Docket No. 23-7302

IN THE
SUPREME COURT OF THE UNITED STATES

"In re MICHAEL A. FARRELL,
Petitioner,

v.

U.S. District Court for the eastern District of Wisconsin,
Respondent.

On Petition for Writ of Mandamus to the U.S. District Court
For the Eastern District Court for Wisconsin

CERTIFICATION IN GOOD FAITH

I Michael A. Farrell, acting *pro se*, declares under the penalty of perjury (in compliance with 28 U.S.C sec.1746) this petition for a rehearing is presented in good faith and not for delay pursuant to Supreme Court Rule 44(1).

Pro Se Petitioner,

c

Michael Farrell

Michael A. Farrell #248915
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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PETITION FOR REHEARING

Pro Se Petitioner,

Michael A. Farrell #248915
Stanley Correctional Inst.
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Questions Presented For Review

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2. Is fundamental fairness essential to produce just results.

3. Does a prosecutor have a duty to correct false testimony by the state?

4. Has petitioners made a substantial showing he's in custody in violation of his constitutional rights and entitled to relief ?

TABLE OF AUTHORITIES CITED

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

All Writs Act, 28 U.S.C. § 1651(a)...

The All Writs Act authorizes the issuance of writs to protect not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments.

U.S.C.A. Const.Amend. VI ...

In all criminal prosecutions... the defendant to be confronted with the witnesses against him, to have the compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

U.S.C.A. Const.Amend. XIV...

No state shell .. deprive any person of life, liberty, or property, without due process of law, nor deny to any person equal protection of the law.

The Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

U.S.Sup.Ct. Rule 44(1)(2)(6)

28 U.S.C. 2254(d)

Wis. Stat. 974.06

1985 Wis.L.Rev. 1219 ...

when chastity is an essential element of the offense for which the defendant is being prosecuted, evidence of virginity is relevant.

Federal rules of evidence, Rule 702...

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

INTRODUCTION

¶ 1. Public trust in our judicial system depends upon trust in the integrity of our prosecutors. ADA Sara Lewis blatant disregard for the law during my trial, and post conviction trial, jeopardized public confidence and reflects adversely on the entire bar. **The state and Federal courts unduly depreciate the seriousness of her misconduct,** failed to protect the public and the courts from further misconduct, and deter similar misbehavior by other attorneys. ADA Sara Lewis misconduct, for failing to correct false trial and post conviction testimony, brought tremendous disrepute to the legal profession and the courts. **Prosecutorial misconduct in state criminal proceeding will be grounds for writ of habeas corpus unless prosecution can show that error was harmless beyond reasonable doubt.** *Brown v. Borg,* 951 F.2d 1011(9th Cir.1991).

¶ 2. **The United States Supreme Court has the duty to make its own independent examination of the record to determine facts when federal constitutional deprivations are alleged.** In cases in which there is a claim of denial of rights under the Federal Constitution, **the United States Supreme Court is not bound by factual conclusions of lower courts, but will re-examine the evidentiary basis on which those conclusions are founded.** A Conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. U.S.C.A.Const. Amend. 14. *Napue v. Illinois,* 79 S.Ct. 1173.

¶ 3. I Michael A. Farrell, acting *pro se,* respectfully petition this court for a rehearing, pursuant to U.S. Sup.Ct. Rule 44(1)(2)(6), on its decision denying my petition for a Writ of Mandamus, (hereinafter WOM). "Federal Appellate courts construes *pro se* petitioners during state post conviction review liberally" *Warren v. Boenen*, 712 F.3d 1090, 1104(7th Cir. 2013) *Id.* @ HN.13. *Holsomback v. White*, 133 F.3d 1382 (11th Cir 1998), *Johnson v. Hulet,* 574 F.3d 428(7th Cir. 2009),

¶ 4. Petitioners WOM asked this court to remand my proceedings back to the U.S.District court for an evidentiary hearing. The All Writs Act authorizes the issuance of writs to protect not only ongoing proceedings, but potential future proceedings, **as well as already-issued orders and judgments.** The U.S.District court denying the following two issues from further review,

- post-conviction counsel allowing the Machner court to deny petitioner post-conviction relief on perjured Machner testimony,
- the state submitting a perjured Proposed Findings of Fact and Conclusions of law document concerning the machinery testimony,

are material facts and arose from petitioner's argument on direct appeal. The U.S.District Court denying these two issues, from further review with no evidentiary hearing, is fundamentally unfair, **objectively unreasonable, and caused petitioner irreparable harm,** because a court cannot properly evaluate petitioners argument from his direct appeal and would **guarantee** a denial for habeas corpus relief.

¶ 5. U.S. District Court, ruling the post-conviction testimony was [erroneous] (not perjury as argued) **is acknowledging** your petitioner was denied his 6th amendment right and 14th amendment right to due process. The record is perfectly clear defense counsel never did what he testified too, **under oath**, which was the reason the court ordered a hearing in the first place **[his failure to give the state's expert an adversarial testing on the exculpatory nature of the exam].** The post-conviction court heavily relied on defense counsel's [erroneous/perjured/false] testimony, as the record states, to deny petitioner post-conviction relief, *see:* WOM, App .B (1), B (2) pg.2#2. The U.S. District Court acknowledging the testimony was [erroneous] should have automatically held an evidentiary hearing pursuant to 28 U.S.C. 2254(d), to find out what his actual strategy was. This epic failure violated petitioners XIV Amendment constitutional right to due process. No "fair minded juris[t] should disagree"

¶ 6. This court denying my WOM is objectively unreasonable because the state and federal court rulings are in direct conflict with other court of appeals rulings on the same important matters, departed from the accepted and usual course of judicial proceedings, which violated my 14 amendment right to due process, see.....

United States v. Cardena, 842 F.3d 959, (7th Cir. 2016). It violates due process for the government to obtain a conviction by the knowing use of perjured testimony. U.S. Const. Amend. V, XIV

Fulton v. Bartik, 547 F.Supp.3d 799, United States District Court, N.D. Illinois, Eastern Division, (2021) Using false evidence to convict a person at trial violates his right to a fair trial under the Due Process Clause of the Fourteenth Amendment. U.S. Const. Amend. 14.

Walker v. City of Chicago, 596 F.Supp.3d 1064, United States District Court, N.D. Illinois, Eastern Division (2022). Fabricated evidence will never help a jury perform its essential truth-seeking function, and thus inherently violates the defendant's right to due process. U.S. Const. Amend. 14.

Background

¶ 7. Petitioner was charged and found guilty with repeatedly sexually assaulting a young girl multiple times, [including deep penetrating sexual intercourse "more than 9 times"], *see* WOM ¶10. Albeit, the state's documented evidence, normal exam, disputes the alleged assaults 100%., *see* (WOM ¶ 20),

¶ 8. We have to trust medical science - quoting Dr. Anthony Fauci,

We must believe in medical science - quoting Pres-elect Joe Biden.

This is what america was told about the covid-19 vaccine in early Dec.2020. The same principle must be applied to the facts in this appeal. The medical science proves my innocence 100%.

¶ 9. The states documented evidence, findings of a "normal exam", when applied reasonably to the facts of the alleged assaults in this case, [not the vast majority as the doctor testified too, WOM ¶ 12.], **is exculpatory evidence** as the Michigan Supreme Court ruled.....

> **if the private parts of the defendant entered this of a child, then only 7 years old, as the testimony of the state tends to show, the marks of penetration would be permanent.** see: WOM ¶ 20/ App.D, par. 31 (*People v. Inman,* 315 Mich. 456, 24 N.W.2d 176),

furthermore, when chastity is an essential element of the offense for which the defendant is being prosecuted, **evidence of virginity is relevant.** If chastity is not an element, but promiscuity is a defense,

then evidence of virginity is relevant only after the defendant has introduced evidence of promiscuity.see: 1985 Wis.L.Rev. 1219 , *Id* @ (e), (also, @ 120)

¶ 10. Federal courts require that the proponent of expert testimony demonstrate that the experts "methods and principles" are "reliable" and "were applied reliably to the facts of the case." *see* **Federal Rules of Evidence 702** *see* constitutional provisions pg.

¶ 11. The record is perfectly clear defense counsel failed to give the state's expert witness an adversarial testing, either through cross examination or a defense expert. Petitioner argued, on direct appeal, "defense counsel failing to compel, from the states expert, the exculpatory nature of the experts findings, to the actual alleged assaults reported and testified to [in this case], was ineffective counsel and highly prejudicial to petitioners defense."

see: Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, held.....

> "The partially of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and effecting the weight of the testimony, *Id* @ HN.2. Denial of the right of effective cross-examination is a constitutional error of the first magnitude and no amount of showing of want of prejudice will cure it," *Id* @ HN.4

One of the fundamental constitutional rights of a criminal defendant is the right to due process of law, guaranteed by the fifth and fourteenth amendments to the United States Constitution. Due process requires that defendants be given a fair opportunity to defend against the government's charges. Compulsory process allows a defendant to call witnesses to testify at trial, and, if necessary, to use the subpoena power to compel testimony. Since compulsory process applies only to witnesses 'in his favor,' and only relevant evidence can be favorable, the testimony must be relevant to the issues in the case. The sixth amendment also guarantees a defendant the right 'to be confronted with the witnesses against him.' Confrontation means, in essence, that witnesses whose testimony is adverse to the defendant must be present at the trial and subject to cross-examination. **Confrontation is valuable because cross-examination provides the defendant the opportunity to obtain all the relevant facts from the**

witness, not just those in the prosecution's favor, and to elicit answers that impeach the witness' credibility. The right to confront adverse witnesses is especially important in sexual assault prosecutions since the trial outcome often turns on the credibility of the complainant. Compulsory process and confrontation are opposite sides of the same coin. **When the testimony of a witness is adverse to the defendant, the defendant has the right to cross-examine the witness. When the testimony is favorable, the defendant has the right to have the testimony heard by the jury.** Together, the rights to compulsory process, confrontation and due process give the defendant a constitutional right to present relevant evidence. *see:* Wisconsin Law Review, 1985 Wis.L.Rev. 1219, *Id* @ (a)

¶ 12. The court ordered a Machner Hearing on petitioners argument. During the hearing defense counsel's explanation for **[not]** crossing examining the states expert, examining physician Dr. Kelly Hodges, on the exculpatory nature of the exam was....

> I cross examined the **[other witness]** that came up earlier in the trial and she had all the same qualifications of the other witness and **I remember exploring those issues with her <u>regarding injury</u> and all the commonality and all that sort of stuff through that witness**, I believe I did talk about these facts to the jury. Because I felt I had dealt with all those issues with the previous examining nurse. WOM-App. E (a)

¶ 13. **There was no [other witness],** only examining physician Dr. Kelly Hodges testified at trial. Post-conviction counsel was ineffective for not challenging his testimony. ADA Sara Lewis allowed it to go uncontested knowing it to be not true, then vouched for it in he proposed finds of fact document. Petitioner argued, *pro se* § 974.06 motion, counselors machner testimony was perjury and the states proposed finds of fact statement was perjury. The U.S.District Court denied these arguments from moving forward. Ruleing "the machner testimony was [erroneous] WOM. App.A. pg. 3. ¶ s 1-2, pg.4, ¶ 4, disregarding the court's ruling, (the post conviction court quoted the [erroneous] /false testimony in denying relief. supra ¶ 5) Second, the state's proposed finds of fact, the court ruled.. "this document has no bases on the court's ruling",WOMApp.A.pg.5,.¶1, even after acknowledging the state court **adopted** the states proposed findings of fact document making it their ruling, WOM.App.A page.4.¶ 3.

ARGUMENTS

1) IS A CONVICTION OBTAINED BY USING FALSE/ PERJURED TESTIMONY A CONSTITUTIONAL VIOLATION?

¶ 14 *United States v. Cardena,* 842 F.3d 959,*Id* @12,(7th Cir.2016), held....**undoubtedly,** it violates due process for the government to obtain a conviction by the knowing use of perjured testimony. citing... *Napue v Illinois,* 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). *Schaff,* 190 F.3d at 530. But, to receive a new trial, the defendant must show "(1) that there was false testimony; (2) that the government knew or should have known it was false; and (3) that there is a likelihood that the false testimony affected the judgment of the jury." *United States v. Freeman,* 650 F.3d 673,678 (7th Cir. 2011). The false testimony at issue...

- (1) the courts conceded there was false testimony,
- (2) the government knew or should have known the testimony was false, ADA Sara Lewis prosecuted the case but vouched for defense counsel's false testimony within her proposed finds of fact and conclusions of law statement,
- (3) the false testimony affected the judgment of the court, the court "quoted" this false testimony denying petition post conviction relief. *see:* WOM, App. B (1), B (2) pg.2 #2.

2) DOES A PROSECUTOR HAVE A DUTY TO CORRECT FALSE TESTIMONY BY THE STATE?

¶ 15 **Yes, according to this court**, the prosecutor engaged in one of the forms of argumentation that the Supreme Court repeatedly has identified as improper: implying that a jury should believe a witness based on evidence that was not presented to the jury, *Jorden v.Hepp,* 831 F.3d 837(7th Cir.2016). On this record, the prosecutor's improper vouching for the credibility of defense counsel went to the heart of the matter. The record is perfectly clear [counsel's erroneous/false/perjured testimony] had a significant impact on the states court's decision, due to the fact the court quoted the testimony in its ruling.

¶ 16. ADA Sara Lewis had a duty not to mislead the court. Instead she kept the facts secret in the face of a long-standing rule of constitutional statute requiring disclosure, and then present testimony in such a way as to suggest the opposite of what she knew to be not true. **Prosecutorial misconduct in state criminal proceeding will be grounds for writ of habeas corpus unless prosecution can show that error was harmless beyond reasonable doubt.** *Brown v. Borg,* 951 F.2d 1011(9th Cir.1991).

3) IS FUNDAMENTAL FAIRNESS ESSENTIAL TO PRODUCE JUST RESULTS?

¶ 17. **Yes, according to this Court,** the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. **In every case** the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. *Strickland* @ 696, # IV

¶ 18. Everybody keeps overlooking the fact the post-conviction court accepted the false testimony, quoted the false testimony, in denying post-conviction relief. AAG Tiffany Winters even invented a strategic reason for defense counsel failures, which the Wis.Appellate courts quoted, *see* WOM ¶ 25. It's not the courts "commission" to invent strategic reasons **or accept any strategy counsel could have followed without regard to what actually happened;** when a petitioner shows that counsel's actions actually resulted from inattention or neglect, rather than reasoned judgment, the petitioner has rebutted the presumption of strategy, even if the government offers a possible strategic reason that could have, but did not, prompt counsel's course of action. *Marcrum v. Luebbers,* 509, F.3d 489,502 (8th Cir. 2007).

4) PETITIONER HAS MADE A SUBSTANTIAL SHOWING HE'S IN CUSTODY IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS AND ENTITLED TO RELIEF.

¶ 19. The arguments submitted within my 'W OM' proves state appointed defense counsel did nothing to even try to put on a defense. Doing nothing cannot be an option ! U.S. Const. Amend. XIV

No Cross Examination

No Defense Witnesses

No Defense Medical Witness

No Meaningful Adversarial Testing

No Meaningful Investigation (by his own admission) (WOM ¶ 19)

"At the heart **of effective representation** is the independent duty to investigate and prepare." *Weidner v. Wainwright,* 708 F.2d 614, 616 (11th Cir.1983), Therefore, permissible trial strategy can never include the failure to conduct a reasonably substantial investigation into a defendant's one plausible line of defense." *Washington*, 693 F.2d at 1252. The record clearly indicates that defense counsel inadequately investigated and prepared the case.

Pursuant to the familiar *Strickland* two- prong test, trial counsel's conduct is ineffective if his or her acts or omissions at the time of trial were "outside the wide range of professionally competent assistance", *Strickland v. Washington*, 466 U.S. @ 690. There is little tactical wisdom in counsel resting on his hands and assuming the government would make the defense case for him, *Goodman v. Bertrand,* 466 F.3d 1022 (7th Cir.2006). These **highly prejudicial errors** denied petitioner's jury the opportunity to deliberate "reasonable doubt" **and violated petitioners VI and XIV amendment rights.**

¶ 20. Prejudice - meaning an error which so infected the entire process that the conviction violated due process, *Sulla v. Hepp*, 2019 U.S. Dist. 41089. More specifically, failing to cross examine or to call defense medical witnesses at trial, where a credible defense exists (exculpatory exam), **falls below an**

objective reasonable standard of representation, thus constituting ineffective assistance of counsel. *Harris v. Reed,* 894 F.2d 871, 878-91(7th Cir.1990). *Holsomback v. White,* 133 F.3d 1382, 1385-89 (11th Cir. 1998), *Pavel v. Hollins*, 261 F.3d 210,217-18(2nd Cir. 2001), *Lindstadt v. Keane,* 239 F.3d 191, 202 (2nd Cir 2001)

¶ 21. Not developing a defense is tantamount to presenting no defense at all where lends credible support for the defense, *Davis v. Alabama*, 596 F.2d 1214, 1218(5th Cir.1979). In fact, such inaction has been found to be "a clear breach of the duty a defense attorney owes to his client" *Id.* @ 1219. Moreover, not presenting a viable defense cannot be found to be a tactical decision, it simply represents ineffective assistance, *Weidner v. Wainwright*, 708 F.2d 614, 616 (11th Cir.1983).

CONCLUSION

¶ 22. I respectfully argue, this court's decision denying my WOM is contrary to other opinions by this court, and other courts, on the same important matter, (supra ¶ s 4,5,7,13,14,16,19,20,21) The All Writs Act 28 U.S.C. § 1651(a) authorizes the issuance of writs to protect not only ongoing proceedings, but potential future proceedings, **as well as already-issued orders and judgments.** Unless specifically constrained by an act of Congress, the All Writs Act authorizes a court to issue writs any time, the use of such historic aids is calculated in its sound judgment **to achieve the ends of justice entrusted to it.** *Burr & Forman v. Blair*, 470 F.3d 1019, (11th Cir (2006). This court is authorized to issue a writ of mandamus pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Mandamus is a "drastic remedy traditionally used to confine a lower court to the lawful exercise of its jurisdiction **or to compel it to exercise its authority when it has a duty to do so.**" *United States v. Lapi,* 458 F.3d 555, 560–61 (7th Cir.2006); *In re Sandahl*, 980 F.2d 1118, 1119 (7th Cir.1992) ("[T]he petitioner must show irreparable harm (or, what amounts to the same thing, the lack of an adequate remedy by way of direct appeal or

otherwise and a clear right to the relief sought."). Although these demanding hurdles "are not insuperable," see *Cheney,* 542 U.S. at 381, 124 S.Ct. 2576 (granting writ),

¶ 23. I argue that this exacting standard is satisfied here with respect to the district court's denying the two issues from further review petitioner suffered irreparable harm because without those two issues petitioner is unable to successfully argue his argument from his direct appeal and as a result would be a denial of due process and automatically lose habeas corpus relief.

Dated this 16 day of July 2024.

Pro Se Petitioner,

Michael A. Farrell

Michael A. Farrell #248915
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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PROOF OF SERVICE

I, Michael Farrell, declare that on this date, July 16, 2024, as required by Supreme Court Rule 29 I have served the enclosed, Petition for Rehearing, Certification in good Faith, Certification of Mailing, on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

U.S Solicitor General, Room 5614
Department of Justice
950 Pennsylvinia Ave. N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the forgoing is true and correct:

Executed on July 16, 2024.

Pro Se Petitioner,

Michael Farrell

Michael A. Farrell #248915

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CERTIFICATION OF MAILING

I Michael A. Farrell, declare under the penalty of perjury (in compliance with 28 U.S.C sec.1746), pursuant to S.C. Rule 29(2) that the following documents submitted within Petition For Rehearing and Appendix, Certification of Mailing, and Proof of Service, was deposited in the Institution's internal mailing system, properly addressed with repaid first class postage.

Dated on this 16th day of July 2024

Pro Se Petitioner,

Michael Farrell

Michael A. Farrell #248915
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100 Corrections Dr.
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