

No. 25-5475

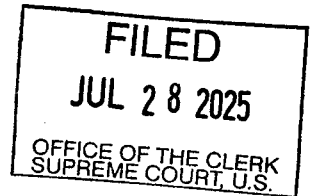
IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON D.C. 20543-0001

In Re Mr. GEORGE DANIEL LUSTER JR #1264827 PETITIONER
(Your Name)

ORIGINAL



ON PETITION FOR A WRIT OF HABEAS CORPUS

UNITED STATES COURTS OF APPEALS FIFTH CIRCUIT 24-50594-
U.S.D.C No 6:24-cv-387 Actual Innocence BY NEWLY DISCOVERED
EVIDENCE, THAT WAS WITHHELD AT PETITIONER TRIAL OF February 19, 2003
28 USCS 2254(b)(1) (A)-(B)(i)(ii)(d)(1)(2) (A)(i)(ii)
(B)(4)(g)(h) Actual Innocence Newly Discovered Evidence Withheld
by State Prosecutor at Trial Proceedings of February 19, 2003, Namely

Expert(Same) examination of PETITION FOR WRIT OF HABEAS CORPUS performed on the
alleged victim November 19, 2002, at Scott and White Hosnital Temple Tx 76501
which proves Detention's actual innocence of alleged offense aggravated sexual
assault of child by penetration. Mr. George Daniel Luster Jr #1264827

(Your Name)

Bill Clements Unit 9601 SPUR 591

(Address)

Amarillo Tx. 79107

(City, State, Zip Code)

unknown

(Phone Number)

QUESTION(S) PRESENTED

named due #1
process

Prosecutor Misconduct, Brady v Maryland Violation 14th Amendment
Actual Innocence Newly Discovered Evidence Withheld at
trial by prosecutor for state, February 19, 2003 that proves
petitioner actually innocent of the alleged offense of
aggravated sexual assault of a child. Younger than
14 years of age by alleged penetration of the accusing
person female sexual organ by the alleged use of petitioner's
male sexual organ to were, newly discovered evidence of
withheldment by state prosecutor namely sexual assault (SANE)
examination DNA Test, performed on the accusing person at
Scott and White Hospital November 19, 2002 show no penetration
ever took place, nor were there any sign of aggravated
sexual assault of a child of any form. Violation of petitioner's
14th Amendment Due Process of the United States Constitution.
Petitioner ask Court to grant relief from final wrongful
conviction and sentence after view of factual evidence that
can not be rebutted by State or Federal District Courts.

#2 Stacyland Washington violation of 14th Amendment due process
Ineffective Assistance of Counsel at trial, failure to contact
alibi witness's, failure to obtain discovery of case, improper
investigation of case, coercion of petitioner to plea
by use of wrongful advice of issues of evidence, aiding in
the coercion from prosecutor to plea guilty by use of threat
of more time of 50 to life in prison if petitioner did not
accept the plea bargain agreement and try to proceed to trial.

#3 Brady v Maryland Violation of 14th Amendment due process
Prosecutor Misconduct / Misfeasance of Justice with holding
evidence favorable to inmate, of Actual Innocence, namely
sexual assault examination test performed of the accusing
person November 19, 2002 by a expert (SANE) nurse of Scott
and White Hospital Temple Tx. at trial of February 19, 2003, to
were sexual assault examination DNA test proves petitioner
actually innocent of the alleged offense of aggravated sexual
assault of a child by alleged penetration of the accusing person
female organ by alleged use of petitioner's male sexual organ
which exam document show and prove no penetration nor
was there any sexual assault occurred at all to the accusing
female sexual organs. petitioner ask court grant relief from
wrongful conviction and sentence once review and weight
of overall evidence by state court, to were this is a violation
of petitioner's 14th Amendment due process clause of the United
States Constitution rights of America.

4. Insufficient Evidence to obtain a conviction on defendant to prove said offence took place due to petitioners newly discovered evidence that was withheld at trial of February 19, 2003 that proves actual innocence and rebuts all evidence of trial costs, to were trial court use of fake evidence to obtain a conviction,

Petitioners can prove the evidence used to obtain his conviction is insufficient to hold a conviction, which is the product of being withheld by state prosecutor at trial to receive a granted conviction, A sexual assault examination test performed on the accusing person at Scotland White Hospital by expert Gynecologist nurse examines proves petitioners is actually innocent of the alleged offense of aggravated sexual assault of a child by alleged penetration of the accusing person female sexual organ by alleged use of petitioners female sexual organs, A expert Gynecologist sexual assault test performed on the accusing person November 19, 2003 that was withheld at petitioners trial of February 19, 2003 by state prosecutor prove petitioners actual innocence, and also proves trial court use of fake evidence and insufficient evidence to obtain a conviction on petitioners which is a violation of petitioners 14th Amendment Right to due process, Constitution of United States of America, Right,

S

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:

Petitioner George Daniel Luster Jr #1264822

V

SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C. 2053-0001

RELATED CASES

Petitioner do not understand this question, so therefore he can not answer it.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Opinion Below Below page 1
APPENDIX B	Justification Justification JURISDICTION page 2) one in pages;
APPENDIX C	CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED page 3) one(1) page
APPENDIX D	STATEMENT OF CASE page 4) two(2) pages
APPENDIX E	REASONS FOR GRANTING THE WRIT page 5) Four(4) pages.
APPENDIX F	CONCLUSION page 6 one(1) page

TABLE OF AUTHORITIES CITED

CASES Brady Maryland 371 U.S. 83 PAGE NUMBER

Brady v Maryland 373 U.S. 83, 83, Sct 1194
 102, Ed, 2d 215 (1963) Prosecutor Misconduct
 Withholding of actual innocence evidence violation of
 14th Amendment due process
 Strickland v Washington 466 U.S. 668, 687
 80 L. Ed 2d 674 104, Sct 2052 (1) (2) Wrong,
 Ineffectiveness of Counsel, Violation of 6th Amendment
 Violation of Due Process,

STATUTES AND RULES Federal R. Civ. P. 60(b)
 Federal R. Civ. P. 60(b) (6)
 Federal R. Civ. P. 60(b) (2) under Rule 59(b)
 Federal R. Civ. P. 60(b) (3)
 Federal R. Civ. P. 60(d) (1) (3) or
 Rule 20.3 (a) - ~~_____~~

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPINIONS BELOW

☐ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix 1.A to the petition and is

☒ reported at In re Luster, 2024 U.S. App. LEXIS 25108; 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 1.A to the petition and is Western District of Texas, Waco

☐ reported at Division 2024 US Dist Lexis 25390; 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 1.A to the petition and is

☐ reported at Luster v Tex Ct of Criminal Appeals 2024 U.S. Dist Lexis 25390; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. Ex parte Luster, 2021 Tex Crim App, Unpub. Lexis 611

The opinion of the State Judicial Court Bell County TX court 2024-04-04 appears at Appendix 1.A to the petition and is

☐ reported at Luster v. State 2021 Tex. Crim. App, Unpub. Lexis 611; 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 Oct 3, 2024.

☒ 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: 1/4, 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 1/4 (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 December 8, 2021.
A copy of that decision appears at Appendix F2B.

☐ A timely petition for rehearing was thereafter denied on the following date: 1/4, 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 1/4 (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Page 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28. USCS 2254 (b)(1)(A)(B)(i)(ii) (d)(1)(a)(e)(i)(ii)(iii)
(B)(F)(G)(h.) Violation of 14th Amendment, the Amendment
Appendix C #3 due Process Clause of The United States Constitution

STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT

Appendix (D) #21 [REDACTED] Brady v Maryland

Petitioner has tried in State District Court to present application of 11.07 writ of habeas corpus on the claim of Actual Innocence of the alleged offense of aggravated sexual assault of a child by alleged penetration by alleged use of petition male sexual organ to cause alleged penetration of the alleged victim female sexual organ. To were newly discovered actual innocence evidence that was withheld by State Prosecutor purposely at petition trial proceedings of February 19, 2003, namely a Expert (Sane) Nurse examination document DNA test that show and proves petitioner actually innocence of the alleged state offense in the state indictment, which was performed on the alleged victim November 19, 2002 which proves no penetration took place to any of the alleged victim female sexual organs, the said examination Sane DNA test also proves no sexual assault ever took place.

Court is Page 4
Petitioner has constantly and diligently tried to put this document into State trial court for litigation and proof of actual innocence for relief from the wrongful conviction sentence of the alleged offense stated in the indictment, to were the document exam test has come up missing out of the 11.07 and 2054 petition for litigation to the proper court for relief from wrongful conviction, to were petition habeas writ dismissed or denied for abuse of writ, to were petitions last 2054 petition of July 18, 2004 was also denied for want of prosecution, Oct 3, 2004 after being transferred from the US District Court Western District of Waco Division to were once received at the United Courts of Appeal 5th circuit for approval of certificate of appealability which when sent to the Western District Court the 2054 petition for relief on claim of actual innocence the exam was not forwarded to the United States Courts of Appeals 5th circuit for approval of certificate of appealability for the claim of actual innocence and relief from final conviction and sentence, alone with the other documents of exhibited evidence to the 5th circuit court to were the said Court of Western District Sealed the exam in they court records and files to were my 2054 writ was dismissed on the claim of actual innocence as a free

standing claim for actual innocence by not showing
 a prima facie showing of being actual innocence, October
 3, 2024, Petitioner's 2024 writ was dismissed for want
 to prosecute, to were had the Clerk of Court not sealed
 the Sexual assault examination DNA test and accompanied
 it to the 5th Circuit Court of Appeals to give proof
 of evidence to the claim of actual innocence relief
 would of been granted due to petitioner's innocence
 would have been greatly proven by wide miles of
 high and miles, and the exam would of gave evidence
 to every ground stated on the 2024 writ of habeas
 corpus and would hands down allowed the said Court
 of the 5th Circuit to grant petitioner a Certificate
 of appealability so that petition could be litigated
 in the said Court of the Western District for relief
 from final conviction and sentence with out a doubt
 due to there no reasonable would find Petitioner guilty
 beyond a reasonable doubt, which once weighed by the
 Court in whole of all evidence of record in trial Court's
 files and record of State Court, Petitioner's exculpatory
 evidence that was the product of withheldment by
 the prosecutor for the State at trial of February 19, 2003
 relief will be granted to were this 2024 writ of habeas
 is not to disturb law of Justice or bring stress to Court
 dockets of frivolous filed petition to said Court, Petitioner
 has tried to litigate this evidence to every Court of
 proper jurisdiction but to only be denied are mislead
 by Court official of the were about of the sexual assault
 exam document, from 2021 on up 2025 petition has accompa
 nied this document of factual actual innocence but to only
 be given denial to his claim of actual innocence by state
 and federal Courts stating the exam was not accompanied
 to they Court for litigation of the claim of actual innocence
 I'm tired of this so petitioner ask this said Court to
 please bring this case to litigation into it Court for relief
 from wrongful conviction, Supreme Court Rule 20, Section 81651(a)
 of Title 28 of the United States Code, Supreme Court Rule 20.3(a)
 Supreme Court Rule 20.4(a) Neither Congress nor the Court it
 self has the power to limit or extend the Courts Original
 Jurisdiction as conferred by art III.

Continue of page 4

Maryland V Brady, - Strickland V Washington

Had counsel investigated case properly, petitioner's trial would of been different and would of been found innocent of the alleged crime.

REASONS FOR GRANTING THE PETITION

Appendix E#3

Petition was given 5 years deferred probation to where it was only accepted because of the use of coercion and wrongful advice of counsel and also the threat of prosecutor relayed to petitioner from counsel of more time of 50 to life in prison if petitioner did not accept the plea agreement from state prosecutor and try to proceed to trial, had the exam of sexual assault DNA test not been withheld by state prosecutor at the petitioners trial of February 19, 2003, petitioner would of never agreed to take the plea agreement or had petitioner seen or know the were abouts of the exam and correct results of the exam, to where counsel stated to petitioner that the DNA prosecutor told counsel a exam was done and it showed against petitioner proven guilty of the alleged offense against petitioner, to where counsel was constantly ask about the exam, he state he has not seen it and the DNA prosecutor want answer his calls return them, petitioner did not find out the results of the exam until he received his own copy from prosecutor of appealant division February 13, 2019, to where petitioner did not know the exam showed actual innocence until then, prosecutor of case at the revocation hearing know of the results of the exam due to the exam was perform November 19 2002 and petitioner's community supervision trial took place February 19, 2003, to where petitioner stated that he had never seen no evidence to show his guilty of the alleged offense to where prosecutor state the State has a Judicial Confession of petitioner sign to confess and plea guilty which is a document of coercion, by counsel told petitioner the Judicial Confession had to be sign or the plea would not be accepted.

REASON FOR GRANTING THE PETITION

Petition ask Court to hold a evidentiary hearing to give petitioner the right to present his exculpatory evidence of actual innocence and view all evidence State trial court has in its possession to hold this said conviction against petition after weighing all evidence in light of evidence in trial record against petitioners evidence, Petitioners exculpatory evidence of actual innocence newly discovered will prove hands down petitioner actual innocence that was withheld by prosecutor, Petitioners ask the said Supreme Court to hold a evidentiary hearing guided by Fed. Rule, App. Evid. set out in statute, for appellees, Item of Evidence ask to be reviewed

- 1- Witness Statements against petitioners stating petitioners involvement of offense that show proof of his guilt,
- 2- Video tape of the accusing person stating petition involvement of the offense and guilt, done at the children advocator center. State prosecutor told petitioners counsel about.
- 3- Child Protection People Interview of the mother and the accusing person.
- 4- A copy of the Sexual Assault examination document, that the State prosecutor has in his files and records which is not docketed in the District Clerk of Bell County Justice Complex files and Courts Records,

The Denial of DNA Testing Document of [REDACTED] March 16, 2014, by State Prosecutor Bob D Odom who was petitioners counsel on his direct appeal to where he filed a Anders brief and withdrew as petitioners counsel of December 2005, to where he State in the Memorandum Opinion of the denial of DNA testing preceeding that a Expert (Sone) Nurse examiner State "no physical or biological November 19, 2002, was collected from the victim during the examination" because of the amount of time that had passed between when the crime occurred and when the exam took place, moreover the State attached a copy of the Sone report to its response, that report reveals that, although the victim was checked for injuries, no biological samples were collected.

Continue of page 5

REASON FOR GRANTING THE PETITION

Now paragraph 4, Line 1-5 Statement of experts of the (Same) DNA sexual assault result from a Expert (Same) nurse examiner from Scott and White Hospital State "After reviewing Luster's motion and the States response, the district court denied Luster's request for DNA testing and found among other things that there was no physical or biological evidence collected from the victim in this case" therefore the State has no biological or physical evidence in its possession and there is no evidence to be DNA tested.

Now im no rocket science but I did ask about the exam and what physical evidence was and learn it would be trauma, tear of the hymen or open of the vagina after penetration that would never hell back to perfect form, are trauma does not ever leave due to its scar tissue to the body, Now I also ask what Well estragenized Hymen mean due to that's what the (Same) nurse examiner who performed sexual assault test on the accusing person stated on the exam of here ending results of the exam, to were the (Same) nurse stated no injuries to any of the accusing person sexual female organ (Same) nurse also state Head to toe exam reveals no trauma and also state Detail genital exam reveals no trauma, now the trial court, prosecutor has a copie of this examination document, the U.S. District Court of Western District has a copie of the (Same) examination DNA test, that proves petitioner's actual innocent of the alledge offense, stated in the indictment. So why is petitioner still incarcerated, petitioner due fill foul play in said courts and petitioner is tired of this run around game of the courts he has been diligently applying his actual innocent claim in but to only be slapped down and laughed at that's how petitioner fill due to why would the petitioner file his actual innocence ground and state everything about the results of the actual innocence evidence and not accompanie it to make sure relief be granted that do not make sense so foul play is some were with this exam document constantly come up missing before reaching proper court for litigation for proof of actual innocence

Just the Memorandum Opinion from
the State Prosecutor Bob D. Odom on the
Denial of DNA testing should be enough
to grant relief sought from wrongful
conviction due to no evidence of physical
or biological, to were exam document proves
innocence on behalf of petitioner that trial
court or any other court can not rebut
after review of the said trial courts evidence
of files and court records. Prosecutor stated the Court
has no evidence of DNA to be tested in its possession to be
tested. The real reason relief should be granted
due to petitioner has been incarcerated
to were state court has not showed
one lick of evidence to hold this wrongful
conviction on petition but a Judicial Confession
of overbearing and of threat from prosecutor
of more time. Expert (one) nurse examines
DNA test alone once view by said court of
United States Supreme Court relief will be
granted due to factual fact of actual innocence.
that once view will show no juror would
of convicted petitioner in light of the evidence
of exculpatory proof,
thus why relief should be granted do petitioner
has prove his actual innocence of the alleged
offense against his by state prosecutor withheld
of evidence favorable to a defendant. Brady Violation

Violation of petitioner 14th Amendment
due process clause of The United States of American
Constitution Rights.

"REASON FOR GRANTING PETITION"

Under Federal Rules Civ. P. 60(b) (6)(2)(3)(d)(1)
(3) Rule 20.3(a)/88 U.S.C.S 2254(b)(1)(A)
Continue of page 6 (b)(1)(2)(3)(4)(5)(6)(7)(8)(9)
(h)

Petitioner sent his 2254 Petition to Western District Court to where it had the sexual assault exam in it, to where the clerk seal the exam in the courts files and records, and transferred the 2254 petition to the Court of Appeals 5th Circuit, to where the Clerk of the Court of Western district did not send, the sexual assault expert (Sane) sexual assault examination test that proves actual innocence of the alleged offense to where the Court of Appeals of the Fifth Circuit dismissed petitioner's petition for want of prosecution, petitioner only filed one 28 USC 2254 petition the year of 2024 to the Court of Appeals 5th Circuit to where No 24-50594 was Case No. Now Clerk of Court sent notice of petitioner's 28 USC 2254 petition for actual innocence petition was Denied for freestanding claim of actual innocence By Justice NO, Ramirez, Wilson & CUDIAM. No 25-50488, July 22, 2024 FILED. UNPUBLISHED ORDER by Melissa B. Courcavlt, Deputy Clerk. Now the problem is that the only 28 USC petition petitioner filed was the one sent to the Western District Court due to Clerk of 5th Circuit Court of Appeal Christina A Gardner Deputy Clerk No 24-50594 that was CONCLUSION transferred back to the 5th Circuit Court July 23, 2024 on the said grounds stated.

Petitioner make the following Conclusion that the state actual innocence evidence of withheld from petition from state prosecutor at trial of February 19, 2003 and other document in district Clerk of Bell County Court files and records and also in the Western District Court of Waco Division who also has the Newt (I) discovered evidence in they Clerk Court files and records also the United States Court of Appeals 5th Circuit Clerk files and records that proves petitioner actual innocence.

The petition for a writ of habeas corpus should be granted.
Respectfully submitted, of alleged offence stated against petitioner in State indictment.

Mr George Daniel Luster Li
#1264827

Date: July 28, 2025

To clarify and understand why petition is
addressing this COURT OF SUPREME COURT OF UNITED
STATES, about this said case and its litigation
defaults and reasons, Petitioner sent his 2254 petition
to the 5th circuit Court for approval of certificate of
Appealability, accompanied with exhibits of evidence
for the claim of Actual innocence, To were June 6, 2024
Clerk of Court of Appeals 5th circuit Christina A. Bardner
Return petitioners petition and all documents of exhibits
and stated in the notice there is no need for a
request for a certificate of Appealability for this
petition due the court has no documents of a successful
petitioner filed the court or court records to warrant
the approval of appealability so therefore no action will
taken on the request for appealability, so petitioner
sent his 2254 petition for actual innocence with the
newly discovered evidence namely expert (Sane) examination
DNA test, performed on the accusing person November
19, 2022, at Scott and White Hospital Temple Tex,
that show and proves no penetration or sexual
ever took place to the accusing person at all or
at any time and especially not by petitioner, To were
once Court of Western District of Texas Waco Division
Received the 28 USC 2254 petition and docketed it.
July 18, 2024, the Court of Western District transferred
the petitioners 2254 petition back to the the 5th circuit
Court of Appeals for authorization of appealability July 23,
2024, to were the Western District Court sealed the
one most important document sent to their court
to prove petitioners actual innocence of the offence of
aggravated sexual assault of child by alleged penetrat-
ion of the accusing person female sexual organs by
alleged use of petitioners male sexual organs namely
the sexual assault examination documents to were the court
dismissed petitioners 2254 petition for want of prosecution
for not following the Order of July 25, 2025, Had Court
Western District sent the Examination Document that
would of showed and proved petitioners claim of actual
innocence to the Court of Appeals 5th circuit ~~would~~ not started
petitioners claim was a freestanding claim and no order
would of been needed, ORDER was given due to Court
of Western District Texas Sealed the Sexual Assault Exam
that proved petitioners actual innocence claim had a abundance
merits of actual innocence for relief ask to be granted, so
now petitioner is asking this court to grant relief once viewed

the evidence of actual innocence that proves
hand down petitioner has the right for relief
from wrongful conviction, petitioner is tired
of the run around by these court on this
case at hand, to were petitioners should of
been release on relief sought in 2021 by trial
District Court of Bell County due to the exam
was sent in his 11.07 on the ground of actual
innocence due to newly discovered evidence,
to were no court has litigated and gave
courts litigation on the sexual assault examination
document, but they do have the said document
in they court files and records, these courts of
lower jurisdiction are playing games so these
for petitioner ask this said court SUPREME
COURT OF THE UNITED STATES to Grant Relief from
final conviction of wrongful. Exhibit of Evidence
of Newly Discovered Evidence is accompanied with
this petition to prove actual innocence so that
relief may be granted.

Notably one Expert (Sane) Nurse Examines sexual assault
test that was performed on the accusing person November 19 2002
that was withheld by state prosecutors at petitioners trial
of February 19, 2003. That was performed at Scotland
White Hospital Temple Tx on the accusing person that
proves petitioner actual innocence.

Executed July 28, 2025

Respectfully Submitted

#126482

George Daniel Luster Jr

George Daniel Luster Jr

Bill Clements Unit

Q601 SPUR 591

Amarillo Tx 79107

MEMORANDUM OF LAW

Under 28 USCS 2254. WRIT OF HABEAS CORPUS
Ground one: Actually Innocent of of Alleviated Sexual,
Assault of a child by, alleged Penetration/
Penetration of accused female organ with,
Petitioner male organ; Newly Discovered Evidence

Supporting facts: Petitioner will show and prove he
is actually innocent of the alleged offense he has been
illegally imprisoned for, 21 1/2 years of his life, to where
the Anti-terrorism and Effective Death Penalty Act
of 1996 (AEDPA) provides; 28 USCS 2254(e)(1)(A)(i)(ii)(B)(EXG)

(h) - In a proceeding instituted by an
application for a writ of habeas
corpus by a person in custody
pursuant to the judgment of a
state court, a determination of a
factual issue made by a state court
shall be presumed to be correct.
The applicant shall have the burden
of rebutting the presumption of
correctness by clear and convincing
evidence.

Sexual Assault (Sone) Examination document test DNA,
that was performed on the accusing person at Scotland
White Hospital by Sone Nurse A. Sander. Show no kind
of sexual assault or penetration of the female organ.
Eves accused to the accusing person, as stated by
the trial courts charging instrument which is the
Indictment handed down by the Grand Jury.
This exam was withheld at trial Feb 19, 2003, to
where it was not actually in the hands of Petitioner
until February 13, 2020, to where Petitioner has
allegedly tried to present this document to
the state district courts of this around for relief,
to where the exam comes up missing from Petitioner
petition to the court on the ground of actual innoc
ence. Kitchen v State 1937 OK CR 99-Intercourse/
Penetration case: HN2. Under Okla. Stat. Ann tit. 21, §1113,
the essence of a crime is the violence done to a
person and feelings of an injured female while the
[redacted] is completed by sexual penetration, and while
the skin test penetration is presumed sufficient, there
must be proof of some degree of entrance of the male
organ "within the labia of the vulvum" In other words
it must be shown that the private parts of the male entered

continue of Grand 1. Actual Incest / New N Discover Evidence
at lease to some extent, in those of the female.

HN4 Emission seminis of itself make no case without actual penetration, Emission without penetration is not sufficient to constitute the consummated crime of rape. Actual contact merely of the sexual organ of a male with organ of a female or emission without penetration is not sufficient to constitute rape. So therefore in in this case of conviction, the (Sane) examination DNA test, prove no sexual assault of a child accused by Defendant or she have ever had sexual intercourse at time of exam or before exam was done. Dr Harry D Bonnell M.D. License Pathologist DNA expert, Affidavit state no sexual assault, could have occurred let alone aggravated sexual assault of a child. Denial of Forensic DNA Testing done by Asst DA Bob D Odum he state no physical or biological was collected from the accusing person, due to a (Sane) nurse from Scott and White Hospital examination of the accusing person. Page 9, Lines 1-4 paragraph 1 state the State noted that because the victim had delayed for some weeks in keeping her appointment for the (Sane) examination, no physical or biological evidence was obtain from her and therefore, no such evidence was available for testing. #1 It's not Defendant's fault the accusing person did not keep her appointment for the examination to be done. #2 Furthermore trauma or secret tissue does not leave a female person sexual organs, nor does the hymen or vagin, Libia, Oudendum, will never heal back to normal form, or leave female's sexual organ once penetrated by, human or foreign objects, to were the exam show and no penetration, exam state's no injuries to no parts of her sexual organs, further it state's head to toe genital exam no trauma. DNA Forensic Denial State Brief, Page 10, Paragraph 21 Lines 1-3 state's The State's response to the Applicant's Motion Affirmatively shows that no physical or biological evidence of the sexual assault of a child existed at the time nor does it at present. So this is why the Defendant is entitled to relief from this unlawful conviction and imprisonment against his will. Due to evidence of actual exculpatory evidence of innocence's show and prove no rational juror would of found Defendant guilty in light of the evidence if presented at his original trial. The newly discovered evidence rebuts any evidence state and trial court can or will present in this case, had this evidence not been withheld at trial that would of proved Defendant actually innocent, of the alleged sexual assault, exam document alone is enough for acquittal of this alleged offence.

Ground Two: Ineffective Assistance of Counsel in the case, failure to properly investigate case and build defense for trial, failure to interview or obtain statements from alibi witnesses, coerced defendant to plea guilty.

Supporting facts: Counsel was ineffective counsel to petitioner and was not acting as adequate counsel as granted by the Sixth Amendment, United State Constitution set out for counsel in criminal proceedings of representation to a inmate at trial. Petitioner was denied adequate representation a violation and deprived petitioner of his due process right in said criminal proceeding. At trial, Counsel failure to investigate case, failure to call or obtain witness statements from alibi witnesses, who could clear petitioner of said charge, alleged against him, was, ineffective assistance of counsel. Counsel coerced petitioner to sign a judicial confession after relaying a threat of inducement of time by DA to where he state petitioner would get 50 to life if he did not accept the plea bargain and take it to trial Acct DA will make sure petitioner receive 50 to life. Counsel never took petitioner to no preliminary hearings or showed petitioner any evidence on his behalf for trial in the case. Counsel did make a statement about exam was done and it showed against me, that the DA told him this information but he stated he never seen the exam to where I myself never knew of the exam until recievement of the victim in dock statement documents to where it stated the costs, that was in 2005, to where petitioner never actually seen or observed the actual document until February 13, 2020, to where then DA for state trial court sent petitioner a copy of the exam stating it was in the State response to Daniel of forensics DNA testing. From the court to where no exam was ever in the response from the trial court or State response. Petitioner ask on numerous occasion for this document but to only be given the cold shoulder by Asst DA and court official to where as of this day the exam is not located in the clerk records of files to where petitioner after obtaining the exam along with other evidence to prove actual innocence accompanied it in his 11.07 to the District Court in 2021 and 22 to where it was removed before or after the courts recievement of petitioner petition to the said court for the actually innocence ground to prevail and be given relief sought by petitioner.

Counsel of around two - ineffectiveness of counsel.
Counsel Affidavit to the court on the ineffectiveness
claim against him, he state no exam was ever done to
to his knowledge, if so ok but to go off the bold assertion
of the DA if he did, of the event of the exam, what
kind of professional sound adequate representation was
to advise the petitioner to accept a plea agreement, and
the state or trial court had not presented no physical or
biological proof of aggravated sexual assault of a child
or witness statements, or documented video footage
as stated in the Affidavit to the court, now Petitioner
must rely on the advice of his counsel and having strong
faith of his ability in representation of the case, due
to Petitioner lack of experience in the adjudication system
and court proceedings, this is why counsels are builds
to clients, they have taken years of schooling and
been sworn in attorney status by the State and
State Bar for Attorneys to carry out righteous justice
in Sixth Amendments form of the United States of
America Constitution rights of Due Process to the ever
so accused for righteous representation in criminal
proceeding, rather high or low black or white, rich or
poor, every man or woman is to be afforded adequate
representation by trial counsel retained or appointed.
Counsel for Petitioner was told of the events that
was the cause for the allegation to be placed on
Petitioner, Counsel was given names locations and
date's to investigate to prove Petitioner was nowhere
around the accusing on that day or after that day,
the aunt and uncle of the accusing person was the
sole alibi witnesses who could of stopped the whole
proceeding from ever going to trial no billed or
or not sufficient to bring to trial, Due to the accusing
person went to stay with her aunt Margara Allen.
June 7, 2001 after Judge Joe Carroll gave the mother
16 days jail, To were the uncle of the accusing
person moved into the apartment with Petitioner
June 7, 2001 due to a request from the aunt of
the accusing person due to the accusing person and
her three were also taken alone with her to stay
at the aunt Margara Apartment, the aunt ask me to
let her brother stay at the apartment of ours due
to it would not be so crowded at her apartment
with the accusing person and her three siblings and the
Aunt's little boy, June 7, 2001 day time, to were
the accusing person change her statement on the exam
from the statement on the arrest Affidavit.

Continue of around two ineffectiveness of counsel,

Strickland v Washington, Voluntariness of his guilty plea. Where as here a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the understanding voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Hill v Lockhart 474 U.S. at 56 (quoting McMann v Richardson 397 U.S. 759 23 L.Ed. 2d 763, 90 S.Ct. 1441 (1970)). The two-part test for attorney competence found in Strickland v Washington 476 U.S. 668 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984) "applies to challenges of guilty pleas based on ineffective assistance of counsel." Hill v Lockhart 474 U.S. at 58. Petitioner must show that counsel representation fell below an objective standard of reasonableness and but for counsel errors, the petitioner would insisted on going to trial as opposed to pleading guilty. Hill v. Lockhart, at 56-60. Compelled to plead guilty based on fear his charge would get him 50 to life in prison. Stated from trial counsel to petitioner from Act 22 of State if petitioner did not accept the plea and took case to trial, also letting DA know he would coerce petitioner into signing a judicial confession to where this is the only evidence to hold around to case or show guilt of petitioner, which was not made of petition words or handwriting of any form or fashion. To where the petitioner never talk to no police agency or detective about the case or gave a statement or confession of any kind and admitting to this offense. Petitioner has stated his actual innocence of this alleged offense since day one of its proceeding and knowledge of it. Petitioner is asking the said court to acquit him of this charge and conviction, due to he is innocent of the alleged offense and exculpatory evidence will show the same. Coerced confessions United States ex rel Master v. Baldi, 193 F.2d 113, 1952 U.S. App. Lexis 2150 (3d Cir. 1952) reversed and remanded, 28 USC 2247 (Documentary evidence).

~~Ground THREE Ineffective evidence to prove said offense took place or to hold conviction on defendant, due to defendant's new exculpatory evidence of innocence.~~

HN 2. Counsel Right Counsel / Williams v Taylor 529 U.S. 362 120 S.Ct. 1149 ** 146 L.Ed.2d 389 **

Counsel Right to Counsel its well settled that the fact that constitutional error occurred in the proceeding that led to a state-court conviction may not alone be sufficient reason for concluding that a prisoner is entitled to the remedy of habeas. On the other hand, errors that undermine confidence in the fundamental fairness of the state adjudication certainly justify the issuance of the federal writ. The deprivation of the right to effective assistance of counsel is much an error.

Ground THREE: Insufficient Evidence to prove said offense took place, or to hold conviction on defendant due to defendant, newly exculpatory evidence of actual innocence.

Sonporting Facts: Newly exculpatory actual innocence evidence can, and will prove states and trial court exculpatory evidence is wholly insufficient and had state not withheld exculpatory evidence from Defendant at trial Defendant would of been found not guilty for aggravated sexual assault of a child by penetration to her female sexual organ with his male sexual organ, (Gone), examination test done on the accusing person at Scott and White Hospital November 19, 2002 show and prove trial court and state evidence is wholly insufficient to hold grounds to the charging instrument which is the indictment and the only mechanism evidence in the courts record which is a coerced signed confession not of Defendant own words or handwritten to were counsel for Defendant coerced Defendant into signing the judicial due to the threat made by Asst DA for the State, any logical human would of know about the newly disclosed would of never accepted a plea or pleaded guilty to the said offense of hand, Defendant has tried on more than two occasions to have this document presented to courts for actual innocence and and relief from unlawful conviction, to were it's constantly coming up missing out of Defendant Habeas writs once out of this slant,

State V Germain 165 N.H. 350

HN 6. - Due Process requires that the State prove each element of the Criminal charged beyond a reasonable doubt. Despite this Constitutional requirement, the Federal Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course, as long as taken as a whole, the instructions currently convey the concept of reasonable doubt to the jury. The standard, a reviewing court, inquires whether, after viewing the evidence in the light most most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The purpose of this standard of review is to ensure that the trial court fact finder rationally applies the constitutional standard required by the due process clause of the Fourteenth Amendment which allows for convictions of a Criminal offense only upon proof beyond a reasonable doubt. The standard is designed to ensure that a defendant due process right in the trial court was properly observed.

Continue of, Ground THREE Insufficient Evidence.

People v Mumin 15 Cal 5th 176- Sufficiency of the evidence. HX 19 Case Law presupposes as an essential of the due process guaranteed by the fourteenth Amendment U.S. Const. 14 Amend that no person shall be made to suffer the pains of a criminal conviction except upon sufficient proof - defines as evidence necessary to convince a trier of fact beyond a reasonable doubt of the offense. In order to preserve that due process right, the critical inquiry in a criminal appeal must be not simply to determine whether the jury was properly instructed but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to ask itself whether it believes guilt beyond a reasonable doubt. Instead, the relevant question is whether after viewing the ~~evidence~~ evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential element of the crime beyond a reasonable doubt. This familiar standard gives full play to the responsibility of the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. (Judgment of Acquittal) States evidence of said case is not sufficient to hold conviction or to sustain any elements to factual proof of the offense occurred. No reasonable juror would of found petitioner guilty beyond a reasonable doubt had state withheld evidence of factual proof no offense of sexual assault or penetration took place at all. Evidence of actual innocence newly discovered is proof beyond a reasonable doubt that petitioner is innocent beyond a reasonable doubt. Petitioner do believe that once trial court view evidence in light relief. Petitioner ask that said court Acquit him of the alleged charge. Petitioner Due Process was violated that's guaranteed by the 14th Amendment of United States Const Amend Ground Four.

Actual Innocence, Miscarriage of Justice
Violation 14th Amendment Prosecution withholding
Evidence favorable to defendant of Actual
Innocence, Miscarriage of Justice Violation of
14th Amendment due process.

Supernatural Facts. Prosecutor for State did purposely withhold evidence of exoneratory actual innocence from Petitioner of trial of 2003 to were Petitioner did not have handle of said evidence until April 2012 to were he presented it to said court, to were the state trial court still denied relief of said conviction. Petitioner heard district clerk

Continue Grand Jury
"4"
Clerk of Court for copies of the exam after trial court
denied the 11.07 writ of habeas corpus, Clerk constantly
stated the document was in receipt of is not in district
Clerk files or records, district Clerk Sheila Norman stated this
on numerous request to her back to me, Petitioner has
tried to obtain copies of said letters of request to Clerk
from district Clerk Donna Staton, to where she's given me
run around, petitioner learn a exam was done on the accusing
person at Scotland White Hospital due to victim impact state-
ment document once he recieved the transcripts and records
from the trial court clerk, to where he diligently tried to
obtain the exam, to view the results, in 2006 Petitioner
stayed in the district court clerk and Asst DA for State
trial court for the obtainment of the same examination
document to view out come and results for his self, but
to only be refused or ignored of the initiated request to
obtain this (Same) sexual assault examination document,
Case Summary Case No. FR 53755 document on 6-21-2006
Docket Petitioner filed request for outcome of, important
document Namely Sexual Assault Exam 06/11/06 Per S. Proctor
NO RESPONSE NEEDED, Petitioner finally filed a successful Post
Motion for DNA Testing, to where defendant was granted
a DNA Appeal for Forensic DNA Testing, to where the exam
results showed Petitioner was actually innocent of
of the alleged offense he had been threat and coerced
into pleading guilty for to where DA for State trial court
with held the exam from Petitioner at trial plea proceeding
to obtain a conviction out of vindictiveness, Asst DA
who was also Petitioner direct appeal attorney of the
same cause no, who filed a and a brief to Petitioner direct
appeal proceedings to where he later became Asst DA
for Bell County district court, is the same person who did
the denial of forensic's DNA testing brief to the third
courts of Appeals in Austin Texas (Conflict of Interest)
to where he incorporated a sexual assault (Same) examination
showing no physical or biological evidence was ever
obtained or collected from the accusing person, to
where Asst DA stated on page 10, Paragraph (a) Line 1-3
of the Denial of Forensic documents, that it affirmativ
of a child was obtain then or at present Indictment
State Denatration of the female sexual organ with
Petitioner male sexual organ, to where Same nurse and
State DA say no physical or biological evidence was
obtain for testing, etc biological of DNA will disappear
but physical evidence will not ever leave nor will
a human or vagina, Libia, or clutrum health back to normal
form of defect, once disturbed due to Denatration
of intercourse of the male sexual organ or foreign object,
the exam state Well's traumatized human, it poses
further to state head to toe genital examination show
no trauma, Even the accusing person statement on
the exam she alleged to place is fake due to score
tissue would of appeared on her private part to
where she stated Petitioner tried to put his penis
inside of her, no physical evidence appeared this was
said by Same nurse a professional medical field employee,
Dr. Harry B Bonnell 1 piece Pathology forensic examiner,
Affidavit state no sexual assault could of accused let alone
aggravated,

continued ground 4.

To this day the Clerk of the trial Court state this document is not in their files or court records, Petitioner has placed this document in his Petition to the Court on three occasions but only be denied relief from conviction of unlawfulness, the State has this document in its possession DA files and Court Records so when the State Attorney finally sent petitioner a copy of the same examination document that was, withheld at trial proceeding in 2003, to were petitioner never seen or viewed or new were about of any kind to obtain for him self, Asst DA Sean K Proctor sent petitioner a copy of the same examination through his district clerk Feb 13, 2020, to were district clerk stated to petitioner in a return Inmate Correspondence Reolv - Govt. Code 552.028 from Joanna Staten, Dated December 13, 2019, it state Other: The District Clerk's office does not have the sexual assault exam filed in the District Clerk's file and we do not know who performed the exam. December 30, 2019, Inmate Correspondence Reolv - Govt. Code 552.028 Joanna Staten District Clerk Line 4, There is not any [redacted] report of a same exam filed in the District Clerk's file. Inmate Correspondence Reolv - Govt. Code 552.028, Dated December 30, 2019, Joanna Staten District Clerk, State, Other: There are not any sexual assault exams in the District Clerk's files and we do not know where you could find this information. In a receipt letter from Asst DA Sean K. Proctor to petitioner dated February 13, 2020 about obtaining of copies of the (Sane) examination document, he state as you may recall from the litigation surrounding the the DNA motion that Petitioner filed in 2012 a copy of the Sane report was attached to the State Response that was filed with the Court, and I have included that a copy of your DNA motion and the Court's Order Denying relief for review. (Sane) Exam document state it was done November 19, 2003, he state that was filed with the court. Therefore Feb 19, 2003 was well aware and had complete knowledge of the (Sane) examination were abouts as well as the held the exam, from petitioner to obtain a vindictive conviction of unlawfulness or violation of Due Process of the 14th Amendment of the United States Constitution, of America,

Petitioner Conviction Felon of Aggravated Sexual Assault sought this writ of habeas Corpus pursuant to the Anti Terrorism and Effective Death Penalty Act 1996 28 USC 2254 on the grounds that both his conviction and sentence were in violation of the United States Constitution, If the State fails to provide all relevant materials and exculpatory evidence at pre-trial discovery proceeding which violated Petitioner's rights as guaranteed by U.S. Consts. amends. V VI VIII XIV.

Continue of Grand (four) "4": Actual Innuence Miscarriage of Justice Prosecutor Misconduct Withholding Evidence Favored to defendant,

Guizan V. Blass 2012 U.S. Dist Lexis 10058

Claim of Brady Violation

The United States Supreme Court in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963) held that prosecutors must turn over favorable evidence to an accused when the evidence to an acc is material either to guilt or punishment. Wrongful withholding violates the right to due process.

Brady, 373 U.S. at 89, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), Evidence is material when there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different."

Bivens remedies have been recognized for alleged Brady violations,

Stricker v. Green, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed. 2d 286 (1999) (citing United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3325, 87 L.Ed. 2d 481 (1985) Stricker states there are three components to a true Brady violation;

- 1) the evidence must be favorable to the accused,
- 2) that evidence must have been suppressed by the State, 3) prejudice must have ensued,

Procedures Due Process, Scope of Protection,

During a Criminal Prosecution, the Federal Rules of Criminal Procedure and the Constitution of the United States of America require the United States to disclose certain evidence to a criminal defendant Fed. R. Crim. P. 16 is one source that imposes such duty on the United States. The Due Process Clause of the United States Constitution is another source imposing a duty to disclose on the United States.

Finally the U.S. Supreme Court has refined Brady and clarified that it is not necessary that a defendant request pre-trial evidence, regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government.