No. 25-5809

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2024

ANTHONY LEE VAN DURMEN

Petitioner,

-vs-

BRYAN MORRISON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Submitted by:

Anthony Lee Van Durmen, #189744
Petitioner In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

6/30/25

QUESTION PRESENTED FOR REVIEW

(I)

WHERE PETITIONER'S APPEAL OF RIGHT WAS DELAYED FOR OVER (20) YEARS DUE TO THE STATE'S CREATED IMPEDIMENT WHICH PROHIBITED HIM FROM FILING, RESULTING IN SEVERE PREJUDICE, IS HE ENTITLED TO A NEW TRIAL WHERE AT LEAST ONE CONSTITUTIONAL CLAIM WOULD HAVE RESULTED IN A REVERSAL UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION?

LIST OF PARTIES

The Parties listed in, or associated with, the instant Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, are listed on the cover page heading and can be addressed as:

Petitioner Party:

Anthony Lee Van Durmen, #189744
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Respondent Party:

Carol Howes, Warden - (Deceased)
was the original Respondent in this case.

Bryan Morrison, replaced Carol Howes as Warden of the
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

-or Respondent can be addressed by way of-

c/o Michigan Attorney General's Office
Department of Attorney General
G. Mennen Williams Building, 7th. Floor
525 West Ottawa Street
Post Office Box 30212
Lansing, Michigan 48909

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The Decisions Below

The January 29, 2025, order from the U.S. Court of Appeals for the Sixth Circuit, denying reconsidering on its denial on the appeal from the US District Court, can be found under *Van Durmen v Morrison,* US App Lexis (2025) - (Appendix-1a). The opinion and order from the United States Court of Appeals for the Sixth Circuit denying the appeal from the US District Court denying the motion for a certificate of appealability on October 3, 2024, can be found in *Vandurmen v Morrison,* 2024 US App Lexis 25076 (2024) - (Appendix 2a to 15a).

The opinion of the US District Court denying the habeas petition on March 28, 2023 can be found in *Van Durmen v Howes,* 2023 US Dist. Lexis 53026. The opinion of the US District Court dismissing the habeas petition for lack of exhaustion on 2/14/2013, can be found in *Van Durmen v Howes,* 2013 US Dist Lexis 46665. The opinion of the Court of Appeals for the Sixth Circuit granting remand on 12/24/2014 can found in *Van Durmen v Smith,* 2014 US App Lexis 25018.

The opinion of the State Court of Michigan's Supreme Court, denying the appeal is published and can be found in *People v Van Durmen,* 485 Mich 1010; 775 NW 2d 784 (2009). The opinion below from the Michigan Court of Appeals denying the appeal of right after a 20 plus year delay, can be found in *People v Van Durmen,* 2009 Mich App Lexis 1518.

Jurisdiction

Petitioner Van Durmen seeks review in this Honorable Court. Jurisdiction is conferred pursuant to Title 28 USC §1254(1). This Writ of

Certiori challenge the Opinion and Order entered on January 29, 2025, and January 14, 2025, by the Sixth Circuit under citation, *Van Durmen v Morrison,* 2024 US App Lexis 25076, denying his rehearing appeal from the US District Court's denial of his Title 28 USC § 2254 habeas petition, where the ruling is conflicting with a decision of this Court on the subject matter of the inordinate delay for the appeal of right - over (20) years, and conflicts with the prejudice ruling announced in *Roe v Flores-Ortega,* 528 US 470 (2000), [recognizing counsel's obligation to discuss the possibility of an appeal with the client].

This Petition is timely, from the Sixth Circuit denying relief, pursuant to Rule 13.1 of the Rules of this US Supreme Court. Jurisdiction is invoked pursuant to Title 28 USC § 1251.

Jurisdiction of this Court is also invoked under the supervisory authority vested in Title 28 USC § 1251; U.S. Const. Art III, and US Const. Amends. VI and XIV. Furthermore, Petitioner seeks supervisory jurisdiction of this Court to determine whether the courts below arrived at, but completely disregarded the ruling in *Rodriquez v United States,* 395 US 327 (1969), on the long delay in the appeal of right. And, because this Court has never decided a claim where the delay exceeded (20) years, it can now determine whether prejudice should be presumed from the inordinate delay under *United States v Smith,* 94 F3d 204, 212 (6th. Cir. 1996).

Constitutional and Statutory Provisions Involved

The issue presented for certiorari review to this Court is in direct violations of constitutional amendments, and statutory provisions infra:

1). U.S. Const. Amend VI (1791)

In all criminal prosecutions the accused shall the right to ... have the assistance of counsel to assist in his defense.

2). US Const Amend. XIV, § 1 (1868)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce and 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.

3). Michigan Const. 1963 Art 1, §§ 17. (Due Process of Law - Fair Investigation Clause]

4). Title 28 USC § 2254(d)(1); (d)(2).

5). State Statutes: MCL § 750.316(1)(a) (Murder in the First Degree).

Petitioner urges this Court to grant his petition for a writ of certiorari and clarify that a claim of inordinate delay in excess of (20) years for an appeal of right violates the due process clause requiring a new trial, where several claims of constitutional error were submitted, one of which might have warranted reversal of the conviction and that prejudice, from the (20) plus year delay must be presumed.

Additionally, this Court is urged to address the claim in such a fashion that will preclude future and needless litigation on this subject matter of what constitutes "an inordinate delay on the appeal as of right causing prejudice to the accused," and a violation of his due process rights.

The focus of the certiorari inquiry is, does the twenty year delay in submitting the appeal of right creates such a prejudicial impact that reversal

of the conviction is the sole remedy, and should be treated as a delay in the right to a speedy trial. cf. *Baker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

Furthermore, because this Court has not decided a case of similar posture, i.e., a (20) year delay in filing the appeal of right, the delay attributed to a speedy trial would be a focal point in determining the prejudicial impact of the (20) year delay, as a jurisdictional impediment warranting relief. Accord, *Becker v Montgomery*, 532 US 757; 121 S Ct 1801; 149 L Ed 2d 983 (2001).

Petitioner asserts a significant inquiry as to whether or not his claim give rise to the grant of relief under either *Garza v Idaho*, supra, or the case of *Rodriquez v United States*, 395 US at 332 (remanding to the district court for resentencing where trial counsel failed to file a notice of appeal).

Petitioner asks this Court to grant certiorari to clarify, once and for all, that where, as here, a criminal defendant's appeal as of right has taken over (20) years due to state's created impediment, that delay is such a prejudicial impact that reversal of the conviction is the sole remedy under the due process clause of the Fourteenth. U.S. Const. Amend. XIV.

A Fortiori to grant certiorari in this case, this Court should grant certiorari and correct the errors of the courts below, or remove any conflicting decisions relating to a long inordinate delay on the appeal of right in excess of (20) years.

This Court has yet to determine a case of similar posture and Petitioner urges the Court to apply the 'doctrine of novelty' to his claim and grant certiorari. S. Ct. Rule 10(c).

Statement of the Case

Petitioner, Anthony Lee Van Durmen, was convicted in the State trial court of Michigan for the statutory crime of first degree murder, MCL § 750.316. He was sentenced to life imprisonment without the possibility for a parole. He attempted to appeal his conviction and sentence by an appeal of right but was delayed for over (20) plus years due to a State impediment. i.e., the appointment of several appellate attorneys who failed to submit an appeal in a timely manner. Finally, after (20) years his appeal was denied by the Michigan Court of Appeals, and the Michigan Supreme Court.

Petitioner submitted a petition for writ of habeas corpus under Title 28 USC § 2254 in the United States District Court which was dismissed for failure to exhaust. He returned to the State Courts and exhausted his claims and again submitted his Title 28 USC § 2254 habeas petition which was denied in 2013. He appealed this denial to the US Court of Appeals for the Sixth Circuit, in Cincinnati, Ohio, which remanded the case back to the US District Court. That Court again, denied relief.

Petitioner sought relief in the US Court of Appeals by filing a Motion for a Certificate of Appealability which the Court denied. On reconsideration, the Court denied relief on January 29, 2025. From this lengthy appellate process in both state and federal courts, Petitioner now seeks a Writ of Certiorari to address the long inordinate delay for over (20) years for his appeal of right. This Court has never addressed such a claim.

A. Decisions of Other Courts on the Question

In the context of the question presented in this Petition for a Writ of

Certiorari, there are no decisions below which have specifically addressed the inordinate delay for over (20) plus years for the appeal of right. The Sixth Circuit Court of Appeals addressed the issue of an inordinate delay in *United States v Smith,* 94 F 3d 204, 208 (6th. Cir. 1996), but the case was premised on the right to a speedy trial. Therefore, no rulings have been decided on a long (20) plus year inordinate delay in the appeal of right. This Court is urged to grant certiorari and render an opinion on this subject matter under the Fourteenth Amendment of the Due Process Clause.

B. The Importance of the Question Presented

The importance of the question presented in this Petition for Writ of Certiorari is for this Court, for the first time, to address the long (20) plus year inordinate delay on the appeal of right and whether or not it violates the spirit and mandate of the due process clause and creates such a prejudicial impact that reversal of the conviction is required. This Court has ruled that a criminal defendant enjoys the right to an appeal under *Evitts v Lucey,* 469 US 387, 394 (1985). Therefore, the question is important for this Court to address in the first instance. S. Ct. Rule 10(c).

Reasons for Granting Writ of Certiorari

PETITIONER'S APPEAL OF RIGHT WAS DELAYED FOR OVER (20) YEARS DUE TO THE STATE'S CREATED IMPEDIMENT WHICH PROHIBITED A TIMELY FILING RESULTING IN PREJUDICE ENTITLING HIM TO A NEW TRIAL BECAUSE AT LEAST ONE CONSTITUTIONAL CLAIM WOULD HAVE RESULTED IN REVERSAL U.S. CONST. AMEND. XIV.

The Writ for Certiorari should be granted. Petitioner addresses all the claims submitted on his appeal by right under the banner of his inordinate

delay of (20) plus years, and he asks this Court to review each claim, although in short version form, in deciding whether or not either of the claims may have warranted reversal but for the twenty year inordinate delay by the state.

Background Facts

Following the US Court of Appeals' decision which denied Petitioner's appeal, he sought rehearing which was denied. However, in his Motion for a Certificate of Appealability, to appeal the decision of the US District Court dismissing his 28 USC § 2254 habeas petition, and declining to issue a Certificates of Appealability for appeal, Petitioner pointed out that his claim was premised, not on the right for a speedy trial, but rather, an a timely appeal of right, which was not addressed on its merits by the US District Court. The orders were entered on March 29, 2013, March 28, 2023, and March 25, 2024. He requests that the Court issue a COA to appeal those decision from Judge Robert J. Jonker and Magistrate Ray Kent, of the US District Court for the Western District of Michigan, who decided they would take no action on Appellant's eight (8) issues embedded in his petition, and denied relief.

The issues, in their individual short version for certiorari consideration are: 1) Inordinate Appellate Delay; 2) Ineffective Assistance of Trial/Appellate Counsels; 3) Newly Discovered Evidence/Third-Party Culpability; 4) Jury Instructions and Evidentiary errors; 5) Prosecutorial Misconduct During Trial; 6) Insufficient Evidence to Support Defendant's Conviction; 7) Prosecutorial Misconduct in Responding to Motion for New Trial; and 8) Trial Court Erred in Denying Defendant's Motion for New Trial.

Appellant presents those issues for review by this Court to determine whether or not a Writ of Certiorari should issue.

ISSUE- I: INORDINATE APPELLATE DELAY
Supporting Facts and Legal Posture

Petitioner was convicted in the state trial court, for the County of Berrien, on July 16, 1987. To date, the appellate history has spanned over thirty-six (36) years. Such an inordinate delay, under the circumstances of this case, cries for dismissal of all charges, the only appropriate remedy, not only because of the length of delay, but because of the evidentiary prejudice to Petitioner's case. No one can disagree with the fact that in this case there has been a virtually unheard of delay in Petitioner's appeal history, not caused by him, and for which there is no excuse. In *Matthews v Eldridge,* 424 US 319, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976), the Court opined:

> "Due process requires fundamental fairness, and applies to any adjudication of important rights, and is a flexible concept calling for those procedural protections which a particular situation demands". id at 334.

This Court addressed an inordinate delay under a "prong" test, with the first prong overriding the second and third prong–was that delay caused by the government. *United States v Smith,* 94 F. 3d 204, 205 (6th Cir. 1996). This prong was met by Michigan's Berrien County Circuit Court Judge, Honorable J. T. Hammond in 2004, after a seventeen-year delay on ruling on Petitioner's 1987 motions, which thwarted Petitioner's Appeal of Right. Judge Hammond stated:

"One cannot help but note that this case has taken far too long to reach this position. although a whole lot of blame could be ascribed to a whole lot of doorsteps, including a number of appellate counsel for defendant, a number of judges, including at least two who are no longer on the bench, as well as the author of this opinion. I suggest it would do little good to review the past history. It is time to get this matter decided once and for all, at least at the trial court level." (Circuit Court's Opinion/Order, 2004, p 3, ¶ 3).

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Petitioner, having met *Smith's* prongs was not required to argue additional prongs. The District Court failed to adhere to the Appellate Court's ruling. Consequently, Jurists of reason in the Court of Appeals decided the claim differently. cf *Smith*, 94 F3d at 205. The due process clause of the Fourteenth Amendment guarantees procedural safeguards to criminal defendants at trial, as well as for appeals of right. *Evitts v Lucey*, 469 US 387, 393-394; 105 S Ct 830; 83 L Ed 2d 821 (1985). Petitioner is on his Appeal of Right after a (30) year delay due to the State's created impediment. The government is compelled to provide an "adequate and effective appeal," which is "more than a meaningless ritual." *Griffin v Illinois*, US 12, 18; 76 S Ct 585; 100 L Ed 2d 891 (1956); *Evits*, supra, at 393-394.

Here, *sub judice*, there is an extreme delay in the appeal process. The District Court's failure to follow clearly established precedent, created an unreasonable application of federal law as determined by the US Supreme Court. Alternatively, the lower court failed to follow this Court's ruling in *Strunk v United States*, 412 US 434, 440; 93 S Ct. 2260; 37 L Ed 2d 56 (1973). When the government's negligence caused the delay, the need to establish prejudice decreases as the delay increases. Accord, *Dogget v*

United States, 505 US 647, 652, 655-656; 112 S Ct 2686 (1992). In *Dogget*, only an eighteen-month delay was at issue, where as here Petitioner did not reach the Michigan Court of Appeals for nearly Twenty years. The Court of Appeals noted an (8) year delay, warranted an unconditional writ of discharge. *Turner v Bagley*, 410 F. 3d 718 (6th Cir. 2005). Americas Jurisprudence is based on the belief that the procedure is as important as the result. *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963); *Estes v State of Texas*, 381 US 532, 557-560; 85 S Ct 1628; 14 L Ed 2d 543 (1965) (concurring opinion). A remedy must be provided, but there is no legal remedy where Petitioner is forced to go through the appellate process with hands tied after his twenty-plus years delay in his appeal of right. He has already suffered the prejudice constitutionally prohibited by the due process clause, and to continue the delay only adds additional prejudice. The violation is extreme, and the District Court rulings were contrary, unreasonable, and constitutionally wrong. This issue creates arguable merits to proceed further by reasonable jurist, certiorari should issue.

ISSUE II: INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL

Trial/Appellate counsel, James K. Jesse, filed four motions in the trial court in 1987, then did absolutely nothing for another ten (10) years, even convincing Petitioner to not comply with an ongoing investigation by the Michigan Attorney Grievance Commission in the attorney's handling of clients' cases. Petitioner sought prisoner help, and was able to have his attorney replaced with the State Appellate Defender's Office (SADO), where they then filed the same four 1987 motions and then did nothing for six years.

Judge Hammond's 2004 Opinion and Order addressed these delays, supra.

Petitioner has a right to effective assistance of counsel. *US Const. Amend. VI, XIV. Powell v Alabama*, 287 US 45, 71; 53 S Ct 55; 77 L Ed 158 (1932); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *McMann v Richardson*, 397 US 759; 90 S Ct 1441; 25 L Ed 2d 763 (1970). Appellate counsel's actions, or in actions, were clearly ineffective, which is clearly arguable amongst reasonable jurist in the Court of Appeals, and a Certificate of Appealability should have been issued as a matter of right, but was not. 28 USC § 2253(c).

ISSUE III: NEWLY DISCOVERED EVIDENCE THIRD-PARTY CULPABILITY

Petitioner was accused by two alleged codefendants, David Vail and Jerry Sisk, as the person that killed Emma McNaulty during a robbery. Felony Murder charges were dropped against both alleged codefendants as well as additional charges both were facing for a second and like crime (caught in the act). A third participant was granted immunity (David Vail's girlfriend). Vail and Sisk repeatedly changed their stories before, during, and after Petitioner's trial. Both have admitted they lied about Petitioner-Petitioner so that their charges could be wiped out and reduced. Except for the testimony of Vail and Sisk, there is absolutely no physical evidence to connect Petitioner with the crime. His later possession of goods stolen from the scene is evidence of receiving and concealing, which he told authorities about, not murder. Vail admitted to a third-party that Sisk and he had committed the murder, not mentioning-Petitioner, but the victim's son as a

third person. Sisk, while in prison admitted his participation to another prisoner, that he had killed the victim by stabbing her in the stomach and neck. Both the persons whom Vail made these statements and the person that Sisk confessed to have made statements.

The Sixth Circuit had previously ruled that Jurors must hear all the facts before coming to a decision. Perjury testimony may be the basis for a new trial. *United States v Hawkins*, 969 F2 169 (6th Cir. 1992). In Petitioner-Appellant's case it is even stronger, as we have testimony that the two star witnesses for the prosecution lied, as well as another person. There is no question that all of this testimony, when considered in conjunction with the entire trial, and if brought to a jury it would be clearly arguable amongst reasonable jurist. Moreover, this US Supreme Court has made it abundantly clear that a criminal conviction obtained by the use of false/perjured testimony should not stand in light of the due process guarantee of a fair trial. Accord. *Napue v Illinois*, 360 US 264, 269-270 (1959). Accordingly, a a Writ of Certiorari should issue on this claim.

THIRD-PARTY CULPABILITY:

Not only would the testimony, at least testimony involving Sisk and Vail, be impeachable, but it would be direct evidence as to who in fact had committed the murder. It certainly showed that Sisk and Vail committed the crime, not Vandurmen. The defense is permitted to offer evidence of third-party culpability, even in circumstances where application of evidence rules alone might not permit it. *Chambers v Mississippi*, 410 US 284, 320; 93 S Ct 1038; 35 L Ed 2d 297; *Holmes v South Carolina*, 547 US 319; 126 S Ct 1727; 164 L Ed 2d 503 (2006). Thus, these statements not only may be

admitted to impeach, but also can be admitted for the truth of the matter. *Chambers, supra.* There are many serious questions about Petitioner's conviction. He has been incarcerated for over 36 years, under circumstances wherein it looks very much as if he is in fact innocent of the murder charge, and only guilty of receiving and concealing stolen property, which he admitted to from the outset. Reasonable jurist would find this issue warrants further debating, and arguably, a COA should have issued, but was not, to prevent any further incarceration of an actually innocent person. Accord, *House v Bell,* 547 US 518; 126 S Ct 2064 (2006).

ISSUE IV: JURY INSTRUCTIONS/EVIDENTIARY ERRORS

Edward Becker, a known "Jailhouse snitch," whose trial testimony vacillated from one end of the spectrum to the other, changing repeatedly during Petitioner's state trial proceedings, going from testifying against Petitioner to admitting all of his previous testimony was a lie, was allowed, under objection, to testify to bizarre and unsubstantiated attacks on his family. The trial judge instructed that Petitioner: "...denied that he had received stolen property, and all other trial evidence indicated that he had." However, Petitioner had, in fact, admitted from the very beginning and on the witness stand that he received coins from one of the codefendants for owed rent fees. By relying on inaccurate and improper facts, while allowing jurors' blood to boil, denied Petitioner's right to due process. The actions by the court are contrary to clearly established US Supreme Court rulings. *In Re Winship,* 397 US 358; 90 S Ct 1068; 25 L Ed 2d 368 (1970); *Jackson v Virginia,* 443 US 307, 316-318; 99 S Ct 2781; 61 L Ed 2d 560 (1979). The

District Court failed to recognized the precedent set by the Supreme Court, and this issue is debatable amongst reasonable jurists. Therefore, a COA should have been issued, but was not requiring a Writ of Certiorari.

ISSUE V: PROSECUTORIAL MISCONDUCT DURING TRIAL

The trial prosecutor badgered witnesses: Sixteen-year old, Lisa Vandurmen, was pressured into testifying to facts the prosecution knew had nothing to do with the crime for which Petitioner was being prosecuted, inflaming the jury that Petitioner had told her he had seen a "dead body." Petitioner, after the jury was inflamed, discovered this viewing had been over a year before the crime he was being prosecuted for. The prosecutor also 'prepped' Lisa, going over her questions and responses in the prosecutor's office, "refreshing" her testimony, telling her what answers the APA wanted her to give. The APA's zealous and repetitive actions crossed the line of permissible conduct, including the introduction of irrelevant and prejudicial testimony, requesting a "civic duty" verdict and pleading to the jury to bring a verdict based upon sympathy for the victim, arguing facts not in evidence. *Mattews, supra; Evitts v Lucey, supra.* An issue clearly arguable amongst reasonable jurists, and therefore, a Certificate of Appealability should have been issued for an appeal but was not. Therefore, under this Court's ruling in *Berger v United States*, 295 US 78, 88 (1935) - (describing foul blows prohibited by a prosecutor during the course of a jury trial), a writ of certiorari should be granted under S. Ct. Rule 10(a).

ISSUE VI: INSUFFICIENT EVIDENCE TO SUPPORT PETITIONER'S CONVICTION

Petitioner's state court conviction should have been overturned by the

District Court, as there was insufficient credible evidence at trial to prove he was guilty of the crime. *United States Const. Amend. V and IV. In Re Winship,* supra; *Jackson,* supra. Thus, the question presented is not whether there is some evidence which could support the prosecutor's case, but whether there is sufficient evidence which justifies a reasonable conclusion of guilt beyond a reasonable doubt. *US Const. Amend. XIV. In re Winship,* 397 US at 363.

Although there is the argument about conflict of testimony or credibility of witnesses, where courts have stated that - it is for the jury to determine; however, it is in a broad sense, as the cases cited above indicates, there is a basic constitutional requirement that there has to be sufficient credible evidence introduced before the jury may exercise their discretion in determining what the facts actually are. To prove Petitioner's premeditation and deliberation, the prosecution is using circumstantial and conjecturally misleading facts as evidence of a crime.

Edward Becker's testimony involved an admission at trial that he'd written a letters saying the whole deal against Petitioner was a set up from the beginning and the "police" asked him to find out as much as he could, and if he had to, he was supposed to lie. Becker also admitted what he did was wrong. He later stated the above was wrong, and that he received a $1500 from the prosecutor and that the charges he was in jail for would be dropped. The District Court allowed this damning and improper testimony to remain against Petitioner, and afforded the state courts' ruling deference on this claim, which is/was contrary to 28 USC § 2254 (d)-(2). See also, *Miller El v Dretke,* 545 US 231, 275; 125 S Ct 2317 (2005).

Just as Gina Hamilton received immunity, even though she is the person that gave Petitioner the stolen property, telling him to use it to bail out Vail, who was in jail on a like charge, where he and Sisk had been caught in the act of committing. An evidentiary hearing should have been ordered to determine the facts. This issue deserves further consideration and would be debatable amongst reasonable jurists. The Appellate Court below should have issued a COA for appeal but did not creating a need for a writ of certiorari to issue. S. Ct. Rule 10(a).

ISSUE VII: PROSECUTORIAL MISCONDUCT IN RESPONDING TO PETITIONER'S MOTION FOR A NEW TRIAL

Where, as here, the prosecution has necessarily presented to the court(s) materially misleading, inaccurate or false information, did the trial court's representation of the facts constitute error that was devoid of due process, violating Petitioner's constitutional rights, substantive and procedural? *US Const. Amend. V and XIV,* and also violated his right to confrontation and a fair trial. *Const. Amend. VI.* This court ruled in *United States v Calloway,* 116 F 3d 1129 (6th Cir. 1997) that trial courts' factual findings are reviewed for clear error and the application of facts to law. And in *United States v Bonds,* 12 F 3d 784, 788 (6th Cir. 1993) ruled that Admission of evidence is reviewed for abuse of discretion. The denial of due process is a failure to observe the fundamental fairness essential to the very concept of justice. *Lisen[t]ba v California,* 314 US 219, 236; 62 S Ct 280; 86 L Ed 166 (1941). In-Petitioner's case an officer of the court intentionally introduced inaccurate information contrary to the Autopsy Report where the victim clearly had been stabbed in the stomach to contradict Jerry Sisk's

statement of having stabbed her in the stomach. The judge's reliance on this "While the Pathologist's Report, which did in fact did not indicate any stomach wounds." Petitioner fought for years to obtain the full Autopsy Report, which did, in fact, indicate three stomach wounds. The Prosecutor's actions were intentional and with malice, denying Petitioner-Petitioner a fair trial and appellate process, contrary to *In Re Winship, supra*; *Jackson, supra.* Juries should not be allowed to speculate. There must be sufficient evidence which proves a defendant's guilt beyond a reasonable doubt. "Plain error" requires a determination that Petitioner has been prejudiced, and that the error seriously affects the fairness, integrity, or public reputation of proceedings. *United States v Page,* 232 F 3d 536, 544 (6th Cir. 2000), *cert denied,* 532 US 1056, 121 S Ct 2202; 149 L Ed 2d (2001).

This court has ruled misconduct by the prosecution with presentation of evidence can amount to substantial error because doing so "may profoundly impress a jury and may have a significant impact on a jury's deliberations." *Donelly v Christoforo,* 416 US 637, 646; 94 S Ct 1868; 40 L Ed 2d 431 (1974). Asserting facts that were never admitted into evidence may mislead a jury in a prejudicial way. *Berger v United States,* 295 US 78, 84; 55 S Ct 626; 79 L Ed 1314 (1935). The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. *Brady v Maryland,* 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), Id at 373 US at 87. The prosecution's withholding three (3) pages of the Autopsy Report when that evidence could have shown the actual killer is a violation, which would be arguable amongst

reasonable jurist, and therefore, Appellate should be issued a COA for further adjudication on the *Brady* withholding evidence violation. cf. *Strickler v Green,* 527 US 263; 119 S Ct 1936 (1999).

In Petitioner's case, the courts further relied on the prosecutor's misleading information by taking away the credibility of the evidence presented by Petitioner in their rulings. If Petitioner's evidence had not been denounced by the prosecution as false, Petitioner's evidence would have retained its 'worthiness and integrity' and looked at in toto with a more favorable light, making the outcome different. The prosecutor's use of false, inaccurate and misleading information to "sway" the courts is the same as if the prosecutor had presented the information to a full jury. Under the due process clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. *California v Trombetta,* 467 US 479, 485 (1984) The due process requirement of disclosure applies to evidence that might lead a jury to entertain a reasonable doubt about a defendant's guilt. *Giglio v United States,* 405 US 150, 154 (1972). Any fact presented by the prosecution, as true later found to be false, denies the defendant his right to a fair trial. Had trial counsel not found, or objected to presentation of evidence that could not be relied on as true, this court must find error, as the District Court should have. A new trial must be granted. This issue would be arguable amongst reasonable jurist, so Petitioner should be issued a writ of certiorari. S. Ct. Rule 10(b).

ISSUE VIII: TRIAL COURT ERRED IN DENYING THE PETITIONER'S MOTION FOR NEW TRIAL

The trial court and jury used evidence in consideration of its verdict,

where evidence such as blood typing, or other evidence failed to establish a proper evidentiary basis, i.e., chain of evidence to persuade the jury of circumstantial evidence violated Petitioner's right to a fair trial. *US Const. Amend. V*, VI.

Typing of blood (AB0 typing) is not conclusive proof of defendant's guilt. It may be inferred, however, where there exists a means to positively identify between the defendant and that of the victim. Type "O" blood was found on the scene. Petitioner's blood type is Type "A". The victim's son has type "O" blood. A prime suspect, later to have discovered blood in both front pockets of a pair of confiscated jeans. This type "O" blood was used to link Petitioner to the scene of the killing. Completely self-serving testimony unsupported by other evidence and in the teeth of universal experience will not support a jury verdict. The prosecution's theory that Petitioner-Appellant had wounded himself (leaving behind type "O" blood); however, the knife did not have any of the -Petitioner's blood on it, nor was his blood found anywhere on the scene. The ONLY blood evidence discovered was type "O" and the victim's blood (A+). Petitioner has asked every court to allow blood typing and or newly discovered DNA testing, yet has been denied by those courts, including the District Court. Sisk and the victim's son has type "O" blood. Petitioner's blood is Type "A". This supports his claim of actual innocence and accordingly, a Writ of Certiorari should issue under the Court's ruling in *Schlup v Delo*, 115 S Ct 851, 856 (1995)

The eight issues Petitioner submitted to the District Court, issues that are integral to the point of being so interwoven that all must be considered in toto, and, although the Honorable Judge Jonkers and Magistrate Judge Kent

ruled that they had laid out the facts in their opinion/order, this is not correct, and contrary to clearly established United States Supreme Court rulings and the habeas corpus statute under 28 USC § 2254(d)(1) and (2), mandating reversal. The Magistrate completely ignored the new evidence in its totality and did a piece meal analysis of the facts presented.

Petitioner states as reasons why the Sixth Circuit should have granted a Certificate of Appealablitiy in this case is because Jurists of reason may debate the issues, denied by the District Court Judge and the Magistrate Judge in a different manner. The reasons to have granted the Certificate of Appealability by the Appellate Court were as follows:

Petitioner asserts that an appeal from the US District Court cannot be submitted for adjudication on the merits, unless that Court, or the Court of Appeals, grants a Certificate of Appealability, which was denied in this case on March 29, 2013, March 28, 2023, and March 25, 2024 (*See* Judgment Order and Opinion ECF Nos. 52, 53, and 55), when dismissing the habeas petition. However, the Magistrate Judge did state in his March 29, 2013 and March 25, 2024: "Here, while the Court declined to issue a Certificate of Appealability, the undersigned does not conclude that any issue petitioner might raise on appeal would be frivolous." (ECF No. 64, Page ID.6706, n1, ¶ 3). Petitioner asserts that Jurist of reason could indeed conclude that the opinion was wrong because it failed to note the extraordinary amount of time between Petitioner's conviction and his first appeal, contrary to well established law.

Pursuant to Title 28 § USC § 2253(c)(1), and the Federal rule of Appellate Procedure, Rule 22(b), Petitioner submitted his motion for a

certificate of appealability to appeal the decision of the US District Court, entered by the Honorable Robert J. Jonkers and Magistrate Judge Ray Kent on March 29, 2013, March 28, 2023, and March 25, 2024, dismissing Petitioner's habeas petition.

Petitioner's Motion for a Certificate of Appealability in the Court of Appeals should have been granted because he demonstrates a clear violations of his Constitutional Rights under the *US Const. Amend. IV, V, VI, and XIV*, where he presented facts that any reasonable Jurist would see as a debatable issue. The (20) year delay in the appeal of right should have warranted habeas corpus relief, but was not. Thus, Certiorari is necessary to address this claim in the first instance. U.S. Const. Amend. XIV.

The District Court failed to note that Petitioner was not obligated to argue all eight issues, as he had complied with the first prong in his delay, which rendered all other issues as moot; however, to show the totality of the injustice, Petitioner presented the Court with all Constitutional violations. A Certificate of Appealability was ripe for further constitutional debate.

This Court should grant the within Petition for a Writ of Certiorari and allow petitioner an opportunity to appeal his case to this Court on the merits of the claims asserted. This case would amount to, or should be referred to, as a prima facie violation of Petitioner's constitutional rights under US Supreme Court precedent, i.e., *In re Winship*, 397 US at 364, where the Court opined:

> "The due process clause protects the accused against conviction except upon proof beyond a reasonable doubt on each and every element of the crime charged." Ibid.

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Clearly, the Petitioner's many state appointed attorneys, the prosecution, a number of Judges, and the US District Court failed to prove Petitioner's claims were without merit. The evidence before the Judge and the Magistrate was sufficient to justify habeas relief under title 28 USC § 2254 (d)(1)(2).

The District Court dismissed Petitioner's 2254 habeas petition on March 29, 2013, March 28, 2023, and March 25, 2024, contrary to the habeas statute which mandates that habeas relief cannot be rendered unless a Petitioner demonstrates that the state court's resolution resulted in a contrary to, or an unreasonable application of clearly established law as determined by the US Supreme Court, not by state court(s') decisions. Petitioner's plea for all eight issues were sufficient for a COA to be issued, because his claims are embedded within the Fourth, Fifth, Sixth, and Fourteenth Amendments of the US Constitution. These claims are ripe for further recognition on the protection of the due process clause when a fair and unbiased state trial-state appellate proceeding are at issue.

Petitioner urges this court to grant his certiorari petition and allow him an opportunity to show that his constitutional rights were violated during his trial and appellate process. As presented in Petitioner's Motion, a new trial should be afforded Petitioner, or release him from custody to cure this fundamental miscarriage of justice, as this Court would be remiss in declining to address Petitioner's claims under the full panoply of the due process clause. US *Const. Amend. XIV.*

Conceivably, due to the nature of this case, *Jurists* of reason may decide the claims in a different manner and well within the constitutional command

of the Fourteenth Amendment's guarantee of a "fair adjudication." Therefore, Petitioner requests that this court issue an order granting the "Petition for a Writ of Certiorari" for the delay in the appeal of right to proceed on review.

Moreover, under the facts and circumstances of this case, and the denial of fundamental due process of law, this Court should grant the writ of certiorari and allow an appeal to this Court, because in a supervisory capacity, this Court may decide the issue differently. *Barefoot v Estelle*, 463 US 880, 892-893; 103 S Ct 3383, 3394-3395; L Ed 2d 1090 (1983). So stated, Petitioner Vandurmen urges this Court to review his writ of certiorari and grant review to address his eight issues under the equal protection clause of the Fourteenth Amendment. *US Const. Amend. XIV.* Petitioner urges this Court to allow his appeal to move forward through the conclusion of the appellate process. cf. *Miller El v Cockrell*, 537 US 322, 336; 123 S Ct 1029; 154 L Ed 2d 931 (2003).

This Court should review Petitioner's claims submitted in his motion for a Certificate of Appealability. The District Court ruled contrary to well established law, and the evidence will support Petitioner's claims, and should be reviewed in tandem with the issues infra.

Petitioner asks that this court review his claims under the "doctrine of novelty" because his Fourth, Fifth, Sixth, and Fourteenth Amendment claims would afford him a new trial or immediate release once all the evidence is reviewed in its totality. Certiorari should be granted, S. Ct. Rule 10(c).

appeal by right, due to a state created impediment, and Petitioner did not contribute to the delay, this Court should take up this claim, and because all other claims were ingrained in the unreasonable delay for an appeal of right, certiorari should be granted to render a decision on the merits. *Turner v Bagley,* 401 F 3d 718 (6th. Cir. 2005), the Court opined:

> "We further note that under certain circumstances inordinate delay or deprivation of access to appellate process renders the appeal worthless such that a petition for habeas corpus may be unconstitutionally granted." id, 401 F3d at 727.

Petitioner urges this Court to apply the above logic to the facts of his case and grant him a petition for writ of certiorari. S. Ct. Rule 10(c). Petitioner is entitled to habeas corpus relief in this case, and certiorari should be granted on the inquiry on his claim of denial of an appeal by right to appeal in a timely manner. The lower court's failure to grant habeas relief under Title 28 USC § 2254(d)(1)-(2) was error requiring relief, as this Court said in *Engle v Isaac,* 71 L Ed 2d 783, 799, and opined:

> "The writ of habeas corpus indisputably holds an honored position in our jurisprudence. Tracing its roots deep into English common law, it claims a place in Art I of our Constitution. Today, as in prior centuries, the writ is a bulwark against convictions that violate fundamental fairness." *Wainwright v Sykes,* 433 US, at 97; 53 L Ed 2d 594; 97 S Ct 2497. (Stevens, J., concurring).

Petitioner, Anthony Lee Van Durmen, petitions this Honorable Court to issue an order granting his Petition for a Writ of Certiorari, to review the Opinions and Orders rendered in this case on January 29, 2025, by the US Court of Appeals for the Sixth Circuit, denying his appeal from the order of denial by the US District Court, Eastern District of Michigan, in

Detroit, Michigan denying his Title 28 USC § 2254 habeas corpus petition.

The decisions below were contrary to this Court's rulings on an issue of the same magnitude regarding the inordinate delay for over (20) years prohibiting Petitioner from submitting his timely appeal of right, depriving him of fundamental due protection, where the right to appeal was thwarted by the state's created impediment resulting in substantial prejudice requiring relief such as a new trial on his Sixth Amendment claim of 'constitutional' ineffective assistance of counsel. U.S. Const. Amend. VI.

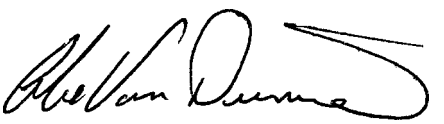
The inordinate delay of (20) plus years for the appeal of right violates this Court's ruling in *Rodriquez v United States,* 395 US 327 (1969), which entitles Petitioner to relief under the prejudice factors announced in *Roe v Flores-Ortega,* 528 US 470 (2000). The decisions below conflicts with the decisions of this Court on like subject matter and should be reversed on the prejudicial delay for an appeal of right. cf. *Garza v Idaho,* 586 US 232 (2019).

Further, Petitioner is very mindful of this Court's posture in rarely, if at all, granting a pro. per. indigent prisoner certiorari pleadings. However, because his case is one of exceptional circumstances, and the Court has yet to decide a case of similar posture, i.e., a (20) plus year delay in appealing the criminal conviction due to the state's created impediment, and the Courts below have trampled on his Sixth and Fourteenth Amendment right to fundamental due process and the denial of counsel at a critical stage of the criminal process against him, i.e., his appeal of right, he urge the Court to *abandon* its denial of pro. per. litigants an opportunity to be heard on the merits of the question presented for review.

CONCLUSION

WHEREFORE, and for all the reasons listed above, Petitioner, Anthony Lee Van Durmen, respectfully asks that this Honorable Court grant his Petition for Writ of Certiorari, an order that the decisions of the Courts below are reversed and a new trial is granted. Alternatively, order the State of Michigan to answer the writ of certiorari and show cause why the relief should not be granted on the long inordinate delay in providing an appeal of right.

Respectfully submitted,



Dated: June 30, 2025

Anthony Lee Van Durmen
MDOC ID #189744
Petitioner in Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036