

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

DARNEIL RICHMOND - PETITIONER

VS.

PEOPLE OF THE
STATE OF ILLINOIS - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

PETITION FOR WRIT OF CERTIORARI

DARNEIL RICHMOND

P.O. BOX 1000

Menard, Illinois 62259

I.D. # 1230584

QUESTION(S) Presented

WHETHER,

- Darneil Richmond's Post-conviction Petition set forth the arguable basis of a claim that trial counsel was ineffective for failing to seek an order for the state to determine how many nine-loci matches there are in the state's DNA database, where his DNA was in the state's DNA database matching at 9 loci instead of the standard 14 loci. And that,
- Appellate counsel was ineffective for failing to raise the issue on direct appeal.

LIST of PARTIES

[✓] All PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

Table of contents

	PAGE
Opinions Below	10
Jurisdiction	7
Constitutional And Statutory Provisions involved	8
Statement of the case	9
Reason For Granting the writ	13
Conclusion	15

INDEX to Appendices

Appendix A - Decision of the Appellate Court First Judicial District Court.

Appendix B - ORDERED of the Illinois Supreme Court

Appendix

1

INDEX

INDEX

Table of Authorities cited

CASES: PEOPLE V. WRIGHT, 2012 IL App 1st 073104

- PEOPLE V. SMITH 2012 IL App. 1st 102354 175, 179
- PEOPLE V. RICHMOND 2017 IL App. 1st 150642
- PEOPLE V. HODGES, 234 Ill. 2d 1, 9-11, 16 (2009)
- STRICKLAND V. WASHINGTON 466 U.S. 668, 688 (1984)
- PEOPLE V. TATE 2012 IL 112214
- PEOPLE V. WATSON 2012 IL App 2nd 091328

STATUTES AND RULES:

- U.S. CONST. AMENDS WERE VIOLATED VI, XIV; ILL. CONST. ART I, § 8
- M25 ILCS 5/116-5
- ALLAN SIMCOX, MARIJANE HEMZA-PLACEK, - CHALLENGING THE ADMISSIBILITY OF DNA TESTING 83 Ill. B.J. 170, 172 (April 1995)

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.

OPINION BELOW

[✓] FOR CASES FROM STATE COURT: THE OPINION OF THE APPELLATE COURT FIRST
JUDICIAL DISTRICT COURT APPEARS AT APPENDIX A. TO THE PETITION AND IS
ORDERED IN A PUBLISHED OPINION REPORTED AT PEOPLE V. RICHMOND 2017
IL App. 1st 150642.

JURISDICTION

FOR CASES FROM THE STATE COURT:

The Appellate Court Affirmed DARNELL RICHMOND'S CONVICTION ON JUNE 30, 2017. NO PETITION FOR REHEARING WAS FILED. A COPY OF THE APPELLATE COURT'S JUDGMENT IS APPENDED TO THIS PETITION SEE APPENDIX A. PETITION IS TIMELY FILED WITHIN (90) DAYS. THE PETITIONER REQUESTED FOR REVIEW BY THE ILLINOIS SUPREME COURT ON SEPTEMBER 27, 2017 SEE APPENDIX B.

The Jurisdiction of This Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- US CONSTITUTIONAL AMENDMENTS 6 & 14 ILLINOIS CONSTITUTIONAL RIGHTS WAS VIOLATED UNDER ARTICLE 1 § 8

- 705 ILCS 5/1110-5

STATEMENT OF THE CASE

○ THIS Appeal is from A Stage-one Summary Dismissal of Darnell Richmond's Pro se Post-conviction. In his Petition, Among other claims, Richmond Alleged that his Trial Counsel was ineffective for failing to sufficiently challenge the DNA Evidence used to convict him. (C. 42) Previous Trial and Direct Appeal;

Richmond was tried before a Jury on three counts of Aggravated Criminal Sexual Assaults of C.L, one count of Robbery of Erin Luboff, And one count of Attempt Robbery of Lia Stalkos. (T.C. 58, 64, 70, 97; T.R. FF4, C029) The Jury found Richmond Guilty As charged on all counts except for the Attempt Robbery Stalkos which Defendant was Acquitted. T.C. 40, 156-160, 204) The Court sentence Richmond to three consecutive terms of 18 years for the Aggravated Criminal Sexual Assaults of C.L And one term of (3) years for the

○ Robbery of Erin Luboff. (T.C. 40, 204) AT TRIAL, C.L TESTIFIED THAT she was walking home on April 9, 2007, stopping along the way to buy some chicken and beer (T.R. PP. 26-27) AT Around 8:50 pm to 9:10 pm, she reached 55th STREET AND SOUTH EVERETT AVENUE AND SOMEONE CAME UP FROM behind her AND Applied Pressure TO her back. (T.R. PP. 26-28) Although she never saw A Gun the person said "I HAVE A Gun, Dont move, Give me your money" (T.R. PP 31-PP 55). AS she Reached in her backpack TO GET her wallet, SOMEONE ON the STREET walked by, And the offender Told her TO put her backpack BACK ON And Pretend that nothing WAS wrong or she would Get shot (T.R. PP 32) ONCE the Person Passed, the offender Told her TO go TO A nearby PARKING LOT (T.R. PP 33) While between A VAN AND the Dumpster, the offender

○ ORDERED C.L TO pull Down her pants, he unzipped his PANTS, STOOD behind her, And put his Penis INTO her VAGINAL AND Anus (T.R. PP 33) It WAS DARK And she tried TO turn Around, BUT he pushed her back Around (T.R. PP 31-PP 34) C.L

Testified that the offender was becoming agitated and since she was menstruating and wearing a tampon at the time, she took out her tampon (T.R. PP 34-35) The offender then made her turn around, keep her head down and perform oral sex by placing her mouth on his penis (T.R. PP 35) There was noise on the street, the offender took between 50 and 100 dollars and some of C.L.'s beer, gave her back her wallet and keys and left. (T.R. PP 35-36) C.L. checked to see if he was gone and then left. She saw someone in the middle of the street and asked him to take her to the hospital. (T.R. PP 37) At the University of Chicago Medical Center, a nurse took cotton swabs from her mouth, vagina, and anus (T.R. PP 38, RR 12). C.L. described the offender as a black, taller than her, wearing a puffy black jacket with a fur-lined hood (T.R. PP 40) She further testified that she never got a good look at him (T.R. PP 43) She only saw her offender in the dark (T.R. PP 41-42) C.L. viewed a physical lineup on April 10, 2007 and did not identify anyone because, she testified, she saw her offender in the dark (T.R. 41-42) C.L. viewed a photo array on April 11, 2007 and was not able to make an identification. C.L. did not make an in-court identification. Schubert testified as an expert in DNA analysis (T.R. QQ 81) Schubert tested the oral, anal, and vaginal swabs taken from C.L.'s body, swabs taken from the parking lot where the offense occurred, and the tampon C.L. removed during the offense. (T.R. QQ 93-99) The only swab that Schubert found enough DNA on to conduct an analysis on was the anal swab (T.R. QQ 98) The anal swab contained two DNA profiles (T.R. QQ 139) One profile matched the DNA profile of C.L. and the other was of an unidentified male (T.R. QQ 100-103) Schubert put the male profile into the DNA database. After entering the profile into the DNA database, police associated the swab with the name of

DARNEIL RICHMOND AND FOCUSED THE INVESTIGATION ON HIM (T.R. QQ 38) INVESTIGATOR KEVIN O'LOUGHLIN TESTIFIED THAT ON AUGUST 27, 2007, HE WITNESSED A LAB TECHNICIAN AT CERMAT HOSPITAL TAKE A BUCCAL SWAB FROM RICHMOND (T.R. QQ 57, QQ 100-103) DETECTIVE ROBERT DISTASIO CONDUCTED THE MAY 23, 2007 PHYSICAL LINEUP VIEWED BY LUBOFF CONTAINING RICHMOND, AFTER THE DNA DATABASE RESULTS ASSOCIATED RICHMOND WITH THE CASE (T.R. QQ 38-41) SCHUBERT CONCLUDED THAT RICHMOND COULD NOT BE EXCLUDED FROM HAVING CONTRIBUTED TO THE MALE PROFILE ON THE ANAL SWAB. (T.R. QQ 104) SCHUBERT TESTIFIED THAT RICHMOND COULD NOT BE CALLED A MATCH BUT RATHER COULD NOT BE EXCLUDED, BECAUSE HIS DNA MATCHED THE MALE PROFILE ON THE ANAL SWAB AT NINE LOCI OUT OF THE 14 LOCI EXAMINED (T.R. QQ 105-109) AT FIVE LOCI, SCHUBERT HAD OPTIONS OF DNA PROFILES AT EACH OF THEM. SCHUBERT TESTIFIED THAT APPROXIMATELY 1 IN 3.9 TRILLION BLACKS, 1 IN 750 TRILLION WHITES AND 1 IN 1.8 QUADRILLION HISPANIC, UN-RELATED INDIVIDUALS, COULD NOT BE EXCLUDED FROM HAVING CONTRIBUTED TO THE PROFILE FOUND ON THE ANAL SWAB. SCHUBERT STATES THE STATISTIC IS NOT FOR RICHMOND PROFILE (T.R. QQ 213-219) THE JURY RETURNED A VERDICT OF GUILTY OF (3) COUNTS OF AGGRAVATED CRIMINAL SEXUAL ASSAULT OF C.L. INCLUDING PENIS TO ANUS, PENIS TO MOUTH, PENIS TO VAGINA (T.C. 156-158, R. 2251) THE JURY ALSO FOUND RICHMOND GUILTY OF ROBBERY OF ERIN LUBOFF AND ACQUITTED HIM NOT GUILTY OF ATTEMPTED ROBBERY OF C.A. SKALKOS. ON DIRECT APPEAL, RICHMOND ARGUED THAT HE WAS FOUND NOT PROVED GUILTY OF ROBBERY BEYOND A REASONABLE DOUBT; THAT THE TRIAL COURT ERRED IN GRANTING THE STATE'S REQUEST TO JOIN (3) SEPARATE CASES, OR, ALTERNATIVELY, DEFENSE COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE JOINDER OR FOR NOT MOVING TO SEVER THE CASES; AND THAT THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION IN LIMINE TO BARRED QUESTIONING RELATING TO C.L.'S PRIOR SEXUAL HISTORY. THE APPELLATE

● COURT AFFIRMED RICHMOND'S CONVICTION PEOPLE V. RICHMOND 2012 IL App(1st) 100125-11 (FEBRUARY 02, 2012) THE INSTANT POST-CONVICTION PROCEEDING: ON AUGUST 10, 2014 RICHMOND FILED A PRO SE PETITION FOR POST-CONVICTION RELIEF THAT IS THE SUBJECT OF THIS APPEAL. (C.116) IN THIS PETITION, HE ALLEGED THAT HIS TRIAL COUNSEL WAS INEFFECTIVE (OR AMONG OTHER THINGS, FAILING TO REQUEST THAT THE STATE BE ORDERED TO DETERMINE HOW MANY NINE-LOCI MATCHES THERE ARE IN THE STATE DNA DATABASE (C. 42) HE ALSO ALLEGED THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT RAISING THE ISSUE ON DIRECT APPEAL (C.43) THE PETITION WAS DOCKETED ON SEPTEMBER 12, 2014 (C.116) ON NOVEMBER 21, 2014 THE COURT SUMMARILY DISMISSED RICHMOND'S PETITION AS FRIVOLOUS AND PATENTLY WITHOUT MERIT (C.208) THE COURT NOTED THAT THE WEAKNESS OF THE DNA EVIDENCE WAS MADE ABUNDANTLY CLEAR BY TRIAL COUNSEL AT TRIAL AND THAT THE JURY WAS PRESENTED WITH ALL OF THE FLAWS WITH THE EVIDENCE TO ANALYZE AND WEIGH. (C.216) THE COURT RULED THAT FURTHER CHALLENGE BY DEFENSE COUNSEL THAN WHAT HE ALREADY DID AT TRIAL WOULD HAVE ADDED LITTLE TO NOTHING AND BEEN MERELY CUMULATIVE. THE COURT RULED THAT APPELLATE COUNSEL WAS THUS NOT INEFFECTIVE FOR NOT CHALLENGING TRIAL COUNSEL'S HANDLING OF THE DNA EVIDENCE. (C.217) ON APPEAL RICHMOND ARGUED THAT THE CIRCUIT COURT ERRED IN SUMMARILY DISMISSING HIS POST-CONVICTION PETITION WHERE IT FORTH THE ARGUABLE BASIS OF A CLAIM THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO SEEK AN ORDER FOR THE STATE TO DETERMINE HOW MANY NINE-LOCI MATCHES THERE ARE IN A STATES DNA DATABASE AND THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE ON DIRECT APPEAL. ON JUNE 30, 2017 THE FIRST DISTRICT APPELLATE COURT AFFIRMED THE CIRCUIT COURT DISMISSAL ORDER IN A PUBLISHED OPINION PEOPLE V. RICHMOND 2017 IL App(1st) 1501642

Reason For Granting The Petition

● DNA evidence can be a powerful weapon for either prosecutors or defense counsels. DNA evidence is arguably the most powerful weapon in the state's arsenal. In fact, as the Wright court has noted, "Whenever a DNA uses the words, it's a DNA "MATCH", the jury believes the defendant is guilty." *People v. Wright*, 2012 IL App (1st) 073106 at ¶¶ 94. At Richmond trial, the forensic DNA expert testified that while Richmond could not be called a match, his DNA could not be excluded, because his DNA matched the male profile on the C.L.'s anal swab at nine loci out of the 14 loci examined (T.R. QQ 105-129); C.L. was unable to identify the person who assaulted her, and there was no other physical or direct evidence linking Richmond to C.L.'s assault sexually. Despite only the

● PARTIAL match, defense did not seek an order requiring the state to determine how many nine-loci matches were in the state's DNA database as 725 ILCS 5/116-5 allowed him to do. This inaction by defense counsel was arguably constitutionally deficient and thus, Richmond's post-conviction petition raised an arguable claim of ineffective assistance of trial and appellate counsel. *People v. Hedges*, 234 Ill. 3d 1, 9-11, 16 (2009). Moreover, the appellate court's decision in this case directly conflicts with the decision in *Wright*. Thus this court should grant review to resolve the conflict. Here Darrell Richmond, Richmond's post-conviction petition set forth the arguable basis of a claim that trial counsel was ineffective for failing to seek an order for the state to determine how

● many nine-loci matches there are in the state's DNA database. Richmond's DNA profile matching the male profile at nine-loci instead of the 14 loci, is far short of the 14 loci required for a true match. SEE

○ Allan Sincor, Marijane Henza - Placet, Challenging the Admissibility of DNA Testing 83 Ill. B.J. 170, 172 (April 1995) So As long As 13 loci is insufficient As "A Further Review of the other... loci on each individual would show that there was really no match. People v. Wright 2012 IL App. (1st) 073106 ¶ 154. Where the Defendant is not a True, Any consistencies between his Profile and the Recovered Profile is totally lacking in Probative Value, And has Great Potential for Prejudice And for confusing the Jury. People v. Smith 2012 IL App. (1st) 10-2354 ¶ 175, 179. Given the complexity of DNA, And the low Relevancy of Anything less than a True Match, lower courts have sparred over whether this evidence should be in front of a Jury At All And whether Counsel is ineffective for failing to object to it.

○ Smith ¶ 155. Even if such evidence is Allowed there is still a Question of whether it should have been Paired with a DNA Database Search, To Demonstrate the High number of Pairs that may "match" at fewer than 13 loci. In cases such as this one, a DNA Database Search is a useful Tool for the Defense that a Trial Court has no Discretion to deny Because such evidence has a Good chance of creating Reasonable Doubt in the Jury's mind. Wright 81. The Appellate Court The First District in this case Disagree with the Wright court. People v. Richmond 2017 IL App 1st 150642 ¶ 63. Richmond maintains that at this juncture, he need only set forth an Arguable claim that Counsel's Performance was Deficient, And that Counsel's Performance Arguably Prejudiced the Defendant. U.S. Const. Amendments VI, XIV; Ill. Const.

○ Art. I, § 8; Strickland v. Washington 466 U.S. 668, 688 (1984) People v. Tate 2012 IL 112014. Noting that a Post-conviction Petitioner need only raise an Arguable claim of ineffective assistance in order to survive Summary Dismissal.

conclusion

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED
RESPECTFULLY SUBMITTED,

Samuel R. P.

DATE: 12-17-2017