office a few times. Petitioner further stated now it all makes sense as to why you (Ms. Banks) was always angry with Petitioner. Once confronted with this information Appellate Counsel stated: "I can still be professional." Petitioner stated how is outright deceiving Petitioner being professional?Petitioner then stated if you were professional, you would have never had taken the case, or at the very onset you would have declared to Petitioner that your previous counsel and I are best friends. But you did not. Petitioner then stated that Petitioner firmly believes you are here to sabotage my case and your an agent for the D.A.'S Office. Nothing you are doing or have done, makes any sense or benefits Petitioner in anyway. Petitioner then alerted counsel that he would be filing a second grievance with The Oklahoma Bar Association due you lying to me for well over a year. Due to your deception we can no longer be productive. The Hearing was held on April 1, 2021 in front of Judge Richard Kirby. Petitioner was told to either hire counsel, represent himself or keep Ms. Banks. But Re-Appointed of Counsel would not be given. All of this information was brought out at the Hearing held on April 1, 2021 in front of Judge Richard Kirby. Appellate Counsel remained silent the entire time. Judge Kirby stated he was new to the bench. But he had talked to the other Judges in the Courthouse. Ms. Banks record had been verified to be great by all the other Judges in the Courthouse. The Trial Court never decided if there was a conflict of interest between Petitioner and Appellate Counsel. Her record with colleagues in the Courthouse was not the issue at hand. But rather, was there a conflict with Petitioner or not. This Trial Court never deliberated on whether there was a conflict between Petitioner and Counsel. The trial court rather asked other Judges what they thought of Appellate

Counsel. Never deciding on the issues Petitioner had raised.

#1 Did Appellate Counsel deceive Petitioner? Answer: Yes.

#2 Was there a conflict *of* interest with counsel being that her best friend had just been removed from Petitioner's case? Answer: Yes.

#3 Petitioner wanted to call witnesses at the Evidentiary Hearing and have former ADA Brad Miller cross examined on his lies. Counsel refused to do anything Petitioner requested her to do. Appellate Counsel knows that she can just say that she had a strategy and the Court would rule that attorney's have strategies. Counsel stated this to Petitioner. Finally, Petitioner asked Counsel, So, your strategy is to do absolutely nothing. Call no witnesses. When instructed by the Court to do oral argument, Just find a way around not doing it. That's called strategy. Petitioner also wanted Wayne Fournerat called to testify at the Evidentiary Hearing Trial Counsel for Appellant. Appellate Counsel refused to call him also. Due to the DNA clears you was her reason to do absolutely nothing each time Petitioner requested that witnesses be called. During the Evidentiary Hearing, Counsel asked Petitioner was there anything Petitioner could think of to ask Antje Stambough The OSBI DNA Analyst? Petitioner stated: Yes. Ask her Could she explain why Julius Jones DNA was found in a bandanna twenty years later that he state's he never possessed, But Petitioner's DNA was not found in any of the State's evidence twenty one years later? Appellate Counsel stated she was not going to ask her that.

Conclusion

Petitioner Is Actually And Factually Innocent Of This Crime! Petitioner received a call from his uncle who was a veteran Oklahoma City Police Officer. Petitioner's uncle stated that Petitioner had a warrant for murder. Petitioner explained to his uncle that he had not killed anyone. Petitioner's uncle told Petitioner to come and turn himself in. Petitioner went to the

Oklahoma County Jail to surrender himself and was told he did not have a warrant. Petitioner then went to the Oklahoma City Jail and was told likewise, "You don't have a warrant." At this time Petitioner called his uncle once more and stated to his uncle, I've been to both jails and they said I do not have a warrant. Petitioner's uncle assured him that he did. Its just not active until 8:30 a.m. At this time Petitioner went to his attorney's office and explained to counsel what his uncle had said. Petitioner's attorney advised Petitioner to just come to court with me and we'll sort it out. Inside of The Honorable Judge Virgil C. Black's courtroom Petitioner surrendered himself in the belief's that this misunderstanding would be worked out shortly. Petitioner has been incarcerated from that day. In late November 2016 Petitioner was told about The 2013 Post-Conviction DNA Act. How convicted people could challenge their convictions through DNA Testing if you were **Actually And Factually Innocent.** On January 13, 2017 Petitioner filed a Post-Conviction under 22 §1373.2-1373.5 The Post-Conviction DNA Act. In November of 2017 The Honorable Glenn Jones appointed Petitioner counsel tentatively and set a DNA Hearing for January 29, 2018. Over the objection of the State, Judge Jones granted DNA testing on the items that the State contends Petitioner wore. Petitioner declared in open court, that I guarantee that none of my DNA will be in any of that stuff! I guarantee it! Thirteen months later the results were back. Petitioner had been excluded from all the State's evidence. And an unidentified males DNA was found on the victims fingernails. The State of Oklahoma has continued to obstruct justice and defy Judge Jones order and not test the remaining co-defendants. Due to the State knows that Petitioner is **Actually And Factually Innocent.** By testing the other co-defendants this would prove **Petitioner is Actually And Factually Innocent.** These are the true guilty perpetrator's. The State of Oklahoma contended that Petitioner wore black stocking cap and a blue bandanna on his face and on his head. None of

Petitioner's DNA has been found in any of the State's evidence. Petitioner noticed that the Medical Examiner had clipped the victims fingernails.At January 29,2018 DNA Hearing Petitioner also asked the Judge to test the victims fingernails for Petitioner's DNA. Due to the State contends that it was a violent struggle between Petitioner and the victim. And Petitioner left covered in the victims blood. Petitioner had read that in majority of violent struggles the victim scracthes the perpetrator. Judge Jones agreed to have the victim's fingernails tested. From this test an unidentified males DNA was found on the victims fingernails. However, Petitioner has been excluded. Petitioner respectfully prays that this Court will vacate Petitioner's sentence and restore him back with his family or at the very least reverse and remand Petitioner's case for a new trial. The 2013 Post-Conviction DNA Act was passed due to all the people in Oklahoma who has been wrongly/falsely convicted. What if Petitioner would have had adequate trial counsel and the jury would have known that an unidentified males DNA was found under the victims fingnails and Petitioner was excluded?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: April, 2023