

*In re* CHARLES TIMOTHY )  
ERICKSON, )  
 )  
Petitioner, )  
v. ) Case No. WD\_\_\_\_\_  
 )  
REBECCA EHLERS, )  
Warden, )  
Boonville Correctional )  
Center, )  
 )  
Respondent. )

Pursuant to Rules 84.24 and 91, section 532.430, RSMo Supp. 2020, and article I, section 12 of the Missouri Constitution, Petitioner Charles Timothy Erickson requests a writ of habeas corpus, granting him relief from a 25-year conviction that was obtained through the violation of rights guaranteed by the United States and Missouri constitutions, which resulted in the imprisonment of an innocent person.

Since 2004, when police and prosecutors exploited Charles' vulnerabilities to coerce a constitutionally deficient guilty plea by violating his rights, Charles has been in the custody of the Missouri Department of Corrections. He is currently detained at the Boonville Correctional Center, located at 1216 E. Morgan Street in Boonville, Missouri 65233, under the

authority of its warden, Rebecca Ehlers. Charles is sixteen years into his twenty-five year total sentence (comprised of two fifteen-year sentences served concurrently, and one ten-year sentence served consecutively). His Department of Corrections identification number is 1138775.

## **II. OTHER PETITIONS FOR RELIEF**

Charles has not made any petition for relief to a higher court. His only other petition for relief was denied by the Pike County Circuit Court on April 29, 2019. A copy of the Pike County court's order is attached as Exhibit 1.

## **III. ATTACHMENTS**

Pursuant to Western District Local Rule 20, a copy of the State's Response to Show Cause Order filed in response to Charles' petition in the Pike County Circuit Court is attached as Exhibit 2.

When the Boone County Circuit Court sentenced Charles and placed him into the custody of the Missouri Department of Corrections, it did not create any formal order. Therefore, pursuant to Rule 91.04(b), a copy of the criminal docket containing a minute entry sentencing Charles and placing him under the custody of the Department of Corrections has been attached as Exhibit 3 to this petition.

## **IV. STATEMENT OF FACTS SHOWING THAT PETITIONER'S RESTRAINT IS ILLEGAL**

Each of the below facts is provided in greater detail in suggestions filed in support of this petition. Documentary evidence supporting each of the below facts is also identified by and submitted with those suggestions. Therefore, each of the below statements is supported by a citation to the suggestions.

### CLAIM NO. 1: CHARLES ERICKSON IS INNOCENT

In 2004, Charles Erickson and his friend Ryan Ferguson were wrongfully arrested and prosecuted for the murder of Kent Heitholt.

That prosecution was based on a tremendously weak case. No physical evidence collected from the scene of the crime—not the fingerprints, the DNA, or the bloody footprints—matched either Charles or Ryan. (Suggestions Supp. Pet’n 40-41.) And the only person to witness the suspects at the scene of the murder affirmatively excluded both Charles and Ryan. (*Id.* at 30, 43, 97.)

So police and prosecutors cheated. During Ryan’s trial, they withheld exculpatory evidence. (*Id.* at 34-37, 42-43.) *Ferguson v. Dormire*, 413 S.W.3d 40, 72-73 (Mo. App. 2013). They relied heavily on the testimony of a liar. (Suggestions Supp. Pet’n 34-37, 42-43, 45-47.) *Ferguson*, 413 S.W.3d at 61-63. And they coerced Charles into pleading guilty and testifying against his friend.

At the time of Charles’ arrest, he was a vulnerable youth susceptible to coercive pressure. New evidence shows that Charles’s own experiences, youth, cognitive dysfunction, and psychological disorders—including a tendency toward obsessive thought—made him susceptible to confessing and pleading guilty to crimes he did not commit. (*Id.* at 15-17.) Furthermore, new evidence demonstrates that Charles’ binge drinking and drug use on the same night as Mr. Heitholt’s murder caused him to black out, lose all memory of that night, and left him susceptible to piecing together a false memory based on suggestions from others and things that he had read, seen, or heard. (*Id.* at 55.) In fact, these vulnerabilities had already caused Charles to

groundlessly suspect his own participation in the Heitholt murder. (*Id.* at 19-20, 54-56.) He had even begun constructing a false memory based on what he read in newspapers where he placed a greater portion of the blame for the murder on Ryan, (*id.* at 21), and tested those theories on friends, (*id.* at 21).

Police and prosecutors exploited each of Charles' vulnerabilities, imposing unconstitutional coercive pressure to extract his false confession, guilty plea, and consequential testimony against Ryan. They began with a day-long interrogation where police pushed, deceived, threatened, and led Charles into providing them a tale of murder, where he and Ryan went to rob Kent Heitholt, but ultimately killed him. (*Id.* at 22-25, 31-32.) While Charles was in jail, prosecutors continued to apply coercive pressure by providing him false or fabricated reports confirming his false memories. (*Id.* at 26-28.) They withheld evidence by never telling Charles that: witnesses saw him and Ryan leave the area of the murder almost an hour before it occurred, (*id.* at 30-31), witnesses who Charles had identified contradicted his false memories, (*id.* at 27), and the only witness who consistently claimed she could recognize the murder suspects affirmatively excluded both Charles and Ryan as suspects, (*id.* at 30). And throughout all of this, prosecutors maintained a threat of heavy punishment by making public statements about possibly seeking the death penalty for the Heitholt murder culprits. (*Id.* at 31.) Ultimately, Charles succumbed to the police and prosecutors' pressure and gave them what they sought, a false guilty plea and an agreement to testify against Ryan. (*Id.* at 32-33.)

Through their misconduct, police and prosecutors obtained convictions of both Charles and Ryan.

But Ryan is now a free man. Following a decade in prison, this Court vacated his convictions and ordered his release after it found that he was actually innocent and prosecutors had obtained his false conviction by violating his constitutional rights. *Ferguson*, 413 S.W.3d at 73-74.

Like Ryan, Charles is innocent and his turn for justice is long overdue. He has languished for sixteen years in prison where no physical evidence exists tying him to the crime. (Suggestions Supp. Pet'n 40-41.) His alleged collaborator has been exonerated. *Ferguson*, 413 S.W.3d at 73-74. New evidence shows that no eyewitness places Charles or Ryan at the site of the murder. (Suggestions Supp. Pet'n 35, 44-46.) And new evidence demonstrates that Charles' prior confessions are the unreliable product of a psychologically frail teenager, who after suffering an alcohol-induced blackout, constructed a false memory based on his own research and suspicions, the prodding and suggestions of the police and prosecutors, and reinforced through his trial work, (*id.* at 52-56).

For the foregoing reasons, this Court should find that there is new evidence establishing a reasonable probability that no reasonable juror would find Charles Erickson guilty and review the merits of his constitutional claims two, three, four, and five, discussed below in further detail.

**CLAIM NO. 2: CHARLES ERICKSON'S GUILTY PLEA IS CONSTITUTIONALLY UNACCEPTABLE BECAUSE IT WAS NOT VOLUNTARILY MADE**

New evidence demonstrates that Charles' guilty plea is constitutionally unacceptable because it was not voluntarily made.

As stated above, new evidence demonstrates that Charles was a vulnerable youth at the time of his arrest and guilty plea. A person's youth is always a factor to consider when determining the voluntariness of a guilty plea because young people do not cope well with the pressures of the criminal process, where a high number of false confessions are made by young people. (*Id.* at 63.) This made Charles susceptible to succumb, as he did, to the high-pressure coercive tactics police and prosecutors used, such as plying him with false evidence, withholding exculpatory evidence, and maximizing Charles' feelings of potential penalties. (*Id.* at 68-83.) Evidence of the effects of Charles' youth on his actions were apparent immediately after he was jailed and told another inmate that he, like many other youths unable to cope with the prosecutorial pressures, had "confessed to the murder merely because 'he wanted to go home' and the police promised him he could go home after giving a statement, and he eventually took the plea agreement to 'get it over with.'" (*Id.* at 49-50.)

New evidence shows that Charles' psychological disorders made him unable to withstand the State's coercive pressure to plead guilty. Persons suffering from psychological disorders are highly vulnerable to psychological pressure from police and prosecutors. (*Id.* at 64-65.) Charles had a tendency toward obsessive thought—with a family history of Obsessive-Compulsive Disorder and being diagnosed with the disorder in 2005—when he was prosecuted for the Heitholt murder. (*Id.* at 16, 64-65.) This made Charles susceptible to succumb, as he did, to the psychologically coercive tactics police and prosecutors used, such as plying him false evidence, withholding

exculpatory evidence, and maximizing his fear of grave punishment. (*Id.* at 68-83.)

New evidence demonstrates that Charles' impeded cognitive function also made him unable to resist the police and prosecutor's coercive pressure. Juveniles with cognitive impairments are particularly susceptible to falsely confessing and pleading guilty when under pressure. (*Id.* at 66.) Charles had a diagnosed neurological impairment representing a "significant deficit" relative to his overall abilities when he was subjected to the police and prosecutor's coercive tactics. (*Id.* at 66-67.)

And new evidence demonstrates that Charles' blackout, after bingeing on drugs and alcohol the same night as Kent Heitholt's murder, made him susceptible to psychologically coercive tactics. When persons suffer from en bloc blackouts after alcohol binges, they have no memory of things that occur during that blackout. (*Id.* at 67.) Consequently, those individuals are susceptible to "creating" false memories after incorrect information is implanted. (*Id.* at 67.) Those persons can even be led to actually believe them to be true. (*See id.* at 67-68.) After Charles experienced an en bloc blackout the night of the Heitholt murder, and his confession and guilty plea were a product of his obsessive tendencies and the police and prosecutor's coercive tactics used to convince him that he was a murderer and should plead guilty. (*Id.* at 68-83.)

For the foregoing reasons, this Court should find that Charles Erickson's guilty plea was constitutionally unacceptable because it was involuntary and that he is, therefore, entitled to a writ of habeas corpus.

**CLAIM NO. 3: CHARLES ERICKSON'S GUILTY PLEA IS CONSTITUTIONALLY UNACCEPTABLE BECAUSE IT WAS NOT KNOWINGLY MADE**

New evidence demonstrates that Charles' guilty plea is constitutionally unacceptable because it was not knowingly made.

Charles' guilty plea was constitutionally defective because his trial counsel, Mark Kempton, failed to adequately investigate the case to provide Charles the information he required to knowingly plead. During the eight months Mr. Kempton represented Charles before his guilty plea, Mr. Kempton billed just over 2 hours per week on average, despite the immense amounts of discovery and investigation this case should have sought and received. (*Id.* at 87.) And Mr. Kempton never used those two hours per week to contact or interview witnesses to learn that the truth did not conform with Charles' coerced confessions. (*Id.* at 91-92.) He never sought to determine whether Charles suffered from any psychological conditions that could affect his recall of events. (*Id.* at 89-90.) And he made no effort to learn whether Charles' intoxication the same night as the murder could have affected his memory of that night. (*Id.* at 90-91.) Nevertheless, a reasonable investigation would have allowed Mr. Kempton to learn all these things. (*Id.* at 93-98.)

Police and prosecutors also deprived Charles of his ability to knowingly plead guilty when they withheld important exculpatory evidence. Prior to Charles' guilty plea, prosecutors heard from two people that witnessed Charles and Ryan leave the area where the murder occurred almost an hour before it happened. (*Id.* at 101-2.) They learned that the only person to confidently identify the suspects witnessed at the scene had affirmatively excluded Charles and Ryan. (*Id.*) And they knew that one person Charles had



identified as an eyewitness had rejected Charles' account. (*Id.* at 102.) But police and prosecutors never made this exculpatory information available to Charles, impeding him from actually understanding the facts supporting their case.

Lastly, evidence shows that Charles' plea colloquy failed to establish that his guilty plea was knowingly offered. Plea colloquies must establish that a pleader possesses the required understanding of the law in relation to the facts. (*Id.* at 106.) This includes informing the pleader about the availability of converse jury instructions. (*Id.* at 107.) But the trial court never informed Charles that Missouri Approved Jury Instructions would have instructed potential jurors to disregard statements that jurors considered were not freely and voluntarily made. (*Id.*)

For the foregoing reasons, this Court should find that Charles Erickson's guilty plea was constitutionally unacceptable because it was not knowingly entered and that he is, therefore, entitled to a writ of habeas corpus.

**CLAIM NO. 4: CHARLES ERICKSON'S CONVICTION IS CONSTITUTIONALLY  
UNACCEPTABLE AFTER POLICE AND PROSECUTORS WITHHELD  
EXCULPATORY EVIDENCE**

New evidence demonstrates that police and prosecutors violated Charles's constitutional rights by withholding important exculpatory evidence prior to obtaining his confession. As explained above, prosecutors had significant exculpatory evidence on hand when Charles pleaded guilty—including an eyewitness statement effectively excluding Charles as one of the

observed suspects. (*Id.* at 109-10.) But they never disclosed that information to Charles, as was their constitutional duty. (*Id.*)

For the foregoing reasons, this Court should find that police and prosecutors violated Charles Erickson's constitutional rights by withholding exculpatory evidence prior to his guilty plea and that he is, therefore, entitled to a writ of habeas corpus.

**CLAIM NO. 5: CHARLES ERICKSON'S CONVICTION IS CONSTITUTIONALLY UNACCEPTABLE AFTER POLICE AND PROSECUTORS FABRICATED EVIDENCE TO SECURE HIS GUILTY PLEA**

New evidence demonstrates that police and prosecutors violated Charles' Due Process rights by fabricating evidence to secure his guilty plea. As explained above, police and prosecutors plied Charles with reports and information that they knew, or should have known, was false or fabricated. (*Id.* at 113-15.) These actions shock the conscience as they worked to deceive an innocent person, vulnerable because of his personal experiences and weaknesses, concerning his participation in a heinous crime. (*Id.* at 114.)

For the foregoing reasons, this Court should find that police and prosecutors violated Charles Erickson's constitutional rights by fabricating evidence to secure his guilty plea and that Charles is, therefore, entitled to a writ of habeas corpus.

**CLAIM NO. 6: CHARLES ERICKSON IS ENTITLED TO A WRIT OF HABEAS CORPUS BECAUSE CLEAR AND CONVINCING EVIDENCE DEMONSTRATES HIS ACTUAL INNOCENCE**

Because new clear and convincing evidence demonstrates that Charles is innocent, he is entitled to a writ of habeas corpus. The Missouri Constitution entitles prisoners to habeas corpus relief under a freestanding

claim of actual innocence where new evidence clearly and convincingly undermines confidence in the correctness of a conviction. *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 546 (Mo. banc 2003). New evidence demonstrating Charles' innocence has been detailed above. This evidence is so significant that it clearly and convincingly undermines confidence in the correctness of his conviction.

For the foregoing reasons, this Court should find that new clear and convincing evidence demonstrates Charles' innocence and make him entitled to a writ of habeas corpus.

WHEREFORE, Petitioner Charles Timothy Erickson respectfully prays that this Court:

- A. Grant a writ of habeas corpus discharging him from custody based upon his illegal confinement and the record before the Court; or
- B. In the alternative and in accordance with Rule 91.05, issue an order requiring Respondent to answer his Petition for Writ of Habeas Corpus and "show cause why the writ should not be granted";
- C. Allow his counsel reasonable time to respond to Respondent's answer;
- D. Expand the record to include the exhibits identified by and submitted with suggestions filed in support of this petition;
- E. Conduct an evidentiary hearing on the allegations of Charles' petition, including his claim of actual innocence; and,
- F. Grant such further relief this Court deems consistent with the ends of justice.

Respectfully submitted,

WITHERS, BRANT, IGOE & MULLENNIX, P.C.

Dated: June 23, 2020

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was sent to Assistant Attorney General Michael J. Spillane, who agreed to accept service on behalf of Respondent Rebecca Ehlers, via electronic mail on June 23, 2020, using the following information:

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