

26-5701

No. _____

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Sebastian Albert Campbell — PETITIONER
(Your Name)

vs.

Warden Bethany Annachia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sebastian Albert Campbell
(Your Name)

13800 McMullen Hwy SW
(Address)

Cumberland, MD 21502
(City, State, Zip Code)

JD* 466-146/2868574
(Phone Number)

QUESTION(S) PRESENTED

1. Does a court's refusal to legitimately consider the *de facto* claims as presented, which allege both the imposition of an unconstitutional "Hobson's" choice between two firmly established constitutional rights, and a prejudicial failure to adhere to the procedures mandated to protect the right to a fair trial, so substantially diverge from the accepted and usual course of judicial proceedings as to deprive a petitioner of due process?
2. Does any court possess the legal authority to unilaterally impose a determination of guilt beyond a reasonable doubt upon a petitioner for an offense he was neither convicted of at trial, nor even indicted for; and if not, does denying habeas relief based predominantly on the court's expressed belief that the petitioner is, in fact, guilty of that uncharged allegation, conspicuously conflict with relevant decisions of this Court, and demonstrate such a departure from the accepted and usual course of judicial proceedings as to require supervisory correction?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

All parties appear in the caption of the case on the cover page, which are:

Warden Cornachia, Bethany &
Maryland Attorney General

RELATED CASES

Campbell v. Maryland, 529 US 1169, U.S. Supreme Court, Judgment:

Campbell v. State, 243 Md App 507, Appellate Court of Maryland, Judgment 12/18/19

Campbell v. Nines, No.: 1:21-cv-3127, District Court of Maryland, Judgment: 7/18/24

Campbell v. State, No.: 1371, Sept. Term, Appellate Court of Maryland, Judgment: 9/19/21

Sebastian H.C. v. State No.: 1436, Sept Term, App. Ct. of Maryland, Judgment: 11/19/21

Campbell v. McCally, No.: 328, Sept. Term, App. Ct. of Maryland, Judgment: 7/17/24

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

~~For~~ For cases from **federal courts**:

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

☐ reported at _____; or,

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

~~is~~ is unpublished.

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

~~is~~ reported at 2024 U.S. Dist. LEXIS 129321; or,

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

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

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

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

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

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Feb. 4, 2026.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 24, 2026, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including August 21, 2026 (date) on July 5, 2026 (date) in Application No. 26A59.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- ① Fifth Amendment of the U.S. Constitution
- ② Sixth Amendment of the U.S. Constitution
- ③ Fourteenth Amendment of the U.S. Constitution

STATEMENT OF THE CASE

On August 17, 2017, Petitioner, representing himself, was convicted by a jury of four distinct counts of sexual abuse against his then minor daughter, ("T.B.") which the prosecution specified as the "first" and "last" sexual assaults at two separate locations in Montgomery County, Maryland; 31 Maryland Ave. and 725 Falls Grove Drive, respectively. T.B. testified at trial to each particular act in heartwrenching detail; Petitioner, in his own defense, asserting that T.B.'s account was a complete, "A" to "Z" fabrication. It was not his only defense. He also offered numerous items of evidence which drastically contradicted T.B.'s story. Unfortunately for Petitioner, the trial judge refused to present the vast majority of that evidence to the jury.

Although the four particularized indictments failed to allege, or even suggest that any one of the charged offenses resulted in T.B. becoming pregnant, T.B. testified that on August 21, 2013, she gave birth to a daughter ("P.C.") at 13 years of age. The prosecution was allowed to introduce DNA evidence that established Petitioner's paternity of P.C. to a certainty of 99.999%, despite the fact that the prosecution inexplicably declined to formally charge Petitioner with the actual specific act of sexual contact that would have resulted in P.C.'s conception. The DNA confirmation was therefore only legally

viable under the "other bad acts" canopy of evidence. Since the DNA did not directly attach to any of the charged offenses, it was only sufficient to generate an inference that Petitioner, in addition to the crimes he was actually on trial for, may have also impregnated T.B. through sexual abuse, without any way to lawfully return a verdict of guilty beyond a reasonable doubt on the uncharged speculation.

Relying on the Supreme Court of Maryland's ("SCM") interpretation of this Court's ruling in *Ake v. Oklahoma*, 470 U.S. 68 (1985), prior to trial Petitioner filed a timely motion for an *ex parte* hearing to establish the necessity for an expert witness. In *Moore v. State*, 390 Md. 343 (2005) the SCM made it abundantly clear that for reasons of fundamental fairness, an *ex parte* hearing, when timely requested, "is required," *Id.* at 372, thereby instituting the procedural due process protections for those circumstances. However, contrary to the firmly established precedent, the trial court refused to conduct the *ex parte* hearing. Instead, the court unilaterally decided, as a matter of law, that Petitioner was required to relinquish his right to self-representation in order to receive any concession conferred through *Ake*; not simply as a matter of the Office of the Public Defender's ("OPD") independently constructed policy.

The Appellate Court of Maryland ("ACM") upheld the trial court's ultimatum by determining, without proper explanation, that, essentially, the right to self-representation and the right to counsel of choice were "virtually identical" in the context before the court. *Campbell v. State*, 243 Md. App. 507, 525 (2019). Since an indigent defendant has no absolute right to implement counsel of choice, the indigent Petitioner in this case, exercising the apparently indistinguishable right to represent himself, also had no constitutional standing to enforce that right. Therefore, while the ACM

concluded that Petitioner was, in fact, entitled to the provisions conveyed through ~~the~~, conditioning the grant of those benefits upon an indigent defendant's surrender of his right to self-representation is appropriate because, according to the ACM's expressed rationale, it does not compel a choice between two execrable constitutional prerogatives. Despite Petitioner's assiduousness in elucidating the material discrepancies between an indigent defendant's right to represent himself, as explicitly defined by this Court, and the right of an indigent defendant to counsel of choice, as also clearly defined by this Court; the Supreme Court of Maryland ("SCM"); the District Court of Maryland ("DCM"); and, the Fourth Circuit Court of Appeals have, in succession, conspicuously declined to directly address the prejudicial impropriety of the ACM's *de facto* rationale and ruling on this matter.

Thirty-five days after final judgment in this case, on the very day of her legal emancipation, T.B. submitted a letter to Assistant State's Attorney ("ASA") Haynes admitting that her trial testimony was untruthful. T.B. was also deposed by the Director of the Montgomery County Office of the Public Defender ("OPD"); and submitted a sworn, notarized affidavit to the trial court in support of Petitioner's motion for new trial. In each statement T.B. confirmed that her allegations of sexual abuse were willfully false. T.B. also offered an explanation as to how her pregnancy was accomplished, asserting that she masturbated utilizing her dildo covered with a deliberately punctured, used condom belonging to the Petitioner. She further expounded that she intentionally set out to experience what sperm "feels like" inside her vagina, without considering the potential consequences. However, and critically, none of the information clarifying how T.B. became pregnant was directly material to establishing Petitioner's guilt or innocence of the

charged offenses. Nevertheless, even after offering her unequivocal recantation under oath at the hearing on Petitioner's motion for new trial, the trial judge, who openly stated that she found the explanation of T.B.'s pregnancy "offensive," based her denial of relief almost exclusively on her expressed disbelief of it. The trial judge, and subsequently the ACM opined that the court's disbelief of T.B.'s testimony with respect to the uncharged allegation was sufficient to justify a determination that her entire recantation lacked credibility. This, apparently, without it being necessary to genuinely analyze any of the material facts directly related to the offenses Petitioner was actually convicted of, as no such evaluation appears in the record.

The DCM advanced the State courts' disputable legal predisposition to its ultimate inevitable exegesis. The DCM not only gave deference to the lower courts' conclusions, but extended them to signify that Petitioner had actually been CONVICTED of the uncharged allegation that he'd impregnated T.B. through sexual intercourse, beyond a reasonable doubt. And, "BECAUSE" Petitioner could not demonstrate his actual innocence of that informal speculation, he also could not possibly be innocent of all, or any, of the actual charged offenses where T.B. in fact DID NOT become pregnant. Having declined to conduct a detailed evaluation of T.B.'s recantation in conjunction with the entirety of the evidence presented to support it, the DCM did not, as Justice Brennan and Justice Marshall expressed, "explain what it is about that recantation that warrants a conclusion that it is not credible," beyond its expressed belief that, apparently, Petitioner's right to the presumption of innocence on an uncharged allegation had been somehow irrevocably invalidated.

The Fourth Circuit Court of Appeals ("4COA") could not find that reasonable jurors would debate; 1) whether or not the determination

that an indigent defendant's entitlement to enforce his rights of self-representation and counsel of choice were virtually identical is contrary to the holdings of this Court; 2) whether or not violating the statutory procedures established to vindicate a state-created liberty interest is protected and reviewable under the Due Process Clause of the Fourteenth Amendment; or, 3) whether or not a court's unilateral imposition of a verdict of guilty beyond a reasonable doubt on an uncharged allegation violates both procedural due process, as well as the process due under the Sixth Amendment to be presumed innocent before trial and conviction. These considerations are now presented to this Honorable Court in hopes of an exercise of supervisory powers.

REASONS TO GRANT THE PETITION

A. The Lower Courts Prejudicially Violated Petitioner's Right To Procedural Due Process

In *Ake* this Court recognized, this Court recognized the equitable need to conduct an *ex parte* hearing to establish a threshold showing of necessity for expert assistance, but it did not rule that an *ex parte* hearing was constitutionally required. Clearly established federal law consists of the "holdings, as opposed to the dicta of [the Supreme Court's] decisions." *Williams v. Taylor*, 529 US 362, 412 (2000). Nonetheless, the Fifth and Fourteenth Amendments have made it abundantly clear that individuals in this great country may not be deprived of "life, liberty, or property without due process of law." This Court has consistently for decades held, both in dicta and in formal opinions that the constitutional right to due process is virtually immutable. See *Kuon Hai Chew v. Colding*, 344 US 590, 603 (1963); *Cheersman v. Teets*, 354 US 156, 166 (1957); *Rogers v. Richmond*, 365 US 534, 545 (1961);

Kennedy v. Mendoza-Martinez, 372 US 444, 186 (1963) (procedural due process could not be overcome even in times of war); *Boykin v. Alabama*, 395 US 238, 244 (1969) (procedural due process necessary in guilty plea); *Stanley v. Illinois*, 405 US 645, 650-51 (1972) (what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by governmental action); *Wolff v. McDonnell*, 418 US 539, 580 (1974); *Garlosky v. Kramer*, 455 US 745, 769-70 (1982); *Medina v. California*, 505 US 437, 443 (1992). What is clear from this line of cases is that the procedural process due is invariably determined by the courts and the legislature. This Court also determined that "a State may confer procedural protections of liberty interests that extend beyond those minimally required by the Constitution of the United States. If a State does so, the minimal requirements of the U.S. Constitution would not be controlling, and would not need to be identified in order to determine the legal rights and duties of persons within that State." *Mellon v. Rogers*, 487 US 291, 300 (1982).

The holding in *Ahe* instructs that "when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant's access to a competent psychiatrist..." *Id.* at 83. This Court further declared, "We leave to the States the decision on how to implement this right." *Id.* *Ahe* specifically directed that the threshold showing be made "to the trial judge," thereby conveying upon the trial judge a constitutionally prescribed obligation to actually ascertain and consider the defendant's proffer; and rationally, without compelling him to possibly incriminate himself in the presence of the prosecution. This is especially true when, as in this case, the defendant has elected to exercise his right to self-representation. This Court unequivocally bestowed upon the State the authority to define the procedural process due to a defendant

under these circumstances.

The SCM took exceptional care in defining the implementation of the rights conveyed through *Ake*. In addition to concluding that *Ake* could, in Maryland, extend beyond the psychiatric expert limitation, in *Moore v. State*, 390 MD 343, 364-66 (2005), the SCM also made it abundantly clear "that an *ex parte* hearing, when timely requested, is REQUIRED" *Id.* at 371 (emphasis added). This so that indigent defendants seeking State funded experts would "not have to disclose to the State the theory of the defense when non-indigent defendants are not required to do so" *Id.* The holdings of the SCM have the force of law in the State. "The General Assembly is presumed to be aware of this Court's interpretation of enactments and, if such interpretation is not legislatively overturned, to have acquiesced in that interpretation." *Lawrence v. State*, 475 MD 384, 414 (2021). Here, the SCM's interpretation of the lower courts' obligation in determining whether a defendant should receive psychiatric, or any type of expert assistance at State expense REQUIRES the court to conduct an *ex parte* hearing if, as in this case, it was timely requested. The unambiguous language does not provide the trial court with the discretion to deny such a timely requested hearing under any circumstances. Having done exactly that in this case, the trial court not only abused its discretion to Petitioner's immediate and potentially future disadvantage, in his quest to vindicate his constitutionally recognized liberty interest in receiving a fair trial, the court dramatically violated the due process entitled to Petitioner through the long history of rulings from this Court, as well as the Fifth and Fourteenth Amendments. Courts are bound by the Congressional implementation of the Full Faith and Credit Act, codified at 28 USC § 1738, which states that authenticated judicial proceedings "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law

or usage in the courts of such State, Territory or Possession, from which they are taken." Therefore, the holding in *Moore* regarding *ex parte* hearings must be fully recognized as procedural due process at the constitutional level when evaluating the effect of, and remedy for its deprivation.

In this case Petitioner was not allowed access to the clearly established process necessary to obtain his constitutional provisions under *Ake*. Without the ability to properly make the threshold showing, the permitted relief was legally unavailable to him, due to no fault of his own. The Respondents will likely, as they have previously, suggest that BECAUSE Petitioner never made the requisite showing, the "void in the record limits this Court's ability to consider the constitutional question presented here." (*Campbell v. Maryland*, 592 US 1169 (2021), Brief in Opposition to Petition for Writ of Certiorari ("Opp. Brief") at pg. 9). However, the Respondents were craftily attempting to misdirect this Court into focusing on the wrong question, just as the DCM has apparently done in denying relief.

The DCM correctly acknowledged that Petitioner "filed a Motion for Ex Parte Hearing to Establish Necessity for Appointment of Expert Witness. ECF 9-1 at 76-79." *Campbell v. Niles*, 2024 U.S. Dist. LEXIS 129321 at *57 ("DCM Opinion"). Critically, the motion did not seek "funding" *per se*. It sought only for an opportunity to comply with the singular, constitutionally established prerequisite to funding as defined by this Court in *Ake*. The DCM then asserts that "the trial court held a hearing on the motion on August 7, 2017. ECF 9-7 at 4-41." *Id.* This is somewhat misleading because that hearing was conducted solely to determine IF an *ex parte* hearing would be granted, not whether there was a necessity for an expert witness as the motion sought consideration of. Contrary to established precedent defining the procedural process due to Petitioner in this matter, the trial court declined to conduct the timely requested *ex parte* hearing, thereby precluding Petitioner's opportunity

to fortify the record with his specific need for expert assistance. The DCM's assertion that Petitioner "primarily sought expert funding to challenge the State's DNA evidence," is incorrect. Having been denied the mandatory *ex parte* hearing, Petitioner was under no obligation to expose his theory of defense to the prosecution before establishing that he would actually be capable of utilizing it. Thus, he logically refrained from doing so. A more thorough review of the record will reveal that the challenge Petitioner made to DNA evidence was in conjunction with an entirely different motion. The trial court clearly violated Petitioner's right to due process by refusing to conduct the "required" *ex parte* hearing. Therefore, if the Respondents intend to assert that Petitioner's failure to make the threshold showing is adversely determinative to relief, then the appropriate remedy is to remand to the trial court to correct the constitutional due process violation that was the direct cause of that prejudicial default. Even if the trial court had no intention of providing funds for an expert witness, it had an inflexible obligation under *Ake* to receive Petitioner's proffer; and under *Moore*, to do so *ex parte*. Further, in this case the actual nature of the assistance Petitioner aspired to utilize in his defense is rendered irrelevant because the record clearly reflects that the trial court's decision to deny access to an expert was completely impervious to any consideration of the type of expert needed. The trial court's explicit ruling was that Petitioner simply could not receive any funding for an expert, psychiatric or otherwise, unless he relinquished his constitutional right to represent himself.

The DCM's conclusion that Petitioner "never had a clearly established constitutional right to expert funding" significantly diverges from the facts in the record. Under *Moore*, as an indigent defendant, Petitioner's right to funding is irrefutable. The properly directed and focused inquiry is

whether the exercise of that right can lawfully be made contingent upon the surrender of another right, i.e., the right to a jury trial; the right against self-incrimination; the right to freedom of speech or religion; the right to self-representation; the right to due process of law; or any other well-established constitutional right that is not immediately nullified by the condition of indigence such as, critically to this case, the right to counsel of choice. The DCM evaded answering, or even directly addressing this specific constitutional inquiry, thereby depriving Petitioner of just and reasoned resolution. This conduct by the DCM demonstrates a departure from the accepted and usual course of judicial proceedings, and could be found to have offended a "principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental." *Medina* at 446. This material question is now, and once again, ripe for this Court's determination.

B. The Lower Courts Refused To Adjudicate The ~~De Facto~~ Constitutional Issue On The Merits

The basis for the DCM's denial of relief on this issue is twofold. First, the DCM incorrectly concluded that Petitioner "never had a clearly established constitutional right to expert funding." (DCM opinion at *60). That conclusion is, in the first instance, completely unexplained. The DCM offers no rationale as to why this Court's provision of expert psychiatric assistance to indigent defendants would not apply to Petitioner had he actually been allowed to demonstrate such a need. Moreover, the State court's decision in *Moore* unequivocally defines the procedural process due to indigent defendants in their effort to vindicate their liberty interest in obtaining a fundamentally fair trial. This includes access to funding for expert witnesses, as well

as an *ex parte* hearing which, due to the Full Faith and Credit Act, is constitutionally protected by the Due Process Clause of the Fourteenth Amendment. In fact, the State courts' decisions about Petitioner's entitlement to funding was exactly opposite of the DCM's. Again, the DCM left only wonder about the basis of that contradictory conclusion.

Secondly, the DCM opined that Petitioner's argument was erroneous because "the United States Supreme Court has never said that defendants who exercise the right to self-representation [one constitutional right] also have the right to [exercise another] expert assistance." (DCM Opinion at *59-60). While this may be technically correct, it is functionally irrelevant. This Court has issued thousands of constitutional decrees, each of which stands firmly on their own as the incontrovertible law. To hold that these axiomatic imperatives are so fragile as to become absolutely invalidated by a mere attempt to exercise one in conjunction with another without specifically articulated permission to do so suggests that this Court should devote an unimaginable amount of judicial resources developing an algorithm that will intelligently combine every constitutional provision in a manner that will ultimately only reiterate the obvious. That is, every right afforded to citizens by the Constitution, or this Court, is inherently enforceable, irrespective of whether it is exercised independently, simultaneously with or in tandem to any other immutable right. If, as the DCM seems to believe, that is not abundantly clear, this case presents the perfect opportunity to make it so. However, the Fourth Circuit directly contradicted one of its own reported holdings when it failed to issue a certificate of appealability on this matter. Specifically, quoting language from the Third Circuit, the Fourth Circuit held, "A defendant in a criminal proceeding is entitled to certain rights.... He is entitled to all of them; he cannot be forced to barter one for another. When the exercise of one right

is made contingent upon the forbearance of another, both rights are corrupted." *United States v. Midgett*, 312 F.3d 321, 327 (4th Cir 2003) (quoting *United States ex rel. Wilcox v. Johnson*, 555 F.2d 115, 120 (3rd Cir 1977)). The Fourth Circuit's decision is not only in conflict with the Third Circuit's holding on this important issue, it is in direct conflict with itself.

Ultimately the disposition of this case relies on a genuine adjudication on whether or not the restrictions that invalidate an indigent defendant's right to counsel of choice are so indistinguishable from the restrictions that would render that same defendant's right to self-representation equally unenforceable that, as the State court explicitly ruled, they are legally interchangeable in the context of this case. The rephrasing and misdirection employed by the Maryland Office of the Attorney General, and apparently adopted by the courts, do not alter the fact that this critical constitutional issue has never been credibly resolved. Fortunately, and ironically, the resolution presents absolutely no overwhelming complications. "The California courts' conclusion that Faretta had no constitutional right to represent himself was made in the context of the following not unusual rules of the California criminal procedure: An indigent criminal defendant has no right to appointed counsel of his choice." *Faretta v. California*, 422 US 806, 852 n.8 (1975). This denotes that the California courts did, in fact, perceive Faretta as being indigent. Therefore, the context of this Court's holding in *Faretta* is to specifically overrule the misperception that indigent defendants had no right to self-representation, concluding, "In forcing Faretta, under these circumstances, to accept against his will a state-appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense." *Id.* at 836. In stark contrast, this Court made it clear that the "right to choose one's own counsel is circumscribed

in several important respects....a defendant may not insist on representation by an attorney he cannot afford." *Wheat v. United States*, 468 U.S. 153, 159 (1984). Any comparison between the indigent defendant's right to self-representation and his right to counsel of choice should have been a non-starter. The former firmly exists; the latter absolutely does not. Had the DCM actually attempted to resolve the *de facto* claim presented by Petitioner, it would have necessarily determined that not only are arguments regarding an indigent defendant's rights to self-representation and counsel of choice NOT "virtually identical," they are, in fact, diametrically opposed. The irony is that as obvious as distinguishing these rights appears to be, the DCM failed to, in denying relief, utilize the terms "indigent," "indigence," or "counsel of choice" in a single instance. It stands to reason that the DCM could not have made the "accepted and usual" evaluation without doing so.

Nearly six years ago this Court compelled the Maryland Office of the Attorney General to submit a response to Petitioner's initial petition for writ of certiorari on this very issue. In their opposition, filed November 13, 2020, the Respondents admitted that *Faretta* and *Rke* "are not recent cases," nevertheless, quoting a footnote in *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) suggested that when "frontier legal problems are presented, periods of percolation in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court." (Opp. Brief at p. 18). Essentially, Respondents felt this Court should simply do nothing and wait, giving those courts "an opportunity to apply *Faretta* and *Rke* to varying factual scenarios before it considers whether to resolve a question left open by those cases," *Id.* at 19; also, apparently, leaving Petitioner and any other affected defendant to simply wait, indefinitely, in the face of a constitutional violation. Unfortunately for Petitioner, at least half of the target courts will never reach this issue.

The Criminal Justice Act of 1964 ("CJA") commands that "a person who is unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte hearing, that the services are necessary and that person is financially unable to obtain them, the court..." is required to make funding available. 18 USC § 3006A(e)(1). This Act is construed to apply to criminal defendants who elect to proceed *pro se*. Accordingly, an indigent, *pro se* defendant seeking expert assistance in the federal court will never be confronted with the circumstances in this case, and no informative opinions will emerge from federal courts. However, what is informative is that the federal criminal justice system has, for decades, recognized the constitutional propriety of providing necessary funding for indigent, *pro se* criminal defendants, while the State of Maryland has flatly rejected it. Respondents acknowledged that Connecticut and Florida high courts have conceded that failure to provide indigent, *pro se* defendants with necessary tools for an adequate defense constitutes reversible error. That was nearly six years ago but, unfortunately, Petitioner does not have access to research State court decisions outside of Maryland. By now there could most certainly be more.

This case provides this Court with a pristine opportunity to dispel the DCM's belief that the rights afforded by *Faretta* and *McKe* can not be exercised simultaneously; as well as, and critically, to correct the State of Maryland's obvious misperception as to the extent of its lawful authority to infringe upon an indigent criminal defendant's right to self-representation which, at present, clearly contradicts the established holdings of this Court. In *Faretta* it is established that limitations on the exercise of the right to self-representation do exist, i.e., a defendant "who deliberately engages in serious and obstructive misconduct" may have his self-representation terminated by a judge, *Id.* at 852 n.46; or,

a defendant exercising his right to self-representation "relinquishes as a purely factual matter, many of the traditional benefits associated with the right to counsel," *Id.* at 835. However, none of the restrictions on the an indigent defendant's right to conduct his own defense, include the loss of the entitlements to exercise any or all of his constitutionally provided rights at his discretion, even while losing other benefits. With self-representation a defendant has a choice, an equitable one, on whether or not to abandon the benefits attached to the right to counsel, but without actually forgoing representation altogether. The benefit is lost, but the right itself, mutually exclusive as it is, remains. Obviously a defendant cannot exercise the right to appointed counsel, and the right to self-representation simultaneously. This is simply not true with the rights at issue in this case. This Court has determined that when "the 'benefit' to be gained is that afforded by another provision of the [Constitution], an undeniable tension is created. Thus, in this case [Petitioner] was obliged either to give up what he believed... to be a valid [the] claimer, in legal effect, to waive his [right to conduct his own defense]. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons v. United States*, 390 US 377, 394 (1968). Petitioner, who is currently serving a greater-than-life sentence, faithfully prays that this Honorable Court still subscribes to the wisdom manifest in *Simmons* so that after nearly a decade, justice can be served.

C. A Court Cannot Overcome The Constitutionally Protected Presumption Of Innocence On An Uncharged Allegation By Sheer Force Of Will

In this case the PCM clearly and erroneously assessed the

DNA evidence confirming Petitioner's paternity of P.C. as providing proof supporting a charged offense that he had been convicted of beyond a reasonable doubt. In fact, not only was Petitioner not proven guilty of that specific offense, constitutionally he MUST BE presumed innocent for purposes of imposing punishment, including denial of relief. "Axiomatic and elementary, the presumption of innocence lies at the foundation of our criminal law." *Coffey v. United States*, 156 US 432, 453 (1895). Without a conviction, or even after a "conviction has been reversed, unless and until [the defendant] should be retried, he must be presumed innocent of that charge." *Johnson v. Mississippi*, 486 US 578, 585 (1988). This Court has further explained that a State "may not presume a person, adjudged guilty of no crime, none the less guilty enough for monetary exactions," or by extension, guilty enough for any other penalty.

The unambiguous language of the DCM ruling makes it very clear that it has adjudged Petitioner guilty beyond a reasonable doubt of "impregnating his 12 year old daughter through sexual intercourse" with the penalty being the summary denial of Petitioner's claims of actual innocence on the charged offenses in which T.B. did NOT become pregnant. Both the adjudication itself, and the subsequent penalty are independent violations of Petitioner's constitutional right to due process. In addition to bastardizing Petitioner's entitlement to the presumption of innocence, the DCM has autonomously convicted him of a felonious offense without the apparent inconvenience of an indictment; a trial by jury; or, a unanimous verdict as guaranteed by the Sixth Amendment. "A criminal procedure violates due process if it offends some principle of justice so rooted in the traditions and conscience of our people 'as to be ranked fundamental.'" *Medina v. California*, 505 US 437, 445 (1992) (quoting

Patterson v. New York, 432 US 197, 202 (1977)). It is indisputable that our American heritage is intrinsically intertwined with a system of justice that affords an accused with, at its foundation, the right to a fair trial by jury. Departure from this convention is usually viewed by our society as intolerable, if not tyrannical. "The guarantees of a jury trial in the Federal and State Constitutions reflect profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the government.... Fear of unchecked power... found expression in the criminal law in this instance upon community participation in the determination of guilt or innocence." *Duncan v. Louisiana*, 391 US 145, 156 (1968).

"Traditionally, decisions on 'questions of law' are 'reviewable de novo,' decisions on 'questions of fact' are 'reviewable for clear error,' and decisions on 'matters of discretion' are 'reviewable for abuse of discretion.'" *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 572 US 559, 563 (2014) (quoting *Pierce v. Underwood*, 478 US 552, 558 (1986)). The DCM's conclusion in this case uniquely involves considerations of law, fact, and discretion. However, even applying the most exacting standard of review, a reasonable jurist would debate whether the DCM's judicial conclusion resolves to an untenable violation of due process. "The abuse of discretion standard does not preclude an appellate court's correction of a district court's legal or factual error. 'A district court ~~will~~ necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.'" *Highmark* at 564 n.2 (quoting *Cooter & Zell v. Hartmax Corp.*, 496 US 384, 403 (1990)). In this case the record clearly depicts that Petitioner was not even charged with impregnating his 12-year-old daughter through sexual intercourse, much less convicted of it beyond a reasonable doubt. This Court has determined

that deference is the "hallmark of [the] abuse-of-discretion review" applicable to evidentiary determinations, *Gen. Elec. Co., v. Joiner*, 522 US 136, 143 (1997), and should only be disturbed if "manifestly erroneous." *Id.* at 142. However, "abuse of discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors... are slighted." *United States v. Tzarnaev*, 595 US 302, 332 (2022). See also *American Paper Inst. Inc., v. American Elec. Power Service Corp.*, 461 US 402, 413 (1983) (to decide whether an action was abuse of discretion "we must determine whether the [court] adequately considered the factors relevant to the question.") The critical factor that was overlooked by the DCM is Petitioner's constitutionally protected presumption of innocence on all uncharged allegations, irrespective of pre-trial evidence or perception.

Petitioner recognizes that this Court does not offer relief on a freestanding claim of actual innocence, holding, "this body of our habeas jurisprudence makes clear that a claim of 'actual innocence' is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred claims considered on the merits." *Herrera v. Collins*, 506 US 390, 404 (1993); *Schuy v. Delo*, 513 US 298, 326-27 (1995). Since the Petitioner's actual convictions were derived exclusively from the testimony of the complaining witness, his claim that he is actually innocent of those offenses is predicated in large part, but not entirely, on the repeated and categorical sworn recantation of T.B.'s trial testimony. Unfortunately for Petitioner, the law allows a judge, who had no contemporaneous knowledge of the Petitioner, the alleged victim, or the offense at the time it was to have been committed, to unilaterally determine exactly what did or did not transpire during that period, even in the face of directly contradictory accounts from the complaining witness. Reasonable jurists could

easily debate, under these circumstances where T.B.'s trial testimony was solely responsible for establishing every element of the charged offenses, whether her full, unequivocal and, critically, sworn recantation, which legally constitutes perjury, is sufficiently impeaching to have those contrasting sworn accounts evaluated in the crucible of cross-examination for determination by a jury. Nevertheless, where the trial court found that the recantation lacked credibility, 28 USC § 2254(e) requires the habeas court to presume the correctness of that finding. However, this presumption is qualified by the procedural obligation to actually consider whether the finding has been rebutted "by clear and convincing evidence," to which Petitioner presented a virtual plethora.

The State charged, and ultimately convicted Petitioner of four specific counts of sexual abuse; the "first" and "last" instances at 37 Maryland Avenue; and, the "first" and "last" instances at 725 Fallgrove Drive which T.B. appeared to have perfect recollection of. Neither T.B. nor the State ever indicated that any of the four charged criminal acts resulted in T.B. becoming pregnant. Again, her testimony established every element of the charged offenses without any other direct evidence whatsoever, including any evidence establishing the court's territorial jurisdiction. To rebut this stand alone evidence, in addition to T.B.'s recantation, Petitioner presented records from the Oakland County Circuit Court in Pontiac, Michigan ("OCC") demonstrating that Petitioner was incarcerated in the Oakland County Jail ("OCJ") during the period T.B. alleged at trial Petitioner brought her 37 Maryland Avenue, March 2012, and brutally stripped her of her virginity in that "first", April 2012 assault. These records indicate that Petitioner was incarcerated for a full five months during the exact period that T.B.'s testimony asserted she was being "held hostage" by Petitioner and forcibly raped "at least twice a week." Her recantation indicated that

she had deliberately fabricated events beyond the realm of physical possibility because she mistakenly believed doing so would prevent Petitioner from being found guilty. Petitioner submitted a correspondence authored by T.B. to the OCCJ Judge where she pleaded for Petitioner's release from custody in April 2012, the very time her testimony at trial asserted she was being forcibly deflowered. Transcripts from a hearing held in the OCCJ in May 2012, dictate that the above referenced letter, accompanied by an audio CD, were personally delivered to that court by T.B.'s paternal grandmother, Tonie Campbell. This is where T.B.'s recantation and other presented evidence clearly establish that T.B. was, in fact, in the care and custody of Tonie Campbell in Detroit, Michigan during the ENTIRE PERIOD of Petitioner's confinement in the OCCJ, February 2012 to August 2012; and, the exact timeframe of the "first" offense at 31 Maryland Avenue as specifically relayed in T.B.'s trial testimony. Clear and convincing, if not irrefutable evidence illustrates that neither Petitioner nor T.B. were even in the State of Maryland during the time the "first" offense was to have occurred. Tonie Campbell, who refused to testify at trial due to her legal culpability for unlawfully harboring, and transporting T.B. across state lines, ultimately swore an affidavit to this effect (*Campbell v. Myles* - ECF 31-3). If the DCJ had fulfilled its procedural obligation to actually evaluate rebuttal evidence, it could not have rationally come to any conclusion other than that the circumstances of the "first" offense, as relayed in trial by T.B., diverge from physical possibility. T.B.'s trial testimony on this crime is not only false, but corporeally unrealizable. Reasonable jurists would debate the propriety of an assignment of guilt to an offense that could not have possibly occurred.

Finding clear and convincing evidence that a material portion of T.B.'s recantation is, in fact, inherently credible, the DCJ's predisposition to presume the correctness of the State credibility determination

would be logically diminished. While the Circuit Courts of Appeals have adopted the position that post-trial recantations of testimony should be "looked upon with the utmost suspicion," *United States v. Johnson*, 478 F.2d 1278, 1279 (5th Cir. 1973), this Court has not specifically articulated any such prerequisite.

There are criteria that the Circuit Courts have consistently utilized to determine the credibility of recantations which, in this case, the DOM simply chose to ignore. Specifically, neither the trial court, nor the DOM found that the recantation was "the result of coercion, bribery, or misleading," *Johnson* at 1279. The courts did not find that there was any "reasons support[ing] T.B.'s incentive to lie by recanting [her] trial testimony." *United States v. Wilson*, 624 F.3d 649, 665 (4th Cir. 2010). T.B.'s recantation is not a "suspect eleventh-hour statement" delivered years after trial. *United States v. Buckley*, 164 Fed. Appx. 301, 305 (4th Cir. 2006). The record reflects that T.B.'s initial recantation letter was submitted to ASA Elizabeth Haynos on the very day of her legal emancipation, her 18th birthday; and, importantly, only 35 days after final judgment in this case. In *Smith v. Qin*, 565 US 13, 76 (2012), this Court observed that "evidence impeaching an eyewitness may not be material if the State's other evidence is strong enough to sustain confidence in the verdict" (citing *United States v. Agurs*, 427 US 97, 112-13 and 11.21 (1976)). However, distinguishing *Smith*, as this case is distinguished, "That is not the case here. [T.B.'s] testimony was the only evidence linking [Petitioner] to the crimes," he was charged with and convicted of. Id. T.B.'s recantation, which is essentially a sworn impeachment of the only eyewitness to offenses where no other direct evidence of guilt exists, is overwhelmingly material. While the prosecution introduced DNA evidence supporting an allegation that one particular instance of sexual abuse may have occurred, that specific offense was never charged; therefore, the DNA evidence

alone is insufficient to independently sustain a conviction on any of the charged offenses.

It is important to acknowledge that not one word of T.B.'s testimony, which the DCM reiterated in great detail, was corroborated by even the slimmest fragment of direct evidence. In fact, substantially to the contrary, the evidence presented by Petitioner, including police records; court records; CPS records; statements from T.B.'s mother; cellphone triangulation information; T.B.'s letter to the CCC; T.B.'s letter to A&A Hayco; T.B.'s sworn deposition received by the Director of the Montgomery County CPD; T.B.'s two, separate sworn, notarized affidavits; T.B.'s oath driven hearing testimony; sworn, notarized affidavit from Tonia Campbell; Aiyah Turner's sworn trial testimony; and, Petitioner's sworn trial testimony all unequivocally confirming that Petitioner did not arrive in Maryland until August 2012, and T.B. was firmly in the care and custody of her paternal grandmother, Tonia Campbell, until the end of November 2012. Since the only corroborated evidence in the case illustrates that neither T.B. nor the Petitioner could have possibly been at the scene of that "first" assault as it was conveyed to the jury, in light of that evidence, "it is more likely than not that no reasonable juror would have found the petitioner guilty beyond a reasonable doubt," of a crime that never occurred. *Abuse v. Bell*, 547 U.S. 10, 537 (2006) (quoting *Schup v. Delo*, 513 U.S. 298, 321 (1995)).

United States Supreme Court Justices J. Brennan and J. Marshall authored impassioned dissents to a denial of a capital inmate's petition for writ of certiorari. *Robert v. Mainwright*, 468 U.S. 1231 (1984). Justice Brennan was adamant that, "In the face of a specific recantation of critical testimony, a court must evaluate the recantation itself and explain what it is about that recantation that warrants a conclusion that it is not credible." *Id.* at 1235-36. In the actual innocence gateway context, this evaluation also encompasses an analysis of other presented evidence

as it relates to the recantation. "In assessing the adequacy of Petitioner's showing, therefore, the district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on actual innocence allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial." *Schup* at 327-28. Critically, unlike the requirement of "new reliable evidence" necessary to pass through the *Schup* gateway, *Id.* at 324, the evaluation for "clear and convincing evidence" required to rebut a State court's determination of fact under 28 USC § 2251(e)(1) does not restrict the reviewable evidence in any way. The DCM had a procedural obligation to actually evaluate the presented evidence under the clear and convincing evidence standard, and not simply defer to the State court's opinion as it clearly did in this case. "The Court defers to the trial court's conclusion on T.B.'s credibility," *Campbell v. Nix* at 65, and accordingly, "Campbell cannot establish that the testimony offered by [T.B.] at trial was false." *Id.* The DMC apparently concluded that the recantation "does not overcome the strength of the DMC evidence" which, at its most probative value, only creates a propensity inference against the actual charged offender; that it does not overcome "inculpatory statements made by Campbell in his emails to T.B." which were created over three full years after the period of the alleged offenses and, critically, do not in any way contain a confession to the charged offenses; and finally, that it does not overcome what the court perceived as a "seriously inappropriate" but not criminal relationship between Petitioner and T.B. *Id.* However, what this conclusion actually establishes is that, first, the DCM failed to recognize the legal fact that even if, *arguendo*, the Petitioner had, in fact, ADMITTED in an email to unrepudiating T.B. through verbal intercourse, that admission of guilt on the uncharged allegation could still not generate a verdict of "guilty" from the jury on that unindicted offense. Further, even the fact that

Petitioner was admittedly guilty of the singular, uncharged allegation could not independently sustain his guilt of the charged offenses where the only eyewitness, the alleged victim herself, adamantly asserts that those specifically charged offenses never actually occurred. Legally and logically, Petitioner's guilt of the uncharged offenses, and his actual innocence on his criminal convictions are not mutually exclusive. And secondly, the DCM's conclusion fails to "explain what it is about the recantation" itself that lacks credibility, *Robert* at 1235-36, or even suggest that it made any evaluation after considering the mountain of evidence offered to rebut the State court's determination.

As an initial matter, the DCM has catastrophically discounted the amount of "new evidence" Petitioner presented for consideration with respect to his Schlep gateway claim, and in support of his rebuttal of the State's credibility finding on T.B.'s recantation. In addition to the only "two pieces of 'new' evidence" the DCM acknowledged, *Id.* at 48, Petitioner submitted a detailed account numerous "Demonstrable Facts and Reasonable Inferences" containing references to evidence in the State Record ("SR") which Petitioner could not physically attach to his Reply. (ECF 26 at pp. 111-125). The very consequential evidence which the DCM declined to consider on the record includes a transcript of a hearing in the OCC where the prosecutor confirmed that a handwritten letter and an audio CD, written and recorded by T.B., were delivered to the State's Attorney on May 31, 2012 by T.B.'s paternal grandmother, Tonie Campbell. The letter and the CD were T.B.'s own words indicating she was "fine," and requesting that Petitioner be released from jail where he was obviously not raping her, and holding her hostage as she testified at trial. (ECF 25-10). This clearly and convincingly demonstrates that T.B. was in direct contact with her paternal grandmother, and not being held hostage at least as late as May 31, 2012, well beyond

her 12th birthday, as well as the period when the "first" offense at 37 Maryland Avenue was testified to have occurred.

Petitioner presented an "ABSCONDER REPORT" generated on October 13, 2012, indicating Petitioner had violated the terms of his probation and was henceforth a fugitive. The report, which lists 37 Maryland Avenue as his current address, also indicates that "defendant's whereabouts are unknown." The probation agent's conclusion drastically reduces the likelihood that Petitioner was still living at his "known" residence, a rebuts the DCMS belief that Campbell instructed [TB] to hide when the police came to the door [of 37 Maryland Avenue] looking for her. Campbell v. Mims, at *52-53, because had Petitioner actually been present on those occasions when the police arrived he, being a fugitive, would've been immediately arrested. These facts counsel against there being any truth whatsoever to the trial testimony that Petitioner and T.B. were residing at his "known address" (SR 888), and fully supports the sworn testimony of Alejah Turner, Petitioner, and T.B.'s recantation indicating T.B. and Petitioner ~~DID NOT~~ live at 37 Maryland Avenue for a single day during the period of the alleged offenses.

The record reflects, as submitted for consideration by Petitioner, that T.B.'s mother, Katrina B., stated to ASA Haynes that she received a phone call from T.B. in November 2012, where T.B. stated she was "fine." T.B.'s mother informed police about the call, and police were able to trace it as originating from Tonie Campbell's cell phone, and "pinging" off of a tower in Downtown Detroit, Michigan where Tonie Campbell has resided for decades. (ECF 9-9 at 9). The trial judge would not let the jury consider this evidence, despite it clearly establishing that T.B., contrary to her tales about the "first" assault at 37 Maryland Avenue, was in fact in physical contact with Tonie Campbell IN DETROIT, MICHIGAN as late as November 2012.

Petitioner submitted a police report from the Detroit police ("PPD"), Report No.: 1702250071, generated on Jan. 2, 2013, where, in response to potential harboring charges, Tonie Campbell, through her attorney, ~~ADMITTED~~ allowing T.B. to "use her phone and did not call police in regards to her whereabouts." (SR 877-879). Petitioner presented a Child Protective Services ("CPS") Investigation Report that again confirms T.B. called her mother from Tonie Campbell's cell phone in November 2012, near "the area of Woodward and Mack," in downtown Detroit. (SR 875). Petitioner also presented a DPD Report No.: 1607290321 depicting that in July 2016, over a year prior to trial, T.B. admitted to a police officer in the DPD station that she was, in fact, in the care and custody of Tonie Campbell from February 25, 2012, the day she ran away from foster care in Michigan, until November 30, 2012, encompassing the ENTIRE PERIOD of the alleged "first" assault at 37 Maryland Avenue. The trial judge would not allow the jury to consider this evidence. Finally on this point, Petitioner submitted a sworn, notarized affidavit from Tonie Campbell detailing her personal encounters with T.B. during the relevant time period which, except for T.B.'s assertion of how she became pregnant, fully reinforces the veracity of T.B.'s recantation testimony. At the very least, jurists of reason could debate whether Petitioner has shown by clear and convincing evidence that the State court's factual determination on the credibility of T.B.'s recantation of that "first" charged offense is unsustainable; that T.B.'s recantation was not wholly incredible simply because the statements explaining an uncharged allegation reflected an uncommon circumstance which, in and of itself, believed or disbelieved, did not negate in any legal or logical manner, the statements of the only eyewitness disavowing the veracity of the actual charged offenses; and, they would debate that after rebutting the State's credibility determination with clear and

convincing evidence whether the recantation then qualifies as "new, reliable evidence" that, in conjunction with the other presented evidence is sufficient to satisfy the *Schup* gateway standard.

The DCM had before it a myriad of material evidence presented by Petitioner in an effort to rebut the State's credibility finding, but expressly only recognized and considered "two pieces of 'new' evidence: (1) a Michigan probation violation report, and (2) T.B.'s recantation of her trial testimony." *Campbell v. Ohio* at *48. The DCM was explicit, stating, "Because T.B.'s recantation was part of Campbell's motion for a new trial (12/4/2018), the Court will defer to the Circuit Court's factual conclusions determining whether actual innocence has been established," despite the viability of that determination being the very subject. 28 USC § 2254(e)(1) required the court to evaluate. The DCM explicitly states that it only conducted a "*de novo*" review with the Michigan probation report as the singular consideration. *Id.* *Schup* makes it plain that the habeas court must consider ALL THE EVIDENCE, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under the rules of admissibility that would govern at trial." *Blaise v. Bell*, at 538 (citations and internal quotations omitted) (emphasis added). However, the DCM did not adhere to precedent and take into account "ALL" of the presented evidence while either assessing the reliability of T.B.'s recantation, or the viability of Petitioner's claim of actual innocence. Instead, the DCM dismissed Petitioner's claims on an imperfect and categorical basis. No mention of the analysis requested by Petitioner pursuant to 28 USC § 2254(e)(1) appears in the opinion. As it was an integral component in Petitioner's claim of actual innocence, whether it was inadvertently or deliberately overlooked, failing to adjudicate the matter reflects an abuse of discretion. "It is entirely proper for a reviewing court to find an abuse of discretion when important factors are slighted." *Torres v. [unintelligible]* at 332.

The DOM ultimately concluded that "the jury could have completely discounted all of T.B.'s [trial] testimony and still found Campbell guilty of all the offenses charged. The DNA evidence established paternity (ECF No. 9-18 at 122-134) and reasonable jurors would have rejected T.B.'s alternate explanation for how she was impregnated." *Campbell v. Niles* at *52. This declaration is a clear misstatement of the law. It is evident that the DOM failed to take into consideration the dire importance of the fact that Petitioner was not convicted of, or even charged with any criminal act that was alleged to have resulted in T.B. becoming pregnant. The prosecution productively exploited its distinct advantage over the self-represented Petitioner in legal acumen, by negotiating the admission of prejudicial DNA evidence that, peculiarly, did not directly support any of the charged sexual offenses. It is quite possible then, probable even, that the strong "other bad acts" evidence so inflamed the jury that rather than carefully weighing the only evidence directly establishing the charged offenses, T.B.'s radically inconsistent testimony, the jury believed, and executed on the belief that they were convicting Petitioner of "impregnating his twelve-year old daughter through sexual intercourse," *Campbell v. Niles* at *49, just as the DOM expressly surmised. Critically, even if that crucial error was, in fact, correct, contrary to the DOM's explicit conclusion as to the reason why "Campbell cannot meet the actual innocence standard," *Id.*, with dispositive evidence, such as that demonstrating neither Petitioner nor T.B. were at the scene of the alleged offense, Petitioner could still conclusively establish his actual innocence on any offense in which T.B. DID NOT become pregnant. Ergo, every offense Petitioner was convicted of.

In any event, the jury was completely prohibited from

lawfully rendering a verdict of "guilty beyond a reasonable doubt" on an uncharged allegation. The ECM made it clear that "To allow a charge to be implied by the conduct of the parties and the trial court, though absent from the indictment, would create an unfair guessing game for defendants in which they would be required to defend not only the charges in the indictment, but also any other crimes discussed on the record or argued to the jury." *Johnson v. State*, 421 MD 356, 375 (2012). "Such a procedure would vitiate the constitutional and prudential reasons for indicting defendants." *Id.* at 371. Likewise, *Dunn v. State*, 442 US 109, 107 (1979) ("It is... a violation of due process to send an accused to prison following conviction... upon a charge that was never made."); *Turner v. New York*, 386 US 713, 715 (1967) ("[A] conviction upon a charge not made is not consistent with due process.") Under constitutional and Maryland law, neither the ECM, the trial court, nor the jury had the legal discretion to determine that there was "proof beyond a reasonable doubt that [Petitioner] impregnated his twelve-year old daughter through sexual intercourse." *Campbell v. Niles*, at *20.

Returning to the ECM's erroneous legal conclusion, finding that T.B.'s unequivocal recantation was inconsequential because, even if the jury "completely discounted ALL of T.B.'s [trial] testimony," it could have "still found Campbell guilty of the offenses charged." *Id.* at *52 (emphasis added). This judgment is in direct opposition to the general consensus of the Circuit Courts of Appeals indicating that juries must be instructed to absolutely refrain from utilizing evidence of other, uncharged acts as the exclusive basis for convicting on the charged offenses. See *United States v. Copeland*, 2025 U.S. App. LEXIS 33168 at *3 (2nd Cir 2025) (The court should have "properly instructed that though the jury could consider evidence of prior sexual assaults, it may not consider this evidence of similar acts as a substitute for proof that [Petitioner] committed the crimes charged.");

United States v. Payano Perez, 2025 U.S. App. LEXIS 3851 (3rd Cir. 2025) (Instructing the jury, "The defendant is not on trial for committing this other act. You may not consider the evidence of this other act as a substitute for proof that the defendant committed the offense charged.") at *3; *United States v. Johnson*, 24 F.4th 590, 598 (6th Cir. 2022) ("You've heard testimony... that the defendant committed acts... other than the ones charged in the indictment. If you find the defendant did those acts, you can consider the evidence only as it relates to the Government's claim to rebut the defendant's testimony that the defendant had not engaged in any such acts before. You must not consider it for any other purpose, including as a substitute for proof of the charged criminal offenses. Remember, the defendant is on trial here only for the charges contained in the indictment, not for the other acts. Do not return a guilty verdict unless the Government proves the crimes in the indictment beyond a reasonable doubt."); *United States v. Anderson*, 933 F.2d 1261, 1270 (9th Cir. 1991) ("You may not consider ^{such} this evidence of similar acts as a substitute for proof that these defendants committed any crime charged in this case."); *United States v. McHorse*, 179 F.3d 889, 903 (10th Cir. 1999) (The proper instruction "Charges the jury that the propensity evidence alone is insufficient to convict Defendant of the crimes charged in the indictment, and to obtain a conviction the Government must prove each element of the charged offenses."); *United States v. Chavez*, 894 F.3d 893, 605 (4th Cir. 2018) (The uncharged crime "evidence could not be used as a substitute for proof that the defendant committed the crime charged, or as proof that defendant had a bad character."). In this case T.B.'s testimony was the ONLY evidence establishing the requisite criminal elements of the charged offenses. Without that evidence, proper jury instruction would have unequivocally prevented a conviction based solely on the "other bad acts" DNA evidence as a matter of law. Reasonable jurists would debate the propriety of the PCMB contrary

determination.

This Court has acknowledged that "the individual interest in avoiding injustice is most compelling in the context of actual innocence." It is incontrovertible that condemning an innocent person to serve a greater-than-life sentence is an unconscionable miscarriage of justice, second only to his execution. "Indeed, concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected, for example in the fundamental value determination of our society that it far worse to convict an innocent man than to let a guilty man go free." *Schlup* at 325-26 (quoting *In re Winship*, 397 US 358, 372 (1970)). However, the circumstances of this case significantly diverge from the societal predisposition recognized by this Court. In this case, not only has the accused claimed he is innocent, the alleged victim has admitted, under oath as an adult, that the testimony she gave at trial as a minor was willfully false, and, negating that testimony, there isn't the thinnest fragment of direct evidence capable of establishing that the charged offenses ever even occurred. It is completely incompatible with the core concerns this Court has expressed regarding our criminal justice system to adjudge a person guilty of an offense they were never tried for, or maintain a conviction for a crime that the overwhelming weight of the evidence clearly and convincingly demonstrates never actually happened. Petitioner is absolutely terrified of the emerging prospect that he will die in prison for a crime he did commit, and prays this Court will exercise its authority to realign the execution of American law with the fundamental societal values it must reflect.

CONCLUSION

Petitioner respectfully requests that this Honorable Court
GRANT this Petition for Writ of Certiorari in the interest of
justice.

Respectfully submitted,
Sebastian Campbell

CERTIFICATE OF SERVICE

I, Sebastian Campbell, hereby certify that on this day of
August 2026, I did serve by first-class, U.S. Mail with postage
prepaid, a copy of the foregoing Petition for Writ of Certiorari upon
the Maryland Office of the Attorney General, 200 St. Paul Place,
Baltimore, MD 21202.

I solemnly affirm under the penalty of perjury and upon
personal knowledge that the foregoing statements are true and
correct.

Executed on: August

Sebastian Campbell

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Sebastian Campbell — PETITIONER
(Your Name)

VS.

Warden Cornachia — RESPONDENT(S)

PROOF OF SERVICE

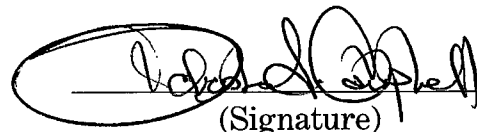
I, Sebastian Campbell, do swear or declare that on this date, August 19, 2026, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Office of the Attorney General, 200 St Paul Pl., Baltimore, MD 21202

I declare under penalty of perjury that the foregoing is true and correct.

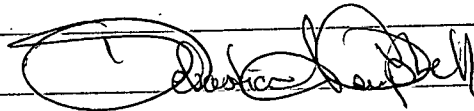
Executed on August 19, 2026


(Signature)

CERTIFICATE OF FILING

I, Sebastian A. Campbell certify that I am involuntarily confined in Western Correctional Institution ("WCI") in Cumberland, Maryland; I have no direct access to the U.S. Postal Service, or to a permitted means of electronically filing the attached Petition for Writ of Certiorari; on August 19, 2026, I personally deposited the attached Petition for mailing in a receptacle designated by WCI for outgoing mail; and the item was in mailable form with the correct postage affixed.

I solemnly affirm this 19th day of August 2026, under the penalty of perjury and upon personal knowledge that the foregoing statements are true and correct.

 Sebastian A. Campbell

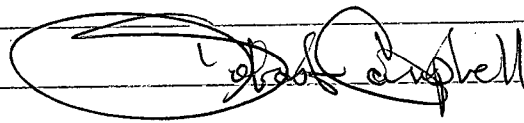
CERTIFICATE OF SERVICE

I, Sebastian Campbell, do declare that on this date, September 17, 2026 I have served the corrected documents on each party in Sebastian Campbell v. Warden Cornachia that is required to be served, by depositing an envelope containing those documents in the United States mail, properly addressed with postage prepaid to:

Office of the Maryland Attorney General
200 St. Paul Place
Baltimore, MD 21202

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on Sept. 17, 2026

 Sebastian Campbell