

No. 23-7675

REQUEST ORAL
ARGUMENT WITH
APPROPRIATE
ORIGINAL
EVIDENTIARY
HEARING
EXPAND THE RECORD
FOR THE RESIDEN-
TIAL LEASE AGREE-
MENT AND TEXT
MESSAGES

IN THE
SUPREME COURT OF THE UNITED STATES

DARREN DEAN JOHNSON — PETITIONER
(Your Name)

VS.

PEOPLE OF THE STATE OF MICHIGAN RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

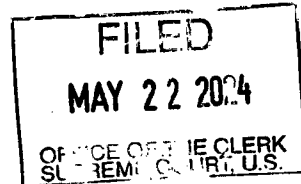
PETITION FOR WRIT OF CERTIORARI

Darren Dean Johnson
(Your Name)

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(Address)

Kincheloe, MI 49788
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

I WHETHER THE STATE COURTS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, AND THE ADJUDICATION OF THE CLAIM RESULTED IN A DECISION THAT WAS CONTRARY TO CLEARLY ESTABLISHED ^{LAW} FEDERAL~~LY~~, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES.

II WHETHER THE PETITIONER RECEIVE MISCARriage OF JUSTICE AT TRIAL WHICH RESULTED TO AN UNFAIR AND/OR A PARTIAL TRIAL.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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☐ is unpublished.

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

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☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

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☐ is unpublished.

The opinion of the ~~Michigan Court of Appeals and Trial Court~~ court appears at Appendix B, A to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 29, 2024. A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution Provides in relevant part: "In all Criminal Prosecutions, the accused shall...have Assistance of Counsel for his defense".

The fourteenth Amendment to the United States Constitution Provides in relevant part: "... Nor shall any State deprive any person of life, liberty, or Property without due process of law".

STATEMENT OF THE CASE

Petitioner is in custody in violation of the Constitution. Miscarriage of Justice took place at Petitioner trial where Petitioner trial Counsel failed to provide Petitioner with effective assistance of Counsel guaranteed by the Sixth Amendment of the United States Constitution, where trial Counsel failed to produce exculpatory evidence of residential lease agreement and text messages, which deficient performance that was not a matter of sound trial strategy. TT Vol one of five pg 3, 4, 5, 7, 9; TT Vol Two of five pg 9 This prejudiced the Petitioner. The Jury was not convinced that the Petitioner was guilty so, they asked to subpoena the exculpatory residential lease agreement and text messages that was suppressed and not allowed in due to trial Counsel failing to comply with discover rules. Vol one of five pg 9. i Vol IV of V 165 See residential lease agreement with Federal Court letter and text messages in Appendix A. Petitioner assents his claim of actual Innocence establish new reliable evidence of critical physical evidence of residential lease agreement and text messages demonstrates and shows that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt.

Petitioner pursued his actual innocence claim in the trial Court along with his ineffective assistance of trial Counsel claim requesting a evidentiary hearing under People v Givther, and requesting for the Court to expand the record and allow the new reliable evidence in but the trial Court made a blanket denial without viewing the merits. See Trial Court order in Appendix A. Then Petitioner Appeal to the Michigan Court of Appeals and the Court made a blanket denial and failed to view the merits. See Michigan Court of Appeals orders in Appendix B. After timely filing that Appeal, Petitioner timely filed his Appeal in the Michigan Supreme Court. The Michigan Supreme Court made a blanket denial without viewing the merits. See Court order in Appendix C.

Petitioner Legal issue has not been considered by the state courts, so Petitioner asks for this Court to review the merits of the issue de novo, and asks that due to this extraordinary circumstances, involving this compelling claim of actual innocence, for the state procedural default rule to not be applied to Federal habeas petition (not deny Petitioner due to state procedural rule). The state courts has decided an important Federal question in a way that conflicts with relevant decision of this Court Rule 10(c).

The state courts blanket denial was contrary to clearly established Federal law, as determined by the Supreme Court of the United States. Miscarriage has took place at trial and will continue to take place if this Petition is denied.

The state courts failed to consider the old evidence.

REASONS FOR GRANTING THE PETITION

There is a conflict with the state court rules, and decision with the United States Supreme Court decision. The Michigan State Court made blanket denials failing to consider the legal issue, the denial was made according to MCR 6.502 (G), Contrary to *House v. Bell*, 547 U.S. 518, 537-38. Our review in this case addresses the merits of the Schlup inquiry, based on a fully developed record, and with [§ 538] respect to that inquiry Schlup makes plain that the habeas Court must consider "all the evidence", old and new, which the state courts are aware of. See *People v. Swain*, 288 Mich. App 609, 640 (But all the evidence, old and new, in criminality and extenuation, must be considered, *House v. Bell* 538), but denied due to MCR 6.502 (G) which states in pertinent part "A defendant is only entitled to file one motion for relief from judgment, MCR 6.502 (G) (1). However, this rule is not absolute. MCR 6.502 (G) (2) permits the filing of successive motion under two circumstances: A defendant may file a second or subsequent motion based on retroactive change of law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered (before the first such motion), therefore, this instant case should be remanded down to the state courts for consideration of the old evidence of residential lease agreement and text messages. See also MCR 6.502 (G) (2), which is contrary to Schlup and is not the requirement to get through the actual innocence gateway through the procedural hurdle. Petitioner only way of filing successive motion for relief from judgment is not only newly evidence that was not discovered before the first such motion, but instead, see *House v. Bell*, 547 U.S. 518, 537 (first although "it is not credible" gateway claim requires "new reliable evidence -- whether it be extenuation scientific evidence, trustworthy eyewitness accounts, or critical physical evidence -- that was not presented at trial"), the residential lease agreement and text messages are new reliable critical physical evidence -- that was not presented at trial. Id.;

Aldridge v. Phillips, 714 Fed. App'x 562, 563 (Both the United States Supreme Court and this Court have emphasized that the actual-innocence gateway is extremely narrow. See, e.g., Schlup v. Delo, 513 U.S. 293, 321, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995); Souter v. Jones, 395 F.3d 573, 590 (6th Cir. 2005). Indeed, it is not enough that a petitioner shows a reasonable doubt exists as to his guilt in light of new evidence. Rather, "the petitioner must show that it is more likely than not that no reasonable jury would have convicted him in light of the new evidence." Schlup, 513 U.S. at 327, that "new evidence" need not be newly discovered, however, [x 564] but simply may be "evidence that was not presented to the fact-finder during trial, i.e., newly presented evidence". Cleveland v. Bradshaw, 693 F.3d 626, 633 (6th Cir. 2013) (citing Souter, 395 F.3d at 595 n.9)).

The state courts failed to conduct an evidentiary on petitioner ineffective assistance of counsel, and Appellate Counsel claim, and actual innocence claim, therefore, petitioner asks that this Court review his legal issue *de novo*. *Wissnig v. Smith*, 539 U.S. 510, 531 (2003), and discharge the petitioner, or remand to the state courts for a claim dealing with trial counsel failing to produce his exculpatory evidence of residential lease agreement and text messages, which deficient performance was not a matter of trial sound strategy that prejudiced the petitioner because the critical physical evidence shows and demonstrates that more likely than not in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt.

Petitioner case is similar to *house v. Bell* in certain respects. Like in *house* petitioner constitutional claims were barred based on state procedural rules, but petitioner contended that evidence of his actual innocence was sufficient to except his claims from procedural default. The petitioner asserts new evidence

Conclusively established that he did not conduct a criminal act of Home Invasion 1st degree.

House v Bell, 547 U.S. 518. The case was reversed, and the case was remanded, for consideration of Bell procedurally barred claims. Id. which alternatively, if the court does not issue an order for discharge, Petitioner is asking for the same relief Bell received. Id.

In order for Petitioner in reviewing the claim denying to receive a new trial, or discharge, Petitioner must meet the two prong test of Strickland on his ineffective issue.

In examining whether defense counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that counsel's performance was not a matter of sound trial strategy. Strickland 466 U.S. at 689 and 689. In this instant case trial counsel deficient performance fell below an objective standard of reasonableness and was not a matter of sound trial strategy. At Vol one of two P33 (ms. ESHINGER: Yes, your. At the last trial date, which was September 21st of this year, Mr. Hamisar had indicated to me that he had some evidence in the form of text messages that were contained on a cell phone. It was my understanding that these text messages were supposedly sent to the defendant from the victim in this case, ms. Flemings; P34 Id. (so that's who I filed a motion to exclude this evidence); Id P37 (Hamisar: I have the phone with me right now. I will be pleased to take you know, to look at those messages. I have prepared not a summary, but a verbatim transcript of what is in the text messages. I have welcome her to check it for accuracy, they are what they are.

And we-- I do think it would be prejudicial to so to trial without Mr. Johnson being able to put this in. Id Pg 9 (The Court) I believe that 6.201 (A)(G) has been violated; that this evidence should have been given to the prosecution. Accordingly, I am suppressing it. I will order that there be no reference to the Cell Phone, to the text messages, no cross-examination, no direct examination, nothing may come out with regards to those text messages, unless it is cleared by this Court before hand.)

Id Pg 9 (THE COURT: Well, what I'm more concerned about this point in time is violation of 6.201 discovery. Again, Section 6 states the description or an opportunity to inspect any tangible physical evidence that any party may introduce at trial. This is something that, Mr. Hamilton you could have subpoenaed laws ago; that you would have mandators had to give the prosecution a copy of this or an opportunity to inspect. Now, into day one of trial after we've picked the jury you asked me this morning to sign a subpoena to trial and get this, which I did, but I'm not sure that I'm going to allow it at this point. Yet, why should that be allowed, in violation of discovery order? 201 therefore meeting the first prongs of Strickland, 466 U.S. at 689; Armstrong, 490 Mich. at 290-294; Tucker v. Lewis, 2004 U.S. Dist LEXIS 8697 at 775-777.

In addition to proving that defense counsel's representation was constitutionally deficient, defendant must show "but for counsel's deficient performance, a different result would have been reasonably probable." Strickland, 466 U.S. at 694-696.

In the present case, the key evidence that the prosecution asserted against defendant was the complainant's testimony; therefore, the reliability of defendant's conviction was undermined by defense counsel's failure to introduce exculpatory critical physical evidence that corroborated defendant's testimony. SC

Although the complaint was cross-examined by defense counsel, a reasonable probability exists that this additional attack on the Complainant's credibility [the introduction of cell phone records and the text messages, and the residential lease agreement would have tipped the scale in favor of finding a reasonable doubt defendant's guilt. The text messages states in pertinent parts and showed that these text messages was sent a little over a week after the alleged criminal sexual conduct and shows Complainant witness communicating with the defendant for around a month telling him that she miss him, and love him, and want to have sex with him. See text messages in Appendix D The lease agreement with the Federal Court letter show that defendant had a legal right to the apartment and was a actual lease, which shows that but for Counsel's deficient performance, a different result would have been reasonably probable. Strickland, 466 U.S. at 694-696; *Armstrong*, 490 Mich. at 290-294; *Tucker v. Revico*, 2004 U.S. Dist. LEXIS 8697 at 775-777.

The jury was not convinced that the defendant was guilty and wanted to subpoena the lease agreement and text messages that they heard from trial counsel that was not allowed in so they can make their determination, but the judge did not allow the subpoena. Vol. IV of V Page 165 (The Court: A Couple of Issues, Ladies and Gentlemen, my client informed me, and I've discussed this with the attorneys. Evidently there was a question by the jury as she was living you up, could you subpoena, or could you get additional evidence and the answer to that, clearly is no.)

Petitioner asserts failure to consider the claims will result
in a fundamental miscarriage of justice. *Coleman v. Thompson*,
501 US 722, 750, 115 L.Ed.2d 610, 111 S.Ct 2546 (1991).

Petitioner substantial due process right where violated
where he was deprived of a particular constitutional guarantee
to effective assistance of counsel guaranteed by the Sixth Amendment to
the United States Constitution, and as a result deprived him of
life, liberty, without due process of law, contrary to the
fourteenth Amendment to the United States Constitution, which also
actions that shocked the conscience.

Discharge in this case would be appropriate. *Tucker v. Rentsch*,
2004 US Dist LEXIS 8697 at 777 (It is further ordered that
the Petition for writ of habeas corpus is granted, it is further
ORDERED that the respondent shall release the Petitioner from
custody, or alternatively, remand for a further hearing on the
ineffective issue, or reverse the state court judgment, and
remand the case to the Kent County Circuit Court for a new
trial. *Armstrong*, 490 Mich at 294, or what this Court deem
just and proper favoring Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "M. J. R.", written over a horizontal line.

Date: May 21, 2024