

24-5613
No.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

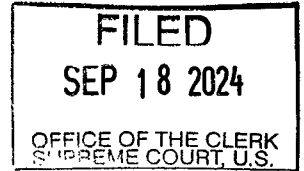
In re LYNDON C. DAVIS

Petitioner

V.

TRENT ALLEN

Respondent



PETITION FOR WRIT OF HABEAS CORPUS

Attorney for petitioner:

LYNDON C. DAVIS
Petitioner / Pro-se
DOC # 232171
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064-9001

QUESTION PRESENTED

- 1) Whether on these facts, the Prosecution at the Petitioner's trial, during Closing argument, Misrepresentation of the trial testimony of a State's eyewitness, denied him due process of the Law in Violation of the Fourteenth amendment to the United States Constitution?
- 2) Whether on these facts, the petitioner, had received both ineffective assistance of trial and of appellate Counsel, in Violation of the right to effective assistance of Counsel of the Sixth amendment to the United States Constitution?
- 3) Whether the trial that Led to the Petitioner's Conviction was Constitutionally Valid?

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I. The Prosecution at the Petitioner's trial denied him due process of the law in violation of the Fourteenth Amendment of the United States Constitution, U.S. Constitution

II. The Petitioner's trial/Appellate Counsel denied him effective assistance of Counsel at his trial, and on direct appeal proceeding, in violation of the Sixth Amendment of the United States Constitution, U.S. Constitution

III. The Petitioner's Conviction is Constitutionally invalid Under the Sixth and Fourteenth Amendments

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PETITION FOR WRIT OF HABEAS CORPUS TO THE UNITED STATES SUPREME COURT

The Petitioner, Lyndon C. Davis, respectfully prays that this Court review his newly Constitutional claims filed within this petition for habeas Corpus relief challenging his Conviction that is Unconstitutional, and his detainment that is in violation of the Constitution; and clearly established Federal Law.

OPINION BELOW

The Petitioner challenges his 2013, Conviction, and the decision by the Indiana Court of Appeals when that Court affirmed his Conviction on March 5, 2014 (Davis v. State, 6 N.E.3d 509, 2014 Ind. App. Unpub. Lexis 311, Ind. Ct. App. March 5, 2014). The Indiana Court of Appeals, direct appeal memorandum decision is unpublished, and is reprinted in the Appendix to this Petition at App. A, *infra*. The Cause number to the Petitioner's appeal is, No. 45A04-1304-CR-207.

JURISDICTION

The petitioner invokes this court's Jurisdiction to entertain Original habeas Corpus Petitions Under 28 U.S.C. § 2241(a), and U.S.C. Supreme Court rule 20(4)(a). See In re Bowe, 601 U.S. 144 S.Ct. 1170, 218 L.Ed.2d 67 (2024). The Petitioner have not exhausted state remedies for the newly claims within this petition. He have exhausted all of his state remedies presenting prior claims and currently have no other available remedies for to raise the questions presented within this petition. All prior decisions are reprinted in the Appendix to this petition.

REQUIREMENTS UNDER 28 U.S.C.S
§ 2241, § 2242 AND § 2254(b) PROVISIONS

§ 2241(c)(3)

The Petitioner, Lyndon C. Davis, contends to this Court that he is convicted, and in custody, in violation of the due process clause of the Fourteenth Amendment of the United States Const., and that his conviction is also in violation of clearly established federal law under the case law of Miller v. Pate, 386 U.S. 1, 7, 87 S.Ct. 785, 17 L.Ed.2d 690 (1967) (the right not to be convicted by the use of false evidence under the due process clause of the U.S. Const.).

§ 2242

The Petitioner, Lyndon C. Davis contends that the reason he have filed his application for habeas corpus relief to the United States Supreme Court, and not the District Court, is because he have already tried to present his newly Constitutional claims to the District Court and the District Court dismissed the Petitioner's Petition stating that the Petitioner had needed to get permission from the Seventh Circuit Court to file a second or successive habeas corpus Petition for the District Court to be able to hear the Petitioner's new claims. The Petitioner had filed several applications to the Seventh Circuit Court seeking permission, but the Seventh Circuit Court denied permission stating that the Petitioner could not satisfy the Antiterrorism and —

Effective Death Penalty Act of 1996 (AEDPA) § 2244
(b)'s strict requirements for Authorizing a Second or
Successive § 28 U.S.C. § 2254 application for relief
See Appendix

§ 2254(b)

The Petitioner contends to this Court that he has already exhausted all of his State Court remedies that were available as he was in Pursuit for relief filing totally different claims. He contends that his newly claims were available at the time that he went through his State Court remedies, but that his appellate counsel had overlooked the claims for direct review, and the Petitioner had overlooked the newly claims when he filed for State Post-Conviction relief. He contends that he did not become aware of the claims until the facts to the newly claims (or substance) were brought to the Petitioner's attention by the Courts themselves.

The Petitioner contends that although his claims were not presented to the State Courts as a standalone claim, the substance (or facts) to his newly filed claims were developed in the State Courts after his trial, and direct appeal had taken place. The Petitioner contends that these facts were developed at his Post-Conviction hearing, and on appeal from the denial for Post-Conviction relief. But that the facts were so confusing to the Petitioner that he did not realize that those newly facts had pointed out a bigger Constitutional issue for new claims, until the newly facts were also

Stated on record by the District Court as the Petitioner's first Petition for habeas corpus relief was denied. The Petitioner contends that the newly facts that are on the record by the Courts explaining the evidence that was presented at the Petitioner's trial, that is in conflict with the prior statement of the evidence that was presented at the Petitioner's trial by the Indiana Court of Appeals, is currently enough evidence for to show this Court that the Petitioner deserves relief. The Petitioner will argue that the State Court's connections to the facts to his case should have raised a red flag concerning the Petitioner's case to those Courts, because those Courts should have seen the contradiction in what was being stated on why the Petitioner was convicted. The Petitioner would argue that the State Courts had a meaningful opportunity for to pass upon the substance of the Petitioner's claims, because those Courts were aware of the error that is discussed within the substance of the newly claims and decided not to do anything about the error. See Rodriguez V. Scillia, 193 F.3d 913, 916 (7th cir, 1999) (Fair Presentment requires a Petitioner a Petitioner to have given the State Court a "Meaningful opportunity to pass upon the substance of the claims" he is presenting in his habeas Petition). Also, See McDowell V. Lemke, 737 F.3d 476, 483-84 (7th cir, 2013) (a claim is fairly presented when it was discussed in the context of a different claim) (Nested Claims).

The Petitioner contends that according to § 2254(b)(1)(B)(ii), there are now circumstances that not only have prevented the Petitioner from seeking State Court collateral review for his new

claims, but have now also rendered that Process ineffective to protecting his rights. The Petitioner contends that he cannot return back to the State Courts for collateral review of his newly claims, because a Petitioner may not file a Writ of habeas Corpus in an Indiana State Court for to attack his Conviction or Sentence, See Partlow V. Superintendent, Miami Correctional Facility, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001). The State of Indiana will treat any attacks on a Conviction or Sentence as a Post-Conviction Relief Petition, See Hawkins V. Jenkins, 268 Ind. 137, 140, 374 N.E.2d 496, 498 (1978) (citing that Indiana's Post-Conviction rule 1(1)(c) states that a Writ of habeas Corpus that attacks a Conviction or Sentence must be transferred to the Court of Conviction and treated as though filed as a Post-Conviction Petition). Under Indiana Post-Conviction Rule 1(g), a Petitioner may raise new claims in a Successive Petition only if the Unraised claim could not have been raised earlier proceedings. That Unraised claims that should have been raised earlier are waived or are procedurally defaulted. See Isom V. State, 31 N.E.3d 469 (Ind. 2015).

The Petitioner contends that filing his habeas Corpus Petition to this Court to seek the relief that he is entitled is his only option at this point. That it would be a miscarriage of Justice for this Court to refuse to review the Petitioner's newly claims, and for to grant the relief that he is entitled, based upon the substance of the Petitioner's claims.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following Statutory and Constitutional Provisions are involved in this case.

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State 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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST., AMEND. XIV

Section 1. 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 within its Jurisdiction the equal Protection of the laws.

§ 2241(a) (28 U.S.C. § 2241)

Writs of habeas Corpus may be granted by the Supreme Court, any Justice thereof, the district Courts and any Circuit Judge within their respective Jurisdictions. The order of a Circuit Judge shall be entered in the records of the district Court of the district where in the restraint complained of is had.

§ 2241(c)(3) (28 U.S.C. § 2241)

The Writ of habeas Corpus shall not extend to a prisoner Unless - He is in Custody in Violation of the Constitution or laws or treaties of the United States.

§ 2242 (28 U.S.C. § 2242)

Application for a Writ of habeas Corpus shall be in Writing, Signed and Verified by the Person for whose relief it is intended or by Someone acting in his behalf.

It shall allege the facts concerning the applicant's Commitment or detention, the name of the Person who has custody over him and by Virtue of what claim or Authority, if known.

It may be amended or Supplemented as provided in the rules of Procedure applicable to civil actions;

If addressed to the Supreme Court; a Justice thereof or a Circuit Judge, it shall state the reasons for not making application to the district Court of the district in which the applicant is held

§ 2244(b)(2)(A) and (B) (28 U.S.C. § 2244)

A claim Presented in a Second or Successive habeas Corpus application Under Section § 2254 (28 U.S.C. § 2254) that was not presented in a prior application shall be dismissed Unless -

(A) the applicant Shows that the claim relies on a new rule of Constitutional Law, Made retroactive to cases on collateral review by the Supreme Court, that was previously Unavailable, or

(B) (i) the factual predicate for the claim Could not have been discovered Previously through the exercise of due diligence.

(ii) the facts underlying the claims, 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.

§ 2254 (28 U.S.C. § 2254)

- (a) The Supreme Court, a Justice thereof, a Circuit Judge, or a district Court shall entertain an application for a writ of habeas Corpus in behalf of a Person in custody Pursuant to the Judgment of a State Court only on the ground that he is in Custody in Violation of the Constitution or laws or treaties of the United States
- (b)(1) An application for a writ of habeas Corpus on behalf of a Person in Custody Pursuant to the Judgment of a State Court shall not be granted Unless it appears that -
- (A) the applicant has exhausted the remedies available in the Courts of the State, or
 - (B)(i) there is an absence of available State corrective process; or
 - (ii) Circumstances exist that render Such process ineffective to protect the rights of the applicant.
- (2) An application for a writ of habeas Corpus may be denied on the Merits, notwithstanding the failure of the applicant to exhaust the remedies available in the Courts of the State.
- (3) A State shall not be deemed to have waived the exhaustion

requirement or be estopped from reliance upon the requirement unless the State, through Counsel, expressly waives the requirement.

(C) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this Section, if he has the right under the Law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim —

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States, or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding,

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court, a determination of a factual issue made by a State Court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State Court proceedings, the Court shall not hold an evidentiary hearing on the claim unless the applicant shows that —
(A) the claim relies on —

- (i) a new rule of Constitutional law, made retroactive to Cases on collateral review by the Supreme Court, that was previously Unavailable; or
 - (ii) a factual predicate that Could not have been previously discovered through the exercise of due diligence; and
- (B) the facts underlying the claim 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.
- (F) If the applicant challenges the Sufficiency of the evidence adduced in Such State Court Proceeding to Support the State Court's determination of a factual issue made therein, the applicant, if able, Shall produce that part of the record Persistent to a determination of the Sufficiency of the evidence to Support Such determination. If the applicant, because of indigency or other reason is Unable to produce Such part of the record, then the State Shall produce Such Part of the record and the federal Court Shall direct the State to do so by order directed to an appropriate State official. If the State Cannot provide Such Pertinent Part of the record, then the Court Shall determine Under the existing facts and circumstances what Weight Shall be given to the State Court's Factual determination.
- (G) A copy of the official records of the State Court, duly certified by the Clerk of Such Court to be a true and correct Copy of a finding, Judicial opinion, or other reliable Written

indicia showing such a factual determination by the State Court shall be admissible in the federal Court proceeding.

- (h) Except as provided in Section 408 of the Controlled Substances Act, in all proceedings brought under this Section, and any subsequent proceedings on review, the Court may appoint Counsel for an applicant who is or becomes financially unable to afford Counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of Counsel under this Section shall be governed by Section 3006A of title 18
- (i) The ineffectiveness or incompetence of Counsel during federal or state collateral Post-conviction proceedings shall not be a ground for relief in a proceeding arising under Section 2254.

35-41-1-1 (Indiana Code; Murder)

A person who:

- (1) knowingly or intentionally kills another human being.

35-41-2-4 (Indiana Code; Aiding, inducing or causing an offense)

A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:

- (1) has not been prosecuted for the offense;
(2) has not been convicted of the offense; or
(3) has been acquitted of the offense.

STATEMENT OF THE CASE

In July of 2011, the Petitioner, Lyndon C. Davis (Mr. Davis, here in) and his Uncle Robert E. Davis (Robert, here in), were both charged with the Murder of Parrish Myles (Mr. Myles, here in). Both men were tried for the Murder amongs two separate trials. With no physical evidence to present at the trials for to help with the State's case, the State of Indiana presented three eyewitnesses (Aniya Lawson, Rosa Orphey, and Krystle Gavin) at each trial who each gave a story of what they had witnessed on the day of the Murder, and a discription of the person (or persons) who they had claimed to have seen commit the crime.

With no Motive to present, the State of Indiana tried Robert first in a January of 2012, trial. The State presented a theory that Robert was the person who had shot and killed Mr. Myles, and that Mr. Davis was Robert's accomplice to the shooting. During Robert's trial, not one of the three State's eyewitnesses were able to identify Robert, or place Robert at the scene of the crime as the shooter who killed Mr. Myles. After Robert was not identified as the shooter at his trial, without any objections from Robert's defense counsel, the prosecution presented a tendered, Indiana accomplice Liability Jury instruction to Robert's Jurors and told the Jurors that "... If they did not believe that the State of Indiana had proven that Robert shot and killed Mr. Myles, that they better believe that he was guilty under the accomplice Liability Jury instruction for whatever role that he played..." Robert was found guilty for the Murder of Mr. Myles. The Indiana Court of Appeals

On direct appeal, Stated within their memorandum decision that Robert Could have been found guilty as the Shooter, or as the Shooter's accomplice due to the evidence presented at his trial. The Court Stated that the Victim's daughter, and State's eyewitness Aniya Lawson (Lawson, here in) has witnessed the entire crime. The Story of Lawson's trial testimony had also become the Written Facts to the State's case. Lawson Was eleven years old When she testified at Robert's trial. Robert was Sentenced to 65 years in prison for this crime, See Davis V. State, 982 N.E.2d 30, 2013 Ind. App. Unpub. Lexis 49 (Ind. Ct. App, Jan. 23, 2013).

A year Later, in February of 2013, the State of Indiana tried Mr. Davis in a Second trial for Mr. Myles Murder. At Mr. Davis' trial, the State of Indiana Presented a Motive that Mr. Davis and Robert had both Killed Mr. Myles for to collect bounty Money. The State of Indiana also presented a trial theory that Robert had Shot and Killed Mr. Myles, and that Mr. Davis Was Robert's accomplice to the Shooting. With no physical evidence to present at trial, the State of Indiana Presented the same three eyewitnesses at Mr. Davis' trial that Was also Presented at Robert's trial, and a recorded interview of Mr. Davis to Show the Jurors that Mr. Davis Was familiar with Mr. Myles, and had Visited the apartment Complex Where Mr. Myles was Killed before Mr. Myles Was Murdered. During Mr. Davis' trial, he also was not identified, or placed at the crime Scene by any of the State's eyewitnesses. It Was also Shown Within Mr. Davis' Video recorded interview that he had told the Police that he had no Knowledge of the Shooting; and Was not near the Shooting when it happened. See Davis V. State, 112 N.E.3d 232, 218 Ind. App. Unpub. Lexis 1208, 2018 WL 495,

7199 (Ind. Ct. App., Oct. 15, 2018). App. B.... Fully aware that Mr. Davis was not identified by any of the State's three eyewitnesses to have participated in the crime, State's prosecutor Angela Mattozzi (Mattozzi, hereinafter), during her closing argument, without any objections from Mr. Davis' defense counsel, told Mr. Davis' jurors that Lawson had indeed testified that she had seen both Mr. Davis and Robert at the scene of the crime having a conversation with Mr. Myles before Lawson saw Robert shoot Mr. Myles. Mattozzi told the jurors that Lawson saw Mr. Davis move over from the passenger seat to the driver's seat of Robert's gold colored Camry after the shooting (Toyota Camry), then she saw Mr. Davis drive Robert away from the scene of the crime.

Mr. Davis was convicted for Mr. Myles' murder stated as an accomplice to Robert under the same accomplice liability jury instruction that Robert was convicted under at his trial. On direct appeal, the Indiana Court of Appeals affirmed Mr. Davis' murder conviction. The Indiana Court of Appeals stated that Lawson had testified to have seen Mr. Davis watch Robert approach and shoot Mr. Myles. Then Lawson saw Mr. Davis switch from the passenger seat to the driver's seat of Robert's car and drive Robert away from the scene of the crime. The Indiana Court of Appeals repeated Mattozzi's closing argument comments about Lawson's trial testimony as the reason why Mr. Davis was convicted at his trial. The Indiana Court of Appeals credited Mr. Davis' conviction to the trial testimony of Lawson, and Lawson's trial story became the substance of the State of Indiana facts to Mr. Davis' case as it

was also stated on direct appeal for Robert. See Davis v. State, 6 N.E.3d 509, 2014, Ind. App. Unpub. Lexis 311 (Ind. Ct. App. March 5, 2014). App. A.

After Mr. Davis was convicted, and sentenced to prison to serve a 55 year sentence, he then filed for state post-conviction relief to the state court and amongs several claims, he presented a claim stating that his trial/Appellate Counsel Kevin Milner, was ineffective at his trial for failing to impeach Lawson with her prior to trial statements about the crime that were contradicting to her trial testimony story statements. Kevin Milner (Mr. Milner, here in) stated at the post-conviction hearing that he did not want to show that Lawson was "lying", because Lawson had never testified that she had seen Mr. Davis commit any crime, or do anything wrong.

Judge Kathleen Sullivan, who presided over Mr. Davis' post-conviction hearing, stated to Mr. Davis during the hearing that there was no need for Mr. Milner to have impeached Lawson, because Lawson had never stated at Mr. Davis' trial that she had seen Mr. Davis at the scene of the crime, or to have seen Mr. Davis participate in the crime. Judge Sullivan stated that Lawson had never identified Mr. Davis, and that Lawson stating to not have seen Mr. Davis "helps" Mr. Davis. That there was no need to impeach Lawson.

The Post-Conviction Court denied relief for Mr. Davis' claims stating that Mr. Milner was not ineffective at Mr. Davis' trial, including his failure to impeach Lawson. On Appeal from the post-conviction denial, the Indiana Court of Appeals affirmed the post-conviction court's decision repeating Judge Sullivan's statements about Lawson's testimony. See Davis v. State

112 N.E.3d 232, 218 Ind. App. Unpub. Lexis 1208, 2018 WL 4957194 (Ind. Ct. App., Oct. 15, 2018), App. B. Pg 3.

Confused about the Indiana Court of Appeals newly Statements about Lawson's trial testimony in it's affirming of the denial of post-conviction relief, compared to that Court's Statements about Lawson's trial testimony on direct appeal, App. A, pg 4. Mr. Davis filed for post-conviction relief to the District Court in his first federal habeas corpus petition and he presented that Court with the same impeachment claim (amongst several other claims). The District Court, in part, denied Mr. Davis's habeas corpus petition stating that Mr. Davis's trial Counsel was not ineffective, because Anya Lawson had never identified Mr. Davis as the shooter, or as the other person who Lawson had seen in the car that she described. See Davis V. Zetecsky, 2020 U.S. Dist. Lexis 255,704, 2020 WL 9936705 (S.D. Ind., Apr. 20, 2020), App. C. Pg 8.

After the District Court denied Mr. Davis's petition for habeas corpus relief, in part, stating the newly statements concerning Lawson's trial testimony that was also stated by the Indiana Court of Appeals affirming the denial of Mr. Davis's post-conviction petition. Mr. Davis then tried to file a second or successive federal habeas corpus petition for relief to present his newly constitutional claims of the denial of his fourteenth amendment, and sixth amendment rights. Mr. Davis challenged the contradictory position by the Indiana Court of Appeals concerning the facts and statements about Anya Lawson's trial testimony, and he contended that the Court's change in position have now clearly

Shown that (4) the Petitioner, Mr. Davis's fourteenth amendment due process right to a fair trial was violated because the Prosecutor at his trial misrepresents the trial testimony of a State's eyewitness to the jurors at the Petitioner's trial for to obtain his conviction;

(a) the Petitioner's Sixth amendment right to Counsel was violated when his trial Counsel had failed to object to the Prosecutor's statements during closing argument that Mr. Davis represented the trial testimony of a witness at the Petitioner's trial, and (3) the Petitioner's Sixth amendment right to Counsel was violated when his appellate Counsel had failed to file the Prosecutor misconduct claim on direct appeal for review.

The District Court dismissed Mr. Davis's Second or Successive petition stating that Mr. Davis had needed permission from the Seventh Circuit Court of Appeals for the District Court to be able to review the petitioner's (Mr. Davis) claims. Mr. Davis, then filed an application to the Seventh Circuit Court of Appeals for to be able to file the Second or Successive habeas petition.

The Seventh Circuit Court acknowledged that the Direct Appeal's statements concerning Lawson's trial testimony by the Indiana Court of Appeals were not correct. But then denied permission for Mr. Davis to be able to file the Second or Successive petition. The Seventh circuit stated that Mr. Davis could not satisfy 28 U.S.C. § 2244(b)'s stated requirements for authorizing a Second or Successive 28 U.S.C. § 2254 application. App. D. . . . The Petitioner, now, files this petition for habeas Corpus relief to this Court (The United States Supreme Court), because he has no other Court to obtain adequate relief from, under his circumstances.

REASON FOR GRANTING THE WRIT

I. THE PROSECUTION AT THE PETITIONER'S TRIAL DENIED HIM DUE PROCESS OF THE LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION

The Prosecution at Mr. Davis' trial blatantly acted in bad faith and denied him due Process of the Law by presenting false evidence to the Jurors at his trial for to Manipulate the Jurors to Convict him as an accomplice to murder Under Indiana's accomplice Liability Statute Law. See Indiana Codes '35-41-2-4, and '35-42-1-1.

At Mr. Davis' trial, during the prosecution's closing argument, State Prosecutor Angela Mattozzi (Mattozzi, here in), Without any objections from Mr. Davis' defense Counsel, deliberately Misrepresented the truth to the Jurors about Aniya Lawson's (Lawson, here in) trial testimony Statements. Lawson was the Victim's daughter, and was a twelve Year old child when she testified at Mr. Davis' trial. Mattozzi told the Jurors that Lawson had actually testified to have Seen Mr. Davis at the crime Scene, and to have Seen Mr. Davis participate in this crime, when Mattozzi was fully aware that Lawson had never identified Mr. Davis at his trial as anyone who she had Seen at the Scene of the crime, or to have Seen participate in this crime. Mattozzi was aware that Mr. Davis was not identified at his trial by any of the three state's eyewitness as anyone who they had Seen at the crime Scene, or to have participated in this crime.

Mr. Davis Was Convicted at his trial because of Mattozzi's false Statements about Lawson's trial testimony Statements. After Mr. Davis was convicted Mattozzi's Statements were repeated on Mr. Davis' direct

Appeal. The Indiana Court of Appeals stated that Lawson had testified to seeing Mr. Davis participate in the crime, repeating the false statements that Mattozzi had told the jurors at Mr. Davis' trial. This statement put out by the Indiana Court of Appeals confirms that it was believed that the false statements about Lawson's trial testimony was the evidence that helped the State of Indiana to convict Mr. Davis for this crime.

There are currently three different courts on the record now stating that Lawson had never testified to seeing Mr. Davis at the crime scene, or to have seen Mr. Davis participate in the crime. The newly court statements have not only corrected the facts to Mr. Davis' case, the newly statements have dismantled the case against him; have shown that he was denied due process of the law due to prosecutor's misconduct at his trial; and that he is currently being detained in prison under false evidence from the prior false statements about Lawson's trial testimony. See App. A...., App. B...., App. C...., and App. D.... (For to see the prior and newly statements by the courts concerning Lawson's trial testimony).

Mr. Davis' case is one of the rare, extraordinary cases that the federal habeas corpus remedy was created for. The reason for granting relief to Mr. Davis is because, his conviction not only violates the due process clause of the fourteenth Amendment to the United States Constitution, his conviction also violate clearly established federal law as this court have clearly stated that "the fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence." See Mooney v. Holohan, 294 U.S.

103, 55 S.Ct. 340, 79 L.Ed. 791 (1935). See Napue V. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959). See Miller V. Pate, 386 U.S. 1, 7, 87 S.Ct. 785, 17 L.Ed. 2d 690 (1967).

Mr. Davis' case is similar to the case of Miller V. Pate, *Supra*. The basis of this Court's decision in Miller V. Pate, was that due process requires that prosecution refrain from deliberately misrepresenting the truth when presenting its case (quoting the case of Hamric V. Bailey, 386 F.2d 390, 393 (4th Cir. 1967)). In Pate, the prosecution deliberately misrepresented the evidence at trial by stating that red paint stains that were on a pair of shorts were blood when the prosecution was fully aware that the stains were red paint. The Supreme Court decided in Pate, that the disregard, or the deliberate misrepresentation of the truth about the evidence presented at a trial, violates the due process clause of the fourteenth amendment of the United States Constitution, clearly following its decision in Mooney V. Holohan, *Supra*, stating that a conviction obtained by the use of false evidence cannot be tolerated. The knowing use of false evidence violates the Fourteenth Amendment of the U.S. Constitution. According to this Court's prior decision in Miller V. Pate, *Supra*, Mr. Davis' conviction cannot be tolerated, and must be vacated.

Mr. Davis have shown this Court that exceptional and rare circumstances exist concerning his case, warranting this Court to grant habeas corpus relief. Although Mr. Davis' due process, prosecutor misconduct claim was not exhausted in the state courts, the substance of his claim concerning Lawson's trial testimony was discussed by the state court, and the facts to his claim are developed enough for this Court to grant relief. The state courts were aware about the facts and they

"Passed Upon" the due process matter of this claim by failing to take judicial notice. Under Mc Dowell v. Lemke, 737 F.3d 476, 483-84 (7th Cir. 2013), a claim is fairly presented to a Court when it was discussed in the context of a different claim. It's called a "Nested Claim". Also, see Rodriguez v. Scillia, 193 F.3d 913, 916 (7th Cir. 1999) (Fair presentment requires a petitioner to have given the State Court a meaningful opportunity for to pass upon the substance of the claims he is presenting in his habeas petition).

Mr. Davis, is also entitled to have his defaulted due process claim excused Under the Actual Innocence exception Under the Schlup Standard. See Schlup v. Delo, 513 U.S. 298, 130 L.Ed.2d 808, 115 S.Ct. 851 (1995). Also, see House v. Bell, 547 U.S. 518, 536, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006) (A habeas petitioner can also overcome a procedural default by establishing that the Court's refusal to even consider a defaulted claim would result in a fundamental miscarriage of justice because he is actually innocent). Mr. Davis filed for the permission to file his claims to the district Court under the Actual Innocence claim for to pass the "gateway" Under Schlup, but his petition was denied. The Petitioner have claimed his innocence for the charge, and conviction against him, and would be able to pass the Actual Innocence gateway, "because in light of the evidence as a whole, it is more likely than not that no reasonable juror would have even convicted Mr. Davis. See Schlup, *supra*. Habeas Corpus is an extraordinary remedy and is generally reserved for those situations where other relief is not practically available. See United States ex rel. Caputo v. Sharp, 382 F.Supp. 362, 1968 U.S. Dist. Lexis 8212 (E.D. Pa. 1968). Mr. Davis is entitled to relief to avoid a Miscarriage of Justice.

II. THE PETITIONER'S TRIAL/APPELLATE COUNSEL DENIED HIM EFFECTIVE ASSISTANCE OF COUNSEL AT HIS TRIAL AND ON DIRECT APPEAL IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Mr. Davis' Trial Counsel Kevin Milner, was also his Counsel on direct appeal (Benjamin Murphy was his Co-Counsel on direct appeal). At Mr. Davis' trial, Kevin Milner (Mr. Milner, here in) was obligated to give Mr. Davis adequate representation under the Sixth amendment of the United States Constitution. Mr. Milner stood by and listened while the prosecution made false statements concerning Lawson's trial testimony and he failed to object to the prosecution's comments as he was also aware that the prosecution's comments about Lawson's trial testimony were false. Under the two prongs in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 679 (1984), Mr. Milner's performance as a professional attorney fell below reasonable standards of a competent professional attorney at Mr. Davis' trial, and was prejudice to any defense that Mr. Milner could say to have presented at Mr. Davis' trial. If Mr. Milner would have objected to the prosecution's false comments at Mr. Davis' trial, the objection would have been sustained, and the State of Indiana would not have had the evidence to convict Mr. Davis as an accomplice to murder. If Mr. Davis was a trial trained attorney, he could have objected to the error himself. This is how blatant the error appeared, obvious. Mr. Milner was ineffective at Mr. Davis' trial.

Mr. Milner was also ineffective for his failure to file the claim of Prosecutor Misconduct (due process claim) on appeal for direct

review by the Indiana Court of Appeals. Mr. Milner only filed a claim of insufficient evidence on direct appeal in Mr. Davis' behalf and did not mention any argument concerning the false comments stated by the Prosecutor concerning Lawson's trial testimony. See App. A. . . . The Due process, Prosecutor Misconduct claim would have been a clear winner on direct appeal, and would have been stronger than what Mr. Milner had presented on appeal. This Court have stated in Smith v. Robbins, 528 U.S. 259, 289, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000), that to establish ineffective assistance of Appellate Counsel, a petitioner must demonstrate that the issue not presented was clearly stronger than issues that Counsel did present on appeal. Mr. Davis have demonstrated that his claim would have been a stronger claim than what Mr. Milner had presented on appeal, and that his claim was clearly on the face of the record to where any appellate Counsel would have noticed the Prosecution's error.

Although Mr. Davis' ineffective assistance of Counsel claims were not presented to the State Courts for collateral review, both claims were developed from the Due Process, Prosecutor Misconduct claim that he is presenting to this Court for review. An Attorney's error that have constituted ineffective assistance of Counsel is cause to set aside a Procedural default. See Sanders v. Cotton, 398 F.3d 572, 578 (7th Cir. 2005). Mr. Davis is presenting his claims to this Court, because warrants this Court to exercise its discretionary powers. Also, adequate relief cannot be obtained from any other Court. Under these circumstances, this Court is allowed to grant relief. See Felker v. Turpin, 518 U.S. 651, 668, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996). Also see Rule 20.4(a) of the United States Supreme Court rules.

III. THE PETITIONER'S CONVICTION IS CONSTITUTIONALLY INVALID UNDER SIXTH, FOURTEENTH AMEND.

The United States Supreme Court has made it clear that the fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. See Mooney v. Holohan, Supra. Under Miller v. Pate, Supra, the Court has also stated that a prosecution's deliberate misrepresentation of the truth violates the fourteenth Amendment of the United States Constitution. The prosecution at Mr. Davis' trial falsely placed him at the crime scene of a murder, as a participant of the murder, by its deliberate lies to his jurors about a twelve year old (12 year old) little kid's trial testimony when the prosecution was fully aware that this innocent little kid did not place Mr. Davis at the scene of the crime, or had never stated to have seen Mr. Davis participate in the crime at all. The prosecution's conduct at Mr. Davis' trial would have resulted in the conviction of any person, because the jurors would easily choose to sympathize with a kid who has claimed to have seen her father murdered. Mr. Davis did not have a chance against the prosecution's deceitful tactic at his trial.

Mr. Davis is restrained of his liberty in violation of the Due Process clause of the United States Constitution, and his conviction is in violation of clearly established federal law under Mooney, and Miller v. Pate for the prosecution's actions at his trial. Mr. Davis' conviction is also in violation under the federal law of Strickland v. Washington, and under the sixth amendment of the United States Constitution as he was also denied adequate representation at his

trial by his trial Counsel, and on direct appeal by his appellate Counsel who was also his trial Counsel. If Mr. Davis' trial Counsel would have made the timely objections at trial to the Prosecution's remarks, and false comments, the objections would have been sustained, and the State of Indiana would not of had the evidence to convict Mr. Davis as an accomplice to murder. Under Indiana Code § 35-41-2-4, Aiding, inducing, or causing an offense. To determine whether a person aided another in the commission of a crime, the courts consider the following four factors: (1) Presence at the scene of the crime; (2) Companionship with another engaged in criminal activity; (3) Failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime. Also, See Garland V. State, 788 (N.E. 2d 425, 431 (Ind. 2003) (Indiana's accomplice Liability statute, Ind. Code § 35-41-2-4).

The Prosecution at Mr. Davis' trial was fully aware that it had to place Mr. Davis at the scene of the crime (first factor Under the Indiana's accomplice Liability statute) for to convict Mr. Davis as an accomplice to Murder, stating that he participated in this crime. This is why the Prosecution acted in bad faith, because the prosecution could not place Mr. Davis at the scene of the crime, or as an actor in this crime, without falsely placing Mr. Davis there by lying to the Jurors about Aniya Lawson's trial testimony. Mr. Davis' trial Counsel should have been aware that the Prosecution was making false comments and remarks about Lawson's trial testimony, because Mr. Davis was not identified at his trial by Lawson. Mr. Davis' trial Counsel, Kevin Miller, was also his attorney for direct appeal. By Mr. Miller failing to make an timely objection at Mr. Davis' trial to the Prosecution's false comments,

Mr. Milner had no plans to file any issue on direct appeal that concerned the prosecutor's comments, or conduct at Mr. Davis' trial. The Fundamental error of the prosecutor's misconduct, and the due process violation, would have clearly been a stronger claim than the "inefficiency" of the evidence claim that was filed on appeal by Mr. Milner. See Smith v. Robbins, 509 U.S. 191, 114 S.Ct. 1613, 114 L.Ed.2d 827 (1996). Mr. Davis' trial counsel and as Mr. Davis appellate counsel.

To justify the granting of a writ of habeas corpus, the petitioner must show exceptional circumstances warranting the exercise of the court's discretionary powers, and must show that adequate relief cannot be obtained in any other forum or from any other court. See Rule 20.4(a) of the Supreme Court rules. Also, see Felken v. Turpin, 518 U.S. 651, 663, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996). Mr. Davis have been diligently seeking relief from his conviction filing claims on collateral review that should have gotten relief, but was erroneously denied pertaining to the facts to Mr. Davis' case that was presented on direct appeal by the Indiana Court of Appeals. Mr. Davis filed a claim of ineffective assistance of counsel for failure of his trial counsel to impeach state eyewitness Anya Lawson. But it was told to Mr. Davis that there was no need for Mr. Davis' trial counsel to show she was falsely testifying at Mr. Davis' trial, because Lawson had never testified to seeing Mr. Davis at the crime scene. Mr. Davis' trial/Appellate Counsel, Kevin Milner stated at the state post-conviction hearing that, he did not want to show the jurors that Lawson was lying, because Lawson never stated that she had seen Mr. Davis do anything. Mr. Davis had a strong issue for state post-conviction, but it was denied after the truth of the

trial facts; and Aniya Lawson's trial testimony was finally brought to the light in connection of the facts to the case presented by the State of Indiana, and the Indiana Court of Appeals. App. B.

Mr. Davis' newly Constitutional claims were brought to Mr. Davis' attention by the Courts denying his failure to impeach Aniya Lawson claim in which have now revealed the truth about Mr. Davis' case. Although Mr. Davis' newly claims were available when he went through his full round of collateral relief, Mr. Davis did not get the chance for to file these newly claims, because he was not aware of the claims, and was seeking relief for other claims that should have gotten him the relief that he is entitled. Mr. Davis is now without any available remedies for to seek the relief that he is entitled as a result of his newly stated Constitutional claims, and errors, because he have exhausted all of his state remedies, and the Seventh Circuit Court will not grant permission for him to file a second or successive petition for to seek relief for his newly claims. The Seventh Circuit Court are aware of Mr. Davis' claims. But just as in Halprin v. Davis, 140 S.Ct. 1200, U.S. Court, April 6, 2020, NO-19-6156, the Seventh circuit Court have concluded that Davis could not satisfy §2254(b)'s "strict" requirement for authorizing a second or successive §2254 application. App. D.

Under the Fed. R. Crim. P. 52(b), the federal Courts could overlook a failure to object at trial if it effects substantial rights, and seriously affects the fairness, integrity or public reputation of Judicial proceedings. See Henderson v. United States, 568 U.S. 266, 133 S.Ct. 1121, 185 L.Ed. 2d 85 (2013). Mr. Davis' conviction was not fair; his substantial rights were affected, and it would surely affect the integrity of the Courts for to leave Mr. Davis' conviction standing after this Court

have stated that the Due Process clause Cannot tolerate a State Conviction obtained by false evidence, or by the Prosecution's Misrepresentation of the truth at a trial when it presents it's case. See Mooney V. Holohan, Supra, and Miller V. Pate, Supra. This Courts refusal to review Mr. Davis' Constitutional claims due to any procedural default, would result in a Miscarriage in Justice as the Facts to Mr. Davis' Case are now clearly Showing that he is entitled to relief. This Court would not only be disregarding the United States Constitution, it would be also in Contradiction to its own decisions, and clearly established Federal Law.

According to 28 U.S.C. § 2241(a), the United States Supreme Court clearly have the Power to grant the Writ if it could find that the Petitioner's Conviction is in Violation of the United States Constitution, and if it could clearly see that the Petitioner have no other options available to seek the relief he/she is entitled. Also, Under Schlup V. Delo, Supra. The United States Supreme Court have stated that "in interpreting the Law of Collateral review, Courts should accommodate both the Systemic interest in finality; and Conservation of Judicial resources, and the overriding individual interest in doing Justice in extraordinary cases". Schlup, also states that "A Petitioner's claims may still be reviewed in a federal habeas Corpus Collateral Proceeding if he can establish that the Constitutional error has probably resulted in the Conviction of one who is actually innocent. Citing Murray V. Carrier, 477 U.S. 478, 485, 91 L. Ed. 2d 397, 106 S. Ct. 2639 (1986). To establish actual innocence, a Petitioner must

demonstrate that in light of all of the evidence "it is more likely than not that no reasonable juror would have convicted him. Also, McQuiggin v. Perkins, 569 U.S. 383, 395, 133 S.Ct. 1924, 185 L.Ed. 2d 1019 (2013) (Actual innocence, if proved, held to be gateway through which a state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar, or expiration of time limitations period).

Mr. Davis in also, would request that this Court consider for his claims to be excused from any procedural defaults under the Schlup Standard for actual innocence in which would allow his claims to pass the "gateway" for the Court to be able to review his procedurally barred claims. Mr. Davis originally filed his newly claims to the District Court seeking relief asking to pass the Schlup's gateway. The District Court dismissed the petition and advised Mr. Davis to get permission to file a second or successive petition from the Seventh Circuit Court. Mr. Davis filed for permission to the Seventh Circuit Court and that Court denied Mr. Davis permission for his actual innocence claim. Under Schlup, a petitioner have to present newly facts of innocence that in light of all the evidence, no reasonable juror would have convicted him. Under Arnault v. Marberry, 351 F. App'x 143, 144 (7th Cir. 2009), the Court talks about newly facts for to meet the cause or prejudice standard, or for to pass the actual innocence "gateway" for to have his claims heard.

The Courts have now given Mr. Davis newly facts showing that no reasonable juror would have found him guilty for this crime, minus the prosecution's disregard for the truth at his trial. The State of Indiana did not have any other evidence for to convict Mr. Davis at his trial. In Davis v. State, 112 N.E.3d 232, 218 Ind. App. Unpub. Lexis 1208, 2018 W.L. 4957 199 (Ind. Ct. App. Oct. 15, 2018), this Court could clearly see the newly

Facts. Indiana Court of Appeals changed their factual position that was previously written by that Court concerning Mr. Davis' Case. These newly on the record facts to Mr. Davis' Case have now given him newly factual evidence of innocence to his case. In the Indiana Court of Appeal 2018 Memorandum decision affirming the denial of Post-Conviction relief for Mr. Davis, that Court stated that "... Lawson testified that the man who did the shooting was not Mr. Davis. And she testified that she was not really able to see anything about the person in the car. (See, App. A, Page 3 of Indiana Court of Appeals decision). That Court also stated that "... He (Mr. Davis) acknowledges that his statements that he did not plan to commit a crime with Robert; that he was not near the shooting to see what happened; and that he had no knowledge of the shooting before he left the scene of the crime were "not at all incriminating towards himself or Robert" (See, App. B, See Page 11 of Indiana Court of Appeals decision).

In the Indiana Court of Appeals March 5, 2014, direct appeal memorandum (App. A, See Page 4 of that decision) that Court then stated that:

"Myles' daughter testified that from her Vantage Point in Myles' Vehicle she could see Myles, Robert, and Davis. She saw Myles talk to both Robert and Davis before he was shot, she saw Robert shoot Myles and she saw Davis move into the driver's seat of the car before they left the parking lot."

There are Currently two totally different point of views on the Court's records to Mr. Davis' Case Concerning Aniya Lawson's trial testimony, and Mr. Davis' Conviction. The 2018, Indiana Court of Appeals memorandum decision's facts to the Case. Stating that Lawson did not identify Mr. Davis is the true facts to Lawson's trial testimony. That Court's memorandum decision is Contradicting to that Court's first decision about the Case, and Lawson's trial testimony, and it clearly shows that Mr. Davis have stated his innocence from the beginning of the Case.

The reason for granting the Writ for Mr. Davis, is clearly to avoid a clear Miscarriage of Justice. Mr. Davis Cannot file his newly claims to the State Courts, or the District Court due to Strict default rules. For this Court to refuse to hear Mr. Davis' claims, this Court would have to state that it has turned a blind eye to injustice. Mr. Davis is entitled to have his Conviction Vacated, and for to be released from prison. Mr. Davis have diligently pursued relief from this wrongful conviction even though he had missed these newly claims for his first Collateral review. Mr. Davis May have missed filing these newly claims for his first Collateral review, but the Courts have kept the doors open for review, because the facts about the key part of the state's evidence against Mr. Davis have now been Contradicted by the Court itself. Mr. Davis have been detained for the last thirteen years, because of the prosecution at his trial total disregard for the truth. Mr. Davis is asking this Court for his Liberty back. He is asking to be released.

CONCLUSION

For the reasons stated within this petition, a Writ should issue to vacate Mr. Davis' Conviction and Mr. Davis should be released from prison immediately, or receive whatever relief that he is entitled.

Respectfully Submitted,
Lyndon C. Davis, Pro-Se
Lyndon C. Davis, Pro-Se
DOC # 232171
Indiana Department of
Corrections
Pendleton Correctional Facility
4490 West reformatory Road
Pendleton, Indiana 46064-
9001

September 12, 2024
Date