

24-6383

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTIAN RICKER - PETITIONER

VS.

STATE OF INDIANA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

INDIANA COURT OF APPEALS

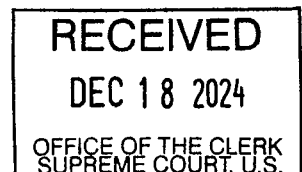
PETITION FOR WRIT OF CERTIORARI

CHRISTIAN RICKER

1 PARK ROW

MICHIGAN CITY, IN 46360

P.1



QUESTIONS PRESENTED

1. Is a State Appellate Courts Finding that the States Prosecutorial Misconduct and Conditioning during Voir dire was waived by Failure to raise these issues on direct appeal wrong and an unconstitutional denial of Due Process under the 14th Amendment?
2. Was Christian Rickers' Due Process rights under the 14th Amendment of the Constitution violated when the State Appellate Court ruled that Rickers trial Counsel has not shown either deficient performance or prejudice on the issues of introducing evidence that Christian Rickers accusers Sister made allegations of sexual abuse that indicated Ricker was the Perpetrator and by Failing to cross-examine Rickers accuser (L.S.) regarding her prior inconsistent statements.

LIST OF PARTIES

All parties appear in the Caption of the Case on the Cover page.

Indiana Court of Appeals

RELATED CASES

April 17, 2014 Conviction, Child Molesting, Intimidation; St. Joseph County, IN. 71D08-1209-FA-000026.

May 15, 2015 Direct Appeal Affirmed; Ricker v. State 71A03-1407-CR-266.

October 6, 2023 Post-Conviction Denied; St. Joseph County, IN; 71D08-1905-PC-000016.

June 4, 2024 Post-Conviction Appeal, Affirmed the denial; Ricker v. State, 24A-PC-184.

September 12, 2024 Petition to Transfer to Indiana Supreme Court denied; Decision without published opinion.

TABLE OF CONTENTS

OPINIONS BELOW <u>N/A - Not Over 5 Pages</u>	•
JURISDICTION	•
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	•
STATEMENT OF THE CASE	•
REASONS FOR GRANTING THE WRIT	•
CONCLUSION	•

INDEX TO APPENDICES

APPENDIX A - Decision of State Appellate Court - Affirmed on
June 4, 2024.

APPENDIX B - Decision of State Trial Court (Post-Conviction Relief) -
Denied on October 6, 2023.

APPENDIX C - Decision of State Supreme Court - Transfer denied on
September 24, 2024.

TABLE OF AUTHORITIES CITED

Page No.

CASES:

- | | |
|--|-------|
| 1. Perkins v. State, (1989), Ind. 541 N.E. 2d 927, 929. | P. 9 |
| 2. Lee v. State, (1990) Ind. 550 N.E. 2d 304. | P. 12 |
| 3. Brady v. Maryland, 373 U.S. 833 (1963). | P. 12 |
| 4. Strickland v. Washington, 466 U.S. 668 (1974). | P. 11 |
| 5. Ingram v. State, 715 N.E. 2d 405, 407 (Ind. 1999) Quoting 12 Robert Lowell Miller, Indiana Practice § 403, 102 AT 284 (1995). | P. 11 |
| 6. Stephenson v. State, 864 N.E. 2d 1022 (Ind. 2007). | P. 12 |
| 7. New York v. Hill, 528 U.S. 110, S. CT. 659, 145 L. Ed. 2d 560 (2000). | P. 12 |
| 8. Brookhart v. Janis, 384 U.S. 1, 7-8 (1966). | P. 12 |
| 9. Ake v. Oklahoma, 470 U.S. 68 (1985). | P. 10 |

STATUTES AND RULES

- | | |
|---|-------|
| 1. Indiana Rules of Professional Conduct Rule 3.4(e). | P. 11 |
| 2. Indiana Rules of Evidence 400, 401, 402, 403, 404. | P. 11 |
| 3. United States Constitution, Amendment XIV. | P. 8 |

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: N/A - None.

For Cases From State Courts:

The opinion of the highest State Court to review the Merits appears at Appendix A to the Petition and is reported at: Ricker v. State, 2024 Ind. App. UNPUB, Lexis 698.

The opinion of the Appellate Court on Direct Appeal is reported at: Ricker v. State, 2015 Ind. App. UNPUB. Lexis 546.

JURISDICTION

For cases from Federal Courts: N/A

No Petition For Rehearing was timely Filed in My Case.

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
September 12, 2024. A copy of that decision appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 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 of life, liberty, or property, without Due Process of law; Nor deny to any person within its Jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Trial Counsel failed to make a contemporaneous objection to prosecutorial Misconduct.

Trial Counsel introduced evidence that another child had made accusations of Child Molesting under circumstances that indicated the defendant was the perpetrator.

Appellate Counsel on Direct Appeal did not raise these issues on Direct Appeal.

Post-Conviction Counsel raised the Prosecutorial Misconduct Claims under Fundamental Error.

Post-Conviction Counsel raised Ineffective Assistance of Trial Counsel Claim for trial Counsel introducing evidence that another child had made accusations of Child Molesting that indicated the defendant was the perpetrator.

The Post-Conviction was denied in this case stating: Prosecutorial Misconduct Claims were freestanding and therefore waived. Trial Counsel was not ineffective.

The Indiana Court of Appeals denied relief stating: Rickers claims were freestanding and therefore procedural defaulted and trial attorney was not ineffective.

The Supreme Court of Indiana denied transfer.

The Appellate Court finding that the State prosecutorial Misconduct and Conditioning during voir dire was waived by failure of defendant Appellate Counsel to raise the issues on direct appeal is incorrect where defendants Counsel failed to object at trial. The trial attorneys' failure to object and the conduct of the prosecutor constituted Fundamental Error which cannot be waived. The State failed to mention in their argument that trial Counsel failed to make a contemporaneous objection to preserve these issues for appeal. These claims have never been adjudicated on its merits.

In Perkins v. State, (1989), Ind. 541 N.E.2d 927, 929 it has been

REASON FOR GRANTING THE PETITION

Certiorari should be granted because of the State Court of last resort has not applied the waiver doctrine correctly to Rickers ineffective assistance of trial counsel, prosecutorial misconduct and claims of fundamental error consistent to this Court's holding in *Ake v. Oklahoma*, 470 U.S. 68 (1985) before applying the waiver doctrine to a constitutional question the State Court must rule, either explicitly or implicitly on the merits of the constitutional question.

At the least the State Appellate Court should be required to rule on the merits of Rickers' case.

The Petitioner prays for a writ of Certiorari to be granted.

Respectfully Submitted;

Christian Ricker

Dec 4th, 2024

Trial Counsel was ineffective for eliciting testimony alleging additional uncharged Criminal Sexual Conduct by Ricker upon a sibling of the victim. Had Rickers' Counsel avoided introducing this purely prejudicial evidence, there likely would have been a different outcome at trial. *Strickland v. Washington*, 466 U.S. 668 (1974), unfair prejudice addresses the way in which the jury is expected to respond to the evidence; it looks to the capacity of the evidence to persuade by illegitimate means, or the tendency of the evidence "To suggest a decision on an improper basis *Ingram v. State*, 715 N.E.2d 405, 407 (Ind. 1999), (Quoting 12 Robert Lowell Miller, *Indiana Practice* § 403, 102 AT 284 (1985)). Under Indiana Rules of Professional Conduct, Rule 3.4 (e) an attorney shall not, in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence. The testimony was not relevant to the charged offense, and appears to have been inadmissible under the entire 400-Section of the Indiana Rules of Evidence.

The Multiple errors of trial Counsel deprived Ricker of effective assistance of Counsel and his right to a fair and impartial jury.

The issues of Fundamental Error resulting from ineffective assistance of Counsel at trial are not waived. Rickers' claim of misconduct by the State in failing to investigate exculpatory evidence and their actions in attempting to interfere with a legitimate inquiry into their actions Merits Ricker a New Trial.

established that Fundamental Error may be raised in Post-Conviction Proceedings although it was available but not raised on direct appeal.

It is available as Freestanding Error if it meets the Standard of Fundamental Error and may also be raised under the Concept of ineffective assistance of Counsel. *Lee v. State*, (1990), Ind. 550 N.E. 2d 304 FN.1. Also see *Stephenson v. State*, 864 N.E. 2d 1022 (Ind. 2007).

Petitioner has not waived objections to violations of *Brady v. Maryland*, 373 U.S. 833 (1963) because the violations were not known at the time of the trial and have still never been fully disclosed. None of the issues raised on appeal have been waived for failure to raise them on direct appeal because this would violate Due Process under the 14th Amendment. In *New York v. Hill*, 528 U.S. 110, 120 S. Ct. 659, 145 L. Ed. 2d 560 (2000) The Court explained that what suffices for waiver depends on the right at issue. A Fundamental right may only be waived upon showing that the defendant made an informed and voluntary waiver of the right.

The right to effective representation is one such right. *Brookhart v. Janis*, 384 U.S. 1, 7-8 (1966). Additionally, all the issues raised here are issues involving Fundamental Error in that they would deprive Ricker of his right to a fair trial before an unbiased jury regardless of whether they are considered prosecutorial misconduct or ineffective assistance of counsel.

The State appellate Courts ruling that trial Counsel was not ineffective for intentionally drawing forth the suggestion that his client had molested another youth is wrong.