

26-5859 ORIGINAL

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: TIMOTHY SIMMS,

Petitioner.

:

:

Original Action in Habeas Corpus

Supreme Court, U.S.
FILED

JUL 31 2026

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

FOR PETITIONER:

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Petitioner, in pro se

FOR APPELLEE:

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether, where Trial counsel failed to file a Motion to Suppress, fails to file a Notice of Alibi, refused to call any witnesses other than defendant's wife and failed to present available evidence undermining the false testimony of the complaining witness, was constitutionally ineffective within the meaning of the Sixth and Fourteenth Amendments.
- II. Whether the blatant coaching of the 10-year-old complaining witness combined with the withholding of exculpatory evidence by the prosecutor constitutes prosecutorial misconduct in violation of the Fifth Amendment.
- III. Whether a trial judge who openly opined in a public elevator in the midst of trial his belief in the guilt of the defendant, and discussed what he is going to do to the defendant, and later conspired with the prosecutor to intimidate the complaining witness and threaten her for recanting her false testimony, is in violation of the right to a fair trial under the Sixth Amendment.
- IV. Whether a valid, credible recantation of the complaining witness completely exonerating the Petitioner requires relief from a wrongful conviction.

LIST OF PARTIES

The parties to this proceeding are Timothy Simms, Petitioner and the State of Ohio as the Respondent.

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OPINIONS BELOW

Order, U.S. District Court, dismissing Petition for Writ of Habeas Corpus, November 11, 2024 (2024 U.S. Dist. LEXIS 208993).

Order, Sixth Circuit U.S. Court of Appeals, denying Application for Certificate of Appealability August 4, 2025, Case No. 24-4063 (2025 U.S. App. LEXIS 19672).

Order dismissing Petition for Writ of Certiorari, U.S. Supreme Court, November 24, 2025, Case No. 25-5937, 146 S. Ct. 838.

BASIS FOR JURISDICTION

This Petition for Writ of Habeas Corpus is being submitted pursuant to the fact that this Court has original jurisdiction to issue a Writ of Habeas Corpus pursuant to Article III of the United States Constitution, and to issue all writs in aid of its jurisdiction pursuant to 28 U.S.C. §1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, §9, Cl. 2, United States Constitution:

“The privilege of the Writ of Habeas Corpus shall not be suspended unless when in Case of Rebellion or Invasion, the public safety may require it”.

Fifth Amendment, United States Constitution:

“No person shall [...] be deprived of life, liberty or property without due process of law [...]”.

Sixth Amendment, United States Constitution:

“The accused [...] shall enjoy the right [...] to the assistance of counsel for his defence...”

Fourteenth Amendment, United States Constitution:

“[...] 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”.

STATEMENT OF THE CASE

Petitioner Timothy Simms was convicted in state court of multiple counts of rape, gross sexual imposition, tampering with evidence and disseminating matter harmful to juveniles and was ultimately sentenced, on October 25, 2010, to serve, inter alia, multiple terms of life without parole. At Trial, trial counsel failed to file a Motion to Suppress, failed to file a Notice of Alibi, refused to call any witnesses other than Petitioner's wife, and failed to present available evidence undermining the false testimony of the complaining witness. Moreover, the prosecutor blatantly coached the complaining witnesses' testimony, as well as withholding exculpatory evidence. During trial the trial judge, in a public elevator in front of a number of people, openly opined his belief in the guilt of the defendant, and discusses what he is going to do to the defendant.

During his appeal process, the complaining witness, his daughter "EJ", issued a full recantation in a sworn, counselled deposition, during which she admitted to having made the entire story up and did not realize how serious it was, and that the police and prosecutor had told her what to say (Appendix C). Upon the filing of an attendant Motion for New Trial, the state prosecutor and state court trial judge, who had also openly voiced a propensity of prejudice against defendants charged as Simms was, conspired to work together to intimidate and coerce the witness to "recant" her recantation. However, they were not successful in doing so; they merely intimidated the witness to the point where she acquiesced in an attorney, appointed by the trial judge and not her original counsel, refusing to permit her to take the stand at the state court hearing, which resulted in the denial of relief to Simms. A Motion for New Trial was denied, and all state remedies were exhausted. Following exhaustion of all available state remedies, Appellant filed his Petition for Writ of Habeas Corpus under 28 U.S.C. §2254 on June 16, 2022, seeking the issuance of a Writ of Habeas Corpus based upon, inter alia, actual innocence.

Following the submission of the Respondent's Return of Writ and Petitioner's Traverse thereto, (and the unrequested substitution of Magistrate Judge Michael R. Merz at his own behest for the initially assigned Magistrate Peter B. Silvain, Jr.,) Magistrate Merz issued a Report and Recommendation, on 06/20/2023, recommending dismissal without a hearing and with prejudice (Doc. # 21), to which Appellant filed timely Objections (Doc. 22).

Based upon clear errors of law and fact, including the miscalculation of the limitations period dates, Judge Sargus recommitted the case for additional review on July 10, 2023 (Doc. #23) resulting in the submission of a second Report and Recommendation by Magistrate Merz, dated the following day, July 11, 2023, again recommending dismissal without a hearing and with prejudice (Doc. #. 24). Following timely submission of proper Objections, and based upon additional clear errors of law and fact, Judge Sargus recommitted the case for additional review on July 25, 2023 (Doc. #26) resulting in the submission of a Third Report and Recommendation, by Magistrate Merz, dated six (6) days later, and again recommending dismissal without a hearing and with prejudice on August 1, 2023 (Doc. #. 27).

Appellant filed a Motion for Extension of Time to file Objections thereto, which was granted, as well as a Motion to Remit the case back to the original Magistrate, (Doc. # 28) which was denied, and timely Objections to the Magistrate's Third Report and recommendation were filed (Doc. # 32).

On September 13, 2023, the District Court Judge Sargus issued an Order "Adopting the Report and Recommendations" (being the Magistrate's third Report and Recommendation), and dismissing the case with prejudice (Doc. #35 & 36), and the following day, vacated that judgment as erroneous, and recommitted the case back the Magistrate based upon the additional clear errors of law and fact committed in the Third Report and Recommendation (Doc. # 38).

On September 18, 2023, a mere four days later, the Magistrate issued his Fourth Report and Recommendation, again presenting clear errors of law and fact and recommending dismissal without a hearing and with prejudice (Doc. # 39).

Appellant filed timely objections, once again establishing that the Fourth Report and Recommendation was riddled with clear errors of law and fact, on September 28, 2023, (Doc. # 40); placing the case before Judge Sargus for review and disposition as of that date.

Following the passage of almost an additional year, with nothing coming from Judge Sargus, Appellant filed a Motion to Proceed to Hearing and Judgment, advising the Court that he has been diagnosed with terminal cancer and may not have long to live, (Doc. # 45), which was denied on May 13, 2024 (Doc. # 46).

Despite the fact that Judge Sargus reviewed and responded to each of the first three Report and Recommendations by Magistrate Merz within 3 days, 1 day and 7 days of the submissions of Petitioner's Objections, respectively, the District Court Judge persistently and without reason refused to adjudicate the case which was properly before him (See, e.g. **Will v Calvert Insurance Co.** (1976) 437 U.S. 655, 661-662).

Simms then filed an Affidavit of Prejudice and a Motion for Recusal as to both Magistrate Judge Merz and District Judge Sargus. Magistrate Judge Merz denied the Motion as to himself, and issued a Report and Recommendation recommending denial as to Judge Sargus (Doc. #s 50 & 51, respectively). Following Objections, and waiting for over a year for any activity, with a Motion to Proceed to Hearing and Judgment being denied, Simms then filed an Original Action in Procedendo in The United States Court of Appeals for the Sixth Circuit, seeking an Order to the District Court to proceed to a judgment, in Case No. 24-3021.

On November 11, 2024, Judge Sargus adopted the Report and Recommendation and refused to recuse himself (Doc. # 56), and additionally issued a blanket Order overruling all of Simms' objections and dismissing the case denying the issuance of a Certificate of Appelability (Doc. #57). In March 10, 2025, the Procedendo was dismissed as moot.

A timely Application for Certificate of Appealability was filed and, on August 4, 2025, the Sixth Circuit Court of Appeals denied the Application, in Case No. 24-4063. A subsequent timely Petition for Writ of Certiorari was filed, and denied by this Court. This Petition for Writ of Habeas Corpus follows.

RULE 20.4(a) STATEMENT

Reasons for not making application to District Court:

Petitioner submits that he has made application to the District Court which declined to issue the Writ based upon AEDPA restrictions on November 11, 2024 (2024 U.S. Dist. LEXIS 208993). Petitioner further sought the issuance of a Certificate of Appealability from the United States Court of Appeals for the Sixth Circuit, which declined to issue one, based upon AEDPA restrictions, on August 4, 2025, Case No. 24-4063 (2025 U.S. App. LEXIS 19672).

Exhaustion of State Remedies:

Petitioner fully exhausted all available state remedies prior to the presentation of his initial §2254 Petition, including taking the issues presented in both the initial direct appeal and the motion for New Trial all the way to the highest state court having jurisdiction.

Exceptional Circumstances Warranting the Exercise of the Discretionary Powers of this Court:

Article I, §9, Cl. 2, United States Constitution provides, "the privilege of the Writ of Habeas Corpus shall not be suspended unless when in Case of Rebellion or Invasion, the public safety may require it". The ability to issue a Writ of Habeas Corpus by a Federal District Court and this Court

has been codified under the All Writs Act (28 U.S.C. §1651) and under 28 U.S.C. §§2241 and 2254.

The AEDPA revisions to 28 U.S.C. §2254 served to extremely narrow the scope of Federal Habeas Corpus relief for State prisoners, as well as severely curtail the authority and jurisdiction of the Federal Judiciary to issue a Writ. These revisions, inter alia, served to place a time limitation on the filing of a Petition, enhanced the presumptions of correctness afforded to a state court's factual determinations, as well as their legal conclusions, and created additional and more difficult procedural barriers to obtaining Federal Habeas Corpus review of unconstitutional infirmities relating to criminal convictions in state courts. Notably, the congressional record establishes that every one of these specific revisions were all initially deemed unconstitutional and a suspension of the Writ by Congress when first introduced by Senator Arlen Specter in 1993 and again in 1994, and only passed as part of the omnibus AEDPA in response to the bombing of the Federal Building in Oklahoma City in 1995, under the title of "Anti-Terrorist and Effective Death Penalty Act of 1996", nowhere mentioning that the first three pages of the Bill consisted entirely of Senator Specter's habeas corpus reform act, verbatim.

This Court was asked to determine, in **Felker v Turpin** (1997) 528 U.S. 651, whether any federal habeas petition is and must be subject to the restrictions established under the AEDPA. The question in **Felker** was whether such restrictions were constitutional, or whether they constituted an unconstitutional suspension of the Writ. This Court held the AEDPA restrictions did not constitute an unconstitutional suspension of the Writ for the sole reason that this Court "retains original jurisdiction" over Habeas Corpus and retains the authority to issue a writ, once requested.

Not only has the effect of the decision in **Felker** been disastrous for the country, as well as usurping the Constitutional prerogative of the Judiciary by interfering with their ability to issue a Writ of Habeas Corpus, the doctrine of Stare Decisis should have prevented the arrival by the Court at the decision in **Felker**. The AEDPA revisions inherently conflict with the purpose of the Writ, and it warrants revisiting and overturning by the Court as an unconstitutional limitation of the constitutional power of the federal judiciary. Petitioner submits that the **Felker** decision warrants revisiting, because, even upon issuance, it directly conflicts, severely and inherently, with the prior decision of the Court in **Harris v Nelson** (1969). 394 U. S. 286, in which the Court held:

“The Writ of Habeas Corpus “is the fundamental instrument for safeguarding individual freedom from arbitrary and lawless state action. Its’ pre-eminence is recognized by the admonition in the Constitution that the privilege of the Writ of Habeas Corpus shall not be suspended. [...] the scope and flexibility of the writ, its’ capacity to reach all manner of illegal detention – its’ ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility to ensure that miscarriages of justice within its reach be surfaced and corrected.” (id, at 290).

Surely there are other means by which to address potential abuses of the Writ that do not close the courthouse door on prisoners.

Notably, since the issuance of this Decision, this Court, while faced with dozens upon dozens of requests, has issued exactly zero Writs of Habeas Corpus, while untold numbers of Habeas petitioners have had their Petitions summarily tossed out due to AEDPA restrictions, many of which prisoners have subsequently eventually ultimately been exonerated. Specifically, an examination of some of the records of both the National Registry of Exonerations and the Ohio Innocence Project establish that there is an unacceptably high number of prisoners whose federal Habeas Corpus petitions have been rejected due solely to AEDPA restrictions and reforms, and were later found to have been innocent all along.

A review of the 42 listed exonerees in the report from the Ohio Innocence Project (University of Cincinnati College of Law) shows that 12 of the 42 had Federal Habeas Corpus petitions thrown out under the AEDPA and were later exonerated, an astonishing rate of 33.333%. A review of 128 listed names (mostly beginning from alphabetical order) from the National Registry of Exonerations which samples approximately 5% of the approximately 3300 exonerees on the list, establishes that 21 of the 128 had Federal Habeas Corpus petitions thrown out under the AEDPA and were later exonerated, compiling an astonishing rate of 33/167 or approximately 24%. A five percent sample of all exonerees listed demonstrates that 24% of people found to be completely innocent of crimes after being incarcerated for up to 4 or 5 decades, had their opportunity for federal review of the Constitutional violations resulting in their wrongful convictions usurped by AEDPA technicalities, resulting in more years of incarceration. During this time, this Court has issued ZERO writs of Habeas Corpus.

In **Marbury v Madison** (1803) 5 U.S. 137; 1 Cranch 137, This Court first encountered, and determined, the question of the separation of powers of the three co-equal branches of government, and held that “this Court has the power to invalidate laws on the ground that they exceed the constitutional power of congress or violate some specific prohibition of the Constitution”. **Griswold v Connecticut** (1965) 381 U.S. 479, quoting **Fletcher v Peck** (1810) 6 Cranch 87, 10 U.S 87. In **Williams v Taylor** (2000) 529 U.S. 437, this Court further held, “At the core of this power is the Federal Court’s independent responsibility, independent from its co-equal branches in the federal government, and independent from the constitutional authority of the several states, to interpret federal law”.

Why Adequate Relief Cannot Be Obtained in any Other Form From any Other Court:

As noted above, the District and Appellate courts were unable to provide relief. This is based upon

The restrictions enacted within the AEDPA, Notably, as discussed below, the District Court adopted the Magistrate's Report and Recommendation only after rejecting the first four Report and Recommendation's, due to clear significant errors of law and fact in each. The state courts refused to provide relief, instead the trial judge elected to conspire with the prosecutor to harass and intimidate the complaining witness when she came forward to recant her false testimony against Petitioner. There are no other remedies available in any other form or any other court in which Petitioner can even attempt to find relief.

As Petitioner was unable to obtain relief from his wrongful conviction, for which he has been sentenced to multiple sentenced of life without parole, due to the unconstitutional restrictions to habeas corpus relief within the AEDPA, this constitutes sufficient extraordinary circumstances for this Court to exercise its discretionary powers, as it indicated that it would in **Felker**, *supra*.

FIRST QUESTION PRESENTED FOR REVIEW

Whether, where Trial counsel failed to file a Motion to Suppress, fails to file a Notice of Alibi, refused to call any witnesses other than defendant's wife and failed to present available evidence undermining the false testimony of the complaining witness, was constitutionally ineffective within the meaning of the Sixth and Fourteenth Amendments.

Standard of Review

A Constitutional claim of ineffective assistance of counsel is a mixed question of law and fact and the factual determinations of the reviewing Court are reviewable under the "clearly erroneous standard", while the legal conclusions are reviewed de novo. **Strickland v Washington** (1984) 466 U.S. 668.

LAW AND ARGUMENT

It is black-letter law that a defendant in a criminal case is constitutionally entitled to competent assistance of counsel "at all critical stages of the proceedings" (**Douglas v California**

(1963) 372 U.S. 353; **Gideon v Wainwright** (1963) 373 U.S. 335). Moreover, it is also clearly established by the Supreme Court that counsel's errors made prior to a proceeding, such as procedures relating to the entry or withdrawal of a guilty plea, constitute ineffective assistance of counsel within the meaning of the Sixth and Fourteenth Amendments under the standard set forth by the Court in **Strickland**, supra. See, e.g. **Frye v Missouri** (2012) 566 U.S. 135 and **Lafler v Cooper** (2012) 566 U.S.156.

When reviewing a claim of ineffective assistance of counsel, "the question is whether there is any reasonable argument that counsel satisfied **Strickland's** deferential standard, see, e.g. **Harrington v Richter**, (2011) 562 U.S. 86. where a claim of ineffective assistance of counsel implicates the Sixth and Fourteenth Amendments under **Strickland**, supra, and is universally recognized as such.

It is well-settled that an attorney in a criminal case has an affirmative duty under the **Strickland** analysis to make proper investigations into the law and facts of the case, or to make a *reasonable* determination that such investigation is unnecessary. In **Bigelow v Williams** (6th Cir., 2007) 367 F3d. 562, the Court vacated a conviction where, as here, trial counsel failed to conduct reasonable investigations. In **Bigelow**, the failure to investigate concerned an alibi witness, in this case, it was alibi evidence together with records proving that the complaining witnesses' story was false The failure to investigate by trial counsel "must be supported by a reasoned and deliberate determination that investigation is not warranted". (id., citing **O'Hara v Wigginton** (6th Cir., 2004) 24 f3d. 823, 828, citing **Mathews v Abramajtys** (6th Cir., 2003) 319 F3d 780, 789-790, citing **Blackburn v Foltz** (6th Cir., 1987) 828 F2d 1177.

Counsel failed to investigate, and failed to bring in Petitioner's work records (Appendix D), and the School records of the complaining witness, which together would have proven that her

story was not possible. Moreover, counsel refused to call any witnesses except for Petitioner's wife, whose testimony was objected to by the prosecutor, and sustained by the trial court, thereby reducing the case to the presentation of no defense at all. While it is often held that whether and what witnesses to call falls within the realm of "trial tactics", in this case it is blatantly clear that the tactics of trial counsel were foredoomed to failure. The failure to call eyewitnesses that would exculpate the defendant is clearly prejudicial and the ineffective performance of trial counsel by failing to call eyewitnesses is not "trial strategy" as the respondent seeks to assert, but rather fundamental ineffectiveness causing inherent prejudice and mandating relief. See, e.g. **Kimmelman v Morrison** (1986) 477 U.S. 365, 385; **Bigelow v Williams** (6th Cir., 2004) 367 F3d 562; **Vasquez v Bradshaw** (6th Cir., 2000) 345 F. App'x. 104; **Groseclose v Bell** (6th Cir., 1997) 130 F3d 1161.

This Court has held that, where counsel fails to function as the "counsel" envisioned by the Sixth Amendment, by failing to make the adversarial testing process work at trial, such counsel is not only ineffective, but the "prejudice prong" of the Strickland analysis is to be presumed. See **U.S. v Cronic** (1984) 466 U.S. 648.

In addition, trial counsel completely failed to file a motion to suppress the involuntary statement elicited from Petitioner. When claiming ineffective assistance of counsel for failing to file a motion to suppress, the movant must show that there was a basis to suppress the specified evidence and that the failure to challenge it resulted in prejudice. See, e.g. **State v Adams** (2004) 103 Ohio St. 3d 503; **State v Robinson** (1996) 108 Ohio App. 3d 428 433. Only where it is established that the filing of a motion to suppress had "no reasonable probability of success" can relief be denied. **State v Nields** (2001) 93 Ohio St. 3d 6, 34. In this case, an analysis of the interrogation demonstrates that Petitioner repeatedly denied any wrongdoing. Only after hours of

badgering did he finally tell them what they wanted to hear in hopes of the interrogation stopping. Such tactics have universally been condemned by this Court and the unreliable results deemed unconstitutional.

Based upon the complete abandonment of his duties by counsel, the resultant convictions against Petitioner violate the Constitution and the issuance of a Writ of Habeas Corpus to rectify the continuing incarceration of an innocent man is warranted.

SECOND QUESTION PRESENTED FOR REVIEW

Whether the blatant coaching of the 10-year-old complaining witness combined with the withholding of exculpatory evidence by the prosecutor constitutes prosecutorial misconduct in violation of the Fifth Amendment

LAW AND ARGUMENT

It is well-settled that a prosecutor, as an agent of the state, has a duty to ensure that justice is served, and not merely seek to win a conviction. See, e.g. **Berger v U.S.** (1935) 295 U.S. 78. A prosecutor is, therefore, prohibited from telling a witness what to say before their testimony, and doing so warrants vacation of any resultant conviction. (id).

In keeping with this duty to ensure fairness, a prosecutor has an affirmative duty to disclose evidence that he knows or should know is exculpatory to the defense prior to trial, and the failure to do so violates Due Process of Law. See, e.g. **Brady v Maryland** (1963) 373 U.S. 83. The “Brady” rule is violated where the prosecutor fails to disclose or actively withholds evidence that is material and exculpatory (id). Such exculpatory evidence includes evidence that can be used to impeach state witnesses. See, e.g. **Kyles v Whitley** (1995) 514 U.S. 419. The duty to disclose applies to evidence known to the prosecutor, or known to any other branch of the state apparatus. (id., p. 437). Evidence that is exposed as having been withheld by the prosecution must be viewed collectively, and within the entire context of the proceedings. **U.S. v Agurs** (1976) 527 U.S. 97,

112. Where the withheld evidence, had it been presented to the jury, would “put the case in a different light”, the materiality prong of the Brady analysis has been met. See, e.g. **Youngblood v West Virginia** (2006) 547 U.S. 867, 870; **Banks v Dretke** (2004) 540 U.S. 668.

In this case, the prosecutor acted to withhold the school records of the complaining witness by advising the school not to comply with the subpoena for the records, thus not only working to hide exculpatory evidence, but also essentially tampering with evidence. Such actions undermine confidence in the outcome of the case, and, moreover, worked to convict an innocent man. The blatant and documented misconduct of the prosecutor violates every precept of the Constitution, and the issuance of a Writ of Habeas Corpus is warranted.

THIRD QUESTION PRESENTED FOR REVIEW

Whether a trial judge who openly opined in a public elevator in the midst of trial his belief in the guilt of the defendant, and discussed what he is going to do to the defendant, and later conspired with the prosecutor to intimidate the complaining witness and threaten her for recanting her false testimony, is in violation of the right to a fair trial under the Sixth Amendment.

LAW AND ARGUMENT

It is well-established that a fair and unbiased judiciary is guaranteed by Article III of the United States Constitution as well as being required by the Due Process Clause of the Fifth and Fourteenth Amendments. See, e.g. **Caperton v A.T. Massey Coal Co.** (2009) 556 U.S. 868, 884; **In re: Murchison** (1955) 349 U.S. 133, 136-139; **Tunney v Ohio** (1927) 273 U.S. 510, 522.

During trial the trial judge, in a public elevator in front of a number of people, openly opined his belief in the guilt of the defendant, and discusses what he is going to do to the defendant. Further, as noted above, EJ, the complaining witness who recanted her coerced testimony, was badgered and threatened by the trial judge and the prosecutor, working in tandem. As a result, her sworn testimony set forth in the counselled deposition was not produced in open court was and is

only a part of the record through the deposition. If the Court were to conduct a hearing, she would be free to testify, without pressure, bias or coercion, to the truth. The only reason that this testimony was not presented in open court is due solely and completely to conduct of the state and the trial court judge, and is not, in any way, attributable to Simms. As the record demonstrates that a full, fair hearing was never conducted in the state courts, despite all of Simms' efforts to do so, and especially with regards to an interview of the recanting witness, a hearing is surely warranted in this case.

A review of Appellant's allegations set forth relating to his claim in the state court reveals that the argument was raised as:

"In the instant case, Simms issued a subpoena for E.J. yet the trial court prevented counsel from calling E.J. to the witness stand. Furthermore, the trial court did not conduct a colloquy, did not inform E.J. of counsel's questions, and did not inquire whether E.J. would assert her Fifth Amendment right as to all questions asked. Moreover, because E.J. did not take the witness stand, she did not directly assert her Fifth Amendment right".

A review of this passage clearly demonstrates that the trial court refused to enforce a subpoena which stands in violation of the Right to Compulsory Process, guaranteed by the Sixth Amendment to the Constitution. See, e.g. **Washington v Texas** (1967) 388 U.S. 14, **Chambers v Mississippi** (1973) 410 U.S. 284, **Crawford v Washington** (2004) 541 U.S. 36. The issues relating to the misconduct of the trial court judge are clearly Constitutional in scope, and are sufficient to warrant the issuance of a Writ of Habeas Corpus.

FOURTH QUESTION PRESENTED FOR REVIEW

Whether a valid, credible recantation of the complaining witness completely exonerating the Petitioner requires relief from a wrongful conviction.

LAW AND ARGUMENT

As occurs so often in this type of case, Mr. Simms has been a victim of a system that does not easily admit when a mistake has been made. The number of cases in which wrongful

accusations of child molestation are uncovered years later are legion and have been the subject of documentaries and sociology studies for many years. In this case, Mr. Simms is a victim of such false accusations, stemming from a young girl who had no idea of the import of her actions.

The fact that the allegations are false are fully documented and detailed in the attached transcribed Deposition of E.J., the accuser and initial complainant in this case (Appendix A, 34 pages). Specifically, the witness sought to recant the false accusations she had made against Simms, at the direction of the prosecution, and to recant and correct the false testimony she had presented at trial, which testimony was created and fabricated by the prosecutor, Chris M. Brown.

As reflected in the Deposition, EJ simply made up the accusations against Mr. Simms because she wanted to stay at her mother's house because it was 'boring over there' [at her dad's house] (p. 19). The allegations went from simply trying to avoid going to her dad's to the initiation of the prosecutorial machine, during which time, EJ was scared by the police "Mostly, the police really scared me then. I mean, I was terrified of the police" (p. 22), and after initially gleaning things to say from a story told to her by her friend, Christy, (p. 19), the story told at trial was generated by "It was the guy that – I think it was the prosecutor. [...] He just kind of, like, explained to me, like, what to say, really" (p. 18). This deposition was conducted under oath, attended by counsel for EJ and after clearly explaining the seriousness of telling the truth and the concepts of perjury, and subsequent to ensuring that the statement was voluntary (pp. 5-8).

Upon coming forward to come clean, EJ became the focus of a targeted attack by the prosecutors and the trial judge, who, it has been uncovered, was predisposed to rule against Mr. Simms (See Memo from the Franklin County Public Defender, Emily Huddleston, Appendix C). This targeted attack consisted of berating, threatening and verbally abusing the witness to the point that she felt intimidated and the lawyer appointed by the judge and prosecutor (not her personal

counsel), and not the witness herself, declined for her to testify at the hearing. Appendix B, the transcript from the hearing on the Motion for Leave to File Delayed Motion for New Trial based partly upon the recantation in the Sworn deposition, demonstrates the concerted effort on the part of Judge Michael J. Holbrook and Prosecutor Sheryl Prichard to harass, intimidate and threaten the recanting witness, to the point of appointing her a lawyer who threatened her with criminal prosecution if she testified. Notably, the possibility of perjury charges was thoroughly explained to the witness during the deposition (Appendix A, Tr. p. 6-7) along with assurances that the witness was not being coerced to recant (*id.*, pp. 7-9).

The content of the deposition sufficiently establishes both voluntariness and awareness of potential legal consequences to the recanting witness that the campaign of intimidation by the trial court and the prosecutor was absolutely unnecessary in terms of providing “protections” for the witness, and can only reasonably be deemed what they were, campaign to intimidate the witness to refuse to testify to the recantation (which the witness stands by to this day).

Mr. Simms is currently suffering from Prostate, Liver and Lung Cancer, (stage 4), and is undergoing what is likely futile chemotherapy treatments from the prison hospital. His Petition for Writ of Habeas Corpus in the Federal District Court was recently denied, after being sent back to the Magistrate Judge four (4) times due to demonstrable and admitted errors in factual findings and legal conclusions all directed towards rejecting relief, ultimately being denied after Mr. Simms complained of the interminable delay. A request for permission to appeal that denial was then denied by the U.S. Court of Appeals for the Sixth Circuit, in Case No. 24-4063, and, frankly, Mr. Simms is afraid he will die before the current process is complete.

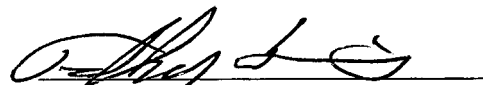
Mr. Simms submits that the evidence of innocence is overwhelming and only due to the undue restrictions in the court system has he been unable to obtain any relief. Therefore, he seeks the issuance of a Writ of Habeas Corpus, and he so prays.

CONCLUSION

The decision of the District Court in this case abandoned the purpose of the Writ and, by basing the ultimate legal conclusions upon clearly erroneous determinations of fact by the state court, for which the presumption of correctness is completely overcome by record evidence, the District Court erred and abused its' discretion. The Sixth Circuit also erred in adopting this reasoning in rejecting the issuance of a Certificate of Appealability.

For the foregoing reasons, this Court should accept jurisdiction and issue a Writ of Habeas Corpus, and Petitioner so prays.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy Simms', is written over a horizontal line.

Timothy Simms, #A638-458
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