

IN THE UNITED STATES SUPREME COURT

No. _____

SCOTT OLIVER,
PETITIONER
vs.

SUPERINTENDENT, SCI GRATERFORD, et.al.,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI FROM APPEAL FROM THE
UNITED STATES CIRCUIT COURT, OF THE THIRD CIRCUIT, AT
No. 17-3229, DENYING A PETITION FOR CERTIFICATE OF
APPEALABILITY, FROM THE UNITED STATES DISTRICT COURT, AT
No. 16-0920, DENYING A PETITION FOR A WRIT OF HABEAS CORPUS
FROM JUDGMENT OF STATE COURT

PETITIONER'S PETITION FOR CERTIORARI

FILED ON BEHALF OF:

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QUESTIONS PRESENTED

"Should Habeas relief be GRANTED where the District Court found the State Court's factual determination in "Oliver 2" to be objectively unreasonable, where the State Court rested its decision upon such improper facts to deny relief; and would the Petitioner's continued confinement violate the Constitution, where the State Court in "Oliver 1", unanimously found the new DNA test results excluding the Petitioner as a source of semen found on the Decedent's vaginal swab, "sufficiently compelling as to warrant a new Trial ?"

"Did the District Court err by adding improper language of: "beyond a preponderance of the evidence"; and "he must prove no juror...", to the Schlup v. Delo, standard of review, which has sufficiently undermined the reliability in the fairness in the proceeding below, as to render the judgment and opinion of the Court as an [independent] judgment, where no such language exists in the standard ?"

"Did the Circuit Court err by not granting the C.O.A. on the issues squarely framed in the Petition for C.O.A., in regards to the questions hereinabove ?"

PARTIES INVOLVED

It is alleged, that the only party representing all of the
RESPONDENTS, is Counsel of record, to whom is:

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STATEMENT OF JURISDICTION & OPINIONS BELOW

This is a Petition for a Writ of Certiorari, from the United States Court of Appeals for the Third Circuit.

The Court of Appeals denied a timely Petition for re-argument, on April 3, 2018, at No. 17-3229, denying a request for a Certificate of Appealability, on February 23, 2018.

The Orders of the Circuit Court have not been reported, and are found in the Petitioner's Appendix, at Appendix "A" and Appendix "B".

This Petition for a Writ of Certiorari, is timely filed within ninety(90) days of the application denying re-argument from the Circuit Court, thus, This Court has jurisdiction, under 28 U.S.C. §1254(1).

The request for a C.O.A. to the Circuit Court was premised on the denial of Federal Habeas Corpus relief, on July 21, 2017, at No. 16-0920, by a Magistrate's R/R, which was adopted by the Judge on September 18, 2017.

The Order adopting the R/R, has not been reported and is found in the Petitioner's Appendix, at Appendix "C".

The Magistrate's R/R has not been reported, and is found in the Petitioner's Appendix, at Appendix "D".

CONSTITUTIONAL PROVISION INVOLVED

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. 14th Amendment
U.S. Constitution.

STATEMENT OF THE CASE

On August 20, 1989, the Petitioner had purchased some beer for his neighbor, of whom, is a minor, and his friends. The very next day, relatives of one of the minors, had came to the Petitioner's residence, inquiring into the whereabouts of one of the minors, because she did not come home. Shortly thereafter, the Police, had too came to the Petitioner's residence, inquiring the whereabouts of the minor.

On August 22, 1989, the Petitioner was arrested on a corruption of minors charge. While at the Police Station, and upon inquiry by Detectives, the Petitioner admitted his participation, in purchasing beer for the Minors. The Detectives left the interrogation room. Upon returning, the Detectives had asked questions regarding the Minor, to which the Detectives relinquished the facts. That being, that the Minor had been found Murdered, Raped and badly beaten. The Detectives repeatedly badgered the Petitioner regarding the body of the Minor Decedent. The Petitioner told the Detectives, that [he] did not know what they were referring to, nor did [he] commit these heinous crimes.

The Detectives had continued to badger the Petitioner in a gestapo fashion, yet the Petitioner continued to deny the allegation, the Detective was insinuating. After hours of a barrage of interrogation methods, the Detectives had resulted to assault upon the Petitioner. This had eventually led the Petitioner to "fear for his life", and complied with the Detectives demand of writing down what it was the Petitioner was to have done, and to make it believable, and made the Petitioner

sign and initial the writing instrument, i.e. "a confession". This was partly due to "what" the Detectives told the Petitioner to write, as [they] only had knowledge of the crime scene, not the Petitioner.

After finishing, with this 'alleged" confession, the Petitioner was then charged with Murder and Rape of the Minor Decedent, in addition to the corruption of minors charge.

A Preliminary Hearing was held, and all charges were bound for Trial. A Court Order was issued on August 25, 1989, to be taken to the Medical Examiner, to be examined for scratches, bruises, and other marks; along with a hair, blood, saliva samples along with fingernail clippings.

Shortly thereafter, a Trial was held on the corruption of minors charge. The Petitioner had pled guilty and was sentenced to three(3) to six(6) years.

It was thereafter in January of 1991, that the Trial began for the Murder and Rape of the Decedent.

At the Trial, the Court only found portions of the Detectives testimony to be credible.

The evidence obtained had disclosed that the white skin, found underneath the Decedent's fingernails, came from a person of caucasian race. In addition, it was determined the person whom strangled the Decedent was left-handed, the Petitioner is right-handed. The Petitioner had also presented evidence that he was bald, and the Medical Examiner testified that the Petitioner had no scratches upon his person. Moreover, testimony was given that the soil found on the Petitioner's clothing did not match the

soil samples taken from the scene of the crime. The Defense also called the Warden to discredit the jailhouse "snitch".

The only direct evidence, at that time, was the detection of semen on the vaginal swab taken from the Decedent. This evidence in conjunction to witness testimony, that [they] had seen the Petitioner with soiled clothing, and scratches upon his person- led the Jury to convict the Petitioner, in addition to the jailhouse "snitch" to whom, Petitioner "allegedly" confessed.

Petitioner had received Life w/o Parole for the Murder, a 10-20 year sentence each for the Rape & IDSI charge, and a 1-2 year sentence for indecent assault.

Direct Appeals were taken, and were denied in 1993, and 1994 respectively.

It was not until, with the assistance of the Innocence Project, that testing began, in November of 2009.

The testing results proved that the Petitioner was excluded as a source of semen detected on the vaginal swab, taken from the Decedent. Such exculpatory results, had required the Petitioner to file a PCRA, in January of 2010, by submission of the Innocence Project. To which, additional testing was done on two(2) hair fragments that were found on the Decedent. The PCRA Court held a hearing, to hear the results and testimony of the experts. The Court denied relief.

A timely Appeal was taken, and the Superior Court reversed the PCRA Court, this referred herein, as "Oliver 1". The Court again denied, another Appeal was taken, the Superior Court affirmed, this is referred herein, as "Oliver 2".

Federal Habeas Corpus followed, the Court denied relief, the Circuit Court denied a C.O.A., this Appeal now follows.

CONCISE REASONS RELIED UPON FOR GRANTING CERTIORARI

It is argued that the inferior Courts have entered a decision in conflict with a decision of this Court on the same important matter, and have so departed from the usual course of Judicial proceedings as to call upon an exercise of this Court's supervisory powers.

In sum, the District Court found, "by clear and convincing evidence", that the State Court Opinion, ("Oliver 2"), had rested its decision to deny relief upon an objectively unreasonable finding of fact, that the DNA Test results was in some way compromised. see, (Appendix, "D", @, 10-11).

It is argued that upon such a finding that "Oliver 2", was objectively unreasonable, that the Court should have adopted "Oliver 1", where the State Appellate Court unanimously agreed that the new DNA Test results were "sufficiently compelling as to warrant a new Trial". see, (Appendix, "E", @, 3, ¶ 3).

The Court did not however do such. [It] continued to adhere to "Oliver 2", and considered other evidence that the "Oliver 1" Court deemed improper by the PCRA Court, on the first Appeal.

In addition, the Court improperly added "beyond a preponderance of evidence", (Appendix "D", @, 9-10), to the Schlup Standard. Injecting such language, where none exists, has fundamentally undermined any reliability of fairness in the proceeding. This plain or structural error has foreclosed the probability of Federal Habeas Relief.

With this stated, it is argued that "Oliver 1" should have thus been ultimately adopted, given deference and extended

comity. After all, the "Oliver 1" Panel unanimously found: 1.)the PCRA Court erred in its factual determination; 2.)the Court did not apply the correct standard of review; 3.)the Court considered improper evidence in assessing the new DNA results; and 4.)the new DNA evidence was sufficiently compelling as to warrant a new Trial. see, (Appendix "E", @, 3-5). That is, the test results excluding Petitioner as a source of semen found in the decedent's vagina on the swab, taken nearly three(3) decades ago.

The Circuit Court too had erred by not granting a COA, (Appendix "B"), where such issues were clearly framed in the Petition for COA, (Appendix "G"). In addition, on re-argument, (Appendix "A"), where it was again, clearly framed regarding this misapprehension of the true issue before the Court. see, (Appendix "H").

It is upon this summation, that the Petitioner asserts the foregoing arguments, pertinent to the questions presented. The Petitioner prays that This Court will not foresake Him, and this Court will GRANT relief to the Petitioner.

I.) THE DISTRICT COURT EMPLOYED AN INCORRECT STANDARD OF
REVIEW BY ADDING LANGUAGE WHERE NONE EXISTS
AS ANNOUNCED BY THE UNITED STATES SUPREME COURT

The District Court has erred by adding language where none exists. The Court, otherwise, improperly held that the Petitioner must show that by a preponderance of the evidence no reasonable juror would convict him based on the new evidence. "Here...he must prove that no reasonable juror would have voted to convict". see, (Appendix "D", @, 9-10).

The emphasis on "by a preponderance" and "he must prove" are simply devoid from the Schlup standard and/or Schlup progenies. This very erroneous application of Law, by the Court, has given the appearance of partiality,¹ to the entire Opinion, as an "independent judgment", for which, Schlup forbids, and undue prejudice to the Petitioner. The integrity in reliability in the fairness in the proceeding, too, has been compromised.

As This Court is aware, or should know, "[it] is not the District Court's independent judgment as to whether reasonable doubt exists that the standard addresses. Rather, the standard requires the District Court to make a "problematic determination" about what reasonably, properly instructed jurors would do. see, Schlup 513 U.S. @, 329.

Because the Court utilized "by a preponderance" and "he must prove", deprived the proper review, the fundamental, and basic concepts of Due Process and Equal Protection of the Laws, by such erroneous addition of language, where none exists.

The Petitioner is only required to "demonstrate" his innocence under Schlup, not affirmatively [prove] his innocence, by a preponderance of all the evidence.

By utilizing this unorthodox standard, it allowed the Court to evade the claim of Petitioner's [demonstration] of his innocence in accord with Schlup.

¹-while it seems the Court is discussing the showing needed for a freestanding claim, the Court's later statement of : "Here...he must [prove]...", affirms the legal position that such an erroneous standard was applied. Moreover, the appearance of partiality is also further reflected in the Court's Opinion. For example, the Magistrate states that the Petitioner has not presented no viable claim, (Appendix "D", @, 7), yet reflects a claim of after discovered evidence that proves the conviction resulted in Constitutional error. see, (Appendix "D", @, 3).

That being, the vaginal swab, that [now] tested, excludes the Petitioner as a source of the semen found in the Decedent's vagina.

This "glaring revelation" cannot be easily ignored. Any reasonable juror could see this [exculpatory], compelling new DNA evidence, (see, Appendix "E", @, 3, ¶ 3), and could unquestionably conclude without debate, "NO RAPE....NO MURDER". After all, this was the State's "case-in-chief"; "...[he] stood over the Decedent, strangled her, ...murdered her, ...to cover up the Rape."

For this reason alone, this Court should GRANT Certiorari.

II.) THE COURT BY EMPLOYING THIS ERRONEOUS STANDARD ABOVE, FAILED TO GRANT FEDERAL HABEAS RELIEF WHERE THE VAGINAL SWAB EXCLUDES THE PETITIONER AS A SOURCE OF THE SEMEN, WHERE THE COURT FOUND THE STATE COURT OPINION'S FACTUAL DETERMINATION AS "OBJECTIVELY UNREASONABLE"

PREMISE:

There is no room for debate, that Ms. Leal testified that the test results confirm that the Petitioner is excluded as a contributor of the male fraction of DNA detected from the vaginal swab. see, "Oliver 1", (Appendix "E", @, 2-3).

There can be, also, no debate that the State's theory and evidentiary picture, is that the Petitioner was the sole Assailant, whom strangulated the Decedent, to conceal the Rape. This unquestionably was the State's theory, when the State had utilized, otherwise, "circumstantial evidence", that had suggested such indignity had happened to the Decedent, and thus, those circumstances dictated that the Petitioner was guilty as

charged to the Jury.

The Petitioner, [now] excluded, as a source of semen detected on the vaginal swab, now leads us to two(2) conclusions: 1.)the Petitioner DID NOT Rape the Decedent; and 2.)the real killer/rapist is still at large.

The absence of these scientific advances, at the time of the Petitioner's Trial, decades ago, deprived [Him] of the necessary, and opportunistic advantage to prove or demonstrate, akin, to an ALIBI DEFENSE, "...NO RAPE,...NO MURDER". A very serious blow or direct contradiction of the State's "Case-in-Chief", and theory of guilt; "...with strong, compelling evidence,not [His] semen."

THE COURT GAVE IMPROPER DEFERENCE:

The District Court correctly found that: "the Petitioner appears to argue that the Superior Court Opinion was both contrary to... and an unreasonable determination of facts"; see, (Appendix "D", @, 9), with respect to this Claim.

The District Court also finds that: "Superior Court based its decision on four findings: 1.)the exculpatory DNA test was unreliable because of the disclaimer regarding chain of custody; ...". see, (Appendix "D", @, 9).

The District Court had correctly found that Superior Court's conclusion regarding the chain of custody procedures, involved, in obtaining those DNA results, was "objectively unreasonable"; thus, consequently, finding that the test results were unreliable, as "OBJECTIVELY UNREASONABLE", see, (Appendix "D", @, 10).

The District Court found that the disclaimer was only that in which dealt with the "raw" DNA samples submitted by the Petitioner to test against, Id. Not the actual evidence obtained decades ago from the Decedent's body. Thus, as the Court correctly found, "...the Report itself rebuts the Superior Court's finding the chain of custody's unreliability". see, (Appendix "D", @, 10-11).

While such a finding of determination under §2254(d)(2), does not, in and of itself, compel to warrant Federal Habeas relief, unless the Petitioner can show that his confinement also violates the Law. The Petitioner can do such. The [new] reliable evidence, i.e., the DNA Test results, exclude the Petitioner as a source of semen detected on the vaginal swab. Surely, Petitioner's actual innocence offends the Constitution. The [new] evidence negates the State's theory of guilt.

The District Court, however, could not concede to grant relief on the fact that the vaginal swab does not contain the Petitioner's DNA, as a source of the semen found. This is partly due to the bizarre and erroneous standard employed, as mentioned in "PART I", above.

This is due to the fact, that once the Court found "Oliver 2" to be "objectively unreasonable" in "Oliver 2", [it] should have abated any further deference to such Opinion. Instead, the Court continued to adopt and afford deference to "Oliver 2", and consider other improper evidence, that "Oliver 1", unanimously condemned.

The vaginal swab that has recently been found, not to contain the Petitioner's DNA Profile, is "critical evidence", if

not compelling, to demonstrate his innocence, with regard to the other evidence presented at Trial, as Schlup mandates. see, 513 U.S. @, 324, 327.

There can be no room for doubt, nor debate that the [only] direct evidence, at the time in question, (semen on a swab), of sexual assault, has [now] dropped out of the case, due to new DNA testing; "...and so too, has the State's central theme linking the Petitioner to these heinous crimes". see, House v. Bell 547 U.S. 518, 540-42 (2006).

Again, to reiterate, this "glaring revelation" cannot be easily ignored. Any reasonable juror could find such compelling evidence as exculpatory, and could conclude that the Petitioner is not guilty. Again, it was the State's theory, that the Murder was committed to cover-up and conceal the Rape.

Surely such new evidence, the State Court's objectively unreasonable determination of facts, and the Petitioner's continued confinement violate and offend the Constitution.

The Petitioner was surely denied the opportunity to present evidence in his favor. That is, a [now] ironclad alibi defense, that it was not him, whom perpetrated these heinous crimes.

Unquestionably, the lack of such [evidence] deprived the Jury of the "TRUTH" of the State's case, "...that [it] was putting the wrong person on Trial".

The present case at bar, aligns itself, or mirrors the relevance in House v. Bell, supra.

In House, many witnesses "allegedly" seen House covered with blood and soil stains, with no shirt nor shoes, and visible

scratches on his person. see, 547 U.S. @, 520-32.

This Court found that the central forensic evidence connecting House to the crimes, "blood & semen", have been called into question, due to DNA testing. see, 547 U.S. @, 540-48.

Those results of the testing proved that the semen samples taken from the decedent was from [her] husband, NOT House. see 547 U.S. @, 540-42.

Those same set of factual circumstances found in House, are mirrored in this case at bar. In the Petitioner's case, there were witnesses whom "allegedly" seen the Petitioner with scratches upon his person. Likewise, soil on his person and shoes. Just like in House, the Petitioner's forensic evidence a vaginal swab, linking the Petitioner to the crimes, has now been called into question, due to DNA testing. Those testing results prove that it is someone else's semen, not Petitioner's.

This Court stated in House: "When the only direct evidence of sexual assault drops out of the case, so, too, does the central theme in the narrative linking House to the crimes". Id, 547 U.S. @, 540-42.

With this stated, it cannot be argued that House is not a "wooden application" as to the Petitioner's case. After all, the State's theory was that the Petitioner, the lone assailant, murdered the Decedent, to cover up the Rape. The [new] Test results confirm, Petitioner is not a source of the semen found on the vaginal swab. Thus, it was not the Petitioner, whom raped, then murdered.

The State's direct forensic evidence, has dropped out of the

case, so has their theory linking the Petitioner to these crimes.

To not afford the Petitioner the same relief afforded to House, would be to gravely offend the Constitution; as noted in House, "...this is not a complete exoneration... but close enough to warrant relief..."

It is for these reasons, that the Court should have adopted "Oliver 1", as that Panel unanimously found, "...those results as sufficiently compelling as to warrant a new Trial". see, (Appendix "E", 2-3).

It is for this reason alone, that this Court should GRANT Certiorari.

THE COURT CONSIDERED IMPROPER EVIDENCE BY ERRONEOUSLY ADOPTING "OLIVER 2", WHICH WAS CONDEMNED IN "OLIVER 1"

The Court had also erred, when it gave further deference to "Oliver 2", by considering improper evidence, that a unanimous Panel in "Oliver 1", had condemned. SEE, R/R, (Appendix "D", @, 12-15), and compare, "Oliver 1", (Appendix "E", @, 2-5).

The Panel in "Oliver 2" had considered the "same" improper evidence, that the "Oliver 1" Panel had condemned the PCRA Court from considering, when [it] reversed and remanded with instructions. Thus, not only did the "Oliver 2" Court err, but too the PCRA Court, and now the District Court.

First, the "alleged" confession. The use of such evidence has offended Due Process. see, Culombe v. Connecticut 367 U.S. 568, 602(1961). also see, Com. v. Conklin 160 A2d 566, 568(Pa. 1960)("A confession of a commission of a crime is not sufficient, in and of itself, to convict..."); Crane v. Kentucky 476 U.S. 683,

689(1986)("Confessions, even those that have been found to be voluntary are not conclusive of guilt").

In regards to the law, above, no weight can be given to such an "alleged" confession, (Appendix "D", @, 13-14), forget the fact of whether Petitioner was properly Mirandized, or felt free to leave, or was denied His request for Counsel.

In light of the [new], strong and compelling evidence of the "lack of" the Petitioner's semen on the vaginal swab, the Law and facts weigh heavily in His favor.

Next, the hair sample, (Appendix "D" @, 13, 14-15). The admission of weight as to this evidence raises much "speculation" or conjecture, as "nothing conclusive", thus, arguably should accord no weight here.

While the Trial testimony given was thought to be "highly unreliable", (see, Appendix "D", @, 14-15), the Court found such to be inculpatory, (Appendix, "D", Id). This is probably due to the Court's "independent finding" in regards to an "FBI Article", (Appendix "D", Id), because it is consistent with the Petitioner at the scene of the crime, in conjunction to other circumstantial, if not, speculative evidence.

The Petitioner argues that such reliance on the "FBI Article" by the Court is "gravely misplaced". The Petitioner argues that the hair comparison analysis employed in his case, is unreliable, as it was found in Williamson v. Reynolds 904 F. Supp. 1529, 1555-58 (E.D.Ok1. 1995).

To rebut the State's position, the Petitioner presented evidence and testimony by an expert, that the "hair" found, is

[only] consistent with hair from the top area of the head. Such hair, could not have come from the Petitioner, because [he] suffers from male pattern baldness, of this area, at a very early and young age. To which, the Petitioner had shown, he was, in fact, bald, at the time of the crimes, not shaven, as suggested by the Court, (Appendix "D", Id).

Nonetheless, the State's expert, as alike, in many other cases, is self-validating and carries with it, undue weight, and the Petitioner has suffered great prejudice due to its admission. see, e.g. U.S. v. Baller 519 F2d 463, 466(4th 1975). To allow such misleading evidence, violates the rationality of fundamental fairness encompassed in Due Process, see, Caldwell v. Mississippi 472 U.S. 320, 340(1985), U.S. v. Scheffer 523 U.S. 303, 308(1998).

If this Court would allow the admission of this [unproven] hair analysis, it will unwittingly perpetuate and legitimize junk science.

With this stated, the Petitioner reasonably believes the hair evidence, here in the case at bar, is inadmissible, just as it was found to be in Williamson, supra, to which, should be binding on this Court.

It is thereby submitted, that no reasonable juror would have voted for guilt, if the Jury knew:

1.) the vaginal swab does not contain the Petitioner's DNA

Profile, but contains another unknown Male fraction as the source of semen found;

2.) the hair sample is hair from the top of the head, to which the

Petitioner was bald at the time of the crime and suffers from male pattern baldness;

3.) the white skin found underneath the Decedent's nails could not have come from the Petitioner, whom is of African-American decent, and the Petitioner had no scrapes or scratches on his person at the time of the crime, as examined and testified too, by the Medical Examiner; and

4) the soil samples taken from the Petitioner's clothing does not match the soil samples taken from the scene of the crime.

Surely, no reasonable juror would have voted for guilt, where it is, after all, the State's theory that the Petitioner killed the Decedent, to cover-up the Rape.

We now know it was not the Petitioner whom Raped and Murdered the Decedent, as the [new], [reliable] evidence, does exculpate the Petitioner, beyond all doubt.

It is for this reason, that this Court should GRANT Certiorari, in the Interests of Justice.

III.) THE CIRCUIT COURT ERRED BY NOT GRANTING A C.O.A.

The Circuit Court too has erred, by not granting a C.O.A. on the issues clearly framed before it. see, (Appendix "G", @, 2, 4-7). The Court denied the C.O.A. on timeliness grounds. (Appendix "B"). This issue of timeliness and/or Due Process [Claims], as cited in the Court's Order denying, were not raised in the Petition for C.O.A. see, (Appendix "G", @, 2, 4-7). There certainly was no timeliness issues asserted, (Appendix, "G", Id), nor the "alleged" Due Process Claims, in question of the Court's perspective.

The [only] issues framed in the Petition for C.O.A., are the

issues surrounding the new DNA test results, and the Opinions of the Court regarding such Claim. (see, Appendix "G", @, 2, "questions", presented).

Matter of fact, the Magistrate in His R/R, made it rather very clear, that the DNA Evidence Claim, was not only timely, but too, very diligently presented. see, (Appendix "D", @, 6-7).

Surely the issues framed in the Petition for C.O.A., (Appendix "G", @, 2), that the District Court was incorrect in its ruling, adding improper language to the Schlup standard; giving improper deference to the State Court Opinion, after finding such Opinion to be "objectively unreasonable", are clearly pled out in the four(4) corners of the pleading submitted.

There can be no room for doubt, the District Court did utilize improper language in its standard employed, which is contrary to or an unreasonable application of Schlup, supra. The District Court should have abated from "Oliver 2", upon finding its fact determination regarding the evidence to be objectively unreasonable, hence should have given "Oliver 1" deference, and accord comity to such Opinion. After all, the "Oliver 1" Panel stated, that the new evidence, was "sufficiently compelling as to warrant a new Trial". see, (Appendix "E", @, 3, ¶ 3).

Thus, as to the first prong of the Slack v. McDaniel 529 U.S. 473 (2000), standard, the Circuit Court was incorrect by not granting a C.O.A., where the District Court was incorrect in its procedural rulings, of giving improper deference, and adopting

improper language as to the standard of review.

The second prong, "the denial of a substantial Constitutional Right", is met two ways here. First the District Court stripped the Petitioner of any "process due", by using an improper standard, injecting its independent judgment as to whether reasonable doubt exists; and giving improper deference. The other way the second prong is invoked, is that the Petitioner heavily relies upon House v. Bell, supra, under the Due Process & Equal Protection of the Laws Clauses of the 14th Amendment.

Surely, the Petitioner was deprived of Due Process in his Trial, "the new, reliable evidence excludes him as a contributor of the semen found on the vaginal swab nearly three(3) decades ago."

There can be no doubt, nor room for debate, that the Petitioner surely has met the standard for obtaining a C.O.A.. As such, the Circuit Court should have issued one, had it been but for not the errors of the Circuit Court misapprehending the true facts and claims clearly framed before it.

It is for this reason, that this Court should GRANT Certiorari, in the Interests of Justice.

CONCLUSION

For these enumerated reasons hereinabove, it is respectfully submitted, and prayed upon, that This Court will not foresake the Petitioner, and GRANT Certiorari on this very important matter; or in lieu, issue a "per-curiam" reversal, with binding instructions for further proceedings; or [Any] Justice of This

Court, whom is of the Opinion that a C.D.A. should issue, issue such in a "per-curiam" reversal, with binding instructions for further proceedings. MAY THIS COURT OR JUSTICE THEREOF, GRANT ANY OR ALL OTHER RELIEF THE PETITIONER MAY BE ENTITLED TOO. MAY IT SO BE ORDERED.

Respectfully Submitted,

April 23rd, 2018

date

Scott Oliver

Scott Oliver,
petitioner, pro-se