

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WALTER PAYTON - PETITIONER

VS.

STATE OF KANSAS et. al. - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WALTER PAYTON

HUTCHINSON CORRECTIONAL FACILITY

P.O. BOX 1568

HUTCHINSON, KANSAS 67504

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [x] 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 follows:

The entire 18th Judicial District Court et. al.

James Fleetwood, District Court Judge
Nola T. Foulston, Former Chief District Attorney of Sedwick County
Kimberly T. Parker, Former Assistants District Attorney of Sedwick County
Mark Bennet, Chief District Attorney of Sedwick County
Ronald S Trollope, Detective of Wichita Police Department

QUESTION(S) PRESENTED

- (1) The Tenth Circuit stated the plaintiff applied KSA 21-2512 law wrongly, DNA favorable?
- (2) Plaintiff wants to know why KSA 21-2512(f)(2) DNA favorable does not apply to previously tested DNA?
- (3) Plaintiff wants to know why newly intervening change of law does not apply to his case?
- (4) In July of 2001, the current DNA testing law was placed on the books, which was 3 years and 4 months after the plaintiffs trial. Why is the plaintiff not allowed to apply the DNA testing that already been tested?
- (5) Had the plaintiff's civil rights been violated when the lower court chose to ignore DNA testing that exonerated him?
- (6) Had the plaintiff's 14th Amendment Right of the United States Constitution been violated by denial of the plaintiff the same equal protection and due process?
- (7) Was the plaintiff being treated the same as all U.S. citizen when DNA exonerated him before the State charged him?
- (8) Had the plaintiff's civil right been violated when the judicial system allowed Det. Ronald S. Trollope and Assistance District Attorney Kimberly T. Parker to support perjury?
- (9) Had the District Court been in violation of the plaintiff's civil rights when they heard from Det. Trollope, change the alleged victim's testimony to state that Rayton wore a condom even after DNA evidence excluded him?
- (10) Had the District Attorney Office and the Courts violated the plaintiffs civil right when they failed to disclose a report from Officer Wilkerson #1823 had made on Case# 97CR6857?
- (11) had Detective Trollope withhold exculpatory evidence by not admitting he changed the alleged victims testimony to state that the plaintiff wore a condom after DNA excluded him before the District Attorney established probable cause?
- (12) Had Detective Trollope violated the plaintiff's 14th admendment right

when he never disclosed in the affidavit in Case # 97CR0038 that there was any DNA like he didn't have for Case# 97CR6857?

(13) Did Assistant District Attorney Kimberly T. Parker and Detective Trollope violated the plaintiffs rights by withholding exculpatory information?

(14) Did Assistant District Attorney Kimberly T. Parker violated the plaintiffs 6th amendment right by obtaining a arrest warrant supported by perjury, by using Detective Whal's affidavit and when the Detective never testified to the information and the Bayton never got the chance to confront the state witness. 97CR1534?

(15) The plaintiff would like to know if the statute KSA 21-2512(f)(2) does not apply to DNA favorable then the statute is unconstitutional violating the 14th Amendment, no state shall deprive any person within thier jurisdiction rights secured by the constitution, nor violate due process of law nor equal protection or treat the plaintiff indifferent?

(16) Does the rule of law in the Declaration of Independence states man shall enjoy the right of independence and the pursuit of happiness?

(17) Did the judge violate De Facto, KSA 21-2512(f)(2), DNA favorable before trial on the 16th of March 1998 when the new intervening change in the law on the 1st of July 2001?

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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.

OPINION BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or

☒ is unpublished.

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

☒ reported at 2017 U.S. Dist. LEXIS 61361

; 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 _____ to the the petiton and is

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or

☐ is unpublished.

The opinion of the _____ court appears at Appendix ____ to the the petiton 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 15th of September, 2017.

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

☐ A timely petition for rehearing was denied by the United States Court copy of the order denying rehearing appears at Appendix B

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

The jurisdiction of this court is involed under 28 USCS § 1254(1).

☐ For cases from the **state courts**:

The date on which the highest state court decided my case was ____th day of _____, 2017. A copy of that decision appears at Appendix ____.

☐ A timely petition for rehearing was thereafter denied on the following date: ____th day of _____, 2017, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this court is involed under 28 USCS § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's 4th amendment rights were violated when the State violated it when they issued a arrest warrant with no probable cause to support the oath affirmation particular place searched, person or thing to be seized, hospital report withheld exculatory information, 97CR1534.

Petitioner's 6th amendment rights were violated when the prosecutor knowingly used fraudulent information by using Detective Whal's affidavit. Detective Whal never testified violating the right to confront witness to challenge affidavit. Also ~~violate~~ the 1st admendment of the Kansas Bill of Rights.

Petitiner's 14th amendment rights were violated when the state denied him the equal protection of the law within its juristition (97CR1534), prosecutor used fraud to obtain probable cause when no rape occured, Wesley Medical Center. No hospital report violating the due process and equal protection treating indifferent civil rights violation of KSA 21-6102(a) and 42 USCS 1983.

The interpatation of the statutory sentencing guideline is a question of law, and, thus, scope of review is unlimited. See State v. Dolay, 253 Kan. 132, 133-34, 853 P. 2d 680 (1993). The general rule that criminal statues must be strictly constude in favor of the accused. The rule of strict constitution, however is subordinate to the rules that the judical interpatation must be reasonable and sensible. To effect legislative design and intent. See State v. Cox, 258 Kan. 557 Syl., 908 P. 2d 603 (1995). Under the fundamental rules of staturoy construction, the intent of the legislative govern. When the intent can be ascertianed from the statue. When a statue is plain and unambiguous, we must give effect to the intent of the legislature, rather than determine what the law should or should not be. State v. Cox, 258 Kan. 557 Syl., 908 P. 2d 603 (1995). Any other rules of statutory construction. Kansas Annotated Statutes 21-2512(f) (2)&(g) DNA Favorable.

Thus the issue is determine whether justice requires the reaching of merits of the plaintiff's 42 USCS 1983. To do that, we must determine if the plaintiff asserts any colorable claims. "A colorable claim is [a] claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law" Blacks Law Dictionary 302 (10th edition 2014); See also Schriro v. Landrigan, 550 U.S. 456, 474, 127 S. Ct. 1933, 167 L. ed. 836 (2007), (Court must consider whether a hearing could enable an applicant to the petitioner's factual allegations. Which if true would entitle the applicant to habeas relief.) Earp v. Ornoski, 431 F. 3d 1158, 1170 (9th Cir. 2005) (Asserting that a colorable claim is a relatively "low bar"); Pizzuto v. Blades, 2010 U.S. Dist. Lexis 108833, 2010 WL 4008273 at *1 (D. Idaho 2010) (to establish a colorable claim, petitioner must allege specific facts that, if proven to be true would establish that he is entitled to relief, citing Landrigan); State v. Wooden, 478 S.W. 3d 585, 592 (Tenn. 2015) colorable claim is a claim, in a petition for post-conviction relief, that, if taken as true, in the light most favorable to the petitioner, would entitle to relief. See Littlejohn v. State (2017). Also See Payton v. State the plaintiff's first 60-1507.

When the United States Supreme Court clearly states, if an appellate court is reviewing and orders a dismissal. A plaintiff suit, the court accepts as true all the factual allegation in his complaint. (Kagen J. joined by Roberts CH J. and Kennedy. Ginsburg, Breyer and Sotomayor JJ) The Supreme Court held that a defendant's due process right are implicated when the state knowingly used false testimony to obtain a conviction, see Plye v. Kansas, 317 U.S. 231, 216, 87 L. Ed. 214. See Taylor, 82 F.3d at 1562, nonetheless sent to crime lab analysis and DNA resulted from evidence on pants did not match Taylor's DNA. The prosecutor Mr. Souvall, thereafter dropped the crimes against Mr. Taylor. Mr Taylor had been incarcerated in the Uintah County Jail for seven weeks before he was released.

STATEMENT OF THE CASE

Petitioner states that the courts violated his 14th amendment rights where the law states that no state shall make or enforce any law which shall abridge of the United States nor any state deprive any person of life liberty without due process nor deny any person within its jurisdiction equal protection. In Case No. 97CR1534 the District Attorney used a affidavit of Detective Whal, whom never testified to no rape kit pursuant to KSA 65-448 was performed. Wesley Medical Center's report was never disclosed to the defense this is exculpatory in nature. Violation of KSA 21-2512 DNA Testing, no rape kit was performed treating the petitioner indifferent the judge is De Facto. Again this is De Facto Ex Facto KSA 21-2512 in 97CR2023 exonerated the petitioner between 16th day of July 1997 and 16th day of October 1997 or 4th day of March and 8th day of March 1998, the newly intervening change of law KSA 21-2512 became law on 1st day of July 2001, which was 3 years 4 month after petitioner was previously excluded, Payton v. State 198 P.3d 212 had his first KSA 60-1507 around May 2001, his attorney was ineffective assistance of counsel for not amending the new law KSA 21-2512(f)(2) DNA previously done. The alleged victim was for sure the Payton ejaculated in her and did not wear a condom. District Attorney Kimderly T. Parker and Detective Trollope conspired and changed the victims statement to say the petitioner wore a condom in the narrative, which have DNA tested Case No. 97CR6857 wrote on the 15th day of July 1997, however in his Affidavit on the 16th day of October Detective Trollope stated that ~~the~~ victim said I wore a condom and recanted in trial stating that he make a mistake (pg. 198 line 8 thru 26) affidavit never stated the DNA was tested although the narrative became a affidavit, the District Attorney soborn perjury.

REASON FOR GRANTING PETITION

1. District Court Judge violated De Facto Ex Facto.
2. The District Court violated the petitioners 4th admendment right by illegally seizure, ~~when~~ District Attorney by the law issued a warrant without probable cause to support the crime, the oath affirmation particulary place search person or thing to be seized, hospital report withheld exculpatory information. 97CR1534
3. Prosecutor violated the 6th admendment by using Detective Whal's affidavit whom never testified, violating the right to confront witness, challenging the truth of the states affidavit 97CR1534.
4. Violation of the petitioners 14th admendment by denying petitioner within its jurisdiction equal protection and due process of the law. 97CR1534
5. Violation of the petitioners right to have previously tested DNA favorable to be retroactive to KSA 21-2512 and apply it, or it is unconstitutional and treats the petitioner indifferent.

CONCLUSION

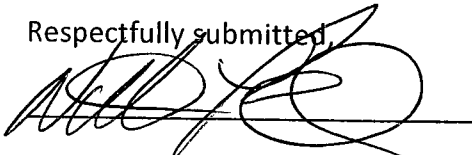
DA'S Office v. Osborne, 557 U.S. 52, 129 S. Ct. 2308(2009), was allowed a hearing on DNA when Alaska did not have a law on DNA Testing. However, after Alaska allowed DNA testing the United States Supreme Court granted the Writ of Certiorari and heard Osborne's case.

The plaintiff has presented his case on several occasions requesting DNA testing in the District Court and in the Kansas Court of Appeals. He hadbridge the law KSA 21-2512 stating that the jury heard the evidence on DNA and still found the plaintiff guilty, no where in the statute does it state this. The plaintiff filed a civil rights complaint under 42 USCS 1983 stated that the court should amend KSA 21-2512(f)(2) to include previously favorable DNA perform 3 years 4 months before the newly intervening change of law on July 1st 2001. How the 10th Circuit Court of Appeals misconstrued the law, stating that the plaintiff should ask for the KSA 21-2512 to trigger the statute.

The state maliciously prosecuted the plaintiff after discovering that DNA testing had already excluded the plaintiff before arrest and before trial.

The ~~petition~~ for a writ of certiorari should be granted.

Respectfully submitted,

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

Date: 27 day of Nov. of 2017