No. 25-6377

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

RONALD WOLTERS,

Petitioner-Appellant,

v.

SHELBIE SMITH,

Respondent-Appellee.

Ronald Wolters, pro se
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QUESTIONS PRESENTED FOR REVIEW

Did the Sixth Circuits denial of a COA decide the important federal question related to sufficiency of the evidence and proof beyond a reasonable doubt in a way that disregards the decisions of this Court holdings in *In re Winship, 397 U.S. 358, and Jackson v. Virginia, 443 U.S. 307*, and 28 U.S.C. § 2254(d)(2)?

Whether due process extends to the representation of counsel on habeas corpus review, and if due process requires counsels conduct to meet the Sixth Amendment standard as this court held in *Strickland v. Washington, 466 U.S. 668* or at a minimum laws of agency?

Can hired counsel for the purposes of representation during habeas corpus review be deemed ineffective counsel? Can this ineffectiveness of counsel on habeas review allow for review of the higher courts?

Did the United States Court of Appeals for the Sixth Circuit impose an improper and unduly burdensome certificate of Appealability standard that contravenes this courts precedent and deepens a four-circuit split when it denied Ronald Wolters COA to review his 2254 Habeas petition?

TABLE OF AUTHORITIES

STATE RULES

STATE STATUTES

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Miller-El v. Cockrell, 537 U.S. 322, 340, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003)

Parker v. Matthews, 567 U.S. 37, 43, 132 S. Ct. 2148, 183 L. Ed. 2d 32 (2012)

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Slack v. McDaniel, 529 U.S. 473,484, quoting Barefoot v. Estelle, 463 U.S. 880,893

Smith v. Nagy, 962 F.3d 192, 205 (6th Cir. 2020) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)

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Taylor v. Maddox, 366 F.3d 992, 1000 (9th Cir. 2004)

Wood v. Allen, 558 U.S. 290, 301, 130 S. Ct. 841, 175 L. Ed. 2d 738 (2010)

Wolters v. Warden, Belmont Corr. Inst., 2024 U.S. Dist. LEXIS 188191

FEDERAL CONSTITUTIONAL PROVISIONS

Fifth Amendment

Sixth Amendment

Fourteenth Amendment

OTHER SOURCES

Restatement of the Law, Agency 3d

No._____

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgements below.

OPINIONS BELOW

1. The Opinion of the Sixth Circuit Court of Appeal C.O.A. denial appears at **Appendix A** to this petition The court's opinion is reported at *Wolters v. Smith, 2025 U.S. App. LEXIS 10002.*
2. The Opinion of the U.S. District Court Southern District of Ohio appears at **Appendix B** to this petition. The court's opinion is reported at, *Wolters v. Warden, Belmont Corr. Inst., 2024 U.S. Dist. LEXIS 188191*
3. The Opinion of the Fifth Appellate District Court Direct Appeal Decision **Appendix C** to this petition. The opinion is reported at *State v. Wolters, 2022-Ohio-538*
4. The Opinion of the Fifth Appellate District Court 26(B) decision at **Appendix E** to this petition. This Opinion is Unreported

JURISDICTION

The Sixth Circuit Court of Appeals entered final judgment on the appeal on April 25, 2025 A copy is attached at appendix A. *Wolters v. Smith, 2025 U.S. App. LEXIS 10002.*

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

CONSTITUTIONAL PROVISIONS

This case involves a state criminal defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments. The Fifth Amendment provides in relevant part:

> No person shall be... be deprived of life, liberty, or property, without due process of law.

The Sixth Amendment provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense.

The Fourteenth amendment provides in relevant parts:

> No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the applications of 28 U.S.C. §2253(c), which states:

1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from
    a. The final order in a habeas corpus proceeding in which the detention complained of arises out of a process issued by a state court;
2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

A. Introduction

By any measure, Ronald Wolters's case is extraordinary where the right to fair trial and due process have been completely abrogated. It raises a national concern that threatens the doctrine of stare decisis, raises a question does upholding an inconsistent application of federalism, and comity outweigh upholding the constitution in this country? It gives the appearance that, litigants have no right to have their obvious wrongful convictions fairly reviewed, usurping due process and equal protections of the law trapping them unlawfully. The prosecutor went beyond the law to convict Wolters based on evidence constitutionally insufficient to maintain a conviction on appeal.

In Ohio, a person who commits the offense of rape under Ohio Revised Code § 2907.02(A)(1)(b), which prohibits a person from engaging in sexual conduct with someone under 13 years of age. "Sexual conduct" includes vaginal and anal intercourse, fellatio, cunnilingus, and, "without privilege to do so, the insertion, however slight, of any part of the body or . . . other object into the vaginal or anal opening of another." Ohio Rev. Code § 2907.01(A). The jury also convicted Wolters of eight counts of GSI under Ohio Revised Code § 2907.05(A)(4), which prohibits a person from engaging in sexual contact with someone under 13 years of age. "Sexual contact" is defined as the "touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person." Ohio Rev. Code § 2907.01(B).

The trial court and intermediate appellate court ignored the implausibility of the evidence presented at trial, choosing to take SANE nurse Elisha Clark's testimony

over the testimony of 30 a year veteran's testimony Dr. Stephen Guertin. Dr. Guertin testified that there was no evidence of any sexual abuse at all.

Litigation History

On February 26, 2020, Petitioner was indicted by the grand jury of Guernsey County, Ohio, on eight counts of rape and eight counts of gross sexual imposition ("GSI)(Indictment, State Court Record, ECF No. 7, Ex. 1). The trial jury convicted Wolters on three of the eight rape counts and all eight GSI charges. He was sentenced to three terms of imprisonment of twenty-five years to life on the rape counts, to be served consecutively, and five years on each of the GSI counts to be served concurrently with each other and with the rape sentences. Id. at Ex. 15.

Wolters appealed to the Ohio Fifth District Court of Appeals which affirmed the conviction. State v. Wolters, 2022- Ohio 538, 185 N.E.3d 601 (Ohio App. 5th Dist. Feb. 24, 2022), app. jurisdiction declined, 167 Ohio St.3d 1407, 2022 Ohio 2047, 188 N.E.3d 1098 (2022). On October 24, 2022, Wolters filed an application to reopen under Ohio R. App. P. 26(B)(State Court Record, ECF No. 7, Ex. 23), which the Fifth District denied. Id. at Ex. 24. The Ohio Supreme Court again declined to accept jurisdiction of an appeal. Id. at Ex. 27.

On December 1, 2023, Wolters filed his Petition in this Court with the assistance of counsel, pleading the following grounds for relief:

Ground 1: The State of Ohio failed to produce sufficient evidence to convict the appellant of the counts in the indictment in violation of his right to due process

under the Fifth Amendment made applicable to all state criminal prosecutions by the Fourteenth Amendment to the federal constitution.

Ground 2: The trial court violated petitioner's right to confrontation by allowing the alleged victim to testify via closed circuit.

Ground 3: Petitioner was denied effective assistance of counsel guaranteed by the Fifth, Sixth Amendments made applicable to the State of Ohio by the Fourteenth Amendment to the federal constitution.

(Petition, ECF No. 1, PageID 7-13).

Contrary to his clear instructions, counsel representing Wolters in his habeas proceedings did not present his claim of actual innocence nor claim that his convictions were based on an unreasonable determination of the facts under 28 U.S.C.S. 2254(d)(2). As explained below, this was critical in Mr. Wolters case.

REASON FOR GRANTING THE WRIT

The Sixth Circuit's decision not to provide a C.O.A. in this case has so far departed from the accepted and usual course of judicial proceedings on a preclusion of federal Habeas 2254 review, adjudication, and a petitioner's claims of an unreasonable determination of the facts as it relates to a claim of actual innocence and the application of AEDPA has sanctioned such a departure by the lower courts, as to call for an exercise of this Court's supervisory power.

The Sixth Circuit court(s) decisions in this case contravened several of this courts precedent(s). This case is extraordinary and of national importance. It calls in into

question the uniform application of the rule that criminal convictions must be based on the beyond a reasonable doubt standard, see; *In re Winship, 397 U.S. 358, and Jackson v. Virginia, 443 U.S. 307.*

Ronald Wolters did everything he could possibly do to comply with the 2254 habeas procedural requirements including giving clear and unambiguous instructions to the attorney representing him in his habeas corpus action to make sure to claim that his convictions were "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." see: 28 U.S.C. § 2254(d)(2).. As explained below, challenging the unreasonable determinations of the facts was the strongest and easiest way to prove that Mr. Wolters convictions were obtained in violation of the U.S. Constitution and that his habeas corpus petition should have been granted or in the very least obtain de novo review in the Sixth Circuit upon issuance of a Certificate of Appealability.

Relief Under 28 U.S.C. § 2254(d)(2)

A petitioner is not entitled to relief under 28 U.S.C. § 2254(d)(2) unless he can establish that the state court decision in his case was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). A state court decision based on a factual determination is "not unreasonable merely because the federal court would have reached a different conclusion in the first instance." Wood v. Allen, 558 U.S. 290, 301, 130 S. Ct. 841, 175 L. Ed. 2d 738 (2010). The factual determination must

be "objectively unreasonable in light of the evidence presented in the state-court proceeding." Miller-El v. Cockrell, 537 U.S. 322, 340, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (emphasis added). This means that even if "[r]easonable minds reviewing the record might disagree" about the finding in question, "on habeas review that does not suffice to supersede the trial court's . . . determination." Rice v. Collins, 546 U.S. 333, 341-342, 126 S. Ct. 969, 163 L. Ed. 2d 824 (2006).

To find that a factual determination is unreasonable under § 2254(d)(2), the court must be "convinced that an appellate panel, applying the normal standards of appellate review, could not reasonably conclude that the finding is supported by the record." Taylor v. Maddox, 366 F.3d 992, 1000 (9th Cir. 2004), overruled on other grounds by Cullen v. Pinholster, 563 U.S. 170, 185, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011). "This is a daunting standard—one that will be satisfied in relatively few cases." Id.; see also Schriro v. Landrigan, 550 U.S. 465, 473, 127 S. Ct. 1933, 167 L. Ed. 2d 836 (2007). "State-court factual findings, moreover, are presumed correct; the petitioner has the burden of rebutting the presumption by 'clear and convincing evidence.'" Collins, 546 U.S. at 338-339 (quoting § 2254(e)(1)). This "clear and convincing evidence standard . . . pertains only to state-court determinations of factual issues, rather than decisions." Miller-El, 537 U.S. at 341 (emphasis added).

Although the courts below reached factual findings they claimed were supported by the record before the state court these findings were not actually supported by the record as explained below.

In light of the facts contained in the record, it is Mr. Wolters position that because the appellate court did not cite to the relevant portions of the record and merely parroted the prosecutions arguments, which also did not cite to the relevant portions of the record, the findings of fact are objectively unreasonable in light of the evidence presented in the state-court proceeding. Mr. Wolters has presented the relevant portions of the record that were completely ignored in the courts below that in any reasonable persons mind would clearly and convincingly support his claim of actual innocence. Counsel representing Mr. Wolters in his habeas action completely ignored his instructions to present the argument that his case was a case that was based on unreasonable determinations of fact.

The Sixth Circuits denial of a COA has decided this important federal question in a way that disregards the decisions of this Court holdings in *In re Winship, 397 U.S. 358, and Jackson v. Virginia, 443 U.S. 307*, and 28 U.S.C. § 2254(d)(2).

Sixth Circuit has sanctioned such a departure by the lower courts, as to call for an exercise of this Court's supervisory power.

This in turn raises another issue of national significance: On whether due process extends to the representation of counsel on habeas corpus review, and if due process requires counsels conduct to meet the Sixth Amendment standard as this court held in *Strickland v. Washington, 466 U.S. 668* or at a minimum laws of agency.

This Sixth Circuit decision creates a precedential legal loop hole that allows for any state government to say anything, lead witnesses and construct case facts unsupported by the record in which no appellant can defend against in appellate

courts, and allowing appointed counsel or hired counsel during habeas corpus review to ignore legal duties, and that counsel does not have to comply with their client's legal objectives or meet at a minimum the professional competent and effective standards that agency law or professional rules of conduct and agency law requires. Because counsel is not constitutionally required at the habeas stage attorney's are currently free to provide substandard work, ignore the ABA Professional Code of Conduct, or other contractual obligations as explained throughout *Restatement of the Law, Agency 3d.*

This creates a mechanism to abuse the process and procedurally sabotage a petitioner's federal review of their wrongful convictions, effectively eliminating the federal habeas 2254 review process for state petitioners. The question remains, what standard is applied to counsel's representation on habeas corpus review?

Can hired counsel for the purposes of representation during habeas corpus review be deemed ineffective counsel? Can this ineffectiveness of counsel on habeas review allow for review of the higher courts?

Further, this case is unique. This court has not encountered a similar set of facts and circumstances.

Ground One: Sufficiency of Evidence Claim: The lower court's decision related to Mr. Wolters sufficiency of the evidence claim. This claim is based on Mr. Wolters assertion that the State of Ohio failed to present evidence sufficient to convict him on three counts of rape and

eight counts of gross sexual imposition. Mr. Wolters has argued that his Fifth, Sixth and Fourteenth Amendment rights to a fair trial and due process and effective assistance of counsel have been violated because the State of Ohio has failed to present evidence to support every element of the offenses that Mr. Wolters was charged and convicted of. Mr. Wolters is claiming that the findings of the jury and lower courts are not only objectively unreasonable, but also physically implausible.

Mr. Wolters is also asserting that the lower courts decisions were not based on the record but on the prosecutions arguments against Mr. Wolters sufficiency of evidence and manifest weight of the evidence claims, with the prosecutions arguments literally being unsupported by the record. The state arguments below were unsupported by the record, meant to be inflammatory and presented in a manner meant to deflect from the actual testimony and evidence presented. Because the state presented its case on appeal without any citation to the record to support its arguments see *State v. Wolters, 2022-Ohio-538*[*14], see below;

[*P14] We note at the outset the State did not provide this Court with a statement of facts in its brief, and further responded to Appellant's argument without citing to facts in the record, instead arguing in conclusory fashion the judgment is not against the manifest weight or sufficiency of the evidence.

As a result, the appellate court followed suit, affirmed the trial court's decision based on facts not contained in the record.

In fact, the appellate court decision does not contain one single citation to the trial transcripts to support their factual findings, if you compare the states appellate brief and the appellate court's decision you will see that the findings of fact were taken directly from the states brief, this

indicates that the appellate court did not actually review the record, thus denying Mr. Wolters the full and fair appellate review he was entitled to.

Because of the nature of the charges brought against Mr. Wolters and the natural bias anyone would have when asked to review a case like this, the state court decisions are largely unreasoned boiler plate string citations meant to affirm the states unsupported arguments which denied Mr. Wolters the full and fair appellate review he was entitled to under the Sixth and Fourteenth Amendments of the U.S. Constitution.

For example, the lower court relied on alleged content of jail phone calls to corroborate evidence presented because the court claims that Mr. Wolters did not deny the charges and only claimed that he was over charged. *See* [*3] of Southern Districts Decision and Order *Wolters v. Warden, Belmont Corr. Inst., 2024 U.S. Dist. LEXIS 188191* referencing **ECF No. 16, PageID 2202.** This is an unreasonable finding of fact because the State of Ohio never presented the entire phone calls for the jury to consider and the appellate court could not consider evidence not on the record in rendering any of their decisions. In these calls, Mr. Wolters in fact, never admitted to any of the conduct he was charged with.

Additionally, the State of Ohio presented evidence in the form of an interview of the victim that in short claimed that the conduct being charged had happened "a lot" when the alleged victim had been asked how many times the acts had occurred. During the alleged victims interview the number of times was decided by the number of pencils that the alleged victim picked up. This is the very definition of arbitrary and cannot be considered to be proof beyond a reasonable doubt of anything.

It should be noted that absolutely no evidence was presented to the trial court that showed that the alleged victim was ever apprehensive of going to visit Mr. Wolters, there was no credible

evidence presented that there were claims of any physical injury, nor any emotional distress when questioned, not even in the mother's testimony about the call she made to Dr. Rangaswamy **Doc.#7-5 : PAGEID# 1211,**which would surely would have been present if the events actually happened the way that the alleged victim claimed they had in the alleged initial disclosure and interview.

The alleged victim's mother in fact refused to make arrangements for alleged victim to be seen by Nationwide Children's in Columbus despite Dr. Rangaswamy's recommendation.

The evidence that was presented was testimony of SANE Nurse Elisha Clark, in which she claimed to have found evidence of three partial tears on the alleged victim's hymen. In the State of Ohio's Return of Writ they presented the reasoning that the jury was free to believe SANE nurse Clark over the pediatrician and that the appellate court could not reassess the weight to be given to their testimony.

What the state didn't explain is how digital penetration could have resulted in the alleged damage connected with these alleged tears or notches, because the SANE nurse attempted to indicate that this was evidence of damage that could have occurred during penile penetration which was disproven by Dr. Guertin's testimony of no physical damage being present in the photos taken of the alleged victim. And that the examination was "normal".

This factual determination related to this evidence is objectively unreasonable and unsupported by the record, to begin with, the SANE nurse Clark did not testify that she had found partial tears only that she had identified three notches and that she associated those notches as evidence of tears. These factual findings are objectively unreasonable because SANE nurse Clark is limited in her expertise, experience and education. **Doc. #7-5 : PAGEID# 1535.**

Where Dr. Guertin is a fully trained and licensed pediatrician with over 38-years of experience, testifying in over 2,000 child abuse related cases with his finding no evidence of any physical tears on the alleged victims hymen. **Doc.#:7-5 PageID# 1863, 1864, 1865, 1866, 1868, 1870, 1871**

It is conceded that in Ohio that a conviction can be upheld solely on the victim's testimony but not when the testimony is physically implausible, any layman with general knowledge of anatomy would know that an adult male cannot penetrate a five-year-old female without significant physical and emotional injury being done in the first instance much less "a lot" of times, as claimed.

This significant physical and emotional injury would have been openly apparent prior to and at the time of initial disclosure and a mother would not, in good conscience, been able to ignore this damage and delay medical examination and treatment. Ohio law describes the sexual conduct element of the offense of rape as:

'Sexual conduct' means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse." R.C. 2907.01(A).

Penetration, even slight penetration would not be physically possible as described and could not have occurred as described by the alleged victim because she never described anything at all in terms that could have been construed as attempts to penetrate or even slight penetration, she clearly claimed that Mr. Wolters "put his pee pee in her cookie" the alleged victim never mentioned any level of discomfort or pain, no mention of any difficulty in preforming this alleged conduct, nothing at all of this nature in any statements or trial testimony, because this statement is implausible, her entire story and testimony is implausible. Digital penetration would

not have resulted in damage that would have been observable 6-weeks after the alleged disclosure and claims. In short, absolutely none of the evidence presented by the state proved the essential element of penetration or any other sexual conduct beyond a reasonable doubt.

Furthermore, this would have been an unbelievable emotional hardship on a victim of this age had this happened 'a lot' of times it is impossible to believe, that a child of that age, suffering both substantial physical and emotional distress over any period of time would have been able to keep something like this to themselves, in fact a child would be screaming and crying due to the physical pain and would be virtually inconsolable.

Add to this that the person that hurt them was someone close to them, the need to tell someone is increased 10 fold. Anyone with experience with children has experienced situations where the young child has tripped and fallen, scaring themselves more than hurting themselves and they cry uncontrollably until the shock has worn off. The alleged conduct in this matter is not something a child would or could keep to themselves for any length of time given that the child was not held in isolation by Mr. Wolters but rather, the alleged victim routinely visited with Mr. Wolter's and his wife and even had toys and a bedroom at Mr. Wolters home.

When the mother of the alleged victim (Kayla Slaten) did a physical examination of the alleged victim at the alleged time of disclosure and did not see redness, drainage, blood, or any other sign of assault or injury. See **Doc.#:7-5 PageID# 1239, 1240, 1244**. If a 7-year old child had experienced penile penetration from a grown man, which is the claim giving rise to this entire case, the damage would have been immediately evident and no mother would delay an examination or treatment. The alleged victim's statements and testimony go far beyond mere inconsistencies and headlong into wholly implausible.

This is a case where a child told a story for whatever reason, saw how upset it made her mother and rather than coming clean about telling a story, the child doubled down on the story with the mother and other adults compounding the problems by continued questioning, further trapping the child into sticking to the story and embellishing this story as time passed and concern grew.

Material facts are as follows; Alleged victims' testimony

1.) Alleged victim's testimony indicated only that she was alone with pap-pap (Mr. Wolters) 5-9 times not that anything had happened between them 5-9 times. **Doc. #:7-5 PageID#1484**

2.) When asked "what's it mean he put his wee wee in your coochie?" alleged victim responded "I don't know" **Doc.#:7-5 PageID# 1489**

3.) When asked, "what's it mean to have sex?" alleged victim responded "I don't know" **Doc. #:7-5 PageID# 1489**

4.) When asked, "has anybody touched you?" Alleged victim responded 8 consecutive times "no" see **Doc.#:7-5 PageID# 1489,** and then reconfirmed through cross-examination **Doc.#:7-5 PageID# 1512, 1513, 1515**

5.)When asked on cross examination " Ok, Now, you said when Miss Angler, the lady that was up here standing where I am standing a little while ago, she asked you if you had ever had sex with anyone and you said no . Is that right?" the alleged victim stated "yeah" **Doc.#:7-5 PageID# 1512**

6.) When asked, "Did you tell a grown up that papa put his finger in your vagina?" to which the alleged victim answered "Actually, he didn't put his finger in my coochie" **Doc.#:7-5 PageID# 1491** and further stated that " Well, he—I can't remember" **Doc.#:7-5 PageID# 1491**

Testimony of Expert Witness Dr. Stephen Rodrick Guertin, M.D. with qualifications in the fields of pediatric intensive care, a physician of the Child Safety Program and is an associate professor of pediatrics at Michigan States University's College of Human medicine. He also has 40 years' experience in child sexual abuse cases. This is a non-exhaustive list of his qualifications.

The questioning and majority of Dr. Guertin's testimonial reply's to the questions have been abbreviated and paraphrased due to the length and sometimes technical nature of the reply's, all can be confirmed in the referenced pages of the record.

Dr. Guertin made several findings based on the digital photographs provided to him by the Lansing police department.

7.)When asked " Okay, And as a result of your work and examination in that regard, did you—can you tell us what it is that you observed?" Dr. Guertin's answered, in short, that there was no evidence of external injury, no evidence of any injury to the posterior forchette, the hymen, or vestibule. That any irregularities of the hymen was not unusual and that the exam was completely normal. And that "the hymen is complete, There is no notch there" " the hymen is normal. I mean it's not healing" " there's no evidence of trauma" **Doc.#:7-5 PageID# 1863, 1864, 1865, 1866, 1868, 1870, 1871**

8.) While explaining the physical differences between adolescents and prepubertal Dr. Guertin explained that non-estrogenized hymenal tissue in prepubertal children doesn't stretch and that it's totally different than adolescents hymenal tissue that does. **Doc. #:7-5 PageID# 1922,** Dr. Gurtin goes on to explain " So penile/vaginal intercourse in an adolescent may cause no harm

whatsoever, penile/vaginal intercourse in a five-year-old or a four-year-old is going to tear her up." **Doc.#:7-5 PageID# 1924**

9.) When answering questions concerning a child's disclosure and if their memory and answers can be affected by the person who is questioning the child. Dr. Guertin used the following example in answering these questions.

Dr. Guertin testified in his explaining spontaneous disclosure and delayed disclosure and/or coaching that in short, if a child was caught masturbating the person catching them would be shocked and would question the child until they obtained an answer that they were searching for because the child felt cornered, and that continued questioning could expand the answers being given over time by the child as their vocabulary and the story grew. **Doc.#7-5 : PAGEID#1930-1936.**

Dr. Guertin's testimony completely disproved all of SANE Nurse Elisha Clark's findings and testimony. It should be noted, just as Dr. Guretin is not a child psychologist and therefore could not testify on the alleged victim's mental state, SANE Nurse Elisha Clark is not a Medical Doctor whose testimony on medical issues would have little to no evidentiary value or weight. Nurse Clark's job is to make initial findings and to refer the patient to a doctor qualified to treat the patient's ailment.

Furthermore, Dr. Guertin testified, in answering a question about a five year old masturbating, that " It's really common, It often leads people to think something has happened in a child because they are shocked by it, but they shouldn't be." " so shocking as it may be sometimes look, the fact of the matter is that is completely normal sexual behavior in the two to five-year old age group" " What you can say is there's absolutely no physical evidence that the child was

physically or sexually abused. That's what you can say. And you can also say that if there's a concern about masturbation, it's misguided." **Doc.#:7-5 PageID# 1876, 1877**

Dr. Guertin based this portion of his testimony upon his 30-plus years' experience in dealing with child sexual abuse cases referred to him.

The courts below decided important questions of federal and constitutional law that has not been, but should be, "Clearly" settled by this Court, and/or has decided important federal questions in a way that conflicts with relevant decisions of this Court that should be answered.

In this extraordinary case, this court should grant de novo review to clarify *Evitts* v. *Lucey*, 469 U.S. 387, 401, and clearly settle the question whether a conviction can be upheld based on wholly implausible evidence and testimony?

The Sixth Circuit court(s) relied on an overly broad interpretation of this court's decision in *Parker v. Matthews*, 567 U.S. 37, 43, 132 S. Ct. 2148, 183 L. Ed. 2d 32 (2012) (per curiam) and *Smith v. Nagy*, 962 F.3d 192, 205 (6th Cir. 2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

Therefore, Ronald Wolters requests this honorable court to grant review to revisit *Evitts* v. *Lucey*, 469 U.S. 387, 401. In order to; 1) To clarify and settle the Unreasonable Determination of the Facts standard of review, 2) to answer the question, 3) does the Sixth Amendment and Due Process Clause of the Fourteenth Amendment require that counsel's actions to be professionally competent and effective on habeas corpus review? 4) deciding if the denial of COA on these issues

was improper and unduly burdensome to keep uniformity amongst the lower courts with this court's ruling.

Did the United States Court of Appeals for the Sixth Circuit impose an improper and unduly burdensome certificate of Appealability standard that contravenes this courts precedent and deepens a four-circuit split when it denied Ronald Wolters COA to review his 2254 Habeas petition?

The lower courts departed from the accepted and usual course of judicial proceedings on fair presentation, and the Sixth Circuit Court of Appeals sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power, especially where the Sixth Circuit Court of Appeals has entered a decision in conflict with the decision of at least 9 United States court of appeals on the same important matters below.

This courts precedent is clear: a COA involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner may meet this standard by showing that reasonable jurists could debate whether the petition should have been determined in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473,484, *quoting Barefoot v. Estelle*, 463 U.S. 880,893.

The petitioner need only show that the petition contains an issue (1) that is "debatable among jurists of reason"; (2) "that a court could resolve in a different

manner"; (3) that is "adequate to deserve encouragement to proceed further" or (4) that is not "squarely foreclosed by statute, rule, or authoritative court decision, or that is not lacking any factual basis in the record." *Id.* at 893 n.3 and 894 (internal quotations and citations omitted). *See also, Slack v. McDaniel*, 529 U.S. 473.

This raises a significant national issue and the need for this court to clarify for the various circuits: Whether a lower court can withhold issuing a C.O.A. When a state appellate court's decision is not only an unreasonable determination of the facts in light of the evidence presented in the State court proceeding but that the factual determinations are completely implausible and unsupported by the record .?

The standard for granting a certificate of appealability is *low. Frost v. Gilbert*, 835 F.3d 883, 888–89 (9th Cir. 2016). This court has cautioned against undue limitations on the issuance of certificates of appealability. It is unnecessary for a "petitioner to prove, before the issuance of a COA, that some jurist would have granted the petition for habeas corpus.' *Miller-El v. Cockrell*, 537 U.S. 322,337. Indeed, "a claim can be debatable even though every jurist of reason might agree, after a COA has been granted and the case received full consideration that [the] petitioner will not prevail." *Miller-El* 537 U.S.at 338. (*quoting Barefoot*, 463 U.S. at 893), *See also id.* at 342. This court has also held if the petition was denied on procedural grounds, the petitioner must show "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable and the district court was incorrect in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473.

The rare circumstance presented here the court "must yield to the imperative of correcting a fundamentally unjust incarceration. *Engle v. Isaac*, 456 U.S. at 135, 71 L Ed 2d 783. (A federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default.). A reasonable jurist could find it debatable that Ronald Wolters is not precluded from federal review, that no procedural default occurred or that any perceived default should be excused because he is actually innocent of all charges.

He fairly presented his claims to the state's highest court and/or he met the cause and prejudice and actual innocence standard(s).

The habeas court must make its determination concerning the petitioner's innocence "in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial." *Schlup v. Delo*, 513 U.S. 298,327-328. With "'all the evidence' thus in mind, the court's final task is 'to assess the likely impact of the evidence on reasonable jurors'; it is not to work through an 'independent factual determination' to divine 'what likely occurred.'" *Id.* (*quoting* House, 547 U.S. at 538); The lower court's did not correctly assess Ronald Wolters actual innocence.

The jury deliberated with evidence and testimony that was wholly implausible but due to the nature of the charges and the appearance of credibility the state placed on these false claims through the testimony of SANE Nurse Elisha Clark, the jury found Ronald Wolters guilty based on the inflammatory nature of the charges and the courts below did not affirm Mr. Wolters case on the record, the basis for their decisions to affirm is unknown

because the record was not used, only the prosecutions inflammatory, conclusory, arguments were considered.

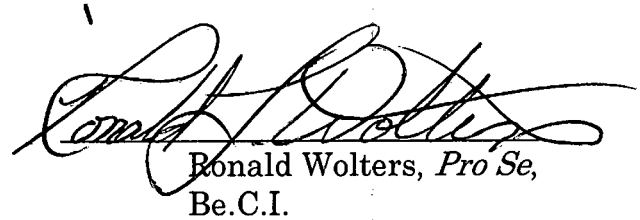
Because a *Schlup* claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record. *See, ibid. If* new evidence so requires, this may include consideration of "the credibility of the witnesses presented at trial." *Ibid.; see* also *ibid.* (noting that "in such a case, the habeas court may have to make some credibility assessments"). *House v. Bell*, 547 U.S. 518,538-539.

Although this case does not present any new evidence, the evidence presented at trial was so completely implausible and the appellate court not relying or citing the record in support of their determination of fact, it is clear that this conviction cannot be allowed to stand and clearly and convincingly raises the question of actual innocence. The lower courts including the District Court and Sixth Circuit court did not apply a standard of review related to an unreasonable determination of the facts, thus imposing an overly burdensome or completely ignoring the actual innocence standard. Therefore, this court should Grant Certiorari.

CONCLUSION

Therefore, for the above stated reasons this court should grant Certiorari.

Respectfully Submitted,



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