

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES RAY WALTON — PETITIONER
(Your Name)

vs.

LORIE DAVIS, Dir. T.D.C.J. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals - United States District Court Sth. District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles Ray Walton #1356490
(Your Name)
SMITH UNIT - L-22B
1313 C.R. 19
(Address)

Lamesa, Texas 79331
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Whether the Fifth Circuit Court of Appeals' opinion denying Walton - (Petitioner) a Certificate of Appealability, and affirming the U.S. District Court's denial of Walton's § 2254 Petition on claims of Ineffective Assistance of Counsel, is in direct conflict with this Court's decision(s) in Strickland v Washington, 466 U.S. 668 (1984); Wiggins v Smith, 539 U.S. 516 (2003); Williams v Taylor, 529 U.S. 362 (2002); Barefoot v Estelle, 463 U.S. 880, 893 (1983); Slack v McDaniel, 529 U.S. 473 (2000).
- 2.) Whether Fifth Circuit erred denying/affirming of Petitioner's § 2254 Petition, when it found the U.S. District Court applied the correct legal standard in reviewing Petitioner's Prosecutorial Misconduct claim(s) related to unobjected-to improper closing arguments, and failure to grant Certificate of Appealability in accord to this Court's decisions in United States v Diano, 507 U.S. 725 (1993); Slack v McDaniel, 529 U.S. 473 (2000)
- 3.) Whether the Fifth Circuit erred affirming the denial of Walton's § 2254 Petition where the District Court failed to conduct an evidentiary hearing, where the record shows Walton presented affidavits in direct conflict with his counsel's affidavit, which if resolved in Walton's favor, conclusively establish facts warranting relief under § 2254(d) and entitling Walton to an evidentiary hearing.

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:

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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 C1 to the petition 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 A+C to the petition and is

☐ reported at _____; 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 EF to the petition 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 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 DECEMBER 13, 2017.

[] 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: JANUARY 12, 2018, and a copy of the order denying rehearing appears at Appendix D.

[] 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 January 15, 2014.
A copy of that decision appears at Appendix F.

[] 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

Constitutional Provisions

Amendment VI -

In all Criminal Prosecutions, the accused shall enjoy the right to ... and to be informed of the nature and cause of the accusation; ... to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense.

Amendment XIV - Section 1:

All persons born or naturalized in the United States subject to the jurisdiction thereof, ... 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.

STATUTORY PROVISIONS

Section 2254, 28 U.S.C. provides:

- (e)(1) - in a proceeding instituted by application for writ of habeas corpus by a person in custody pursuant to judgment of a state court, determination of a factual issue made by a state court shall be presumed correct; The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.
- (2) if the applicant has failed to develop the factual basis of a claim in state court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that -
 - (A) the claim relies on -
 - (i) a new rule of law of the constitution ... or
 - (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
 - (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable juror/factfinder would have found the applicant guilty of the underlying offense.

Beth A. Townsend, "Defending The Indefensible" A Primer to Defending Allegations of Child Abuse, 75 A.F.L. Rev. 216, 270 (1998)

STATEMENT OF THE CASE

On March 3 2006, Petitioner was found guilty of Aggravated Sexual Assault of child under 13, alleged to have been committed on or about January 12 2005. Petitioner appealed: Filed P.D.R.'s 11.07 writ of Habeas Corpus; and Writ of Certiorari. On or about April 16 2007, mandate issued in state habeas. No hearings were held to any of the Petitioner's request for evidentiary hearings.

On or about ~~June 15 2014~~ August 15 2014 Petitioner filed his federal 2254 writ of Habeas Corpus with Exhibits. On or about January 23, 2015, Respondent filed its Motion for summary judgment. On or about January 26, 2015 Petitioner filed Motion for leave to supplement, which was granted on or about May 19 2015. On March 16 2015, Petitioner filed Objections/Proposition to Respondent's Motion for Summary Judgment, and Motion for evidentiary hearing. (Doc. 37-38) Proceedings before Magistrate granted. Recommendations

and Memorandum granted on 6-22-15 (Doc. 50) Petitioner filed Objections on 7-23, 2015. (Doc. 56) On 9-5-2015 Order adopting recommendations of the Magistrate granted, denying Petitioner's request for Evidentiary Hearing, and denying with Prejudice Petitioner's writ of Habeas Corpus. (Doc. 57) Final Judgment and COA denied in (Doc. 58) Petitioner filed Motion of Appeals. (Doc. 64, 73).

While appeal was pending Petitioner filed Motion to strike Judgment (Doc 70) on October 5 2016. Order denying Petitioner's appeal and C.O.A. issued. (Doc. 73) Order denying to issued 2-1-2017 (Doc. 76) Petitioner filed Motion of Appeal on 2-14-2017. (Doc-77) On 3-27-17 Petitioner filed Motion for C.O.A. (Doc. 82)

Walton, Petitioner seemingly failed to file Amended Briefs, instead sought Certificates of Appealability. District Court denied Petitioner's C.O.A. Request in (Docs. 58, 73, 83 90) See Appendix - "D" Doucet Sheet

For detailed STATEMENT OF FACTS OF THE CASE Please see EXHIBIT - 11 pages 2-3 - (Walton's Application for Certificate of Appealability).

Reasons To Grant THE WRIT

1. The Fifth Circuit's opinion denying Walton a Certificate of Appealability, and affirming the District Court's denial of Walton § 2254 petition, on claims of Ineffective Assistance of counsel, because its decision is in direct conflict with this Court's decisions in Strickland v Washington, 466 U.S. 668 (1984); Wiggins v Smith, 531 U.S. 510 (2003); Williams v Taylor, 529 U.S. 362 (2000); Barefoot v Estelle, 463 U.S. 880, 893 (1983); Slack v McDaniel, 529 U.S. 473 (2000)
2. The Fifth Circuit erred affirming denial of Petitioner's § 2254 petition, when it found the U.S. District Court applied the correct legal standard in reviewing Petitioner's Prosecutorial Misconduct claims, related to unobjection to improper closing arguments, and failure to grant C.D.A. unreasonable.
3. The Fifth Circuit court erred affirming the denial of Walton's § 2254 Petition where the District Court failed to conduct an evidentiary hearing to resolve the factual dispute of whether Walton's counsel contacted people on witness list which Walton gave him, where the record "conclusively shows" Walton presented affidavits that his counsel did not contact people, to conclusively establish facts warranting relief under § 2254, and entitling Walton to an evidentiary hearing.
Walton is a pro se litigant seeking review under Heines v Kerner, and respectfully ask the Court pursuant to Rules of Evidence 201 to Take Judicial Notice and subpoena Document-

50 - MEMORANDUM AND RECOMMENDATIONS GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT, to review in these
Pleadings.

Watton humbly submits exhibits in support of these claims
and respectfully ask the Honorable Justices to carefully scruti-
nized the constitutionality of this conviction, as there are
numerous violations and complexities in this case that warrant
a review.

Petitioner respectfully urges that all aspects of the Circuit Courts decisions as explained below, are at variance and are erroneous with this Court's decisions.

I. The Court of Appeals erred by determining Petitioner's Ineffective Assistance of Counsel Claims did not meet the standards set forth by this Court in Strickland v Washington, 104 S.Ct. 2052; Wiggins v Smith, 123 S.Ct. 2527, further erring denying Petitioner's request for a Certificate of Appealability - C.O.A. see Slack v McDaniel, 529 U.S. 473, 484 (2000)

Petitioner, Walton asserted in his § 2254 Petition that his trial Counsel - Charles Brown - (Brown) failed to investigate and have a firm grasp of the facts as evidenced by his failure to introduce to the jury evidence that the complainant - (J.E.) was coached by her biological father to make false allegation of sexual abuse to school authorities; failed to ascertain the relevance of lease contracts; failed to hire expert to rebut state's expert testimonies; failed to introduce Walton's 2003 arrest as alibi; and failed to object to improper closing arguments of prosecutor.

Petitioner asserted that there was a reasonable probability that the outcome of his trial would have been different had the jury heard the evidence ~~excluded~~ not presented at trial. see Williams v Washington, 59 F3d 673 (7th Cir.) ; Anderson v Johnson, 338 F3d 382, 392 (5th Cir. 2003); Miller-El 537, U.S. 322 (2003).

Claims of Ineffective assistance of counsel are governed by by the familiar two-part test set out in Strickland v Washington, 466 U.S. 668; 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 (1984)

First, a defendant must show that counsel's performance was deficient. Second, he must show that the deficient performance prejudiced the defense. see Strickland *supra*; Neely v. Chana, 764 F.2d 1173, 1177 (5th Cir. 1985); Bryant v. Scott, 28 F.3d 1411, 1418 (5th Cir. 1994); Wiggins v. Smith, 539 U.S. 510, 526, 527, 123 S.Ct. 2527, 156 L.Ed. 2d 471 (2003).

In this case the record reflects that counsel's investigation consisted of the state's files, and his communications with the complainant's mother and the complainant; filing discovery motions; including the offense report, the complainant's statements made at the Children's Assessment Center, the statement from the outcry witness, and the report of the investigating officer. [see Document 50 - MEMORANDUM AND RECOMMENDATIONS GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT - Page 9 at 9 - 12]; [Doc. 50 p. 10 - 20]

Relying on Cullen v. Pinholster, 131 S. Ct. 1388 (2011) and Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770, (2011) the district court found the state habeas court's findings credible to defeat Walton's claims of ineffective assistance of counsel. [Doc. 50 p. 16-20]

Petitioner argues, that Brown's trial strategy was unreasonable when he failed to call Latoya Wilson to trial and ~~for~~ investigate and interview before trial to develop the defense.

Walton informed Brown that the complaining witness J.E. had been coached by her biological father to make the allegation to school authorities, and that Marcus Kuykendahl and the complainant's older half-sister Latoya Wilson overheard the biological father coaching the complainant. [see EXHIBIT- 1]

The district court relying on the state habeas courts findings found Brown's affidavit credible as reasoned trial strategy, in a "paper hearing".

Brown's strategy as explained in his affidavit and mirrored by the District Court states:

"According to the credible affidavit of Charles Brown, counsel contacted people on the list [Brown] gave him as possible witnesses, counsel does not always issue subpoenas for a defendant's family members, and most of the names [Brown] provided counsel were his family members.

(see Document 50 p. 10 o 14)

Walton submitted affidavits from Mary Walton which diametrically contradicts Brown's affidavit, stating Brown failed to contact any of the witnesses given to him before trial. [EXHIBIT-2]

Walton further presented the declaration of Latoria Wilson which provides for the biological father's coaching. see [EXHIBIT-3]

Cullen and Amholster stands for the question whether fair-minded jurist can conclude that the state court's decision is contrary to even unreasonable application of the facts presented in the state court proceedings.

Walton contends, as in Wiggins v. Smith, supra, the court's inquiry here is whether the investigation supporting counsel's decision not to call, interview Latoria Wilson before trial, or at trial was itself reasonable. See Flores-Ortega, 528 U.S. 470, 481, 120 S.Ct. 1029, 145 L.Ed. 2d 985 (2000)

A purportedly strategic decision is not objectively reasonable "when the attorney has failed to investigate his options and make a reasonable choice between them." See Horton v. Zant, 941 F.2d 1449, 1462 (11th Cir. 1991) (cited in Louis, 205 F.3d, 288) see also

Bryant v Scott, 28 F3d 1411 (5th Cir. 1991); Anderson v Johnson, 338 F3d 382, 391 (5th Cir. 2003) (quoting Bryant v Scott)

Here, Brown had knowledge that J.E. was coached to make false allegations of sexual abuse before trial, but by his own submission he did not call Latoya to introduce such evidence, because she was a family member whom he does not issue subpoenas to.

Indeed, Counsel Brown, attempted to introduce the information at trial, during a bench conference between the trial court, the D.A., and himself, as a result of an objection by the Prosecutor which resulted in an In-Court motion of Limine, to exclude relevant evidence to Walton's defense. (See EXHIBIT-4 B. 87-89 of R.R. 3)

The crucial distinction between strategic judgment calls and just Plain omissions has echoed in the judgments of the Fifth Circuit, Strickland does not require deference to decisions that are not informed by an adequate investigation into the controlling facts and law [or that do not] yield some benefit or avoid some harm to the defense. see, Moore v Johnson, 194 F3d 615; SMITH v DRETKE, 417 F3d 438, 441 (5th Cir. 2005)

Latoya's declaration clearly refute Brown's affidavit that he contacted the witnesses given him, and as such is an unreasonable determination of the facts. see Miller-El v Cockrell, 537 U.S. 322, 338 (2003); 28 U.S.C. § 2254 (d).

What is more important here is that counsel Brown had knowledge of this crucial evidence before ~~that~~ trial, and sought to admit it into the record but did not.

In assessing the reasonableness of the investigation, the Court must consider not only the quantum of evidence known to Counsel, but also whether the known evidence would lead a reasonable attorney to investigate further. Wiggins v Smith, 539 U.S. 527.

Here, Counsel Brown tried to introduce the testimony at trial, but without any success. (SEE EXHIBIT-4)

THE STATE COURT'S ULTIMATE DECISION WAS:

"[WALTON]' fails to demonstrate that trial counsel failed to call any witness to testify at trial that was available and whose testimony would have benefitted [Walton]. Kins v State, 649 SW2d 42, 44 (Tex. Crim. App. 1983); Wilkerson v State, 762 SW2d 542, 557 (Tex. Crim. App. 1996)

(See Document SDP 12 235)

Here, while a state court's factual findings are entitled to a presumption of correctness absent clear and convincing rebuttal, "a Federal court can disagree with a state court's credibility determinations, and when guided by AEDPA, conclude the decision was unreasonable or that the factual premise was incorrect. MILLER-EL v Cockrell, 537 U.S. 322, 340, 123 S.Ct. 1029, 154 L. Ed. 2d 931 (2003)

Here, the state court's credibility determination is an unreasonable determination of the facts.

Furthermore, because ineffective assistance of counsel is a mixed question of law and fact, the reviewing court owes no deference. Strickland, 466 U.S. 668; Westley v Johnson, 83 F3d 714, 720 (5th Cir. 1996)

Cases are legion in the circuits on issue of failure to investigate and present a witness at trial. ca RICHARDS v Quarlesman, 500 F3d 553 (5th Cir 2009) (counsel ineffective for failure to present exculpatory evidence); Mason v Mitchell, 543 F3d 766 (6th Cir. 2008) (failure to investigate unreasonable application of Strickland.); MALON V WALLS, 538 F3d 744 (7th Cir. 2008) (failure to call ex witness unreasonable application of Strickland.); Draughton v Dretke, 427 F3d 286 (5th Cir 2006) (Same); Riley v Payne, 352 F3d 1313 (9th Cir. 2003) (failure to call witness I.A.C.); Saffar v Dretke, 368 F3d 441 (5th Cir. 2004) (failure to call and interview witness with exculpatory evidence was ineffective assistance).

Had counsel Brown introduced Latoya's testimony and called her as a witness at trial there is a reasonable probability that the jury would have credited J.E.'s recantation at trial as truthful. (see R.R. 4 p. 98-99)

Indeed, there was evidence that the complainant's biological father would cause problems with the mother's new boyfriends (see R.R. 4 p. 185)

In Soffar v. Dietke, 368 F.3d 441 (5th Cir. 2004) the Fifth Circuit reversed for the exact same reason as here. Soffar's counsel failed to investigate in Michal for failure to interview police officers, and present evidence which would highlight discrepancies in testimonies and evidence.

Thus, this set of facts are materially indistinguishable from those in Soffar, absent counsel Brown's failure to conduct adequate Michal investigation and call a witness with exculpatory evidence of coaching to make false allegation; the result of the proceedings would have been different.

see Strickland, supra, and Tenny v. Cockrell, 420 F. Supp. 2d 617 (W.D. Tex. 2004); Richards, supra, and Wiggins v. Smith, supra; Lockhart v. Fretwell, 506 U.S. 364, 372, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993)

LEASE CONTRACTS

Walton contends for the lease contracts Brown's failure to investigate to have grasp of the facts reveal through record that Brown did not believe lease contracts were relevant to any contested facts of the instant case. (See Document 50 p. 10 p 15)

Walton argued, they were relevant to develop an accurate timeline, relevant to the defense of alibi by incarceration. Indeed, Brown conceded that time was an issue as evidenced by his affidavit and the state court's credibility assessment. (See Doc. 50 p. 90 11)

Relying on Williams v Washington, 59 F3d 673, 680-81 (7th Cir. 1995) where counsel failed to investigate letters to ascertain relevant reputation evidence & failure to visit the crime scene residence, resulted in ineffective representation to William's prejudice. Walton contends, that had Brown investigated the lease contracts he would have found that J.E. was age 5 when she resided at the address of 5050 Yale Street #231. Since the state alleged the abuse to have taken place when J.E. was age 4 (RR. 4 p. 28 i 33) and that it was an one-time event, that happened at the address of 1001 Pine mont. (see RR. 4 p. EXHIBIT - 5 Prob. Cause Complaint)¹

There is a reasonable probability that had the jury believed that because the abuse happened when J.E. was age 4, and she resided at 5050 Yale at age 5, then she was age 5 at 1001 Pine mont - thus abuse at age 4 was impossible making J.E.'s recantation true. Had the jury believed the recantation true the outcome of trial would have been different. Strickland. supra.

Because it can be reasoned that the state court's findings are

1. - NOTE PRESENTATION OF FALSE INFORMATION TO MISLEAD ON AGE AT TIME OF ALLEGED OFFENSE TO INITIATE PROSECUTION AGE 6 VS. AGE 4. (see EXHIBIT 8 page 19 Line 15)

Contrary to Strickland, it necessitates an unreasonable application of the Strickland Standard, see Wiggins v Smith, *supra*; Tenny v Cockrell, 420 F.3d 671, 634-35 (W.D. 2004) and an unreasonable application determination of facts. Miller-El, *supra*.

ARREST RECORD

The record reveals that the complaining witness alleged the abuse at age 4 (RR. 4p. 28; 33) with the State arguing this contention during closing arguments. (RR. 5p. 19)

It further reveals that J.E. was placed in Childs Protective Services - CPS in February 2002 and was not released until October 31, 2003. (See EXHIBIT - 5; 7)

It also reveals that J.E. was born on January 22, 1999. (See RR. 4p. 44); (Exhibit - 5; 7)

Walton asserted that counsel Brown was ineffective for failing to introduce his arrest into trial as alibi evidence.

The record reveals in State's EXHIBIT #9 that Walton was incarcerated when J.E. was age 4 and was not released from the incarceration until after she had become age 5. [See EXHIBIT - 6]

In the 9th Circuit case of Reynoso v Giurbiro, 462 F.3d 1099 (9th Cir. 2006) the court relied on Strickland and found defense counsel ineffective for his failure to offer records and to present evidence of the defendant's alibi.

Here, Walton argues, his case is no different because had the jury heard that Walton was incarcerated when J.E. and the prosecution alleged, coupled with her

in-court recantation there is a reasonable probability the jury would have credited the recantation as true resulting in a different outcome. Strickland, supra Reynoso v Giurchino, supra.

Defense counsel stated in his affidavit that, "he was aware of Walton's criminal history at the time of trial, ..."

(see Doc. 50 p. 10 & 17) but he fails to explain or state any reason as to why he failed to introduce such highly exculpatory evidence into Walton's trial.

As this court has stated, the "Principal concern" is not whether as counsel may claim, his conduct was strategic, but rather whether the investigation supporting his decision... was itself reasonable... Strickland does not establish that a cursory investigation automatically justifies a tactical decision..." see Wiggins v. Smith 539 U.S. 2522-23 (emphasis in original) The Fifth Circuit has observed, "It is axiomatic -- particularly since Wiggins -- that [counsel's] decision cannot be credited as calculated tactics or strategy unless it is grounded in sufficient facts, resulting from an investigation that is at least adequate for that purpose." Lewis v. Dretke, 355 F.3d 364, 368 (5th Cir. 2008) (emphasis added); Horton v. Zant, 941 F.2d 1449, 1462 (11th Cir. 1991).

Here, as stated Brown has provided no insight into why he did not consider Walton's arrest when the crime was alleged was relevant. It is clear from the record that J.E. was age ~~two~~ 2 when placed into CPS custody and was not released

until 3 months after Walton's incarceration for the charge in State's Exhibit #9. (see EXHIBIT-6)

Counsel's Failure to Call Expert Witnesses

Petitioner asserted in his § 2254 Petition that his counsel was ineffective for failing to hire an expert witness to exploit the findings of differing medical opinions.

The record reveals that the complainant's mother had taken her to medical doctors on two occasions.

Her first exam was conducted by Dr. Eachompati whom found that complainant's vaginal area appeared unusually bigger, with allegations of suspected sexual abuse in foster care. (see EXHIBIT - 7)

Her second exam was conducted at Texas Childrens Hospital - TCH - in which findings upon her genitalia were:

There was no indication on the examination of her genitalia anus, and perianal tissues today that she has been sexually abused. However, this does not preclude the possibility that she has been sexually abused.

Yet, the same report reveals in its Comments - Very large LIR at 6 o'clock attached to the hymen at 5 o'clock. The inner edge was continuous without breaks or tears. (EXH. - 7, 62)

The district court adopted the state court findings based on Brown's affidavit in which his purported strategy was: "Counsel did not believe that hiring an expert on the subject of sexual abuse for trial would have been helpful; because his experience has been that experts

in this area are often a double-edged sword with regard to symptoms and signs of sexual abuse.

(See Document 50 p.12 at 33)

Walton relied on the cases of Lindstadt v Keane, 239 F3d 191 (2nd Cir. 2001); EZE v Senkowski, 321 F3d 110 (2nd Cir. 2003); Pavel v Hollins, 261 F3d 210 (2nd Cir. 2001) and Williams v Washington, 863 F. Supp. 2d 697 (N.D. Ill. 1994) (also found 2 59 F3d 673 (7th Cir. 1995) -affirmed) to support his arguments on this claim.

In the District Courts motion for Summary Judgment it stated, that Walton's claims were conclusory and should be denied, relying on Dodd v Estelle, 661 F2d 388, 390 (5th Cir. 1991) quoting Bucklew v United States, 575 F2d 515, 521 (5th Cir. 1978), which proposes that uncalled witnesses are not favored.

In contrast, the cases of Lindstadt, supra, EZE, supra, and Pavel, supra, all highlight the importance of expert testimony in child sex abuse cases in light of effective representation. Walton avers, counsel Brown's representation could not have been effective, as Strickland is to be determined on a case-by-case basis. Brown basing his strategy on past experience when medical reports differed suspecting sexual abuse in C.P.S. custody-(foster care) without at least seeking out a medical expert to make an informed decision, based on what the expert could provide to the defense is objectively unreasonable. see Holsmback v White, 133 F3d 1382,

1387-89 (11th Cir. 1998) (holding that counsel may be found to be ineffective for failure to conduct adequate investigation into medical evidence of sexual abuse); Kottv. Mahay, 671 F.2d 1208, 1212-13 (8th Cir. 1982) (noting counsel may be found to be ineffective for failing to consult an expert where "there is substantial contradiction in a given area of expertise," or where counsel is not sufficiently "versed in a technical subject matter ... to conduct effective cross examination."); cf. Jucker v. Fed 7581 (holding that, in a complex case of fraud, "it should have been obvious to a competent lawyer that the assistance of an accountant [was] necessary.")

Here, as in Lindstadt, Walton argues, with the evidence of the scarring and an unusually bigger vagina, Counsel's reliance on past experiences amounts to not even contacting an expert to educate himself on the vagaries of abuse indicia, see generally Beth H. Townsend, Defining the "Invisible": A Primer to Defending Allegations of Child Abuse, 45 A.F.L. Rev. 261, 270 (1998) (It is difficult to imagine a child abuse case ... where the defense would not be aided by the assistance of an expert).

Walton argues, that the District Court's failure to consider the expert publications listed in Lindstadt @ 201-203 n.2 unreasonable application of the facts, Miller, supra, Walton's defense was prejudiced as it lead counsel Brown to conclude that there was no evidence in the medical reports of relevance, because of the delayed outcry, (see Document 50 p.10-13) Had counsel Brown hired an expert through expert testing procedures he may have been able to produce and discover evidence of the exact or nearly the

exact time of the abuse. Here, Walton contends that counsel Brown's failure to consult with an expert allowed the state's prosecution to dress up the weak and inconclusive physical evidence, during closing arguments stating: "Well, maybe it happened in foster care. ... Whatever, it's inconclusive and you know why it's inconclusive."
(SEE EXHIBIT - 8 P. 20)

See Holcomb, 133 F.3d 1388 (holding that in a case turning on credibility, the failure to adequately investigate the physical evidence concerning whether sexual abuse occurred prejudiced the defendant) cf. Chater v White, 858 F.2d 1479, 1487 (11th Cir. 1988) (holding that failure to make warranted motion to exclude damaging circumstantial evidence prejudiced the defendant.)

Here, there was no evidence of - and some evidence of - sexual abuse through two different doctors exams, the complaining witness's recantation of the allegation in court, and the contradicted and explained away evidence the state put forth as coaching a recant - simply put there was no evidence to convict Walton on.

The Fifth Circuit's adoption of the U.S. District Court's denial based on the credibility determinations of the state court where unreasonable applications of Skidland and its progeny, Williams v Taylor, supra, and Wiggins v Smith, supra and unreasonable determinations of facts, see Miller-EL v Cockrell, supra, cf. Hart v Gomez, 174 F.3d 1067, 72-73 (9th Cir. 1999)

Failure To Object To Improper Prejudicial Closing Arguments

Because this claim is intertwined with the question of whether the Fifth Circuit erred affirming the denial of Walton's § 2254 Petition, when it found the U.S. District Court applied the correct legal standard in reviewing Petitioner's Prosecuted Misconduct claims, related to unobjected-to improper closing arguments, Question #2, Walton

argues that in concert, because finding that the complained of argument results in plain-error, it will necessitate a finding of ineffective assistance of counsel. see *Habeas Hurley*, 426 F3d 368, 386-88 (6th Cir. 2005) (relying on *Washington*, 228 F3d 2705; *Martin v. Parker*, 11 F3d 613, 616-17 (6th Cir. 1993); *Strickland*, 543 U.S. 26, 54; and *Williams v. Taylor*, 529 U.S. 362, 412-13, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000)) finding counsel ineffective for failing to object to improper Presidential Districts argument and Court's finding it was not an unreasonable application of AEDPA standard)

II. Whether the Fifth Circuit Court erred affirming denial of Petitioner's 32254 petition, when it found the U.S. District Court applied the correct legal standard in reviewing Petitioner's prosecutorial misconduct claims, related to undisclosed to improper closing arguments, and failure to grant G.O.A. unreasonable.

Petitioner asserted in his state 1107 application and his 32254 motion that the complained of argument resulted in plain-error. The state court deemed the claim procedurally defaulted. (see Doc. 50 p. 142-46) Walton advanced the claims in his 32254 motion with the U.S. District Court who held, "Each of these claims was rejected on the merits by the Texas Court of Criminal Appeals. That rejection, both with or without the state trial court's findings of fact and conclusion of law, was not contrary to, or based on an unreasonable application of clearly established Federal law or based on an unreasonable determination of the facts in light of the evidence in the state court proceedings. (see Document 50 p. 23)

Relying on Styron v Johnson, 262 F3d 438, 449 (5th Cir. 2001) cert. denied, 543 U.S. 1163 (2002), the U.S. District Court denied the claim.

The Styron court held, "the comments did not so infect the trial with unfairness as to deny due process. The Court's decision rested on the contents of statements made by a witness during the guilt-innocence phase of trial.

In contrast here, Walton's claims addressed statements made during the Prosecution's closing summations, which were not objected-to.

The Fifth Circuit made it clear in U.S. v Garcia, 522 F3d 597, 600 at n.2 (2008) the proper standard of review to be used to unobjected-to improper comments, is the Plain-error standard, see also United States v Gallardo-Trapedo, 185 F3d 307, 322 n.7 (5th Cir. 1999) (holding that Plain-error review applied because defendant's attorney's objection although raised was based on topic unrelated to matter on appeal); cf. United States v Fields, 483 F3d 313, 360 (5th Cir. 2007) (citing Gallardo-Trapedo 185 F3d 2321) (In contrast, the trial court's admission of objected-to comments are reviewed for abuse of discretion, which involves two steps: 1) we must first find whether the prosecution made an improper remark and, 2) if an improper remark was made, we must determine whether the remark affected the substantial rights of the defendant. Id. 2358 (citing United States v Insulgrat, 378 F3d 456, 461 (5th Cir. 2004) cert. denied, ___ U.S. ___, 128 S. Ct. 1065, 169 L.Ed. 2d 814 (2008)).

The Fifth Circuit should have evaluated Petitioner's claim under the Plain-error standard of review.

Federal Rule of Criminal Procedure 52(b) provides:

Plain Error. A plain error that affects substantial rights may be considered even though it was ~~brought~~ not brought to the court's attention.

Under this rule federal appellate courts have "a limited power to correct errors that were forfeited because [they were] not timely raised in the district court." see

United States v. Diano, 507 U.S. 725, 731, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993) An appellate court must look to "(1) error, (2) that is plain, and (3) that affects substantial rights." United States v. Cotton, 535 U.S. 625, 631, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002); San. v. U.S., 520 U.S. 461, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997); U.S. v. Mares, 402 F.3d 511, 520-21 (5th Cir. 2005).

Walton contends that the "entire argument" of the prosecution was prejudicial and violative through misrepresentations of record evidence which amounted to false argument and bolstering of its witnesses testimonies as part of the investigative teamwork to prove the claimants duty as 100% faithful.

Respondents argue the comments were summation of evidence, while Walton contends they were violative - plain error.

The prosecution begin its bolstering in its opening - "You've got to pick who was telling the truth and when" ... exactly what your job is." [See EXHIBIT - 8 p. 5] and then continuing with its first misrepresentation of record evidence, that suggest she assesses some type of knowledge outside of the record of "what this child was going through ... she is still trying to please her mother ~~and this man~~ ... and she is still trying to please him, her abuser and her rapist." [See EXH. - 8 p. 16]

Proper argument must encompass reasonable deductions drawn from the evidence at trial. see GARCIA v. State, 845 SW2d 824 (Tex. Crim. App. 1992); UNITED STATES v. SWEETSHIRTS, 107 F.3d 1405, 1409.

Walton contends the Prosecutions averring that the ring was given as a promise of trying to Please is contrary to the record testimony of the complainant and her mother. She, the Complainant testifies she asked to wear the ring on her way to court (RR. 4p. 113) and the mother testifies that she gave her that specific ring because it was the only one that fit the complainant's finger, out of the five she had on. (RR. 4p. 149-50) This misrepresentation lead to the next plain-error comment.

"... she will lie. She never took her daughter and said, 'Oh yeah, She says that somebody abused her.' ... She flat out lied to you when she said, 'I went in and said, 'Oh yeah, she said she was abused. No, it didn't happen.'" [see EXHIBIT-8 P. 17 Lines 8-18]

This argument is violative in two areas, first, It is recognized that it is highly improper for the government to refer to a defense witness as a liar. see United States v Cooper, 827 F2d 991, 995 (1987) When a Prosecutor calls a defense witness a liar, he engages in an improper excess of advocacy, United States v Moore, 710 F2d 157, 159 (1983)

This argument further is contrary to defense exhibit #1, ~~the~~ [EXHIBIT-7] which clearly evidence the motion had taken the child to doctors with complaints of sexual abuse. see also (RR. 4p. 144) This misrepresentation was a Present ment of false statements to impeach defense witness, and because the jury heard that Wilson was Walton fiancee (RR. 4p. 135) such argument can be likened to law in Harrison 716 F2d 1052, of impeachment with prior conviction - in this case, the mothers drug use see [EXHIBIT-8 P. 19 Lns. 3-9] which caused C.P.S. Placements in foster-care. [see EXHIBIT-7] as highly prejudicial. see Fed. Rule EVIDENCE - 609 advisory committee n. 3 Weinstens and Berser, Weinstens Evidence 1609 [04] 609-659 (1992); Giglio v United States, 405 U.S. 150, 153, 92 S.Ct. 763, 766, 31 L.Ed. 2d 104 (1972)

Such argument of the mothers drug use as "an abandonment" of her children so that she could get clean [See EXHIBIT-8 p. 19 & 3-10] was used to produce prejudice to Walton. Harrison, supra.

Within the complained of argument the prosecution also begin its bolstering of the investigation, "All of us know, and I guarantee ... every teacher, every doctor, every nurse ... You must call the authorities. (EXHIBIT 8 p. 17 lvs 13-15) Then, "You heard it from Kim - (states Paralegal) - You heard what Juron's never get to ~~the~~ hear, which is the process, some of the process behind what we're doing." [EXHIBIT-8 p. 18 lvs. 9-11]

"Nobody's ever asked her about that before. That's something that had never been asked - heard before because it hadn't been asked." [EXH. - 8 p. 19 lvs. 22-24]

"I asked her questions intentionally that she had never been asked before never." [EXH. 8 p. 22 lvs. 6-7]

You know, I've and Dr. Rambur told you about all the things, what they are looking for." [Id p. 22 & 17-18]

The Prosecution intertwined her personal beliefs about the complainant's trial testimony by misleading the jury to believe the complaining witnesses testimony was 100% true and "relied" on the stand because of "questions that had never been asked before."

However, a careful review of the record will reveal that the complaining witness was asked, "by the prosecutor, "All right.

And do you remember all the things that you told that lady?"

"Yes", All right. And what did you tell that lady had happened."

[See EXHIBIT 8 p. 79] and being lead by the prosecution with questions that presupposed the tense of presence sense

"How?" "And how did that happen?" "Where were you when it happened."

To which the complaining witness being lead by the prosecution gave a detailed description of 'what she had told that lady' on the video-taped interview taken by Iree Syon.

Further review of the record will exhibit that at the end of the descriptive testimony the complainant was asked.

" Now, those are all the things that you told Iree, that lady in the room, right? " [EXHIBIT- 9 p. 90 22-3]

Thus, the prosecution arguing that J.E. "relived" the abuse on stand was gross mischaracterization to identify herself and its witnesses as part of the investigation.

It has been held that the use of "us" and "we" to refer to steps taken in the investigation ran a foul of the "witness-advocate rule" as well as the "vouching" rule. see Hermanek, 289 F3d 1076, 1078-79, here by identifying themselves as participants in the criminal investigation, the prosecutor assumed a witness-like role in addition to serving as advocates. see also United States v Franklin, 764 F2d 548 (1985)

The prosecution continued to violate the "witness advocate" and "vouching" rules by stating that J.E's outcry was an "accidental disclosure", as, - "another way that "we" know that what she told Iree Syon on that day and what she "relived for you" yesterday" is absolutely 100 percent true" and that it happened absolutely at the hands of this man." (EXHIBIT 8 p. 24 25-8.)

She continued by suggesting to the jury that it, "could convict based on the testimony of forensic interviewer" who testified to what the complainant had stated in the video-taped interview shown to the complainant before trial, IREE. (EXH. 8 p. 26 214-15)

A Prosecutor may not impart to the jury his personal belief that a Government witness is credible. United States v. McKay, 771 F2d 1207, 1210 (9th Cir. 1985)

Other mischaracterizations from the evidence which amount to Giglio violations were the Prosecutions Presentment that the complaining witness J.E. had not told her school teacher that her allegation was not true. (see EXHIBIT 8 p. 25 Ln. 1 - p. 26 Ln. 3)

Walton argues, because the complainant had testified that she had in-fact told her teacher that she had not told the truth, during the Prosecutions Questioning, to present such to the jury in relation to the recantation was only to use her assessment of the complainant's testimony (imprimatur). (see EXHIBIT 9 p.)

In ending her summation the Prosecution incited the passions of the jury by speculating about the evidence that a "7-year old can't make this stuff up" (EXH. 8 p. 23 Ln. 4-9) (Id. p. Ln. 20-25)

"We clean up the word now, and the charge is called sexual assault of a child. What does that mean now? Because that's a pretty trite phrase. It means rape of a kid. It means ~~violating~~ defiling the mind of a little kid because it doesn't go away ever, ever. (EXH. 8 p. 24)

"It's in your hands. ... It is Joy's reality. And it is all of our reality. And I'm asking you now, please find him guilty because it is the ~~right~~ just thing to do, it is the right thing and because this man is guilty of aggravated sexual assault of a child.

As argued every aspect of the closing arguments were calculated to inflame the passions and prejudices of the jury through various misrepresentations of the evidence, resulting in Plain-error vouching/bolstering.

This Court, in oft-quoted passage from Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935) has long held that it is as much the Prosecution's duty to refrain from foul blows, and it is not just for the Prosecution to win a case, but that justice shall be done, and as a servant of the law his duty is two-fold of which is that guilt shall not escape or innocence suffer. ... Consequently, improper suggestions, insinuations, and especially, assertions of personal knowledge are apt to carry much weight against the accused when they should carry none.

The Fifth Circuit has long acknowledged this double-burden which the U.S. attorney carries as set forth in Berger v. United States, 419 F.2d 582, 588 (5th Cir. 1969); Handford v. United States, 249 F.2d 295, 296 (5th Cir. 1957); United States v. Young, 470 U.S. 1, 18-19, 105 S. Ct. 1038, 84 L. Ed. 2d 1 (1985); Gracia, 522 F.3d 2602 (5th Cir. 2008).

It has also been held by this Court that argument which exerts the jury to 'do its job', be it by defense or prosecution is error. See Young, 470 U.S. 25-6; 28; 30.

Walton contends, this Plain-error comments affected his substantial rights to a fair trial. There was no physical evidence in which to convict Walton. The Prosecution cited to evidence of promised gifts of ring, dollhouse, new house & car and trips to country with family, but each of these were explained away as evidence talked of before the allegation was made. (RR. 4P. 146)

It is clear that the Prosecution's arguments had an adverse effect on the jury. - In light of testimony that the complainant's ~~and~~ biological father caused problems for the mother's new boyfriends (RR. 4P. 185); that the complainant reconciled (ExH. 9P. 98-99); that Walton was serving state-jail at time offense alleged see ExH. - 6; that jury was concerned about how J.E. had "He did v. Charles did" (ExH. - 10) with one juror at odds.

Point is it was only the complainant's testimony that could convict Walton, and without the Prosecution's use of improper tactics there is a reasonable likelihood the outcome of trial would have been different, and cast serious doubt on the jury's verdict. see United States v Holmes, 406 F3d 337, 356 (5th Cir. 2005) (internal quotation marks & citations omitted); United States v Cotton, 535 U.S. 625, 631, 127 S. Ct. 1781, 152 L. Ed. 2d 860 (2002)

Here, the Fifth Circuit applied the incorrect legal standard and erred failing to grant Walton a C.D.A. and relief in his § 2254 petition, as the court's ruling is at odds with OLANDE, supra, COTTON, supra, Berger, supra, and Young, supra.

Petitioner argues, further that because he relied on Wiggins v Smith, 539 U.S. 522 (2003), Montgomery v Peterson, 846 F2d 407, 412 (7th Cir. 1988), NEALY v Cabana, 764 F2d 1173 (5th Cir. 1985) and other cases cited within his request for Certificate of Appealability, the Fifth Circuit erred in failing to grant a C.D.A. on all issues of Ineffective Counsel and Prosecutorial Misconduct and Abuse of Discretion Claims. (see C.D.A. EXHIBIT - 11)

Walton contends, the Court erred because it never took time to read the request or to apply the correct review of a threshold manner, to see if Walton listed any courts as jurist of reason. The Slack v McDaniel, court made it clear, "the Petitioner need not show that he would prevail on the merits, but must demonstrate that the issues are debatable among jurist of reason or that the questions are adequate to deserve encouragement to proceed further. 529 U.S. 473, 484 (2000)

(b) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Here, Walton contended that he was not afforded a full and fair hearing in the state court, because he presented affidavits from Mary Walton, Latoya Wilson, Isabel Cain, and Ina Scarlett, with M. Walton's and L. Wilson's affidavits directly disputing his trial counsel's affidavit.

[See EXHIBITS 2 and 3]

The Fifth Circuit Court has reviewed such claims as an abuse of discretion. see MURPHY V. JOHNSON, 205 F3d 809 (5th Cir. 2000); McDonald V Johnson, 131 F3d 1056, 1059 (5th Cir. 1998)

Walton contended that because his trial counsel failed to contact and interview before trial Latoya Wilson, he was unable to place before the jury evidence that the complaining witness, was coached by her biological father to make the allegation of sexual abuse to school authorities, only after an altercation he had with Walton, and that a finding that he did not contact this witness before trial to ascertain a need to present such evidence at trial he was ineffective.

When there is a "factual dispute" [that] if resolved in the petitioner's favor, would entitle [him] to relief and the state court has not afforded the petitioner a full and fair hearing, "a federal habeas corpus petitioner is entitled to discovery and an evidentiary hearing. Ward V Whitley, 21 F3d 1355, 1367 (5th Cir. 1994) cert. denied. — U.S. — 115 S. Ct. 1237.

In the instance of whether Petitioner Walton's counsel was ineffective for failing to object to prejudicial closing arguments, Walton contends, because he relied on the 6th Circuit decision of Hodge v Hurley, 426 F3d 388, a case where counsel was ineffective for failing to object to the closing arguments in a case of sexual abuse, in his C.D.A. request (see EXHIBIT-11 P.15) A. C.D.A. should have issued by the Fifth Circuit court.

- 3.) The Fifth Circuit Court erred affirming the denial of Walton's § 2254 Petition where the District Court failed to conduct an evidentiary hearing to resolve the factual dispute of whether Walton's counsel contacted People on witness list which Walton gave him, where record "conclusively shows Walton presented affidavits that his counsel did not contact People, to conclusively establish facts warranting relief under § 2254, and entitling Walton to an evidentiary hearing.

Section 2254 Provides:

- (e)(1) in a proceeding instituted by application for a writ of habeas corpus by a person in custody pursuant to a judgment of a State Court, a determination of a factual issue made by a State Court shall be presumed correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.
- (2) if the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that -
- (A) the claim relies on -
- (i) a new rule of constitutional law ... or
 - (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

131 L.Ed. 2d 137 (1995) Yom v. Henry, 938 F.2d 543, 560 (5th Cir. 1991) cert. denied, 503 U.S. 940, 112 S.Ct. 1485, 117 L.Ed.2d. 627 (1992)

Walton contends that such presumption of correctness to the state courts findings do not apply to questions of fact and law, such as an ineffective assistance of counsel claim. see, Koch v. Puckett, 907 F.2d 524, 527 (5th Cir. 1990); Carter v. Collins, 918 F.2d 1198, 1202. (5th Cir. 1992)

Courts have found that a "paper hearing" such as here adequate to resolve factual issues, see Armstead v. Scott, 37 F.3d 202, 207 (5th Cir. 1994) However, "it is necessary to examine in each case whether a paper hearing is appropriate to the resolution of the factual dispute underlying the petitioner's claim." May v. Collins, 955 F.2d 299, 312 (5th Cir. 1992)

In Nothman v. Collins, 993 F.2d 1154, 1157 n.8 (5th Cir. 1993) cert. denied, ___ U.S. ___, 114 S.Ct. 1416, 128 L.Ed.2d 87 (1994), the court held that because the state habeas judge was not the judge at the state trial, the paper hearing was not adequate and a fair hearing.

Here, Walton contends that because the trial judge in this instant matter was Donald Strickland (see EXHIBIT - 10) and the habeas court's judge was H. Renee Magee (Mager) - (see Appendix -) the paper hearing in this case should not have been afforded the presumption of correctness, see Vuong v. Scott, 62 F.3d 673, 683-84 (5th Cir.) ; Perillo v. Johnson, 79 F.3d 441, 447 (5th Cir. 1996) (Finding because the habeas judge could not supplement the affidavits with his own recollection of the trial and Walton's performance in it, there was danger of "trial by affidavit" Ans. 61 F.3d 9347)

Thus, Petitioner Walton was entitled to an evidentiary hearing in this matter. Nathaniel v Collins, 993 F2d 1154, 1157, n.8. (5th Cir. 1993); MAY v Collins, 955 F2d 2314; Perillo v Johnson, 79 F3d 441, 444 (5th Cir. 1996) (quoting Ward v White, 21 F3d 1355, 1367 (5th Cir. 1994)); see also Harris v Nelson, 394 U.S. 286, 89 S. Ct. 1082, 22 L. Ed. 2d (1969)

Conclusion

Petitioner Walton has been deprived of basic fundamental rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and seeks relief in this Court to restore such rights. Based on the arguments and authorities presented herein, Petitioner's conviction was sustained in violation of due process because he has not been afforded fair and proper due process. He has been convicted on false allegations of sexual abuse, and has been denied the effective counsel as guaranteed by the Sixth Amendment and due process as the Fifth and Fourteenth Amendments call for. This petition should be granted.

If this Court elects not to address the issues presented in this petition at this time, it is requested that the writ issue and the matter be remanded to the Fifth Circuit Court of Appeals for consideration in light of this Court's opinion in Strickland, Wiggins, Slack v McDaniel, and Harris v Nelson, all supra.

Wherefore, Petitioner prays, that in interest of justice, the Court will issue a writ of certiorari and reverse the judgment of the Fifth Circuit Court of Appeals.

Respectfully Submitted,



CHARLES RAY WACTOL #1356490
SMITH UNIT L-121B
1513 CR 19
LAMESA, TEXAS 79331
PRO SE REPRESENTATION

JUNE 5, 2018

CERTIFICATE OF COMPLIANCE

CHARLES RAY WACTOL - PETITIONER
VS.
LOUIE DAVIS - RESPONDENT

I CERTIFY THAT THIS PETITION FOR WRIT OF CERTIORARI CONTAINS APPROXIMATELY 6800 WORDS, AS SUPREME COURT RULE 33.1, AND 33.1(i) REQUIRES, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.
EXECUTED ON THIS THE 5, DAY OF JUNE 2018.

