

No. _____

24-6045

IN THE

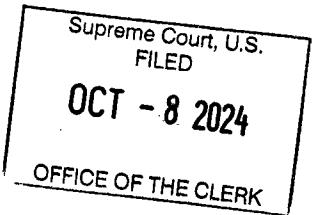
SUPREME COURT OF THE UNITED STATES

ORIGINAL

SHAWN M. BERILA — PETITIONER
(Your Name)

vs.

STATE OF OHIO — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SHAWN M. BERILA # 760-017

(Your Name)

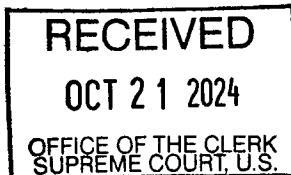
P.O. BOX 1812

(Address)

MARION, OHIO 43301

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

- I. IS A PETITIONER'S FOURTEENTH AMENDMENT RIGHT OF DUE PROCESS VIOLATED WHEN A DISTRICT COURT DOES NOT ALLOW A PETITIONER AN EXTENSION TO OBJECT TO THE REPORT & RECOMMENDATION?
- II. IS A PETITIONER'S FOURTEENTH AMENDMENT RIGHT OF DUE PROCESS OF LAW VIOLATED WHEN THE EVIDENCE PRESENTED AT TRIAL IS INSUFFICIENT TO SUPPORT A GUILTY VERDICT AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE?
- III. IS A PETITIONER'S FOURTEENTH AMENDMENT RIGHT OF EQUAL PROTECTION OF LAW VIOLATED WHEN THE TRIAL RECORD DOES NOT SUPPORT A SENTENCE WITH CONSECUTIVE SENTENCES?
- IV. IS A PETITIONER'S SIXTH AMENDMENT RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL VIOLATED WHEN A TRIAL COUNSEL DOES NOT INVESTIGATE A PETIT JURY ARRAY AND COUNSEL'S MISCONDUCT AND TRIAL ERRORS ARE ACCUMULATIVE TO SUPPORT INEFFECTIVE ASSISTANCE?
- V. IS A PETITIONER'S SIXTH AMENDMENT RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL VIOLATED WHEN THERE IS APPELLATE COUNSEL MISCONDUCT AND COUNSEL ERRORS IN THE APPELLATE PROCESS?
- VI. IS A PETITIONER'S FOURTEENTH AMENDMENT RIGHT OF EQUAL PROTECTION OF LAW VIOLATED WHEN THERE IS JUDICIAL MISCONDUCT AND ERRORS AT TRIAL AND SENTENCING?
- VII. IS A PETITIONER'S RIGHT OF EQUAL PROTECTION OF LAW VIOLATED WHEN THERE IS TRIAL JURY MISCONDUCT AND ERRORS?
- VIII. IS A PETITIONER'S FOURTEENTH AMENDMENT RIGHT OF EQUAL PROTECTION OF LAW WHEN THERE IS PROSECUTORIAL MISCONDUCT AT TRIAL?

LIST OF PARTIES

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

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

TABLE OF CONTENTS

OPINIONS BELOW	i
JURISDICTION	ii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	iii
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE WRIT	10
CONCLUSION	27

INDEX TO APPENDICES

APPENDIX A	United States Court of Appeals July 12, 2024 Order
APPENDIX B	United States District Court Report & Recommendation
APPENDIX C	Ohio Court of Appeals June 30, 2020 Decision and Journal Entry

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Banks v Reynolds, 54 F.3d 1508	16
Brady v Maryland, 373 U.S. 83	23
Cammon v United States 2020 U.S. Dist. LEXIS 185909 ..	10
Duncan v Louisiana, 391 U.S. 145	18
Duren v Missouri, 439 U.S. 357	18
Franklin v Rose, 811 F.2d 322	16
Levine v Torvik, 986 F.2d 1506	16
Middletown v Allen, 579 N.E.2d 254	17
Mitchell v Mason, 325 F.3d 732	18
Mooney v Hoolahan, 294 U.S. 264	22
Naupe v Illinois, 360 U.S. 264	22
Powell v Alabama, 287 U.S. 45	18
Riggins v McMacking, 935 F.2d 790	16
State ex rel Sharpless v Gierke, 739 N.E.2d 1231	15
State v Andricks, 675 N.E.2d 872	20
State v Higgins, 572 N.E.2d 834	17
State v Woodard, 1966 Ohio LEXIS 332	21
Strauder v West Virginia, 100 U.S. 303	19
Taylor v Louisiana, 419 U.S. 522	18
Thompson v Foley, 2020 U.S. Dist. LEXIS 157812	10
United States v Brown, 957 F.3d 679	10
United States v Cook, 45 F.3d 388	16
United States v Vicara, 12 F.3d 195	10
STATUTES AND RULES	
Ohio Revised Code 2151.421	11
Ohio Revised Code 2907.06(B)	12
Ohio Revised Code 2945.27	20

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

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

reported at 2024 U.S. APP LEXIS 17175; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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

reported at 2024 U.S. DIST. LEXIS 15652; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**:

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

reported at 2020 - OHIO - 3523; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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

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

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JULY 12, 2024.

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was JUNE 30, 2020. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
UNITED STATES CONSTITUTION SIXTH AMENDMENT
UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT
OHIO REVISED CODE 2151.421
OHIO REVISED CODE 2907.06(B)
OHIO REVISED CODE 2945.27

STATEMENT OF THE CASE

In October 2017, the Petitioner was indicted by the Medina County Grand Jury charging him with one count of Gross Sexual Imposition, (count 1); six counts of rape, (counts 2-7); and 24 counts of rape (counts 8-31). Petitioner was appointed counsel and plead not guilty to all charges. Petitioners counsel requested discovery and a Bill of Particulars, and the State provided these documents.

This case proceeded to trial. The jury found the Petitioner guilty on all charges, including a special finding that Petitioner used force in six of the counts related to rape. At sentencing the trial court sentenced Petitioner to four years imprisonment for count 1, life in prison with parole eligibility after ten years doe each count of 2 through 7, these were ordered to run concurrently with each other but consecutive to the other sentences, and Petitioner was sentenced to nine years in prison for counts 8 through 25, these were ordered to run concurrently with each other but consecutive to all other sentences; and for counts 26 through 31, Petitioner was sentenced that these counts run concurrently to each other, but consecutive to the other sentences, for a total of 32 years to life in prison.

Through new counsel Petitioner filed a timely appeal to the Ninth Appellate District for Medina County, Ohio. In this appeal the Petitioner raised the following assignments of error:

1. The evidence was insufficient to support the jury verdicts of guilty.
2. Appellant's convictions were against the manifest weight of the evidence.

3. The trial court erred when it sentenced appellant to consecutive prison terms when clearly and convincingly the record failed to support its findings.

4. Defendant-appellant's trial counsel provided ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution.

5. The State of Ohio committed prosecutorial misconduct by withholding exculpatory evidence. Said misconduct constituted plain error.

On June 30, 2020, the Ninth Appellate District Court of Appeals affirmed the trial court's judgment and sentence.

On August 13, 2020, the Petitioner filed his Notice of Appeal and Memorandum in Support of Jurisdiction to the Ohio Supreme Court. In his Memorandum in Support of Jurisdiction he raised the same five issues he raised in the Appellate Court. On October 27, 2020 the Ohio Supreme Court declined to accept jurisdiction of Petitioner's appeal.

In October 2020, the Petitioner filed a Motion for Leave to File an Application to Re-open Direct Appeal Pursuant to Appellate Rule 26(B). In this motion Petitioner explained that he had sent the application to the wrong court and did not learn of his mistake until the clerk of court returned the unfiled application to him after the required filing date.

Petitioner also submitted his Application to Re-open Direct Appeal alleging ineffective assistance of appellate counsel for failing to raise the following errors in his direct appeal:

1. Appellants Due Process and Effective Assistance of Counsel's Rights were violated under the Sixth and Fourteenth Amendment of the United States Constitution when trial counsel failed to investigate in petit jury array.

2. The Appellant's Due Process and Effective Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to Judicial Misconduct and Judicial Errors.

3. The Appellant's Due Process and Effective Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to jury misconduct and errors.

4. The Appellant's Due Process and Effective Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to Prosecutorial Misconduct and errors.

5. The Appellant's Due Process and Effective Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to defense counsel and appellate counsel misconduct and errors.

On February 1, 2021, the Ninth District Court of Appeals denied Petitioner's motion for leave and his application finding that Petitioner failed to show good cause. On March 8, 2021, Petitioner moved for leave to file a motion for reconsideration, the Court also denied this motion as well in May 2021.

On March 5, 2021, Petitioner filed his Notice of Appeal and Memorandum in Support of Jurisdiction in the Ohio Supreme Court. He raised the following claims:

1. The Appellant was deprived of his right to effective assistance of counsel in contravention to the Sixth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution.

2. The Appellant's right to Due Process and Effective Assistance of Counsel were violated under the Sixth and Fourteenth Amendment of the United States Constitution when trial counsel failed to investigate Petit jury array.

3. The Appellant's right to Due Process and Effective Assistance of Counsel were violated under the Sixth and Fourteenth Amendment of the United States Constitution due to Judicial Misconduct and Judicial Errors.

4. The Appellant right to Due Process and Effective Assistance of counsel were violated under the Sixth and Fourteenth Amendment of the United States Constitution due to jury misconduct and errors.

5. The Appellant right to Due Process and Effective Assistance of counsel were violated under the Sixth and Fourteenth Amendment of the United States Constitution due to defense counsel and appellate counsels misconduct and errors.

In May 2021, the Ohio Supreme Court declined to accept jurisdiction of Petitioner's appeal.

On October 15, 2021, Petitioner filed a Federal Habeas Corpus Petition under 28 U.S.C. 2254. In January 2022, Petitioner filed an Amended Petition. In his Petition the Petitioner raised the following grounds for relief with supporting facts:

GROUND ONE: The evidence was insufficient to support the jury verdicts of guilty.

SUPPORTING FACTS: The Courts ignored the conflicting testimonies while also ignoring testimonies that contradicted statements made to the police. Which were used to the jury for indictment and in the trial. Jury was impacted due to such.

GROUND TWO: Appellant's convictions were against the manifest weight of evidence.

SUPPORTING FACTS: In addition to conflicting statements vs. testimonies, the prosecution lied to the jury repeatedly stating the drives that were taken during the police search warrant were completely empty when they had over 300k files (estimated). The prosecution refused to give the defense the drives and computer. So they were unable to use at the trial for our defense. There were no evidence of any crimes. There was no witness to any crime. There was no DNA. And the state's accuser was a mental patient.

GROUND THREE: The trial court erred when it sentence the defendant to consecutive prison terms when the record clearly and convincingly failed to support its findings.

SUPPORTING FACTS: The court ignored the clear and convincing evidence and/or lack of evidence when passing the sentence. The judge and prosecution both inferred that a max sentence would be imposed if the 8, 3 or

1 year deal was not taken and it proceeded to trial. The defendant was a productive member of society with only a ticket in 20 years.

GROUND FOUR: Trial and Appellate counsel provided ineffective counsel in violation of the Sixth Amendment to the United States Constitution.

SUPPORTING FACTS: The lawyers failed to act as requested during the trial and in the appeal. Ignoring use of evidence and witnesses. Improper filings and failing to review before filing of motions or an appeal. Both failed to work as directed with the trial lawyer refusing to act at all for long periods of time. Appellate lawyer also did the same, even as far as letting a pre-law person work and likely file without review.

GROUND FIVE: The Appellant's Due Process and Effective Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution when the trial counsel failed to investigate in petit jury array.

SUPPORTING FACTS: The Appellant is male and the alleged victim is female. When the jury was brought into the courtroom, the vast majority of the jury pool were females in the community. This was the second pool after the first pool was a majority of males, and was dismissed at the request of the prosecution.

GROUND SIX: The Appellant's Due Process and Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to Judicial Misconduct and Judicial Errors.

SUPPORTING FACTS: FIRST, the trial judge, no fewer than six times, told the defense counsel to hurry up or speed up his actions, quesitons, or defense. SECOND the trial judge cut short the defense counsels closing arguments to the jury so the prosecution could present its rebuttal. THIRD, the trial judge ofter berated the defense counsel in front of the jury and once when they were excused. FOURTH, the trial judge and prosecution answered quesitons from the jury without the presence of the defense counsel. FIFTH, the trial judge told the jury they were staying until they came to a unanimous decision. This was the morning following the jury's late deliberations that ended in a 9 to 3 hung vote. SIXTH, there was an active separation of witnesses, but the trial judge declined the objection of two of the states primary witnesses talking during a recess which was after one witness had testified and before the other one did. SEVENTH, the trial judge

at the end of the trial day told the defense to hurry up as "it was not a murder trial, as she had a real murder trial the following week." EIGHTH, the trial judge told defense counsel that he was lucky her murder trial pled out and she didn't have to reschedule, then admonished him again by telling him to hurry up. NINTH, the trial judge and defense counsel both handled the foreclosure case of the defendant's home which was a clear conflict of interest by handling both a civil and criminal trial/case at the same time when there were other judges. TENTH, the trial judge refused objections by the defense when two jurors informed the judge that they visited the alleged victim's mother place of employment as custers and who knew who she was. This is the same place the alleged victims mother blew an undercover sting per her testimony by talking weeks to clients about it. The same two jurors were next door neighbors with the ability to discuss the case outside and away from the court. ELEVENTH, the trial judge would not excuse another juror who told the court during the trial she often had one of the witnesses scheduled and no called due to this, at her home as her daughter worked with her and was friends. TWELFTH, the trial judge let her opinion and beliefs on abortions affect her sentencing, and admonished the defense counsel with the same beliefs at sentencing. Going with her beliefs, the judge ignored evidence aand levied a much harsher sentence than the three to eight offered, or the one year deal offered at the start of the trial by the prosecution. Both deals were added during the trial due to defendant's request.

GROUND SEVEN: The Appellant's Due Process and Effective Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to jury misconduct.

SUPPORTING FACTS: FIRST, the jury had a total of three active jurors admit and notify the court to knowing the State's witnesses. SECOND, the jury had requested to have questions answered while in deliberations. The jury accepted answers from both the judge and prosecution without the defense present at all. THIRD, the jury pool was not fairly represeted in accordance with the petit jury array causing bias and an unfair trial. FOURTH, Allen charge, the defense, the prosecution and the judge were all aware of the jury being hung at a 9 to 3 count after deliberations. FIFTH, the jury ignored their instructions allowing for a hung jury after being told they had to come to an unanimous decision. The jury misconduct and errors clearly constitutes an unfairness and bias that deprived a fair trial.

GROUND EIGHT: The Appellant's Due Process and Effective Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to Prosecutorial Misconduct and errors.

SUPPORTING FACTS: FIRST, the prosecution answered questions to the jury who were in deliberations without any part of the defense present. SECOND, allowed a State's witness to give perjured testimony that conflicted with the witnesses own sworn testimony/statements to police. THIRD, the prosecution withheld evidence and discovery from teh defense. These were BCI reports digital files, drives and all items relevantly used by BCI from the search warrant. None was ever given to the defense even though it was requested several times and several more in the weeks before the trial. FOURTH, in an attempt to hide the fact of withholding evidence and dsclosure, the prosecution had the police department, with no proof, testify they had the officer call the defendant directly in regards to the items taken, investigated, along with the finding report. three days before trial ignoring the fact the defendant had legal counsel and they were aware all contact to go through him. FIFTH, the prosecution misled and lied to the jury often stating the drives and equipment were empty and there was absolutely nothing on them. When the defendant's family finally procured the stand alone drives, there were over 30k photos and files that the defense could have used to disprove or argue many of the Prosecution's case. Photos that could have showndetails and factual evidence to dsprove much of points driven to jury to give the jury the impression the prosecution wanted. To the state, the police have failed to return items that were cleared by BCI of any evidence or wrongdoing. SIXTH, the prosecution falsely used the clear BCI reports to influence guilt onto the defendant for the jury, when the State's own BCI found nothing that implied guilt or could be used as evidence.

GROUND NINE: The Appellant's Due Process and Effective Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to defense and appellate counsel misconduct and errors.

SUPPORTING FACTS: FIRST, the trial attorney that was first retained for by the defendant for \$5000.00 dropped the defendant when teh defendant was arrested after the indictment after being retained for a long period of time, when his daughter was given a prosecuting attorney position. SECOND, the trial attorney went agaiinst the defendant's wishes, and sided with the prosecution to gain favor, and dismissed a male heavy

jury pool. THIRD, the trial lawyer stated the remainder of the transferred retainer would be used on an investigator and to obtain an expert witness, which counsel never done. FOURTH, at no point did the defense counsel advise the defendant's right to claim indigence which would allow the defense to request investigation specialists and expert witnesses. FIFTH, the trial attorney refused to use neighbor's in defense list of a vast majority of witnesses the defendant wanted to use against the state. SIXTH, the trial lawyer stated before trial he wanted to put a lien on the Appellant's home, which he insisted he could handle with the trial judge. Later he told family he couldn't pay for investigators, experts, and such trying to get more money as the Appellant was running out. SEVENTH, trial counsel stated the lien had to be done right after sentencing before the appeals attorney could take over. Trial counsel tried overpricing the lien four times. Used the appellate attorney he had the judge assign as a witness to the lien. EIGHTH, trial counsel never used and/or obtained the defendant's medical records from the Cleveland Clinic stating he had multiple sclerosis or from Medina Hospital about spots on the defendant's brain. The prosecution referred to the defendant as a liar and a hypocondriac. NINTH, the trial lawyer failed to object at sentencing when the judges bias towards abortion caused her to rebuke him and then unfairly sentence defendant due to her bias. TENTH, trial counsel never objected to being rushed by the judge or when told it wasn't a murder trial. ELEVENTH, trial counsel never objected to verbal harassment he received from both the judge and prosecution. TWELFTH, trial counsel never objected to being cut short during defenses closing arguments. THIRTEENTH, trial counsel acted in his own interests after the conviction, changed the locks on the house in foreclosure to deprive defendant's POA and family access to his property to the point where the Medina County Sheriff became involved and sided with the defendant's POA and family. FOURTEENTH, trial counsel refused to challenge the state's witnesses and never called into account the slurred speech and delayed reactions. Counsel did this because "he didn't want to be mean." FIFTEEN, both trial and appellate counsel failed to argue or question the State's witness testimony that conflicted with their sworn statements. SIXTEEN, appellate counsel met with the defendant briefly to inform him it would take months to receive transcripts. Appellant was promised a copy of the trial transcripts. Appellant still has not received a copy of these transcripts. SEVENTEENTH, Appellate counsel agreed to allow the defendant an active role in the appeal process at the meeting, then only answered the phone several times over the next year and a half. EIGHTEENTH, Appellate counsel ignored the appellant's direct

request not to file the appellate brief without allowing the defendant to review the brief. Counsel gave his thoughts of the issues and promised to visit to review multiple times and never came. NINETEENTH, Appellant requested several specific claims to be included in the appeal, none were reviewed or added. Instead counsel stated he was having someone studying working with him doing most of the work and filing. The Appellant has never seen what was filed. TWENTIETH, Appellate counsel filed many extensions while admitting in the few calls he wasn't working on it all yet. TWENTY-FIRST, Appellate counsel never used the BCI Reports or files on the drives in the appeal as he stated he would. Counsel still has not advised if they obtained the BCI Reports. TWENTY-SECOND, Appellate counsel failed to get medical records from ODRC and NCCC where the defendant's Multiple Sclerosis dianosis was reconfirmed by a neurologist at Grant Hospital in Columbus, Ohio reflecting to serious complications dating back to 2009. The defendant and appellate counsel misconduct and errors constitutes unfairness and bias that has deprived both a fair trial and appeal.

REASONS FOR GRANTING THE PETITION

Because there has been a miscarriage of justice in this case, in the interest of justice, this Court should accept the Writ of Certiori and adjudicate the grounds presented herein and grant the petition. "Interest of justice' standard may be envoked even when the alleged defects were not reverseable error," United States v Vicara, 12 F.3d 195.

Because of this standard this Court may review and grant relief sought in the Petitioner's petition and overturn the lower Courts decisions, "A court may grant relief if a 'fundamental defect which results in a miscarriage of justice.' Further, petitioner's must prove by ht epreponderance of evidence that their constitutional rights were denied or infringed," United States v Brown, 957 F.3d 679, 690; Cammon v United States 2020 U.S. Dist. LEXIS 185909.

Petitioner will present argument and facts for each ground with the following:

GROUND ONE: The evidence was insufficient to support the jury verdicts of guilty.

Supporting Facts: The Courts ignored conflicting testimony while also ignoring testimonies that contradicted statements made to the police. Which were used to the jury for indictment and trial. Jury was impacted due to such.

GROUND TWO: Appellant's convictions were against the manifest weight of evidence.

Supporting Facts: In addition to conflicting statements, something testimonies, the prosecution lied to the jury repeatedly stating the drives that were taken during the police search warrant were completely empty when they had over 300k files (estimated). The prosecution also refused to give the defense drives and computer. So they were unable to use it at trial for our defenses. There were no evidence of any crime. There was no DNA. And the State's accuser was a mental patient.

These two grounds are being addressed together in this instance.

These grounds were fairly presented to the State Appellate Courts as the following claims: "I. The evidence was insufficient to support the jury verdict. II. Appellant's convictions were against the manifest weight of evidence," Appellant's direct Review, Ninth Appellate District Court of Appeals, Medina County Ohio appeals case no. 19CA0007-M. There were also fairly presented to the Ohio Supreme Court, case no. 2020-099. The Ohio Supreme Court declined to review this discretionary appeal, State v Berila, 2020 Ohio LEXIS 2372.

In this case there was testimony only presented stating that "[t]he patient reports a history of sexual abuse by her stepfather, starting at age ten. And she states that this was unreported," Trial Transcript Page 535. If this testimony is to be held to be true, then there are many questions that need to be answered first. First, had these claims of sexual abuse been present at the age of ten, then why was it not reported to the police? Second, if this sexual abuse was going on as presented in testimony of the alleged victim, and other witnesses, why was it allowed to go on once they knew it? Same goes for the medical professionals. In Ohio it is mandated by law that when these claims are being stated, they must be reported to the police for investigation, see Ohio Revised Code 2151.421.

Lastly, the alleged victim in this case stated that she would go to the Petitioner's bedroom and wait for him to come to the room time and time again, WHY? Because if she was waiting on the Petitioner to finish what he was doing, i.e. shower, common sense say she would leave and report the abuse to a neighbor or somebody.

Petitioner was convicted based upon testimony of the alleged victim in this case and this is a "miscarriage of Justice." The reason why is in teh State of Ohio a person who faces charges of felony Gross Sexual Imposition and Rape, to be convicted, these charges has a lower level of proof than a third degree misdemeanor for Sexual Imposition. This misdemeanor requires physical evidence and not just a victims testimony.

Ohio Revised Code 2907.06(B) Sexual Imposition mandates:

"No person shall be convicted of a violation of this section solely upon the victims testimony unsupported by other evidence."

The Petitioner is now asking this Court to be the "thirteenth juror" and ask itself these common sense quesitons being presented. Clearly the Appellate Court chose to ignore common sense facts of the case and allow the conviction to stand based upon solely of the alleged victim in this case, a standard that is lower than the standard set for a third degree misdemeanor that carries a maximum sentence of "Not more than sixty days," see Ohio Revised Code 2929.24(A)(3).

GROUND THREE: The trial court erred when it sentenced the defendant to consecutive prison terms when the record clearly and convincingly failed to support its findings.

Supporting Facts: In this case the sentence imposed by the trial court representens cruel and unusual punishment.

Also Petitioner is being punished for invoking his rights to a trial by jury.

In this case the trial court imposed consecutive sentences and still at this hearing through Petitioner's trial counsel, maintained his innocence. The trial court statements at this hearing demonstrated bias against the Petitioner and shows that even though he was offered a maximum sentence of eleven years, when he refused this offer and went to trial, the trial court punished him.

In this case the Petitioner was offered a sentence of three (3) to eleven (11) years of imprisonment if he were to plead guilty to the counts charged, Transcript Page 230, Line 21 to Page 232, Line 16. When he refused this plea deal, the trial court imposed a life sentence, thus showing the trial courts vindictiveness. "It is beyond dispute that a defendant cannot be punished for refusing to plead guilty and exercise his right to a trial," Thompson v Foley, 2020 U.S. Dist. LEXIS 157812.

Next the sentence imposed violates the Petitioner's right to be free from cruel and unusual punishment. Because the sentence imposed by the trial court is vindictive, by imposing a harsher sentence than what was offered amounts to cruel and unusual punishment. When this claim was presented to the Ninth District Court of Appeals, the Appellate court did not properly adjudicate the claim and because of appellate counsels ineffectiveness.

Appellate counsel failed to ensure that the complete record was supplied to the court. This is supported by the Courts opinion and judgment stating: "where the appellant has failed to provide

complete record to facilitate appellate review," State v Berila, 2020-Ohio-3523 at P 34. Here the appellate court is holding the Petitioner accountable and not his counsel for a document that he has no legal right to obtain to deny meaningful appellate review, "A criminal defendant has no legal right to obtain and review his presentence investigation report after he has been sentenced," State ex rel Sharpless v Gierke 137 Ohio App.3d 821, 739 N.E.2d 1231.

Therefore, the sentence imposed in this case was not properly adjudicated and imposed by the trial court that is biased against the Petitioner. It is also both unsupported by the record as well as cruel and unusual punishment because the Petitioner was sentenced to a life sentence of imprisonment because he refused a plea maximum offer of imprisonment of eleven (11) years and minimum of three (3) years.

GROUND FOUR: Trial and appellate counsel provided ineffective counsel in violation of the Sixth Amendment to the United States Constitution.

Supporting Facts: Both appellate and defense counsel refused to act in accordance with defendant's wishes. Both also have ignored five requests for all case information.

In this case the Petitioner's appeal was not properly and fairly adjudicated because of counsels ineffectiveness. As stated in previous ground, when appellate counsel presented a sentencing error that it adjudication depended upon the pre-sentence investigation report, (PSI), failed to ensure that the record, (PSI), was present for the appellate courts review, provides counsels ineffectiveness when he failed to follow appellate court procedures.

Second, trial counsel failed to failed to subpnoa the alleged victims medical records from Wadsworth Hospital Gynocology Offices. The alleged victim in this case was a patient there with her mother from her early teenage years. These records state that the alleged victim was not sexually active and virgin up to atleast seventeen years of age.

The Courts in United States v Cook, 45 F.3d 388 and Banks v Reynolds, 54 F.3d 1508 provide that counsel must raise "dead bang winner" issues on appeal. A "dead bang winner" is an issue which is obvious from the record and one which probably would have resulted in a reversal on appeal.

The Petitioner puts forth the argument that he was deprived of effective assistance of appellate counsel when counsel failed to present meritorious issues on his direct appeal, i.e.-Appellant is being sentenced to a harsher sentence because he envoked his right to trial and not based on the record.

Appellate counsel also failed to present any and all claims in the direct review as a federal constitutional issue, instead he presented them as issues arising under state law. As this Court knows that in order to present any claims to this court they must be presented to the state courts as constitutional issues and provide the state courts an opportunity to remedy the asserted constitutional violation, see Franklin v Rose, 811 F.2d 322 (6th Cir. 1987); Levine v Torvik, 986 F.2d 1506 (6th Cir. 1993); and Riggins v McMacking, 935 F.2d 790 (6th Cir. 1991).

Next, trial counsel failed to schedule the appearance of five (5) expert witnesses for the defense. These experts would have testified on behalf of the Petitioner to counter the alleged evidence presented at trial, "Where counsel is aware of potential witness and fails to subpoena them for trial, such failure constitutes a substantial violation of an essential duty owed to the accused and materially prejudices the defense, thereby denying the accused the effective assistance of counsel," Middletown v Allen, 63 Ohio App.3d 443, 579 N.E.2d 254.

Next counsel failed to present evidence that contradicted the prosecution's witness statements and testimony. This is especially true for the alleged victim in this case. The alleged victim testified because of these alleged events, she could only have sexual intercourse one way. However, reports and other witness testimony, (the alleged victim's ex-boyfriend), testified that they did it all ways. "Counsel's failure to properly investigate and failure to object to records, and other damaging statements constituted ineffective assistance of counsel requiring reversal," State v Higgins, 60 Ohio App.3d 414, 572 N.E.2d 834.

GROUND FIVE: The Appellant's Due Process and Effective Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution when trial counsel failed to investigate the petit jury array.

Supporting Facts: The Petitioner is male and the alleged victim is female. When the jury was brought into the court room, the vast majority of the jury pool were females in the community.

In this case trial counsel failed to investigate the petit jury and ensure that the prospective jurors are balanced between

both female and male. The final jury pool that was brought into the court room for trial were mostly female, this was the second pool brought in after the first jury pool was majority male.

The first jury pool was dismissed because of this by the prosecution.

In this case, the distinctive group of males was not a fair representation of the community. In the context of petit jury selections, the United States Supreme Court has held that the Sixth Amendment's provision for a jury trial is binding on the states by virtue of the Fourteenth Amendment, Duncan v Louisiana, (1968) 391 U.S. 145. Because males are considered a distinct group, in the selection of a petit jury, it is essential that the pool forms a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial, Taylor v Louisiana, (1975) 419 U.S. 522.

In order to establish the violation a defendant must prove: (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in veniers from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that the representation is due to systematic exclusion of the group in the jury-selection process, see Duren v Missouri, 439 U.S. 357, 364.

Because the jury selection process is a pre-trial requirement, it is a "critical period". Because this is critical period in the criminal proceedings, it encompasses counsel's constitutionally imposed duty to investigate the case, see Mitchell v Mason, 325 F.3d 732 (6th Cir. 2003) citing Powell v Alabama, 287 U.S. 45,

This constitutes the mandatory duty that trial counsel in this case must investigate every defense in the case to include the selection of fair cross-section of people in the jury selection process.

In this case since the Petitioner has shown substantial underrepresentation of his group, he has made a prima facia case of discriminatory purpose, now the burden is shifted to the State to rebut the case and claim, see Strauder v West Virginia, (1880), 100 U.S. 303.

GROUND SIX: The Appellant's Due Process and Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to Judicial misconduct and Judicial errors.

Supporting Facts: Trial Judge told the defense counsel to speed up his actions. Trial Judge cut the defense closing arguments so that the prosecution could present its rebuttal. Trial judge forced a jury verdict. Trial overruled defense counsels objection of witness violating trial separation orders after one had just testified and the other was next to testify.

In this case the actions and remarks of the trial judge in no way shape or form promote independence and integrity of Petitioner's trial. Under Canon 1 of the Code of Judicial Conduct, it mandates that "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

When the judge in this case berated trial counsel in front of the jury because he was trying to represent his client, clearly allows a juror to believe that the attorney is trying or presenting evidence not worth while.

Next, the trial judge told the jury that they were staying until they come to a unanimous vote, this was the morning after following the jury's late deliberations ending with a vote of 9 to 3. IN this case the trial court was faced with a "deadlock" jury. The proper remedy was for the trial court to issue the "Howard Charge" instructions. By failing to do so, the trial court violated the Petitioner's right to a fair and just trial. Because the trial court failed to give the "Howard charge," when it appeared from the record that the jury was deadlocked, committed plain error as it deviated from the syllabus in the Howard case, see State v Andricks, 111 Ohio App.3d 93, 675 N.E.2d 872. Thereby concluding that the State courts in the appellate process failed to follow the mandates of the laws.

GROUND SEVEN: The Appellant's Due Process and Effective Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to jury misconduct and errors.

Supporting Facts: Three jurors failed to recuse themselves as they know members of the State's witnesses. The jury accepted answers to their questions outside the presence of the Petitioner or his counsel. The jurors failed to follow any instructions after being told that they needed to come to a unanimous decision.

In the State of Ohio any jury member must make it known if they know any witnesses for either the prosecution or defense. It is provided by Section 2945.27 of the Revised Code that the court shall examine prospective jurors, with reasonable examination to be allowed to the prosecutor and counsel for the defense. The nature between a witness and a juror falls within this scope. Counsel has an obligation to help discover, by examination, those facts which would make a juror unsuitable to serve in a case,

Next, the jury clearly lost its way and just wanted to get deliberations over with. In this case the jury was persuaded by the trial courts statements that they are not come back without a verdict. What instruction by the court that was given was clearly ignored so that they could just render a verdict.

Because of these errors, especially with the communications between the court and jurors outside the presence of the Petitioner or his counsel must be presumed prejudicial to the Petitioner against whom, after such communication, a verdict was returned.

GROUND EIGHT: The Appellant's Due Process and Effective Assistance of counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to prosecutorial misconduct and errors.

Supporting Facts: Answering quesitons outside the presence of the Petitioner or his counsel. Eliciting false statements knowing that they were false. Failed to reliquish evidence under the discovery rule thus violating the Brady mandate.

In this case for the Petitioner to establish prosecutorial misconduct or denial of due process, he must show that (1) the testimony or statement is false; (2) the statement or evidence is material; and (3) the prosecution knew it was false.

In this case the prosecution elicited false testimony from the alleged victim and other state witnesses that were false. This testimony contradicts what was filed in the police reports and taken down in statements given to the police for the investigation of this case.

The statement and evidence is material in the fact that the alleged victim was making these false statements agains the

Petitioner at trial. Next, the prosecution used BCI reports that was never given to the Petitioner or his counsel to influence the guilt of the Petitioner. However, when testifying about these reports, the BCI team stated there was nothing to show any wrong doing by the Petitioner.

The Due Process Clause guarantees and embodies the fundamental conceptions of justice which lies at the base of our criminal institutions. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through deliberate deception of court and jury by the presentation of testimony known to be perjured, see Mooney v Holohan, 294 U.S. 103. "The same resul obtains when the State, whether or not soliciting false evidence, allows it to go uncorrected when it appears," Naupe v Illinois, 360 U.S. 264.

The prosecution in this case also withheld exculpatory evidence from the Petitioner that was used at trial. As this Court knows, the withholding of evidence expected to be used at trial prevents the defendant the ability to prepare a proper defense, thus denying the defendant the right to a fair trial.

During the trial, the prosecution cross-examine the Petitioner concerning hhis hobby of photography. The Petitioner took picture throughout his marriage to include family gatherings and vacations. The prosecution used photographs that were confiscated that belonged to the Petitioner. These photographs were not povided to the Petitioenr or his counsel. These pictues showed Petitioner and

the alleged victim in this case at family gatherings and vacations, thus making them exculpatory. The prosecution has a duty and obligation to disclose any impeachment evidence, exculpatory evidence, especially when it knows it will be used at trial. This is to ensure the defendant will have the right and opportunity to prepare a defense against the allegations he has against him.

The system of discovery is the very foundation to ensure a criminal defendant has a fair trial as guaranteed by the Fourteenth Amendment. The "suppression of evidence" favorable to the accused is itself sufficient to amount to a denial of due process, Brady v Maryland, 373 U.S. 83.

The rposecutors conduct in withholding evidence and eliciting perjured testimony constitutes misconduct and palin error that violates the Petitioenr's Fourteenth Amendment right of Due Process of Law and a fair trial.

GROUND NINE: The Appellant's Due Process and Effective Assistance of Counsel rights were violated under the Sixth and Fourteenth Amendments of the United States Constitution due to defense counsel and appellate counsel misconduct and errors.

Supporting Facts: First, the trial attorney was retained for \$ 5000.00, dropped the Appellant right after the indictment was handed down, as he disclosed that his duagher was working for the prosecution. Trial counsel went against the Petitioner's wishes when he sided with the prosecution to gain favor and dismissed a male jury pool. Third, trial counsel stated that the remainder of the legal fees would be used to obtain an investigator and expert witnesses, this never happened. Fourth, at no time did trial counsel advise Petitioner of his right to indigence

status which would allow the Petitioner to request investigators, specialists, and expert witnesses. Fifth, trial counsel refused to use Petitioenr's neighbors in defense, as Petitioner would use in his defense against the allegations leveid against him. Sixth, trial counsel instated a lein against Petitioner's home, which he presented to the trial judge in the Petitioner's criminal case. Trial counsel stated to Petitioner's family that he could not pay for investigators, expert witnesses and such as he was trying solicit more money because Petitioner was running out. Seventh, trial counsel stated that the lein against the Petitioner's home had to be finished before the appeallate attorney could take over the case, as counsel used appellate counsel, the trial court assigned for the appeal as a witness for the lein. Trial counsel also overpriced the lein four (4) times. Eighth, trial counsel failed to obtian the Petitioner's medical records from the Cleveland Clinic, these records verify that the Petitioner has Multiple Sclerosis. Also , counsel failed to obtain the Petitioner's medical records from Medina Hospital establishing that the Petitioner had spots on his brain. This would refute the prosecutions claims and alligations the prosecution made stating that Petitioner was a lier and a hypocondriac. Ninth, triala counsel failed to object at sentencing when the trial judge bias towards abortions caused her to reprimand him and then unfairly sentence the Petitioner due to this bias. Tenth, when trial counsel was being rushed by the trial court, or was told by the trial court that this was not a murder trial. Eleventh, trial counsel failed to object when he was being berated by the trial

judge and prosecutor in front of the jury. Twelfth, trial counsel never objected when he was cut short delivering his closing argument so that the prosecution could present theirs. Thirteenth, trial counsel acted in his own interest as part of the lien on Petitioner's property, counsle changed the locks to deprive Petitioner's POA and family access to the property, thus involving the Medina County Sheriff who sided with the Petitioner's POA and family. Fourteenth, trial counsel failed to challenge the prosecutions witness. Counsel chose to ignore teh altered states of the prosecutions witnesses and never called into account the witnesses slurred speech and delayed reacitons. He stated "he did not want to be mean." Fifteenth, both trial counsel and appellate counsle failed to challenge the prosecutions witness statements and testimony given at trial as these two things were in conflict with each other. Sixteenth, appellate counsel met with Petitioner and stated that it would take months to receive the transcripts and promised Petitioner a copy. To this day Petittioner is yet to receive that copy from appellate counsel. Seventeenth, appellate counsel agreed to allow Petitioner an active role in the appellate process, then during the appellate process only answered the phone several times over the next eighteen months. Eighteenth, appellate counsel ignored Petitioners request of allowing him to review the appellate brief before submission. Counsel gave his thought about what issues to be presented and promised to visit Petitioner so that he would have an active r||le in the appellate process. Nineteenth, Petitioner gave appellate counsel several issue to be submitted in the appeal,

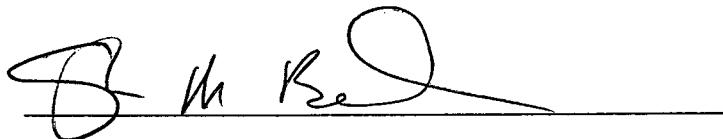
none were added nor reviewed. Instead counsel had a student that was working with him do the appellate brief and filing without the Petitioner even seeing it. It was not until the Respondent filed the record and sent it to Petitioner did the Petitioner finally see what the arguments were in the appellate brief. Twentieth, appellate counsel filed several extensions, yet in a phone conversation that Petitioner did have with him, he stated he was not working on it. Twenty-first, appellate counsel never used the BCI reports as part of the record and arguments as well as the files on the drive like he stated he would. In fact, appellate counsel failed to file a complete record as stated before when he failed to ensure the PSI was submitted to support his claim against consecutive sentences. Twenty-second, appellate counsel failed to obtain the medical records of Petitioner from ODRC or North Central Correctional Complex as this would reaffirm Petitioner's diagnoses of Multiple Sclerosis as diagnosed by a neurologist at Grant Hospital in Columbus, Ohio reflecting back to serious complications back to 2009.

Even though one of these claims against trial counsel and appellate counsel by themselves may not constitute error, however, the multiple errors in total accumulate to a massive ineffective assistance of trial and appellate counsel, thus violating the Petitioner's rights guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution.

CONCLUSION

Based upon the foregoing facts, claims, support of law, Petitioner respectfully requests that this Court grant his petition for a writ of certiorari. Petitioner has set forth claims that are plain error that support the fact that his United States Constitutional Rights were violated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. M. Reed", is written over a horizontal line.

Date: Oct 7, 2024