No. 25-5173

IN THE

SUPREME COURT OF THE UNITED STATES

DOUGLAS DEAN WELSH — PETITIONER
(Your Name)

vs.

MARK GARMAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DOUGLAS DEAN WELSH #JY-1921
(Your Name)

1 Rockview Place, Box A.
(Address)

Bellefonte, Pa. 16823-0820
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

A. DID THE DISTRICT COURT ERROR IN RULING THAT PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS, AND SIXTH AMENDMENT RIGHT TO CONFRONTATION WAS NOT VIOLATED BY THE STATE COURT'S LIMITATION ON THE SCOPE OF HIS CROSS EXAMINATION OF THE VICTIM ALISHA DAUBERT ?

B. DID THE DISTRICT COURT ERROR IN RULING THAT THE IMPOSITION OF PETITIONER'S TWO LIFE SENTENCES PURSUANT TO A STATUTE DECLARED UNCONSTITUTIONAL, DID NOT VIOLATE THE FIRST, EIGHT, AND FOURTEENTH AMENDMENTS ?

C. DID THE DISTRICT COURT ERROR IN RULING THAT TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PROPERLY RAISE AND LITIGATE THE STALENESS OF THE INFORMATION UPON WHICH THE SEARCH WARRANT WAS ISSUED FOR PETITIONER'S RESDIENCE ?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

XXX [ ] 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:

PENNSYLVANIA ATTORNEY GENERAL
STRAWBERRY SQUARE 14th FLOOR
HARRISBURG, Pa. 17110

COLUMBIA COUNTY, DISTRICT ATTORNEY
COLUMBIA COUNTY COURTHOUSE
P.O. BOX 380
BLOOMSBURG, Pa. 17815.

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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

[XXX] For cases from **federal courts**:

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

[XXX] reported at C.A. No. 24-1556; or,

[ ] has been designated for publication but is not yet reported; or,

[XXX] is unpublished.

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

[XXX] reported at CIVIL ACTION No. 1:20-0329; or,

[ ] has been designated for publication but is not yet reported; or,

[XXX] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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

[XXX] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was APRIL 1, 2025.

[XXX] 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 _____. A copy of that decision appears at Appendix _____.

[ ] 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

UNITED STATES CONSTITUTION

ARTICLE I, SECTION 9:

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each person.

The Privilege of Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Verssells bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatsoever, from any King, Prince, or foreign State.

ARTICLE IV SECTION 5:

The right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE VI, SECTION 2:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to 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.

ARTICLE VIII, SECTION 1:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE XIV, SECTION 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

COMMONWEALTH OF PENNSYLVANIA STATUTES

42 Pa. C.S.A. Section 9718:

§9718 Sentence for offenses against infant persons.

(a) Mandatory sentence.

A person convicted of the following offenses when the victim is less then 16 years of age shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa. C.S. § 2702(a)(1) and (4) (relating to aggravated assault) - not less than two years.

18 Pa. C.S. § 3121(a)(1),(2),(3),(4) and (5) (relating to rape) - not less then ten years.

18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse) - not less than ten years.

18 Pa. C.S. § 3125(a)(1) through (6) (relating to aggravated indecent assault) - not less than five years.

(2) A person convicted of the following offenses when the victim is less than 13 years of age shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa. C.S. § 2502(c) (relating to murder) - not less than 15 years.

18 Pa. C.S. § 2702(a)(1) - not less than five years.

(3) a person convicted of the following offenses shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa. C.S. § 3121(c) and (d) - not less then ten years.

18 Pa. C.S. § 3125(a)(7) - not less than five years.

18 Pa. C.S. § 3125(b) - not less than ten years.

(b) Eligibility for parole. - Parole shall not be granted until the minimum term of imprisonment has been served.

(c) Application of mandatory minimum penalty. - With the exception of prior convictions, any provision of this section that requires imposition of a mandatory minimum sentence shall constitute an element enhancing the

underlying offense. Any enhancing element must be proven beyond a reasonable doubt at trial on the underlying offenses and must by submitted to the fact-finder for deliberation together with the underlying offense. If the fact-finder finds the defendant guilty of the underlying offense, the fact-finder shall also decide whether any enhancing element has been proven.

(c.1) Notice. - Notice to the defendant of the applicability of this section shall be required prior to conviction.

(d) Authority of court in sentencing. - There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) or to place the offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(e) Appeal by Commonwealth. - If the fact-finder has found any enhancing element and a sentencing court imposes a sentence below the mandatory minimum sentence, the Commonwealth shall have the right to appellate review of the sentence. If the appellate court finds that the mandatory sentencing provision was applicable, the court shall vacate the sentence and remand the case for resentencing in accordance with that provision.

§ 9718.2. Sentences for sexual offenders:

(a) Mandatory sentence.

(1) Any person who is convicted in any court of this Commonwealth of an offense set forth in section 9799.14 (relating to sexual offenses and tier system), shall, if at the time of the commission of the current offense the person had previously been convicted of an offense set

forth in section 9799.14 or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction, be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon such conviction, the court shall give the person oral and written notice of the penalties under paragraph (2) for a third conviction. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

(2) Where the person had at the time of the commission of the current offense previously been convicted of two or more offenses arising from separate criminal transactions set forth in section 9799.14 or equivalent crimes under the laws of this Commonwealth in effect at the time of the commission of the offense or equivalent crimes in another jurisdiction, the person shall be sentenced to a term of life imprisonment, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required.

(b) Mandatory maximum. - An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) or any other provision of this title or other statute to the contrary.

(c) Proof of sentencing. - The provisions of this section shall not be an element of the crime, and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at

sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the offender and, if this section is applicable, shall impose sentence in accordance with this section. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

(d) Authority of the court in sentencing. - There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) and (b) or to place the offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(e) Appeal by Commonwealth. - If a sentencing court shall refuse to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the imposition of a sentence in accordance with this section if it finds that the

sentence was imposed in violation of this section.

42 Pa. C.S.A. § 9799.14:

§9799.14. Sexual offenses and tier system.

(a) Tier system established. Sexual offenses shall be classified in a three-tiered system composed of Tier I sexual offenses, Tier II sexual offenses, and Tier III sexual offenses.

(b) Tier I sexual offenses. The following offenses, or an attempt, conspiracy or solicitation to commit any of the following offenses, shall be classified as Tier I sexual offenses:

(1) 18 Pa. C.S. § 2902(b) (related to unlawful restraint).

(2) 18 Pa. C.S. § 2903(b) (relating to false imprisonment).

(3) 18 Pa. C.S. § 2904 (relating to interference with custody of children), except in cases where the defendant is the child's parent, guardian or other lawful custodian.

(4) 18 Pa. C.S. § 2910 (relating to luring a child into a motor vehicle or structure).

(4.1) 18 Pa. C.S. § 3011(a)(1) and (2) (relating to trafficking in individuals).

(4.2) 18 Pa. C.S. § 3013 (relating to patronizing a victim of sexual servitude).

(5) 18 Pa. C.S. § 3124.2(a) and (a.4)(1) (relating to institutional sexual assault).

(6) 18 Pa. C.S. § 3126(a)(1) (relating to indecent assault).

(7) (Reserved).

(8) 18 Pa. C.S. § 6301(a)(1)(ii) (related to corruption of minors).

(9) 18 Pa. C.S. § 6312(d) (relating to sexual abuse of

children).

(10) 18 Pa. C.S. § 7507.1. (relating to invasion of privacy).

(11) 18 U.S.C. § 1801 (relating to video voyeurism).

(12) 18 U.S.C. § 2252(a)(4) (relating to certain activities relating to material involving the sexual exploitation of minors).

(13) 18 U.S.C. § 2252A (relating to certain activities relating to material constituting or containing child pornography).

(14) 18 U.S.C. § 2252B (relating to misleading domain names on the Internet).

(15) 18 U.S.C. § 2252C (relating to misleading words or digital images on the Internet).

(16) 18 U.S.C. § 2422(a) (relating to coercion and enticement).

(17) 18 U.S.C. § 2423(b) (relating to transportation of minors).

(18) 18 U.S.C. § 2423(c).

(19) 18 U.S.C. § 2424 (relating to filing factual statement about alien individual).

(20) 18 U.S.C. § 2425 (relating to use of interstate facilities to transmit information about a minor).

(21) A comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth.

(22) [Repealed by amendment]

(23) A conviction for a sexual offense in another jurisdiction or foreign country that is not set forth in this section, but nevertheless requires registration under a sexual offender statute in the jurisdiction or

foreign country.

(c) Tier II sexual offenses. The following offenses, or attempt, conspiracy or solicitation to commit any of the following offenses, shall be classified as Tier II sexual offenses:

(1) 18 Pa. C.S § 3011(b).

(1.1) 18 Pa. C.S. § 3122.1(a)(2) (relating to statutory sexual assault).

(1.2) 18 Pa. C.S. § 3124.2(a.2) and (a.3).

(1.3) 18 Pa. C.S. § 3126(a)(2), (3), (4), (5), (6) or (8).

(1.4) 18 Pa. C.S. § 3012 (relating to involuntary servitude) as it relates to sexual servitude.

(2) 18 Pa. C.S. § 5902(b.1) (relating to prostitution and related offenses).

(3) 18 Pa. C.S. § 5903(a)(3)(ii), (4)(ii), (5)(ii), or (6) (relating to obscene and other sexual materials and performances).

(4) 18 Pa. C.S. § 6312(b) and (c).

(5) 19 Pa. C.S. § 6318 (related to unlawful contact with minor).

(6) 18 Pa. C.S. § 6320 (relating to sexual exploitation of children).

(7) 18 U.S.C. § 1591 (relating to sex trafficking of children by force, fraud, or coercion).

(8) 18 U.S.C. § 2243 (relating to sexual abuse of a minor ward).

(9) 18 U.S.C. § 2244 (relating t5o abusive sexual contact) where the victim is 13 years or age or older but under 18 years of age.

(10) 18 U.S.C. § 2251 (relating to sexual exploitation of

children).

(11) 2251A (relating to selling or buying of children).

(12) 18 U.S.C. § 2252(a)(1), (2), or (3).

(13) 18 U.S.C. § 2260 (relating to production of sexually explicit depictions of a minor for importation into the United States).

(14) 18 U.S.C. § 2421 (relating to transportation generally).

(15) 18 U.S.C. § 2422(b).

(16) 18 U.S.C. § 2423(a).

(17) A comparable military or similar offense under the laws of another jurisdiction or foreign country or under former law of this Commonwealth.

(18) [repealed by amendment]

(d) Tier III sexual offenses. The following offenses, or an attempt, conspiracy or solicitation to commit any of the following offenses, shall be classified as Tier III sexual offenses:

(1) 18 Pa. C.S. § 2901(a.1) (related to kidnapping).

(2) Pa. C.S. § 3121 (relating to rape).

(3) 18 Pa. C.S. § 3122.1(b) (relating to statutory sexual assault).

(4) 18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(5) Pa. C.S. § 3124.1 (relating to sexual assault).

(6) 18 Pa. C.S. § 3124.2(a.1) and (a.4)(2).

(7) 18 Pa. C.S. § 3125 (relating to aggravated indecent assault).

(8) 18 Pa. C.S. § 3126(a)(7).

(9) 18 Pa. C.S. § 4302(b) (relating to incest).

(10) 18 U.S.C. § 2241 (relating to aggravated sexual abuse).

(11) 18 U.S.C. § 2242 (relating to sexual abuse).

(12) 18 U.S.C. § 2244 where the victim is under 13 years of age.

(13) A comparable military offense or similar offense under the laws of another jurisdiction or country or under a former law of this Commonwealth.

(14) [Repealed by amendment]

(15) (Reserved).

(16) Two or more convictions of offenses listed as Tier I or Tier II sexual offenses.

(17) One conviction of a sexually violent offense and one conviction of a sexually violent offense as defined in section 9799.55 (relating to registration).

STATEMENT OF THE CASE

On August 30, 2007, the South Center Township Police Department, conducted a search of Petitioner's (hereinafter Welsh) residence, in relation to a search warrant alleging crimes committed against Alisha Daubert (hereinafter A.D.), and David Daubert Jr. (hereinafter D.D.) between January 2002 and March 25, 2004. (App. E) In October of 2007, Petitioner, and co defendant Eugene Makara (hereinafter Makara) were arrested and Welsh, was charged with a number of sex crimes, and related charges against A.D.. Makara, was charged with a number of sex crimes and related charges against A.D. and her brother D.D..

The Commonwealth filed it's Criminal Information against Welsh, on November 20, 2007. In the Information Welsh was charged with around (18) counts alleged to have occurred in a continuing course of conduct between January 1, 2002, through August 29, 2007. *1 Some of these charges were dismissed by the court after a state habeas corpus proceeding, and some of which the Commonwealth withdrew prior to trial.

Makara, filed a motion to obtain certain C&Y records on February 29, 2008. After conference, and based upon agreement of counsels and Luzerne County, Clinton County, and Columbia County, was directed to provide the court with a copy of the requested records at which time the court would conduct an in camera review. The subject records were inspected by the court and released to all counsels.

Welsh, and Makara, filed an Omnibus Pretrial Motion, and Supplemental Omnibus Pretrial Motion. The initial hearing held on these motions was September 10, 2008. Both defendants challenged the sufficiency of the Commonwealth's evidence. A.D., D.D., and Sergeant Mark Fedder, testified

at this hearing.

A.D. was the first witness called by the Commonwealth. She stated that she and her brother would often times stay at the residence of Welsh, and Makara. She related that she had been touched by Gene and Dean. She also related that Dean held Gene's penis and tried to put it in her privets, her vagina. A.D. in response to questioning related that she told her mom a lot of times but she never believed her. She did indicate that her father believed her, but later in her testimony she confirmed that her father was having sexual intercourse with her. A.D. also indicated that she did not understand what was happening to her until she was twelve (12) years old.

Makara's counsel pursued a line of questioning with A.D. about her father having sexual intercourse with her. A.D.A. McDonald, objected indicating that it was outside the scope of direct examination. In response Welsh's counsel indicated that it was relevant to motive and bias. Counsel of Makara, also indicated that it was relevant for the purpose of determining the actual perpetrator, of the crime. The trial court permitted the answer and line of inquiry.

In Welsh's, defense counsel's cross examination of A.D. he inquired if David Hons, had sexual intercourse or contact with A.D. A.D.A. McDonald, once again objected. The trial court stated for the record, "we will permit it on the basis of motive, knowledge, and bias." Counsel was permitted to inquire into A.D.'s sexual intercourse and sexual contact with David Hons, Stephin Daubert, and Brian Daubert.

Makara is alleged to have sexually abused A.D. and D.D. in 2002 through 2004. He is alleged to have had sexual intercourse and caused the minor child A.D. to have oral sex with him during this time period. In addition A.D. alleges that the sexual intercourse and oral intercourse

occurred on trips to Florida in 2002, and 2003, and that whenever she had sex with Makara, Welsh was present. D.D. testified that Makara, had anal intercourse with him. He testified that Makara, would place baby oil and aloe vera on his penis before entering D.D.'s buttocks. In addition he claimed that Makara, placed D.D.'s hand on his penis, and that Welsh, never touched or did anything sexual to him.

At the conclusion of this hearing the trial court issued an order granting a motion for suppression with respect to undergarments, permitting counsel to raise any objection to the bathing suit or any other pieces of clothing used during trial. The court further stated that it would rule on any objections at that time as to relevance.

On September 19, 2008, after reviewing discovery related to the search warrant, and application for search warrant, counsel filed a supplemental omnibus pretrial motion in which he raises the issue of the staleness of the information supporting the search warrant for the first time. While awaiting litigation of Welsh's staleness issue, on October 28, 2008, counsel working on an alternative defense a hearing was held where the Commonwealth and counsel reached an agreement regarding the items obtained during the search that the Commonwealth would seek too admit at trial. *2

Upon motion by Makara, the trial court ordered Milestones, Kids piece, Northeast Counselling and St. Michael's School, should provide defense counsel and the District Attorney with all counselling and educational records in their possession concerning A.D. and D.D. within fifteen days from the trial court's order. The trial court further directed that counsels should not distribute these records to their clients provided however that the subject records could be distributed or disseminated to any expert engaging or retained by the parties.

Kids Piece, filed a Motion for Reconsideration, of the court's order for production of records. Having not received a hearing or ruling on the motion for reconsideration, Kids Piece, filed an appeal with the Superior Court of Pennsylvania, docketed at 2011 MDA 2008. On August 26, 2009, the Superior Court vacated the trial court's order as to Kids Piece, and the matter was remanded for further proceedings consistent with the court's opinion. The trial court thereafter scheduled a hearing on the Kids Piece records.

Upon motion by Makara, Judge Naus, recused himself. In addition, Attorney Hugh Sumner, was appointed as guardian ad litem for A.D. and D.D. On May 6, 2010, newly appointed Judge William Keiser, ordered and directed that neither of the defendants not the Commonwealth nor anyone else who currently had access to the counselling records would make any further distribution, or disclosure of information that is contained in those records to any person or entity except after appropriate hearing and stipulation and further court order. This order applied to all of the counselling and educational records that had been received pursuant to Judge Naus' order.

After review of the matter Judge Keiser, denied Welsh's and Makara's request for Kids Piece, counselling records. The court thereafter ordered a venue/venire hearing to be scheduled for June 23, 2010. At the hearing the defense presented testimony from Professor Neil Sloane, concerning a pretrial survey done regarding the Welsh and Makara case. On July 14, 2010, the trial court denied Welsh and Makara's motion for change of venue without prejudice that the matter could be raised at a time during jury selection. The court on August 5, 2010, also denied both defendants motion for psychological evaluation of each of the children for the purpose of determining competency.

The Commonwealth filed a Motion in Limine challenging Welsh, and Makara's ability to question A.D. about sexual intercourse and sexual contact with her father, cousin, and two (2) uncles. The court ordered that the defense file a brief with there offers of proof. The court ordered the Commonwealth respond via brief. The defense filed a motion challenging the Commonwealth's request to admit prior bad acts under Pa. R.E. Rule 404 (b). The court granted the defense's motion but allowed the Commonwealth to immediately amend. The Commonwealth amended it's 404 (b) notice on record. The trial court found this offer was admissible for the purpose of intent and common plain.

The defense filed a number of motions as the trial approached. Several of the motions namely a Motion for Prosecutor Misconduct, a Motion to Dismiss, and a Motion for a Continuance, were filed concerning videotapes of interviews with A.D. and D.D., by a member of Clinton County C&Y. These untimely submissions prevented the defense from securing a "taint" expert to review this matter to determine whether the children were competent to testify at trial. The trial court denied the motions.

On the first day of trial the court granted the Commonwealth's Motion in Limine and refused to allow the defense to question A.D., about sexual intercourse and contact with her father, cousin, and two (2) uncles. In addition after a lengthy hearing the court permitted the Commonwealth to offer testimony of counsllors, police, and other individuals, who questioned or received information from A.D. and D.D., concerning the alleged events subject to the Commonwealth's criminal information.

After several days of trial on September 20, 2010, the jury convicted Welsh, of Aggravated Indecent Assault of a Child (18 Pa. C.S.A. §3125 §§ (b)); Indecent Assault, Person Less Then 13 Years of Age (18 Pa.

C.S.A. §3126 §§ (a)(7)); Corruption of Minors (18 Pa. C.S.A. §6301 §§ (a)(1)); and Criminal Conspiracy Engaging - Rape of a Child (18 Pa. C.S.A. §903 §§ (a)(1)).

Welsh filed a timely direst appeal to the Superior Court of Pennsylvania captioned COMMONWEALTH OF PENNSYLVANIA V. DOUGLAS DEAN WELSH, docketed at 519 MDA 2011. The Superior court affirmed Welsh's judgment of sentence on August 8, 2012. Welsh then timely filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania captioned COMMONWEALTH OF PENNSYLVANIA V. DOUGLAS DEAN WELSH, docketed at 211 MM 2012, which the court denied on October 21, 2013.

On August 11, 2014, Welsh sent to be filed a timely Petition for Post Conviction Collateral Relief (hereinafter PCRA) in the Court of Common Pleas of Columbia County, Pennsylvania, captioned COMMONWEALTH OF PENNSYLVANIA V. DOUGLAS DEAN WELSH, docketed at CP-19-CR-0000829-2007. The court dismissed this petition as meritless on February 16, 2017, but did not file the dismissal until February 21, 2017.

Welsh, timely filed an appeal to the Superior Court of Pennsylvania, in response to the dismissal of his PCRA petition, captioned COMMONWEALTH OF PENNSYLVANIA V. DOUGLAS DEAN WELSH, docketed at 1850 MDA 2018. On November 21, 2019, the Superior Court affirmed in part and vacated the underlying judgment of sentence to the extent that it designated Welsh as a sexually violent predator under Pennsylvania's Sex Offender Registration and Notification Act (hereinafter SORNA) 42 Pa. C.S.A. §9799.10,9799.41, and remanded with instructions to the trial court. On January 23, 2020, the trial court corrected Welsh's sentence in accordance with the Superior Court's decision.

On February 11, 2020, Welsh timely sent his Federal Petition for Writ of Habeas Corpus to by filed in the United States District Court for the

Middle District of Pennsylvania, captioned DOUGLAS DEAN WELSH V. MARK GARMAN, docketed at 3:20-CV-0329. On March 1, 2024, Judge Mannion, denied Welsh's Petition for Habeas Corpus, and ruled there was no basis for the issuance of a Certificate of Appealability (hereinafter COA). Welsh, filed a timely Notice of Appeal to the Third Circuit Court of Appeals, captioned DOUGLAS DEAN WELSH V. MARK GARMAN, et. al., docketed at 24-1556. On April 15, 2024, Welsh filed a timely Application for Certificate of Appealability and Incorporated Memorandum of Law. sometime thereafter, the caption of this appeal was changed to DOUGLAS DEAN WELSH V. SUPERINTENDENT ROCKVIEW SCI: ET AL. On April 1, 2025, the Third Circuit Court denied Welsh's request for a COA. This Petition for Writ of Certiorari, follows.

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*1 In the instant case the Court should note that although the criminal information alleged the crimes charged occurred during a continuing course of conduct from January 1, 2002, through August 29, 2007. The record of the case establishes the Affidavit of Probable Cause attached to the Search Warrant for Petitioner's property and residence alleged the crimes occurred between 2002 and 2004 only. (App. E @ 1)

Moreover instantly in March of 2004 A.D. made the same accusations that led to the present charges, to the Hazelton Police who investigated and found the allegations to be unfounded and closed the case with no charges filed. Actually, prior to these allegations Petitioner had no contact with A.D., or D.D. for that matter (Petitioner was not tried for any charges related to D.D. whatsoever), after Petitioner, Makara, and A.D., returned from a trip to Florida, in December of 2003 or January of 2004, and had not seen either child again until they appeared in court in the instant matter. Further, in early 2007 A.D. and D.D., were remover from their parents and placed in foster care until at least 2011, where Petitioner, had no contact with A.D. Thus, Petitioner had no contact with A.D. or D.D. for that matter since 2004 and as such no continuing course of conduct from January 1, 2002 to August 29, 2007, could have occurred.

Also review of Children And Youth Services (hereinafter CYS) interviews dated June 13, 2007, states that "
LAURA (A.D.'S MOTHER) EXPLAINED THAT ALISHA HAD TOLD THEM THAT THEY HAD BEEN TOUCHING HER AND DAVID (A.D.'S FATHER) HAD DECIDED THAT HE NO LONGER WANTED THE CHILDREN TO GO THERE. THIS CW ASKED LAURA IF THEY EVER LET THE CHILDREN GO THERE AFTER ALISHA HAD TOLD THEM THAT. SHE STATED THAT THEY HAD NOT. THIS CW ASKED LAURA HOW LONG AGO ALISHA HAD TOLD THIS TO THEM. LAURA STATED THAT IT MUST HAVE BEEN A YEAR OR TWO AGO WHEN THEY STOPPED VISITING." (emphasis added) and CYS interview dated June 26, 2007, states "THIS CW ASKED ALISHA WHEN ALL OF THIS HAPPENED TO HER. SHE EXPLAINED THAT IT HAD BEEN A YEAR OR TWO AGO." (emphasis added).

REASONS FOR GRANTING THE PETITION

A. DID THE DISTRICT COURT ERROR IN RULING THAT PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS, AND SIXTH AMENDMENT RIGHT TO CONFRONTATION WAS NOT VIOLATED BY THE STATE COURT'S LIMITATION ON THE SCOPE OF HIS CROSS EXAMINATION OF THE VICTIM ALISHA DAUBERY ?

Instantly in the District Court's Memorandum Dated March 1, 2024, the court ruled: "We do not find Welsh to have established that the state court's limitation of the scope of his cross examination of A.D. violated his confrontation clause rights nor the state court's unreasonable applied Supreme Court case law when it rejected this claim. Therefore, we do not find this claim warranted habeas relief." Id. @ 17-18 Ex. B.

Welsh contends that the District Court erred in it's ruling. Where it not only conflicts with the decisions of Appellate Courts, but also conflicts with clearly established Supreme Court rulings. The Supreme Court has established that the constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense. CRANE V. KENTUCKY, 476 U.S. 683, 690 (1986). This guarantee has it's roots in both the Due Process Clause (CHAMBERS V. MISSISSIPPI, 410 U.S. 284,294 (1973)), and the right to "have compulsory process for obtaining witnesses in his favor" as provided by the Sixth Amendment. WASHINGTON V. TEXAS, 388 U.S. 14,23 (1967). A defendant's right to due process in a criminal trial is, "in essence, the right to a fair opportunity to defend against the states's accusations." CHAMBERS, @ 294. Included within these guarantees is the right to cross examination (DAVIS V. ALASKA, 415 U.S. 308,315-16 (1974)), and to present relevent evidence. MICHIGAN V. LUCAS, 500 U.S. 145 (1971).

In the instant case even though A.D. had already testified at the

Omnibus Pretrial Hearing On September 10, 2008, before Judge Scott Naus, to having sexual intercourse regularly with her father, once with her uncle Steve, (Recorded Record @ 73a, hereinafter R.R.), about 20 times with another uncle (R.R. @ 71a), and to having sexual contact with another relative beginning sometime after she was (6) years of age. At trial Judge Kieser, then held that A.D. could not be questioned about those alleged sexual assaults at trial. (R.R. @ 67a) The trial court only allowed Welsh, to elicit testimony from A.D. that she had been untruthful with forensic investigator Sherry Moroz, when she told her that no one other then Welsh or Makara had touched her. (Trial Testimony 9/16/10 @ 367-68) and permitted Sherry Moroz, to conform this during her testimony. (Trial Testimony 9/17/10).

Welsh, contends this decision that A.D. could not be cross examined about other acts of alleged criminal sexual intercourse she was involved in at the same time she was claiming that she was having intercourse with Makara, with Welsh present. Only allowing evidence to be elicited from A.D. that she had been the victim of improper touching by individuals other then Makara, and that she lied about it was wholly insufficient. Denying Welsh, his right to both a fair trial pursuant to the Fourteenth Amendment, and right to present evidence in defense of the charges against him pursuant to the Sixth, and Fourteenth Amendments.

Although the District Court stated it's reasons for it's decision in it's Memorandum of March 1, 2024, @ 10-17. (Ex. B) The Court did not make mention of and totally overlooked the fact that this issue excluded testimony that would/could have established Welsh's innocence. Where instantly both Welsh and Makara's defense was that A.D. was lying and that neither had any type of inappropriate contact with her. As such Welsh, contends that the Court's decision denied him his ability to first and foremost present evidence

that would establish his actual innocence.

Where even taken in consideration with medical testimony that in laymen terms provided that a person could have sexual intercourse a time or two and still retain a hymen, and with time also heal and show no signs of sexual abuse. Had the above cited evidence been presented at trial establishing that at the same time A.D. was claiming to have been having sexual intercourse with Makara, with Welsh being present, she was also claiming to have had sexual intercourse at least (22) times with three (3) different men starting at around (6) years of age. Before even adding to that the number of times she claimed to have had intercourse with Makara, and her father who she lived with and was regularly having intercourse with up until she was removed from her parents home by C&Y in early 2007. Yet still having a hymen and no signs of sexual abuse.

Although this Court, has observed that "State and federal rule makers have broad latitude under the constitution to establish rules excluding evidence from criminal trials." U.S. V. SCHEFFER, 523 U.S. 303,315 (1998). "Well established rules of evidence permit trial judges to exclude evidence if it's probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issue, or potential to mislead the jury." HOMES V. SOUTH CAROLINA, 547 U.S. 319,326 (2006). Rules of this type "do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purpose they are designed to serve.'" SCHEFFER, @ 308. Although this Court has also observed that "Exclusion of evidence pursuant to state rules of evidence is unconstitutional only where it "significantly undermined the fundamental elements of the accused defense."' SCHEFFER, @ 315.

Numerous Courts of Appeals have also held exclusion of the type of

evidence in the instant case under similar circumstances constitutes violations of the due process and confrontation clause. See; SECRETARY, FLA. DEP"T OF CORRECTIONS V. BAKER, 406 Fed. Appx. 416 (11th Cir. 2010); HOLLEY V. YERBOROUGH, 568 F.3d 1091 (9th Cir. 2009); FLOWER V. SACRAMENTO COUNTY SHERIFF'S DEP'T, 421 F.3d 1027 (9th Cir. 2005); WHITE V. COPLAN, 399 F.3d 18 (1st Cir.); and LEWIS V. WILKINSON, 307 F.3d 423 (6th Cir. 2022).

Welsh contends that under the circumstances of this case if the evidence at issue had been admitted it would not have created confusion of the issue, mislead the jury, or been an attack on A.D.'s reputation for chastity. But only showed the jury that even though A.D.'s medical examination in 2007 or 2008, established she still had an intact hymen, and showed no signs of sexual abuse. She was claiming to have been criminally sexually assaulted by (4) other men not including Makara, with Welsh being present. Claiming to having hard core sexual intercourse (not just being improperly touched), on a regular basis with the father from around (6) years of age until being removed from her parents in late 2006 or early 2007 by C&Y, and at least (22) other times with three (3) other men, not including the number of times she claimed Makara, had intercourse with her.

In fact Welsh, submits that the exclusion of this evidence actually mislead the jury. By leading them to believe that A.D. was only improperly touched by other individuals and it was possible for A.D. to show no signs of sexual abuse, and still have a hymen. Where she was only claiming to have had sexual intercourse with Makara, a few times. When in fact she was claiming to have been having hard core sexual intercourse regularly since the age of (6) with at least (5) men including Makara, and that no charges in any other case were pursued.

Moreover, Welsh, avers that this evidence would show a pattern and

practice by A.D. of alleging that she was sexually abused by men to get what she wanted. In this case at least one reason would be to stay in foster care and not return to her parents care. Where she previously lived in deplorable and unsafe conditions, and establish that it would be extremely unlikely if not impossible for her to have suffered the years of sexual abuse by numerous men as she claimed. Basically, being used as a sex toy regularly for years by the men in her family. Yet still have an intact hymen, and show no signs of the systemic sexual abuse she claimed to have suffered. The introduction of this evidence would also not be precluded by the rape shield law of Pennsylvania, or the federal rape shield law. As none of these acts would be considered consentual due to A.D.'s age at the time and therefore, would not run afoul of the purpose the rape shield laws were designed to serve.

Therefore, Welsh, avers that the District Court's decision that Welsh did not establish that the state court's limitation on the scope of his cross examination of A.D. violated his Confrontation Clause Rights, nor that the state court unreasonably applied Supreme Court case law when they rejected his claim, is in error and contradicts this Court's case law, and Welsh seeks relief.

B. DID THE DISTRICT COURT ERROR IN RULING THAT THE IMPOSITION OF PETITIONER'S TWO LIFE SENTENCES PURSUANT TO A STATUTE DECLARED UNCONSTITUTIONAL, DID NOT VIOLATE THE FIRST, EIGHT, AND FOURTEENTH, AMENDMENTS ?

Instantly in the District Court's Memorandum of March 1, 2024, the court ruled Welsh's two life sentences pursuant to 42 Pa. C.S.A. §9718.2, which imposed a mandatory minimum sentence when there is a previous

convictions for sexual offenses, did not warrant habeas relief. Id. @ 21-25 (Ex. B). The court reasoned that Welsh was challenging his sentence pursuant to this Court's decision in ALLEYNE V. UNITED STATES, 570 U.S. 79 (2013), and that ALLEYNE, did not apply to his case. Where the two life sentences were imposed pursuant to a mandatory minimum sentencing statute pertaining to prior convictions.

Welsh avers that the district court erred in this ruling. where like the state courts, the district court misunderstood Welsh's argument or ignored his actual argument, and the district court's decision is contrary to this Court's established case law. Welsh did not argue that his sentences were illegal because of a direct result of this Court's decision in ALLEYNE. But as a result of the fall out of ALLEYNE, or as an indirect result of ALLEYNE.

The common legal understanding of the term "ILLEGAL" is "AGAINST OR NOT AUTHORIZED BY LAW". (BLACK"S LAW DICTIONARY ABRIDGED 5th Ed. @ 380). The United States Constitution is "THE LAW OF THE LAND ..." (ARTICLE VI (2) U.S. CONST.) In accordance with these well understood definitions both this Court, and the Pennsylvania Supreme Court, have consistently recognized that mandatory sentences are illegal and unenforceable when not applied in conformity with a valid statute or when applied in violation of the constitution. See e.g. PEUGH V. UNITED STATES, 113 S.CT. 2072,2086 (2013) ("A (guideline sentence) law can run afoul of the (Ex Post Facto) Clause even if it dose not alter the statutory maximum punishment attached to the crime."); HICKS V. OKLAHOMA, 447 U.S. 343,347 (1980) (State violated due process by not ordering resentencing after mandatory sentence was imposed pursuant to a statute declared invalid.); and LINDSEY V. WASHINGTON, 301 U.S. 397,401-02 (1937) (Ex Post Facto violation to apply new harsher mandatory sentencing statute even though same sentence might have been imposed without it.)

Welsh, contends that his two life sentences in the instant case are illegal because they are not applied in conformity with a valid statute. This Court in ALLEYNE, reconsidered and expressly overturned it's prior precedent in HARRIS V. UNITED STATES, 536 U.S. 545,567-68 (2002). (Expanding that APPRENDI (APPRENDI V. NEW JERSEY, 530 U.S. 466 (2000) only prohibited judicial power to extend the mandatory maximum sentence beyond what was authorized by statute and reaffirming it's pre APPRENDI, decision in McMILLIAN V. PENNSYLVANIA, 477 U.S. 79 (1986)), and establishing "that any fact that, by law increases the penalty for a crime must be treated as an element of the offense, submitted to a jury rather then a judge, and found beyond a reasonable doubt." ALLEYNE @ 2163.

The effects of this decision in the Commonwealth of Pennsylvania was to invalidation of a number of similiary patterned mandatory minimum sentencing statutes as unconstitutional, including 42 Pa. C.S.A. § 9718, the statute at issue in this case. See COMMONWEALTH V. WOLFE, 140 A.3d 651 (Pa. 2016) (Holding "that SECTION 9718 IS IRREMEDIABLY UNCONSTITUTIONAL ON IT'S FACE NON-SERVERSABLE AND VOID.)

Welsh, avers that the fact that this statute (9718) had not yet been declared unconstitutional at the time of his sentencing (February 22 2011) prior to this Court's decision in ALLEYNE, and the Pennsylvania Supreme Court's decision in WOLFE, is irrelevant in this context. Where the law of the Commonwealth of Pennsylvania is clearly established and the Pennsylvania court's, have continually held that: "An unconstitutional statute is ineffective for any purpose as it's unconstitutionality dates from the time of it's enactment, and not merely from the date of the decision holding it so." (citation omitted) "If no statutory authority exists for a particular sentence that sentence is illegal and subject to correction. An illegal sentence must

be vacated. (citation omitted) ... Because the statute is deemed unconstitutional retroactive to it's inception, the court lacked authority to convict and sentence appellant ..." COMMONWEALTH V. MOHAMMAD, 992 A.2d 897,903 (Pa. Super. 2010). Also see; COMMONWEALTH V. BARNES, 151 A.3d 121 (Pa. 2016); and COMMONWEALTH V. BROWN, 431 A.2d 905 (1981).

As such welsh, contends that with the court's decision in ALLEYNE, and WOLFE, declaring mandatory minimum sentencing statutes such as section 9718, unconstitutional and void as a whole. Combined with the well established law of the Commonwealth of Pennsylvania that when a statute is declared unconstitutional that unconstitutionality applies retroactively to the date of the statutes inception. Thus, making it as if the statutory authority never existed. There can be no doubt that his two life sentences pursuant to section 9718, are illegal. Where in the simplest terms section 9718 never existed and the court lacked the authority to sentence him pursuant to a non-existing statute.

Therefore, welsh contends that what the courts failed to take into consideration in this case. Is that even though the ALLEYNE, decision did not apply to mandatory minimum sentences pertaining to prior convictions. Once the Pennsylvania Supreme Court in WOLFE, declared section 9718, unconstitutional as a whole. It would not matter what subsection of 9718 Welsh, was sentenced under whether pertaining to prior convictions or not the statute itself never existed, and the two life sentences pursuant to section 9718 in the instant sentence became illegal, and welsh seeks relief.

C. DID THE DISTRICT COURT ERROR IN RULING THAT TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PROPERLY RAISE AND LITIGATE THE STALENESS OF THE INFORMATION UPON WHICH THE SEARCH WARRANT WAS ISSUED FOR PETITIONER'S

RESIDENCE ?

Instantly in the District Court's Memorandum of March 1, 2024, (App. B) the court relied on the state PCRA court, and Pennsylvania Superior Court, opinions and held that counsel did in fact rase and litigate the staleness issue, and therefore, the issue was meritless. Id. @ 59-61.

Welsh contends that the District Court erred in this ruling. Where on direct review counsel only raised the issue of stalenes, after he himself abandoned or waived the issue as decided by the trial court. See Trial Court Opinion 6/21/12 @ 5. The Pennsylvania Superior Court then based on the trial court's opinion concluded that trial counsel neither committed an error of law not abused it's discretion in determining that the agreement between the Commonwealth and (Welsh) counsel waived the issue of staleness. (Superior Court Memorandum 8/8/12 @ 12 (App. C)).

Then when Welsh raised the Issue of counsel's ineffectiveness concerning the abandoning or waiving the issue of staleness in his PCRA. The PCRA court rejected the claim as meritless stating: "In the case at bar, the victim reported the alleged abuse to authorities on June 11, 2007. Both victims alleged the abuse occurred over the course of years, and the August 29, 2007, search warrant application and affidavit of probable cause reflects this allegation. one of the victim's alleged the abuse would occur when she stayed over the Petitioner's house, which was at least once a week. The description of the alleged abuse within the search warrant application, and affidavit of probable cause sufficiently established an alleged course of conduct by Petitioner. The facts that some of the alleged abuse occurred years before the search warrant was issued is of no moment due to the establishment of an alleged course of conduct. After receiving the allegations of abuse from

the victims. The authorities moved expeditiously to secure a search warrant. The court finds the information underlying the issuance of the search warrant was not stale, and thus the issue is not of arguable merit. Therefore, Petitioner's trial counsel was not ineffective for failing to further develope the staleness issue during Petitioner's case." (PCRA Court's Opinion and Order 2/21/17 @ 3-4). The Superior Court then excepting the PCRA court's opinion on the issue affirmed on that basis rejecting welsh's claim of ineffectiveness.

In reaching this conclusion the state courts relied on and cited to COMMONWEALTH V. JONES, 668 A.2d 114,118 (Pa. 1995) holding "a showing that criminal activity is likely to have continued up to the time of the issuance of a warrant renders otherwise stale information viable." (PCRA court opinion 2/21/17 @ 3). However, Welsh, submits that the court's reliance on JONES, is misplaced. Where the application for the search warrant at issue clearly establishes that the dates of the alleged violations were limited to between 2002, and March 24, 2004. (App. E), and the Commonwealth applied for the search warrant some (3) years and (5) months after the last alleged criminal act occurred on August 29, 2007.

Moreover, the application for search warrant establishes that the Commonwealth DID NOT ALLEGE anywhere that the ALLEGED CRIMINAL CONDUCT WAS CONTINUING past 2004. (App. E) As such Welsh, submits that any course of conduct alleged to have occurred between 2002 and 2004, would be stale information that CANNOT provide probable cause in support of a warrant. Without a shoeing that criminal activity is likely to have continued up to the issuance of the warrant, in this case on August 29, 2007. Which is not alleged and totally lacking in the present case contrary to the state court courts belief.

Further, Welsh contends that under the circumstances of this case it

would be impossible for the court to find a continuing course of conduct continuing until 2007. Where in the instant case although the criminal information alleged the crimes charged occurred during a continuing course of conduct from January 1, 2002, through August 29, 2007. The record of the case establishes, and the affidavit of probable cause attached to the application for search warrant for Welsh's property and residence alleged the crimes occurred between January 2002, through March 24, 2007 only (App. E), and just because the Commonwealth changed the dates of the alleged criminal conduct on the criminal information does not change what the dates were on the search warrant. Moreover, instantly in March of 2004, A.D. made these same allegations that led to the present charges to Hazelton Police. Who investigated and found the allegations to be unfounded and closed the case with no charges filed. Actually prior to the instant allegations Welsh had no contact with A.D. or D.D. for that matter after Welsh, Makara, and A.D., returned from a trip to Florida in January of 2004, and had not seen either child again until they appeared in court in the instant matter. Further, in late 2006, or early 2007, A.D. and D.D. were removed from there parents and placed in foster care until at least 2011, where Welsh, had no contact with these children. Thus, Welsh, had no contact with these children since 2004, and as such no continuing course of conduct from January 1, 2002, to August 29, 2007, could have occurred, and saying such by the Commonwealth is a total lie to cover up their violation of Welsh's Constitutional rights.

Also review of exhibit b., in Welsh's PCRA appeal brief to the Superior Court in 2019, will show a Children and Youth Services interview dated June 13, 2007, that states: "LAURA (A.D.'S MOTHER) EXPLAINED THAT ALISHA HAD TOLD THEM THAT THEY HAD BEEN TOUCHING HER AND DAVID (A.D.'S FATHER) HAD DECIDED THAT HE NO LONGER WANTED THE CHILDREN TO GO THERE. THIS CW ASKED LAURA

IF THEY EVER LET THE CHILDREN GO THERE AFTER ALISHA HAD TOLD THEM THAT. SHE STATED THAT THEY HAD NOT. THIS CW ASKED LAURA HOW LONG AGO ALISHA HAD TOLD THIS TO THEM. LAURA STATED THAT IT MUST HAVE BEEN A YEAR OR TWO AGO WHEN THEY STOPPED VISITING." (emphasis added), and the C&Y interview dated June 26, 2007, states "THIS CW ASKED ALISHA WHEN ALL THIS HAPPENED TO HER, SHE EXPLAINED THAT IT HAD BEEN A YEAR OR TWO AGO. (emphasis added). Welsh avers this would more then establish if one goes by these statements alone that he had not seen or had contact with A.D. since at least 2005, two (2) years prior to the search of his property.

Further, Welsh avers that a conscience reading of the search warrant will show that A.D.'s statement was talking about a prior course of conduct, not a continuing course of conduct. Thus, Welsh, submits that the state courts' reasoning for finding the issue meritless is totally contrary to the fact and evidence of the case and totally erroneous, and only done to cover up the Commonwealth's violation of Welsh's constitutional rights.

As such Welsh, avers that with no continuing course of conduct from 2002 to 2007, the issue of counsel's waiving of the staleness issue of the search warrant was not meritless, and ineffective assistance of counsel, and Welsh seeks relief.