

No. 22-5468

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

BENJAMIN LAWRENCE PETTY — PETITIONER
(Your Name)

vs.

STATE OF OKLAHOMA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OKLAHOMA COURT OF CRIMINAL APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BENJAMIN LAWRENCE PETTY
(Your Name)

LCRF/7-CHARLIE-105
(Address)

8607 SE FLOWER MOUND RD
(City, State, Zip Code)

N/A (PRISONER)
(Phone Number)

QUESTION(S) PRESENTED

PLEASE SEE ATTACHED BRIEF.

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:

RELATED CASES

PLEASE SEE ATTACHED BRIEF.

TABLE OF CONTENTS

OPINIONS BELOW	II
JURISDICTION.....	III
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	IV
STATEMENT OF THE CASE	V, XE, XIV
REASONS FOR GRANTING THE WRIT	VIII
CONCLUSION.....	1-20
	21

INDEX TO APPENDICES

APPENDIX A DECISION OF STATE COURT OF APPEALS: THE OH.
COURT OF CRIMINAL APPEALS "SUMMARY OPINION"

APPENDIX B SEE ATTACHED BRIEF

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

PLEASE SEE ATTACHED BRIEF

STATUTES AND RULES

OTHER

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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 A 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☒ is unpublished.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☐ is unpublished.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 _____.

☐ 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: _____, 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. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was JUN 9, 2022.
A copy of that decision appears at Appendix A.

☐ 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

PLEASE SEE ATTACHED BRIEF IN SUPPORT

IN THE SUPREME COURT OF THE

UNITED STATES

ORIGINAL

MR. BENJAMIN LAWRENCE PETTY
PETITIONER,

VS.

STATE OF OKLAHOMA
RESPONDENT.

NO.

Supreme Court, U.S.
FILED

AUG 23 2022

OFFICE OF THE CLERK

IN REGARDS TO:

OKLAHOMA COURT OF CRIMINAL APPEALS
CASE NO. F-2020-805

MURRAY COUNTY, OKLAHOMA, CASE NO.
CF-2016-159

PETITION FOR WRIT OF CERTIORARI

AND BRIEF IN SUPPORT

ON PETITION FOR A WRIT OF

CERTIORARI TO OKLAHOMA COURT OF

CRIMINAL APPEALS

FILED PRO SE :

MR. BENJAMIN L. PETTY #1785117
LCRF/7-CHARLIE-105
8607 SE FLOWER MOUND RD.
LAWTON, OK 73501

QUESTIONS PRESENTED

QUESTION I:

DOES REQUIRING A DEFENDANT TO BE A WITNESS AGAINST HIMSELF DURING POLYGRAPH EXAMS, A SPECIAL CONDITION OF PROBATION, VIOLATE DUE PROCESS AND THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

QUESTION II:

CAN A DEFENDANT'S DENIAL THAT HE COMMITTED THE CRIME DURING "SEX-OFFENDER POLYGRAPH TESTING", A REQUIREMENT OF PROBATION, BE CONSIDERED GROUNDS FOR REVOCATION?

QUESTION III:

CAN A POLYGRAPH REPORT BE ENTERED AS EVIDENCE IN SUPPORT OF REVOCATION?

QUESTION IV:

CAN A POLYGRAPHER'S REPORT BE ENTERED AS EVIDENCE WITHOUT THE AUTHOR OF THE REPORT BEING PRESENT FOR CROSS-EXAMINATION?

QUESTION V:

DOES THE DENIAL OF A CONTINUANCE, FOR ADEQUATE TIME TO PREPARE A DEFENSE IN OPPOSITION TO POLYGRAPHER'S REPORT, RESULT IN STATE-INDUCED INEFFECTIVE ASSISTANCE OF COUNSEL?

QUESTION XI:

DOES THE TRIAL COURT HAVE THE AUTHORITY TO IMPOSE ADDITIONAL RULES AND CONDITIONS OF PROBATION, OR MANDATORY POST-IMPRISONMENT SUPERVISION, BEYOND THE SCOPE OF THE ORIGINAL PLEA AGREEMENT?

LIST OF PARTIES AND RELATED CASES

STATE OF OKLAHOMA: / BY AND THROUGH ATTORNEY GENERAL, MR. JOHN O'CONNOR (313 N.W 21ST ST., OKLAHOMA CITY, OK 73105)

PETITIONER PRO SE:

MR. BENJAMIN LAWRENCE PETTY / PRISONER AT LAWTON CORRECTIONAL FACILITY, 8607 SE FLOWER MOUND RD., LAWTON, O.K. 73501

RELATED CASES

- 1) STATE OF OKLAHOMA V. BENJAMIN PETTY, MURRAY COUNTY DISTRICT COURT CASE NO. CF-2016-159
- 2) STATE OF OKLAHOMA V. BENJAMIN PETTY, OKLAHOMA COURT OF CRIMINAL APPEALS CASE NO. F-2020-805 (ALSO SEE CASE NO. RE-2020-805).

TABLE OF CONTENTS

OPINIONS BELOW	II
JURISDICTION	III
CONSTITUTIONAL AND STATUTORY PROVISIONS	IV
STATEMENT OF THE CASE	V, XI, VI, VII
REASONS FOR GRANTING THE WRIT	1-20
CONCLUSION	21

INDEX TO APPENDICES

APPENDIX A:

DECISION OF STATE COURT OF APPEALS: THE OKLAHOMA COURT OF CRIMINAL APPEALS "SUMMARY OPINION", FILED JUNE 9TH, 2022.

APPENDIX B:

BRIEF OF APPELLANT IN DIRECT APPEAL OF THE REVOCATION OF PETITIONER'S SUSPENDED SENTENCES, FILED MAY 19TH, 2021.

APPENDIX C:

NOTICE OF EXTRA-RECORD EVIDENCE SUPPORTING PROPOSITIONS I, III, AND V OF BRIEF OF APPELLANT FILED MAY 19TH, 2021.

APPENDIX D:

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT (FILED BY THE OKLAHOMA AND NEW YORK INNOCENCE PROJECTS) FILED DECEMBER 13, 2021

INDEX TO APPENDICES CONT.

APPENDIX E:

BRIEF OF THE INNOCENCE PROJECT AS AMICUS CURIAE
IN SUPPORT OF APPELLANT (FILED BY THE OKLAHOMA AND
NEW YORK INNOCENCE PROJECTS), FILED DECEMBER 13TH,
2021.

JURISDICTION

- THE DATE ON WHICH THE HIGHEST STATE COURT (OKLAHOMA COURT OF CRIMINAL APPEALS) DECIDED THE CASE AT BAIL WAS JUNE 9TH, 2022.
- THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257(a).
- THE NINETY (90) DAY DEADLINE UNDER THE ABOVE STATUTE IS SEPTEMBER 9TH, 2022.

CITATIONS / STATUTORY PROVISION

<u>UNITED STATES V. SCHEFFER, 523 U.S. 30 (1998)</u>	<u>1, 2, 12, 14</u>
<u>UNITED STATES V. SOUNDINGSIDES, 820 F.2d 1232 (10TH CIR 1987)</u>	<u>1, 12</u>
<u>22 O.S. SUPP. 2019, § 991 a (A) (1)(ee)(10)</u>	<u>2, 6, 9</u>
<u>UNITED STATES V. CALL, 129 F.3d 1402 (10TH CIR. 1997)</u>	<u>2</u>
<u>GLOVER V. UNITED STATES, 531 U.S. 198 (2001)</u>	<u>5</u>
<u>BIRDSONG V. STATE, 1993 OK CR 14, 848 P.2d 580</u>	<u>5</u>
<u>IN RE COLLYAR, 1970 OK CR 48, 476 P.2d 354</u>	<u>6</u>
<u>WILSON V. STATE, 1981 OK CR 9, 624 P.2d 80</u>	<u>12</u>
<u>STICKLAND V. WASHINGTON, 466 U.S. 668 (1984)</u>	<u>15, 18</u>
<u>UNITED STATES V. CRONIC, 466 U.S. 648 (1984)</u>	<u>18</u>
<u>US. V. WATKINWRIGHT, 938 F.2d 1096</u>	<u>20</u>
<u>U.S. CONST. AMEND. XIV, VI, V</u>	<u>THROUGHOUT</u>

STATEMENT OF THE CASE

1. ON JANUARY 19, 2018, THE HONORABLE WALLACE COPPEDGE, DISTRICT JUDGE, ACCEPTED 36-YEAR-OLD, HIGH SCHOOL GRADUATE AND FIRST TIME FELON, MR. PETTY'S AGREED PLEA OF GUILTY IN MURRAY COUNTY DISTRICT COURT CASE NO. CF-2016-159, TO COUNT 1, FORCIBLE SODOMY, IN VIOLATION OF OKLAHOMA STATUTE, TITLE 21 O.S. SUPP. 2016, § 888 (A)(B)(3), COUNT 2, RAPE IN THE FIRST DEGREE, IN VIOLATION OF 21 O.S. 2011, § 1114 (A)(1), AND COUNT 3, RAPE BY INSTRUMENTATION, IN VIOLATION OF 21 O.S. SUPP. 2015, § 1111.1 (A).
2. THE COURT IMPOSED A 15-YEAR SUSPENDED SENTENCE FOR EACH COUNT, ALL RUNNING CONCURRENTLY. THAT SAME DAY, MR. PETTY PAID IN FULL THE \$2,151.50 TOTAL ASSESSED FINES AND COSTS.
3. ON MARCH 13, 2020, JUDGE COPPEDGE RECUSED AND REFERRED THE CASE FOR REASSIGNMENT TO DISTRICT JUDGE DENNIS MORRIS, WHO ON MARCH 30, 2020, ENTERED AN ORDER RETAINING.
4. ON AUGUST 10, 2020, JUDGE MORRIS ISSUED A BENCH WARRANT ON THE STATE OF OKLAHOMA'S MOTION TO REVOKE THAT WAS NOT FILED UNTIL THREE DAYS LATER, ON AUGUST 13, 2020.

5. THE STATE'S APPLICATION TO REVOKE ORDER SUSPENDING EXECUTION OF SENTENCE, ALLEGED THAT PETITIONER (MR. PETTY) BROKE "SPECIAL CONDITION G" OF THE RULES AND CONDITIONS OF PROBATION THAT REQUIRED:

"SEX OFFENDER COUNSELING OR EQUIVALENT AS DIRECTED BY THE OFFICER OR SERVICE PROVIDER AND PROVIDE WRITTEN PROOF OF ATTENDANCE AS DIRECTED".

6. THE STATE ALLEGED THAT THE FIRST "TREATMENT PROGRAM" ISSUED A TREATMENT FAILURE DUE TO THE FACT THAT THE PETITIONER DENIED COMMITTING THE CRIME DURING TWO "POLYGRAPH TESTS". A SECOND-SUBSEQUENT TREATMENT PROGRAM ISSUED A "TREATMENT FAILURE" WHEN MR. PETTY CONTINUED TO DENY THE CRIME.

7. ON OCTOBER 23, 2020, A HEARING WAS HELD BEFORE THE HONORABLE DENNIS MORRIS, DISTRICT COURT JUDGE. THAT SAME DAY, DEFENSE ATTORNEY BRETT MORTON FILED AND ALLEGED A "MOTION TO CONTINUE HEARING", SHOWING THAT THE OKLAHOMA INDIGENT DEFENSE SYSTEM WAS ONLY APPOINTED TO REPRESENT THE PETITIONER ON FRIDAY, OCTOBER 9, 2020, AND THAT COUNSEL'S OFFICE RECEIVED NOTICE OF THE APPOINTMENT THE FOLLOWING MONDAY/TUESDAY - OCTOBER 12TH OR 13TH.

8. DEFENSE COUNSEL AND PETITIONER FIRST ARRANGED TO SPEAK BY PHONE ON OCTOBER 21ST, 2020 - TWO DAYS BEFORE THE REVOCATION HEARING.

9. DEFENSE ARGUED THAT THEY NEEDED MORE THAN TWO DAYS TO DEFEND AGAINST THE STATE'S ALLEGATIONS. SPECIFICALLY, DEFENSE NEEDED MORE TIME TO PRESENT THE TESTIMONY OF PRO-BONO POLYGRAPH EXPERT (BASED OUT OF THE NETHERLANDS), MR. GEORGE MASCHKE.
10. NOT ONLY DID THE CONTINUANCE MOTION MAKE CLEAR THAT ADDITIONAL TIME WAS NEEDED, THE MOTION ALSO STATED:
"EVIDENCE EXISTS WHICH WOULD PROVE THAT THE POLYGRAPH EXAMINATIONS ARE NOT SCIENTIFICALLY RELIABLE, WERE NOT ADMINISTERED IN ACCORDANCE WITH ACCEPTED PRACTICES AND METHODS AND SHOULD NOT BE THE BASIS OF SUCH REVOCATION"
11. THE COURT DENIED THE REQUESTED CONTINUANCE, AND ALLOWED THE STATE TO PRESENT ITS CASE. IN CLOSING, DEFENSE COUNSEL STRESSED THE DEFENSE EVIDENCE THAT WOULD SHOW THAT THE POLYGRAPH EXAMS, WHICH GAVE RISE TO THE "TREATMENT FAILURE" WERE SCIENTIFICALLY UNRELIABLE.
12. THE STATE CLAIMED THAT THE REVOCATION WAS NOT RELATED TO THE POLYGRAPH TESTING (DESPITE ENTERING THE POLYGRAPH REPORTS INTO EVIDENCE TO SUPPORT THEIR CLAIM), INSTEAD THEY CLAIM THAT THE PETITIONER FAILED TREATMENT BY DENYING THE CRIME DURING THE POLYGRAPH TESTS. AND THEREFORE VIOLATED "SPECIAL CONDITION G" OF HIS RULES AND CONDITIONS OF PROBATION.

13. ON THIS BASIS, THE COURT SUSTAINED THE STATE'S MOTION AND REVOKED MR. PETTY'S CONCURRENT 15-YEAR SUSPENDED SENTENCES IN FULL.

14. MR. PETTY APPEALED THE ORDER TO THE OKLAHOMA COURT OF CRIMINAL APPEALS (CASE NO. RE-2020-805) ON MAY 19, 2021. IN THIS APPEAL, COUNSEL RAISED FIVE PROPOSITIONS OF ERROR (PLEASE SEE ATTACHED APPENDICES A-E):

PROPOSITION I:

MR. PETTY WAS DENIED DUE PROCESS OF LAW AND A FAIR HEARING BY THE STATE'S USE OF POLYGRAPH RESULTS TO SUPPORT REVOCATION OF HIS SUSPENDED SENTENCES.

PROPOSITION II:

AS MR. PETTY'S DENIAL AND INABILITY TO DETAIL THE ORIGINAL OFFENSES DID NOT VIOLATE HIS TREATMENT PARTICIPATION RULE AND CONDITION OF PROBATION, REVOCATION ON THIS BASIS MAY NOT STAND.

PROPOSITION III:

MR. PETTY'S REVOCATION HEARING WAS RENDERED FUNDAMENTALLY UNFAIR, BY THE COURTS DENIAL OF THE REQUESTED CONTINUANCE NECESSARY TO GUARANTEE HIS CONSTITUTIONAL DUE PROCESS RIGHTS TO PRESENT HIS SECURED EXPERT WITNESS AND EVIDENCE IN HIS DEFENSE.

PROPOSITION IV:

ALTERNATELY, DENIAL OF THE REQUESTED CONTINUANCE ROBBED APPELLANT OF ADEQUATE TIME TO PREPARE HIS DEFENSE, RESULTING IN STATE-INDUCED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE REVOCATION HEARING.

PROPOSITION V:

AS MR. PETTY'S CONCURRENT SUSPENDED SENTENCES WERE REVOKED IN FULL, THE COURT LACKED AUTHORITY TO IMPOSE ADDITIONAL RULES AND CONDITIONS OF PROBATION OR FOR MANDATORILY POST-IMPRISONMENT SUPERVISION.

15. ON JUNE 9, 2022, THE OKLAHOMA COURT OF CRIMINAL APPEALS AFFIRMED MURRAY COUNTY DISTRICT COURT CASE NO. CF-2016-159 (PLEASE SEE ATTACHED EXHIBIT/APPENDIX A).
16. THE COURT RULED THAT THE REVOCATION WAS ENTIRELY BASED UPON MR. PETTY'S CONTINUED DENIAL THAT HE COMMITTED THE CRIME, THEREBY FAILING THE TREATMENT PROGRAM(S) - DESPITE THE FACT THAT THE DENIALS WERE COMMITTED DURING THE "INSTANT OFFENSE" POLYGRAPHS (PLEASE SEE ATTACHED APPENDIX C-E).
17. THE PETITIONER NOW PRAYS FOR A WRIT OF HABEAS CORPUS WITH THIS COURT AND BELIEVES THAT THE CONSTITUTIONAL RIGHTS OF THOSE WHO ARE REQUIRED TO CONFESS TO CRIMES DURING POLYGRAPH TESTING ARE BEING GREATLY VIOLATED - SPECIFICALLY THE V, VI, AND XIV AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

THEREFORE, THE PETITIONER HUMBLY BEGS THIS COURT TO ADDRESS THE FOLLOWING SIX QUESTIONS AND OFFERS THE COURT THE FOLLOWING FACTS IN SUPPORT:

REASONS FOR GRANTING THE PETITION

THE PETITIONER RESPECTFULLY MOVES THAT THE HONORABLE COURT AND JUSTICES CONSIDER THE FOLLOWING SIX (6) QUESTIONS. THIS COURT HAS VISITED THE USE OF POLYGRAPH EVIDENCE IN A CRIMINAL CASE BEFORE. SEE PROPOSITION I, APPENDIX B-E, ALSO UNITED STATES V. SCHEFFER, 523 U.S. 303, 306-308, 118 S. CT. 1261, 1263-1264, 140 L. ED. 2d 413 (1998); UNITED STATES V. SOUNDINGSIDES, 820 F.2d 1232, 1241-1242 (10TH CIR. 1987). HOWEVER, THE PETITIONER DOES NOT BELIEVE THAT THIS COURT HAS ADDRESSED THE QUESTION OF POLYGRAPHS DURING THE SENTENCE PHASE OF A CRIMINAL CASE. THE PETITIONER MOVES THAT REQUIRING A DEFENDANT TO DETAIL BOTH THE CRIME OF CONVICTION-OR EVEN OTHER CRIMES FOR WHICH HE HAS NOT BEEN TRIED, VIOLATES THE V, XIV, VI, AMENDMENTS. MOST NOTABLY THE RIGHT TO BE FREE FROM BEING COMPELLED IN "ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF".

THE PETITIONER HUMBLY PRESENTS THE FOLLOWING FACTS AND ARGUMENT IN SUPPORT:

QUESTION I:

DOES REQUIRING A DEFENDANT TO BE A WITNESS AGAINST HIMSELF DURING POLYGRAPH EXAMS, A SPECIAL CONDITION OF PROBATION, VIOLATE DUE PROCESS AND THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

THE PETITIONER MOVES THAT REQUIRING A DEFENDANT TO ANSWER QUESTIONS RELATING TO CRIMES THAT HAVE BEEN BOTH TRIED, OR NOT, DURING POLYGRAPH TESTING - A REQUIREMENT

OF OKLAHOMA'S SPECIAL CONDITIONS OF PROBATION, IS A VIOLATION OF CONSTITUTIONAL AMENDMENTS V, VI, XIV.

IN OKLAHOMA THE TOTAL COURT SHALL REQUIRE A DEFENDANT CONVICTED OF CERTAIN SEX OFFENSES TO PARTICIPATE IN A TREATMENT PROGRAM THAT INCLUDES, NOT LESS THAN EVERY SIX (6) MONTHS,:

"POLYGRAPHS SPECIFICALLY DESIGNED FOR USE WITH SEX OFFENDERS FOR PURPOSES OF SUPERVISION AND TREATMENT COMPLIANCE"

PLEASE SEE OKLAHOMA STATUTES 22 O.S. SUPP. 2019, 399(a)(1)(EE), AND (D). MR. PETTY FULLY COMPLIED WITH EVERY POLYGRAPH MANDATED BY HIS PROBATION OFFICER AND TREATMENT PROVIDER HE DID NOT REFUSE TO TAKE ANY OF THE 5 POLYGRAPHS HE WAS REQUIRED TO ATTEND FOR THE ALMOST TWO YEARS HE WAS ON PROBATION.

THIS COURT HAS NOTED THE LACK OF SCIENTIFIC CONSENSUS ON THE RELIABILITY OF POLYGRAPH TECHNIQUES AND RESULTS. SCHAEFFER, 523 U.S. AT 305-314, 317, 118 S. CT. AT 1263-1267, 1269 (THE JURY IS THE LIE DETECTOR; DEFENDANT PROPERLY PRECLUDED FROM PRESENTING EVIDENCE OF POLYGRAPH TESTS...); SEE ALSO UNITED STATES V. CALL 129 F.3d 1402, 1405-1406 (10th CIR. 1997) (EXCLUSIONAL POLYGRAPH EVIDENCE AS MORE PREJUDICIAL THAN PROBATIVE).

THE STATE'S APPLICATION TO REVOKE ALLEGED ONLY THAT MR. PETTY BROKE "SPECIAL CONDITION 6 OF HIS RULES AND CONDITIONS OF PROBATION" WHICH REQUIRED "SEX OFFENDER COUNSELING OR EQUIVALENT AS DIRECTED BY THE OFFICER OR SERVICE PROVIDER AND [THAT HE] PROVIDE WRITTEN PROOF OF ATTENDANCE AS DIRECTED".

MR. PETTY WENT TO EVERY COUNSELING APPOINTMENT - ATTENDED EVERY POLYGRAPH, PAID APPROXIMATELY \$1,000 IN POLYGRAPH FEES, AND PROVIDED WRITTEN PROOF THAT HE ATTENDED.

THE STATE'S "SPECIAL CONDITIONS 6" OF HIS RULES AND CONDITIONS OF PROBATION ONLY REQUIRED THAT HE ATTEND AND PROVIDE PROOF OF SUCH ATTENDANCE. HE DID THAT. THE ONLY THING HE DID NOT DO WAS CONFESS TO THE CRIME.

THE STATE ALLEGED THAT THE FIRST TREATMENT PROGRAM ISSUED A TREATMENT FAILURE BECAUSE MR. PETTY "DENIED THE CRIME" DURING TWO POLYGRAPHS, AND A SECOND PROGRAM ISSUED A TREATMENT FAILURE WHEN MR. PETTY CONTINUED TO "DENY THE CRIME".

AT THE REVOCATION HEARING, PROBATION OFFICER ALEX SCHMIDT TESTIFIED WHEN HE TOOK OVER THE CASE, MR. PETTY WAS ATTENDING "CHANDLER AND ASSOCIATES" WITH COUNSELOR MEGAN SMITH, BUT WAS DECLARED A TREATMENT FAILURE FOR FAILING TWO POLYGRAPH EXAMINATIONS.

SCHMIDT TESTIFIED THAT POLYGRAPH EXAMINER JAMES KELLY EMAILED HIM THE "FAILED POLYGRAPH RESULTS FROM FEBRUARY 14 AND MAY 14, 2019 (PLEASE SEE APPENDIX C - POLYGRAPH REPORTS ATTACHMENT 1 AND 2), AND THESE POLYGRAPH REPORTS WERE ADMITTED OVER DEFENSE OBJECTIONS ON SUCH GROUNDS AS THE CONCLUSORY NATURE OF THE REPORTS - WITHOUT ANY ACTUAL POLYGRAPH DATA TO SUPPORT THE EXAMINER'S CONCLUSIONS.

WHILE NO SUPPORTING DOCUMENTATION OR MATERIALS WERE OBTAINED ON APPEAL, JAMES KELLY (POLYGRAPHER) WAS UNABLE TO PRODUCE ANY RECORD OR DATA, BEYOND HIS UNSUPPORTED AND CONCLUSORY POLYGRAPH REPORTS ADMITTED AS STATE'S EXHIBITS 1 AND 2, FURTHER DENIGRATES THE VALIDITY AND RELIABILITY OF HIS POLYGRAPH EXAMINATIONS, RESULTS

AND CONCLUSIONS BASED DATA KELLY ALLEGEDLY COLLECTED, BUT CANNOT VERIFY OR EVEN SHOW - EXPLAN, OR ALLOW A QUALIFIED EXPERT TO REVIEW HIS RESULTS (PLEASE SEE APPENDIX C - EXHIBIT D AND E). LUCKLY, MR. PETTY DID RECORD (AUDIO) HIS POLYGRAPH TESTING (PLEASE SEE APPENDIX C - EXHIBIT B) AND THESE RECORDINGS DO INDEED SHOW THAT THE PETITIONER WAS ASKED TO EXPLAIN ACTIONS ASSOCIATED WITH THE CRIME(S), SPECIFICALLY:

- DID YOU HAVE SEXUAL CONTACT WITH YOUR VICTIM AT FALLS CREEK ON OR ABOUT JUNE 16TH, 2016 (A CRIME)?
- DID YOU EVER LIE TO A PROBATION OFFICER ABOUT ANYTHING SERIOUS (A POSSIBLE CRIME - SUCH AS "OBSTRUCTION OF JUSTICE")?
- DID YOU TOUCH YOUR VICTIM'S VAGINA IN ANY WAY AT FALLS CREEK ON OR ABOUT JUNE 16TH, 2016 (A CRIME)?
- DID YOU MAKE A SEXUAL PROPOSAL TO YOUR VICTIM AT FALLS CREEK ON OR ABOUT JUNE 16TH, 2016? (THIS WOULD BE THE CRIME OF "LEWD PROPOSAL TO A MINOR" - A CRIME THAT THE PETITIONER WAS NOT CHARGED WITH OR ACCUSED OF).

KELLY EVEN STATES THAT HE ASKED THESE QUESTIONS BECAUSE THEY "HAVE TO DO WITH CRIME" (PLEASE SEE APPENDIX C - EXHIBIT B, PG. 9). KELLY EVEN PRESENTS A FALSEHOOD IN HIS "POLYGRAPH REPORT" BY LISTING AT LEAST 5 ALLEGATIONS THAT MR. PETTY DENIES BUT THAT HE DIDN'T EVEN ASK DURING THE ACTUAL POLYGRAPH TEST (SEE APPENDIX C - EXHIBIT E

THE QUESTION FOR THE COURT IS IF MR. PETTY'S RIGHT TO BE FREE FROM BEING A WITNESS AGAINST HIMSELF WAS VIOLATED BY THESE QUESTIONS? THE RECORD IS CLEAR THAT

- THE POLYGRAPHS WERE USED TO JUSTIFY REVOCATION.
- THE POLYGRAPHER WAS REQUIRED TO REPORT TO THE PETITIONER'S PROBATION OFFICER.
- THE POLYGRAPHER ASKED QUESTIONS THAT WOULD IMPLICATE THE PETITIONER IN CRIMES FOR WHICH HE HAD NOT BEEN TRIED.

THE ADMISSION AND CONSIDERATION OF THE POLYGRAPH EVIDENCE IN THIS CASE IS NOT HARMLESS BECAUSE IT RESULTED IN MR. PETTY'S 15-YEAR INCARCERATION (NOT TO MENTION ADDITIONAL RULES AND CONDITIONS OF PROBATION / MANDATORY POST-IMPRISONMENT SUPERVISION THAT WAS ARBITRARILY ADDED ON TO HIS SENTENCE) SEE GLOVER V. UNITED STATES, 531 U.S. 198, 203, 121 S. CT. 696, 700, 148 L. E. 2d 604 (2001) (ANY INCREASE IN THE AMOUNT OF ACTUAL JAILTIME DEMONSTRATES PREJUDICE); BIRDSONG, 1982 ON CR 120, 919 9-10, 649 AT 787-788 WILSON, 1981 ON CR 9, 912, 624 P. 2d AT 81.

A REVOCATION MUST BE BASED UPON "COMPETENT EVIDENCE" BECAUSE "FUNDAMENTAL CONSIDERATIONS OF FAIRNESS AND SOUND JUDICIAL ADMINISTRATION CANNOT TOLERATE AN ARBITRARY

DEPRIVATION OF ONE'S LIBERTY". IN RE COLLYAR, 1970 OUL 48, 915, 476 P.2d AT 357-358, QUOTING ESCOE V. ZEARST, 295 U.S. 490, 55 S. CT. 818, 79 L. ED 1566 (1935), SEE ALSO 22 O.S. 2021, § 9916(A).

CONCLUSION:

THE PETITIONER MOVES THAT THE USE OF POLYGRAPH RESULTS THAT WERE UNVALIDATED, INADMISSIBLE, UNAUTHENTICATED AND THAT VIOLATED THE PETITIONER'S RIGHT TO BE "FREE FROM BEING COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF" SHOULD ENCOURAGE THIS COURT TO ANSWER THE QUESTION PRESENTED. SPECIFICALLY, DOES REQUIRING A DEFENDANT TO BE A WITNESS AGAINST HIMSELF DURING POLYGRAPH EXAMS, A SPECIAL CONDITION OF PROBATION, VIOLATE DUE PROCESS? ESPECIALLY WHEN IT RESULTS IN THE REVOCATION OF A 15-YEAR SUSPENDED SENTENCE?

FURTHERMORE, THE PETITIONER STRESSES THAT THIS POLICY OF POLYGRAPHS BEING USED AS TOOLS TO VIOLATE THE PROBATION OF DEFENDANTS IS NATION-WIDE, AFFECTS A GREAT MANY PEOPLE AND IS NOT PARTIAL TO JUST "SEX OFFENSES". DEFENDANTS OF ALL TYPES ARE REQUIRED TO "CONFESS" TO CRIMES DURING POLYGRAPHS IN EVERYTHING FROM DRUG OFFENSES TO CAPITAL CRIMES - IS THIS WHAT OUR COUNTRY'S FATHERS MEANT TO PROTECT US FROM WHEN IT CAME TO THE 5TH AMENDMENT AND DUE PROCESS?

THE PETITIONER BEGS THIS COURT TO CONSIDER THIS CLAIM.

QUESTION 2:

CAN A DEFENDANT'S DENIAL THAT HE COMMITTED THE CRIME DURING "SEX-OFFENDER POLYGRAPH TESTING", A REQUIREMENT OF PROBATION, BE CONSIDERED GROUNDS FOR REVOCATION?

THE PETITIONER MOVES THAT DENYING THAT ONE COMMITTED A CRIME, DURING "SEX-OFFENDER POLYGRAPH TESTING", CANNOT STAND AS A PREMISE OR GROUNDS FOR REVOCATION OF A SUSPENDED SENTENCE.

THE REVOCATION IN THIS CASE RESTED ONLY WITH THE STATE'S CLAIM THAT MR. PETTY BROKE SPECIAL CONDITION G OF HIS "RULES AND CONDITIONS OF PROBATION" THAT REQUIRED "SEX OFFENDER COUNSELING OR EQUIVALENT AS DIRECTED BY THE PROBATION OFFICER OR SERVICE PROVIDER AND PROVIDE WRITTEN PROOF OF ATTENDANCE AS DIRECTED". THE COURT SHOULD NOTE THAT MR. PETTY NEVER MISSED AN APPOINTMENT - ATTENDED ALL SCHEDULED COUNSELING SESSIONS AND POLYGRAPHS - AND KEPT WRITTEN PROOF OF EACH VISIT. THE STATE CLAIMS THAT MR. PETTY FAILED TREATMENT BECAUSE HE "CONTINUED TO DENY THE CRIMES".

THE STATE'S ACCUSATION IS UNSUPPORTED BECAUSE MR. PETTY'S PROBATION OFFICER ALEX SCHMIDT HAD NO PREMISE OR EVIDENCE - STATUTE OR RULE THAT TO REMAIN ON PROBATION, MR. PETTY WAS REQUIRED TO RECITE AND REVISIT THE ACTS OF THE ALLEGED CRIME.

THE QUESTION HERE IS WHETHER OR NOT THE 5TH AMENDMENT OF THE CONSTITUTION CAN BE EXTENDED PAST CONVICTION AND INTO THE SENTENCE PHASE OF A CRIMINAL CONVICTION - SPECIFICALLY A PROBATION SENTENCE. THE AMENDMENT STATES THAT ONE CANNOT BE "COMPELLED IN ANY CRIMINAL CASE" BUT DOES NOT CLARIFY WHAT PHASE THAT PROTECTION WOULD END - IS IT ONLY PRIOR TO CONVICTION? A DEFENDANT CAN INDEED WAIVE THIS RIGHT, FOR EXAMPLE WHEN ONE STIPULATES TO THE CRIMINAL ACT DURING A PLEA AGREEMENT WITH THE STATE. BUT, CAN THE STATE COMPEL A DEFENDANT TO REPEATEDLY CONFESS TO AN ACT - EVEN ONES IN WHICH HE HAS NOT BEEN TRIED FOR? FURTHERMORE, CAN ONE BE COMPELLED TO REPEATEDLY INCRIMINATE ONESELF AS A "RULE OF PROBATION"?

PROBATION OFFICER SCHMIDT ADMITTEDLY DID NOT KNOW AND COULD NOT ADVISE MR. PETTY SPECIFICALLY WHAT THE TREATMENT PROVIDERS WOULD REQUIRE - NO SUCH POLICY EXISTS. IN THEORY THEY WOULD POSSESS AN UNLIMITED AND UNGOVERNED ABILITY TO ASK OF MR. PETTY WHATEVER THEY WANTED! SCHMIDT DID NOT KNOW OR MONITOR THE TREATMENT PROTOCOLS OR STEPS, AND COULD NOT ADDRESS THOSE REQUIREMENTS OF TREATMENT, HOW VARIOUS TESTS WERE ADMINISTERED DURING THE TREATMENT PHASES, OR THE ACCURACY OF ANY RESPONSES GIVEN DURING SUCH TESTING OR IN ANSWERING QUESTIONNAIRES.

SCHMIDT ACKNOWLEDGED THAT HE AND HIS OFFICE COULD NOT RELY ON ANY POTENTIALLY SPECIFIC LANGUAGE OF THE "SPECIAL SEX OFFENDER RULES AND CONDITIONS OF PROBATION, AS THEY WERE NEVER ISSUED TO MR. PETTY AND WERE NOT CONTAINED IN THE FILE SCHMIDT POSSESSED.

PAPERWORK NEVER INFORMED MR. PETTY THAT HE WOULD BE REQUIRED TO ADMIT GUILT TO CRIMES OR GIVE SPECIFIC DETAILS OF THE CRIME TO ANY AGENT OF THE STATE, OR TREATMENT PROVIDED ACTING ON THE STATES BEHALF. MR. PETTY COMPLIED WITH EVERY REQUEST MADE BY HIS PROBATION OFFICER - HE PAID HIS FINES, PASSED DRUG SCREENING, ATTENDED TREATMENT, LIVED IN "SAFE ZONES", ATTENDED MEETINGS WITH PROBATION. IN FACT, OTHER THAN THE ALLEGED ISSUE OF "ADMETTING GUILT", MR. PETTY WAS COMPLETELY COMPLIANT.

DUE TO MR. PETTY'S ALLEGED TREATMENT FAILURE ALONE, MR. SCHMIDT RECOMMENDED FULL REVOCATION OF HIS 15-YEAR SUSPENDED SENTENCE. SCHMIDT ADVISED THE COURT, "D.O.C.'S POLICY WITH SEX OFFENDERS IS, ON ANY REVOCATION, WE ALWAYS ASK FOR REVOCATION IN FULL... DUE TO THE NATURE OF THE ORIGINAL CRIME, BEING A SEX OFFENSE, THAT'S WHY WE REQUEST REVOCATION IN FULL". DESPITE THE FACT THAT NO SUCH "D.O.C. POLICY" EXISTS.

ACCORDING TO OKLAHOMA STATUTE, 22 O.S. SUPP. 2021, § 9916(A) - A SUSPENDED SENTENCE MAY NOT BE REVOKED FOR ANY CAUSE UNLESS COMPETENT EVIDENCE JUSTIFYING THE REVOCATION OF THE SUSPENDED SENTENCE IS PRESENTED TO THE COURT AT A HEARING HELD FOR THAT PURPOSE. THE PETITIONER ASKS CAN DENIAL OF A CRIME JUSTIFY SUCH REVOCATION?

IN ATTACHED APPENDIX-A, SUMMARY OPINION OF THE OKLAHOMA COURT OF CRIMINAL APPEALS - THE COURT RULED (PG. 4) THAT MR. PETTY "CONTINUED TO DENY HIS CRIME OF CONVICTION, DENY ANY CRIMINAL SEXUAL BEHAVIOR, AND WAS ULTIMATELY DEEMED A TREATMENT FAILURE..." FURTHER, THE COURT RULED THAT MR. PETTY'S "REPEATED DENIAL

OF HIS CRIME OF CONVICTION RESULTED IN HIS SECOND TREATMENT FAILURE AND THE BASIS FOR THE PRESENT REVOCATION "... IN SHORT MR. PETTY'S 15-YEAR SUSPENDED SENTENCE WAS REVOKED SIMPLY BECAUSE HE WOULD NOT ADMIT GUILT - EITHER TO THE CRIME FOR WHICH HE WAS CONVICTED OR OTHER CRIMES IN WHICH POLYGRAPHERS WERE ATTEMPTING TO GARNER CONFESSIONS!

CONCLUSION :

AS STATED IN POLYGRAPHER'S REPORT MR. PETTY MAINTAINED HIS INNOCENCE THROUGHOUT THE COURT ORDERED AND PROBATION OFFICER MANDATED "SEX OFFENDER TREATMENT" - ALTHOUGH NOT THE CASE HERE, EVEN WHERE A PROBATIONER ENTERS A PLEA OF NO CONTEST, SO LONG AS THE COURT ORDERS "TREATMENT" PROBATION OFFICERS ENFORCE THE REQUIRED TREATMENT NO MATTER THE FACT THAT THE PROBATIONER NEVER ADMITTED GUILT. MR. PETTY ADMITS THAT HE PLED GUILTY BUT MAINTAINS HE ONLY DID SO UNDER THREAT OF MORE CHARGES, MORE TIME, AND THE POSSIBLITY OF DYING IN PRISON DUE TO EXTREMELY POOR HEALTH.

THE PETITIONER RESPECTFULLY MOVES THAT A PROBATIONER CANNOT BE REQUIRED TO REPEATEDLY CONFESS TO CRIMES, EITHER COMMITTED OR NOT, AND FURTHER, TO LOSE LIFE, LIBERTY OR FREEDOM IN COMPLETE VIOLATION OF THE 5TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA. ESPECIALLY IF IT RESULTS IN A 15-YEAR PRISON TERM.

THE PETITIONER BEGS THE COURT TO CONSIDER THIS CLAIM.

QUESTION 3 :

CAN A POLYGRAPH REPORT BE ENTERED INTO EVIDENCE IN SUPPORT OF REVOCATION?

POLYGRAPH EXAMINER JAMES KELLY EMAILED PROBATION OFFICER SCHMIDT THE ALLEGED "FAILED" POLYGRAPH REPORTS FROM FEBRUARY 14 AND MAY 14, 2019. KELLY'S POLYGRAPH REPORTS WERE ADMITTED OVER DEFENSE'S OBJECTIONS DUE TO THE LACK OF A FOUNDATION FOR ADMISSION, NO AUTHENTICATION BY THE ACTUAL EXAMINER, HEARSAY, AND THE CONCLUSORY NATURE OF THE REPORTS - WITHOUT ANY ACTUAL POLYGRAPH DATA TO SUPPORT THE EXAMINER'S CONCLUSIONS.

THE PROSECUTION ARGUED OKLAHOMA TITLE 12, SECTION 2103, SUSPENDED THE "RULES OF EVIDENCE" AT REVOCATION PROCEEDINGS AND THE COURT ADMITTED THE CONCLUSORY REPORTS AS STATE'S EXHIBITS 1 AND 2.

AT THE CONCLUSION OF THE HEARING, WITHOUT ALLOWING THE PETITIONER TO SHOW EVIDENCE IN HIS FAVOR, THE MURRAY COUNTY DISTRICT COURT FOUND THAT THE STATE HAD PROVEN THE ALLEGATION IN ITS MOTION TO REVOKE BY A "PREPONDERANCE OF THE EVIDENCE". AGAIN, THE ONLY EVIDENCE ADMITTED TO THE COURT WERE POLYGRAPHER'S REPORTS (PLEASE SEE APPENDIX C-EXHIBIT A AND B) AND PROBATION OFFICER SCHMIDT'S REPORT BASED UPON THESE POLYGRAPH REPORTS.

IN ITS SUMMARY OPINION (APPENDIX A, PG. 4) PRESIDING JUDGE ROWLAND INDICATES THAT "EVIDENCE WAS PRESENTED THAT APPELLANT HAD TAKEN A POLYGRAPH TEST AND THAT HE DENIED HIS CRIME OF CONVICTION IN ADDITION TO POLYGRAPH RESULTS INDICATING POTENTIAL DECEPTION".

THE COURT GOES ON TO CLAIM THAT IT WAS APPELLANT'S "REPEATED DENIAL OF HIS CRIME OF CONVICTION" THAT WAS THE "BASIS FOR THE PRESENT REVOCATION" DESPITE THE CLEAR FACT THAT PROBATION OFFICER SCHMIDT'S REPORT WAS BASED SOLELY ON THE POLYGRAPH REPORTS. AS MENTIONED IN PREVIOUS QUESTIONS, SCHMIDT ADVISED THE COURT THAT "D.O.C.'S POLICY WITH SEX OFFENDERS, ON ANY REVOCATION, WE ALWAYS ASK FOR REVOCATION IN FULL".

IN MOST PROCEEDINGS, EVEN THE FACT THAT A DEFENDANT TOOK A POLYGRAPH TEST IS INADMISSIBLE. SEE UNITED STATES V. SCHEFFER, 523 U.S. 303, 306-308, 118 S. CT. 1261, 1263-1264, 140 L. Ed. 2d 413 (1998); UNITED STATES V. SOUNDINGSIDES, 820 F.2d 1232, 1241-1242 (10TH CIR. 1987), (SEE ALSO MATTHEWS V. STATE, 1998 OK CR 3, ¶ 18, 953 P.2d 336, 343.

THE COURT OF CRIMINAL APPEALS (OKLAHOMA) HAS SPECIFICALLY HELD THAT A POLYGRAPH IS TOO UNRELIABLE TO BE THE DETERMINATE OF WHETHER A PERSON IS INCARCERATED. WILSON V. STATE, 1981 OK CR 9, ¶ 2, 624 P.2d 80, 81.

DESPITE THIS FACT LITERALLY THOUSANDS OF OKLAHOMANS AND AMERICANS ARE SUBJECT TO THIS TYPE OF POLYGRAPHING IT IS EVEN MORE DISTURBING THAT POLYGRAPHER KELLY COMPLETELY FAILED TO KEEP ANY DATA OR RECORD OF THE TESTING. THE AMERICAN'S POLYGRAPH ASSOCIATION'S "MODEL POLICY FOR POST-CONVICTION SEX OFFENDER TESTING (AT SECTION 10.2 - SEE ALSO APPENDIX C, EXHIBIT A, PG. 1) REQUIRES:

"AUDIO-VISUAL OR AUDIO RECORDING. EXAMINERS SHOULD RECORD ALL PCST POLYGRAPH EXAMINATIONS. THE RECORDING SHOULD INCLUDE THE ENTIRE EXAMINATION FROM THE BEGINNING OF THE PRETEST INTERVIEW TO THE COMPLETION OF THE POSTTEST REVIEW. THE RECORDING SHOULD BE MAINTAINED FOR A MINIMUM OF THREE YEARS. THE RECORDING DOCUMENTS THE QUALITY OF THE CONDUCT OF THE TESTING PROTOCOL; DOCUMENTS THE CONTENT AND AUTHENTICITY OF THE CONTENT OF THE INFORMATION PROVIDED BY THE EXAMINEE, THUS PRECLUDING POSSIBLE FUTURE DENIALS; AND FACILITATES A COMPREHENSIVE QUALITY ASSURANCE REVIEW WHEN NECESSARY"

POLYGRAPHER JAMES KELLY ADMITS (APPENDIX C, PG. 9) THAT "HE DOES NOT MAKE RECORDINGS OR VIDEOS OF HIS POLYGRAPHS, DOES NOT KEEP ANY CLINICAL/THERAPEUTIC RECORDS, ELECTRONIC DATA, NOTES, HAND SCORING OR ANY OTHER DOCUMENTATION BEYOND HIS REPORT..."

THIS IS ALL VERY DISTURBING CONSIDERING THERE IS NO WAY TO CHECK HIS WORK - AND FURTHER, THAT IT RESULTED IN THE REVOCATION OF THE PETITIONER'S 15-YEAR SUSPENDED SENTENCE - WHY IS THIS GOING ON UNCHECKED? WITHOUT OVERSIGHT, AND UNGOVERNED?

THE PETITIONER BEGS THIS COURT TO ANSWER THE QUESTION OF WHETHER POLYGRAPH REPORTS CAN BE INCLUDED IN EVIDENCE IN REVOCATION HEARINGS? HE MOVES FURTHER THAT THIS QUESTION HAS AT ITS HEART THE BASIC TENETS OF THE CONSTITUTION

SPECIFICALLY THE V, VI, XIV AMENDMENTS.

AS SET OUT IN SCHEFFER, 523 U.S. AT 309-315, 118 S. CT. AT 1265-1267. AS PHYSIOLOGICAL RESPONSES CAN BE STIRRED BY NUMEROUS EMOTIONS "THERE IS SIMPLY NO WAY TO KNOW IN A PARTICULAR CASE WHETHER A POLYGRAPH EXAMINER'S CONCLUSION IS ACCURATE, BECAUSE CERTAIN DOUBTS, AND UNCERTAINTIES PLAQUE EVEN THE BEST POLYGRAPH EXAMS", ID. 523 U.S. AT 312, 118 S. CT. AT 1266. ESPECIALLY WITHOUT DATA TO SUPPORT SUCH CLAIMS AND SIMPLY BASED UPON THE EXAMINER'S WORD ALONE.

FOR THIS REASON THE PETITIONER BEGS THE COURT TO CONSIDER THIS CLAIM.

QUESTION 4:

CAN A POLYGRAPHER'S REPORT BE ENTERED AS EVIDENCE WITHOUT THE AUTHOR OF THE REPORT BEING PRESENT FOR CROSS-EXAMINATION?

AT THE HEART OF THIS QUESTION IS THE VI AMENDMENT WHICH STATES IN PART THAT THE ACCUSED SHALL:

... "BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE..."

IN REVERSE ORDER- IT IS CLEAR THAT MR. PETTY RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STICKLAND V. WASHINGTON 466, U.S. 668, 687, 104 S. CT. 2052, 2064, 80 L. ED. 2d 674 (1984):

- MR. PETTY'S ATTORNEY COULD NOT CHALLENGE THE POLYGRAPH REPORTS BECAUSE THE DATA SUPPORTING THE REPORTS WAS WITHHELD.
- MR. PETTY'S ATTORNEY COULD NOT CHALLENGE THE POLYGRAPH REPORTS BECAUSE THE AUTHOR OF THE REPORTS WAS NOT PRESENT AND THEREFORE UNABLE TO TESTIFY, OR AUTHENTICATE SAID REPORTS.
- BOTH "TREATMENT" OFFICES WERE UNAVAILABLE / NOT PRESENT, SO MR. PETTY'S ATTORNEY COULD NOT QUESTION THEM IN RELATION TO THE REPORTS OF PROGRAM FAILURE.
- MR. PETTY'S ATTORNEY COULD NOT PRESENT ANY WITNESS ON MR. PETTY'S BEHALF INCLUDING AN EXPERT ON POLYGRAPHS.

IN SHORT, MR. PETTY COULD NOT PRESENT A DEFENSE AT ALL BECAUSE ANY CHALLENGE TO THE ACCUSATION WAS UNCONSTITUTIONALLY BLOCKADED BY THE STATE OF OKLAHOMA. THIS WOULD BE A CLEAR EXAMPLE OF STATE-INDUCED-INEFFECTIVE-ASSISTANCE OF COUNSEL.

NOW TO THE ISSUE OF HAVING WITNESSES IN HIS FAVOR - MR. PETTY WAS ABLE TO SECURE, PRO BONO, EXPERT ON POLYGRAPH TESTING, MR. GEORGE W. MASCHKE. MR. MASCHKE

IS A VETERAN OF U.S. ARMY INTELLIGENCE WITH EXPERIENCE IN INTERROGATION, COUNTERINTELLIGENCE, AND COUNTERTERRORISM. HE IS ALSO CO-FOUNDER OF ANTIPOLYGRAPH.ORG, A NON-PROFIT, PUBLIC INTEREST WEBSITE DEDICATED TO EXPOSING AND FENDING WASTE, FRAUD, AND ABUSE ASSOCIATED WITH THE USE OF POLYGRAPHS.

COUNSEL REQUESTED A CONTINUANCE WHICH WOULD ALLOW MR. MASCHKE OPPORTUNITY TO TRAVEL TO OKLAHOMA BUT THE COURT WOULD NOT ALLOW IT. MR. MASCHKE WAS EVEN AVAILABLE TO TESTIFY VIA "SKYPE-CALL", BUT MR. PETTY'S ATTORNEY COULD NOT SECURE PERMISSION FROM THE JUDGE (COPPEDGE). THE COURT STRANGELY RULED THAT THE REVOCATION HAD NOTHING TO DO WITH POLYGRAPHS.

NOW AS TO THE CONFRONTATION CLAUSE OF THE ABOVE, VI AMENDMENT - DESPITE THE FACT THAT STATE'S EXHIBITS 1 AND 2 WERE ENTERED (THE POLYGRAPH REPORTS), EXHIBITS 3 AND 4 WERE ENTERED (REPORTS FROM PROGRAM PROVIDERS) - NONE OF THE AUTHORS OF THESE REPORTS WERE AVAILABLE TO TESTIFY OR AUTHENTICATE THEIR REPORTS. THIS IS COMPOUNDED FURTHER WHEN ONE CONSIDERS THE FACT THAT NO DATA OR CLINICAL RECORDS ARE AVAILABLE. ALL OF THESE THINGS WERE WITHHELD BY THE STATE AND ITS AGENTS.

HOW CAN A CRIMINAL DEFENDANT DEFEND HIMSELF FROM REPORTS ALLEGING FAILURE WITHOUT HAVING THE OPPORTUNITY TO CHALLENGE THIS EVIDENCE - FURTHERMORE, HOW CAN A COURT EVEN RELY UPON SUCH EVIDENCE WITHOUT VERIFICATION OF ITS CONTENTS?

FINALLY, THE PETITIONER MOVES THAT THERE IS NO WAY HE COULD HAVE BEEN FULLY AWARE OF THE "NATURE AND CAUSE OF THE ACCUSATION" AGAINST HIM - SIMPLY BECAUSE THE

REPORTS COMPLETELY LACKED ANY SPECIFIC FACTS/DATA OR SUPPORTING INFORMATION - THEY SIMPLY MADE ACCUSATIONS AND THE STATE WITHHELD EVERYTHING ELSE. HOW CAN A CRIMINAL DEFENDANT DEFEND HIMSELF FROM THE UNKNOWN?

IT REMAINS CLEAR THAT THE REPORTS WERE PREJUDICIAL AND THE PETITIONER MOVES THAT THIS IS SPECIFICALLY WHAT THE COURT INTENDED TO PROTECT DEFENDANTS FROM WHEN THIS COURT RULED IN "SHEFFER" - AS PREVIOUSLY STATED IN MOST PROCEEDINGS, EVEN THE FACT THAT A DEFENDANT TOOK A POLYGRAPH TEST IS INADMISSIBLE.

THEREFORE, THE PETITIONER WOULD ASK THIS COURT CAN A POLYGRAPH REPORT BE ENTERED AS EVIDENCE WITHOUT AUTHENTICATION OR WITHOUT THE OPPORTUNITY FOR CROSS EXAMINATION, OR CONFRONTATION?

QUESTION 5:

DOES THE DENIAL OF A CONTINUANCE, REQUESTING ADEQUATE TIME TO PREPARE A DEFENSE IN OPPOSITION TO POLYGRAPHER'S REPORT - RESULT IN STATE-INDUCED INEFFECTIVE ASSISTANCE OF COUNSEL?

IT IS CLEAR FROM THE RECORD BOTH THAT DEFENSE WAS PREPARED TO SECURE AN EXPERT READY TO TESTIFY ON MR. PETTY'S BEHALF AND THAT THE COURT DENIED HIM THAT RIGHT - BUT DID SUCH A DENIAL DEPRIVE THE PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL? THE PETITIONER MOVES THIS DENIAL OF ADEQUATE TIME TO PREPARE ROBBED THE DEFENSE OF EFFECTIVENESS.

THIS COURT APPLIES THE TWO-PART TEST SET FORTH BY STRICKLAND V. WASHINGTON, 466 U.S. 668, 687, 104 S. CT. 2052, 2064, 80 L. ED. 2 674 (1984). WHERE, AS HERE, INEFFECTIVENESS OF COUNSEL WAS PRIMARILY DUE TO STATE INTERFERENCE, PRESUMPTION IS PRESUMED. UNITED STATES V. CRONIN, 466 U.S. 648, 659, 104 S. CT 2039, 2046-2047, 80 L. ED. 2d 657 (1984); STRICKLAND, 466 U.S. AT 692, 104 S. CT. AT 2067.

REGARDING THE REQUESTED CONTINUANCE ITSELF, DEFICIENT PERFORMANCE AND PRESUMPTION ARE ESTABLISHED BY COUNSEL'S FAILURE TO SUPPORT THE REQUEST BY SUBMITTING AS AN OFFER OF PROOF, THE OCTOBER 17, 2020, "CRITIQUE AND EVALUATION OF POLYGRAPH EXAMINATIONS OF BENJAMIN LAWRENCE PETTY" (SEE APPENDIX C) PROVIDED TO DEFENSE COUNSEL PRIOR TO THE OCTOBER 23, 2020, REVOCATION HEARING.

FAILURE TO OFFER AS PROOF POLYGRAPH EXPERT GEORGE MASCHKE'S CRITIQUE AND EVALUATION OF THE POLYGRAPHS OF MR. PETTY WAS HARMFUL. DEFENSE EXPERT MASCHKE'S CRITIQUE AND EVALUATION REFUTED THE STATE'S SOLE ALLEGATION (APPENDIX C). COUNSEL WAS DEMONSTRABLY UNPREPARED TO DEFEND MR. PETTY AND FAILED TO USE THE DEFENSE EXPERT'S COMPELLING WRITTEN EVIDENCE. AND MR. MASCHKE WAS EVEN WILLING TO TESTIFY.

CONCLUSION :

APPELLANT RECEIVED INEFFECTIVE ASSISTANCE THAT DEPRIVED HIM OF A FAIR PROCEEDING AND DUE PROCESS OF LAW, U.S. CONST. AMENDS. V, VI, XIV; AND EVEN OKLA. CONST. ART. II, §§ 7, 9, 20. RELIEF IS REQUIRED BECAUSE COUNSEL'S ERRORS DENIED MR. PETTY'S CONSTITUTIONAL RIGHTS TO COUNSEL, A FUNDAMENTALLY FAIR PROCEEDING AND TO NEVER BE DEPRIVED OF LIBERTY WITHOUT DUE PROCESS OF LAW.

THE PETITIONER RESPECTFULLY ASKS THAT THIS COURT DECIDE THIS IMPORTANT QUESTION.

QUESTION XI :

DOES THE TRIAL COURT HAVE THE AUTHORITY TO IMPOSE ADDITIONAL RULES AND CONDITIONS OF PROBATION, OR MANDATORY POST-IMPRISONMENT SUPERVISION, BEYOND THE SCOPE OF THE ORIGINAL PLEA AGREEMENT?

ON JANUARY 19, 2018, THE COURT ACCEPTED THE PLEA AND IMPOSED JUDGMENT AND SENTENCE FOR COUNTS 1, 2, AND 3, AND SENTENCED THE PETITIONER TO A 15-YEAR SUSPENDED SENTENCE - ALL COUNTS RAN CONCURRENT. THE PETITIONER WAS NOT TOLD ANYTHING ABOUT ANY "SPECIAL RULES OF PROBATION" - AS A MATTER OF FACT "SPECIAL RULES AND CONDITIONS OF PROBATION" WERE NEVER AGREED TO AS A PART OF THE PLEA AGREEMENT.

THE PETITIONER'S REVOCATION HEARING WAS HELD ON OCTOBER 23, 2020 - BUT FIVE DAYS LATER, ON OCTOBER 28, 2020, THE COURT CALLED THE PARTIES BACK INTO COURT, CLAIMING TO "GIVE MR. PETTY HIS SPECIAL RULES FOR SUPERVISION AND CONDITIONS FOR SEX OFFENDERS" (PLEASE NOTE ALSO THAT HIS ATTORNEY MR. BRETT MORTON WAS ABSENT THIS DAY AND MR. PETTY WAS WITHOUT COUNSEL - DESPITE WHAT COURT MINUTES SAY, MR. PETTY WAS FORCED TO SIGN THIS DOCUMENT WITHOUT REPRESENTATION).

UNDER THE GUISE OF ANNOUNCING THE RULES AND CONDITIONS FOR POST-IMPRISONMENT SUPERVISION UPON HIS RELEASE, FOR A "MINIMUM OF THREE YEARS OF SUPERVISION OF PROBATION AND PAROLE WITH THE DEPARTMENT OF CORRECTIONS", THE COURT IMPOSED VARIOUS ADDITIONAL REQUIRED RULES AND CONDITIONS.

FURTHER CONTRADICTING THE FULL REVOCATION OF MR. PETTY'S SUSPENDED SENTENCE, THE COURT CLAIMED:

"THESE CONDITIONS ARE AGREED TO BY THE DEFENDANT AS A CONSIDERATION FOR A PROBATED SENTENCE, EITHER IN WHOLE OR IN PART. FAILURE TO COMPLY WITH THE CONDITIONS OF THIS AGREEMENT MAY RESULT IN ACCELERATION OR REVOCATION OF THE PROBATED SENTENCE. THESE CONDITIONS SHALL BE MADE PART OF THE SUMMARY OF FACTS AND SHOULD BE FILED IN THE ABOVE REFERENCED CASE."

1) HOW CAN THE PETITIONER HAVE A SENTENCE REVOKED TWICE?

2) WHY WAS THIS ADDITIONAL CONSEQUENCE NOT DISCLOSED DURING THE PLEA AGREEMENT?

CONCLUSION :

AS IN U.S.V. WATKINSON, 938 F.2d 1096, 1098 (AN ILLEGAL SENTENCE INCLUDES THAT PORTION OF A SENTENCE "WHICH THE JUDGMENT OF CONVICTION DID NOT AUTHORIZE") THE SENTENCE IN THIS CASE IS ILLEGAL AND IS ARBITRARILY SET. SUCH AN ILLEGAL PENALTY, OUTSIDE THE COURT'S STATUTORILY PRESCRIBED AUTHORITY VIOLATES DUE PROCESS OF LAW.

AGAIN, THE PETITIONER RESPECTFULLY ASKS THAT THIS COURT ANSWER THIS CRUCIAL QUESTION.

CONCLUSION

THE PETITIONER MOVES THAT THE ABOVE-QUESTIONS ARE OF NATIONAL IMPORTANCE - JUST IN OKLAHOMA ALONE LITERALLY THOUSANDS OF INMATES ARE SUBJECT TO POLYGRAPHS. THESE POLYGRAPHS ARE BEING USED AS TOOLS TO ENCOURAGE DEFENDANTS TO VIOLATE THEIR OWN 5TH AMENDMENT RIGHT TO BE FREE FROM BEING COMPELLED TO BE A WITNESS AGAINST ONESELF. THESE POLYGRAPHS ARE NOT BEING CONDUCTED WITH THE BENEFIT OF COUNSEL - DEFENDANTS ARE NOT READ THEIR RIGHTS - THEY ARE EVEN ASKED ABOUT CRIMES FOR WHICH THEY ARE NOT CONVICTED.

THEREFORE, FOR THE REASONS SET FORTH HEREIN - THE PETITIONER RESPECTFULLY BEGS THAT THIS HONORABLE COURT ANSWER THESE CRUCIAL QUESTIONS OF NATIONAL IMPORTANCE.

IT IS SO PRAYED.

RESPECTFULLY SUBMITTED,

Ben Petty

BENJAMIN LAWRENCE PETTY
LCRF/7-CHARLIE-105
8607 SE FLAME MOUND RD
LAWTON, OK 73501