

ORIGINAL

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 31A01-1703-PC-547



Lawrence Nunley, #198710

Appellant/Petitioner,

vs.

State of Indiana,

Appellee/Defendant.

Appeal from the Superior Court
Of Harrison County

Trial Cause: 31D01-1009-PC-011

The Honorable
Joseph Claypool
Presiding Judge

APPELLANT'S APPENDIX
VOLUME II

Lawrence E. Nunley
DOC #198710
Wabash Valley Corr. Fac.
P.O. BOX 1111
Carlisle, Indiana 47838

CASE SUMMARY
CASE NO. 31D01-1009-PC-000011

LAWRENCE NUNLEY

v.

State of Indiana

§
§
§
§

Location: **Harrison Superior Court**
 Judicial Officer: **Claypool, Joseph L**
 Filed on: **09/27/2010**
 Case Number History:

CASE INFORMATION

File Date 09/27/2010

Filed Against State of Indiana

Case Type: PC - Post Conviction Relief Petition

Cause of Action
 Post Conviction Relief - Criminal Action

Description/Remedy
 Claim

Case Status: 05/21/2013 Decided

Related Cases
 31D01-0805-FA-000389 (Consolidated)

Case Flags: Appeal Received

Statistical Closures
 05/21/2013 Other

DATE

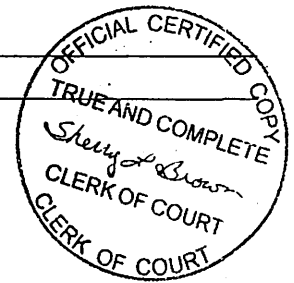
CASE ASSIGNMENT

Current Case Assignment

Case Number: 31D01-1009-PC-000011
 Court: Harrison Superior Court
 Date Assigned: 04/06/2017
 Judicial Officer: Claypool, Joseph L

Previous Case Assignments

Case Number: 31D01-1009-PC-000011
 Court: Harrison Superior Court
 Date Assigned: 09/27/2010
 Judicial Officer: Davis, Roger D
 Reason: Change of Judge



PARTY INFORMATION

Petitioner

NUNLEY, LAWRENCE
 Wabash Valley Corr. Facility
 PO Box 1111
 Carlisle, IN 47838

Attorneys

Sauer, James Michael
 Retained
 317-232-2475(W)
 DEPUTY STATE PUBLIC DEFENDER
 ONE N CAPITOL, SUITE 800
 INDIANAPOLIS, IN 46204-2026
 msauer@pdo.in.gov

Respondent

State of Indiana

DATE

EVENTS & ORDERS OF THE COURT

INDEX

09/27/2010	Cause of Action Post Conviction Relief - Criminal Action () Filed Against State of Indiana Action Type Claim	
09/27/2010	Case Opened as a New Filing	
09/27/2010	Petition for Post-Conviction Relief Filed	

CASE SUMMARY

CASE NO. 31D01-1009-PC-000011






	File Stamp: 09/24/2010 Filed By: Petitioner NUNLEY, LAWRENCE <i>Affidavit of Indigency</i>
09/28/2010	Order Granting Order Signed: 09/28/2010 Movant: Petitioner NUNLEY, LAWRENCE <i>Order entered Appointing State Public Defender. Clerk to notify parties. kh/0928</i>
10/12/2010	Appearance Filed File Stamp: 10/12/2010 For Party: Petitioner NUNLEY, LAWRENCE
10/12/2010	Notice Issued <i>of Present Inability to Investigate</i>
10/14/2010	Answer Filed File Stamp: 10/14/2010
10/19/2010	Order Granting Order Signed: 10/14/2010 <i>Order granting verified notice of present inability to investigate entered. Clerk to notify parties.</i>
06/24/2013	Notice Filed File Stamp: 06/24/2013 Filed By: Public Defender Sauer, James Michael <i>of Withdrawal of Appearance and Certification</i>
06/27/2013	Administrative Event <i>Order Setting Trial and Order to Transport entered. Trial is set for 02/02/14 at 9:00 a.m. on the petitioner's Motion for Post Conviction Relief entered. Clerk to notify parties.</i>
06/28/2013	Hearing Scheduling Activity <i>Hearing scheduled for 01/02/2014 at 9:00 AM.</i>
09/12/2013	Order Denying Order Signed: 09/12/2013 <i>Order denying petitioner's motion for indefinite extension if time entered. Petitioner's request to continue the current trial date set for 01/02/14 at 9:00 a.m. is granted and matter is rescheduled to 07/17/14 at 1:00 p.m. Petitioner shall advise the Court about his progress regarding his ability to proceed to trail no later than March 31, 2014. Clerk to notify parties.</i>
09/12/2013	Hearing Scheduling Activity <i>Hearing originally scheduled on 01/02/2014 at 9:00 AM was rescheduled to 07/17/2014 at 1:00 PM. Reason: By Request.</i>
03/05/2014	Motion Filed File Stamp: 03/05/2014 Filed By: Petitioner NUNLEY, LAWRENCE <i>for Indefinite Extension of Time</i>
03/07/2014	Order Denying Order Signed: 03/05/2014 <i>Order denying petitioner's second motion for indefinite extension of time filed on 03/05/14 entered. The petitioner's defacto request to continue the current trial date set for 7/17/14 is granted and the matter is rescheduled to 07/17/15 at 9:00 a.m. The petitioner shall advise the Court about his progress regarding his ability to proceed to trial no later than 12/31/14. Clerk to notify parties.</i>
03/10/2014	RJO Entry Order Signed: 03/05/2014

Vol./Book 184


CASE SUMMARY


CASE NO. 31D01-1009-PC-000011


ORDER DENYING MOTION FOR INDEFINITE EXTENSION OF TIME. copies dist

- 07/17/2014 Hearing Scheduling Activity
Hearing originally scheduled on 07/17/2014 at 1:00 PM was rescheduled to 07/17/2015 at 9:00 AM. Reason: By Request.
- 03/09/2015 Administrative Event
File Stamp: 03/09/2015
Filed By: Petitioner NUNLEY, LAWRENCE
request for clarification
- 03/09/2015 Notice Filed
File Stamp: 03/09/2015
Filed By: Petitioner NUNLEY, LAWRENCE
notice of inability to proceed and request for additional time
- 05/18/2015 Hearing Scheduling Activity
Hearing originally scheduled on 07/17/2015 at 9:00 AM was rescheduled to 07/14/2016 at 9:00 AM. Reason: By Request.
- 01/07/2016 Notice Filed
File Stamp: 01/06/2016
Filed By: Petitioner NUNLEY, LAWRENCE
of Trial Readiness
- 01/14/2016 Motion Filed
File Stamp: 01/14/2016
Filed By: Petitioner NUNLEY, LAWRENCE
to Amend Post-Conviction; Motion for Specific Discovery; Request for Issuance of Subpoenas and Affidavit in Support
- 01/15/2016  Transport Order Entered
Order Signed: 01/14/2016
Order To Transport entered. Defendant to be transported from Wabash Valley Correctional Facility to the HCJ on or before 7/14/16 at 9:00 a.m. for a hearing and returned to WVCF after completion of hearing. Clerk to notify parties.
- 01/25/2016  Answer Filed
File Stamp: 01/22/2016
Filed By: Respondent State of Indiana
to Amended Complaint
- 01/25/2016  Response Filed
File Stamp: 01/22/2016
Filed By: Respondent State of Indiana
to Petitioner's Motion for Specific Discovery
- 02/01/2016  Motion Filed
File Stamp: 02/01/2016
Filed By: Petitioner NUNLEY, LAWRENCE
Request to have Original Record or Proceedings Removed from the Custody of the Clerk of the Supreme Court and Court of Appeals of Indiana, Submitted to the Trial Court and Received into Evidence as an Exhibit in Post- Conviction Relief Proceedings
- 03/07/2016  Motion Filed
File Stamp: 03/07/2016
Filed By: Petitioner NUNLEY, LAWRENCE
for Status Update


CASE SUMMARY**CASE NO. 31D01-1009-PC-000011**

03/11/2016  Administrative Event
Petition for Record of Proceedings entered. Clerk to notify parties.

03/11/2016  Administrative Event
Court's Response to Petitioner's Request for Issuance of Subpoenas entered. Clerk to notify parties.


03/11/2016  Administrative Event
Order on Petitioner's Motion for Specific Discovery entered. Clerk to notify parties.

03/11/2016 Administrative Event
All pending motions, petitions and requests filed with this court have been ruled upon. Clerk to notify parties.

03/14/2016  Administrative Event
Order on Petitioner's Motion to Amend Petition for Post-Conviction Relief entered. Clerk to notify parties.

04/21/2016 Administrative Event
Court has reviewed defendant's request for status update and documents in question in defendant's request were entered on 03/11/16 and defendant should have received copies thereafter. Clerk directed to notify defendant by CCS.

04/22/2016 Clerk Administrative Event
copy of CCS mailed to defendant per court instructions.

04/27/2016  Request for Discovery Filed
File Stamp: 04/27/2016
Filed By: Petitioner NUNLEY, LAWRENCE
Second Request for Specific Discovery

04/29/2016 Response Filed
File Stamp: 04/28/2016
Filed By: Respondent State of Indiana
to Second Request for Specific Discovery

05/02/2016 Notice Filed
File Stamp: 04/29/2016
Filed By: Petitioner NUNLEY, LAWRENCE
that Petitioner is not Receiving Notification of Orders

07/14/2016 **Hearing (9:00 AM) (Judicial Officer: Claypool, Joseph L)**
Events: 06/27/2013 Administrative Event
POST CONVICTION RELIEF
01/02/2014 Continued to 07/17/2014 - By Request - NUNLEY, LAWRENCE
07/17/2014 Continued to 07/17/2015 - By Request - NUNLEY, LAWRENCE
07/17/2015 Continued to 07/14/2016 - By Request - NUNLEY, LAWRENCE
Commenced and concluded


07/14/2016 Hearing Journal Entry (Judicial Officer: Claypool, Joseph L)
Parties appear. Hearing held. Hearing set for 1/12/17 at 9:00 a.m. Transport Order entered. (REC) rjp.


07/29/2016 Hearing Scheduling Activity
Hearing scheduled for 01/12/2017 at 9:00 AM.


08/15/2016 Clerk Administrative Event
Defendant files Offer of Proof.


CASE SUMMARY


CASE NO. 31D01-1009-PC-000011


08/22/2016  Motion to Strike Filed
File Stamp: 08/22/2016
Filed By: Respondent State of Indiana


08/31/2016  Clerk Administrative Event
Objections to Requests for Admission filed by Susan Schultz, prior attorney for Petitioner

09/01/2016  Administrative Event
Order quashing requests for admission entered. Clerk to notify parties.


09/19/2016  Motion Filed
File Stamp: 09/19/2016
Filed By: Petitioner NUNLEY, LAWRENCE
to Reconsider Previous Ruling and Clarify Inconsistent Rulings by this Honorable Court


11/14/2016  Objection Filed
File Stamp: 11/14/2016
Filed By: Petitioner NUNLEY, LAWRENCE
Objection to Interrogatories

11/15/2016  Motion Filed
File Stamp: 11/15/2016
Filed By: Respondent State of Indiana
Motion to Strike


11/16/2016  Order Issued
Order Signed: 11/16/2016
Order denying petitioner's motion in part and granting in part entered. The Court finds the petitioner's motion is denied as to this Courts order quashing requests for admission dated 09/01/16 therefore, Ms. Susan Schultz has no obligation to respond to requests for admissions. The Court further finds that the def. may refer to I.C. 35-37-5-2 in his request to issue subpoenas, which will be considered by this Court upon proper submission. Copy to parties electronically.


11/17/2016 Automated Paper Notice Issued to Parties
Order Issued ---- 11/16/2016 : LAWRENCE NUNLEY

11/28/2016  Administrative Event
request for blank subpoena by defendant

11/29/2016  Order Issued
Order Signed: 11/27/2016
Order quashing interrogatories entered. Copy to parties electronically; clerk to notify Susan Schultz.

11/30/2016 Automated E:Notice Issued to Parties
Order Issued ---- 11/29/2016 : James Michael Sauer


12/13/2016  Motion Filed
File Stamp: 12/12/2016
Filed By: Petitioner NUNLEY, LAWRENCE
Request for Issuance of Subpoenas to Susan Schultz and Matthew McGovern

12/13/2016  Subpoena/Summons Issued
File Stamp: 12/12/2016

CHRONOLOGICAL CASE SUMMARY


CASE SUMMARY


CASE NO. 31D01-1009-PC-000011


- 12/14/2016  Service Returned Served
Date Served: 12/13/2016
Subpoena served to Susan Shultz


- 01/12/2017 **Hearing (9:00 AM)** (Judicial Officer: Claypool, Joseph L)
HEARING ON PCR
Commenced and concluded

- 01/12/2017 **Hearing Journal Entry** (Judicial Officer: Claypool, Joseph L)
State appears, by J. Otto Schalk. Defendant appears, pro se. Hearing held on def. motion for PCR. Testimony heard. State renews motion for summary disposition. Def. requests to file proposed memorandum of findings of facts and conclusions of law. Granted. Def. has 30 days to do so. (REC) srt


- 02/07/2017  Proposed Findings of Fact and Conclusions
Submitted: 02/03/2017
Filed By: Petitioner NUNLEY, LAWRENCE
by certified mail on Feb. 3, 2017

- 03/02/2017  Findings of Fact, Conclusions and Order
Order Signed: 03/02/2017
Order denying petitioner's petition for post-conviction relief entered. Clerk to notify parties.

- 03/03/2017  RJO Entry
Order Signed: 03/02/2017
FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING POST CONVICTION

- 03/15/2017  Motion Filed
File Stamp: 03/15/2017
Filed By: Petitioner NUNLEY, LAWRENCE
to Proceed on Appeal 'in forma pauperis'

- 03/20/2017 **Notice of Appeal Received**
File Stamp: 03/20/2017
Notice filed with Court of Appeals 3-13-17 under Cause No. 31A01-1703-PC-547

- 03/27/2017  Order Granting
Order Signed: 03/23/2017
Order granting petitioner's motion to proceed on appeal in forma pauperis entered. Clerk to notify parties.

- 04/06/2017 **Notice of Completion of Clerk's Record**
copy to parties

STATE OF INDIANA
COUNTY OF HARRISON
LAWRENCE E. NUNLEY

FILED)
2010 SEP 24 PM 12:07)

IN THE SUPERIOR COURT
OF HARRISON COUNTY

Petitioner, *Sherry R. Brown*)

-v-

CLERK OF HARRISON COUNTY)

CAUSE NO. 31D01-1009-PC-11
(Supplied by the Clerk)

STATE OF INDIANA,)
Respondent.)

PETITION FOR POST CONVICTION RELIEF

1. Place of detention, if detained: WABASH VALLEY CORRECTIONAL FACILITY. P.O. Box 1111 Carlisle, In. 47838.
2. Name and location of court which, and name of judge who, imposed sentence: Harrison Co. Superior Court, 1445 Gardner Lane Corydon In, 47712. Judge Roger D. Davis
3. The case number and the offense or offenses for which sentence was imposed: Cause No. 31D01-0805-FA-389. Count 1- Child molesting, a class A felony. Count 2- Child molesting, a class A felony. Count 3- Child molesting, a class A felony. Count 4- Child molesting, a class C felony. Count 5- Dissemination of matter harmful to minors, a class D felony.
4. The date upon which sentence was imposed and the terms of the sentence:
Jan. 15, 2009. Count 1-35 years. Count 2-35 years. Count 3-35 years. Count 4-4yearsand 8 months. Count 5-21 months. Count 1, 2, 4, and 5 to be served consecutive. Count 3 to be served concurrent with counts 1,2,4,5. All time to be served, -0- time suspended.
5. Was the finding of guilty made?
() After a plea of guilty? OR
(X) After a plea of not guilty?
6. Did you appeal from the judgment of conviction?
(X) Yes () No
7. If you answered "yes" to (6), list:

- (a) The name of the court to which you appealed: COURT OF APPEALS OF INDIANA
- (b) The result in such court and the date of such results: Nov. 16, 2009. The Court of Appeals reversed in part and affirmed in part, Counts 3 and 4 were reversed.

8. State concisely all the grounds known to you for vacating, setting aside or correcting your conviction and sentence. (See Rule PC 1, Sec. 1a)

- (a) Ineffective assistance of trial counsel
- (b) Inadmissible evidence was used to convict
- (c) Prosecution delayed in providing evidence

9. State concisely and in the same order the facts which support each of the Grounds set forth in (8).

- (a) Defendant was denied his right to effective assistance of trial counsel in violation to the fifth, sixth, and fourteenth amendments of the constitution, and article one, sections twelve, thirteen, and twenty three of the Indiana constitution. Trial counsel failed to call any witnesses for the defense. During trial defense counsel failed to request and admonition or move for a mistrial, but instead requested and instruction that defense had evidence that A.Y. had made a false report to police on another occasion. The trial court instead instructed the jury on credibility which did nothing to bring this crucial issue before the jury. The state's case against Mr. Nunley was based in it's entirety on credibility and the defense counsel's failure to make further objections or move for a mistrial at this point waived Mr. Nunley's argument thereby putting him in a position of grave peril. The defense counsel also chose not to introduce information about Mr. Nunley's past relationship with Tonya Caves which would have provided the jury with a possible motive for destroying Mr. Nunley's property, thereby establishing a motive to fabricate the alleged molestation. The relationship between Mr. Nunley and Tonya Caves also gave Richard Caves motive to fabricate his testimony.

Defense counsel chose not to present testimony as to the reason Tonya and Richard Caves actually brought A.Y. to Mr. Nunley's home in the first place because it contained information that involved drug use. Nunley only agreed to watch A.Y. for a short period of time while Tonya and Richard went to purchase methamphetamine. By choosing not to present this information the jury was left with only one story. One which was fabricated.

- (b) On November 16, 2009 The Indiana Court of Appeals determined that the statements made by A.Y. at the Comfort House lacked sufficient indicia of reliability and should not have been admitted via video tape or witness testimony. For this reason, since the video, and the items related to the video (i.e.) the drawings made by A.Y., the testimony of Mrs. Lloyd Black, and officer Wibbles should not have been presented to the jury. Since the state's case consisted almost entirely in presenting this video, and such emphasis was placed on the video, drawings, and testimony concerning the video, the convictions obtained using the video should be vacated and remanded for a new trial.
- (c) Evidence that Richard Caves was arrested and convicted of false informing to police in Harrison County only a short time before his testimony would have certainly impeached his testimony. The prosecution had this evidence as well as evidence of Tonya Caves' arrest and conviction of check fraud prior to trial but failed to give this information to the defense until two days after they had finished testifying. This delay denied Mr. Nunley opportunity to effectively impeach two crucial witnesses against him and thereby denied him his right to a defense afforded him by the constitution.

10. Prior to this petition, have you filed with respect to this conviction:

- (a) Any petition for post conviction relief pursuant to Rule PC 1 or PC 2?

() Yes (X) No

(b) Any petitions for habeas corpus in state or federal courts?

() Yes (X) No

(c) Any petitions in the United States Supreme Court for certiorari?

() Yes (X) No

(d) Any other petitions, motions or applications in this or any other court?

() Yes (X) No

11. If you answered "yes" to any part of (10), list with respect to each petition, motion or application:

12. Has any ground set forth in (8) been previously presented to this or another court, state, or federal, in any petition, motion, or application, which you have filed?

() Yes (X) No

13. If you answered "yes" to (12), identify:

14. Did an attorney represent you at any time during the course of:

(a) Your preliminary hearing?

() Yes (X) No

(b) Your arraignment and plea?

() Yes (X) No

(c) Your trial, if any?

(X) Yes () No

(d) Your sentencing?

(X) Yes () No

(e) Your appeal, if any, from the judgment of conviction or the imposition of sentence?

(X) Yes () No

(f) Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes () No

15. If you answered "yes" to one or more parts of (14), list:

(a) The name and address of each attorney who represented you:

Ms. Susan Schultz. 127 E. Chestnut St. Corydon In, 47112

Mr. Mathew Jon McGovern. 54444 East Indiana St. # 375 Evansville In, 47715

(b) The proceedings at which each such attorney represented you:

Ms. Schultz represented at trial and sentencing. Mr. McGovern on direct appeal

(c) Was said attorney:

Appointed by the court? OR

Of your own choosing?

16. Have you completed service of the challenged sentence?

Yes No

17. Have you retained an attorney to represent you in this proceeding?

Yes No

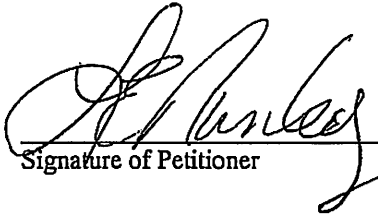
18. If you are without sufficient funds to employ counsel and are incarcerated in the Indiana Department of Correction, the Public Defender may represent you. If you check "NO" you lose the right to representation by the State Public Defender for the duration of this proceeding, including any appeal therefrom.

(a) Do you wish to have the Public Defender represent you?

Yes () No

(b) If yes, have you completed the Affidavit of Indigence attached to this form stating your salary, if any, amount of savings, and all property owned by you?

Yes () No

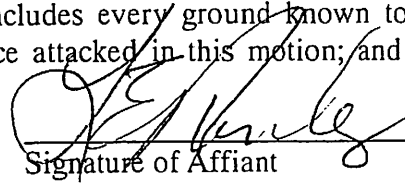


Signature of Petitioner

AFFIRMATION

State of Indiana)
) SS:
County of Sullivan)

I, Lawrence Nunley, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that the matters and allegations therein set forth are true.



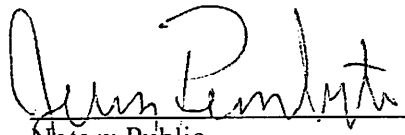
Signature of Affiant

State of Indiana)
) SS:
County of Sullivan)

Subscribed and sworn to before me, a Notary Public for the State of Indiana, this 27 day of Aug, 2000.

My Commission Expires:

2 / 16 / 2017
Month Day Year
Sullivan
County of Residence

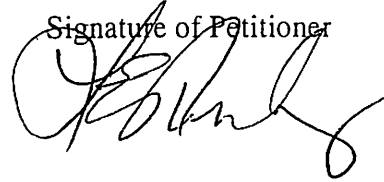


Notary Public
Pemberton
Name Printed

AFFIDAVIT OF INDIGENCE
(See instructions page 1 of this form)

I am currently incarcerated at Wabash Correctional Facility and have been continuously confined since May 28th,2008. I have not been meaningfully employed since May 28th,2008.I do not own money nor the means of support. I do not own property,stocks,vehicles,or anything of value.

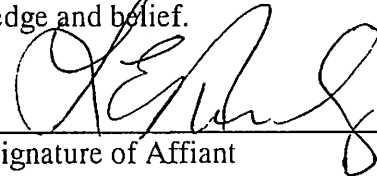
Signature of Petitioner



State of Indiana)
) SS:
County of Sullivan)

I, Lawrence Nunley, being first sworn upon my oath and under the penalties for perjury, depose and say that I have subscribed to the foregoing affidavit; that I know the contents thereof; and that the matters therein set forth are true and correct to the best of my knowledge and belief.

Signature of Affiant



STATE OF INDIANA
IN THE HARRISON SUPERIOR COURT

LAWRENCE E. NUNLEY

VS.

STATE OF INDIANA

CAUSE NO. 31D01-1009-PC-011

ORDER APPOINTING
STATE PUBLIC DEFENDER

Comes now the defendant, pro se, and files Request for Assistance of Counsel. The Court, after being duly advised, now finds that the State Public Defender should be appointed to represent the defendant in this cause.

IT IS THEREFORE ORDERED that the State Public Defender is appointed to represent the defendant in this cause. The Clerk is directed to notify all parties.

So ORDERED this 28 day of September, 2010.



HON. ROGER D. DAVIS, JUDGE
HARRISON SUPERIOR COURT

cc:

Prosecuting Attorney
Defendant
Office of State Public Defender

APPEARANCE FORM (POST-CONVICTION RELIEF)

Petitioner

FILED

Case Number: PCR Cause No. 31D01-1009-PC-11

2010 OCT 12 PM 2:37

(File stamp)
(To be supplied by Clerk at the time of filing)

Sheryl Brown
CLERK HARRISON COUNTY
SUPERIOR COURT

// Check if *Pro Se*. In the event the petitioner decides to represent himself or herself, complete this form listing address and other service information in number 3.

1. Name of Petitioner(s): LAWRENCE E. NUNLEY
[See Administrative Rule 1(B)(4) for multiple charges or defendants]

2. Case Type of proceeding: PC
[See Administrative Rule 8(B)(3)]

3. Post-Conviction Relief Attorney information (as applicable):

Name:	<u>J. Michael Sauer</u>	Attorney No. <u>13360-98</u>
Address:	<u>State Public Defender's Office</u>	Phone: <u>(317) 232-2475</u>
	<u>One North Capitol, Suite 800</u>	FAX: <u>(317) 232-2307</u>
	<u>Indianapolis, IN 46204-2026</u>	Computer Address: <u>N/A</u>

4. Will counsel accept service by FAX: Yes X No _____

5. Additional information required by state or local rule: _____

Authority: Pursuant to Criminal Rule 2.1(B), this form shall be filed at the time a post-conviction relief proceeding is commenced. In emergencies, the requested information shall be supplied when it becomes available. Parties shall advise the court of a change in information previously provided to the court. This format is approved by the Division of State Court Administration.

STATE OF INDIANA)
) SS: IN THE HARRISON SUPERIOR COURT
) PCR CAUSE NO. 31D01-1009-PC-011
COUNTY OF HARRISON)

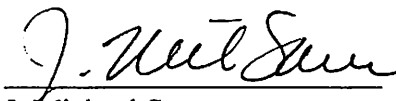
LAWRENCE E. NUNLEY,)
) Petitioner,)
))
) v.)
))
STATE OF INDIANA,)
) Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that I have, this 7th day of October, 2010, served upon Mr. John E. Colin, Deputy Prosecuting Attorney, 3rd Judicial District, a copy of the above and foregoing **APPEARANCE FORM (POST-CONVICTION RELIEF)**, pursuant to Ind. Trial Rule 5(B), by mailing it by deposit in the United States Mail, first class postage affixed, addressed to him at 1445 Gardner Lane, Suite 3101, Corydon, IN 47112.

Respectfully submitted,

SUSAN K. CARPENTER
Public Defender of Indiana
Att. No. 0003127-49

By: 
J. Michael Sauer
Deputy Public Defender
Att. No. 13360-98

PUBLIC DEFENDER OF INDIANA
One North Capitol, Suite 800
Indianapolis, IN 46204
Telephone: 317-232-2475

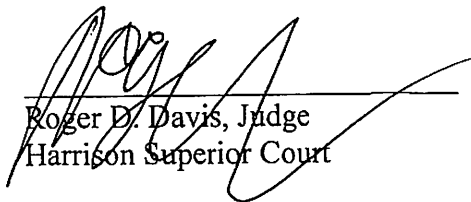
STATE OF INDIANA	)	IN THE HARRISON SUPERIOR COURT
	)	SS: PCR CAUSE NO. 31D01-1009-PC-011
COUNTY OF HARRISON)	
LAWRENCE E. NUNLEY,)	
Petitioner,)	
)	
v.)	
)	
STATE OF INDIANA,)	
Respondent.)	

ORDER

The Petitioner, Lawrence E. Nunley, by counsel, files his **VERIFIED NOTICE OF PRESENT INABILITY TO INVESTIGATE**. The court, having examined said notice, now finds that said notice should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Verified Notice of Present Inability to Investigate be granted, an Amended Petition for Post-Conviction Relief is not due to be filed, nor otherwise respond to the State's answer to his *pro se* petition, and this matter be set for hearing when Petitioner's counsel notifies the Court of his ability to proceed.

Dated this 14 day of Oct, 2010.



 Roger D. Davis, Judge
 Harrison Superior Court

Copies to:

Mr. J. Michael Sauer
Deputy Public Defender
One N. Capitol, Suite 800
Indianapolis, IN 46204

Mr. John E. Colin
Deputy Prosecuting Attorney
Harrison County Prosecutor's Office
1445 Gardner Lane
Suite 3101
Corydon, IN 47112

STATE OF INDIANA)
) SS: IN THE HARRISON SUPERIOR COURT
 COUNTY OF HARRISON) PCR CAUSE NO. 31D01-1009-PC-011

LAWRENCE E. NUNLEY,)
 Petitioner,)
)
 v.)
)
 STATE OF INDIANA,)
 Respondent.)

FILED
 2010 OCT 12 PM 2:37
 J. Michael Sauer
 CLERK OF SUPERIOR COURT
 HARRISON COUNTY

**VERIFIED NOTICE OF PRESENT
 INABILITY TO INVESTIGATE**

Comes now the Petitioner, Lawrence E. Nunley, by counsel, J. Michael Sauer, Deputy State Public Defender, and files his Verified Notice of Present Inability to Investigate.

In support thereof, Mr. Nunley says the following:

1. Mr. Nunley filed a *pro se* Petition for Post-Conviction Relief on September 24, 2010.
2. Undersigned counsel is entering his appearance simultaneously with the filing of this notice.
3. Counsel has not conferred with Mr. Nunley regarding his claims, nor conducted a legal and factual investigation of his cause.
4. A full legal and factual investigation as required by Ind. Post-Conviction Rule 1 includes: conferring with Petitioner; identifying and obtaining necessary documentation; locating and interviewing witnesses; conferring with Petitioner's trial counsel; reviewing all court records; and conducting necessary legal research.
5. Counsel's current caseload is such that he cannot currently investigate Mr. Nunley's claims and pursue his post-conviction remedies.

6. The policy of the State Public Defender's Office is that each client shall be assisted on a first-come, first-served basis, determined by the date of their pro se filing. Once a petitioner has filed his post-conviction petition and invoked his right to be represented by the State Public Defender, delay in pursuing post-conviction relief caused by the caseload of the State Public Defender's Office cannot be attributed to the petitioner, Fortson v. State, 510 N.E.2d 1369 (Ind. 1987); Holliness v. State, 496 N.E.2d 1281 (Ind. 1986).


The purpose of the requirement affording the public defender time to investigate and possibly amend the petition under P-C.R. 1(2), (3) and (4) is to insure representation of indigent petitioners and to promote judicial economy by presenting all known allegations of error in the original petition. Hamilton v. State, 618 N.E.2d 52, 54 (Ind. Ct. App. 1993).

7. Mr. Nunley has been advised of counsel's current inability to investigate his claims.

WHEREFORE, in order to assure that Mr. Nunley is competently represented and his rights protected, counsel respectfully requests that the Court not require Mr. Nunley to file an amended petition or otherwise respond to the State's answer to his *pro se* petition until such time as counsel has investigated and is ready to proceed; and for such other relief the Court deems just and proper.


Respectfully submitted,

SUSAN K. CARPENTER
PUBLIC DEFENDER OF INDIANA
Att. No. 0003127-49

By: 
J. MICHAEL SAUER
Deputy Public Defender
Att. No. 13360-98

VERIFICATION

I affirm under the penalties of perjury that the contents of the above motion are true and accurate to the best of my knowledge.



J. Michael Sauer

PUBLIC DEFENDER OF INDIANA
One North Capitol, Suite 800
Indianapolis, IN 46204
Telephone: 317-232-2475

STATE OF INDIANA)
) SS: IN THE HARRISON SUPERIOR COURT
) PCR CAUSE NO. 31D01-1009-PC-011
COUNTY OF HARRISON)

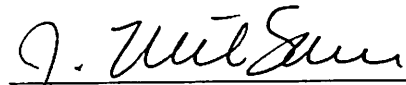
LAWRENCE E. NUNLEY,)
) Petitioner,)
))
) v.)
))
STATE OF INDIANA,)
) Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that I have, this 7th day of October, 2010, served upon Mr. John E. Colin, Deputy Prosecuting Attorney, 3rd Judicial District, a copy of the above and foregoing **VERIFIED NOTICE OF PRESENT INABILITY TO INVESTIGATE**, pursuant to Ind. Trial Rule 5(B), by mailing it by deposit in the United States Mail, first class postage affixed, addressed to him at 1445 Gardner Lane, Suite 3101, Corydon, IN 47112.

Respectfully submitted,

SUSAN K. CARPENTER
Public Defender of Indiana
Att. No. 0003127-49

By: 
J. MICHAEL SAUER
Deputy Public Defender
Att. No. 13360-98

PUBLIC DEFENDER OF INDIANA
One North Capitol, Suite 800
Indianapolis, IN 46204-2026
Telephone: (317) 232-2475

~~FILED~~
IN THE HARRISON CIRCUIT COURT

STATE OF INDIANA 28

LAWRENCE E. NUNLEY

Sherry L. Brown

CLERK HARRISON COUNTY

CAUSE NO. 31-D01-1009-PC-11

V.

STATE OF INDIANA

**STATE'S ANSWER TO PETITIONER'S
PETITION FOR POST CONVICTION RELIEF**

Comes now the State of Indiana by Julie Fessel Flanigan, Deputy Prosecuting Attorney for Harrison County, and respectfully moves the Court to deny the Defendant's Petition for Post Conviction Relief for the following reasons:


1. On September 24, 2010, Lawrence E. Nunley filed a Petition for Post Conviction relief (herein "Petition").

2. In paragraph 8 of the Petition, Nunley makes three (3) allegations of grounds known to him for vacating, setting aside or correcting his conviction. In paragraph 9 of the Petition, Nunley sets forth the alleged facts in support of the three (3) allegations set forth in paragraph 8.

3. Indiana Rule of Post-Conviction Relief 4(a) requires the State to respond by answer stating the reason, if any, that the relief prayed for should not be granted. The State specifically denies the allegations and alleged facts in support thereof set forth in paragraphs 8 and 9. Also, the relief prayed for should not be granted because the averments contained in paragraphs 8 and 9 of the Petition are not sufficient to support the vacating, setting aside or correcting of Petitioner's conviction and sentence. The State further asserts that the doctrine of waiver, *res judicata*, and/or laches prevent the relief requested by Petitioner. Also, without waiving any

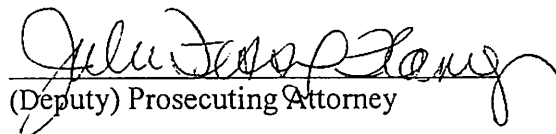
defense the State might otherwise assert, the State further argues that, to the extent Nunely makes claims of ineffective assistance of trial counsel, trial counsel's performance was not deficient or ineffective, did not result in prejudice to the Petitioner, but did, in its totality, provide the Petitioner with constitutionally adequate assistance.

WHEREFORE, the State of Indiana respectfully requests that the Court deny the Petitioner's Petition for Post Conviction Relief, and for all other just and proper relief in the premises.


Julie Fessel Flanigan
Deputy Prosecuting Attorney
Harrison County, Indiana

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was mailed or delivered to Petitioner, by placing said in the U.S. Mail to Lawrence E. Nunley, P.O. Box 1111, Carlisle, Indiana 47838, on this 14th day of September, 2010.


(Deputy) Prosecuting Attorney

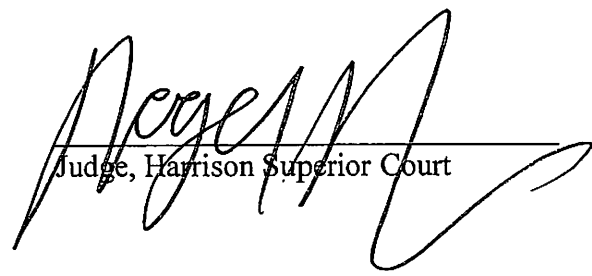
STATE OF INDIANA)
) IN THE HARRISON SUPERIOR COURT
) SS: PCR CAUSE NO. 31D01-1009-PC-011
COUNTY OF HARRISON)

LAWRENCE E. NUNLEY,)
) Petitioner,)
))
) v.)
))
STATE OF INDIANA,)
) Respondent.)

ORDER

Deputy Public Defender J. Michael Sauer, files a Notice of Withdrawal of Appearance and Certification. The Court approves the withdrawal of appearance of the Office of the State Public Defender and directs the Clerk to remove the name of J. Michael Sauer and/or any other representatives of the Office of the State Public Defender from the chronological case summary as attorney of record.

SO ORDERED this 24 day of June, 2013.



Judge, Harrison Superior Court

Copies to:

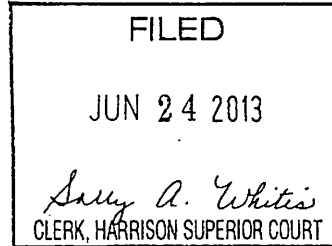
J. Michael Sauer
Deputy Public Defender
One North Capitol, Suite 800
Indianapolis, IN 46204-2026

Mr. J. Otto Schalk
Prosecuting Attorney
3rd Judicial Circuit
1445 Gardner Lane, Suite 3101
Corydon, IN 47112

Mr. Lawrence E. Nunley #198710
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

STATE OF INDIANA) IN THE HARRISON SUPERIOR COURT
) SS: PCR CAUSE NO. 31D01-1009-PC-011
COUNTY OF HARRISON)

LAWRENCE E. NUNLEY,)
Petitioner,)
)
v.)
)
STATE OF INDIANA,)
Respondent.)



NOTICE OF WITHDRAWAL OF APPEARANCE AND CERTIFICATION

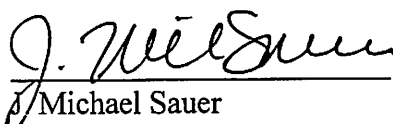
Comes now Stephen T. Owens, Public Defender of Indiana, by J. Michael Sauer, Deputy State Public Defender, and pursuant to Ind. Post-Conviction Rule 1(9)(c), withdraws the appearance filed in this cause. In support, counsel shows the Court the following:

1. Petitioner filed his Petition for Post-Conviction Relief on September 24, 2010.
2. The Public Defender of Indiana entered its Appearance to represent Petitioner on October 12, 2010.
3. Undersigned counsel certifies that the Petitioner has been consulted regarding the grounds for relief in his pro se petition and any other possible grounds.
4. Undersigned counsel certifies that appropriate investigation, including but not limited to review of the trial and sentencing records, has been conducted.
5. The Petitioner has been provided with an explanation of the reasons for withdrawal.
6. Petitioner Lawrence E. Nunley, DOC #198710, currently resides at the Wabash Valley Correctional Facility, P. O. Box 1111, Carlisle, IN 47838.

WHEREFORE, the Indiana Public Defender withdraws the appearance filed in this cause, and requests that this Court honor Petitioner's pro se requests and forward all future documents to Petitioner at the Indiana Department of Correction.

Respectfully submitted,

STEPHEN T. OWENS
Public Defender of Indiana
Att. No. 10471-49

By: 
Michael Sauer
Deputy Public Defender
Att. No. 13360-98

Attorney for Petitioner

PUBLIC DEFENDER OF INDIANA
One North Capitol, Suite 800
Indianapolis, IN 46204-2026
(317) 232-2475

STATE OF INDIANA)
) IN THE HARRISON SUPERIOR COURT
) SS: PCR CAUSE NO. 31D01-1009-PC-011
COUNTY OF HARRISON)

LAWRENCE E. NUNLEY,)
) Petitioner,)
)
) v.)
)
) STATE OF INDIANA,)
) Respondent.)

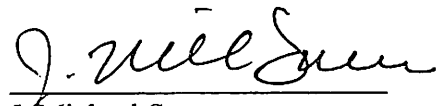
CERTIFICATE OF SERVICE

I hereby certify that I have, this 20th day of June, 2013, served upon Mr. J. Otto Schalk, Prosecuting Attorney, 3rd Judicial District, a copy of the above and foregoing **NOTICE OF WITHDRAWAL OF APPEARANCE AND CERTIFICATION**, pursuant to Ind. Trial Rule 5(B)(2), by mailing it by deposit in the United States Mail, first class postage affixed, addressed to him at 1445 Gardner Lane, Suite 3101, Corydon, IN 47112.

I further certify that I have, this 20th day of June, 2013, served upon Lawrence E. Nunley, a copy of the above and foregoing **NOTICE OF WITHDRAWAL OF APPEARANCE AND CERTIFICATION**, pursuant to Ind. Trial Rule 5(B)(2), by mailing it by deposit in the United States mail, addressed to Wabash Valley Correctional Facility, P. O. Box 1111, Carlisle, IN 47838.

Respectfully submitted,

STEPHEN T. OWENS
Public Defender of Indiana
Att. No. 10471-49

By: 
Michael Sauer
Deputy Public Defender
Att. No. 13360-98

PUBLIC DEFENDER OF INDIANA
One North Capitol, Suite 800
Indianapolis, IN 46204
Telephone: 317-232-2475

LAWRENCE E. NUNLEY)
)
VS.)
)
STATE OF INDIANA)

IN THE HARRISON SUPERIOR COURT

CAUSE NO.: 31D01-1009-PC-011

ORDER SETTING TRIAL AND ORDER TO TRANSPORT

Court sets petitioner's Motion for Post Conviction Relief for trial on January 2, 2014 at 9:00 a.m.

IT IS THEREFORE ORDERED that a trial is set for January 2, 2014 at 9:00 a.m. on the petitioner's Motion for Post Conviction Relief.

IT IS FURTHER ORDERED that the Harrison County Sheriff is ordered to transport Lawrence Nunley, in your custody from the Wabash Valley Correctional Facility to the Harrison County Jail on or before January 2, 2014 at 9:00 a.m. for a hearing in the above-captioned cause and return Lawrence Nunley to Wabash Correctional Facility after said hearing, if appropriate.

SO ORDERED this 27 day of June, 2013.

[Handwritten Signature]

HON. ROGER D. DAVIS, JUDGE
HARRISON SUPERIOR COURT

- cc:
- ✓ Prosecutor
- Defendant
- Harrison County Sheriff

STATE OF INDIANA	)	IN THE SUPERIOR COURT
	) SS:	
COUNTY OF HARRISON	)	OF HARRISON COUNTY
LAWRENCE E. NUNLEY,)	
Petitioner,)	
v.)	
<hr/>		CAUSE NO. 31D01-1009-PC-011
STATE OF INDIANA,)	
Respondent,)	

MOTION FOR INDEFINITE EXTENSION OF TIME

Comes now Petitioner, Lawrence E. Nunley, pro-se, pursuant to Rule 20 of the Rules of Criminal Procedure, and moves the court for an indefinite extension of time to hold the evidentiary hearing in this cause of action. In support of this Motion, Petitioner would show the Court as follows:

1. Judgment was entered upon Petitioner by this Court on January 15, 2009.
2. Petitioner received a sentence of 76 years and 5 months for the crime(s) Count 1.-Child Molesting, class A felony. Count 2.-Child Molesting, class A felony. Count 3-Child Molesting, class A felony. Count 4-Child Molesting,
3. Petitioner is presently incarcerated at the Wabash Valley Correctional Facility, P.O. Box 1111, Carlisle, Indiana 47838-1111.
4. Petitioner needs the record of proceedings to effectively amend his Petition for Post – Conviction in order to raise all available grounds.
5. Petitioner believes he will have the record within the next ninety (90) days.
6. Petitioner is limited to less than two (2) hours of law library time weekly.
7. Petitioner will file a Certificate of Readiness once he has received the record of proceedings and amended his petition for post-conviction relief.

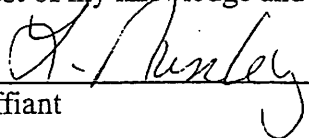
WHEREFORE, Petitioner requests the court to extend the time for the reasons stated above, which includes up to the time Petitioner's Certificate of Readiness is filed with this Court; and for any and all other relief the Court may deem just and proper within the premises.

Respectfully submitted,

Lawrence E. Nunley
Petitioner-Pro Se
DOC 198710
Wabash Valley Correctional Facility
Post Office Box 1111
Carlisle, IN 47838

AFFIRMATION

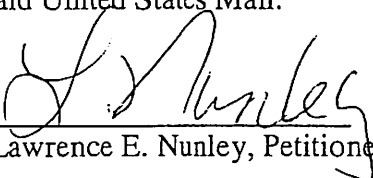
I, Lawrence, do hereby affirm, under the penalties for perjury pursuant to IC 35-44-2-1, that the foregoing representations are true and correct to the best of my knowledge and belief.



Affiant

CERTIFICATE OF SERVICE

I, Lawrence E. Nunley, hereby certify that on this 5th day of July 2013, I served a true and correct copy of the foregoing Motion for Indefinite Extension of Time upon the Prosecutor's Office for Harrison County ordinary first class, postage prepaid United States Mail.



Lawrence E. Nunley, Petitioner

STATE OF INDIANA	)	IN THE SUPERIOR COURT
	) SS:	
COUNTY OF HARRISON	)	OF HARRISON COUNTY
Lawrence E. Nunley,)	
Petitioner,)	
<hr/>		
-v-	)	CAUSE NO.31D01-1009-PC-011
)	
STATE OF INDIANA,)	
Respondent.)	

ORDER

Comes now Defendant, Lawrence E. Nunley, pro se, having filed a Motion for Indefinite Extension of Time, and upon review by this Court, the Court now finds that the Motion for Indefinite Extension of Time should be _____ Granted _____ Denied.

So ordered this _____ day of _____, 200____.

HON. ROGER DAVIS, JUDGE
HARRISON SUPERIOR COURT

cc: Defendant, P.O. Box 1111, Carlisle, Indiana 47838.
Prosecuting Attorney

IN THE HARRISON SUPERIOR COURT
STATE OF INDIANA

LAWRENCE NUNLEY,
Petitioner

VS.

CAUSE NO.: 31D01-1009-PC-011

STATE OF INDIANA,
Defendant

ORDER DENYING

Comes now the Petitioner, Lawrence Nunley, pro se, and files a Motion for Indefinite Extension of Time. The Court being duly advised in the premises now finds that the petitioner's Motion for Indefinite Extension of Time is denied. Petitioner's request to continue the current trial date set for January 2, 2014 at 9:00 a.m. is granted and the matter is rescheduled to the 17th day of July, 2014 at 1:00 a.m. (p.m.) Court further orders Petitioner to advise the Court about his progress regarding his ability to proceed to trial no later than March 31, 2014.

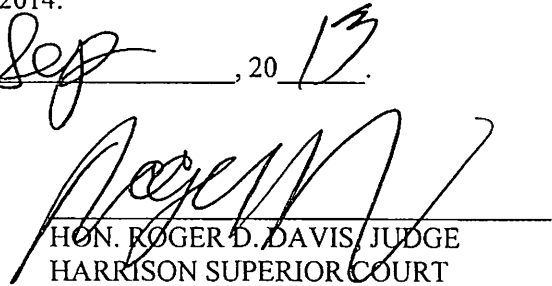
IT IS THEREFORE ORDERED that the Petitioner's Motion for Indefinite Extension of Time is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioner's request to continue the current trial date set for January 2, 2014 at 9:00 a.m. is granted and the matter is rescheduled to the 17th day of July, 2014 at 1:00 a.m. (p.m.)

IT IS ALSO ORDERED that the Petitioner shall advise the Court about his progress regarding his ability to proceed to trial no later than March 31, 2014.

SO ORDERED this 17 day of sep, 2013.

✓ cc: Pros.
Def.


HON. ROGER D. DAVIS, JUDGE
HARRISON SUPERIOR COURT

STATE OF INDIANA)
) SS:
COUNTY OF HARRISON)

LAWRENCE E. NUNLEY,)
)
PETITIONER,)
v.)
)
STATE OF INDIANA,)
)
RESPONDENT,)

IN THE SUPERIOR COURT FILED
OF HARRISON COUNTY MAR - 5 2014

Sally A. White
CLERK, HARRISON SUPERIOR COURT

CAUSE NO. 31D01-1009-PC-011

MOTION FOR INDEFINITE EXTENSION OF TIME

Comes now Petitioner, Lawrence E. Nunley, *pro se*, pursuant to **Rule 20** of the **Rules of Criminal Procedure, Ind. Post-Conviction Rule 1(4)** as well as **Ind. Post-Conviction Rule 1(5)**, and respectfully requests that this Honorable Court grant him an indefinite extension of time in this cause of action. In support of this motion, Mr. Nunley states to this Honorable Court as follows:

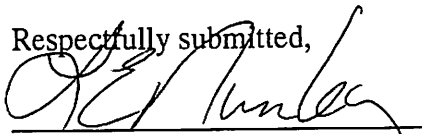
1. Mr. Nunley initiated post-conviction proceedings in this cause of action.
2. At the time of the original filing, Mr. Nunley requested representation from the Indiana State Public Defender's Office.
3. The Indiana State Public Defender filed an appearance on Mr. Nunley's behalf.
4. The Indiana State Public Defender's Office has withdrawn from this case.
5. As a result of the withdrawal of counsel, Mr. Nunley is proceeding in these proceedings as a *pro se* litigant.
6. Mr. Nunley has no formal training in the science of law and needs time to study the rules governing trial procedure, post-conviction remedies, and evidence submission.

7. Mr. Nunley only has limited access to a legal library. In fact, Mr. Nunley is only granted access to the facility's legal library once per week for a two-hour session.
8. Satellite services are not generally provided to the offenders in the general population. Rather, satellite services are only available to those offenders who are in a segregation unit of some type.
9. Thus, Mr. Nunley's access to legal materials is limited to the materials available for review in the legal database located on the facility's LAN when he attends a legal library session.
10. Mr. Nunley has a number of motions, petitions, and requests to make prior to being able to properly submit evidence at an evidentiary hearing. For example, Mr. Nunley needs to request discovery to validate specific issues, submit a request for subpoenas, and compel prior counsels to provide Mr. Nunley with his entire client file.
11. Additionally, Mr. Nunley intends to amend his petition for post-conviction relief. However, Mr. Nunley needs additional time to review the common law cases, statutes, and rules associated with the particular issues to ensure that his petition for post-conviction relief not only contains all issues known and available to him but also that those issues are meritorious.
12. To properly plead all meritorious issues, Mr. Nunley must educateion himself regarding the demanding pleading requirements associated with collateral attacks in the state of Indiana.
13. Mr. Nunley is cognizant of the fact that the post-conviction court will hold him to the same standards as counsel, which is the reason that Mr. Nunley needs additional time.

14. Moreover, Mr. Nunley is currently in negotiations with an attorney. Should those negotiations go well, Mr. Nunley anticipates retaining counsel to proceed with the matters in the petition for post-conviction relief.
15. Mr. Nunley is unable to provide the court with an approximate timeframe pertaining to when he will be ready to proceed. The autodidactic process involves complex subjects of procedural and constitutional dimension with a limited availability of materials.
16. Moreover, Mr. Nunley has been at the mercy of his attorneys' investigative efforts. Now that he is representing himself, Mr. Nunley is struggling to locate and contact witnesses in this matter. These efforts are continually hampered by Mr. Nunley's unfortunate circumstance of incarceration.
17. Therefore, Mr. Nunley requests an indefinite extension of time in this cause of action.
18. Mr. Nunley will file a Trial Readiness Certificate when he is ready to proceed with this matter.
19. Mr. Nunley believes that the principles of Due Process require time for adequate preparation, discovery procedures, and compulsory process. Without these measures, Mr. Nunley cannot possibly be given a fundamentally fair hearing.
20. The Respondent is not prejudiced by the granting of this motion.
21. This motion is not being filed for the purposes of delay or dilatory purposes.
22. Mr. Nunley brings this motion in good faith and believes that he is entitled to the relief sought.

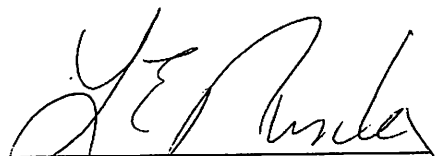
WHEREFORE, Mr. Nunley believes that the law is in his favor and that this Honorable Court s shall respect and honor the law by **GRANTING** him an indefinite extension of time in

order to preserve Due Process, as well as provide a fundamentally fair hearing, and for all other relief deemed just and appropriate.

Respectfully submitted,

Lawrence E. Nunley

CERTIFICATE OF SERVICE

I, Lawrence E. Nunley, hereby certify that on this 26th day of February 2014, I served a true and correct copy of the foregoing Motion for Indefinite Extension of Time upon the Prosecutor's Office for Harrison County by ordinary first class, postage prepaid United States Mail, in accordance with T.R. 5.


Lawrence E. Nunley

IN THE HARRISON SUPERIOR COURT

STATE OF INDIANA

LAWRENCE NUNLEY,
Petitioner

VS.

CAUSE NO.: 31D01-1009-PC-011

STATE OF INDIANA,
Defendant

ORDER DENYING


Comes now the Petitioner, Lawrence Nunley, pro se, and files a second Motion for Indefinite Extension of Time on March 5, 2014. The Court being duly advised in the premises now finds that the petitioner's second Motion for Indefinite Extension of Time should be denied. Petitioner has effectively requested to continue the current trial date set for July 17, 2014 and that request is granted and the matter is rescheduled to the 17th day of July, 2015 at 9:00 a.m. The Court finds this trial date is one and one half years after the original trial setting of January, 2014. This case has been pending since September, 2010. The State Public Defender withdrew in June, 2013. The Court orders Petitioner to advise the Court about his progress regarding his ability to proceed to trial no later than December 31, 2014.

IT IS THEREFORE ORDERED that the Petitioner's second Motion for Indefinite Extension of Time is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioner's defacto request to continue the current trial date set for July 17, 2014 is granted and the matter is rescheduled to the July 17, 2015 at 9:00 a.m.

IT IS ALSO ORDERED that the Petitioner shall advise the Court about his progress regarding his ability to proceed to trial no later than December 31, 2014.

SO ORDERED this 5 day of March, 2014.

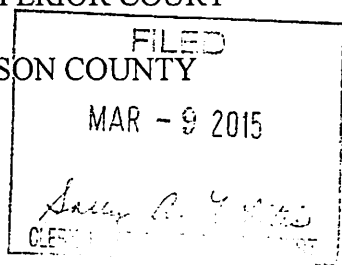


HON. ROGER D. DAVIS, JUDGE
HARRISON SUPERIOR COURT

cc:
Prosecutor
Lawrence Nunley, Petitioner

STATE OF INDIANA)
)
) SS:
COUNTY OF HARRISON)
)
LAWRENCE NUNLEY,)
)
)
) PETITIONER,)
)
)
) -v-)
)
)
) STATE OF INDIANA,)
)
)
) RESPONDENT.)

IN THE SUPERIOR COURT
OF HARRISON COUNTY



CAUSE NO 31D01-1009-PC-011

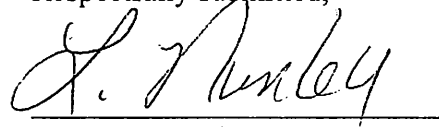
REQUEST FOR CLARIFICATION

Comes now the Petitioner, Lawrence Nunley, *pro se*, and seeks clarification regarding his request for additional time in this matter. In support, Mr. Nunley states to this Honorable Court as follows:

1. On December 23, 2014, Mr. Nunley sent his first notice to this Honorable Court, pursuant to the **ORDER** issued on March 5, 2014.. (See copy attached hereto).
2. In the first notice, Mr. Nunley explained that he did not believe that he would be prepared due to various circumstances, and requested additional time.
3. To date, Mr. Nunley has not received any communication from this Honorable Court.
4. Therefore, Mr. Nunley asks this Honorable Court to clarify for him whether or not his request for additional time has been granted.

WHEREFORE, Mr. Nunley prays that this Honorable Court will **GRANT** this motion, and communicate the ruling on his Notice of Inability to Proceed and Request for Additional Time; and for all other relief deemed just and appropriate in the premises.

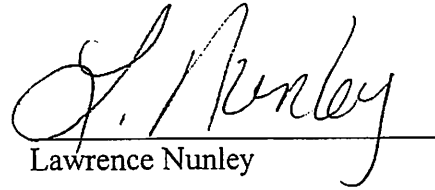
Respectfully submitted,



Lawrence Nunley

CERTIFICATE OF SERVICE

I, Lawrence Nunley, hereby affirm that on this 20th day of February 2015, I served a true and accurate copy of the foregoing Request for Clarification upon the Prosecuting Attorney for Harrison County by ordinary first class, postage prepaid, United States Mail, in accordance with T.R. 5.



Lawrence Nunley

STATE OF INDIANA)
) SS:
 COUNTY OF HARRISON)
 LAWRENCE NUNLEY,)
)
 PETITIONER,)
)
 -v-)
)
 STATE OF INDIANA,)
)
 RESPONDENT.)

IN THE SUPERIOR COURT
 OF HARRISON COUNTY
 FILED
 MAR - 9 2015
 Clerk
 CAUSE NO 31D01-1009-PC-011

**NOTICE OF INABILITY TO PROCEED
 AND REQUEST FOR ADDITIONAL TIME**

Comes now the Petitioner, Lawrence Nunley, *pro se*, pursuant to this Honorable Court's **ORDER**, issued on March 5, 2014, and respectfully notifies this Court of his inability to proceed at the currently scheduled evidentiary hearing and requests additional time to prepare. In support, Mr. Nunley states to this Honorable Court as follows:

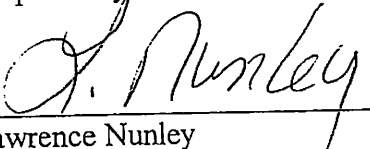
1. Mr. Nunley is proceeding *pro se* in this matter because he cannot afford an attorney and the State Public Defender's Office has elected to withdraw from this case.
2. Mr. Nunley previously asked this Court for an indefinite continuance in order to learn the *Rules of Trial Procedure*, and the *Rules of Evidence*, as well as proper post-conviction procedures.
3. This Honorable Court provided Mr. Nunley with a continuance, but recognized that he might need additional time.
4. Therefore, this Honorable Court **ORDERED** Mr. Nunley to give the Court notice as to whether or not he would be prepared to proceed with the evidentiary hearing at the presently scheduled date and time.

5. Mr. Nunley is not comfortable with proceeding with the evidentiary hearing on the date and time currently scheduled, as a result of circumstances beyond his control.
6. During the past several months, Mr. Nunley's access to the legal library has been severely curtailed due to various institutional lockdowns and holiday schedules.
7. A brash of recent stabbings, severe beatings, and other altercations have occurred. Although Mr. Nunley was not involved in any of these incidents, they resulted in his being confined to his cell due to the facility's being placed on lockdown status while the administration conducted its investigations. During these multiple periods, Mr. Nunley did not have access to the legal library
8. Additionally, there was a statewide lockdown in order to update information on each offender. Each offender was interviewed, photographed, and each tattoo was cataloged. The facility was shutdown until this process was done, which caused Mr. Nunley to miss several of legal library sessions.
9. Furthermore, there have been 14 state holidays, which typically interfere with the legal library schedule for that week. Unfortunately, the normal operation of the facility automatically causes Mr. Nunley to miss at least one additional week legal library because the count letters are created a week in advance. Thus, following each lockdown or shutdown, Mr. Nunley must send anew request to be scheduled and wait at least one week before he is permitted to attend.
10. The varying interruptions to Mr. Nunley's legal library access have severely hampered his ability to learn the rules and procedures associated with litigating a collateral proceeding.

11. These hindrances, coupled with the multifarious reasons that Mr. Nunley relied upon in his first request for a continuance, have severely impeded his ability to proceed in this matter.
12. Mr. Nunley takes this opportunity to remind this Honorable Court that:
 - a. he has no legal training
 - b. he has only limited computer knowledge
 - c. he only does not type well
 - d. he can only access legal materials when attends the legal library because there are no satellite services for the general population. The general population can only access legal materials through the LexisNexis database made available on the facility's LAN system.
 - e. Mr. Nunley's legal library sessions are split between typing and reading relevant legal authorities.
13. Therefore, Mr. Nunley asks this Court for a second continuance. Mr. Nunley would, once again, request an indefinite continuance in this matter. If granted, Mr. Nunley would file a trial readiness certificate when he is prepared to proceed.
14. This motion is brought in good faith, and the Respondent would suffer no prejudice by this Court's granting a second continuance.

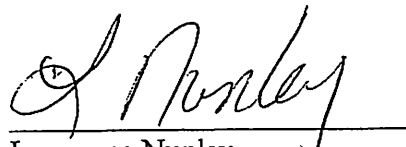
WHEREFORE, Mr. Nunley prays that this Honorable Court will **GRANT** this motion, and communicate the ruling on his Notice of Inability to Proceed and Request for Additional Time; and for all other relief deemed just and appropriate in the premises.

Respectfully submitted


Lawrence Nunley

CERTIFICATE OF SERVICE

I, Lawrence Nunley, hereby affirm that on this 23rd day of December 2014, I served a true and accurate copy of the foregoing Notice of Inability to Proceed and Request for Additional Time upon the Prosecuting Attorney for Harrison County by ordinary first class, postage prepaid, United States Mail, in accordance with **T.R. 5**.


Lawrence Nunley

STATE OF INDIANA
COUNTY OF HARRISON
LAWRENCE NUNLEY,

) FILED
) SS:
) JAN 14 2018
Sandy A. Whites
) CLERK, HARRISON SUPERIOR COURT

IN THE SUPERIOR COURT
OF HARRISON COUNTY

PETITIONER,

-v-

CAUSE NO 31D01-1009-PC-011

STATE OF INDIANA,

RESPONDENT.

MOTION TO AMEND POST-CONVICTION

Comes now Petitioner, Lawrence E. Nunley, *pro se*, pursuant to **Post-Conviction Rule 1, sec. 4(c)**, and respectfully requests this Court's permission to amend his *pro se* Petition for Post-Conviction Relief, by substitution of the following paragraphs:

8(a). Trial counsel was ineffective in violation of the **Fifth, Sixth, and Fourteenth Amendments** to the **United States Constitution** and **Article One, Sections Twelve, Thirteen, and Twenty-Three** of the **Indiana Constitution**.

1. Failure to Impeach A.Y.
2. Failure to object to A.Y's being permitted to provide written testimony, which was introduced as Joint Exhibits 1, 2 and 3 and State's Exhibit 5.
3. Failure to object to violation of the separation of witnesses order.
4. Failure to object to the introduction of State's Exhibit 2, a DVD of the movie *Sex Ed Tutor*.
5. Failure to object to instances of vouching for A.Y.'s credibility.

6. Cumulative Error

8(b). Appellate counsel was ineffective in violation of the **Fifth, Sixth, and Fourteenth Amendments** to the **United States Constitution** and **Article One, Sections Twelve, Thirteen, and Twenty-Three** of the **Indiana Constitution**.

1. Failure to present issues well
2. Failure to present issues

9(a). The right to effective counsel is rooted in the Sixth Amendment of the United States Constitution. *Taylor v. State*, 840 N.E.2d 324, 331 (Ind. 2006). "The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686.

In the state of Indiana, ineffective assistance of counsel claims are governed by the two-part test announced in *Strickland*. *Perez v. State*, 748 N.E.2d 853, 854 (Ind. 2001). First, the defendant must show that counsel's performance was deficient by falling below an objective standard of reasonableness and the resulting errors were so serious that they resulted in a denial of counsel guaranteed under the Sixth Amendment. *McCorker v. State*, 797 N.E.2d 257, 267 (Ind. 2003). Second, the defendant must show that the deficient performance prejudiced the defense. *Id.* Prejudice is shown with a reasonable probability that but for counsel's unprofessional

errors, there is a reasonable probability that the result of the proceeding would have been different. *Id.* A reasonable probability for the prejudice requirement is a probability sufficient to undermine confidence in the outcome. *Wesley v. State*, 768 N.E.2d 1247, 1257 (Ind. 2003).

1. Failure to impeach A.Y.

Lawrence E. Nunley was convicted by the uncorroborated testimony of a single witness. There is no DNA, medical, or forensic evidence linking Nunley to any criminal wrongdoing. There are no videos, or eyewitness accounts. There are no admissions or statements against penal interest, implicating Nunley. The only evidence in this case is the account given by A.Y. Trial counsel could have impeached this critical witness with the statements that she made under oath during her deposition.

For instance, A.Y. testified during her deposition that on 9/30/08, her mother told her what to remember and what to say to the police. Then she denied that her mother told her what to say. A.Y. testified during her deposition that she spent the night with Nunley lots of times, but that this was the first time she had done so without her mother. A.Y. also said that the only thing she could remember was Nunley licked her pee pee and she screamed. A.Y. did not remember seeing or touching Nunley's genitalia. A.Y. could not remember what she wrote down on a piece of paper. She also testified during her deposition that Nunley did not hurt her. The deposition testimony differs from A.Y.'s trial testimony. (R. 417-500). Other inconsistencies regarding the details of the events also arise between the deposition and trial testimonies.

There is no strategic reason for counsel not to impeach A.Y. During her opening statement, trial counsel emphasized the critical importance of A.Y.'s testimony. Counsel

told the jury “This whole case, the whole issue revolves around whether she’s a credible witness, whether you can believe her or not. And, as I said, if you believe her, then he should be found guilty. If you don’t believe her, then he should be found not guilty.” (R. 45). Thus, impeaching A.Y. was critical to successfully defending Nunley. If the jury had the opportunity to consider A.Y.’s testimony during the deposition, they might not believe her trial testimony. This is particularly true of the testimony relating to Count 2. Thus, had trial counsel impeached A.Y., Nunley could have been acquitted.

2. Failure to object to A.Y.’s being permitted to provide written testimony

A.Y., the alleged victim in this case, testified against Nunley. (R. 417-500). During A.Y.’s testimony, the prosecutor asked her about what happened to her the night she stayed with Nunley. (R. 433). The record indicates that the witness started crying and became nonresponsive. (r. 433). After a bench conference, the court was recessed. (R. 434).

When the trial resumed, the prosecutor asked A.Y. to tell her what happened. (R. 435). A.Y. responded, “It’s hard to say. I can only write it.” R. 435). A.Y. later told the judge that there were too many people in the courtroom and that she couldn’t answer in front of them. (R. 438). Another bench conference was had and again the court called for a recess.

When the trial resumed, A.Y. was permitted to respond to questions in writing. (R. 441-443). Those writings were entered into evidence as “Joint Exhibits or Court’s exhibits because they’re in effect testimony.” (R. 444). After the lunch recess, A.Y. wrote down an answer to a question and then read it out loud. (R. 450). That written statement

was entered as State's Exhibit 5. (R. 454). A.Y. later drew a picture of Nunley's penis, which was entered as Joint Exhibit 3. (R. 493). A.Y. described Nunley's penis as soft and approximately ten inches in length. She claims to know because she counted the numbers on a ruler. (R. 493; Joint Exhibit 3).

A.Y. was permitted to provide written testimony without objection from counsel. (R. 441-443, 450, 454, 493). In fact, defense counsel caused Joint Exhibit 3 to be introduced into evidence. A.Y.'s written testimony was sent to the jury room (R. 455). This written testimony unduly emphasized critical portions of A.Y.'s testimony. It also added credibility to the claims made by A.Y., Tonya Caves, and Richard Caves that A.Y. had written her initial allegation against Nunley and gave it to her parents. Therefore, had trial counsel interposed an appropriate objection, the written testimony would have been excluded. Without the written testimony of A.Y., the jury likely would have acquitted Nunley. Therefore, trial counsel was ineffective for failing to object to the written testimony of A.Y.

3. Failure to object to violation of the separation of witnesses order

During A.Y.'s testimony, the trial was recessed for lunch. (R. 445). Immediately after the recess, the prosecutor advised the court that A.Y. was there with her parents, who were also witnesses. (R. 445-446). The judge instructed the prosecutor to go to lunch with A.Y. and her parents so that the prosecutor could inform the court that the separation of witnesses' violation was harmless. (R. 446). The State agreed. (R. 446). Defense counsel did not object to the violation of the separation of witnesses or the State's ex parte communication with witnesses during the trial. After the lunch break, A.Y. answered questions that she had previously refused to answer. This testimony, as

well as the testimonies of Tonya and Richard Caves, should have been excluded based upon the violation of the separation of witnesses order. Had trial counsel objected, it would have been. Without that testimony, Nunley would likely have been acquitted. Therefore, counsel was ineffective for failing to interpose an objection and/or request a mistrial.

4. Failure to object to the introduction of State's Exhibit 2

A.Y. testified that State's Exhibit 2 was the DVD that Nunley showed her (R. 432). However, A.Y. did not view the DVD, had not marked the DVD, and did not identify the name of the DVD that Nunley was alleged to have shown her. When asked how she knew it was the same DVD, A.Y. testified, in part, "I had it memorized, but I don't remember it now."

During the testimony of William Wibbels, the State entered the DVD into evidence (R. 662, State's Exhibit 2). Trial counsel did not object. (R. 662). A.Y.'s testimony lacked a sufficient basis to serve to introduce the DVD into evidence. Therefore, an objection would have served to exclude this evidence. Without this evidence, the jury would likely have acquitted Nunley of Count 5. Thus, counsel was ineffective for failing to interpose an appropriate objection to the admission State's Exhibit 2.

Additionally, Detective Wibbels indicated that A.Y. first revealed that Nunley had made her watch a pornographic movie during the Comfort house interview. (R. 688-689). As the Court of Appeals expressed in the direct appeal, these allegations were too far removed in time to be credible. Thus, Count 5 should have been dismissed along with Counts 3 and 4.

5. Vouching for A.Y.'s Credibility

Detective Wibbels vouched for the credibility of A.Y. when he testified that he did not feel that A.Y. had been coached and that he believed her. Such testimony unduly prejudiced Nunley because it validated the testimony of the State's key witness. Trial counsel did not object to this testimony, request an admonishment, or motion for a mistrial. Had counsel interposed an appropriate objection, requested an admonishment, and/or motioned for a mistrial, she would have prevailed. Therefore, trial counsel was ineffective for failing to take such steps.

6. Cumulative Effect

Nunley contends that even if the individual errors of counsel do not rise to a level of ineffective assistance, the cumulative effect of these errors lead to the conclusion that Nunley was denied effective representation and a fair trial. *Strickland, supra*, demands that reviewing courts consider the cumulative effect of the alleged errors rather than simply considering them individually.

9(b) The standard of review for a claim of ineffective assistance of appellate counsel is the same as for a claim of ineffective assistance of trial counsel. *Wrinkles v. State*, 749 N.E.2d 1179, 1203 (Ind. 2001). Our Supreme Court has recognized three categories of alleged appellate counsel ineffectiveness: (1) denying access to an appeal, (2) failing to raise issues, and (3) failing to raise issues competently. *Bieghler v. State*, 690 N.E.2d 188, 193-195 (Ind. 1997).

1. Failure to Present Issues Well

Appellate counsel raised four (4) issues of error: (1) The trial court violated Mr. Nunley's right to present a defense when it excluded impeachment evidence; (2) The

State committed prosecutorial misconduct in closing arguments; (3) The trial court abused its discretion and violated Mr. Nunley's right of confrontation when it permitted the drumbeat repetition of hearsay statements; and (4) The trial court abused its discretion when it refused to declare a mistrial after a state's witness referenced other accusations of molestation. The first issue presented – the trial court's violating Nunley's right to present a defense -- could have prevailed; however, appellate counsel failed to argue the issue correctly. Appellate counsel's brief focuses primarily upon Rule 608 and does not argue or alert the Court's to the federal nature of the error. Had counsel availed himself of the United States Supreme Court authority available regarding this issue, the appellate courts would have decided the issue in Nunley's favor. Moreover, appellate counsel's reliance upon trial counsel's "preservation of the issue" after the close of evidence was misplaced. This was a critical error that only served to hurt Nunley's claim. Appellate counsel should have argued that Nunley had a right to present a defense by attacking the credibility of A.Y., the State's key witness. A.Y. had falsely accused someone else of criminal wrongdoing, which could have directly impacted the jury's view of her testimony against Nunley. Preventing Nunley from establishing this fact was tantamount to the denial of his right to present a defense

2. *Failure to Present Issues*

a. Sentencing Issues

Appellate counsel failed to present any issues regarding Nunley's sentencing despite clear and obvious sentencing errors. The trial court relied upon invalid aggravating circumstances, including, but not limited to, unproven and uncharged allegations of molestation on another victim, Kimberly Simler. Nunley was never

charged or brought to trial for such allegations; however, the judge suggested that this aggravating circumstance had been proven beyond a reasonable doubt because there was testimony provided at a pretrial hearing. Nunley never had the opportunity to refute the allegations.

Moreover, the sentences violated the principles of double jeopardy and were inappropriate under the circumstances. Although Nunley was convicted of multiple charges, there was a single victim and a single incident. The victim did not sustain any physical injury or other deleterious effects from the incident. Therefore, the sentencing court should not have run the sentences consecutively.

Finally, appellate counsel should have argued that the sentence needed to be reevaluated if the appellate court were to reverse on one of the issues presented. In this case, the Court of Appeals reversed on Counts 3 and 4, leaving counts 1, 2, and 5. The Court of Appeals did not consider the weight that those counts had on the trial court's sentencing decision. Without those counts, Nunley likely would have received a lesser sentence. Therefore, counsel was ineffective for failing to raise these sentencing errors.

b. Failure to Include Count 5 in Argument III

In Argument III, appellate counsel argued, in part, that the statements A.Y. provided at the Comfort House were not reliable because they were made more than a year after the initial allegations. The Court of Appeals agreed with this argument and reversed counts 3 and 4. But, Count 5 also arose from the Comfort House interview. William Wubbels testified that A.Y. had provided additional details during the Comfort House interview. Among the additional details was that Nunley had made A.Y. watch a pornographic movie. Appellate counsel did not include Count 5 in his argument. Rather,

appellate counsel only argued that A.Y. had supplied the facts which formed the basis for Counts 3 and 4. (Brief of Appellant, pp. 23-25). The record clearly shows that A.Y. also revealed, for the first time, that Nunley had made her watch a pornographic movie and those allegations were also restated by detective Wibbels in the same way that Counts 3 and 4 were. The information for this count also lacked sufficient indicia of reliability. Thus, had appellate counsel advanced the argument that the facts governing Count 5 were also revealed during the Comfort House video and restated by Wibbels during his trial testimony, Count 5 would also have been dismissed. Appellate counsel was, therefore, ineffective for failing to include Count 5 in this argument.

c. Failure to Include the underlying issue outlined in 9(a)(2)

Nunley claims that appellate counsel was ineffective for failing to raise the issue underlying counsel's ineffectiveness in 9(a)(2). Nunley does not suggest that appellate counsel should have raised ineffective assistance of trial counsel. Rather, Nunley contends that appellate counsel should have raised the issue that A.Y.'s written testimony unduly emphasized a critical portion of her testimony. Inasmuch as this issue was not properly preserved for appellate review, it could have been presented as fundamental error.

A.Y., the alleged victim in this case, testified against Nunley. (R. 417-500). During A.Y.'s testimony, the prosecutor asked her about what happened to her the night she stayed with Nunley. (R. 433). The record indicates that the witness started crying and became nonresponsive. (r. 433). After a bench conference, the court was recessed. (R. 434).

When the trial resumed, the prosecutor asked A.Y. to tell her what happened. (R. 435). A.Y. responded, "It's hard to say. I can only write it." R. 435). A.Y. later told the judge that there were too many people in the courtroom and that she couldn't answer in front of them. (R. 438). Another bench conference was had and again the court called for a recess.

When the trial resumed, A.Y. was permitted to respond to questions in writing. (R. 441-443). Those writings were entered into evidence as "Joint Exhibits or Court's exhibits because they're in effect testimony." (R. 444). After the lunch recess, A.Y. wrote down an answer to a question and then read it out loud. (R. 450). That written statement was entered as State's Exhibit 5. (R. 454). A.Y. later drew a picture of Nunley's penis, which was entered as Joint Exhibit 3. (R. 493). A.Y. described Nunley's penis a soft and approximately ten inches in length. She claims to know because she counted the numbers on a ruler. (R. 493; Joint Exhibit 3).

A.Y.'s written testimony unduly emphasized critical portions of A.Y.'s testimony. It also added credibility to the claims made by A.Y., Tonya Caves, and Richard Caves that A.Y. had written her initial allegation against Nunley and gave it to her parents. Therefore, the written testimony should have been excluded. Without the written testimony of A.Y., the jury likely would have acquitted Nunley.

c. Failure to Include the underlying issue outlined in 9(a)(3)

Nunley claims that appellate counsel was ineffective for failing to raise the issue underlying counsel's ineffectiveness in 9(a)(3). Nunley does not suggest that appellate counsel should have raised ineffective assistance of trial counsel. Rather, Nunley contends that appellate counsel should have raised the issue regarding the violation of

the separation of witnesses order. Inasmuch as this issue was not properly preserved for appellate review, it could have been presented as fundamental error.

During A.Y.'s testimony, the trial was recessed for lunch. (R. 445). Immediately after the recess, the prosecutor advised the court that A.Y. was there with her parents, who were also witnesses. (R. 445-446). The judge instructed the prosecutor to go to lunch with A.Y. and her parents so that the prosecutor could inform the court that the separation of witnesses' violation was harmless. (R. 446). The State agreed. (R. 446). After the lunch break, A.Y. answered questions that she had previously refused to answer. This testimony, as well as the testimonies of Tonya and Richard Caves, should have been excluded based upon the violation of the separation of witnesses order. Without that testimony, Nunley would likely have been acquitted.

d. Failure to Include the underlying issue outlined in 9(a)(4)

Nunley claims that appellate counsel was ineffective for failing to raise the issue underlying counsel's ineffectiveness in 9(a)(4). Nunley does not suggest that appellate counsel should have raised ineffective assistance of trial counsel. Rather, Nunley contends that appellate counsel should have raised the issue that State's Exhibit 2 should not have been admitted into evidence. Inasmuch as this issue was not properly preserved for appellate review, it could have been presented as fundamental error.

A.Y. testified that State's Exhibit 2 was the DVD that Nunley showed her (R. 432). However, A.Y. did not view the DVD, had not marked the DVD, and did not identify the name of the DVD that Nunley was alleged to have shown her. When asked how she knew it was the same DVD, A.Y. testified, in part, "I had it memorized, but I don't remember it now."

During the testimony of William Wibbels, the State entered the DVD into evidence (R. 662, State's Exhibit 2). A.Y.'s testimony lacked a sufficient basis to serve to introduce the DVD into evidence. Without this evidence, the jury would likely have acquitted Nunley of Count 5. Thus, counsel was ineffective for failing to interpose an appropriate objection to the admission State's Exhibit 2.

Additionally, Detective Wibbels indicated that A.Y. first revealed that Nunley had made her watch a pornographic movie during the Comfort house interview. (R. 688-689). As the Court of Appeals expressed in the direct appeal, these allegations were too far removed in time to be credible. Thus, Count 5 should have been dismissed along with Counts 3 and 4.

d. Failure to Include the underlying issue outlined in 9(a)(5)

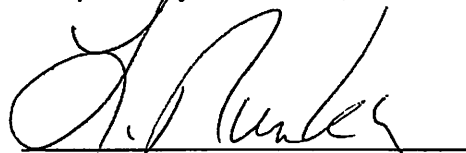
Nunley claims that appellate counsel was ineffective for failing to raise the issue underlying counsel's ineffectiveness in 9(a)(5). Nunley does not suggest that appellate counsel should have raised ineffective assistance of trial counsel. Rather, Nunley contends that appellate counsel should have raised the issue that Wibbels vouched for A.Y. Inasmuch as this issue was not properly preserved for appellate review, it could have been raised as fundamental error.

Detective Wibbels vouched for the credibility of A.Y. when he testified that he did not feel that A.Y. had been coached and that he believed her. Such testimony unduly prejudiced Nunley because it validated the testimony of the State's key witness.

WHEREFORE, Lawrence E. Nunley respectfully requests leave to amend his previously filed *pro se* Petition for Post-Conviction Relief by substituting the above


allegations for those listed in his first petition; and for all other relief deemed just and appropriate.

Respectfully submitted,


Lawrence E. Nunley

AFFIRMATION


I, Lawrence E. Nunley, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that the matters and allegations therein set forth are true.


Lawrence E. Nunley

Subscribed and sworn to before me, a Notary Public for the State of Indiana, this 7th day of January, 2016.

My Commission Expires:

6 / 16 / 2023
Month Day Year


Notary Public

Greene
County of Residence

Marty D. Hale
Name Printed

STATE OF INDIANA)
) SS:
COUNTY OF HARRISON)
LAWRENCE NUNLEY,)
)
PETITIONER,)
)
-v-)
)
STATE OF INDIANA,)
)
RESPONDENT.)

IN THE SUPERIOR COURT
OF HARRISON COUNTY

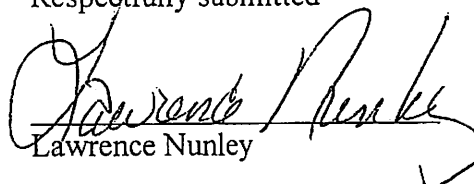
FILED
JAN - 6 2016
Sally A. White
CLERK, HARRISON SUPERIOR COURT

CAUSE NO 31D01-1009-PC-011

NOTICE OF TRIAL READINESS

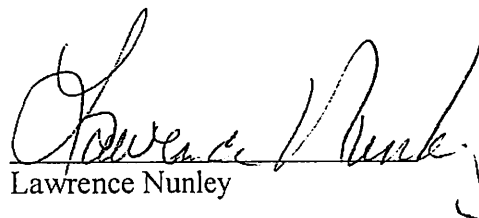
Comes now the Petitioner, Lawrence Nunley, *pro se*, pursuant to this Honorable Court's **ORDER**, and respectfully notifies this Court that the Petitioner should be ready to proceed on the evidentiary hearing date currently scheduled in the above captioned cause of action, provided discovery matters can be resolved in time.

Respectfully submitted


Lawrence Nunley

CERTIFICATE OF SERVICE

I, Lawrence Nunley, hereby affirm that on this 30th day of December 2015, I served a true and accurate copy of the foregoing Notice of Trial Readiness upon the Prosecuting Attorney for Harrison County by ordinary first class, postage prepaid, United States Mail, in accordance with **T.R. 5**.


Lawrence Nunley

STATE OF INDIANA
COUNTY OF HARRISON
LAWRENCE NUNLEY,
PETITIONER,
-v-
STATE OF INDIANA,
RESPONDENT.

)
) SS. FILED
)
) JAN 14 2016
)
) *Larry A. White's*
) CLERK, HARRISON SUPERIOR COURT

IN THE SUPERIOR COURT
OF HARRISON COUNTY

CAUSE NO 31D01-1009-PC-011

MOTION FOR SPECIFIC DISCOVERY

Comes now the Petitioner, Lawrence, E. Nunley, *pro se*, and respectfully moves this Honorable Court to ORDER specific discovery in this cause of action. In support, Mr. Nunley states to this Honorable Court as follows:

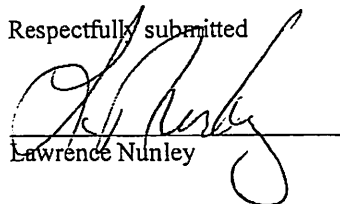
1. Mr. Nunley has a pending post-conviction petition, and specific discovery is needed to validate existing issues.
2. Mr. Nunley asks that this Court ORDER either Susan Schultz or the State of Indiana to provide him with a true and accurate copy of the deposition taken of the alleged victim, A.Y.
3. Mr. Nunley knows that this deposition exists because he has a copy of it. However, the copy in Mr. Nunley's possession has been altered; therefore, it would not be admissible at the evidentiary hearing.
4. Mr. Nunley has alleged that his trial attorney was ineffective for failing to impeach A.Y. during trial. To prevail on such a claim, Mr. Nunley must establish how his attorney could have impeached A.Y., what the inconsistent statements

were, and how it could impact the verdict. Mr. Nunley cannot meet this burden unless he can introduce the deposition into evidence.

5. Mr. Nunley has requested a copy of the deposition from Susan Schultz; however, he has not received a response.
6. Mr. Nunley also needs to know the name and address of the person who transcribed the deposition so that he can request a subpoena to authenticate the record.
7. In the alternative, Mr. Nunley asks that the State stipulate to the record's being admitted despite the highlighted portions.
8. The post-conviction rules allow for limited discovery to validate existing issues. PC Rule 1(5).
9. Mr. Nunley brings this motion in good faith and believes that he is entitled to the relief sought

WHEREFORE, Mr. Nunley asks this Honorable Court to ORDER Susan Schultz or the State of Indiana to provide him with a true and accurate copy of the deposition taken of A.Y., the alleged victim, and to identify the name and address of the person who transcribed the deposition. In the alternative, Mr. Nunley asks that the State stipulate to his copy being admissible despite the highlighted portions.

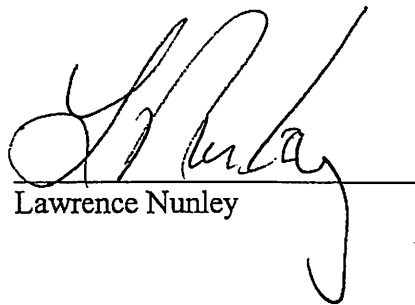
Respectfully submitted



Lawrence Nunley

CERTIFICATE OF SERVICE

I, Lawrence Nunley, hereby affirm that on this 12 day of January 2016, I served a true and accurate copy of the foregoing Motion for Specific Discovery upon the Prosecuting Attorney for Harrison County by ordinary first class, postage prepaid, United States Mail, in accordance with T.R. 5.



Lawrence Nunley

STATE OF INDIANA)
COUNTY OF HARRISON)
LAWRENCE NUNLEY,)
PETITIONER,)

) SS FILED
)
) JAN 14 2016
)
) *Harry A. White's*
) CLERK, HARRISON SUPERIOR COURT

IN THE SUPERIOR COURT
OF HARRISON COUNTY

-v-

CAUSE NO 31D01-1009-PC-011

STATE OF INDIANA,)
RESPONDENT.)

REQUEST FOR ISSUANCE OF SUBPOENAS

Comes now the Petitioner, Lawrence E. Nunley, *pro se*, pursuant to **Ind. Post-Conviction Rule 1(9)(b)**, and requests this Court to issue subpoenas for witnesses at an evidentiary hearing in the above-captioned cause. In support of this motion, Petitioner specifically states the reason such testimony is required and the substance of the expected testimony within his affidavit attached hereto and incorporated herein by reference.

WHEREFORE, Petitioner respectfully requests that this Court issue (a) subpoena(s) for witnesses at an evidentiary hearing in this case pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article One, Sections Twelve, Thirteen and Twenty-three of the Indiana Constitution.

RESPECTFULLY SUBMITTED THIS 14 DAY OF JANUARY, 2016.

L. E. Nunley

Lawrence E. Nunley

STATE OF INDIANA	)	IN THE SUPERIOR COURT
	) SS:	
COUNTY OF HARRISON	)	OF HARRISON COUNTY
LAWRENCE NUNLEY,)	
)	
PETITIONER,)	
)	
-v-	)	CAUSE NO 31D01-1009-PC-011
)	
STATE OF INDIANA,)	
)	
RESPONDENT.)	

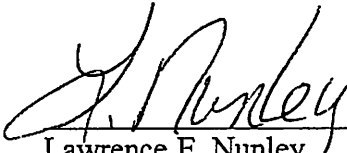
**AFFIDAVIT IN SUPPORT OF
REQUEST FOR ISSUANCE OF SUBPOENA**

Comes now Petitioner, Lawrence E. Nunley, being first duly sworn upon his oath, deposes and says the following:

1. I am the petitioner Cause No. 31D01-1009-PC-011, which is a post-conviction proceeding in the Harrison Superior Court.
2. Susan Schultz’s testimony is required at the post-conviction relief evidentiary hearing.
3. Susan Schultz’s address is: 127 E. Chestnut, Suite1, Corydon, IN 47112.
4. Susan Schultz’s testimony is required for the post-conviction relief claim for the following reason(s): Ms. Schultz represented Mr. Nunley during the pretrial, trial, and sentencing phases of the proceedings. Mr. Nunley has raised multiple issues regarding trial counsel’s effectiveness. Therefore, Ms. Schultz will testify regarding the acts and omissions underlying the allegations of ineffective assistance. For instance, Ms. Schultz will testify that her decision not to impeach the State’s key witness was not a tactical one. Rather, it was merely an oversight. Ms. Schultz will testify that her failure to object to the admission of written testimony was not tactical. Rather, it was the result of her failing to realize the detrimental impact associated with emphasizing the testimony. Ms. Schultz will further testify that she did not have a strategic

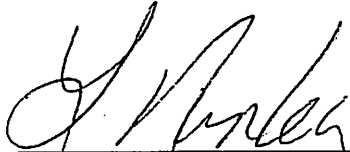
reason to fail to object to the introduction of State's Exhibit 2 or the instances of vouching for A.Y.'s credibility. Ms. Schultz will provide the Court with insight to her thoughts and views as they existed at the time of trial to aid in its determination of the issues before the Court. Furthermore, Ms. Schultz will also authenticate documents from her files for admission into evidence at the hearing.

FURTHER THE AFFLIANT SAYETH NAUGHT.


Lawrence E. Nunley

AFFIRMATION

I, Lawrence E. Nunley do hereby affirm, under the penalties for perjury pursuant to **Ind. Code 35-44-2-1**, that the foregoing representations are true and correct to the best of my knowledge and belief.


Lawrence E. Nunley

STATE OF INDIANA)

IN THE SUPERIOR COURT

COUNTY OF HARRISON)

OF HARRISON COUNTY

LAWRENCE NUNLEY,)

PETITIONER,)

FILED
JAN 14 2019
Sally A. White
CLERK HARRISON SUPERIOR COURT

-v-)

CAUSE NO 31D01-1009-PC-011

STATE OF INDIANA,)

RESPONDENT.)

**AFFIDAVIT IN SUPPORT OF
REQUEST FOR ISSUANCE OF SUBPOENA**

Comes now Petitioner, Lawrence E. Nunley, being first duly sworn upon his oath, deposes and says the following:

1. I am the petitioner Cause No. 31D01-1009-PC-011, which is a post-conviction proceeding in the Harrison Superior Court.


2. Matthew Jon McGovern's testimony is required at the post-conviction relief evidentiary hearing.

3. Matthew Jon McGovern's address is: 5444 E. Indiana Street, #375, Evansville, IN 47715.

4. Matthew Jon McGovern's testimony is required for the post-conviction relief claim for the following reason(s): Mr. McGovern represented Mr. Nunley during the direct appeal. Mr. Nunley has alleged that Mr. McGovern's representation of him was ineffective for failing to raise issues and for failing to raise issues well. Mr. McGovern will testify at the evidentiary hearing that the acts and omissions alleged in the petition were not strategic. Rather, they resulted from ignorance or unfamiliarity with certain aspects of the law, were simply oversights, and/or were not considered. For instance, Mr. McGovern will testify that there was no strategic


reason that he failed to raise issues related to Mr. Nunley's sentence. Mr. McGovern simply neglected to present a sentencing issue. Mr. McGovern will further testify that his failure to raise the issues related to the undue emphasis of A.Y.'s testimony and the vouching for A.Y.'s credibility were not strategic but were simply oversights. He just did not recognize the error; therefore, he did not make a strategic decision not to present the issue. Mr. McGovern will also authenticate the briefs that he submitted for admission into evidence.

FURTHER THE AFFIANT SAYETH NAUGHT.


Lawrence E. Nunley

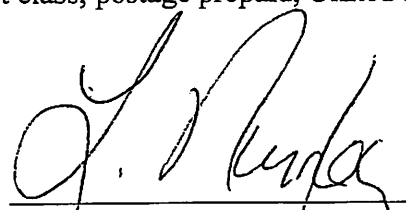
AFFIRMATION

I, Lawrence E. Nunley do hereby affirm, under the penalties for perjury pursuant to **Ind. Code 35-44-2-1**, that the foregoing representations are true and correct to the best of my knowledge and belief.


Lawrence E. Nunley

CERTIFICATE OF SERVICE

I, Lawrence Nunley, hereby affirm that on this 2 day of January 2016, I served a true and accurate copy of the foregoing Request for Subpoenas and supporting Affidavits upon the Prosecuting Attorney for Harrison County by ordinary first class, postage prepaid, United States Mail, in accordance with **T.R. 5**.

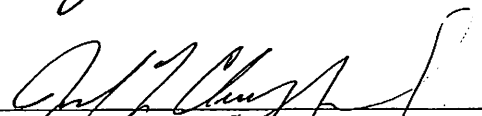

Lawrence E. Nunley

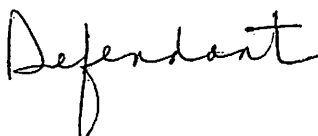
LAWRENCE NUNLEY) IN THE HARRISON SUPERIOR COURT
VS.) CAUSE NO.: 31D01-1009-PC-011
STATE OF INDIANA)

ORDER TO TRANSPORT

To the Sheriff of Harrison County, you are hereby ordered to transport, defendant, Lawrence Nunley, in your custody from the Wabash Valley Correctional Facility or to the Harrison County Jail on or before July 14, 2016 at 9:00 a.m. for a hearing in the above-captioned cause and return the defendant to the Wabash Valley Correctional Facility after said hearing, if appropriate.

SO ORDERED this 14th day of July, 2016.


HON. JOSEPH L. CLAYPOOL, JUDGE
HARRISON SUPERIOR COURT

✓ cc:
Harrison County Sheriff


IN THE SUPERIOR COURT FOR THE COUNTY OF HARRISON

STATE OF INDIANA

LAWRENCE NUNLEY,
PETITIONER

FILED
JAN 22 2016
Sally A. Whites
CLERK, HARRISON SUPERIOR COURT

VS.

CAUSE NO. 31D01-1009-PC-11

STATE OF INDIANA,
RESPONDENT

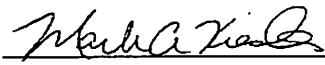
ANSWER TO AMENDED COMPLAINT

COMES NOW the State of Indiana, by Mark A. Kiesler, Chief Deputy Prosecutor, and pursuant to Post-Conviction Relief Rule 1 Section 4(A) and answers the Petition for Post-Conviction Relief filed in this case as follows:

1. The State denies paragraphs eight (8) and (9);

WHEREFORE, the State of Indiana respectfully requests that the Court deny the Petitioner's Petition for Post-Conviction Relief and for all other relief that is just and proper in the premises.

Respectfully Submitted,

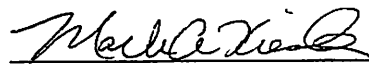


Mark A. Kiesler #28634-31
Chief Deputy Prosecutor
Harrison County Prosecutor's Office
1445 Gardner Lane NW
Corydon, Indiana 47112
(812) 738-4241

CERTIFICATE OF SERVICE

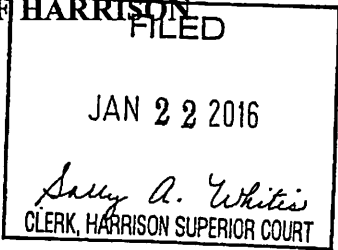
I hereby certify that I have served a copy of the foregoing document by United States Mail, postage prepaid, this 21st day of January, 2016, in accordance with the Indiana Rules of Trial Procedure upon:

Lawrence Nunley #198710
Wabash Valley Correctional Facility
6908 South Old Highway 41
Carlisle, Indiana 47838



Mark A. Kiesler

IN THE SUPERIOR COURT FOR THE COUNTY OF HARRISON



STATE OF INDIANA

LAWRENCE NUNLEY,
PETITIONER

VS.

CAUSE NO. 31D01-1009-PC-11

STATE OF INDIANA,
RESPONDENT

RESPONSE TO PETITIONER'S MOTION FOR SPECIFIC DISCOVERY

COMES NOW the State of Indiana, by Mark A. Kiesler, Chief Deputy Prosecutor, and files its response to Petitioner's Motion for Specific Discovery, and in support thereof states and alleges:

1. The State of Indiana received Petitioner's Motion for Specific Discovery filed January 14, 2016;
2. In said Motion, Respondent is requesting a copy, from the State or his former counsel, of a copy of the deposition transcript of the victim in this matter;
3. At the time of filing this Response, the State has been unable to locate its copy of said deposition;
4. The Respondent would alternatively ask the State to stipulate to a highlight copy to be admitted;
5. The State would not object to Petitioner's highlighted copy being admitted into evidence, as long as it is a complete, true and accurate copy of the deposition;
6. Prior to stipulating on this matter, the State would require that it has the ability to inspect said copy of deposition.

Respectfully Submitted,

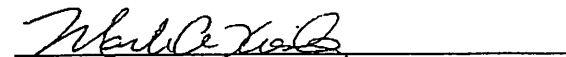


Mark A. Kiesler #28634-31
Chief Deputy Prosecutor
Harrison County Prosecutor's Office
1445 Gardner Lane NW
Corydon, Indiana 47112
(812) 738-4241

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by United States Mail, postage prepaid, this 21st day of January, 2016, in accordance with the Indiana Rules of Trial Procedure upon:

Lawrence Nunley #198710
Wabash Valley Correctional Facility
6908 South Old Highway 41
Carlisle, Indiana 47838



Mark A. Kiesler

FILED
APR 17 2016
OF HARRISON COUNTY
Daisy A. White
CLERK, HARRISON SUPERIOR COURT

STATE OF INDIANA)
) SS:
COUNTY OF HARRISON)
LAWRENCE NUNLEY,)
)
) PETITIONER,)
)
) -v-)
)
) STATE OF INDIANA,)
)
) RESPONDENT.

IN THE SUPERIOR COURT
OF HARRISON COUNTY

CAUSE NO 31D01-1009-PC-011

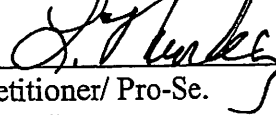
REQUEST TO HAVE ORIGINAL RECORD OR PROCEEDINGS REMOVED FROM THE CUSTODY OF THE CLERK OF THE SUPREME COURT AND COURT OF APPEALS OF INDIANA, SUBMITTED TO THE TRIAL COURT AND RECEIVED INTO EVIDENCE AS AN EXHIBIT IN POST-CONVICTION RELIEF PROCEEDINGS

Comes now the Petitioner, Lawrence Nunley, *pro se*, and respectfully requests this Court issue an order to the Clerk of the Supreme Court and Court of Appeals for the removal of an original record and, in support thereof, says:

1. Under Appellate Cause No. 31A01-0902-CR-00088, a certified decision was reached in Petitioner's direct appeal from his criminal conviction.
2. Petitioner has filed under this cause a Pro Se Petition for Post-Conviction Relief.
3. Petitioner will be representing himself at the evidentiary hearing.
4. Petitioner needs to have the original record of proceedings, which is currently in the custody of the Clerk of the Supreme Court and Court of Appeals of Indiana under Appellate Cause No. 31A01-0902-CR-00088, received into evidence in this post-conviction relief proceeding as Petitioner's Exhibit #1.

WHEREFORE, Petitioner requests this Honorable Court to issue an order to the Clerk of the Supreme Court and Court of Appeals for the removal of the original record of proceedings, as above reasoned, and for all other just and proper relief.

Respectfully submitted,



Petitioner/ Pro-Se.

DOC#

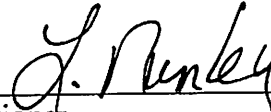
W.V.C.F.

Post Office Box 2222

Carlisle, IN 47838

AFFIDAVIT OF SERVICE

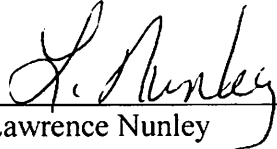
I, Lawrence Nunley, affirm under the penalty of perjury that a copy of the foregoing motion was mailed to Prosecuting Attorney of Harrison County, by United States Mail, first-class postage paid, on this 27 day of January 2016.



Petitioner

VERIFICATION

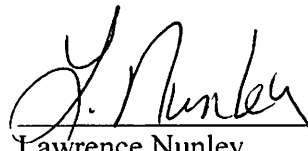
I, Lawrence Nunley, hereby verify that the documents contained in the Appellant's Appendix, Volume II are true and accurate copies of the record on appeal.



Lawrence Nunley

CERTIFICATE OF SERVICE

I, Lawrence Nunley, verify that on the 16th day of October, 2017, I served a true and accurate copy of the foregoing Appellant's Appendix, Volume II upon the Appellee by depositing the same in the **United States Mail**, first-class postage prepaid and affixed, properly addressed as follows: Curtis Hill, Office of the Attorney General, IGCS, Fifth Floor, 302 W. Washington Street, Indianapolis, IN 46204



Lawrence Nunley