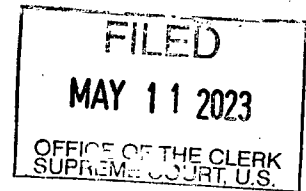


ORIGINAL

23-5146  
Case No: \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

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SANTOS ROSALES MARTINEZ,

Petitioner,

VS.

STATE OF IOWA,

Respondent.

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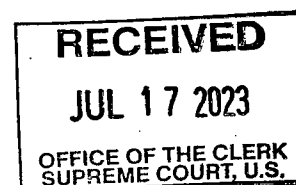
ON PETITION FOR WRIT OF CERTIORARI TO THE IOWA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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Santos Martinez Rosales  
P. O. Box 218  
Newton, IA. 50208

Petitioner, Pro Se



### QUESTION(S) PRESENTED

1. Whether the Iowa Courts have failed to properly adjudicate the Petitioner's actual innocence claims as currently explained in **Schlup v. Delo** 513 U.S. 298, 115 S.Ct. 851 (1995) and of which said innocence was recently made new Iowa Constitutional Rule of Law in **Schmidt v. State** 909 N.W.2d 778 (Iowa 2018) citing the Schlup test?
2. Has the Iowa Courts abused their discretion in not applying Iowa's new rule of actual innocence to the Petitioner's case after it was brought to the courts under the new Schmidt ruling?

### **LIST OF PARTIES**

☒ 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 those petition is as follows:

### **RELATED CASES**

NONE

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☐ For cases from the **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or  
☐ is unpublished.

☒ For cases from **state courts**

The opinion of the highest state court to review the merit appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_ [put the appeal case no; here] 21-1151; or,  
☐ has been designated for publication but is not yet reported; or  
☒ is unpublished.

The opinion of the \_\_\_\_\_ Iowa Court of Appeals court appears at Appendix A to the petition and is

☐ reported at 21-1151; or,  
☐ has been designated for publication but is not yet reported; or  
☐ is unpublished.

## JURISDICTION

☐ For cases **from federal courts**:

The date on which the United States Court of Appeals decide my case  
Was \_\_\_\_\_

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals  
on the following date: \_\_\_\_\_, and a copy of the order denying  
rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for writ of certiorari was granted to and  
including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in  
Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☒ For cases **from state courts**:

The date on which the highest state court decided my case was 2/27/23.

☐ A timely petition for rehearing was thereafter denied on the following date:  
[Procedendo unavailable at this date], and a copy of the order denying rehearing  
appears at Appendix A—when made available at a later date \_\_\_\_\_.

☐ An extension of time to file the petition for writ of certiorari was granted to  
And including N/A (date) on \_\_\_\_\_ (date) in Application  
No. \_\_\_\_\_.

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



### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment right to confront the witnesses against you. As the testimony would support this Petitioner's argument for relief under his actual innocence claim as the expert witness Dr. M. J. Jung had vital information to refute any sexual activity had happened.

The Fourteenth Amendment of due process of law as it applies to the State of Iowa when the Iowa courts and the Iowa prosecution in this case fail to recognize and invoke the right of the Plaintiff being heard on an actual innocence claim.

The due process of law under the Fourteenth Amendment as the Iowa Courts have made a new rule on actual innocence claims on Iowa convictions.

The Iowa courts have failed to properly adjudicate the Iowa Code 822 and specifically subsection 822.8 in not applying the new rule of actual innocence as recently decided in **Schmidt v. State** 909 N.W.2d 778 (Iowa 2018) as it is being deferred to only cases involving plea deals and not a jury trial issue.

## STATEMENT OF THE CASE

The petitioner filed for postconviction relief on his conviction raising the new rule of judicial review on an actual innocence case in Iowa on 8/28/18.

On 11/20/18 the Iowa District Court granted the State's motion to dismiss the postconviction action.

The Petitioner filed a timely motion for an appeal on the ruling to dismiss.

The Petitioner was successful on his first appeal and was granted a full hearing on the merits of his actual innocence claim on 5/13/2020. A copy of the Ruling appears at Appendix B

After a full hearing the district court denied relief and the petitioner appealed.

The Petitioner again appealed and was denied relief in the Iowa Court of Appeals and the Procedendo issued on

## REASONS FOR GRANTING THE PETITION

The Petitioner has continued to argue and advance the issue of his actual innocence in this case under the newly found rule on actual innocence in the Iowa Courts. This actual innocence is found in the case of **Schmidt v. State**, 909 N.W.2d 778 (Iowa 2018) which was decided after this conviction was found by a jury in 2002. Judgment and sentences was had in March 2002. The arguments that this Petitioner advances is that even though his trial was a trial by jury and Schmidt was done by a plea deal, the issues of an actual innocence are mirrored in these two cases as the United States Supreme Court has determined that anyone who can show their innocence has a narrow window of opportunity to do so, **House v. Bell**, 547 U.S. 518, 126 S.Ct. 2064 (2006), and **Schlup v. Delo**, 513 U.S. 298, 115 S.Ct. 851 (1995) as this Court determined that there was no passage of time that could lapse on a person who is actually innocent to be able to have his issues heard in the court.

The issues that now surround this Petitioner and his arguments is that the Iowa courts refuse to hear the issue which is not only an abuse of discretion but shows actual harm by the prosecuting

attorney in his case as the Plaintiff's due process of law under the Fourteenth Amendment is being denied him due to the misuse of judicial authority by the prosecutor and him side stepping the issue of an actual innocence claim by a person convicted by a jury trial and not by a plea offer. An abuse of discretion in the Iowa courts is when a ruling by the court is unreasonable or truly untenable, **Rowen v. LeMars Mutual Insurance Co.** 357 N.W.2d 579, 583 (Iowa 1984), and **State v. August** 589 N.W.2d 740 (Iowa 1999). The Iowa courts have held that an abuse of discretion can be had when the admission of evidence with no supporting testimony allows for the case to be overturned by the Iowa Supreme Court and remanded for proceedings consistent with this type of action, **State v. Price**, 692 N.W.2d 1 (Iowa 1995). This is the exact same scenario this Petitioner asks this court to review as the courts have refused to properly review this evidentiary issue in the proper light. The Eighth Circuit has said that an abuse of discretion is found for these same principles as advanced here, **United States v. Kalb**, 105 Ph.D. 426 (8<sup>th</sup> Cir. 1997).

This Petitioner has filed this third postconviction relief action in the courts after the new ruling came out in the Schmidt case on actual innocence. Since this ruling is a new rule of law within the Iowa courts, Iowa Code 822 has a subsection of 822.8 which states that the court can hear the action before if it presents a ground or fact that is a new ground or was inadequately raised as did the Iowa Court of Appeals did when the case was remanded for more hearings on 5/13/20. This Petitioner argues that a new rule of law is an issued that was not previously adjudicated or heard and since it was not brought at any prior actions in the Iowa courts, is supported by the language of 822 where it says; or an issue that has not been properly adjudicated or wrongfully ruled on can be brought in a separate and subsequent postconviction action. The denial of any proper hearing by the courts and the prosecutor's denial of the due process of law as it applies to Iowa Code 822 supports review by this Court for the reasons as stated.

With the testimony of the State's expert witness not being able to be cross-examined or put under any scrutiny or adversarial testing at trial, the denial of this expert being called to testify is a denial of the Sixth Amendment right to the confrontation of witnesses against you. This issue was held by this Court in **Pointer v. Texas**, where it was held that; "the Sixth Amendment right

to confront the witnesses against him, is likewise a fundamental right and is obligatory on the states by the Fourteenth Amendment, **Pointer v. Texas**, 380 U.S. 400, 404, 85 S.Ct. 1065, 1068 (1965). See also **Coy v. Iowa**, 480 U.S. 1012, 1019-20, 108 S.Ct. 2709 (1988) where it was decided that; the cross examination of a witness and the confrontation clause is of paramount importance. The *Coy* court went on to say at 1020-21, addressed the fundamental right to confrontation of a witness and also said that the denial of this fundamental right requires reversal and cites **State v. Coy**, 433 N.W.2d. 714, 715 (Iowa 1988). **Coy**, 480 U.S. at 1022.

Since the prosecution failed to support their case with testimony as to the findings of the medical report and as the medical report shows that there was no sexual activity as the alleged victim said happened, along with the factors of the alleged victim's testimony was recanted before the trial when the mother of the victim was pressured into testifying or losing her child Iowa's Department of Human Services if she did not testify, is not only another showing of prosecutorial misconduct, but this misconduct allowed the prosecutor to fabricate evidence that the medical report shows a different result, and since this shows that the prosecution was creating evidence that the State's own expert Dr. Jung would have refuted if he was called to testify, prosecutorial misconduct is found, **State v. Tobockhurst**, 305 N.W.2d 705 (Iowa 1981) where the prosecutor was found to have created evidence on his own beliefs, citing **Berger v. United States**, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935) Even with the acknowledgement that the prosecutor can strike hard blows, he cannot strike foul ones, **Berger v. United States**, 295 U.S. 78, 55 S.Ct. 629 (1935), but it appears by the evidence in this postconviction that the prosecutor did strike foul blows to get a conviction when the evidence shows otherwise. The prosecutor's actions or improper actions in the court show that he engages in prosecutorial misconduct when he fails to guarantee the rights of this Petitioner in all the Iowa court proceedings.

A blatant Brady violation has occurred, **Brady v. Maryland**, when the prosecution not only failed to support the facts of their medical examination or so called rape kit done on the alleged victim by not calling Dr. Jung to the stand, but when the prosecution went forward with their case the state intentionally imposed a Brady violation when they did not solicit any factual testimony to

support their charges. This Court has ascertained that; ““suppression of evidence favorable” to the accused was itself sufficient to amount to a denial of due process,” **Brady v. Maryland**, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963). This Court also held that; “although not soliciting false evidence, allows it to go uncorrected when it appears.” **Brady**, 373 U.S. at 87, 83 S.Ct. 1194. The medical report refutes that any sexual act was had upon this victim and the prosecution intentionally hid this fact from the jurors when the medical expert was not called to testify or to be cross examined by the defense on his medical findings of the report.

It is an abundantly clear due process violation in this case that not calling the State’s medical expert witness to support the State’s case but a denial of due process of law under the Sixth and Fourteenth Amendments when the trial attorney failed to subpoena and have this person testify when it was found that the medical examination done by Dr. Jung shows that there was no physical sex abuse as the alleged victim and her mother try to advance. The recantation issues that were known prior to the trial is the issue being raised in the postconviction and from the recent findings in **Schmidt v. State**, supra through the investigations that are a part of the record. Even though this is jury trial and the State prosecution continues to claim that the Schmidt case is a plea deal, the constitutional issues involved and the afore mentioned constitutional rules of law that accompany this claim of innocence are of paramount importance in the review of this issue as it applies to the State of Iowa and its failure to follow the federal constitutional guarantees as they apply to the accused. The Brady violation has allowed the State to get a conviction that should not have had due to the actions of the court and the prosecution in not properly asserting the rights of this Petitioner at trial and for the ineffectiveness of all the court appointed attorneys for their inactions and work that fell below a reasonable level of expectancy and allowed the Petitioner to be prejudiced by these acts, **Strickland v. Washington**, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068 (1984). Iowa’s ineffective assistance of counsel mirrors the Strickland test in **Ledezma v. State**, 626 N.W.2d 134 (Iowa 2001).

The issues of the ineffective assistance of postconviction counsel with this postconviction in the Iowa courts is best described in **Martinez v. Ryan**, 566 U.S. 1, 132 S. Ct. 1309 (2012). The issues

that comes with the ineffectiveness of postconviction counsel is that said counsel failed to raise the ineffective assistance of trial counsel for not objecting to the fact that the prosecution did not call their expert, Dr. Jung to testify about the alleged sex abuse that the medical examination does not support of which he did and signed off on. See medical examination Appendix C. The medical examination reflects an entirely different view of what is alleged to have happened. Trial counsels' failure to call Dr. Jung himself to testify reflects that said trial counsel failed to perform an essential duty and prejudice resulted. **Strickland v. Washington**, 466 U.S. at 694, 104 S.Ct. at 2068. The failure to put the State's case to an adversarial test as this was a jury trial shows that this Petitioner's innocence could have been found by a jury if trial counsel would have acted appropriately. Since not only has the postconviction counsel failed to adequately address the issues of the ineffectiveness of trial counsel, postconviction counsels' ineffectiveness allows this Petitioner to suffer anew the deprivation of the Sixth Amendment right to confront the witnesses against him and to place their testimony under any type of adversarial testing on the expert witness of the state.

It has been found that in a criminal case, it will often arise that where the only reasonable and available defense requires consultation with experts or introductions of expert opinion. **Hinton v. Alabama**, 517 U.S. \_\_\_, 134 S.Ct. 1081, 1088 (2014). In this jury trial of the Petitioner, the expert the state had was not called as he would have to refute the findings of the facts in the medical examination done by him. The prosecution could not allow this to be done and the defense attorney had a duty and obligation to have this expert called as a witness to put him under and adversarial testing of his credibility for first allowing this medical examination to let the prosecution bring any criminal charges, and secondly, if he would have been called and subjected to questioning on this matter, the jury would have in all probability found the Petitioner "Not Guilty" of the charges. This scenario is best explained in **State v. Ruble** which covers the conduct of the prosecutor or the state's attorney, and the fact that the defense never had the opportunity to cross examination of the medical expert, Dr. Jung. **State v. Ruble** 372 N.W.2d 220 (Iowa 1999). The Petitioners' actual innocence claim was barred from proper

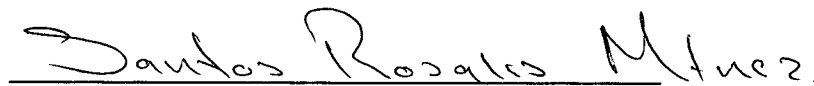
litigation in the Iowa courts due to the deprivation of these constitutional guarantees that were denied him by the State courts just to convict him.

In further regards to the issue of having an expert witness, the Iowa Courts have found that an indigent defendant is entitled to experts at state expense when it is the best interest of justice. **State v. Loutfaimany** 585 N.W.2d 200, 208 (Iowa 1998). The Petitioner was denied the assistance of an expert for his defense as the case history of this Petitioner throughout the proceedings in the state of Iowa support that one was needed, or the State's expert needed a thorough and adversarial testing of his ability as a medical person to show that there were no sexual assault components with this case as charged.

#### CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Santos Rosales Martinez". The signature is written in dark ink and is positioned above a horizontal line.

Santos Rosales Martinez

Date; May 10, 2023