

IN THE SUPREME COURT OF THE UNITED STATES

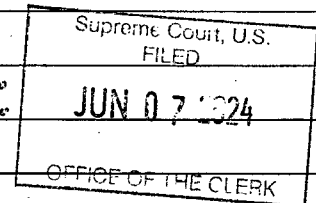
24-5467

IN RE: JOSEPH MILLER)
PETITIONER,)

V.)

CASE NO:

DAN REDINGTON,)
RESPONDENT)



PETITION FOR WRIT OF CERTIORARI

COMES NOW JOSEPH MILLER, A CHRISTIAN by
FAITH IN JESUS CHRIST, brings to the Court's ATTENTION
THE ERRORS that HAVE led to the CONVICTION OF AN
INNOCENT AMERICAN CITIZEN. JOSEPH MILLER is
REPRESENTED PRO SE, AND ADDRESSES THE SUPREME
COURT IN TRUTHS AND FACTS.

QUESTIONS PRESENTED

1. DOES EVIDENCE THAT WAS IN THE STATE'S POSSESSION: AN AFFIDAVIT SIGNED BY THE PROSECUTOR; RECORDED EVIDENCE IN DOCTOR'S NOTE; AND TRANSCRIPTS FROM PRELIMINARY HEARING, THAT WAS KNOWN ABOUT BEFORE TRIAL, BUT "NOT PRESENTED AT TRIAL," WHICH SHOWS THE STATE ELICITED FALSE AND PERJURED TESTIMONY, PERTAINING TO THE REMOVAL OF CONSENT, SHOWS THE STATE FAILED TO CORRECT THE FALSE TESTIMONY, AND TRIAL ATTORNEY FAILED TO CONTEST THE FALSE EVIDENCE, MEET THE STANDARD OF A MISCARRIAGE OF JUSTICE OR THE ACTUAL INNOCENCE GATEWAY TO EXCUSE GROUNDS ONE, TWO, AND THREE?
2. CAN THE RESPONDENT CLAIM IN FEDERAL COURT FOR THE FIRST TIME THAT GROUND ONE; THE STATE KNOWINGLY FAILED TO CORRECT FALSE AND PERJURED TESTIMONY BY THE ALLEGED VICTIM, IS PROCEDURALLY DEFAULTED, WHEN THE RESPONDENT FAILED TO DENY THE "CAUSE AND PREJUDICE" EXCEPTION EXCUSING THE GROUND, IN THE ORIGINAL STATE COURT PROCEEDING?
3. CAN APPELLATE ATTORNEY'S INEFFECTIVENESS; FOR FAILING TO RAISE A CLAIM; SPECIFICALLY PROSECUTORIAL MISCONDUCT THAT THE STATE KNOWINGLY FAILED TO CORRECT FALSE AND PERJURED TESTIMONY, BY THE ALLEGED VICTIM; MEET THE EXCEPTION OF "CAUSE AND PREJUDICE" EXCUSING GROUND ONE?
4. IS POST-CONVICTION COUNSEL INEFFECTIVE FOR FAILING TO RAISE CLAIMS AGAINST TRIAL ATTORNEY; FOR FAILING TO OBJECT OR IMPEACH, PERJURED AND FALSE TESTIMONY OF THE ALLEGED VICTIM; SPECIFICALLY THE REMOVAL OF CONSENT AND ACTIONS OF THE PETITIONER; WHICH SHOULD HAVE BEEN RAISED IN THE INITIAL REVIEW COLLATERAL PROCEEDING, MEET THE EXCEPTION UNDER MARTINEZ V. RYAN, 566 U.S. 1?

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APPENDIX:

UNITED STATE DISTRICT COURT Ruling
Panel Rehearing Denial by Eighth Circuit

Exhibits:

- (1) AFFIDAVIT FOR SEARCH WARRANT
- (2) DOCTOR'S NOTE
- (3) Police Report
- (4) Injury Report

TABLES OF AUTHORITIES

SIXTH AND FOURTEENTH AMENDMENTS
ALCONTA V. TEXAS, 355 U.S. 28

AMRINE V. BOWERSOX, 238 F.3D 1023
COLEMAN V. Thompson, 501 US 722
Giglio V. UNITED STATES, 405 US 150
Gomez V. JAIME, 350 F.3D 673
Griffen V. JOHNSON, 350 F.3D 956
Magwood V. PATTERSON, 561 US 340
MARTINEZ V. RYAN, 566 US 1
Mooney V. HOLDHAN, 294 US 103
MURRAY V. CARRIER, 477 US 478
NAPUE V. ILLINOIS, 360 US 264
Schlup V. Delo, 513 US 298
STRICKLAND V. WASHINGTON, 466 US 668
UNITED STATES V. AGURS, 427 US 97
28 USC 2253(c)(2)
28 USC 2254
MO. Sup. CT. RULE 55.09
MO. Sup. CT. RULE 91
575.040 RSMo

LIST OF ALL PROCEEDINGS

Preliminary Hearing: Circuit Court of Greene County, Missouri,
Associate Division; Case No: 1831-CR01361; State of Missouri v.
JOSEPH MILLER; Disposition June 11, 2018.

Jury Trial: Circuit Court of Greene County, Missouri; Case No: 1831-
CR01361-01; State of Missouri v. JOSEPH MILLER; Disposition Feb. 15,
2019.

Direct Appeal: Missouri Court of Appeals, Southern District; Case No:
SD35976; State of Missouri v. JOSEPH MILLER; Disposition:
April 6, 2020.

Collateral Review 29.15: Circuit Court of Greene County, Missouri;
Case No: 2031-CC00694; Joseph Miller V. State of Missouri;
Disposition: April 19, 2021.

Collateral Review 29.15 on Appeal: Missouri Court of Appeals, Southern District; Case No: SD 37127; Joseph Michael Miller V. State of Missouri; Disposition: May 20, 2022.

Habeas Corpus Rule 91: Circuit Court of Pike County, Missouri; Case No: ZZP1-CC00035; Joseph Miller V. Daniel Redington; Disposition: November 22, 2022.

Habeas Corpus Rule 91 on Appeal: Eastern District Court of Appeals; Case No: ED 111292; Joseph Miller PET V. Daniel Redington; Disposition: January 4, 2023.

2254: U.S. District Court, Western District of Missouri; Case No: 6:23-cv-03058-MDH; Joseph Miller V. Dan Redington; Disposition: September 25, 2023.

C.O.A./Panel Rehearing: United States Court of Appeals for the Eighth Circuit; Case No: 23-3263; Joseph Miller V. Dan Redington; Disposition: March 12, 2024.

STATEMENT OF JURISDICTION

THE UNITED STATES DISTRICT COURT denied Petitioner's 2254. THE UNITED STATES COURT OF APPEALS, FOR EIGHTH CIRCUIT, ENTERED Judgement on December 26, 2023; denying the Application for Certificate of Appealability; And denied A timely Petition For Rehearing And/or Rehearing En Banc, on March 12, 2024. This Court's Jurisdiction is invoked under 28 USCS 1254.

ABBREVIATIONS

JV - Jamie Vorhies (Alleged victim)

Tr - Trial Record

Para - Paragraph

Ph - Preliminary Hearing

STATEMENT OF FACTS

Jamie Vorhies (JV) testified she was standing on the side of the road in the rain with her belongings, when PETITIONER, who lived across the street offered to some of her belongings at his apartment (Tr 347-48). A week later she communicated with PETITIONER to retrieve her belongings (Tr 351-54). While there at PETITIONER's house, they flirted and agreed to have sex (Tr 357-58). She went home, took a shower, and returned to PETITIONER's apartment, without underwear in anticipation of sexual activity (Tr 367). JV demanded PETITIONER, who was cleaning to stop and begin to have sex with her (Tr 363-64). In the bedroom, they participated in oral, vaginal, and anal sex consensually (Tr 365-69). JV testified the removal of consent occurred during anal sex, saying it hurt and to stop multiple times, but PETITIONER did not stop, but continued for a couple of minutes (Tr 369), then inserted his hand in her vagina (369). JV continued to tell PETITIONER to stop, but he continued (Tr 371). Dr. Litherland testified she was told that JV was involved in some trauma during consensual sexual intercourse, and when she told PETITIONER to stop, he did (Tr 452, 472). Dr. Litherland also testified that JV told her directly, that PETITIONER stopped when she said stop (Tr 473). PETITIONER testified that they had consensual sexual intercourse (Tr 729-32). During the consensual encounter he placed fingers in her vagina (Tr 734). At some point during digital stimulation JV said "ow" and that is when PETITIONER stopped (Tr 735).

STATEMENT OF THE CASE

PETITIONER's description of the case will begin with a short overview of the charged offense. Next, will be a short summary of each court action, including witnesses, prosecutors, attorneys, and evidences in

the order of occurrence. PETITIONER will highlight Points of Contention and disputed Facts, in order to bring to the Court's Attention These issues.

PETITIONER will ENUMERATE all subsequent PARAGRAPHS (para.) in this Section and MAKE References to these PARAGRAPHS to MAXIMIZE clarity.

1. PETITIONER was charged with Sodomy and Assault 1st degree And Convicted on Lesser included charges of Sodomy and Assault in 2nd degree, stemming from A vaginal injury sustained during intercourse.

2. ON June 11, 2018 The Preliminary hearing was held in the Circuit Court of Greene County, Missouri; Associate Division; Case NO: 1831-CR01361. ON direct Examination by Prosecutor, JV testified she participated in consensual oral, vaginal, and anal sex. JV testified she told PETITIONER to stop during anal sex and he complied (Ph 16), PETITIONER Engaged in unwanted digital stimulation. The case was bound over to circuit Court.

3. ON June 14, 2018 the STATE Provided PETITIONER with Discovery. Evidences Contained herein are disputed facts concerning the Removal of Consent and serve as the foundation of PETITIONER's defense:

A. Application and Affidavit For Search Warrant, Stating that JV "had vaginal and anal sex consensually with PETITIONER (EX 1). This document is Signed by Prosecutor.

B. Doctor's Note, which Recorded "Jamie is A 26y.o. female who Presented to ER For vaginal bleeding following intercourse. PER The Nurse the patient had Consensual vaginal Sex First, then he placed A finger in the vagina. He Eventually put A hand into the vagina causing her pain And When She told him to stop he stopped" (EX 2). This document was Possessed by Prosecutor.

C. Police Report detailing the interview with Petitioner. Document records Police stating "I pointed out to Miller that we knew he had consensual sex, that at the end he had his hand in her vagina, she said 'Ow' and he stopped" (Ex 3). This document was possessed by Prosecutor.

D. Medical Report classifying vaginal injury as "Superficial Layers Only" (Ex 4). This document was possessed by Prosecutor.

4. ON October 11, 2018 Trial Attorney Filed A MOTION TO Dismiss And For Judgement Of Acquittal. As Grounds to Support MOTION, Trial Attorney Asserted:

A. "THE STATE's complaining witness has STATED And Conceded the sexual Activity between her And the [Petitioner] WAS Consensual."

B. "THE Evidences disclosed to the [Petitioner] fails to Establish the Alleged offense, if Any, was committed without Consent..."

In Motion Hearing, Trial Attorney Refused to orally Argue in Support of this MOTION, AFTER being prompted by the Judge. Motion was denied.

5. ON December 10, 2018 Jury Trial was held in The Circuit Court of Greene County, Missouri; Case NO: 1831-CR01361-01. The Prosecutor Elicited the following testimony From JV Concerning the Removal of Consent:

Q: And this was happening when you're trying to move Away From Anal Intercourse?

A: Correct

Q: NOW After you say it hurts, stop does he stop ANAL INTERCOURSE?

A: NO

Q: AT WHAT-- AT ANY POINT does he End up stopping ANAL intercourse?

A: After A Couple of Minutes

Q: And how many times did you say NO or STOP it hurts do you THINK before he ended up stopping?

A: THREE TO FIVE TIMES

Q: WHAT does he do AFTER THAT?

A: he stopped and pulled himself OUT OF ME And Then inserted his hand in my VAGINA

(TR 369)

Q: Do you Remember how much of his hand goes into your VAGINA?

A: All of it

(TR 370)

Q: AND How Many times did you tell him to stop?

A: Five OR MORE

Q: And EVEN As you told him to stop he continued to pull his FIST in And out of your VAGINA?

A: YES

(TR 372)

Q: Approximately how long did THAT LAST, THAT Period of him Putting his FIST in And out of your VAGINA?

A: it Seemed Like A Really long time but it was probably four minutes give or take

(TR 373)

THE Removal OF Consent Initiated the Alleged offense. The Removal of Consent Above is Perjured And False Proven by Preliminary hearing testimony (para. 2). The testimony Pertaining to the non-consensual digital stimulation After the Removal OF Consent Above, is FALSE Based on Evidence in the STATE'S Possession (para. 3), which Shows Petitioner stopped upon Request.

This false testimony was NOT corrected by The STATE. This False testimony was NOT objected to or impeached by Trial Attorney. This False testimony was NOT Raised by Appellate Attorney on direct Appeal. Trial And Appellate Attorneys' INEFFECTIVENESS WAS NOT RAISED by Post-Conviction Attorney. All Claims concerning the perjured AND False removal of Consent were Raised by Petitioner on Habeas Corpus.

6. ON MAY 16, 2019 the direct Appeal was filed with Missouri Court OF Appeals, Southern district; Case NO: SD35976. Appellate Attorney raised ONE Claim: THE TRIAL COURT Abused its discretion when it refused to admit Evidence regarding the Alleged victim's probation violation... the exclusion of this Evidence VIOLATED [Petitioner] right to due process, to a fair trial, And to present A defense As guaranteed by The Fifth, Sixth, and Fourteenth Amendments to The Constitution. The conviction was affirmed on April 6, 2020.

7. ON June 9, 2020 Petitioner Filed the 29.15 PRO SE motion to Vacate, Set Aside or correct The Judgement of Sentence, with Circuit Court of Greene County, Missouri; Case NO: 2031-CC00694. Petitioner Asserted False and Perjured testimony concerning the Removal of Consent was Elicited by STATE.

8. ON November 12, 2020 the Post-Conviction motion Attorney filed the 29.15 Amended MOTION on Case NO: 2031-CC00694. MOTION Counsel Omitted Petitioner's Claim concerning the false testimony (para 7). Counsel raised the following claims: Trial Counsel was INEFFECTIVE for NOT objecting to testimony of the STATE'S Expert on the cause of the injury; Direct Appeal Counsel ineffectively failed to challenge the sufficiency of the Evidence to prove Criminal intent. Court denied The MOTION.

9. ON November 24, 2021 Post Conviction counsel Filed the Same claims Asserted in THE 29.15 Amended MOTION TO THE Missouri Court of Appeal, Southern district; Case NO: SD37127. The Court Affirmed the Conviction.

10. ON July 18, 2022 PETITIONER Filed A Petition for WRIT OF Habeas Corpus Rule 91, IN the Circuit Court of Pike County Missouri; CASE NO: ZZ P1-CC00035. PETITIONER RAISED THESE CLAIMS:

- 1) THE STATE KNOWINGLY USED FALSE AND PERJURED testimony, violating The 14th Amendment.
- 2) Trial Counsel provided ineffective ASSISTANCE for failing to object to false and perjured testimony, PERTAINING to the REMOVAL OF Consent violating the 6th AND 14th Amendments.
- 3) Trial Counsel provided ineffective ASSISTANCE for failing to impeach false and perjured testimony of Alleged victim violating the 6th Amendment.
- 4) Manifest Injustice/Actual Innocence Gateway Excusing CLAIMS One, Two, AND THREE.
- 5) "Cause And Prejudice" to Excuse Claim One under STRICKLAND V WASHINGTON, 466 US 668; AGAINST Appellate ATTORNEY.
- 6) "Cause And Prejudice" to Excuse claim Two AND Three under MARTINEZ V. RYAN, 566 US 1; AGAINST Post-Conviction motion ATTORNEY.

11. ON August 9, 2022 Respondent filed Response to Petition for WRIT OF Habeas Corpus. Respondent denied Every claim asserted by Petitioner Except the "Cause And Prejudice Exception, Excusing CLAIM one under Strickland V. WASHINGTON, 466 US 668; AGAINST APPELLATE ATTORNEY (PARA 10). This issue is in Contention because Respondent asserts All claims ARE procedurally defaulted. MO. Sup. CT. Rule 55.09 States The failure to deny, in a pleading other than damages, ARE Admitted when NOT denied in the Responsive pleading.

12. ON August 30 2022 Petitioner Filed Reply brief. Petitioner denied Every Assertion by Respondent. Petitioner Alerted THE COURT THAT THE Respondent failed to deny the "Cause And Prejudice" Exception Excusing Claim One (PARA. 10). Petitioner requested adjudication on Claim One.

The Court denied Petition on November 22, 2022. Pike County found EACH Claim was Procedurally defaulted; without Legal basis As There was No false testimony; And Trial Attorney's Action were Reasonable Conduct.

Petitioner filed timely motion For Reconsideration requesting Adjudication on the failure to deny the "Cause and Prejudice" Exception Excusing Claim One. Court did NOT Respond.

13. ON January 3, 2023 Petitioner filed the Petition for writ of Habeas Corpus Rule 91, in the Eastern District Court of Appeals; Case No: ED111292. Petition contained All claims raised in the Circuit Court of Pike County Missouri; Case No: ZZP1-CC00035. Petition was denied on January 4, 2023.
14. ON February 6, 2023 Petitioner filed the ZZ54 writ of Habeas Corpus with the United States District Court; Eastern District of Missouri; Case No: Z:23-CV-00005-MTS. Case was Transferred TO THE Western District of Missouri.
15. ON February 22, 2023 The Case Transferred IN From the Eastern District of Missouri And Assigned Case No: 6:23-CV-03058-MDH. THE Petition was filed timely in compliance with 28 U.S.C. 2244(d). Petitioner included All Grounds raised in STATE Court Proceedings (PARA. 6, 7, 8, 10). Petitioner asserted Each Ground with Its Procedural Argument included:

1) The STATE knowingly USED AND Failed to CORRECT false AND Perjured testimony in violation of The 14th Amendment.

A. The Respondent failed to deny the "Cause And Prejudice" Exception in the responsive pleading that Excuses Ground One; and

b. "Cause And Prejudice" Exception For Ground ONE.

2) Trial Counsel was ineffective for failing to object to the STATE's knowing use of PERJURED AND FALSE Testimony in violation of The 6th And 14th Amendments

A. Post-Conviction Motion Counsel was ineffective for failing to raise a substantial claim of INEFFECTIVE ASSISTANCE of TRIAL Counsel, For Failing to object to The false testimony, through MARTINEZ v RYAN, 566 US 1.

3) Trial Counsel was ineffective for failing to impeach the false testimony of victim, in violation of the 6th Amendment.

A. Post-Conviction Motion Counsel was ineffective for failing to raise a substantial claim of Ineffective ASSISTANCE of TRIAL Counsel, For Failing to impeach The false Testimony, through MARTINEZ v RYAN, 566 US 1.

4) Miscarriage of Justice / ACTUAL Innocence Gateway to Excuse Grounds one, Two, And Three.

5) THE TRIAL Court abused its discretion in NOT admitting Evidence that the victim committed A Probation Violation.

6) Trial Counsel WAS IN EFFECTIVE for NOT objecting to testimony OF THE STATE'S EXPERT ON THE Cause of The Injuries.

7) Direct Appeal Counsel ineffectively failed to challenge the Sufficiency OF THE Evidence to prove Criminal Intent.

16. ON September 25, 2023 The UNITED STATES DISTRICT COURT denied the ZZ54 And Certificate of Appealability For the Following REASONS:

THE DISTRICT COURT Agreed with Pike County, who found Ground One, Two, and THREE to be procedurally defaulted; without Legal basis, AS There was no false testimony; And Trial ATTORNEY'S ACTIONS WERE reasonable conduct. THE DISTRICT ALSO determined Petitioner did NOT MEET the "Cause And Prejudice" or "miscarriage of Justice" Exception.

Ground four, the Gateway of Actual Innocence, Excusing grounds one, Two, and THREE; was denied because Petitioner presented NO "New reliable Evidence, NOT AVAILABLE AT TRIAL" citing AMRINE V BOWEN SOX, 238 F.3d 1023, 1028-1029. PETITIONER raised the Actual Innocence Gateway through Schlup V. Delo, 513 US 298; STANDARD OF "NOT PRESENTED AT TRIAL." PETITIONER asserted that NO Evidence was presented AT TRIAL showing the STATE was using false and perjured testimony. By comparing Trial Testimony (para 5) Against Preliminary hearing testimony (para. 2); And Evidences in the STATE'S Possession (para. 3) false testimony was the basis and foundation of the conviction.

THE DISTRICT COURT denies ground five, six, seven. The Court determined that Petitioner did not make a substantial showing of a denial of A Constitutional Right. The ZZ54 And Certificate of Appealability were denied And the case was dismissed. PETITIONER Filed A timely NOTICE OF Appeal on 10/6/2.

17. ON OCTOBER 11, 2023 the UNITED STATES COURT OF APPEALS FOR THE Eighth Circuit; CASE NO: 23-3263; ordered the original file from the United STATES DISTRICT COURT. THE COURT interpreted the NOTICE of Appeal AS the Certificate of Appealability (C.O.A.). The Court denied The C.O.A. on December 26, 2023.

PETITIONER filed A timely Petition for Rehearing And/or Rehearing EN Banc. PETITIONER addressed EACH ground in the 2254. PETITIONER made A Substantial showing of A denial of A constitutional right, in compliance with 28 USC 2253(c)(2). PETITIONER demonstrated THAT A REASONABLE Jurist would find it debatable whether the District Court was correct in its procedural ruling Addressing: Miscarriage of Justice/Actual Innocence Gateway; Cause And Prejudice; And THE MARTINEZ V RYAN, 566 US 1 Exception. PETITIONER Argued EACH point OF LAW OR FACT the Court overlooked or misapprehended in support of The 2254 Petition For writ of Habeas Corpus. ON MARCH 12, 2024 the Court denied the Petition For Rehearing.

REASONS FOR GRANTING The WRIT

QUESTION ONE

Miscarriage of Justice/Actual innocence GATEWAY

A) The state And federal Courts Erroneously denied the Actual Innocence gateway or miscarriage of Justice Exception Excusing Grounds One, Two And Three, through Schlup V. Delo, 513 US 298. The Courts' REASONING is the gateway of Innocence requires new reliable Evidence, NOT AVAILABLE AT TRIAL THAT could NOT have been discovered through due diligence in light of which NO reasonable Juror would VOTE to convict, citing Amrine V. Bowsox, 238 F.3D 1023. Courts say PETITIONER failed to present ANY new reliable Evidence. The definition of "New" Evidence Adopted by The

Eighth Circuit in *Amrine v. Bowensox* supra, is inconsistent with Schlup, "not presented at trial," which is in conflict with the decision of another United States Court of Appeal.

B) Petitioner raised the actual innocence gateway/mis carriage of Justice Exception to resurrect procedurally defaulted grounds. The standard requires Petitioner to "show that a constitutional violation has probably resulted in the conviction of one who is actually innocent" and "more likely than not that no reasonable juror would have convicted him in light of new evidence" *Schlup v. Delo*, 513 US 298, 327.

C) The first Constitutional violation that led to the conviction of one who is actually innocent is ground one, the state knowingly used and failed to correct false and perjured testimony, in violation of the 14th Amendment (paras). The transcripts clearly show the same question of "did he stop?" was answered differently. At preliminary, the alleged victim stated petitioner stopped when requested (philo). At trial, the alleged victim answered petitioner did not stop when requested, but continued non-consensual penetration for several minutes against her will (Tr 369). This perjured testimony includes the removal of consent and actions of the petitioner initiating the Criminal Act of sex without consent. It continued describing the Criminal Act by saying petitioner inserted his hand in her vagina and continued for an extended time (Tr 369-73), which is false (see para. 3).

D) The use of false and perjured testimony to secure a conviction is prohibited by the 14th Amendment. Petitioner relies on the following cases: *McDonney v. Holohan*, 294 US 103, 112 (1935); *United States v. Agurs*, 427 US 97; *Alconra v Texas*, 355 US 28; *Giglio v. United States*, 405 US 150; *Napue v. Illinois*, 360 US 264; 265, 269, 270 (1959). Petitioner meets the requirements that

Testimony was false, The STATE knew it was false, And the false testimony led to the conviction; by Evidence in the STATE'S Possession. Petitioner used the following Evidences: Preliminary hearing testimony (ph16); Application and Affidavit for SEARCH WARRANT (EX1); Doctor NOTE (EX2); And Police Report (EX3) (see para 3). These Evidences corroborate that the Trial Testimony was false, which created the Criminal Act. It is more likely than not no reasonable Juror would have voted to convict had they been informed the Alleged Victim was testifying falsely And the STATE was complicit.

E) Petitioner asserted two other Constitutional violations that led to the conviction of one who is actually innocent. Petitioner raised Ground Two and Three under Strickland v. Washington, 466 US 668, in violation of the 6th Amendment, addressing trial Attorney's failure to object or impeach the false and perjured removal of consent (Tr 369). Trial Attorney possessed the following Evidences: Preliminary hearing testimony (ph16), Affidavit for SEARCH WARRANT (EX1); Doctor NOTE (EX2), And Police Report (EX3) (see para 3). These Evidences refute that any sexual activity was without consent. Trial Attorney left the Alleged Victim's prejudicial testimony concerning the removal of consent uncontested for Jury deliberation. No amount of Trial Strategy can account for allowing the Jury to deliberate on known false testimony. It is more than likely than not that no reasonable Juror would have voted to convict, if the Alleged Victim had to explain how contradictory statements were compatible.

F) The decision to deny Petitioner's miscarriage of Justice or Actual Innocence Gateway, Excusing Ground One, Two, And Three is based on a conflict with decisions of Another United STATE'S Court of Appeal on the same important matter. Petitioner

Raised this Exception under *Schlup v Delo* supra. Petitioner Provided New reliable Evidence NOT Presented AT Trial to support his Allegation from the Preliminary Hearing testimony (ph16), Affidavit of SEARCH WARRANT (EX1), Doctor Note (EX2), And Police Report (EX3) (see para. 3). The "New" part is the "conclusion," derived from comparing reliable information and Trial Transcripts, which are NOT Generated till After trial, that show the STATE Knowingly Elicited False Testimony. The Seventh And Ninth Circuits Agree the Phrase "New" for purpose of *Schlup* Analysis MEANS "NOT Presented AT Trial." *Gomez v. Jaime*, 350 F.3d 673, 679-80 (7th Cir 2003); *Griffen v Johnson*, 350 F.3d 956, 962-63 (9th Cir 2003). The fact, False and Perjured testimony was used by the STATE to secure A Conviction, WAS NOT Presented AT Trial. The failure to consider Grounds one, two, and three will result in A fundamental miscarriage of Justice.

QUESTIONS TWO AND THREE

CAUSE AND PREJUDICE / STATE Failed TO Deny The Claim

- 6) Petitioner Asserted the "Cause and Prejudice" Exception to Excuse Ground One, in the Initial State Court Proceeding (para. 10); the Respondent failed to deny the "Cause and Prejudice" Exception in The Responsive pleading (para. 11); And the Court deemed Ground One was procedurally defaulted, because Petitioner did NOT PLEAD Any FACTS to Excuse the failure to present the Ground to the STATE Courts. The STATE And Federal Courts have so far departed from the accepted and usual course of Judicial Proceedings, or has decided An important Question of federal Law that has NOT been, but should be, settled by this Court; or has decided An important federal Question in A way that conflicts with relevant decisions of this Court.

H) PETITIONER asserted the following claim: Appellate Counsel was INEFFECTIVE under STRICKLAND V. WASHINGTON, 466 US 668 for Failing to RAISE the due process claim that the STATE Elicited False And PERJURED testimony in violation of the 6th And 14th Amendments. TO ESTABLISH A VIOLATION of PETITIONER's right to effective Assistance of Counsel, it must be shown Counsel Failed to Exercise the customary skill and diligence that A reasonably Competent Attorney would perform under similar circumstances; PETITIONER was prejudiced by the ineffective Assistance of Counsel; And but for Counsel's ineffectiveness the results would have been different. STRICKLAND V. WASHINGTON SUPRA. PETITIONER seeks review by demonstrating "cause and prejudice" As A result of the Alleged Violation of Federal Law, under Coleman V. Thompson, 501 US 722.

I) The Appellate ATTORNEY failed to Exercise the customary skill and diligence that A Reasonable Competent ATTORNEY would perform under similar circumstances by failing to address perjured testimony Elicited by the state concerning the removal OF CONSENT. The Transcripts clearly show the same question of 'did he stop?' was Answered differently. AT Preliminary, the Alleged Victim STATED Petitioner stopped when requested (ph 16). AT Trial in front of The Jury, the Alleged Victim Answered Petitioner did NOT STOP when requested, but Continued Non-Consensual penetration for several minutes Against her will (Tr 369-73) (see para. 5). This perjured testimony included the removal of Consent And Actions of the Petitioner Initiating the criminal Act of Sex without Consent. Appellate ATTORNEY would be Aware Perjury is A prohibited Act, Violating 575.040 RSMo. Appellate ATTORNEY was responsible to RAISE the prosecutorial misconduct. Counsel's ineffectiveness failed to preserve the Constitutional Violating, Creating A procedural default. The default is the result of ineffective Assistance of Counsel, and the 6th Amend. requires the responsibility for the default be imputed to the STATE, murray v. carrier, 477 us 478. Appellate Counsel's INEFFECTIVE PERFORMANCE WAS "cause" For the default.

PREJUDICE/PREJUDICE

J) Appellate Attorney's Failure to raise the due process violation prejudiced the Petitioner. The STATE's case hinged on the removal of consent and subsequent actions. The False Testimony AT Trial (Tr369) worked to the Petitioner's actual and substantial disadvantage by infecting the whole trial with errors of constitutional dimensions. If that testimony was shown to be perjured and false, the conviction would have been vacated. Counsel's failure to raise the claim, that the state knowingly used false testimony, failed to preserve the issue. Counsel further prejudiced Petitioner by abandoning a meritorious claim, and but for counsel's ineffectiveness the results would have been different.

FAILED TO DENY THE CLAIM

K) Petitioner addressed the "Cause and Prejudice" Exception to review the merits of Ground One, the state knowingly used and failed to correct false and perjured testimony, in the Rule 91 Habeas Corpus, in the Circuit Court of Pike County Missouri, Case No: ZZP1-CC00035 (see Pet. At 44-49) (see para. 10).

L) The claim was labeled "issue #1" Addressing Appellate Attorney's ineffectiveness. The Respondent argues, the "second and third" claims of ineffective assistance of post-conviction counsel's performance can not be cause to excuse the default and "such claims are categorically unreviewable" citing Martinez v Ryan, 566 US 1 (order to show Cause at 5-7). Respondent only denied the "second and third" claims, pertaining to post-conviction counsel through Martinez, and never mention claim one "Cause and Prejudice" against Appellate Attorney through Strickland (see para. 11). Petitioner alerted the Court that

Respondent failed to deny "Issue #1" cause and prejudice in the Responsive pleading, And According to Mo. Sup. Ct. Rule 55.09 A claim is Admitted when not denied in the Responsive Pleading (see Petitioner's Reply brief at 25-26). Pike County determined Ground One was procedurally defaulted, without the Respondent Asserting a defense for the "Cause and Prejudice" Exception, which is a drastic departure from the Accepted And usual course of Judicial proceedings, requiring review under Supreme CTR 10.

- M) THE Respondent Addressed the "cause and prejudice" Exception Excusing ground one, For the first Time At the federal Level. The Federal Courts Agreed with the STATE Courts on the procedural default. Petitioner contends that he has "Equal Protection under the Law" by the plain Language of the 14th Amendment, in that Petitioner OR Respondent "may NOT raise in federal court an error that he failed to raise properly in state court." *MAGWOOD V. PATTERSON*, 561 AT 340. The Decision, that Ground One is procedurally defaulted After the Respondent failed to deny "cause and Prejudice" Exception has decided an important Question of federal LAW that has NOT been, but should be, settled by this Court; Requiring review under Supreme C.T.R. 10.

QUESTION FOUR

- N) PETITIONER ASSERTED TRIAL ATTORNEY WAS INEFFECTIVE for failing to object to The STATE's knowing use of perjured testimony of the victim (Ground Two) or impeach the false testimony of the victim (Ground Three), in violation of his Sixth Amendment right to effective Assistance, which was Erroneously Determined to be procedurally defaulted by STATE AND

federal Courts. Petitioner claims post-conviction counsel was ineffective in the initial review collateral Proceeding, for NOT RAISING the claims that TRIAL ATTORNEY WAS ineffective for failing to object (ground Two) or IMPEACH (ground Three) False and perjured testimony of the victim. PETITIONER addresses these claim through MARTINEZ V. RYAN, 566 US 1 Exception.

O) "When A STATE requires A prisoner to raise A claim of ineffective Assistance of Trial Counsel in A collateral Proceeding A prisoner may ESTABLISH Cause for A Procedural default of such claim... where appointed counsel in the initial review collateral proceeding, where the claim should have been raised was ineffective under STRICKLAND V. WASHINGTON, 466 US 668. To overcome the default A prisoner must also demonstrate that the underlying ineffective Assistance AT Trial claim was SUBSTANTIAL." MARTINEZ V RYAN, 566 US 1.

P) The STATE And federal Courts Erroneously determined Ground Two And Three were procedurally defaulted. The STATE Court determined review of both grounds, through MARTINEZ V RYAN supra, are categorically unreviewable. State and federal Courts determined Ground Two was without legal basis, because there was no false testimony to object to; and Ground Three because Cross-Examination is A matter of Trial strategy, STATING counsel did Cross-Examine the victim with "inconsistent" statements. Both Courts have decided An important federal Question in A way that conflicts with relevant decisions of this Court.

Q) PETITIONER ASSERTS the following facts to show Ground Two had A legal basis, because there was FALSE testimony to Object to; Ground three because trial ATTORNEY WAS Ineffective for failing to impeach the Same testimony; And Post-Conviction Counsel was ineffective For failing to RAISE both Claims Against Trial ATTORNEY. AT Trial the Alleged Victim testified Consent WAS Removed during ANAL SEX And Petitioner continued for Several minutes without Consent (Tr 369) (see PARA. 5); then, Engaged in digital Stimulation (Tr 369-73). The removal of Consent (Tr 369) is shown to be Perjured, when the alleged victim testified AT Preliminary hearing Petitioner stopped Anal sex upon request (Ph 16). The digital stimulation is shown to be false by Statements Recorded AT the hospital showing the sexual Activity was Consensual And Petitioner stopped upon Request (EX 2) (see PARA. 3). The Preliminary hearing testimony (ph 16), Affidavit for search WARRANT (EX 1), And the Police Report (EX 3) continue to support THAT All sexual Activity WAS Consensual, And Trial ATTORNEY WAS ineffective for NOT objecting or impeaching the prejudicial trial testimony, And Post-Conviction counsel was ineffective for NOT addressing trial ATTORNEY's Errors.

R) Post-conviction counsel was ineffective under Strickland, for failing to address trial ATTORNEY, who failed to object (ground Two) or impeach (ground three) false And Perjured testimony of the Alleged Victim. It must be shown Counsel failed to Exercise the customary skill And diligence THAT A reasonably Competent ATTORNEY would perform under similar circumstances Strickland V Washington, 466 US 668, 689. Also must demonstrate THAT Petitioner was prejudiced by the ineffective Assistance

OF Counsel id. The prejudice prong is satisfied when there is reasonable probability that, but for Counsel's ineffectiveness the Results would have been different id at 694.

S) Post-Conviction counsel failed to Exercise the customary skill and diligence that A reasonably Competent ATTORNEY would perform under similar circumstances, when Counsel failed to raise A Significant AND obvious claim Pertaining to trial ATTORNEY failure to object or impeach the false and perjured removal of Consent And Actions OF the Petitioner. These CLAIMS ATTACK the foundation of the Conviction, and Counsel would know that A conviction based on false AND perjured testimony is unconstitutional. Counsel's failure to raise and preserve these claims Establishes "Cause" Allowing Review. Petitioner was prejudiced by Post-conviction counsel because these meritorious claims were ABANDONED, which created A procedural default. Had Counsel shown false testimony was used to Secure the conviction, AND NOT objected to or impeached by Trial ATTORNEY, the Appeal would have resulted in A Reversal or New Trial, And there is A reasonable probability that, but for counsel's ineffectiveness the Results would have been different.

T) Trial ATTORNEY Failed to Exercise the customary skill and diligence that A reasonably Competent ATTORNEY would perform under similar circumstances for failing to object or impeach false and perjured testimony of the Alleged victim, specifically the removal of Consent And The following Actions of the Petitioner, which is the foundation of the conviction, in violation of His

Sixth Amendment Right under Strickland v. Washington, supra. At trial the Alleged victim testified that Consent was removed during Anal Sex And Petitioner Continued for several minutes Against her will, then Petitioner Engaged in digital Stimulation (Tr 369-73) (para 5). Trial Attorney should have objected or impeached this prejudicial testimony, because Counsel possessed Evidences showing this testimony was perjured And false. The Affidavit for Search Warrant signed by Prosecutor (EX 1); Police Report (EX 3); And Preliminary hearing testimony (ph 16) corroborate that The Removal of Consent during Anal sex WAS PERJURED And False. Trial Attorney possessed recorded STATEMENT From hospital showing digital Stimulation was Consensual And PETITIONER STOPPED when REQUESTED (EX 2). An Objection to the perjured testimony was warranted, because the use of perjured testimony by the prosecution violates due process, And Petitioner's right to A fair trial under the 6th And 14th Amendment, Trial ATTORNEY should have impeached the False testimony, because Trial testimony (Tr 369-73) was grossly inconsistent with prior STATEMENTS (para. 2, 3) And the impeachment would have created reasonable doubt. Trial ATTORNEY failure to object or impeach False testimony did substantially affected the outcome of the trial, And is contrary to the Customary skill and diligence that A reasonably Competent ATTORNEY would perform under similar Circumstances.

- U) Trial ATTORNEY's Failure to object or impeach the False testimony prejudiced PETITIONER by allowing the jury to deliberate on The False testimony. Had the jury been made Aware that THE Alleged victim was testifying falsely, it would discredit her credibility, which would have Altered the verdict by Creating

REASONABLE doubt. The element OF consent WAS integral to the conviction, And counsel's failure to ATTACK the material fact, deprived Petitioner of his right to A fair trial, And there is A reasonable probability that, but for counsel's ineffectiveness the results would have been different.

- V) The denial of this claim is in direct conflict with relevant decisions of this court issued in *Martinez v Ryan*, 566 US 1, because the CLAIMS AGAINST the Trial Attorney were substantial, violating Petitioner's Sixth Amendment right to effective assistance, And Post-Conviction Counsel was ineffective for failing to Address the Errors. False Testimony was shown by facts to be the reason for the conviction, which is contrary to the lower court's reasoning, which found there was NO false testimony to object or impeach; requiring this court to Exercise its Supervisory power in this matter, under Supreme Ct. R 10.

Conclusion

The Petition for Writ of Certiorari should be granted

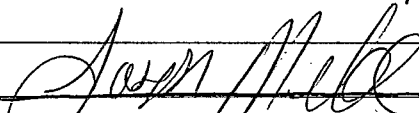
Respectfully Submitted,

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CERTIFICATE of Compliance

AS REQUIRED by Supreme Court Rule 33.1 (H), I
certify that this Document contains 5,555 words,
excluding the parts of the document that are exempt by
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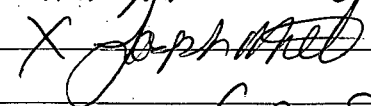
Executed on the 16th day of Aug, 2024

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Certificate OF SERVICE

I hereby certify that a true and correct copy of the
foregoing was mailed through prison mailbox, postage paid
on this 16th day of Aug., 2024:

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