ORIGINAL

No. 23-7557

IN THE

SUPREME COURT OF THE UNITED STATES

PAUL H. GIBSON

Petitioner

V.

TIM SHOOP, WARDEN

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PAUL H. GIBSON, Petitioner, pro Se

Counsel of Record

C.C.I.

P.o Box 5500

Chillicothe, Ohio

45601

Assistant Attorney General

Lisa Kathryn Browning

30 East Broad Street, 23rd floor

Columbus, Ohio

43215 – 6001

Question presented for review;

1. Does the lower court's decision to bar petitioner, and deny equitable tolling for the period of time petitioner was incapacitated, in the intensive care unit, and on life support at Ohio State University Hospital violate due-process and the principles of fairness when that decision is based on petitioners failure to present the hospital records to prove he was in the Hospital, when the Warden has the records in his possession, and the petitioner has diligently sought to obtain the records In question?

2.Should petitioner be required to submit the hospital records when the warden is not disputing the fact that he was in the hospital for the time requesting to be tolled, Oct. 21st 2012 through December 6th of 2021?

3. Is it not a conflict when one court denies equitable tolling for an extraordinary circumstance and another grants it under similar circumstances.

(see Harper v. Ercole, 648 F.3d 132) Pg. 9,38.

4. Should a constitutional violation so sever as to create a structural error, producing a result that is unreliable, be dismissed as a procedural error?

5. Is it not well established that once judicial bias is confirmed, that the only remedy is a new trial

[ ] All parties appear in the caption of cover.

List of Proceedings;

Prior relevant History:

United States Court of Appeals for the Sixth Circuit, March 8, 2024, Filed, No. 23-3599, Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

February 22nd,2024 United States District Court for the Sixth Circuit declined to rehear Petitioners request to rehear his petition, and request for Certificate of appealability.

United States Court of Appeals for the Sixth Circuit, (Gibson v. Shoop, 2024 U.S. App. LEXIS 1357) Case No. 23-3599 (January 19, 2024, Filed) U.S.D.C. for the Sixth Cir. Denied petitioners application C.O.A. Petitioner Argued had it not been for denial of time to be equitably tolled in which petitioner is entitled to Petitioners §2254 petition would be timely. Pg.7, Par.2 of sixth circuit decision the court states that requesting a stay regarding claims 5 through 15 would be inappropriate because they are essentially the same as the claims made in his first post-conviction petition. This is because this is Petitioners First Post- Conviction petition arising to this level and the claims made have never been ruled on their merit's. The request for a stay and abeyance is requested because Post- conviction counsel failed to represent petitioners claims as filed in his petition Filed March 13th,2021 after learning of Judge Pater's unconstitutional Bias in this case. Petitioner was forced to

back track and present the claims in a second petition. These claims have not yet been exhausted in state court. As to claims 5 through 15 they are currently under appeal in the Ohio State Supreme Court as of February 15th,2024.

(January 16th,2024) (State of Ohio v. Paul H. Gibson, CA2023-05-056) In the court of appeals Twelfth Appellate District of Ohio. Judgment entry. Order to dismiss appellants appeal as appellants' arguments are outside the scope of entries from which the appeal was taken.

The Arguments were certainly not outside the scope of the judgment ruling of which the appeal is based. April 24th, 2023 In the Court of Common Pleas General Division Judge James A. Brogan issued a FINAL APPEALBLE ORDER I reference to the claims argued in 5 through 15, (see Doc. 4/24/2023) (Pg.2-Par.1 Judge Brogan directed Gibson to file his appeal of his Crim. R. 33 Motion for a new Trial in the 12th District Court. Therefore, Petitioners claims are not outside of the scope of the entries from which his appeal was taken but rather exactly what should and has been appealed.

United States District Court for the Southern District of Ohio, Western Division

June 26, 2023, Filed Case No. 1:22-cv-697. Judges: Matthew W. McFarland, petition was recommended to be dismissed with prejudice.

Judge McFarland refused to subpoena the necessary documents (being Petitioners Medical records) to make an informed decision, his recommendation was arbitrary and capricious.

A judgment order without the facts are a violation of due-process as Judge McFarland possess the authority to obtain the documents in question.

Magistrate's recommendation at Gibson v. Shoop, 2023 U.S. Dist. LEXIS 95805, 2023 WL 3740821 (S.D. Ohio, May 30, 2023) After being returned to Magistrate Judge for further analysis Judge McFarland, as Magistrate Michael R. Merz still refused to except Gibson's petition. Gibson has filed the required subpoena duces tecum for O.S.U. Medical Center, Franklin Medical Center, and Chillicothe Correctional Institution, as well as filing a sworn affidavit by Gibson to the facts of his hospitalization, and incapacitation creating an exceptional circumstance of which the rules of equitable tolling apply.

Magistrate's recommendation at, Habeas corpus proceeding at Gibson v. Shoop, 2023 U.S. Dist. LEXIS 78514, 2023 WL 3230976 (S.D. Ohio, May 3, 2023)

Magistrate's recommendation at, Habeas corpus proceeding at Gibson v. Shoop, 2023 U.S. Dist. LEXIS 54456 (S.D. Ohio, Mar. 20, 2023) Conclusion

Based on the foregoing analysis, the Magistrate Judge respectfully recommends Respondent's Motion to Dismiss the Petition as untimely be granted. The Petition should be dismissed with prejudice. Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed in forma pauperis.

His decision is based on Magistrate Judge McFarland refusal to grant equitable tolling in a case where it should most certainly be granted Judge McFarland has rendered his decision without considering the facts of this case. Petitioners request for equitable tolling is requested as extraordinary circumstances prevented him from meeting the original time limit as described in (the "AEDPA"). As codified at 28 U.S.C. § 2244(d), it provides:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period [*3] shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

Although the statute can be equitably tolled, Petitioner's claim to equitable tolling depends on a 2021 hospitalization. The Ohio State Supreme Court issued their determination on October 26th, 2021 at this time Gibson was on life support at Ohio

State University Medical Center. Gibson was released from O.S.U. around mid-November and transferred to Franklin medical center for rehabilitation as Gibson still required oxygen and did not yet have the strength to walk. On or about December 6th petitioner Gibson was then transferred back to Chillicothe Correctional Institution where after a short time with the help of a medication called cilistazol, trademark name of Pletal. To assist the blood flow to Gibson's legs at this time Gibson could then walk to the Law Library.

Gibson need only show diligence in the time to be tolled being October 26th, 2021 through December 6th, of 2021 the tolled time would make Gibson's petition timely. As to Gibson's actual innocence a Grown Man Can NOT have vaginal intercourse with a prepubescent Girl and cause no damage to the hymen, further more documents discovered by petitioner prove that although a hymenal injury heals the transection or gap in the hymen is persistent regardless of if the transection was created ten days or ten years prior.

TABLE OF CONTENT

(E) Supplemental Report and recommendation; In the United States District Court for the Southern District of Ohio Wester Division-Cincinnati. (May 3rd, 2023)

(F) RECOMMITTAL ORDER; In the United States District Court for the Southern District of Ohio Western Division-Cincinnati. (May 1st,2023)

(G) Supreme Court of Ohio

(H) Twelfth District Court of Appeals, Ohio

(I) Court of Common Pleas, Butler County, Ohio

(J) Affidavit, (Paul H. Gibson)

(K) Kite; Medical Administrator / Records.

(L) Butler County Local Rule 6.04

(M) Rules of the superintendent for the State of Ohio, Rule 8. Court Appointments.

(N) Dr. David Burkons, Consult report.

(O) Dr. David Lowenstein, Consult report.

(P) Judge Charles L. Pater/ admission of Bias.

(Q) Affidavit of Indigence.

(R) Certificate of Service.

TABLE OF AUTHORITY

Appendices:

(A)(1) REHEARING; en banc, petition for rehearing, ORDER United States Court of Appeals for the 6th Circuit. March 8, 2024, Filed.

(A)(2) (Jan 22, 2024) order, United States Court of Appeals for the Sixth Circuit

(B) Sixth Circuit court of appeals decision.....

(C)(D)(E) Federal District Court Report and recommendation.....

(F) Fed, Dist. Court Re-Committal order.....

(G)Ohio State Supreme Court Order.....

(H) State Of Ohio, Twelfth District Order.....

(I) Court of Common Pleas, Butler County, Ohio.....

(J) Sworn Affidavit of Paul H. Gibson.....

(K) Kite; Medical Administrator / Records.....

(L) Rules of procedure Ohio Butler Cty. Gen. Div. LR 6.04.....

(M) Ohio Sup. R. 8.....

(N) Dr. Burkons Consultation Report.....

(O) Dr. Lowenstein Consultation Reports.....

(P) Judge Charles L. Pater admission of Bias. (News article) ....

(Q) Affidavit of Indigence.....

(R) Certificate of Service.....

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgment below. **Opinion and Order;**

(A)(1) United States Court of Appeals for the Sixth Circuit, (March 8, 2024, Filed) No. 23-3599, Pursuant to established court procedures, the panel now denies the petition for rehearing en banc. (A)(2) United States Court of Appeals for the Sixth Circuit, Gibson v. Shoop, (February 22nd,2024) Upon a careful consideration, the panel concludes that the original deciding Judge did not misapprehend or overlook any point of law of fact issuing the order and, accordingly to rehear the matter.(B) United States Court of Appeals for the Sixth Circuit, (Gibson v. Shoop, 2024 U.S. App. LEXIS 1357) (January 22, 2024, Filed) For these reasons, Gibson's application for a COA is DENIED and his motion to proceed in forma pauperis is DENIED as moot.

(C) Gibson v. Shoop, 2023 U.S. Dist. LEXIS 110651... PAUL HENRY GIBSON, Petitioner, v. TIM SHOOP, Warden, Respondent. Gibson v. Shoop Case No. 1:22-cv-697 United States District Court for the Southern District of Ohio, Western Division 2023 U.S. Dist. LEXIS 110651 2023 WL 4186194 June 26, 2023, Filed Gibson v. Shoop, 2023 U.S. Dist. LEXIS 78514, 2023 WL 3230976 (S.D. Ohio, May 3, 2023) Paul H Gibson, Petitioner, Pro se, CHILLICOTHE, OH. MATTHEW W. McFarland, JUDGE.

Exhibit (D) United States District Court for the Southern District of Ohio, Western Division, May 30, 2023, Decided; May 31, 2023, Filed, Case No. 1:22-cv-697

(SECOND SUPPLEMENTAL REPORT AND RECOMMENDATIONS)

(Judge McFarland sent back for review)

EX.(E) United States District Court for the Southern District of Ohio, Western Division,

May 3, 2023, Filed, Case No. 1:22-cv-697, 2023 WL 3230976.

(SUPPLEMENTAL REPORT AND RECOMMENDATIONS)

(Judge McFarland sent back for review and reconsideration)

EX. (F) In the United States District Court for the Southern District of Ohio Western Division at Cincinnati: Recommittal Order Judge Matthew McFarland (May 1st, 2023)

(G) Supreme Court of Ohio, State v. Gibson, 165 Ohio St. 3d 1424,2021-Ohio-3730,175 N.E.3d 572,2021 WL 4956447. APPEAL NOT ACCEPTED FOR REVIEW.

(H) Court of Appeals of Ohio, Twelfth Appellate District, Butler County,

June 28, 2021, Decided, CASE NO. CA2020-11-114

(I) Court of Common Pleas Butler County, Ohio, Judge James A. Brogan presiding. October 26th, 2020 decision denying Gibson's joint petition for post-conviction relief and motion for a new trial.

Jurisdictional Statement; (A)(1) United States Court of Appeals for the Sixth Circuit, (March 8, 2024, Filed) United States Court of Appeals for the Sixth Circuit, Gibson v. Shoop, (February 22nd,2024) Denial of rehearing. (January 19, 2024) to accept his habeas petition as timely pursuant to the Rules of 28 USCS § 2254, 2244(d)(1)(A), ORC Ann. 5120.21, and the rules of Equitable Tolling and Extraordinary Circumstances, 28 USCS § 2244(d), is subject to equitable tolling in appropriate cases.

This Court has Jurisdiction pursuant to 28 USCS § 1257 and this petition is being filed within 90 days of the decision under review.

Statutory and Constitutional provisions; U.S Const. Amendment 5, 6, and 14, Sec. 1. law [Citizens of the United States.] 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. Phrase "due process of law" does not mean that operations of state government shall be conducted without error or fault in any particular case, nor that Federal courts may substitute their judgment for that of state courts, or exercise any general review over their proceedings, but only that fundamental rights of prisoner shall not be taken from him arbitrarily or without right to be heard according to usual course of law.

Ohio Constitution, Oh. Const. Art. I, § 10, Oh. Const. Art. I, § 16

Introduction: Paul H. Gibson hereby petitions this Court for a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals.

The district Court and the Sixth circuit court of appeals have denied ruling on the merits of claims presented by Gibson as being barred by time limitation. Gibson has repeatedly requested that the courts subpoena Medical records which prove Gibson was incapacitated for the first 47 days of his time to be tolled. Equitable tolling would enable Gibsons petition for Habeas relief to be 19 days early rather than late.

This Is a Case of Wrongful Conviction: Petitioner is being imprisoned against his constitutional rights. Petitioner was sentenced to ten years to life in prison for the rape of a nine-year-old Girl. This alleged crime was reported approximately four years after the alleged crimes were to have accrued. Gibson resided with his then Girlfriend Theresa Turner at the residence of the alleged victim.

Gibson did not Appeal the district Courts decision filed March 13th,2017 because he was told by his appellant Counsel Christopher Fredricks that there was nothing else that could be done, Fredricks sham appeal did nothing to help Gibson only fulfilled his legal obligation to present something to the court resembling an appeal, Gibson was uninformed that Fredricks had even been assigned to his case or that an Appeal had been filed until after the fact. Gibson had no consultation with Fredricks concerning what was to be filed until after it had been filed and

when Gibson tried to discuss additional arguments Counsel Fredricks ignored his words.

Gibson struggles with comprehension of the law as well as basic reading comprehension he has had an extremely hard time trying to get any relief from this miscarriage of justice. His Post-Conviction Counsel obtained to assist Gibson in 2019 Mr. Scott N. Blauvelt undiscovered to Gibson was an alcoholic, that had mental health problems (He has since been disbarred as being unfit to practice law in the State of Ohio)

Gibson's original request for post-conviction relief that was overwritten when Blauvelt was granted permission to file a supplemental request for P.C.R included the relation as they were related to the Judicial Bias Claims of Ineffective Assistance. Blauvelt did not apply these grounds for relief. Gibson then filed an additional Request for relief that did include the claims he had been trying to incorporate showing how ineffective his trial counsel was and that not for counsels constitutionally ineffective assistance the outcome would have been different.

Statement Of This Case: This is a case of a Wrongful Conviction the petitioner is as innocent of the crime he was convicted of as the reader of this document.

On October 21st 0f 2021, five days before the Ohio State Supreme Court filed their decision Mr. Gibson suffered a catastrophic injury caused by a massive spike in his blood pressure.

Records will show that Gibson suffered a complete dissection of his aortic artery, sever enlargement to the left arterial chamber of his heart. Gibson was placed on life support at Ohio State University Wexner Medical Center where he was given a very slim chance of survival. During this time to complicate his condition further he also contracted a severe case of staff or M.R.S.A. based pneumonia, Gibson's lungs where vacuumed multiple time every day to keep him alive, and on the highest amount of oxygen available.

Against all odds and by the grace of GOD Gibson did survive, after about three weeks Gibson was transferred to Franklin Medical Center for continued oxygen therapy, and rehab to regain his strength to walk again. Approximately December 6th, 2021 Gibson returned to Chillicothe Correctional Institution. Gibson was medically incapacitated, fighting for his life for forty-seven days and completely unable to pursue any type of legal recourse. Gibson was presented with the Supreme Courts decision upon his return to C.C.I. It is not until Dec 6th, that Gibsons time clock should begin.

As Petitioner was sentenced to ten years to life in a court presided by a bias Judge; and the United States Constitution reads,

"Amendment 14 Sec. 1. [Citizens of the United States.] 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.

Amendment 6 Rights of the accused: 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. Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clause; be deprived of life, liberty, or property, without due process of law's.

As Gibsons rights to a fair trial in a fair tribunal have been violated is Mr. Gibson not entitled to a new trial in which he would have a chance to present a full defense rather than a mere façade.

The trial in question had (1). defense counsel as requested by the prosecution enabling the Prosecution to chooses their adversary (2). Trial Judge who by self-admission and later confirmed by news articles had a family member traumatized by the same type of heinous crime as the accused. Was admittedly, and understandably bias. (3). Defense Counsel appointed by Biased Judge was neither qualified, or motivated to hold his clients best interest.

Statement of Proceedings: November 5th, 2015 upon receiving information that an indictment had been issued for Gibsons arrest Gibson Voluntarily delivered himself to the custody of the Butler County Sheriff's Department where he was arrested. On November 10th Gibson had a preliminary hearing in which Gibson was appointed Counsel, Gibsons appointed counsel requested to be recused as there was a conflict of interest involving Counsel and the Family of the accuser being friends and preforming legal services for them.

Upon this report Judge Charles L. Pater recused Counsel. At this time County Prosecutor Kelly E. Heile suggested to Judge Pater that a Mr. Kyle M. Rapier was available to serve as conflict counsel and should be appointed, Judge Pater affirmed this and did in fact appoint Mr. Rapier as suggested by Prosecutor Heile.

Gibson was adamant about his innocence and proceeded to a jury trial lasting Three days, Gibson was charged with Four counts of rape in violation of R.C. 2907.02(A)(1)(b), on the fourth day the jury returned a verdict of not guilty on counts One, Two, and Three but returned a verdict of guilty on count four.

When Counsel asked the jury members what evidence tipped the scale to determine Gibson was guilty the jurors stated that it was based on a feeling of obligation to a child and not on any evidence, in fact they knew she was lying.

Facts relevant to the questions presented: § 2244. Finality of determination (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of_(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

As Gibson was unable to file a habeas petition before exhausting his state remedy's the time for Gibsons first four claims of judicial bias should not be ruled as untimely the time period from January 25th through March 13, should be counted only towards the filing of his Cim.R.33 motion for a new trial not his habeas petition.

> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Gibson's time to be tolled for total incapacitation, presenting an extraordinary circumstance, Should run from October 26th through December Sixth when Gibson was released from the Hospital though he was still recovering in accordance with the rules set out in,

> 28 USCS § 2244, Part 1 Equitable Tolling and Extraordinary Circumstances

1. In General: Timeliness provision in federal habeas corpus statute, 28 USCS § 2244(d), is subject to equitable tolling in appropriate cases; petitioner is entitled to equitable tolling only if petitioner shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. Holland v. Florida, 560 U.S. 631, 130 S. Ct. 2549, 177 L. Ed. 2d 130, 22 Fla. L. Weekly Fed. S 437, 2010 U.S. LEXIS 4946, remanded, 613 F.3d 1053, 22 Fla. L. Weekly Fed. C 1298, 2010 U.S. App. LEXIS 16058 (11th Cir. 2010).

One-year period of limitations for filing petition for writ of habeas corpus is subject to equitable tolling since it is not jurisdictional bar. Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 1998 U.S. App. LEXIS 10414 (3d Cir. 1998).

One-year limitations period for filing federal habeas claims by state prisoners is subject to equitable tolling in appropriate exceptional circumstances. Davis v. Johnson, 158 F.3d 806, 1998 U.S. App. LEXIS 26877 (5th Cir. 1998), cert. denied, 526 U.S. 1074, 119 S. Ct. 1474, 143 L. Ed. 2d 558, 1999 U.S. LEXIS 2715 (1999).

Time limitation of 28 USCS § 2244(d)(1) is subject to equitable tolling because there is no indication that time limitation therein is jurisdictional, nor is there evidence of congressional intent to preclude tolling such as would be sufficient to overcome presumption that equitable tolling applied. Neverson v. Farquharson, 366 F.3d 32, 2004 U.S. App. LEXIS 8762 (1st Cir. 2004).

The alleged victim has a substantial history of playing the victim role for attention. The facts supporting her modus operandi was known to trial counsel but was not disclosed to the jury. "Dr. Lowenstein addresses this in his consultation report."

The testimony of the states witness Dr. Kirsten Simonton was not Challenged even though; her testimony was not just misleading but perjures. (see Trial Transcript CR2015-10-1601. Pg.'s 37 through 49.)(April 21st, 2016)

Since the trial Gibson has been able to obtain a substantial amount of evidence, also available to trial Counsel but not presented for lack of discovery and or investigation. As well as testimony from proposed defense experts who were not permitted to testify Dr. David Burkons M.D., and Dr. David Lowenstein Psychiatrist both who's consultation Reports alone were extremely damaging to the prosecutions already weak case. As Judge Charles L. Pater was responsible for the denial of Expert Dr. Lowenstein from testifying and appointing defense counsel who had no business representing a client in such a complex case, by Judge Pater appointing Mr. Rapier as requested by the prosecution show his bias towards the defendant and preference to the prosecution, in allowing Heile to choose her adversary this also leads one to assume that perhaps Judge Paters Bias and had already successfully influenced and corrupted the outcome of the trial even before it had begun. Judge Paters Bias is obvious.

Ohio Butler Cty. Gen. Div. LR 6.04: (A) The Butler County Public Defender will provide attorneys to the Court of Common Pleas and the Butler County Area

Courts and Municipal Courts to provide representation for indigent defendants charged with felonies. Should a conflict arise in representation by the Public Defender, the following procedure shall be instituted by the Common Pleas Court.

(B) Conflict. Court administration shall maintain, and make appointments from, a rotary list of those attorneys who have been approved by the General Division Judges to qualify as conflict or appellate attorneys. The list may pair the seriousness and complexity of a case with the qualifications and experience of the person to be appointed. The General Division Judges may add attorneys to the approved list due to caseload concerns, replace attorneys being removed from the list, or develop less-experienced attorneys, by allowing them to represent only

(D) It is the intention of the Court to distribute equitably appointments for conflict attorneys who have been approved by the Court in an objectively rational, fair, neutral, and nondiscriminatory manner, although the court retains the discretion to deviate from the list when taking into account the factors contained in (B).

(E) In making an appointment for a conflict attorney, the Court will consider the factors contained in the Ohio Rules of Superintendence.

Ohio Sup. R. 8 (A) Definitions As used in this rule:

(1) "Appointment" means the selection by a court or judicial officer of any person or entity designated pursuant to constitutional or statutory authority, rule of court, or the inherent authority of the court to represent, act on behalf or in the interests of

another, or perform any services in a court proceeding. The term "appointment" does not include the selection by a court or judicial officer of the following:

(2) "Appointee" means any person, other than a court employee, receiving an appointment by a court or judicial officer. "Appointee" does not include a person or entity who is selected by someone other than the court.

(3) "Equitable distribution" means a system through which appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among substantially all persons from the list maintained by the court or division of persons pre-qualified for appointment.

(4) "Judicial officer" means a judge or magistrate.

(B) Local rule

(1) Each court or division of a court shall adopt a local rule governing appointments made in the court or division.

(2) The local rule required by division (B)(1) of this rule shall include all of the following:

(a) For appointments frequently made in the court or division, a procedure for selecting appointees from a list maintained by the court or division of persons pre-qualified to serve in the capacity designated by the court or division. The procedure shall ensure an equitable distribution of appointments. To ensure an equitable distribution of appointments, the court or division may utilize a rotary system from a graduated list that pairs the seriousness and complexity of the case with the

qualifications and experience of the person to be appointed. The court or division may maintain separate lists for different types of appointments.

(b) A procedure by which all appointments made in the court or division are reviewed periodically to ensure the equitable distribution of appointments;

(c) If not addressed by the Revised Code or Supreme Court rule, the compensation appointees will receive for services provided and expenses incurred as a result of the appointment, including, if applicable, a fee schedule.

(3) The local rule required by division (B)(1) of this rule may include the following:

(a) Qualifications established by the court or division for inclusion on the appointment list;

(b) The process by which persons are added to or removed from the appointment list;

(c) Other provisions considered appropriate by the court or division.

(D) **Factors in making appointments in making appointments, a court or judicial officer shall take into account all of the following**:

(1) The anticipated complexity of the case in which appointment will be made;

(2) Any educational, mental health, language, or other challenges facing the party for whom the appointment is made;

(3) The relevant experience of those persons available to accept the appointment, including proficiency in a foreign language, familiarity with mental health issues, and scientific or other evidence issues;

(4) The avoidance of conflicts of interest or other situations that may potentially delay timely completion of the case;

(5) Intangible factors, including the court or judicial officer's view of a potential appointee's commitment to providing timely, cost-effective, quality representation to each prospective client.

(Williams *v. Pennsylvania, 579 U.S. 1*) CONSTITUTIONAL LAW §843 > DUE PROCESS -- JUDGE -- POTENTIAL BIAS > Headnote: LEdHN [3] Due process guarantees an absence of actual bias on the part of a judge. Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the U.S. Supreme Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias. An unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. This objective risk of bias is reflected in the due process maxim that no man can be a judge in his own case and no man is permitted

to try cases where he has an interest in the outcome. (Kennedy, J., [10] A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an [*16] essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional [**1910] level, the failure to recuse cannot be deemed harmless. Joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

Judge Paters Daughter his own flesh and blood was laid victim to the heinous crime of being Raped. Judge Pater is a Man, a Father, and a Judge in that order, is it reasonable to believe that a man whose Baby Girl was such a victim would not be biased to similar cases?

a theory of "camouflaging bias." Is also a possibility looking at the facts of this case along with the trial transcripts, lack of prepared defense, and the assignment of Mr. Rapier by all rights appear to be an act of collusion with the Prosecutor, Judge and alleged defense Counsel?

This case is based solely on the testimony of a mentally ill Girl who by self-admission during psychiatric interviews stated that she would threaten self-harm, and claim to be bullied because she liked a lot of attention. Evidence to support

Gibsons innocence was either prevented from being presented by defense Counsel Rapier, or Trial Court Judge Charles L. Pater. There is to this day no evidence that a crime even took place but the evidence supporting the fact that it did not happen has not been acknowledged.

It appears as though Judge Pater Bias may have persuaded, and influenced this case before the trial had even begun. (Williams v. Pennsylvania, 579 U.S. 1)HN9 For due process purposes, it does not matter whether a disqualified judge's vote was necessary to the disposition of the case. The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party.

Is it presumable that an Attorney who has experience in one field such as corporate Law would also automatically be able to represent a client in a criminal trial of which he has 0% experience?

Should a skilled corporate attorney not be held accountable for the misrepresentation of his client in a criminal trial if he does not hold the necessary skills to properly challenge the prosecution?

- Should the Local rules of appointing counsel to an indigent defendant not be followed? (See Loc.R.6.04, and Rules of the Superintendent 8.0)
- Judge Paters Bias is obvious.

- Should the evidence and testimony of defense Experts have been presented would the outcome of the trial not have been different, and an Innocent Man have not been convicted.
- If only one side is presented how can the jury, make an informed decision?
- Has Gibsons constitutional rights not undoubtedly been violated?

Is the right to Counsel, the right to a fair trial, in a fair tribunal, and the right to be heard, to present a defense not just a partial defense but a complete defense not available to all American Citizen's?

(Marvin Dearing, Plaintiff, V. Institutional Inspector Mahalma)

Plaintiff's Own Medical Records, Plaintiff has requested copies of his own medical records. Defendants' objection relies upon Ohio law that allows a prisoner to inspect, but not to possess, copies of his or her own medical records. *See, generally*, Ohio Rev. Code §5120.21; ODRC Policy 07-ORD-11. In order to merely *review* his or her own medical records, a prisoner must complete a form and schedule an appointment. *Id.* By contrast, an inmate's "designated attorney or physician" may obtain a physical copy of the records, upon an inmate's written consent and payment of "a reasonable fee." O.R.C. §5120.21(C)(2). A request that an inmate's medical records be made available to a physician or to a designated attorney may not be made "more than once every twelve months." *Id.*

As Plaintiff points out, his medical records are highly relevant

> Under the circumstances, the Court will grant Plaintiff's request for a copy of his medical records, restricted to the time frame of January 1, 2008 through November 2011. Although such records ordinarily may be accessed only by prison employees, or as provided concerning an inmate's designated physician or attorney, the statute does not restrict additional access if granted "by the consent of the department [of rehabilitation and correction] or the order of...a court of record." O.R.C. §5120.21(A).

As in this case the medical records are instrumental in determining if Gibson Habeas Petition should be granted as being timely, as these records are the only way to prove that Gibson was not just casually unavailable but rather near death, in a state of complete and total incapacitation, on life support presenting an extraordinary circumstance.

(Gibson v. Shoop, 2024 U.S. App. LEXIS 1357) The district court found that, under § 2244(d)(1)(D), the statute of limitations for Gibson's first four claims did not begin to run until January 25, 2019, when Gibson discovered [*10] through a news article that the trial judge harbored a potential bias against defendants in certain sex offense cases. That limitations period was tolled on March 13, 2019, when Gibson filed a post-conviction petition based on this new evidence. 2244 (a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been

determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section [28 USCS § 2255].28 USCS 2244 (B) (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(d) (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

[Gibson v. Shoop, 2024 U.S. App. LEXIS 1357.Gibson also asserted that he could overcome any time bar with a showing of actual innocence, citing exhibits attached to his September 13, 2021,]

Evidence of Actual Innocence: Newly Discovered Evidence;

Trial Court transcripts were in fact necessary for Gibsons claims of ineffective assistance of counsel to have any merit, for without these transcripts Gibsons claims would be unsubstantiated and dismissed by the Court.

Contrary to State and Federal Court have failed to acknowledge that also included as exhibit's presented to the Court f Common Pleas Butler County, Ohio on September 13th,2021 are multiple document's asserting that repeated vaginal, or even a single episode of vaginal penetration by an adult male penis would in fact

leave evidence of penetration that would last indefinitely, thus showing evidence of Gibson actual innocence. As the testimony of the alleged victim stated that there was daily vaginal, penial intercourse with full penetration for over three months' therefor evidence contrary to what was presented by states alleged expert proves Gibsons innocence.

Though a hymeneal tear, or laceration will heal rapidly the transection created will be persistent regardless if it's been three days or four years.

A vaginal examination of Amelia Turner revealed no evidence of any type of trauma or hymeneal damage compatible with the finding in medical studies that have been conducted around the world, her hymen had not been exposed to any type of trauma. Verified by a colposcopy examination.

Dr. David Burkons states in his report that the evidence does not support the allegations made against Paul Gibson, this report was made even before and without the internal vaginal diagnosis of Amelia Turner. Report of a colposcopic examination would have only solidified Dr. Burkons opinion.

Additionally, the consultation report from Dr. David Lowenstein addressing the alleged victims habit of threatening self-harm, as well as claims of being bullied at school all because she stated that she likes a lot of attention. This is documented from psychiatric hospital stays by trained professionals treating alleged victim Amelia Turner. This further raises questions to Gibsons Innocence. And once again these documents show unequivocally that trial counsels performance was not only

ineffective but detrimental to the defense and Mr. Gibsons right to effective assistance of Counsel.

The question is why would a girl make up such horrific, Horrible lies? The answer is disturbingly simple, for attention. When mental health and or psychological abnormalities, and or learned behavior play a part in someone's actions the rules that normally apply to human behavior no longer apply and the results as in this case are very disturbing. Mr. Gibson is a victim of such situation.

(*Lindstadt v. Keane, 239 F.3d 191*) We cannot say that such cross-examination would have been fruitful. But counsel's failure to seek the study was an amazing dereliction. Moreover, there is no evidence that defense counsel contacted an expert, either to testify or (at least) to educate counsel on the vagaries of abuse indicia. See generally Beth A. Townsend, Defending the "Indefensible": A Primer to Defending Allegations of Child Abuse, 45 A.F.L. Rev. 261, 270 (1998) **("It is difficult to imagine a child abuse case . . . where the defense would not be aided by the assistance of an expert.").** Such an expert could have brought [**29] to light a contemporaneous study, accepted for publication at the time of Lindstadt's trial, that found similar irregularities on the hymens of girls who were not abused. See John McCann et al., Genital Findings in Prepubertal Girls Selected for Nonabuse: A Descriptive Study, 86 Pediatrics, No. 3, at 428-439 (Sept. 1990); see also Townsend, 45 A.F.L. Rev. at 269-270 (discussing studies that indicate the presence of clefts on

the hymen of non-abused girls); J. Gardner, Descriptive Study of Genital Variation in Healthy, Nonabused Premenarchal Girls, 120 J. Pediatrics 258-260 (Feb. 1992).

There is no substitution for the assistance of an expert qualified in the field in question. Gibson was denied this opportunity.

(*Richey v. Bradshaw, 498 F.3d 344*) HN5 "allegations of ineffectiveness [**42] based on facts not appearing in the record should be reviewed through the post-conviction remedies of O.R.C. 2953.21." State v. Coleman, 85 Ohio St. 3d 129, 1999 Ohio 258, 707 N.E.2d 476, 483 (1999); accord Byrd v. Collins, 209 F.3d 486, 521 (6th Cir. 2000) (stating that Ohio's res judicata rule "has been consistently interpreted to stand for the proposition that a claim of ineffective assistance of trial counsel, which is dependent upon evidence outside the record, is to be raised in a post-conviction proceeding rather than on direct appeal").

Just as in Hill and Greer, Richey's ineffective-assistance claim depends on evidence outside the trial record. Although the simple absence of competing scientific evidence is apparent from the trial record, the only way that Richey could make out a violation of his constitutional rights was to adduce evidence establishing what his counsel would have learned about the State's arson evidence and how to countermand that evidence, had his counsel performed effectively. This necessarily required evidence outside the record, and it is exactly the kind of evidence that Richey submitted with his state post-conviction petition, and further developed through discovery [**45] in the district court. Richey presented the affidavits of

Armstrong and Custer, who opined that the scientific methodologies and conclusions of the State's experts were flawed and that the fire likely started accidentally. Richey also presented the deposition testimony of DuBois and Kluge, which showed Kluge's lack of oversight of DuBois's minimal work and lack of preparation in seeking to undermine the State's scientific findings. None of this testimony was available to Richey on direct appeal precisely because, under Ohio law, direct appeals are confined to the trial record. Had Richey asserted his ineffective-assistance-of-counsel claim on direct appeal, then, he would have lost. Without evidence showing what kind of scientific defense a reasonably competent attorney would have mounted, the state court would have had no basis for concluding that Richey's counsel was deficient and that Richey was prejudiced thereby. Indeed, we recently granted habeas relief on an ineffective-assistance-of-counsel claim where the petitioner's attorney raised the claim improperly on direct appeal, rather than in post-conviction proceedings where the petitioner could have supported the claim with evidence. In Williams v. Anderson, 460 F.3d 789, 800-01 (6th Cir. 2006), we held as follows: Here, Petitioner's appellate counsel performed below an objective standard of reasonableness by raising Petitioner's ineffective assistance of trial counsel claim on direct appeal despite the absence of evidence in support of the claim in the record. HN8 It is well-established in Ohio law that where an ineffective assistance of counsel claim cannot be supported solely on the trial court record, it should not be brought on direct appeal. . .. Thus, but for counsel's unreasonable decision, Petitioner would have been able to support his

meritorious claim with the necessary evidence in post-conviction proceedings. Accordingly, counsel's conduct prejudiced Petitioner.

For these reasons, we hold that grounds one and three identified by the Supreme Court in its opinion remanding the case--that Richey's trial counsel "(1) inadequately cross-examined experts called by the State," and "(3) failed to present competing scientific evidence against the State's forensic experts"--are not procedurally defaulted,

Petitioner has also discovered via Attorney Scott N. Blauvelt that there was a mole on the jury. This person was in fact a co-worker/ member of the team working for the prosecution, this being a thirteenth member of Cincinnati Children Hospital Staff, as there had been twelve members of C.C.H. subpoenaed by the State of Ohio to assist in their prosecution. Judge Pater, nor Trial Defense Counsel let this be known as this created another structural error in tainting the entire Jury pool.

As in State of Ohio v. Paul H. Gibson trial court counsel did not perform as a skilled attorney is required by the Sixth Amendment to the U.S. Constitution, therefor Gibson should be granted relief, trial courts decision reversed and Gibson should either be retried of released from this unconstitutionally expectable confinement which is against his Fifth constitutional right to due-process "nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation". his Sixth

Constitutional right to be heard "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" And the right to present a defense;

Crane v. Ky., 476 U.S. 683 LEdHN [6] The Federal Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense, whether this right is rooted directly in the due process clause of the Fourteenth Amendment or in the compulsory process or confrontation clauses of the Sixth Amendment; the opportunity to be heard is an essential component of procedural fairness.

The constitutional right to "a meaningful opportunity to present a complete defense" is rooted in both the Due Process Clause and the Sixth Amendment. Crane, 476 U.S. at 690 (quoting (California v. Trombetta, 467 U.S. at 485);see Chambers v. Mississippi, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations."); Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967) ("The [Sixth Amendment] right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's

version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.").

As in State v. Gibson Judge Paters decision to deny Gibson with adequate legal assistance to be constitutionally tolerable, "at the request of Prosecuting Attorney" and the denial of Dr. David Lowenstein. (Psychiatrist) testimony while allowing the state access to the same type of testimony by an expert of their choosing, permitting a juror related to the prosecutions witnesses as co-worker at Cincinnati Children Hospital, discarding of a criminal investigation report or having knowledge of such act, is denial of due- process denying Gibson the opportunity to present a complete defense. Though Judge Pater did permit the testimony of Dr. David Burkons M.D. the failure to call by trial counsel appointed by judge Pater denied Gibson further thus once again showing that Judicial Bias claims and ineffective assistance of counsel are intertwined as both being created by Judge Paters refusal to recuse himself.

Judge Pater assumedly Is also responsible for the disappearance of the investigation report from lead investigating detective Mark Sons Fairfield T.W.P. Police dept. of which in part stated that "after a thorough investigation in my opinion a crime did not take place." Thus relieving Gibson of a crime at the time of trial Counsel informed Gibson that the investigation report could not be found. Gibson's wife pursued the inquiry after the trial concluded and found that the investigation report could not be found with the clerk of court the Fairfield T.W.P.

police Dept. and she even spoke to Detective Sons personally and when asked what happened to his investigation report he stated "That is a question Paul Attorney should have asked" and stated that he had no more to say on the matter.

Reasons For Granting Writ: As well as his rights to due process as guaranteed in the Fourteenth Amendment to the U.S. Constitution "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."

(Holland v. Florida, 560 U.S. 631) LEdHN[4] § 2244(d)is subject to equitable tolling in appropriate cases. See Neverson v. Farquharson, 366 F.3d 32, 41 (CA1 2004); Smith v. McGinnis, 208 F.3d 13, 17 (CA2 2000) (per curiam); Miller v. New Jersey Dept. of Corrections, 145 F.3d 616, 617 (CA3 1998); Harris v. Hutchinson, 209 F.3d 325, 329-330 (CA4 2000); Davis v. Johnson, 158 F.3d 806, 810 (CA5 1998); McClendon v. Sherman, 329 F.3d 490, 492 (CA6 2003); Taliani v. Chrans, 189 F.3d 597, 598 (CA7 1999); Moore v. United States, 173 F.3d 1131, 1134 (CA8 1999); Calderon v. United States Dist. Ct. for Central Dist. of Cal., 128 F.3d 1283, 1289 (CA9 1997); Miller v. Marr, 141 F.3d 976, 978 (CA10 1998); Sandvik v. United States, 177 F.3d 1269, 1272 (CA11 1999) (per curiam).

We base our conclusion on the following considerations. First, HN5 LEdHN[5] the AEDPA "statute of limitations defense . . . is not 'jurisdictional.' Day v. McDonough, 547 U.S. 198, 205, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006). It does not set forth "an inflexible rule requiring dismissal whenever" its "clock has run."

Gibson's medical condition presented an extraordinary circumstance that requires the application of equitable tolling. This application would make Gibson's petition timely and should be ruled on the merits of the claims presented.

A Bias Judge is not excusable as harmless error. This structural error is only corrected by a new trial there is no other remedy.

(Schiefelbein v. Morrow, 2015 U.S. Dist. LEXIS 24815, 2015 WL 881575.)

Under clearly established federal constitutional law, once judicial bias is found, the only remedy is a new trial. . .. Crucially, a reviewing court cannot "disregard a judicial-bias error on the theory that the defendant failed to preserve it or suffered no actual prejudice from it." Railey v. Webb, 540 F.3d 393, 399 (6th Cir. 2008), 557 U.S. 943, 129 S. Ct. 2878, 174 L. Ed. 2d 589 (2009).

Gibson has shown that Judge Paters decisions to appoint unqualified counsel at the request of the state, preventing Gibson opportunity to present defense as to deny Expert testimony, as well as ignoring biased juror, and the apparent destruction of the criminal investigation report show that Judge Paters bias did in fact affect the outcome of this case. As Detective Mark Sons stated the only evidence against Gibson was one (Mentally ill) Girl who by self-admission would tell ties and play the victim role because she likes a lot of attention. (see Dr. Lowenstein's consult report).

(State v. Gibson, 2015-10-1601) It seems quit bizarre, and contrary to the pursuit of Justice for a defendant to be held so stringently to a time limit in which to file a petition against a biased Judge when the Judge in question was constitutionally unable to preside over the case in question. The State of Ohio is guilty of a Brady violation withholding the information of Judge Charles L. Paters extremely high and constitutionally unacceptable potential for bias, and failure to recuse. This defendant is being held against the rights expressed in the united states constitutions.

Judge Charles L. Pater is and was at the time of trial (State of Ohio v. Gibson, Cr2015-10-1601) unequivocally biased. Judge Pater bias did effect the trial outcome as has been described. Judge Pater knowingly appointed counsel preferred by the prosecution, he gave no consideration of the rule of appointing Counsel to an indigent defendant. Judge Pater obstructed Gibson ability to present a complete defense by disposing of Detective Mark Sons investigation report. Judge Pater denied Gibson expert testimony when he denied Dr. David Lowenstein to testify, Judge Pater and the prosecution has repeatedly stated that Dr. Lowenstein was not qualified, this is absurd. (See defense exhibits C,1 and C,2)(This document Appendix #7) filed in the court of common pleas on September 13th, 2021.

(*Arnett v. Mackie, 2019 U.S. Dist. LEXIS 93259*) 8. Justice Markman, in a dissenting opinion in People v. Andrew Audie Williams, 495 Mich 955, 956, 843 N.W.2d 551; 495 Mich. 955, 843 NW2d 551 (2014), recites testimony from a Ginther

hearing in which Dr. Stephen Guertin testified that there is a 94% to 96% chance that a single incident of sexual intercourse with a prepubertal child would result in a tear or transection of the hymenal ring, leaving a lasting visible abnormality. Further, he recites that Dr. Guertin testified that the reason sexual intercourse with a prepubertal child is so likely to leave such an abnormality is because the hymen during the prepubertal stage typically has a "maximum opening of 10 millimeters while "[t]he [*32] average penis is 35 millimeters . . .." Id. fn. 3.

9. Counsel has spoken to Dr. Guertin, who said that more accurately there is a 85% to 92 % chance that a single incident of sexual intercourse with a prepubertal child would result in a tear or transection of the hymenal ring, leaving a lasting visible abnormality. This would only happen according to Dr. Guertin with full penetration of an adult penis into a child's vagina and that this is what had allegedly occurred in the case in which he testified, People v Andrew Audie Williams, supra. It is not entirely clear in the present case that this was the child's allegation. However, Dr. Guertin also told counsel that lacerations within the labia minor would heal within seven to ten days. The SANE nurse testified that a child would heal "fairly quickly from this kind [of] laceration (tr. Vol. II, 73), but she could not say whether the lacerations had occurred within the last month before she saw the child. (tr., Vol. II, 74). She could not give any estimate of when the injury occurred. (tr., Vol. II, 74). The child was not able to say when the last assault occurred. (tr., Vol. I, 264). Dr. Guertin provided an article "Healing of Hymenal Injuries in Prepubertal and Adolescent [*33] Girls: A Descriptive Study" in the journal Pediatrics from 2007.

The article is submitted with the Defendant's brief as an appendix. The conclusions are summarized on page 2 of the article. It is not always necessary, however, to retain an expert witness to counter the opposing party's expert because cross-examination may suffice. Harrington v. Richter, 562 U.S. 86, 111, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011). Here, defendant's counsel cross-examined the states expert only to bolster the credibility of the state's case. In a case were the only knowledge obtained to "come up to speed" as stated by trial counsel Rapier was reading some unknown postings on google and reading over an article written by the states witness. (supported by trial transcript)

In this case there can be no substitution for a qualified Expert, with experience and knowledge in the field of gynecology, Healing, and persistent evidence of damage to the hymen.

Though there are many was to complete the act of rape one must consider the review a case based on the testimony given by the alleged victim. This case was based on the testimony of repeated full vaginal penetration which would have accrued over one hundred times. Medical examinations show unequivocally that the accuser had never suffered any type of vaginal penetration prior to her examination given by states expert.

in Richey V. Bradshaw where Richey's counsel failed to present a qualified expert and or determine what may be said by the expert, in the case of state v. Gibson the expert who was intended to be called was in fact a qualified expert. Counsel Failed

to Call this expert, and when cross-examining states expert as in *Richey* only bolstered the state's case and witness's, failing to challenge the state.

Dr. David Burkons states in his report that the evidence does not support the allegations made against Paul Gibson, this report was made even before and without the internal vaginal diagnosis of Amelia Turner.

(*Lindstadt v. Keane, 239 F.3d 191*) See generally *Beth A. Townsend, Defending the "Indefensible": A Primer to Defending Allegations of Child Abuse, 45 A.F.L. Rev. 261, 270* (1998) ("It is difficult to imagine a child abuse case . . . where the defense would not be aided by the assistance of an expert."). Such an expert could have brought [**29] to light a contemporaneous study, accepted for publication at the time of Lindstadt's trial, that found similar irregularities on the hymens of girls who were not abused. See John McCann et al., Genital Findings in Prepubertal Girls Selected for Nonabuse: A Descriptive Study, 86 Pediatrics, No. 3, at 428-439 (Sept. 1990);

Without being educated in a field of interest to attempt to cross examine an expert without the assistance of an expert yourself, is the equivalent of a Monkey baking bread, It's just a bad idea.

This is a case in which Mr. Rapier failing to call his expert Dr. David Burkons is inexcusable and constitutes ineffective assistance of Counsel. Violating Mr. Gibson's 6th Amendment right to counsel, the right to be heard, and the right to present a

defense. Which are all part of due-process of law guaranteed in the Fifth, and Fourteenth Amendment to the U.S. Constitution.

Unqualified Counsel Rapier colluded with prosecution, and Judge to get a conviction. Trial Counsel Rapier cross examination of states witnesses show he was out only to bolster the credibility of the State's case and to disregard any type of defense for his client, including the failure to present conflicting evidence, to challenge, to investigate, and he failed to call the most important witnesses to the defendant Dr. David Burkons, and Theresa M. Turner.

(Strickland v. Washington, 466 U.S. 668) HN5 Effective Assistance of Counsel, Tests for Ineffective Assistance of Counsel: A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Both components have been met yet Gibson has not been granted relief.

Gibson should be granted equitable tolling and his petition excepted as timely and the merits of the claims ruled on as they stand to prove that Gibson did

not receive a Constitutionally valid trial. Gibson was subject to trial by a hostile Judge whose bias may not have been evident during trial, but that may only show that his influence had been accomplished pretrial, a judges' influence can be instilled at any juncture of the process. As in this case the technique of confirmation bias was used to only present what was necessary to apply dominance to the prosecution, while deflecting from the truth.

Biased Judge, influenced if not Biased Defense counsel, and perjures testimony by the States witnesses.

No one is immune from a wrongful Conviction! But this Court has the power to right the wrongs of these farces.

Counsel Rapier being aware of the unconstitutionally high probability is also guilty of. Ohio Prof. Cond. Rule 8.3: (a) A lawyer who possesses unprivileged knowledge of a violation of the Ohio Rules of Professional Conduct that raises a question as to any lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform a disciplinary authority empowered to investigate or act upon such a violation.

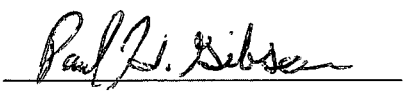
(b) A lawyer who possesses unprivileged knowledge that a judge has committed a violation of the Ohio Rules of Professional Conduct or applicable rules of judicial conduct shall inform the appropriate authority.

Conclusion and Prayer for Relief: I ask this court to show some compassion to a Man who has been bullied by the judiciary system because he is poor, and

uneducated, he has been forced to be a part of. I ask this court to grant Gibson the right to be heard by finding his petition as timely, to present this court's decision based on the facts presented by the plaintiff, and overturn the district courts decision as being unconstitutional. This court should grant certiorari to consider weather, under the U.S. Constitution, Ohio Rev. Code O.R.C. §5120.21(A). §5120.21(C)(2), ODRC Policy 07-ORD-11, (Williams v. Pennsylvania, 579 U.S. 1) (Richey v. Bradshaw, 498 F.3d 344), Sixth Amendment to the U.S. Constitution, Ohio Butler Cty. Gen. Div. LR 6.04, Ohio Sup. R. 8. Gibson is entitled to relief.

I pray this court should grant relief to this plaintiff, Gibson and his Family have been tortured throughout this endeavor and ask this court to make their ruling in favor of Gibson, see the errors as they are and Rule on the merits de novo.

Humbly Submitted

Paul H. Gibson, pro se, 

Paul H. Gibson, Plaintiff, Pro se
C.C.I.
P.o Box 5500
Chillicothe, Ohio
45601

Lisa Kathryn Browning
Assistant Attorney General office
Criminal Justice Section
30 East Broad Street, 23rd Floor
Columbus, Ohio
43215-6001

FOOTNOTES:

[1] E. Equitable Tolling and Extraordinary Circumstances

One-year period of limitations for filing petition for writ of habeas corpus is subject to equitable tolling since it is not jurisdictional bar. Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 1998 U.S. App. LEXIS 10414 (3d Cir. 1998).

One-year limitations period for filing federal habeas claims by state prisoners is subject to equitable tolling in appropriate exceptional circumstances. Davis v. Johnson, 158 F.3d 806, 1998 U.S. App. LEXIS 26877 (5th Cir. 1998), cert. denied, 526 U.S. 1074, 119 S. Ct. 1474, 143 L. Ed. 2d 558, 1999 U.S. LEXIS 2715 (1999).

Time limitation of 28 USCS § 2244(d)(1) is subject to equitable tolling because there is no indication that time limitation therein is jurisdictional, nor is there evidence of congressional intent to preclude tolling such as would be sufficient to overcome presumption that equitable tolling applied. Neverson v. Farquharson, 366 F.3d 32, 2004 U.S. App. LEXIS 8762 (1st Cir. 2004).

[2] § 5.2. Statutes of limitations. Equitable tolling: Recognizing an "Actual Innocence" Exception to AEDPA's Statute of Limitations, 27 N.Y. U. Rev. L. & Soc. Change 343 (2001–02); Anne R. Traum, Last Best Chance for the Great Writ: Equitable Tolling and Federal Habeas Corpus, 68 Md. L. Rev. 545 (2009); Limin Zheng, Note, Actual Innocence as a Gateway Through the Statute-of-Limitations Bar on the Filing of Federal Habeas Corpus Petitions , 90 Cal. L. Rev. 2101 (2002).

... that court should "adopt a flat rule: a 'stop-clock' approach to equitable tolling so that whenever a petitioner is impeded from filing his petition by extraordinary circumstances while the time period of a statute of limitations is running ..... was sufficiently egregious so that it could qualify as an 'extraordinary circumstance' that created an impediment to filing,"

[3] *(Harper v. Ercole, 648 F.3d 132)*: Overview. A litigant who sought equitable tolling based on extraordinary circumstances and who established causation was required to show reasonable diligence in pursuing his claim throughout the period he sought to have tolled. Once tolling ended and the limitations clock resumed, a § 2254 petition was timely as long as it was filed before the total untolled time exceeded one year. The record showed that at the time of the prisoner's 2008 hospitalization, 288 days had run and 78 days remained on the 1-year statute of limitations. Thus, if the limitations period was tolled for the 98-day period of the prisoner's hospitalization, his § 2254 filing 65 days after discharge was within 1 year of the total untolled time after his conviction became final and, thus, was not untimely.

HN4 the requirements of tolling must be satisfied throughout the period to be tolled. If a party carries this burden, the statute of limitations is suspended for the duration of the extraordinary circumstances supporting tolling, and filing is timely if made before the total untolled time exceeds the limitations period without need for further inquiry into diligence. We have deviated from this general rule of equitable tolling when extraordinary circumstances do not come to a determinate end, in which [**10] case diligence through filing determines the timeliness.

[4] (*Reeves v. Sic, 897 F.3d 154*) Actual Innocence; counsel's failure to discover or present to the fact-finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constitutes new evidence for purposes of the Schlup actual innocence gateway.

an exception may exist when a petitioner asserts ineffective assistance of counsel based on counsel's failure to discover the very exculpatory evidence on which the petitioner relies to demonstrate his actual innocence. See Houck, 625 F.3d at 94-95 (stating that the Court was "inclined to accept the [Eight Circuit's] Amrine definition of new evidence with the narrow limitation that if the evidence was not discovered for use at trial because trial counsel was ineffective, the evidence may be regarded as new provided that it is the very evidence that the petitioner claims demonstrates his innocence" but deciding to "stop short of applying a modified Amrine standard" and instead "assuming without deciding" that the petitioner's evidence constituted new evidence). This limited exception avoids an inequity that could lead to the "injustice of incarcerating [*164] an innocent individual." McQuiggin, 569 U.S. at 393.

[5] (*Williams v. Pennsylvania, 579 U.S. 1*)HN9 For due process purposes, it does not matter whether a disqualified judge's vote was necessary to the disposition of the case. The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party.

HN8 A due process violation arising from the participation of an interested judge is a defect not amenable to harmless-error review, regardless of whether the judge's vote was dispositive. The deliberations of an appellate panel, as a general rule, are confidential. As a

result, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decision-making process. Indeed, one purpose of judicial confidentiality is to assure jurists that they can reexamine old ideas and suggest new ones, while both seeking to persuade and being open to persuasion by their colleagues. The description of an opinion as being for the court connotes more than merely that the opinion has been joined by a majority of the participating judges. It reflects the fact that these judges have exchanged ideas and arguments in deciding the case. It reflects the collective process of deliberation which shapes the court's perceptions of which issues must be addressed and, more importantly, how they must be addressed. And, while the influence of any single participant in this process can never be measured with precision, experience teaches that each member's involvement plays a part in shaping the court's ultimate disposition.