23-7199

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN RE: JOSEPH R DICKEY

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT 28 U.S.C. 2241(a)

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QUESTION(S) PRESENTED

Does 28 U.S.C. 2241(b)(1)'s requirement that "a claim presented in a second or successive habeas corpus application under 2254 [28 U.S.C. 2254] that was presented in a prior application shall be dismissed" apply to federal prisoners who file habeas corpus petitions under 28 U.S.C. 2255?

Does it violated the United States Constitution for someone who is serving a life sentence to have no vehicle to present new evidence of actual innocence?

Is a guilty plea based upon a plea agreement knowingly and intelligently made if the terms of the plea agreement offer no benefit and mandates the maximum available sentence yet this fact is not revealed by the judge nor is the fact clear and obvious?

Is it prosecutorial misconduct when the prosecution charges a defendant for crimes which the victims say did not happen based upon the statements of a co-conspirator who was given immunity for his statements?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v Joseph Dickey, No. CR-321-CLS-SGC, Northern District of Alabama
Judgment Entered: February 17, 2006

United States v Joseph Dickey, CR-321-CLS-SGC, Eleventh Circuit Court of Appeals
Judgment Entered: October 12, 2006

Joseph Dickey v United States, No. CV-8006-CLS-PWG, Northern District of Alabama
Judgment Entered: November 8, 2007

Joseph Dickey v United States, No. 10-14655, Eleventh Circuit Court of Appeals
Judgment Entered: August 15, 2011

In re: Joseph Dickey, No. 17-11721-B, Eleventh Circuit Court of Appeals
Judgment Entered: May 5, 2017

In re: Joseph Dickey, No. 19-10416-D, Eleventh Circuit Court of Appeals
Judgment Entered: February 26, 2019

Joseph R Dickey v Nash, Warden USP Yazoo City, No. 19-60197, Fifth Circuit Court of Appeals
Judgment Entered: September 16, 2019

In re: Joseph Dickey, No. 20-11417-E, Eleventh Circuit Court of Appeals
Judgment Entered: June 16, 2020

Joseph R Dickey v United States, No. 20-12025, Eleventh Circuit Court of Appeals
Judgment Entered: May 19, 2021

In re: Joseph Dickey, No. 22-13668-B, Eleventh Circuit Court of Appeals
Judgment Entered: November 21, 2022

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JURISDICITON

This court has jurisdiction to hear this petition pursuant to 28 U.S.C. 2241(a) and the fact I am a federal inmate currently in custody. This submission also contains a statement as required by 28 U.S.C. 2242 as to why I am not filing this petition in a district court within the district in which I am being held.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. 2241(a)

"Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions".

28 U.S.C. 2255(h)(1)

"newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence no reasonable factfinder would have found the movant guilty of the offense".

28 U.S.C. 2244(b)(1)

"A claim presented in a second or successive habeas corpus application under section 2254 [28 U.S.C 2254] that was presented in a prior application shall be dismissed".

REASONS FOR NOT SUBMITTING A PETITION TO THE DISTRICT COURT
AND
WHY THIS COURT SHOULD EXERCISE JURISDICTION TO HEAR THIS PETITION

I am not submitting this petition to a district court because I have already attempted to do so several times and the submissions were all rejected for the following reasons:

The caselaw in the Eleventh Circuit clearly holds that attacks on a federal prisoner's sentence or conviction must be made pursuant 28 U.S.C. 2255. [see McCarthan v Dir. Of Goodwill Indus-Suncoast Inc., 851 F.3d 1076, 1100 (11th Cir 2017) (holding that statutory restrictions on successive 2255 motions do not make 2255 inadequate or ineffective for saving clause purposes)] I have tried numerous times to obtain permission to file a successive 2255 based upon newly discovered evidence of innocence and constitutional violations, but every time the application is denied because I had previously claimed actual innocence and ineffective assistance of counsel in my original 2255 petition. 28 U.S.C. 2244(b)(1) is applied to all of my claims despite the fact I am a federal prisoner and the fact I have newly discovered evidence of my innocence. [In re: Joseph Dickey, 17-11721-B, 17-12705-B, 19-10416-D, 22-13668-D] I also submitted a habeas corpus petition under 28 U.S.C. 2241 to the district court in the district in which I am currently being held but that petition was denied as not being the proper vehicle to address the application of 2244(b)(1) to my case. [Dickey v Warden, FCI Marianna, CV-84-TKW-ZCB]

There is no other way for me to obtain habeas relief nor is there anyway to address the issue concerning 2244(b)(1), which is preventing me from seeking habeas relief. Some of the judges in the Eleventh Circuit and most recently even the Government have agreed that 2244(b)(1) does not apply to federal prisoners yet the application of this statute to federal prisoners including myself remains in effect. The Eleventh Circuit has specifically stated in my case: "I am concerned that Baptiste is blocking relief to prisoners who ask us to take a second look at their case after we got it wrong the first time. Nevertheless, Baptiste is binding precedent in this circuit, so Mr. Dickey will not be allowed to present his claims to a district court for an examination of whether his convictions are legal". [Appendix G-3 (also see In re: Bowe, No. 22-7871 (Feb, 20, 2024) stating "The government agrees with Bowe that 2244(b)(1)'s plain language covers only challenges by state prisoners under 2254")].

Justice Sotomayor has best explained why this Honorable Court should invoke its jurisdiction to hear a case such as mine. "A petition cannot reach this Court from the six Circuits that apply 2244(b)(1) to both state and federal prisoners either. In those Circuits, the court of appeals will apply 2244(b)(1)'s bar and deny certification to any second or successive 2255 motion that raises an issue the prisoner has previously raised. Neither the Government nor the prisoner can seek review of that interpretation of 2244(b)(1) from this Court, however, because AEDPA separately bars petitions for certiorari stemming from 'the grant or denial of an authorization by a court of appeals to file a second or successive application' 2244(b)(3)(E). I would welcome the invocation of this Court's original habeas jurisdiction in a future case where the petitioner may have meritorious 2255 claims". [In re: Bowe, No. 22-7871, (Feb 20, 2024)] My case fits squarely within Justice Sotomayor's stated criteria.

Justice Kavanaugh, Justice Jackson, and Justice Sotomayor have all agreed there is a need to address the application of 2244(b)(1) to federal prisoners. My case presents the perfect opportunity to finally address this issue because in my case 2244(b)(1) is being applied to new evidence of actual innocence. In other words, it is taking away the only "key" which opens the gateway contained in 2255(h) for federal prisoners to file a successive 2255. The facts of my case precisely meet the requirements for filing a successive 2255 under 28 U.S.C. 2255(h) yet I cannot use this gateway because 2244(b)(1) is being applied to me as a federal prisoner. Three circuit courts and even the Government have all said this is wrong as a matter of law. My case presents the perfect opportunity to address this issue.

STATEMENT OF THE CASE

Reasonable minds may disagree on many issues that arise in the criminal justice system,. However, the one principle on which everybody would be expected to agree is that prisons are for the guilty and the courts should ensure that the innocent are freed. But sometimes flaws within our justice system can jeopardize this most sacred principle. This case presents a prime example of such a flaw. This flaw is the egregious consequence of misapplying a statute to a prisoner in a manner which prevents him from ever presenting new evidence of his innocence. 28 U.S.C. 2244(b)(1) is being applied to me as a federal prisoner despite the statute clearly indicating it only applies to state prisoners. As a result, I am in a situation where I cannot present new evidence which proves I am innocent and my conviction is in violation of the United States Constitution.

The criminal case against me began in the Summer of 2005 after my house was searched by the FBI. I had been a target of an FBI investigation dating back nearly three years to 2002. A former friend in which I had an adult relationship with, by the name of Edward Lee Thomas, was arrested in 2002 after he sexually abused his minor cousins aged 5 and 7 years old. Edward's computer was turned over to the FBI and thousands of images of child phonography were recovered off of Edward's computer. Included in these images were photographs of Edward's cousins he had sexually abused and numerous other pornographic images which included very young male children and even infants. Some of the images on Edward's computer turned out to be my great nephews aged 2 and 4 years old.

Because I had formed an adult relationship with Edward Thomas, in 2002 I visited Thomas on several occasions and he spent time with me and my 5 year old son at a state park which had cabins located on a lake. On few a of these occasions my great nephew, who was about the same age as my son, went with us to the park. On one occasion, at the request of his mother, my youngest great nephew, who was 2 years old, went with us to give his mother a break. [CV-08006-LSC-SGC Doc 2 pg. 47 #3]

After Edward was arrested for sexually abusing his 5 and 7 year old cousins in 2002, he contacted the FBI and told them he was concerned about people trading child pornography on the internet and he wanted to help them catch these people. This most likely was because Edward knew what the FBI was going to find on his computer. After the FBI found all the pornographic files on Edward's computer, he indicated he was not interested in images

like those they found and people just started sending them to him. [Appendix B] Edward explained to the FBI that it was me who had sent him all of the images they found on his computer and the pictures they found on his computer which he produced was only because I had conspired with him to produce the images. In other words, he was making a deal with the FBI to avoid prosecution and it worked. He never spend a single day in federal prison for all of the federal child pornography crimes he committed on his cousins nor my nephews.

As a result of the story Edward Thomas was providing to the FBI concerning me, I was unknowingly placed under investigation for nearly 3 years. Eventually the FBI obtained a search warrant for my house and searched my house in the Summer of 2005. During this search a flashcard was found in my house. A forensic analysis of this flashcard recovered 7 deleted images, which I had no idea existed, which were taken back in 2002. The deleted images had never been uploaded on any computer I owned or had ever owned (the FBI did an analysis on my computers and even tracked down a computer I used to own). I had absolutely no equipment to recover or view deleted images. After these images were recovered, I was immediately charged with possession of the images and eventually I was charged in a superseding indictment with 9 counts of sexual exploitation based upon the 7 images. These charges included: Possession of the images; conspiring to produce the images; transporting the images across state lines; and 6 counts of traveling across state lines to engage in sexual activity with my nephews who were in the images. [N.D. Ala Case CR-321-LSC-SGC]

My trial attorney told me and my family that there was no way I could beat these charges but she had negotiated a plea agreement in which I would only get 20 years at the most but I could possibly receive probation since I had no criminal history. [Appendix E-1 #5] The trial attorney told me and my family this was the only possibility to avoid the maximum sentence of 135 years. [Appendix E-1 #1] I told my family on several occasions I did not want to plead guilty because I was not guilty. [Appendix E-1 #2] I even lost the 3 point reduction for acceptance of responsibility when I told the probation officer I was not guilty and that I had not abused anyone or knew anything about pornographic pictures. [Appendix E-4] The actual terms of the plea agreement, if followed (with or without the 3 point reduction), was for a sentence of 135 years. I received exactly what the terms of my plea agreement called for: 135 years. [PSR pg. 14 (Total offense level 50), PSR pg. 19 Paragraph 128 (The guideline term of imprisonment is "Life". This provision states that if the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, the sentence imposed on one or more counts shall run

consecutively. Therefore, as none of the counts of conviction carry a statutory maximum of life, the total punishment is the addition of the statutory maximum for counts 1 through 9 (1620 months or 135 years)] This was one of the facts which prompted me to file the legal malpractice lawsuit against my trial attorney.

I filed a motion pursuant to 28 U.S.C. 2255 with my number one claim in this motion being actual innocence [CV-08006-LSC-SGC, Doc 1 pg. 2] Jeffrey D Bramer was appointed to represent me during the evidentiary hearing and a hearing took place on April 1, 2008. At the beginning of the evidentiary hearing the court stated on the record: "Well, unless something changes, we are going forward today on everything that is in the petition" [2255 Tr. pg. 4 at 7] However, despite the fact actual innocence was my number one claim, it was never addressed at the hearing and the court stated on the record: "I don't know if there is such a claim and we'll deal with it on paper if we need to". [2255 Tr. pg. 186 at 12]

After the evidentiary hearing, I submitted complaints about the hearing and a motion for a second evidentiary hearing [CV-08006-LSC-SGC Doc 74, 78] My habeas counsel, Mr. Bramer, submitted a motion for a second evidentiary hearing based upon my demands. He also submitted a motion to withdraw from representing representing me. [CV-08006-LSC-SGC Doc 73] However, the district court did not address any of the motions and denied my 2255 petition. The district court also recommended that Mr. Bramer continue to represent me for the appeal of my 2255 despite both me and Mr. Bramer asking to go our separate ways. [CV-08006-LSC-SGC Doc 88]

During the 2255 appeal process my 2255 attorney Mr. Bramer and I became adversaries. Mr. Bramer and I submitted numerous submissions to the Eleventh Circuit Court of Appeals trying to separate. We were asking for appointment new counsel, permission to withdraw as counsel, permission to proceed pro se, a "Request For Emergency Appointment of New Counsel", complaints, and even a submission by me in which I asked for permission to file what I described as a "Reverse Ander's Brief" to prove Mr. Bramer's brief he submitted on my behalf was meritless. In my complaints I begged the court to not make me accept Mr. Bramber's brief because it did not address the issues in my case and Mr. Bramer's brief was ignoring numerous ineffective assistance of counsel issues in my 2255 petition. All of my and Mr. Bramer's submissions and requests were either denied or ignored. Ultimately, I lost the appeal just as I said I was going to do and for the exact same reasons I had stated in complaints in an effort to prove my 2255 attorney was absolutely wrong.

Because of the egregious representation my trial attorney provided for me during my criminal proceedings, I filed a legal malpractice lawsuit in state court against her. [Joseph Dickey v Edwina Miller CV-225 Tuscaloosa County Alabama] During the proceedings of this malpractice lawsuit new evidence was revealed which showed horrendous legal mistakes my trial attorney had made and evidence which supported my claim of actual innocence. I attempted to obtain permission to file a successive 2255 based upon this new evidence of constitutional violations and my actual innocence but each time the Eleventh Circuit denied any request I made based primarily upon 28 U.S.C. 2244(b)(1) [see In re: Joseph Dickey, 17-12705-B, 17-11721-B, 19-10416-D, 22-13668-B].

I went on to file a Freedom of Information Act request to obtain documents from my FBI file. This request took over 8 years to be answered. When I received the FBI documents from this request, I was amazed to discover there were numerous facts which were never revealed to me during my criminal proceedings. These facts included: 1) The FBI knew the co-conspirator, Edward Lee Thomas, was lying because Thomas was providing conflicting information; 2) There was absolutely nothing to corroborate Edward's claims against me; 3) My alleged victims' family had clearly indicated their children were not even present for at least three times they were alleged to have been abused; 4) The FBI believed that the crimes Edward Thomas said I conspired with him to commit perhaps did not even happen and even if they did I may not have known about the crimes; and 5) Most importantly, the Birmingham Alabama office of the FBI had closed its case on me because there was no evidence I had committed any crime. Essentially, the FBI documents clearly supported the fact I did not commit the crimes I have been charged with and some alleged crimes did not even happen. [Appendix B]

Based upon this most recent information obtained from the FBI, I once again tried to obtain permission to file a successive 2255 from the Eleventh Circuit but I was once again denied because I had previously claimed my innocence in my original 2255. The Eleventh Circuit held that 28 U.S.C. 2244(b)(1) mandates that any claim presented in a previous application or petition must be dismissed, even actual innocence. Some judges within the Eleventh Circuit believe 2244(b)(1) does not apply to me and my claims but nevertheless it is their binding precedent and I would not be allowed to present my claims to the district court. [Appendix G-3]

In an attempt to address the application of 2244(b)(1) to my claims of actual innocence and the new evidence, I filed a habeas corpus application under 28 U.S.C. 2241 in the Northern District of Florida alleging that 28 U.S.C.

2244(b)(1) was unconstitutional as it was being applied to me. I alleged its application violated the suspension clause as well as the separation of powers doctrine. [Dickey v Warden FCI Marianna CV-84-TKW-ZCB] But the district court ruled a 2241 could not be used to attack the constitutionality of a statute. The district court judge stated he did not know what vehicle I would use to attack 2244(b)(1) as it was being applied to me. Id I appealed to the Eleventh Circuit but that appeal was sua sponte dismissed for the same reason. [Appeal No. 23-10337] I sought certiorari from this Court trying to address 2244(b)(1) but the petition was denied.

I am now submitting this original habeas corpus petition to this Honorable Court pursuant 28 U.S.C. 2241(a) because I have no other way to present new evidence of my innocence nor anyway to address constitutional violations. This submission is being submitted because Justice Sotomayor has said "I would welcome the invocation of this Court's original habeas jurisdiction in a future case where the petitioner may have meritorious 2255 claims". [In re: Bowe No. 22-7871 (Feb 20, 2024)] My case is exactly the kind of case in which Justice Sotomayor said she would welcome the invocation of this Honorable Court's habeas jurisdiction.

NEW EVIDENCE WHICH MEETS 28 U.S.C. 2255(h)(1)'s CRITERIA

28 U.S.C. 2255(h)(1) is the criteria a petitioner must meet in order to be able to file a successive 2255 petition. 2255(h)(1) specifically states that one may file a successive 2255 if he has: "Newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense". Accordingly, I believe I clearly meet this criteria based upon the following new evidence:

I. NEW EVIDENCE REVEALED AFTER THE 2255 HEARING

After the evidentiary hearing in my original 2255, the mother and grandmother drafted letters in which they demanded a chance to be heard. They stated it was impossible for me to be guilty of traveling across state lines to abuse their children on six occasions because their children were not present six times, they were only present three times. They also stated that I am in prison for stuff that "DID NOT HAPPEN". They demanded a chance to be heard but were never allowed to be heard in any federal court in any fashion. [Appendix A-5, A-7]

II. NEW EVIDENCE OBTAINED DURING A LEGAL MALPRACTICE LAWSUIT AGAINST MY TRIAL ATTORNEY

During a legal malpractice lawsuit trial, the grandmother of the alleged victims testified under oath as an "eyewitness" to the fact the alleged victims in my federal case were picked up at her house for these "camping trips" and they did not go six times. She testified that her oldest grandson only went two times and her youngest grandson only went one time for a total of three times. On the other dates in which I was alleged to have abused them they were no where near my travel destination. [Appendix A-1 #4] The grandmother and mother of my alleged victims have stated:

> "Our children have been seen by a counselor and have told us that Joseph Dickey has never abused them nor has he ever taken nude pictures of them. Joseph Dickey is also in prison for events that DID NOT OCCUR. Our children only went on these camping trips 3 times". [Appendix A-5]

> "As we have stated, we do not understand the law but it seems insane that someone remains in prison for a crime that was suppose to have been committed upon a person yet the person that was the target of the crime was not even there on the date of the crime". [Appendix A-7, Footnote 3]

III. NEW EVIDENCE OBTAINED IN 2020 FROM A FREEDOM OF INFORMATION ACT (Took 8 years to receive)

1. FBI files revealed the eyewitness (alleged victims grandmother) had told the FBI that her grandchildren (the only alleged victims in this case) only went on these camping trips 2 or 3 times one summer (2002). This was before I was indicted for traveling for the intent to abuse these children 6 times. This evidence clearly shows the FBI knew no crime took place on at least 3 of the dates I was charged with a crime yet the prosecutor still charged me based upon the testimony of Edward Lee Thomas. [Appendix B-1 & B-2]

2. FBI files revealed Edward Thomas (who established the basis for the charges against me) initially testified he was not aware of me sexually abusing children we were around. [Appendix B-7]

3. FBI files revealed Edward Thomas began providing conflicting statements in 2003 (FBI investigated me from 2002-2005) and eventually it was deemed there was no evidence to "corroborate" co-conspirator's claims against me or to "implicate" me in any crime. [Appendix B-3 & B-4]

4. FBI files revealed the FBI believed the crimes Edward Thomas said happened perhaps did not even happen or if they did happen they may have happened without my knowledge. [Appendix B-3 & B-5]

5. FBI files revealed Edward Thomas admitted he was alone with the victims when I went to get "pizza" and something happened while I was gone. [Appendix B-6]

6. FBI files revealed my online "screen name" and IP address were run through their central tracking computer (Innocent Images), Index Servers, and Office of Juvenile Justice and Delinquency Prevention on January 3, 2003 with "NEGATIVE" results. This I indicated I was not associated with online child pornography as Edward Thomas was alleging [Appendix B-8]

7. FBI files revealed the Birmingham Alabama office closed their case on me because there was no evidence I had committed any crimes. [Appendix B-3, B-4]

8. About 4 months after first running my "screen names" and IP address through their central tracking computers, the FBI once again ran my IP address and "screen names" thorough their computers on on May 27, 2003 and once again as before found absolutely nothing. [Appendix B-9]

THE EVIDENCE AS A WHOLE ESTABLISHES NO REASONABLE FACTFINDER WOULD FIND ME GUILTY

This new evidence when combined with all the evidence as a whole, shows no reasonable factfinder would find me guilty because of two reasons: 1) The evidence shows at least three alleged crimes did not even happen; and 2) The evidence shows all of the crimes for which did occur were not committed by me.

1. CRIMES WHICH DID NOT EVEN HAPPEN

It is factually impossible for me to have traveled for the "purpose" to engage in sexual activities with. the minor victims in this case on February 22, 2002, September 13, 2002 or December 6 or 8, 2002 because the minors were nowhere near my travel location, were not part of my travel plans, and actually lived in a different state from my travel destination. The FBI clearly indicated: some of the crimes perhaps never even

happened and that Edward Lee Thomas was providing conflicting information; the grandmother of the alleged victims (who is an "eyewitness" because the children were picked up at her house) states the children were not present six times as alleged; and the mother of the victims (who qualifies as the victim's voice under the Crime Victims Rights Act) has also stated her children did not go on these trips six times. There were absolutely no crimes committed by anyone on February 22, 2002, September 13, 2002, and December 6 or 8, 2002 because there were absolutely no victims who were present, part of the travel plans, or near the travel location.

2. CRIMES WHICH I DID NOT COMMIT

When the evidence is viewed in totality, it is clear no reasonable factfinder would have found me guilty of any of these crimes. The evidence as a whole leads a factfinder to concluded the following:

1. All of the charges against me center around seven deleted pictures. Witnesses have sworn the flashcard which contained the deleted illegal images only showed normal family photographs. [Appendix A-2 #7, A-8 #7]
2. The camera in which the flashcard went to was discarded because it was broken. It was my mother who saved the flashcard in her Bible. [Appendix A-2 #7]
3. Edward Lee Thomas admitted he was alone with the victims while I went to get "pizza" and something happened. [Appendix B-6]
4. Edward initially admitted he was not aware of me sexually abusing any children during the time he knew me. [Appendix B-7]

In 2019-20 Edward Lee Thomas was caught again using the exact same method he had used on me to obtain access to young children. He targeted a single dad. He presented himself to the single dad as a caring nurturing individual, then sexually abused and made pornography with the father's infant and toddler. This information was revealed in 2020 from a Homeland Security Affidavit which detailed his newest heinous crimes:

> "During the interview with Thomas he was shown the sexual abuse images of two boys, infant and toddler age. He identified them as children he had contact with". "Thomas admitted that he was the person in the pictures and video sexually abusing the children and that he had taken the pictures himself" [Appendix C-4 #16, Affidavit From Homeland Security Officer March 19, 2020]

> "The father of the victims stated that he had not known Thomas was a registered sex offender but Thomas had spent a lot of time with him and the boys. He stated that Thomas often assisted in changing the boys diapers and would offer to give them baths when needed". [Appendix C-3 #12, Affidavit From Homeland Security Officer, March 19, 2020]

Any reasonable factfinder, when viewing all of the evidence as a whole, would come to the conclusion Edward Thomas made the illegal pictures in this case when he was alone with the children and then deleted them without my knowledge. Common sense would lead any reasonable factfinder to conclude I did not know the pictures existed as I would not have saved them in my mother's Bible. Based upon the sworn statements from an "eyewitness" and the victims mother, my travel plans could not have possibly been for the "purpose" to abuse their children on any occasion because the decision for them to be part of my plans was a "spur of the moment" decision made in Mississippi AFTER I had traveled [CV-08006-LSC-SGC Doc 2 pg. 46 #4, pg. 47 #4]. The evidence shows I encountered the minors at their grandmothers house not their house. The victims did not live with the grandmother, they lived with their mother who resided in Alabama during 2002. The evidence clearly shows my travel and plans to travel had absolutely nothing to do with abusing these children.

CONSTITUTIONAL CLAIMS

The new evidence which was obtained through a legal malpractice lawsuit and from a Freedom of Information Act request not only revealed evidence of innocence, but it also revealed evidence of numerous constitutional violations. These violations include: Brady Violations, Franks Violations, Prosecutorial Misconduct, and Ineffective Assistance of Trial Counsel. Most importantly, it revealed that my trial attorney's decisions were based upon her profound ignorance, failure to investigate, and general failure to act as my advocate. As a result, trial attorney's representation went far beyond ineffective and should be viewed as a constructive denial of counsel. All of the claims I am going to make are supported by the following facts:

THE FACTS

FACT A: My trial attorney believed the plea agreement she had me enter, if followed, was for a sentence of between 25-30 years. Her defense attorney revealed this fact during proceedings in the legal malpractice lawsuit by stating: "The highest offense level in the sentencing table of the federal sentencing guidelines is 43. My client's understanding of the proposed plea agreement was upon a plea of guilty, as set forth, the Government would recommend a reduction of the offense level by 3 points to 40. If the court accepted that recommendation, and sentenced Dickey at the 40 offense level, his sentence would have been in the range of 25-30 Years." [D-1 (bottom of page) D-2 (top of page)] "Mr. Dickey, do you know if you had gone to the pre sentencing investigator and had accepted responsibility as you did before the judge and as you did in signing the plea, did you know that you would have been sentenced on the basis of a level of 40 at the worse. Did you not know that?" [D-8 at Line 8]

FACT B: My trial attorney believed this plea agreement was the only possibility of avoiding the maximum sentence of 135 years. "Edwina Miller and Patrick Sims recommended this settlement to Joseph Dickey and his family as being the only possibility of avoiding a maximum sentence". [D-2 Second Paragraph]

FACT C: My trail attorney told me that the agreement was the only way to keep the judge from "stacking" my charges and if I went to trial the judge "might" stack the charges. Her statements on the record while reading a letter she sent to me stated: "Having said all this. I can tell you that upon a plea, the assistant U.S. Attorney will ask that you be sentenced within the guidelines He will not ask for an upward departure or that the

sentences be stacked (as consecutive, not concurrent terms). However, if we have a trial and you are convicted, Judge Johnson will zap you hard. She will sentence you at the upward levels and may stack the counts..." [F-4 Line 7(Trial Attorney's testimony under oath)]

FACT D: My offense level was 50. A 3 point reduction would have had no effect. "The pre-sentence investigation report reveals that Dickey's offense level, with Chapter Four enhancements was 50 (Doc at 14). With a three-level reduction it would have been 47. Either way a total offense level more that 43 is treated as an offense level 43. As noted in the pre-sentence investigation report 'the offense level would not change even if the court granted Dickey credit for acceptance of responsibility". [F-2 Bottom of Page, F-3 Top of Page] If the plea agreement was followed there was no other sentence except 135 years based upon my offense level and how the guidelines work. [PSR pg. 15 paragraph 97 & pg. 19 paragraph 128]

FACT E: My trial attorney sought the assistance of another attorney. This attorney believed the statutes and the Federal Guidelines are the same. Note his statements under oath: "QUESTION: So the guidelines and the statutes were the same? ANSWER: If I'm recalling correctly, yes". [F-10 at line 15-16] He also thought the guidelines in my case had a low end sentence of 10 years. [F-11 Line 10-13]

FACT F: My trial attorney believed the judge could have given me probation. [F-6 at line 12]

FACT G: I never received a copy of the Pre-Sentence Investigation Report. [F-7 at line 10-11]

FACT H: My trial attorney had only handled two federal cases before she handled mine. [D-3 Interrogatory #1]

FACT I: My trial attorney told me the plea agreement closed out state charges in Mississippi but she had never spoken to anyone from the state of Mississippi to see if there were any charges or what the charges might be. [D-5 Interrogatory #14]

FACT J: My trial attorney never spoke to the victims' mother, grandmother, or great-grandmother who had exculpatory evidence and were eyewitnesses. Note their statements: "Our children have been seen by a counselor and have told us that Joseph Dickey has never abused them nor has he ever taken nude pictures of them. Joseph Dickey is also in prison for events that DID NOT OCCUR. Our children only went on these camping trips 3 times.

How can Joseph Dickey remain in prison for events that never even occurred? His trial lawyer never contacted us at any point and we wanted to testify to these facts" [A-1 Victims' Mother and Grandmother] "Joseph Dickey's attorney lied to the entire family. We were told we would have a chance to speak at sentencing of Joseph Dickey. We drove over 2 hours and were present at his sentencing. His attorney told us that day she would let us speak but she did not. Prior to this date, his attorney NEVER contacted us although, she promised the family that she would. No one even told us about the sentencing date and we had to find out the date ourselves at the last minute before the trial. If his lawyer would have done her job and kept her promises like she told the family, she would have know that the victims (our children) were not even there 3 out 6 times there were supposed to have been abused". [A-6 Victims' Mother and Grandmother] "I have never spoken to Edwina Miller or any other attorney concerning the knowledge I have connected with the federal case against Joseph R Dickey" [A-2 Victims Great-Grandmother]

FACT K: A professional federal attorney made the following statements in regard to my trial attorney: "Because your attorney was in way over her head and instead of seeking assistance to deal with your case properly, she pushed you in front of a moving train". [F-1 Michael P Hanle, Federal Appeal Attorney]

CONSTITUTIONAL CLAIMS BASED UPON THE FACTS

CLAIM 1: TRIAL COUNSEL WAS INEFFECTIVE FOR MISUNDERSTANDING THE TERMS OF THE PLEA AGEEMENT SHE ADVISED ME TO ENTER

Based upon the evidence submitted with this petition, it is unquestionable that my trial attorney believed the plea agreement she advised me to enter was for a sentence of 25-30 years and this was the only possibility to avoid a 135 year sentence. However, it is also unquestionable that the terms of the plea agreement was for no other sentence except 135 years. Her advice for me to enter the plea agreement was based upon her profound ignorance concerning the legal terms of the agreement. This Honorable Court has held:

> "An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under the Strickland rule." [Hinton v Alabama, 134 S. Ct. 1081, (2014)]

CLAIM TWO: TRIAL COUNSEL WAS INEFFECTIVE FOR MISUNDERSTANDING THE FEDERAL SENTENCING GUIDELINES

The evidence shows my trial attorney had absolutely zero understanding of the Federal Sentencing Guidelines and had only handled two federal cases before she represented me. She thought all Federal Guideline calculations "capped" at a level 43 because the sentencing table only went to a level 43. She believed if I would have been granted a 3 level reduction for acceptance of responsibility, my offense level would have been lowered to a level 40. She sought the assistance of a co-counsel but his understanding of the guidelines was just as egregious. The co-counsel testified under oath that he thought the statutes and the guidelines were the same and my guideline sentence, "on the low end", would be 10 years. Both trial counsel and her co-counsel believed this was the benefit of me entering a plea agreement for a sentence "within the guidelines" with the Government's promise to not ask for an "upward departure". My offense level was 50, which under the circumstances of this case called for no other sentence except 135 years. Courts have recognized and held that when a trial attorney completely misunderstands the Federal Sentencing Guidelines, that is ineffective assistance:

> A "complete lack of familiarly with the guidelines" is assistance that falls "well below the objective standard of reasonableness required by Strickland" [United States v Grammas, 376 F.3d 433, (5th Cir 2004)]
>
> "In order to provide necessary advice concerning whether to accept a plea offer, counsel is required to know the U.S. Sentencing Guidelines and relevant circuit precedent". [United States v Bui, 795 F.3d 363 (3rd Cir 2015)]

CLAIM THREE: TRIAL COUNSEL WAS INEFFECTIVE FOR NOT SPEAKING TO THE VICTIMS OR THEIR FAMILY

I know of no other case in which a defense counsel absolutely refused to speak to the victims of a crime when the victims are trying to tell the defense counsel that her client did not commit the crime. [A-5, A-6, A-7] There is nothing more that can be said on this issue because it is so egregious that I cannot find any caselaw addressing such an horrendous example of ineffective assistance of counsel. I am pro se and unskilled in the law but this seems to be so egregious it can be viewed as a constructive denial of counsel.

CLAIM FOUR: BRADY AND FRANKS VIOLATIONS

Based upon the evidence obtained from the FBI in 2020, it clearly shows there were exculpatory facts not revealed to my trial attorney (or she was ineffective for not obtaining them). These facts are documented in Appendix B and include: an eyewitness had told the FBI information which made at least three of the charges against me impossible; the FBI knew Edward Lee Thomas was lying; the FBI had run my name through their

central tracking computer and could not find any evidence against me; the FBI thought that the crimes Edward Thomas was accusing me of perhaps did not even happen or if they did happen they may have happened without my knowledge; and the Birmingham FBI office had closed their case on me because there was nothing to corroborate Edward's story. I was not aware of any of this information because it was not revealed. This violates the Brady rule. [Brady v Maryland, 373 U.S. 83 (1963); also see Kyles v Whitley 514 U.S. 419 (1995) (holding Brady disclosure rule also covers material known only to police investigators even if the prosecutor did not know about the evidence)]

In addition to all of these Brady violations, it is clear a rogue FBI agent used information which they knew was false and stale to obtain a search warrant for my house. This rogue agent relied on the testimony of Edward Thomas who they knew was providing false information. This agent also knew there was nothing to corroborate his story and the case in Birmingham had been closed. This was a willful act to mislead a judge and to get a search warrant for a "fishing expedition". My trial attorney was ineffective for not asking for a Franks Hearing [Franks v Delaware, 438 U.S. 154 (1978)] or objecting to the staleness of the information used to obtain a search warrant of my house. Edward's known false information was nearly 3 years old by the time the rogue FBI agent used it to get a search warrant.

CLAIM FIVE: PROSECUTORIAL MISCONDUCT

The prosecution in this case willfully ignored the victims and prosecuted me for crimes they knew did not happen. The victims' grandmother had clearly told the FBI her grandchildren were not present except for two or three times one summer. There was absolutely no evidence to support charging me with six counts of crossing state lines to abuse her grandchildren when it was impossible. Furthermore, the prosecutor willfully ignored the victims' mother at every stage of my criminal proceedings in violation of 18 U.S.C. 3771 (Crime Victim's Right Act). The prosecution also did not tell the victims' mother who Edward Lee Thomas was, what he had done to her children, nor the fact they were going to let Edward get away with all the crimes he did to her children because they had made a deal with him. The prosecution also never told the victims' mother anything about my plea deal. They never asked her if she was ok with me getting 135 years in prison while Edward Lee Thomas was set free. The reason they would not talk to her is because she was revealing information which destroyed their case against me.

All of these actions not only violates the Crime Victim's Right Act, it also goes against the United States Attorney's Manual and the American Bar Association Standards of Professional Conduct. These documents state that before entering into a non-prosecution agreement, prosecutors should consider factors that include: The person's relative culpability in connection with the offense and the person's history with respect to criminal activity. [2008 ABA Standards "Factors prosecutors should consider in deciding to offer limits on criminal liability and/or immunity"] Edward Lee Thomas is in a picture sexually abusing my 2 year old great nephew in this case. He sexually abused at least 5 children yet he only went to prison in the State of Mississippi and only served a mere 8 years for the anal rape of two boys ages 5 and 7 years old. The decision to cut him a deal and ignore the victims in this case is absolutely astounding and goes against the entire purpose of our laws and justice system. The prosecution was so focused on a "Win At All Cost" concerning me that they ignored the victims, the FBI files, and an eyewitness. The prosecution let the real monster go free only to sexually abuse two more babies in 2019-20. This can only be described as nothing else except horrendous prosecutorial misconduct. Because of this misconduct and wanton actions, two more infants were sexually abused by Edward Thomas and I am in prison for life yet I am innocent.

CLAIM SIX: PLEA WAS NOT KNOWINGLY OR INTELLIGENTLY MADE AND I SUFFERED PREJUDICE

The attached evidence and facts established in this petition clearly show there is no way my plea was knowingly and intelligently made. I entered a plea of guilty based upon a plea agreement. The issue is not whether or not the judge had to follow this agreement, it is what were the terms of the agreement if it was followed. I had no idea what the terms in the plea agreement actually meant. There is no question concerning this issue because my own trial attorney had no idea what the terms actually meant. Even the co-counsel she sought out for help had no idea. Therefore, if two attorneys did not understand the terms and value of the promises within the agreement, there is no way I did. The legal standard for showing prejudice in the context of a guilty plea is the following:

> "When a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. [Lee v. United States, 582 U.S. 357 (2017)]

> "Additionally,, to demonstrate prejudice and obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances". [Padilla v Kentucky, 559 U.S. 356 (2010)]

Common sense should prove prejudice in this case. I had three options when I was charged with these crimes: 1) Go to trial, possibly be found guilty on all the charges and receive a maximum of 135 years; possibly be found innocent of some of the charges; or possibly be acquitted of all of the charges. But in all of these scenarios I would retain all my constitutional rights. 2) Plead guilty to all of the charges without a plea agreement and retain many of my rights but possibly get 135 years. 3) Enter the plea agreement my trial attorney recommended which contained a waiver for most all of my rights and guaranteed 135 years if the agreement was accepted and followed. Common sense tells any factfinder no one would choose to enter such an absurd agreement if they had known the agreement was for a guaranteed 135 year sentence if it was followed. The only way to get less than 135 years was if the judge DID NOT follow the terms of the plea agreement. Who on Earth would knowingly give away all their rights in a plea agreement then hope the judge would not follow the very agreement which was entered?

The Second Circuit has faced a situation just like this case presents and has held: "The most significant fact for Johnson at his plea hearing was that life imprisonment was the certain consequence of pleading guilty. By pleading guilty, he was effectively sentencing himself to spend the rest of his life in prison yet this fact was not conspicuous at his plea hearing, which included discussion of many other possible (though actually impossible) sentences and robotic reference to (inapplicable) calculations and judicial discretion" The court also expressed wonderment that "Johnson in the midst of trial preparation would knowingly elect to plead when a plea could yield no discount from the worst that could happen at trial". [United States v Johnson, 850 F.3d 515 (2nd Cir 2017)] My case is the exact same situation. By entering a guilty plea pursuant to the terms of the plea agreement my trial attorney advised me to enter, I was sentencing myself to life in prison. I would have never knowingly done this.

CLAIM SEVEN: EIGHTH AMENDMENT VIOLATION (ACTUAL INNOCENCE)?

This Honorable Court has never resolved the issue if incarcerating someone who is actually innocent violates the United State Constitution's prohibition against cruel and unusual punishment. This case presents an opportunity for this court to address this issue. Would it violate the United States Constitution to keep me in prison for the rest of my life for crimes I not only did not commit but many crimes which did not even happen?

CONCLUSION AND PRAYER FOR RELIEF

Based upon the evidence and arguments I have submitted in this petition, it is clear I meet the criteria outlined in 2255(h)(1) for filling a successive habeas petition. However, 2244(b)(1) is being applied to me even though I am a federal prisoner. Because of this I have absolutely no way to seek habeas relief for a fundamental miscarriage of justice unless this Honorable Court invokes its original jurisdiction under 2241(a). Therefore, I am praying upon this Honorable Court for the following relief:

1. Invoke this Court's Jurisdiction and GRANT me habeas relief in this case by vacating my conviction and sentence based upon the constitutional violations I have proven in this petition and the fact I am actually/factually innocent.
2. GRANT me any and all other relief this Court deems appropriate in this case based upon the circumstances shown in this petition.

Respectfully Submitted,

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Additional material from this filing is available in the Clerk's Office.