

23-6777

No.

SCWY No. S-23-0166

FILED

NOV 20 2023

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Monty Dwayne Sullivan — PETITIONER
(Your Name)

vs.

Warden Wyoming State Penitentiary — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Monty Dwayne Sullivan
(Your Name)

Tallahatchie County Correctional Facility
19351 US Hwy 49N
(Address)

Tutwiler, Mississippi 38953
(City, State, Zip Code)

662-345-6567 (Prison Number)
(Phone Number)

QUESTION(S) PRESENTED

1. Does Mr. Sullivan have a Constitutional Right to Court Transcripts and Medical Records dispositive to the State's theory of the case?
2. May this Court's decision in *Brady v Maryland* 373 US 83, 83 S CT 1194, 10L Ed 2d 215 (1963) Strictly prohibit the withholding of exculpatory evidence as it violates due process and what constitutes improper discovery at trial be applied retroactive to set aside the conviction in this case?
3. May this Court's decision in *United Mine Workers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 222, 19 L. Ed. 2d 426, 88 S. Ct. 353 (1967) apply to the instant case as to what constitutes proper discovery?

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 this petition is as follows:

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Appendix A1: Judgment and Sentence Dated February 26, 2010.

Appendix A2: Credentials of Elizabeth Reiman, Child Advocacy Project (CAP) Forensic Reviewer.

Appendix A3: Review Forensic Interview of K.T. on February 10, 2009.

Appendix A4: Affidavit Regarding Dr. Kurt Pettipiece, Red Rock Family Practice, Thermopolis Wyoming by Sergio Garcia Student Director of the Defender Aid Program at the University of Wyoming.

Appendix B1: Date: August 22, 2023: Wyoming Supreme Court's Order Denying Petition For Writ Of Review by Justice Kate M. Fox Case No. S-23-0166.

- Appendix B2:** Second Petition Writ Of Review to the Wyoming Supreme Court dated July 27th, 2023.
- Appendix B3:** Order Denying Petition for Redress of Grievances, Natural Right to Court Transcripts Dated July 11, 2023, Signed By Bill Simpson.
- Appendix B4:** First Amendment Petition Redress of Grievances Against 3rd Branch of Government Natural Right To Court Transcripts and Medical Records, filed January 4, 2023, Case No. CR09-8.
- Appendix B5:** Petition For Writ of Review to the Wyoming Supreme Court Dates June 5, 2023, Case No. S-23-0128.
- a. Judgment and Sentence Refer to A1.
 - b. First Amendment Petition Redress of Grievances Against 3rd Branch of Government Natural Right To Court Transcripts and Medical Records, filed January 4, 2023, Case No. CR09-8. Refer to B4.
- Appendix B6:** State of Wyoming Attorney Generals, Response To Petition For Writ of Review. Case No. S-23-0128 with State's Appendix A: Hot Springs Fifth Judicial District Court's Docket Sheet for Case No. CR-09-8.
- Appendix B7:** Wyoming Supreme Court Order Denying Petition For Writ of Review. Case No. S-23-1028 By Kate M. Fox Chief Justice.

TABLE OF AUTHORITIES

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CITIATIONS OF OPINIONS AND ORDERS IN CASE

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at

Appendix _____ to the petition and is

[] reported at _____ ; or,

[] has been designed 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 designed for publication but is not yet reported; or,

[] is unpublished.

[X] For cases from **state courts**:

The opinion of the Wyoming Supreme Court appears at Appendix B1 to
the petition and is:

[] reported at Monty Dwayne Sullivan v. State of Wyoming Case No. S-23-0166 ; or,

[] has been designed for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the 5th Judicial District Court Hot Springs County

Thermopolis Wyoming appears at Appendix B3 to the petition and

is:

[] reported at Monty Dwayne Sullivan v. State of Wyoming Criminal Case No 2009.08; or,

[] has been designed for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the Wyoming Supreme Court appears at Appendix B5 to the petition and is:

[] reported at Monty Dwayne Sullivan v. State of Wyoming Case No. S-23-0128; or,

[] has been designed for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

For cases from **state courts**:

The date on which the **Wyoming Supreme Court** decided **S-23-0166** was
8/22/2023.

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. _____ A_____.

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

This case addresses violations of:

- 1) The U. S. Constitution [1st, 5th and 14th Amendments];
- 2) Standing Precedents: The Constitution of the United States of America;
- 3) Standing Precedents: The Wyoming Constitution
- 3) Standing Court Rules [Mailbox Rule] and;

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 621	10
18 U.S.C. § 1746	10
28 U.S.C. § 1254	1
W.S. § 5-2-119.....	2
W.S. § 6-5-301.....	9
W.S. § 6-2-314(a)(i).....	1
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STATEMENT OF CASE

Comes now, Mr. Monty Dwayne Sullivan respectfully applies for Application to Justice pursuant to Supreme Court Rule 22. Mr. Sullivan requests Circuit Court Justice Kaplan.

Original Criminal Case Information:

In October of 2009, a jury found Monty Dwayne Sullivan guilty of **Two Counts** of First Degree Sexual Assault of a Minor under the Age of 13 a violation of Wyoming Statute Annotated § 6-2-314(a)(i) and was sentenced to two 20 to 35 year terms to run consecutive. (**Appendix A1: Judgment and Sentence**). Original case number **CR 2009-2008**.

Current Case For Review:

This Writ of Certiorari pursuant to 28 USCS 1254 is for the decision of the Wyoming Supreme Court for the “Second” Writ of Review involving Mr. Sullivan’s original “First Amendment Petition Redress Of Grievances Against 3rd Judicial Branch Of Government Natural Right To Court Transcripts and Medical Records, filed January 4, 2023. The “Second” Writ originates from Case No. CR09-8 in the 5th in the Judicial District Court Hot Springs County Thermopolis, Wyoming. With supporting documents, Mr. Sullivan is demonstrating to this Honorable Court that the documents which are sought are available to the best of Mr. Sullivan’s ability and proof at this time. (**A2. Credentials of Elizabeth Reiman, Child Advocacy Project (CAP) Forensic Reviewer. A3. Review Forensic Interview of K.T. on February 10, 2009. A4. Affidavit Regarding Dr. Kurt R. Pettipiece, Red Rock Family Practice, Thermopolis Wyoming by Sergio Garcia Student Director of the Defender Aid**

Program at the University of Wyoming.) (**Appendix A2,3 & 4**). Date: August 22, 2023 Case Number S-23-0166.

- I. This Writ is on the judgment of case **No. S-23-0166** entered on August 22nd, 2023, and received by Mr. Sullivan at Wyoming State Penitentiary on August 24, 2023, invoking the “Mailbox Rule”¹, by the Wyoming Supreme Court “**Order Denying Petition for Writ of Review**” by Kate M. Fox, Chief Justice. (This is the Second Writ of Review) (**Appendix B1**). Chief Justice Kate M. Fox states, “This matter came before the Court upon a Second Petition for Writ of Review, filed herein July 31, 2023. After a careful review of that petition, the materials attached thereto, and the file, this Court finds that the petition should be denied. It is therefore,...”
- II. Second Petition for Writ of Review (**Appendix B2**) asking for review pursuant to Article 5, § 10 of the Wyoming State Constitution and Rule 13.01 through 13.09 of Wyoming Rules of Appellate Procedure, W.S. § 5-2-119. Chief Justice Kate M. Fox was in a hurry to clear this case that a reply

¹ The “mailbox rule” that deems a Rule 59 (e) motion filed upon deposit in the mail applies only to {364 Fed. Approx. 262} prisoners reliant on the institution to mail court papers. See *Houston v. Lack*, 487 US 266, 108 S Ct 2379, 101 L Ed2d 245 (1988); *Edwards v. United States*, 266 F3d 756, 758 (7th Cir. 2001); *Marsh v. Soares*, 223 F3d 1217, 1218n. 1 (10th Cir. 2000). For all other litigants, a paper is filed on the date it is delivered to the clerk of court. Fed. R. Civ. P. 5 (d)(2)(A).

brief was not ordered to further the discussion of the First Amendment Filing.

III. “Order Denying Petition For Redress Grievances, Natural Right to Court Transcripts.”²(Appendix B3).

a. This order was entered July 11, 2023 by 5th Judicial District Court Honorable Judge Bill Simpson (Judge Simpson).

1. Judge Simpson stated in the Caption, “Order Denying Petition For Redress Against 3rd Branch of Government Natural Right To Court

² Meredith V. Gober,2000 U.S. App. LEXIS 19120 (2000) “...Veterans of Foreign Wars violated his First Amendment right “to petition the Government for a redress of grievances” because it relied on erroneous and illegally **altered medical records** in ruling on his claims. This court has jurisdiction to consider Mr. Meredith's constitutional challenge to the decision below. *See In re Bailey*, 182 F.3d 860, 865 (Fed. Cir. 1999). (Bold Added)

The U.S. Const. Amend. I protection of the right to petition for redress of grievances protects a petitioner's right of access to the courts, but the right of access to the courts must be exercised within the limits, of course, of their prescribed procedures. Meredith V. Gober,2000 U.S. App. LEXIS 19120 (2000)

When lower court has invalidated federal statute. Iancu v Brunetti, 588 U.S. , 139 S. Ct. 2294, 204 L. Ed. 2d 714, 719 (2019) (As usual when a lower court has invalidated a federal statute, we granted certiorari.); *see also* Rumsfeld v Forum for Academic & Institutional Rights, 547 U.S. 47, 51, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006) (even without conflict among circuits, grant of certiorari followed decision by Third Circuit striking down federal statute). 510.07510.19 [Reserved]

Transcripts" leaving the original "First Amendment" and "Medical Records" out. Technical Judge Simpson **never** adjudicated the original petition.

2. Judge Simpson places the First Amendment Petition under Wyoming's Post-Conviction Statute W.S. §§ 7-14-101 through 108 (LexisNexis 2011). Five (5) year timeframe to dismiss Mr. Sullivan's petition. W.S. §§ 7-14-103(d). This filing not only falls under "Constitutional Violations" but also under, "Actual Innocence.³" Schlup v. Delo, (1965) 513 US 298, 325, 130 LEd 2d 808, 834, 115 SCt 851.
3. Judge Simpson further states, "**This Court cannot determine how these principles apply to any request Petitioner has made or how they apply to Petitioner's assertion that he was forced to state his rights under the federal constitution.**"

IV. The First Amendment Petition Redress of Grievances Against 3rd Branch of Government Natural Right To Court Transcripts and Medical Records, filed **January 4, 2023, Case No. CR09-8. (Appendix B4).** This First Amendment Petition explains each step of the petition, such as Self-

³ **For claim of innocence** – To be credible, such a claim requires petitioner to support his allegations if constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial. Schlup v. Delo, (1965) 513 US 298, 325, 130 LEd 2d 808, 834, 115 SCt 851.

Representation, *pro se* meaning and legal grounds; Mr. Sullivan files this petition on/along with Constitutional law and case law that supports this petition.

- V. Mr. Sullivan has also included the First Petition of Writ of Review to the Wyoming Supreme Court Dated: June 5, 2023, **Case No. S-23-0128** with appendices, Dated February 26, 2010. (**Appendix B5**). This filing was made under Mr. Sullivan's inexperience at the law.
- VI. State of Wyoming Attorney General's Response to Petition For Writ of Review the First Amendment filing with appendix: 5th Judicial District Court Docket Sheet for **Criminal Case No. CR-09-8**. (**Appendix B6**).
- VII. The Wyoming Supreme Court "Order Denying Petition for Writ of Review" by Chief Justice Kate M. Fox **Case No. S-23-0128**. (**Appendix B7**).

REASON FOR GRANTING WRIT OF CERTIORI

- I. Order Denying Petition For Writ Of Review (Second Writ) filed July 31st, 2023 **Case No. S-23-0166**, denied August 22, 2023, Wyoming Supreme Court, Chief Justice Kate M. Fox decision falls short of the Constitutional Standard⁴ in which *Asad v. Bush*, 170 Fed. Appx. 668

⁴ A substantive right of access to the courts has long been recognized. *Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 1494, 52 L. Ed. 2d 72 (1977). Access to the courts is protected by the First Amendment right to petition for redress of grievances. *Wilson v. Thompson*, 593 F.2d 1375 (5th Cir. 1979).

(11th Cir. 2006); *Grandbouche v. Clancy*, 825 F.2d 1463, 8 Fed. R. Serv. 3d (Callaghan) 1037 (10th Cir. 1987), app. after remand, 913 F.2d 835, 17 Fed. R. Serv. 3d (Callaghan) 1042 (10th Cir. 1990)."⁵ How can Chief Justice Kate M. Fox make a decision on a filing when there is still "evidence that has never been", *Schlup v. Delo*, (1965) 513 US 298, 325, 130 LEd 2d 808, 834, 115 SCt 851⁶, afforded to Mr. Sullivan? It's easy

That right has also been found in the Fourteenth Amendment guarantees of procedural and substantive due process. *Ryland v. Shapiro*, 708 F.2d 967, 971-75, (5th Cir. 1983).

The first amendment right to petition for redress of grievances is "among the most precious of the liberties safeguarded by the Bill of Rights." *United Mine Workers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 222, 19 L. Ed. 2d 426, 88 S. Ct. 353 (1967); *Stern v. United States Gypsum, Inc.*, 547 F.2d 1329, 1342 (7th Cir. 1977). There can be no doubt that the filing of a legitimate criminal complaint with local law enforcement officials constitutes an exercise of the first amendment right.

⁵ **Unpublished decision:** Inmates clearly retain protections afforded by First Amendment; however, U.S. Supreme Court has recognized that lawful incarceration brings about necessary withdrawal or limitation of many privileges and rights, retraction justified by considerations underlying our penal system. *Asad v. Bush*, 170 Fed. Appx. 668 (11th Cir. 2006).

"First Amendment becomes applicable where trial court issues order compelling discovery, and partys (sic) privilege not to disclose certain information must be balanced against relevance of evidence, necessity of receiving information sought, whether information is available from other sources, and nature of information. *Grandbouche v. Clancy*, 825 F.2d 1463, 8 Fed. R. Serv. 3d (Callaghan) 1037 (10th Cir. 1987), app. after remand, 913 F.2d 835, 17 Fed. R. Serv. 3d (Callaghan) 1042 (10th Cir. 1990)."

⁶ **For claim of innocence** – To be credible, such a claim requires petitioner to support his allegations if constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness

to deny a *pro se* litigant when the known fact that the record is not complete, simply taking a look at the 5th Judicial District Court's Docket Sheets (**Appendix B6**) is a quick reference to how many ways Mr. Sullivan has tried in his limited legal training to acquire these documents and have been denied. The First, Fifth and Fourteenth Amendments to the United States Constitution is to protect these rights that are so easily ignored by the State Courts⁷. (**Appendix B1**).

- II. This Second Petition for Writ of Review (**Appendix B2**) applies to Judge Simpson's "Order Denying Petition For Redress Grievances, Natural Right to Court Transcripts" denying petitioner's writ. Sullivan asked for a Writ of Review/Certiorari on setting out that Wyoming and the 10th Circuit Court in Denver, Colorado, has plainly adjudicated in other cases in favor of Mr. Sullivan's position. (**Appendix B3**).

In petitioner's previous filings even the United States District Court of Wyoming along with the 10th Circuit Court of Appeals rubber stamped these very issues by denying the Certificate of Appealability (COA)

accounts, or critical physical evidence – that was not presented at trial. *Schlup v. Delo*, (1995) 513 US 298, 325, 130 LEd 2d 808, 834, 115 SCt 851.

⁷ "We reaffirm and reemphasize the central principle laid down in *Beaulieu v. United States*, 930 F.2d 805, 806-07 (CA 10 1991). Ineffective Assistance of Counsel claims should be brought in collateral proceeding, not on direct appeal...A factual record must be developed in and addressed by the district court on the first instance for effective review."

the very miscarriage of justice that Mr. Sullivan presents to this Honorable Court.

III. “Order Denying Petition For Redress Grievances, Natural Right to Court Transcripts.” (Appendix B3). The 5th Judicial District Court of Hot Springs County, Thermopolis, Wyoming falls short of the Nations Standards under the “Continuing Violation” *Vasquez v. Davis*, 882 F.3d 1270, 1277 (10th Cir. 2018)⁸. This filing not only falls under “Constitutional Violations” but also under “Actual Innocence”(See Footnote 2 and 4 above) and has through the complete process. If

⁸ "Continuing violation" doctrine

Vasquez v. Davis, 882 F.3d 1270, 1277 (10th Cir. 2018). However, the Tenth Circuit Court of Appeals "has not yet decided whether it should apply to 1983 claims." *Id.* Regardless, the continuing violation "doctrine is triggered by continuing unlawful acts but not by continuing damages from the initial violation." *Id.* (quoting *Colby v. Herrick*, 849 F.3d 1273, 1280 (10th Cir. 2017)). "Said another way, the continuing violation doctrine . . . would apply here only when a particular defendant allegedly committed wrongful acts within, as well as outside, the limitations period." *Vasquez*, 882 F.3d at 1277. (Bold Added).

"Equitable tolling of the limitations period is available when an inmate diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control." *Coppage v. McKune*, 534 F.3d 1279, 1281 (10th Cir. 2008). Equitable tolling is appropriate . . . when an adversary's conduct-or other uncontrollable circumstances-prevents a prisoner from timely filing, or when a prisoner actively pursues judicial remedies but files a defective pleading during{2019 U.S. Dist. LEXIS 25} the statutory period." *Gibson v. Klinger*, 232 F.3d 799, 808 (10th Cir. 2000) (internal quotation marks and citations omitted). An incarcerated litigant has a "strong burden to show specific facts to support [a] claim of extraordinary circumstances and due diligence." *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008).

Appellate and Trial Counsel was not Constitutionally Ineffective the record would have been fully developed and Mr. Sullivan would not have to ask this Honorable Court to intervene.

- IV. First Amendment Petition Redress of Grievances Against 3rd Branch of Government Natural Right To Court Transcripts and Medical Records, filed **January 4, 2023**, Case No. CR09-8. (Appendix B4). Was laid out to walk the justice through the filing hoping that Judge Simpson would not simply take the first option out. *W.S. §§ 7-14-101 through 108* (LexisNexis 2011) Five Year Statute of Limitations.
- V. First Petition of Writ of Review to the Wyoming Supreme Court Dated: June 5, 2023, Case No. S-23-0128 with Judgment and Sentence Dated February 26, 2010. (Appendix B5, a). Petitioner was under the impression that the First Amendment filing was placed under Wyoming's "deemed denied rule" Wyoming Rules of Civil/Criminal Procedure. 6(c)(2)"... the appeals court acknowledged that this rule provides for application of civil procedure rules where there is no rule of criminal procedure on point... *Patrick v. State*, 2005 WY 32, 108 P.3d 838, 2005 Wyo. LEXIS 35 (Wyo. 2005).

CONCLUSION

Therefore, Mr. Sullivan prays this Honorable Court will grant Mr. Sullivan this petition on the Constitutional Violations presented to this

Honorable Court. Mr. Sullivan would be bold here and ask this Honorable Court to remove this conviction and allow Mr. Sullivan an 'Order" to receive all Evidentiary Documents from Hot Springs County Thermopolis, Wyoming or in alternative "Order 'Time Served' with the Evidentiary Documents" set forth so Mr. Sullivan further the Actual Innocence issue, allowing Mr. Sullivan to put forth the defense that the Constitutional Right to a Fair Trial ensures.

The petition for a writ of certiorari should be granted.

Respectfully submitted, on this 21st day of November, 2023.

This petition has a word count tallied by Microsoft Office 2010 which includes endnotes and the full document from the cover page to the end. The word count is 3,959 M/S ~~2,551~~.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under the penalty of perjury that the above information contained in the foregoing document is true and correct to the best of his knowledge, and that he believes he is entitled to relief as a matter of law as executed and deposited in the institutional mail box or turned over to prison staff in compliance with the "Mailbox Rule" and Court's Rules regarding the service of opposing parties on this 21st day of November 2023. W.S. 6-5-301; 28 USC 1746; 18 USC 1621



Monty D. Sullivan, pro se
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