25-6252

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, DC

WAYNE MURPHY — PETITIONER

(Your Name)

vs.

SHANNON BUTRUM,WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals # USAP 24-6039

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

PETITION FOR WRIT OF CERTIORARI

WAYNE MURPHY #207062

(Your Name)

LUTHER LUCKETT CORR. COMPLEX P.O. BOX 6

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LAGRANGE, KENTUCKY 40031

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(Phone Number)

QUESTION(S) PRESENTED

DID THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENY PETITIONERS HABEAS CORPUS PETITION BECAUSE OF PROCEDURAL DEFAULT WITHOUT REVIEWING THE RECORD AS WELL AS BASING ITS DECISION ON THE UNITED STATES DISTRICT COURTS FINDINGS IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

DID THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENIED PETITIONER INEFFECTIVE ASSISTANCE OF COUNSEL PETITION WITHOUT REVIEWING THE RECORD OF THE CASE WHERE PETITIONER WAS CHARGED WITH ROBBERY IN THE FIRST-DEGREE UNDER KENTUCKY REVISED STATUTE (KRS) 515.020. PRIOR TO TRIAL, COUNSEL WAS IN VIOLATION OF THE FIFTH AND SIXTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION, AND; CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES UNDER THE STRICKLAND STANDARD.

DID THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENY PETITIONERS HABEAS CORPUS PETITION BECAUSE OF PROCEDURAL DEFAULT WITHOUT REVIEWING THE RECORD AS WELL AS BASING ITS DECISION ON THE UNITED STATES DISTRICT COURTS FINDINGS WITHOUT REVIEW THESE ARGUMENT ON THE MERITS OF THE CASE IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the 6th Circuit court of appeals appears at Appendix B to the petition and is

[ ] reported at No. 24-6039; 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[ ] is unpublished.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 C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was May 21, 2025. Sixth Circuit.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the 6th Circuit Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, ***nor be deprived of life, liberty, or property, without due process of law.***

Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein which the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense (competent counsel).

Amend. 14, Section 1

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 any law that will 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 jurisdiction the Equal Protection of the Law.

STATEMENT OF THE CASE

On the morning of July 14, 2004, the Petitioner and his fiancé, Tracy Chaffins, went to Ms. Chaffins' prenatal check-up at King's Daughters Hospital. After the appointment, Ms. Chaffins' uncle, James Hurst, picked them up from the hospital just before 11:00 a.m. and they went to Speedway Gas Station, then they traveled to Ironton, Ohio, where Ms. Chaffins paid on a fine that Mr. Murphy owed at the Lawrence County Courthouse. After she paid on the fine, Mr. Hurst drove Mr. Murphy and Ms. Chaffin to Save-A-Lot Grocery Store where they picked up groceries, and then the trio went to Rich Oil Gas Station in Ohio to fill up Mr. Hurst's car. Finally, Mr. Hurst dropped Mr. Murphy and Ms. Chaffins off at home at approximately 1:00 that afternoon.

Unfortunately, what started out as a normal day quickly turned into a nightmare when Mr. Murphy was implicated in a crime that occurred sometime around noon that day at Superstar Video in Russell, Kentucky. According to the victim, Melissa Ruffing, she was working at Superstar Video when William Ryan Dixon entered the store and opened a membership with the store in order to rent a video. He then left the store to consult a friend about a movie and she returned to cleaning the store. Ms. Ruffing testified that she heard the scuffling of boots, but before she could react, she was struck on the back of the head. She testified that Mr. Dixon and Mr. Murphy dragged her to the back of the store, where Mr. Murphy beat her severely, demanded that she open the safe, threatened to kill her son, raped her, and then struck her viciously on the head with a hammer.

At trial, the defense's theory of the case was that Mr. Murphy could not have committed this crime because he simply was not there. The defense put forth an alternate suspect, John

Barger, who testified at trial that he walked in during the commission of the crime, then left and continued shopping, but later returned to the crime scene and spoke with detectives.

During Mr. Murphy's trial, the Commonwealth presented no physical evidence tying Mr. Murphy to the crime scene. Instead, based only on testimonial evidence, Mr. Murphy was convicted of first-degree rape, first-degree assault and first-degree robbery and was sentenced to life in prison on the rape charge and twenty (20) years each on assault and robbery, to run consecutively.

Mr. Murphy had a Direct Appeal to the Kentucky Supreme Court (***Murphy v. Commonwealth,*** **2007-SC-000176-MR) APPENDIX A**; arguing four (4) arguments: (1) **The court erred by allowing unreliable hair analysis,** (2) **The court erred by allowing prejudicial presumptive blood test result,** (3) **The Court should reverse due to the risk that this is a wrongful conviction,** (4) **Two 20-year sentences cannot run consecutive to a life sentence**. On **April 24, 2008**, the Supreme Court of Kentucky affirmed Mr. Murphy's conviction but remanded for re-sentencing.

Mr. Murphy filed a *pro se* Motion to Vacate Judgment Pursuant to RCr 11.42 on July 22, 2011. On or about May 27, 2014, Mr. Murphy, through counsel, supplemented his RCr 11.42 motion on his trial counsel stating several arguments and that his Sixth Amendment right was violated, (1) **Counsel failed to investigate video surveillance from King's Daughters' Hospital;** (2) **Brady violation for missing evidence;** (3) **Mr. Murphy has presented evidence that he was in Ironton, Ohio at the same time of the alleged crime.** Mr. Murphy's RCr 11.42 was denied by the trial court. Mr. Murphy then appealed to the Court of Appeals of Kentucky **(2017-CA-000596-MR)/(2017-CA-001067-MR) APPENDIX B**, which was denied on **May 17, 2019** stating that Mr. Murphy cannot fault them just because his motion was unsuccessful.

On or about May 27, 2014, Mr. Murphy now represented by appointed counsel, filed a supplemental brief in support of his RCr 11.42 motion.

On or about November 24, 2015, an evidentiary hearing was held for Mr. Murphy on his RCr 11.42; on or about October 26, 2016, there was a second evidentiary hearing for Mr. Murphy.

At the evidentiary hearings, the court heard evidence related to only some of the claims brought in Murphy's RCr 11.42 motion, including his claim that trial counsel had failed to investigate the times of the Speedway surveillance.

At the October 26, 2016 hearing, Mr. Murphy presented evidence that trial counsel had not independently investigated why the timing of the Speedway surveillance video did not match the Speedway's register logs/transaction times and that the prosecution had relied on the incorrect times from the receipts to undermine Mr. Hurst's credibility. To further his claim, Mr. Murphy presented evidence—using lottery ticket transactions, comparing Speedway's transaction logs—demonstration that surveillance camera's timestamp was correct and corroborated his alibi: i.e., Mr. Murphy and his fiancée were at Speedway around 11:17 a.m. and NOT at 11:50 am. as the prosecutor wrongly declared and used this false evidence to discredit Mr. Murphy's alibi witness, Mr. Hurst as a liar.

During the evidentiary hearing the Court declined to hear evidence regarding the Ironton, Ohio Courthouse fine payment; the court stated that, unless the fine had been paid at the time the assault occurred, the trial court decided that there was no relevance for the evidence to be presented. ***VR; 10/26/2016; 2:10;16-2:11:07.***

On or about February 6, 2017, the Greenup County Circuit Court denied Mr. Murphy's RCr 11.42 motion. In the trial courts opinion, it addressed only six of Mr. Murphy's RCr 11.42

claims and made no mention of other claims raised in Murphy's initial *pro se* motion. On or about February 16, 2017, Mr. Murphy filed a motion requesting that the court rule on the remaining issues. Overruling this motion, the trial Court issued an order on May 26, 2017, stating that "the Court can find no remaining issues of any merit to further rule upon" and "all issues have either been waived or already ruled upon." Although, the trial court briefly addressed trial counsel's failure to investigate the timestamp discrepancy on the Speedway transaction, the Court rejected the claim on the ground that the surveillance footage timestamp was irrelevant because it did not overlap with the time of the attack. See ***Commonwealth v. Murphy*, No 04-CR-00149, at (February 6, 2017).**

The trial court similarly ignored the relevance of the Ironton, Ohio fine payment because Mr. Murphy could not prove the exact time his fine was paid. See *id.* The opinion made no mention of the fact that the timestamp on the surveillance footage, once proven correct, corroborated Mr. Hurst alibi testimony and refuted the prosecution's core argument that Mr. Hurst had lied. The opinion of the trial court made no mention of the fact that the correct timestamp directly contradicted the Commonwealth's claims at Mr. Murphy's trial that the Ironton, Ohio Municipal Court fine payment occurred before 11:14 a.m., nor that the Commonwealth's theory Mr. Murphy to be in two places at once.

On or about May 27, 2014, in parallel to the RCr 11.42 motion, Attorney Michael Goodwin, on behalf of Mr. Murphy, filed a Motion for Relief from Judgment pursuant to **Kentucky Rules of Civil Procedure Rule 60.02**, arguing that the alleged victim recanted her trial testimony. On or about March 13, 2017, the trial court denied this motion after a hearing simultaneous Mr. Murphy's RCr 11.42 hearing.

On or about May 14, 2018, Mr. Murphy was represented by Department of Public Advocacy (hereinafter DPA) to file an appeal to the Kentucky Court of Appeal on the trial court ruling on his RCr 11.42 motion which stated that Mr. Murphy was not allowed to properly present evidence, including the alibi timeline at his hearing. In addition, DPA argued that the trial court improperly deemed waived a large number of Murphy's claim without any evaluation.

On or about May 17, 2019, the Kentucky Court of Appeals affirmed Mr. Murphy's case; the Kentucky Court of Appeals held that evidence establishing the timing of the Ironton, Ohio fine payment "would not have impacted the verdict for the simple reason that the jury apparently did not believe that Mr. Murphy was with his fiancée and Mr. Hurst." ***Murphy v. Commonwealth*, No. 2017-CA-0000596-MR, 2019 WL 2157583, *5 (Ky. Ct. App. May 17, 2019) (*Murphy v. Commonwealth*, 2019 Ky. App. Unpub. LEXIS 354).**

On July 17, 2019, Mr. Murphy, with assistance of DPA, filed a motion for Discretionary Review (hereinafter MDR) in the Supreme Court of Kentucky. On March 18, 2020, the Supreme Court of Kentucky issued an order denying Mr. Murphy's MDR. (***Murphy v. Commonwealth*, 2020 Ky. LEXIS 81) (March 18, 2020) (2019-SC-000327-D)**

On or about May 15, 2020, Mr. Murphy filed his Writ of Habeas Corpus (***Murphy v. Ferguson*) (0:20-CV-00058-KKC) APPENDIX C** in the United States District Court for the Western District of Kentucky **28 U.S.C. § 2254** challenging the charges of Rape, assault, and Robbery convicted by the Russell Circuit Court **that his right was violated due to Unanimous Verdict Violation (Direct Appeal); His counsel being Ineffective (RCr 11.42); and that his trial court also violated his rights (CR 60.02). The United States District Court sent an Order/Judgment on June 1, 2023 to Petitioner adopting the Magistrate Judge's Finding**

and Conclusion as well as denying Petitioners Writ of Habeas, as well as denying his Certificate of Appealability.

On or about May 15, 2020 Mr. Murphy filed a Certificate of Appealability (hereinafter COA) (***Murphy v. Ferguson***) **(No. 24-6039) APPENDIX D** in the United States Court of Appeals for the Sixth Circuit challenging the denial of his Application for a COA which was denied on **May 21, 2025.** On **June 2, 2025**, Mr. Murphy filed a motion asking the Court of Appeals for the Sixth Circuit to reconsider their denial of his Application for a COA. On or about **July 3, 2025**, the United States Court of Appeals for the Sixth Circuit denied Petitioner reconsideration stating, it did not overlook or misapprehend any point of law or facts. **(Murphy v. Robey) (No. 24-6039).**

REASON FOR GRANTING THE PETITION

The Court of Appeals for the Sixth Circuit Erroneously denied Petitioner Habeas Corpus Petition because of Procedural Default Without Reviewing the Record as well as Basing its Decision on the United States District Courts findings in Violation of Petitioner's Eighth Amendment to the United States Constitution in Violation of an Unreliable Evidence, and Clearly Established Federal Law, as Determined by the Supreme Court of the United. The Court of Appeals for the Sixth Circuit Erroneously Denied Mr. Murphy's Certificate of Appealability because of Statute of Limitation without reviewing the Record Which Violated Mr. Murphy's Sixth Amendment to the United States Constitution in violation of his Due Process Rights

On or about the 21st day of May, 2025, the United States Court of Appeals for the Sixth Circuit denied Mr. Murphy's COA by way of statute of limitations and that he (Mr. Murphy) failed to argue in his COA that statute of limitations may also be equitable tolled in certain circumstances; Mr. Murphy also failed to object along these lines to the magistrate judge's report and recommendation.

The U.S. Supreme Court may review the denial of a COA by the lower courts. See, *e.g.*, Miller-El v. Cockrell, 537 U.S. 322, 326-327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). When the lower courts deny a COA and this honorable court conclude that their reason for doing so was flawed, this court may reverse and remand so that the correct legal standard may be applied. See, Slack v. McDaniel, 529 U.S. 473, 485-486, 489-490, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

When "a legal issue appears to warrant review, certiorari is granted in the expectation of being able to decide that issue." Buck v. Davis, 580 U.S. 100 (2017). This honorable court grants certiorari on, and the parties addressed their arguments to, the following question: "Whether a defendant in a state criminal case who is prohibited by state law from raising on direct appeal any claim of ineffective assistance of trial counsel, but who has a state-law right to raise such a claim in a first post-conviction proceeding, has a federal constitutional right to effective assistance of first post-conviction counsel specifically with respect to his ineffective-assistance-of-trial-counsel claim." Martinez v. Ryan, 566 U.S. 1 (2012).

However, Mr. Murphy has always maintained his actual innocence and when that's the case, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup* and *House*, or, as in this case, expiration of the statute of limitations. However, tenable actual-innocence gateway pleas are rare: "[A] petitioner does not meet the threshold requirement unless he persuades a district court that, in light of the new evidence, no juror, acting reasonable, would have voted to find him guilty beyond a reasonable doubt." Schlup, 513 U.S., at 329, 115 S. Ct. 851, 130 L. Ed. 2d 808; see House, 547 U.S., at 538, 126 S. Ct. 2064, 165 L. Ed. 2d 1. And in making an assessment of the kind *Schlup* envisioned,

"the timing of the [petitioner]" is factor bearing on the "reliability of th[e] evidence" purporting to show actual innocence. Schlup, 513 U.S., at 332, 115 S. Ct. 851, 130 L. Ed. 2d 808.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 stat. 1214, a state prisoner ordinary has one year to file a federal petition for habeas corpus, starting from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244 (d)(1)(A). If the petition alleges newly discovered evidence, however, the filing deadline is one year from "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." § 2244 (d)(1)(D). McQuiggin v. Perkins, 569 U.S. 383, 395, 133 S. Ct. 1924, 185 L. Ed 1019 (2013). In *Holland*, this honorable court explained that § 2254 (e)(2)'s "restrictions apply a *fortiori* when a prisoner seeks relief based on new evidence without an evidentiary hearing." 542 U.S., at 653, 124 S. Ct. 2736, 159 L. Ed. 2d. 683. A contrary reading would have countenanced an end-run around the statute. Federal habeas courts could have accepted any new evidence so long as they avoided labeling their intake of the evidence as a "hearing." Therefore, when a federal habeas court convenes an evidentiary hearing for any purpose, or otherwise admits or reviews new evidence for any purpose, it may not consider that evidence on the merits of a negligent prisoner's defaulted claim unless the exceptions in § 2254 (e)(2) are satisfied. Shinn v. Ramirez, 596 U.S. 366 (2022). More so, Mr. Murphy meets § 2254 (e)(2)(B) which states;

Further, the United States Court of Appeals for the Sixth Circuit decision on Mr. Murphy's new evidence such as the Kentucky Lottery Commission letter and the Russell Police Department letter, is misplaced.

The lower court of the Sixth Circuit Court of Appeals has gravely misunderstood the importance of the evidence related to the ***True Time*** of when Mr. Murphy made the purchase at Speedway; however, Mr. Murphy never bought a Lottery Ticket as the Sixth Circuit described, more so, the information from the Kentucky Lottery Commission further supports that the cash register's time was incorrect and the incorrect time was used by the Commonwealth for two reasons: (1) ***to falsely claim that Mr. Murphy was still in Kentucky near the noon hour;*** (2) ***to discredit his alibi's testimony to paint Mr. Hurst as a liar.***

Mr. Hurst (alibi) was persistent during his testimony and he did not think he was an hour off about the time of when the fine was paid in Ironton, Ohio. ***VR; 11/20/2006; 11:04:22 am.*** The true/correct time of the Speedway purchase was at 11:17 am. and not at 11;50 am. as the prosecutor incorrectly described and presented to the jury.

This evidence must be married to the evidence that Mr. Murphy discovered/presented in his post-conviction proceedings that shows his fines in Ohio were paid on or around 11:49 am., not before 11:14 as the Commonwealth again presented false evidence to discredit the alibi's testimony and the fine of events. Furthermore, it's about a 15 to 20-minute drive from the Kentucky Speedway to the Municipal Building in Ironton, Ohio where the fines were paid; more so, the results from the investigation shows that Mr. Murphy's fine were paid around 11:45 am. in Ironton, Ohio.

The new evidence supports Mr. Hurst's alibi of Murphy's whereabouts and his testimony was not a lie; however, if the court thought he lied, why wasn't Mr. Hurst charged with perjury.

Furthermore, how can this not be new evidence as well as ineffective assistance of counsel, when Mr. Murphy made numerous attempts to obtain these surveillances that would

have proven his alibi to the jury. So Mr. Murphy should not be held accountable and his statute of limitations should have started when he received that new evidence.

As the United States stated, the statute of limitations may be equitable tolled in certain circumstances. *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); *Holland v. Florida*, 560 U.S. 631, 649 (2010). Furthermore, the circumstance is in Mr. Murphy's case by way of him being innocent of all charges and with the evidence that his trial counsel failed to present; more so, if presented, a reasonable juror would not have found Mr. Murphy guilty of any of the charges he was convicted.

That said, "if the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default be imputed to the State." *Murray*, 477 U.S. at 488, 106 S. Ct. 2639. That is not because a constitutional error "is so bad that the lawyer ceases to be an agent" of the prisoner, but rather because a violation of the right to counsel "must be seen as an external factor" to the prisoner's defense. *Coleman*, 501 U.S. at 754, 111 S. Ct. 2546. "It follows, then, that in proceedings for which the Constitution does not guarantee the assistance of counsel at all, attorney error provides cause of excuse of default." *Davila*, 582 U.S., at ----, 137 S. Ct. at 2065.

However, in *Martinez*, this Court recognized a "narrow exception" to the rule that attorney error cannot establish cause to excuse a procedural default unless it violates the Constitution. 566 U.S., 9, 132 S. Ct. 1309.

Did the Court of Appeals for the Sixth Circuit Erroneously deny Mr. Murphy's Ineffective Assistance of Counsel Petition in Violation of the Sixth Amendment to the United States Constitution, and Clearly Established Federal Law, as Determined by the Supreme Court of the United States in Strickland.

Under the Antiterrorism and Effective Death Penalty Act of 1996, a federal court may not grant a petition for a writ of habeas corpus unless a state court's adjudication on the merits was "contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States." **28 U.S.C.S § 2254 (d)(1).** A decision is contrary to clearly established law if the state court "applies a rule that contradicts the governing law set forth in **[Supreme Court]** cases." *Williams v. Taylor*, 529 U.S. 362, 405, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) **(Opinion for the Court by O'Conner, J.).** See also *Lafler v. Cooper*, 132 S. Ct. 1376, 1390, 182 L. Ed. 2d 398, 2012 U.S. LEXIS 2322 (2012).

The United States Court of Appeals for the Sixth Circuit decisions is neither contrary to Supreme Court precedent nor an unreasonable application of federal law or the facts. Well-established federal law requires that defense counsel conduct a reasonable investigation into the facts of a defendant's case, or make a reasonable determination that such investigation is unnecessary. *Wiggins*, 539 U.S. at 522-23; *Strickland*, 466 U.S. at 691; *Stewart v. Wolfenbarger*, 468 F. 3d 338, 356 (6th Cir. 2007); *Towns v. Smith*, 395 F. 3d 251, 258 (6th Cir. 2005). The duty to investigate "include the obligation to investigate all witnesses who may have information concerning...guilt or innocence." *Towns*, 395 F. 3d at 258. That being said, decisions as to what evidence to present and whether to call certain witnesses are presumed to be matters of trial strategy. When making strategic decisions, counsel's conduct must be reasonable. *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000); see also *Wiggins*, 539 U.S. at 522-23. The failure to call witnesses or present other evidence constitutes ineffective assistance of counsel only when it deprives a defendant of a substantial defense. *Chegwidden v. Kapture*, 92 F. App'x 309, 311 (6th Cir. 2004); *Hutchison v. Bell*, 303 F. 3d 720, 749 (6th Cir. 2002).

The "range of reasonable application" of the *Strickland* standard "is substantial "so under 2254 (d), the "question is not whether counsel's actions were reasonable. The question is whether there is any reasonable that counsel satisfied *Strickland's* deferential standard. Harrington v. Richter, 562 U.S. 86, 101 (2011).

In Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674 (1984); Wiggins v. Smith, 539 U.S. 510, 522, 156 L. Ed. 2d 471 (2003); Bobby v. Van Hook, 558 U.S. 175 L. Ed. 2d 255, 259 (2009), this Court stated, "Counsel has a duty to make reasonable investigation or to make a reasonable decision that makes particular investigations unnecessary." American Bar Association standards used as a guide in assessing whether attorney's failure to investigate was reasonable. However, reversing a finding of deficient performance where the lower court treated the ABA's standards as "inexorable commands" that attorneys must "fully comply with."

The Sixth Circuit is in conflict with this court's ruling when it states; Courts have not hesitated to find ineffective assistance in violation of the Sixth Amendment when counsel fails to conduct a reasonable investigation into one or more aspects of the case and when that failure prejudices his or her client. Such as in *Wiggins v. Smith*, this Court held that the petitioner was entitled to a writ of habeas corpus because his counsel had failed to conduct a reasonable investigation into potentially mitigating evidence with respect to sentencing. *539 U.S.* at 524-29.

However, the lower court claims that Mr. Murphy's "factual predicate" was not discovered through the exercise of due diligence and whether Mr. Murphy's habeas was file "within the one year of discovering the factual predicate of [his] claim." The lower court also stated the statute does not define "factual predicate," but "courts generally agree that 'a factual

predicate consists only of the "vital facts" underlying the claim.'" And it also stated that "A fact is 'vital' if it is required for the habeas petition to overcome sua sponte." However, to avoid sua sponte dismissal of an ineffective-assistance-of-counsel claim, the habeas petition must allege facts showing that: (1) counsel performance was objectively deficient, and (2) the deficient performance prejudice the petitioner. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 694 (1984).

Mr. Murphy contends that trial counsel's failure to investigate establishes the factual predicate for his ineffective-assistance claim. Mr. Murphy asserts that his counsel was deficient because she did not investigate his ***alibi timeline*** which left the door open for the prosecutor to portray his alibi witness as a liar. Furthermore, evidence that the trial counsel failed to investigate to exclude Mr. Murphy from the crime itself, the prosecution was able to turn the corner and again portray the defense witness as a liar; however, the investigation and the evidence that Mr. Murphy asked counsel to investigate and present would have corroborated his alibi and that his alibi witness was actually telling the truth. So there's no way to put it, counsel violated both prongs of *Strickland* which made Mr. Murphy's trial unfair and counsel's performance objectively deficient and counsel deficiency prejudice Mr. Murphy's outcome of his trial.

Mr. Murphy looked to introduce new evidence that would've entitled him to relief, AEDPA prohibits him from doing so, except in a narrow range of cases, unless he "made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in state court." *Williams v. Taylor*, 529 U.S. 420, 435, 120, S. Ct. 1479, 146 L. Ed. 2d. 435 (2000). Furthermore, what's not been mentioned is that, Mr. Murphy's RCr 11.42 motion was filed in 2011 which an evidentiary hearing was held that brought about the newly discovered

evidence that he (Mr. Murphy) disclosed that his trial counsel failed to investigate and collect evidence that would had proved the testimony of his alibi witness; "this failure by trial counsel was after Mr. Murphy asked her to pursue this evidence and she refused." Categorical rules are ill suited to the *Strickland* prejudice inquiry that demands a "case-by-case examination of the totality of the evidence." *Williams v. Taylor, supra.*

This argument is about the Kentucky Lottery Commission letter and the alibi; first, let's address the main issue and that's ... Mr. Murphy had a witness testify that he was with Mr. Murphy during the time that the crime was being committed; the law states that, if a person lies under oath, that person is committing perjury. The Prosecution nor the courts stated that Mr. Hurst was committing perjury so the prosecutor was misplaced when she told the jury that Mr. Hurst could not be believed which in other words "accuses Mr. Hurst as being a liar."

Mr. Murphy asked his trial counsel to investigate and collect the surveillance video to prove his alibi and innocence. Counsel failed at multiple times to collect key evidence, talk to witnesses, and corroborate Mr. Murphy's alibi timeline and that was after Mr. Murphy requested his counsel to investigate and retain his alibi evidence. This failure constituted deficient performance under *Strickland*, and that deficient performance prejudice the outcome of Mr. Murphy's trial. Furthermore, counsel's failure to investigate the alibi timeline cannot be excused or rationalized as a matter of trial strategy.

Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind this honorable court have called "structural"; when present, such an error is not subject to harmless-error review. See *e.g., McKaskle*, 465 U.S., at 177, n. 8, 104 S. Ct. 944, 79 L. Ed. 2d 122. Structural error "affect[s] the framework within which the trial proceeds," as distinguished from a lapse or flaw that is "simply an error in the trial process itself." *Arizona v. Fulminante*,

499 U.S. 279, 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991). An error may be ranked structural, this court has explained, "if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest," such as "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *Weaver*, 582 U.S., at 295, 137 S. Ct. 1899, 1908, 198 L. Ed. 2d. 420, 432 (citing *Faretta*, 422 U.S., at 834, 95 S. Ct. 2525, 45 L. Ed. 2d 562).

Furthermore, in assessing counsel's investigation, the court must conduct an objective review of their performance, measured for "reasonableness under prevailing professional norms," *Strickland*, 466 U.S., at 688, 80 L. Ed. 2d 674, 104 S. Ct. 2052, which includes a context-dependent consideration of the challenged conduct as seen "from counsel's perspective at the time," *id.*, at 689, 80 L. Ed. 2d 674, 104 S. Ct. 2052 ("Every effort [must] be made to eliminate the distorting effects of hindsight"). *Wiggins v. Smith*, 539 U.S. 510.

As far as Mr. Murphy, trial counsel's entire defense was based on discrediting the prosecuting witness when, her only defense should've been the evidence Mr. Murphy asked her to obtain such as the video surveillance from multiple places so his alibi could be protected by evidence and refuted the false evidence that the prosecutor presented to the jury.

Trial Counsel did not seek production of the key evidence such as the Hospital Surveillance footage from before 10:43 a.m. on the day of the alleged crime, which would had demonstrated that neither Mr. Murphy or his fiancée left the King's Daughters Medical Center **before 11:00 a.m.** Trial counsel did not even request phone records from Mr. Murphy's home to show that calls were placed shortly after Mr. Murphy and his fiancée returned home.

Simply put, trial counsel did not conduct any independent investigation into the alibi or adequately prepare to present the alibi defense at trial. Trial Counsel's failure to do so fell below

an objective standard of reasonableness and therefore constitutes deficient performance under *Strickland*, 466 U.S. at 687-88. However, trial counsel did have a chance to question Mr. Hurst, but she also gave the prosecution leverage to state to the jury that Mr. Hurst cannot be believed; had counsel obtained the surveillance video, it would had proved that false information by the prosecutor was being presented to the jury.

Counsel performed no mitigation investigation, overlooking vast tranches of mitigating evidence. Due to counsel's failure to investigate compelling mitigating evidence, what little evidence counsel did present backfired by bolstering the State's aggravation case and counsel did that a lot. More so, counsel failed adequately to investigate the State's aggravating evidence, thereby forgoing critical opportunities to rebut the case in aggravation. Taken together, those deficiencies effected an unconstitutional abnegation of prevailing professional norms.

Had trial counsel investigated Mr. Murphy's alibi timeline, she would had been able to demonstrate that the "fact" upon which the prosecution relied to undermine Mr. Hurst's timeline were untrue. After trial, Mr. Murphy collected the evidence he asked his trial counsel to obtain to confirming his alibi timeline accuracy.

Next, trial counsel's failure to adequately review evidence, including police records of the victim's contradictory statements, in preparation for trial even though she was aware of the significance of the alleged victim's testimony to the prosecution's case and the importance of impeaching the alleged victim's testimony to Mr. Murphy's case. Trial Counsel failure to impeach the prosecution's key identification witness constitutes ineffective assistance of counsel. See *Blackburn v. Foltz*, 828 F. 2d 1177, 1183-84 (6th Cir. 1987).

When it appears that there is grave potential for prejudice, intentional or not, in the pretrial lineup, which may not be capable of reconstruction at trial, and when presence of counsel itself can often avert prejudice and assure a meaningful confrontation at trial, there can be little doubt that the post-indictment lineup is a critical stage of the prosecution at which an accused is "as mush entitled to the aid [of counsel] ...as at the trial itself." Powell v. Ala., 287 U.S. 45 (1932); United States v. Wade, 388 U.S. 218 (1967). The Due Process Clause of the *Fifth* and *Fourteenth Amendments* forbid a lineup that is unnecessary suggestive and conducive to irreparable mistaken identification. Stovall v. Denno, 388 U.S. 293; Foster v. California, 394 U.S. 440. When a person has not been formally charged with a criminal offense, *Stovall* states, the appropriate constitutional balance between the right of a suspect to be protected from prejudicial procedures and the interest of society in the prompt and purposeful investigation of an unsolved crime.

The proper test to be applied for the exclusion of witness' in-court-identification, where an accused's counsel was not present at a lineup identification. Wong Sun v. United States, 371 U.S. 471, 488 (1963). '"Whether, granting establishment of the primary illegality, the identification evidence has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' *Maguire, evidence of Guilt* 221 (1959)." See also Hoffa v. United States, 385 U.S. 293, 309.

In particular, this honorable court stated that "due process concerns arise only when law enforcement officers use[d] an identification procedure that is both suggestive and unnecessary." *Id.*, at 238-239, 132 S. Ct. 716, 181 L. Ed. 2d 694 (citing Manson v. Braithwaite, 432 U.S. 98, 107, 109, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977) and Neil v. Biggers, 409 U.S. 188, 198, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972); emphasis added). To be '"impermissibly suggestive, '"the

procedure must "'give rise to a very substantial likelihood of irreparable misidentification.'" *Id.*, at 197, 93 S. Ct. 375, 34 L. Ed. 2d. 401 (quoting Simmons v. United States, 390 U.S. 377, 384, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968)). It is not enough that the procedure "may have in some respect fallen short of the ideal." *Id.*, at 385-386, 88 S, Ct. 967, 19 L. Ed. 1247. Even when an unnecessary suggestive procedure was used, "suppression of the resulting identification is not the inevitable consequence." Perry, 565 U.S., at 239, 132 S. Ct. 716, 181 L. Ed. 2d 694. Instead, the Due Process Clause requires courts to assess, on a case-by-case basis, whether improper police conduct created a 'substantial likelihood of misidentification.'" Biggers, supra, at 201, 93 S. Ct. 375, 34 L. Ed. 2d 401. "[R]eliability [of the eyewitness identification] is the linchpin' of that evaluation." Perry, supra, at 239, 132 S. Ct. 716, 181 L. Ed. 2d 694.

As far as Mr. Murphy's case, the Russell Police Department did not have a written record of the alleged victim's identification of Mr. Murphy and counsel failed to challenge the credibility of the prosecution's key witness which meets the deficient performance prong of the *Strickland* ineffective assistance of counsel test. The United States Court of Appeals for the Sixth Circuit stated that by counsel not impeaching the alleged victim about her identification of Mr. Murphy in the weeks after the crime might have been marginally helpful but again, the lower court focuses its attention back on the statute of limitations and the new factual predicate.

Last time it was noted under *Strickland*, counsel has an obligation to her client and that means to make sure he has a fair trial. So, if the allege victim did not positively identify Mr. Murphy as her attacker and counsel failed to impeach this evidence that the prosecution used, she is ineffective on behalf of her client. Furthermore, Mr. Murphy's counsel did attempt to impeach the alleged victim of the identification of Mr. Murphy's co-defendant but failed to identify Mr. Murphy in a photo lineup while she was at the hospital

three days after her attack. Later, it was revealed by the Russell Police Department that the alleged victim identification of Mr. Murphy had failed.

Counsel's infectiveness came when she failed to cross-examine the key witness of the identification of Mr. Murphy during the photo lineup; when she failed to pursue the "obvious and only logical means of diminishing [] identification testimony" of the key identification witness, central to prosecution's case; counsel's failure to investigate prevented an effective challenge to the credibility of the prosecution's only witness; and when counsel failed to impeach the prosecution's key witness. *Blackburn*, 828 F. 2d at 1184; *Lindstadt v. Keane*, 239 F. 3d 191, 204 (2d Cir. 2001); *Nixon v. Newsome*, 888 F. 2d 112, 115 (11th Cir. 1989).

If counsel did nothing else, she should had challenged the credibility of the alleged victim or failed to cross-examine the key witness who had given inconsistent accounts of the identification. *Higgins v. Renico*, 470 F. 3d 624, 633 (6th Cir. 2006). Mr. Murphy received ineffective assistance of counsel in violation of his Sixth Amendment right when trial counsel failed to impeach the prosecution's key identification witness with police records regarding her prior statements. Furthermore, counsel should have thoroughly investigated police records regarding the alleged victim's failure to identify Mr. Murphy during the second photo lineup and that evidence could have been used to impeach the prosecution leading witness at trial.

Strickland, has spoken, that counsel has a specific duty under well-established *federal law* to challenge the credibility of key government witnesses, which could have resulted in a different verdict in this case. See *Strickland*, 466 U.S. at 691; *Griffin*, 970 F. 2d at 1359.

"[It] has long been recognized that the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970). The text of the

Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but "Assistance," which is to be "for his defense." Thus, "the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public and prosecutor." *United States v. Ash*, 413 U.S. 300, 309 (1973). If no actual "Assistance" "for" the accused's "defense" is provided, then the constitutional guarantee has been violated. *United States v. Cronic*, 466 U.S. 648 (1984).

More so, Mr. Murphy was thus denied the right of effective cross-examination which '"would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.' *Brookhart v. Janis*, 384 U.S. 1, 3." *Smith v. Illinois*, 390 U.S. 129, 131 (1968). Furthermore, the assistance of counsel is among those "constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." Accordingly, when a defendant is deprived of the presence and assistance of his attorney, either throughout the prosecution or during a critical stage in, at least, the prosecution of a capital offense, reversal is automatic. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Hamilton v. Alabama*, 368 U.S. 52 (1961); *White v. Maryland*, 373 U.S. 59 (1963).

"The preferred method for raising claims of improper impeachment would be for the defendant to take the stand and appeal a subsequent conviction.... Only in this way may the claim be presented to a reviewing court in a concrete factual context." *New Jersey v. Portash*, 440 U.S. 450 (1979).

When the United States government has suggested that an error has been made by the court below, it is not unusual to grant certiorari, vacate the judgment below, and direct

reconsideration in light of the representation made by the United States in this Court. See, *e.g.*, *Biddle v. United States*, 484 U.S. 1054, 98 L. Ed. 2d 971, 108 S. Ct. 1004 (1988); *Malone v. United States*, 484 U.S. 919, 98 L. Ed. 2d 239, 108 S. Ct. 278 (1987). Nor is it novel to do so in a case where error is conceded but it is suggested that there is another ground on which the decision below could be affirmed if the case were brought to this court. *Alvarado v. United States*, 497 U.S. 543 (1990).

The reasoning for the decision from the United States Court of Appeals for the Sixth Circuit was by way of Mr. Murphy not objecting to the Magistrate Judge report and recommendation and the factual predicate of the new evidence was marginally supported an alibi.

The Court of Appeals for the Sixth Circuit denied Mr. Murphy's COA. Without reaching the merits, it held that Mr. Murphy did not object to the Magistrate 's report and recommendation. "The permissive language of 28 U.S.C. § 636 suggest that a party's failure to file objections is not a waiver of appellate review. Now to the factual predicate of new evidence (marginally); While the United States Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury. See, *e.g.*, Fed. Rule Evid. 403; Uniform Rule of Evid. 45 (1953); ALI, Model Code of Evidence Rule 303 (1942); 3 J. Wigmore, Evidence §§ 1863, 1904 (1904). Plainly referring to rules of this type, this Court stated that the U.S. Constitution permits judges "to exclude evidence that is 'repetitive..., only marginally relevant' or poses an undue risk of 'harassment, prejudice, [or] confusion of the issues.'" *Crane*,

476 U.S., at 689-690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986); See also *Montana v. Egelhoff*, 518 U.S. 37, 37, 42, 116 S. Ct. 2013, 135 L. Ed. 2d 361 (1996).

With that being said, with all the evidence that Mr. Murphy has provided to each court; from the State Courts, to the United States Court of Appeals for the Sixth Circuit, to this Honorable Court, he (Mr. Murphy) was never found guilty *beyond a reasonable doubt*.

Proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, *Miles v. United States*, 103 U.S. 304, 312 (1881)

Furthermore, in evaluating the district court's guilty verdict, an appellate court first assesses whether its findings "support the ultimate legal conclusion of guilt. The court will uphold a finding of guilt if "after viewing the 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."

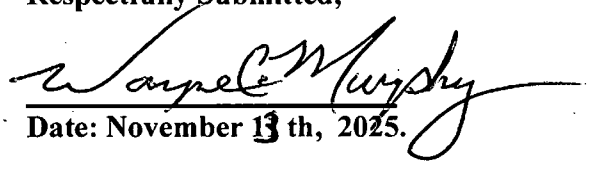
Mr. Murphy prays this Honorable Court finds that the United States Court of Appeals for the Sixth Circuit erred in making its decision because if counsel would had investigated and presented evidence supporting the true timeline as described, this would had created doubt in a reasonable jurors' minds and it would have supported Mr. Murphy's alibi during his trial.

CONCLUSION

For the reason stated above, Mr. Murphy asks this Court to grant his Petition and reverse his conviction for first-degree rape, first-degree assault and first-degree robbery and *Grant* him a new trial, because he was convicted of an offense that was lack of evidence and Ineffective

Assistance of Counsel, which he was actually innocent of all charges. For these reason, the petition for certiorari should be granted.

Respectfully Submitted,



Date: November 13 th, 2025.

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