

No.23-6064

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IN The

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Supreme Court of the United States

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ANTHONY LYN KIMBROUGH

Petitioner, Pro-Se

Vs.

THE STATE OF OKLAHOMA ET AL,

Respondents,

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On Petition for a Rehearing

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ANTHONY LYN KIMBROUGH

D.O.C.#224852

LEXINGTON CORRECTIONAL FACILITY

P.O. BOX 260

LEXINGTON, OKLAHOMA.73051

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## Question Presented

2. Whether a State Consistent with the Sixth and Fourteenth amendment of the united States Constitution. allows a trial court in the State of Oklahoma to “abuse its discretion” by its failure to use the proper standard in determining whether to grant or deny the Petitioner motion for First Post-Conviction D.N.A. testing. 22 O.S. (2013) §§ 1373.1-1373.7 such as: Favorable presumption and/or considering (a)ll the evidence produced at trial along with any newly discovered evidence and the impact that and exculpatory DNA test could have had in light of this evidence. This State law Requires a decision by this court which consequently will stop the conflict among the Federal Court and State courts of last resort such as **State vs. Crumpton**,332 P.3d 448 (2014).

3. Whether and to what extent the 14<sup>th</sup> amendment due process clause applies to Post-Conviction D.N.A. Proceedings to determine whether a prisoner conviction would be set aside and/or modified upon favorable results of D.N.A. testing. This case particularly concerns the State of Oklahoma First, Motion for Post-Conviction D.N.A. testing. 22 O.S. (2013) §§ 1373.1-1373.7. where a liberty interest has been established under § 1373.5(A) “it allows for the vacation of a conviction or other relief. This statue is not an amendment to the original Post-Conviction act 22 O.S. § 1080(a)-(f) and the fact the (O.C.C.A) will deny any indigent defendant the right to appeal his appointed counsel was ineffective during the hearing. This State law Requires a decision by this court which consequently will stop the conflict among the Federal Court and State courts of last resort such as **Greenholtz vs. Inmates of the Nebraska Penal and Correctional complex**,442 U.S. 1 (1979).

4. Whether the Oklahoma Court of Criminal Appeals Properly applied the Standard articulated in William vs. Pennsylvania, 579 U.S. 1 (2016) in cases where a showing of actual subjective Bias is not required to establish a Fourteenth amendment due process violation.

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**Constitutional Provisions**

U.S. Const. amend. XIV§1 (excerpt):

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty. or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.....2

U.S. Const. amend. VI (excerpt):

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime Shall have been committed. which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.....2

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**PETITION FOR REHEARING**

Petitioner Anthony Lyn Kimbrough respectfully file his Petition for Rehearing from the denial of his Petition for writ of Certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

**PARTIES TO THE PROCEEDINGS**

Petitioner is Anthony Lyn Kimbrough Pro-se, Respondents are the State of Oklahoma, by and through Gentner Drummond Attorney General, Steve Kunzeiler, the District Attorney in and for Tulsa County, Oklahoma. And the Honorable District Judge Dana Moody in and for Tulsa County, Oklahoma.

**RELATED PROCEEDINGS**

Order Affirming Denial of Motion For Post-Conviction DNA Testing filed on  
August 23<sup>rd</sup> 2023 Case no. PC-2023-624.

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The Petitioner Petition-in-error from the Denial of the Petitioner motion for First Post-Conviction DNA testing filed on July 28<sup>th</sup> 2023 case no. Pc-2023-624. The District Court Judge denied the Petitioner first motion for Post-Conviction DNA testing filed on July 6<sup>th</sup> 2023 Case no. Cf-93-1833.

Anthony Kimbrough vs. The State of Oklahoma, Petitioners First Motion for Post-Conviction (D.N.A.) Testing was filed on February 23<sup>rd</sup> 2023 22 O.S. §§ 1373.1-1373.7 with attached Sworn affidavit of innocent (exhibit-A) in case no. #Cf-93-1833.

**OPINIONS BELOW**

The Order of the Oklahoma Court of Criminal Appeals denying the Petitioner Petition-in-error is not reported but available at (Pet. Appendix-A at 1a-9a).

The Trial Judge Court order Finding of Facts and Conclusion of law denying the Petitioner 3<sup>rd</sup> Post-Conviction relief is not published but is available at (Pet. Appendix-B at 10a-20a).

**JURISDICTION**

The Petitioner Petition for writ of Certiorari was filed in the United States Supreme Court, on Nov 14<sup>th</sup> 2023 case no. 23-6064 within (90) days and denied on January 22<sup>nd</sup> 2024 case no. 23-6064.

This Petition for rehearing has been filed with in the (25) days of the denial of the writ of Certiorari. See, case no. 23-6064. This Court has Jurisdiction pursuant to **28 U.S.C. § 1257(a)**. and Comply with rule 44 (1)-(6) of this Supreme Court rules. Petitioner having asserted below and asserting here a deprivation of rights secured by the Constitution of the United States. The Petition for rehearing has been filed timely. See also, United States Supreme Court order denying writ of Certiorari (Pet. Appendix-I 49a-50a).

## **REASON WHY THE PETITION FOR REHEARING SHOULD BE GRANTED.**

Sense the filing of the Petitioner Petition for writ of Certiorari on November 14<sup>th</sup> 2023. (PCR) “Polymerase Chain Reaction and (STR) “Short Tandem Repeat” DNA technology has become newer, advance and more reliable.<sup>1</sup> In addition, evidence has been discovered that State Fingerprint expert Robert Yerton which has done **Tens of Thousands** of fingerprint analysis, here in the State of Oklahoma. By his own testimony is not **accredited** has no **degree** or **certified** by any agency as a fingerprint examiner and has funk/failed the **International Association of Identifiers or identification organization** test. See, Daubert Hearing and Jury trial testimony by State Fingerprint expert R. Yerton and Defense Counsel request to forbid the District Attorney from calling the State expert as a witness against his client because the State haven’t met the standards required in **Kuhom Tire Company vs. Carmichael**, 119 S.ct 1167 (1999).<sup>2</sup> See also, WWW.CNN March 11<sup>th</sup> 2024 story by CNN news Anchor Emma Tucker and Andi Babineau. on Colorado Bureau of investigation Forensic

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<sup>1</sup> A key advance for addressing those challenges was the introduction of 8-dye STR multiplex technologies. With eight dye chemistry, forensic analysts can achieve more accurate and reliable DNA profiling, Even in complex cases, leading to improved human identification and greater overall efficiency in forensic DNA testing, these next generation 8-dye STR multiplex technologies include new tools like spectrum CE and powerplex 35Gy systems for PCR amplification and fluorescent detection forensic Dna analysis can provide conclusive evidence to trace specific individuals to a crime scene scene and has been instrumental in solving cold cases, exonerating the wrongfully accused and bringing justice to victims it also aids in identifying disaster victims, resolving paternity disputes and assisting in missing persons cases. There are several methods by which forensic scientists can process DNA samples but STR analysis through capillary electrophoresis CE remains the gold Standard. See, **Labroots Genetics and Genomics November 13<sup>th</sup> 2023** written by: Sarah Hoffman. See also February 5<sup>th</sup> 2024, In investigate Othram research advances in DNA technology continue to help crack cold cases.

<sup>2</sup> Defense Counselor argued that although fingerprint examiners in the United States and elsewhere subscribe to a process of identification called, **ACE-V** which stand for analysis, **comparison, evaluation, and verification**. That the Tulsa Police Department forensic Department has failed to use the process of verification. But yet uses R. Yerton as their top forensic expert which has failed to use the **verification** process in criminal cases. See, Danny west case mistrial declared. (**Daubert hearing and Jury trial testimony of R. Yerton**, Volume II at pages 270-71,293, 321-325 and 400 Case no. Cf-2002-3970. (Pet. Appendix-J at 54a-65a).

expert Yvonne Missy woods, a DNA scientist who manipulated data in hundreds of cases over decades. And because this above information has just been discovered by Petitioner in his case. The Petitioner request a Rehearing, Finally a decision by this court will not only protect the Petitioner **5th, 6th, and 14th** amendment United States Constitutional rights but will also affect the constitutional rules governing the operation of all State and Federal Courts in the State of Oklahoma if not throughout the United States.

### **Conclusion**

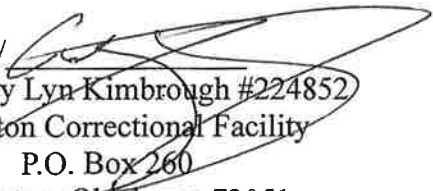
For the foregoing reasons the Petition for rehearing should be granted.

### **VERIFICATION**

I, Anthony Kimbrough, State under penalty of Perjury under the laws of Oklahoma that on this 25th day of March 2024 that the facts within this instrument and the authenticity of all documents and exhibits included in or attached to the above Petition are true and correct to the best of my knowledge and belief. And that this Petition for rehearing is presented in good faith and not for the purpose of delay. And filed within 15 days of the United States office of the Clerk letter Lisa Nesbitt see attached (exhibit-A)

### **CERTIFICATE OF MAILING**

I, Anthony Kimbrough, am a prisoner at the (Lexington Correctional Facility) in the State of Oklahoma, Stating that the grounds within this Petition- for- rehearing in case no.23-6064 are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. See S.ct rule 44.6. I also declare under the Penalty of perjury that the foregoing is true and correct with copies attached and was mailed/executed on 25th day of March 2024 to the Court Clerk Office of the U.S. Supreme Court at 1 First Street, N.E. Washington, DC.20543 and First-Class Postage has been Prepaid. See 28 U.S.C. § 1746 See also attached letter by Lisa Nesbitt the Supreme Court Clerk (exhibit-A)

/s/   
Anthony Lyn Kimbrough #224852  
Lexington Correctional Facility  
P.O. Box 260  
Lexington, Oklahoma.73051



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