

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TEHAMA

<i>IN RE</i> LARRY POHLSCHNEIDER, Petitioner, On Habeas Corpus. <hr/>) Case No.) Related Actions: Tehama County) Superior Court No. NCR54406))))
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PETITION FOR WRIT OF HABEAS CORPUS

Linda Starr, #118789 Maitreya Badami, #173241 NORTHERN CALIFORNIA INNOCENCE PROJECT at Santa Clara University School of Law 900 Lafayette Street, Suite 105 Santa Clara, CA 95050 Telephone: (408) 551-3260 Facsimile:(408)554-5441
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Thom Seaton, #62713 Attorney at Law 1012 Middlefield Road Berkeley, CA 94708 Telephone: (510) 204-9600
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1 children were actually molested by Albert Harris, the biological father of the two
2 younger victims. Harris confessed, pled guilty and is serving a sentence for that
3 molestation.

4 Mr. Pohlschneider's conviction was the result of a "perfect storm" of errors.
5 The initial accusations against Mr. Pohlschneider were the result of false medical
6 evidence. When medical professionals incorrectly concluded that someone other than
7 Albert Harris had molested the children, those incorrect medical opinions convinced
8 law enforcement officers of Mr. Pohlschneider's guilt. The officers, believing the
9 children were trying to protect Mr. Pohlschneider, conducted aggressive interrogation
10 of the children, resulting in their making false accusations. Although the children
11 subsequently testified truthfully at trial that Mr. Pohlschneider had never molested
12 them, the prosecution's reliance upon the children's unreliable pretrial statements,
13 demonstrably false medical evidence and pseudo-scientific opinion testimony
14 concerning Child Sexual Abuse Accommodation Syndrome ("CSAAS") convinced the
15 jury to disregard the three children's trial testimony.

16 The attorney appointed to represent Mr. Pohlschneider failed to consult with or
17 present any experts to contradict the false and misleading testimony of the
18 prosecution's witnesses. Trial counsel's failures resulted in the jury's incorrect
19 conclusions that the children were lying at trial and that Mr. Pohlschneider was guilty.
20 The trial lacked any competent, reliable evidence that Mr. Pohlschneider had molested
21 the children, because he had not. The results of this wrongful conviction have not only
22 been devastating to Mr. Pohlschneider, but have also had a terrible impact on the
23 children. For 14 years, Mr. Pohlschneider has been wrongfully imprisoned. The
24 children have been left twice victimized, once by Albert Harris, and again, by the
25 police and prosecution's mistreatment of them through the investigation and trial of
26 Mr. Pohlschneider. The relief sought herein must be granted.

27 I.

28 Mr. Pohlschneider is unlawfully incarcerated and confined at the California
Institute for Men at Chino, California by Dr. Jeffrey Beard, Secretary of the California

1 Department of Corrections and Rehabilitation, pursuant to a judgment of the Tehama
2 County Superior Court in *People v. Pohlschneider*, case number NCR54406.

3 This petition is being filed in this court pursuant to its original habeas corpus
4 jurisdiction. (Cal. Const., art. VI, §10.) The petition relies upon and incorporates the
5 attached exhibits and memorandum of points and authorities. At a minimum, its
6 allegations, taken as true, establish the requisite *prima facie* case, requiring an Order to
7 Show Cause and an evidentiary hearing. (Cal. Rules of Court, rule 4.551(c); *In re*
8 *Hardy*, 41 Cal.4th 977, 1016 (2007); *In re Clark*, 5 Cal.4th 750, 766 (1993); *In re*
9 *Hall*, 30 Cal.3d 408, 417 (1981).)

10 II.

11 The Northern California Innocence Project (NCIP) is a non-profit, clinical legal
12 education program developed by faculty of the Santa Clara University School of Law.
13 Law students, faculty, and staff carefully screen thousands of inmate applications and
14 choose to represent only those with strong evidence of actual innocence. NCIP is a
15 member of the Innocence Network. (Exhibit A, Declaration of Maitreya Badami.)

16 III.

17 By Tehama County Information No. NCR54406, filed on December 13, 2000,
18 Petitioner Larry Pohlschneider was charged with three counts of sexual molestation
19 against three children under the age of 14 years with whom he had resided or had
20 recurring access. (Pen. Code, § 288.) Each count included special allegations of
21 multiple victims (Pen. Code, § 1203.066, subd. (a)(7)); "substantial sexual conduct"
22 (Pen. Code, § 1203.066, subd. (b)); and the use of force (Pen. Code, § 1203.066, subd.
23 (a)(1)) (Clerk's Transcript on Appeal, hereinafter "CT," 2-5.) Count one alleged
24 crimes against Ethel J., count two alleged crimes against Ashley H., and count three
25 alleged crimes against David H. (CT 2-5.) Ethel is Mr. Pohlschneider's biological
26 child. Ashley and David are the biological children of his girlfriend, Ceandy Curry,
27 and Albert Harris.

1 Mr. Pohlschneider pled not guilty, invoked his right to a trial by jury, testified
2 at trial, and has always maintained his innocence. As Mr. Pohlschneider was indigent,
3 the court appointed attorney Thomas Hilligan, State Bar No. 35453, to represent him.
4 At Mr. Hilligan's advice, Mr. Pohlschneider waived his right to a preliminary hearing
5 and invoked his right to a speedy trial. (Exhibit B, Declaration of Larry
6 Pohlschneider.)

7 IV.

8 The facts supporting the conviction are summarized as follows:

9 **Albert Harris' Sexual Abuse of Ethel, Ashley, and David.**

10 Prior to the false accusations of molestation against Mr. Pohlschneider, it is
11 undisputed that Albert Harris, the father of Ashley and David, and the stepfather of
12 Ethel, sexually abused the three children over a lengthy period of time.

13 In late September or early October 2000, Ceandy Curry, mother of all of the
14 children involved in this case, took eight rolls of film to Wal-Mart to be developed; the
15 films depicted events as early as Christmas 1999. (Exhibit C, Red Bluff Police
16 Department Crime Reports ("CR") 01008088 and 01008088/2.) Curry picked up the
17 photographs on October 6, 2000. (Exh. C.)

18 While looking at the developed photographs, Mr. Pohlschneider, Curry's then
19 partner, and father of her oldest child, discovered a sexual photograph of a girl. (Exh.
20 B; RT 310:3-15.) When he realized that the girl in the photograph was ten-year-old
21 Ashley, Mr. Pohlschneider showed the photo to Curry. (Exh. B; RT 310:17-25; Exh.
22 C.) The photograph depicted Ashley's buttocks and David's hand. (Exh. C.) The
23 photograph had been taken between Thanksgiving and Christmas, 1999. (Exh. C.)

24 Mr. Pohlschneider and Ms. Curry immediately spoke with the children who told
25 them that Albert Harris had molested them. (Reporter's Transcript on Appeal,
26 hereinafter "RT," at 310:28-311:11.) Mr. Pohlschneider told Curry that they had to
27 involve the police and Curry agreed. (RT 311:21-24.) Ashley told Curry that Albert
28 Harris had taken the photograph and had molested her, her sister and her two brothers.
(Exh. C.) Mr. Pohlschneider and Curry reported to the Red Bluff Police Department

1 that they had found a nude photograph of one of the children, and that the children told
2 them it had been taken by Albert Harris. (RT 269:1-21, 271:10-16.)

3 Officer Brett McAllister of the Red Bluff Police Department began the
4 investigation on October 8, 2000 and spoke to Mr. Pohlschneider, Curry and the
5 children. The children told Officer McAllister that Albert Harris had molested them.
6 (RT 270:4-5.) Thereafter, Detectives Daniel Flowerdew and Eric Magrini took over
7 the investigation. (Exh. C.)

8 Albert Harris had left California in June 2000. (RT 419:8-9.) Police located
9 him after the allegations surfaced, and he confessed to having molested the children.
10 Albert Harris ultimately pled guilty to forcible sodomy and two counts of forcible
11 lewd acts with a child under 14 years of age. Harris was sentenced to state prison for
12 24 years. *People v. Harris*, 2001 WL 1407693 (Cal. Ct. App., Nov. 13, 2001,
13 C038223).

14 **The Allegations Against Mr. Pohlschneider.**

15 On November 3, 2000, Physician Assistant ("PA") Sandra Relyea examined
16 David with the understanding that the molestation had ended by July 2000. She
17 reported to the Red Bluff detectives that she believed that her examination showed that
18 David had been abused more recently than July 2000. (Exhibit D, Relyea Report.)

19 PA Relyea's finding and report triggered the police investigation of Mr.
20 Pohlschneider. On November 16, 2000, Red Bluff police received the medical reports
21 and, based on PA Relyea's report that David exhibited signs of having been molested
22 after Albert Harris had left California, began further investigation. (RT 167:1-5.) They
23 went to the children's school and conducted another interview with Ethel and Ashley.
24 Ms. Curry was not present. (*Id.*) The girls did not accuse Mr. Pohlschneider of
25 molesting them. At approximately 2:30 p.m. on the afternoon of November 16, 2000,
26 police detectives questioned the children at the Red Bluff police station. (Exh G, H, I.)
27 By the end of these interviews, the children had accused Larry Pohlschneider of
28 molesting them. The police recordings of these interviews were apparently lost prior
to trial. In the evening of November 16, detectives conducted yet more interviews of

1 the children at the Victim/Witness center. In these videotaped interviews, the children
2 accused Mr. Pohlschneider of molesting them. (CT 33-119.) Police arrested him that
3 day.

4 Prior to trial, the children recanted the accusations against Mr. Pohlschneider.
5 The prosecution made an in limine motion to admit the testimony of an expert on
6 Child Sexual Abuse Accommodation Syndrome ("CSAAS"). When Mr. Hilligan, Mr.
7 Pohlschneider's trial attorney learned that the children had recanted their accusations,
8 Mr. Hilligan told Mr. Pohlschneider that he was upset because now he would be forced
9 to spend all night doing research. (Exh. B.) The record contains no opposition by
10 defense counsel to the introduction of the expert testimony regarding CSAAS. Mr.
11 Hilligan made no request for a continuance of the trial in order to consult with an
12 expert of his own.

13 **The Children All Testified That Only Albert Harris, And Not Mr.**
14 **Pohlschneider, Had Molested Them.**

15 At trial, each of the children recanted the statements that he or she had made to
16 the police. Ethel, who was 11½ at trial, testified that Albert Harris had molested her
17 beginning when she was five years old (RT 69:9-19) and had molested Ashley
18 beginning when Ashley was four years old. (RT 69:9-19.) Ethel denied that Petitioner
19 had molested her and testified that she had lied to the police about Petitioner. (RT
20 65:18-25.)

21 Ashley, who was 10½ at the time of the trial, testified that she had lied before
22 (RT 92:14-16) and that Petitioner had not done bad things to her or anything like
23 Albert Harris had done to her. (RT 103:16-20.) Ashley was not asked any questions
24 about whether she had witnessed Petitioner abuse Ethel. (RT 83:5-103:28.)

25 David, who was a month short of 9 years old at trial, testified that Albert Harris,
26 not Petitioner, had done bad things to him (RT 49:22-50:9) and that he had lied to the
27 police. (RT 50:10-19, 51:6-14, 56:1-8.) David reiterated that Albert Harris had
28 molested him. (RT 53:4-55:17.)

1 On January 30, 2001, a mere two months after the purported last act of sexual
2 abuse, a jury convicted Mr. Pohlschneider of three counts of continuous sexual abuse
3 of a child and found true each special allegation with respect to each victim. (RT 407-
4 409; CT 2-5.)

5 VI.

6 Pursuant to Mr. Pohlschneider's motion for a new trial, the superior court found
7 that the evidence was insufficient to support the conviction on one of the three counts
8 (Ashley H.), because the evidence did not clearly show that the abuse of one of the
9 victims took place over a period greater than three months. (CT 166-177; RT 404:20-
10 409:19.) The trial court sentenced Mr. Pohlschneider to two consecutive terms of 12
11 years each. (RT: 404:20-409:19; CT 238-240.)

12 VII.

13 On August 8, 2002, the California Court of Appeal, Third Appellate District,
14 affirmed Mr. Pohlschneider's conviction. The California Supreme Court denied
15 review. Mr. Pohlschneider has filed no previous petitions for writ of habeas corpus in
16 this or any other court.

17 VIII.

18 Mr. Pohlschneider's imprisonment is in violation of his federal and state
19 constitutional rights as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to
20 the United States Constitution, by Article I, sections 1, 7, 15, and 17 of the California
21 Constitution, and by California Penal Code section 1473. Mr. Pohlschneider's
22 imprisonment is unlawful because:

- 23 1. Mr. Pohlschneider was convicted upon the basis of false evidence that was
24 "substantially material on the issue of guilt or punishment" in violation of his
25 rights; Cal. Pen. Code, § 1473, subd. (b); *In re Hall*, 30 Cal.3d 408, 424 (1981),
26 quoting *In re Wright*, 78 Cal.App.3d 788, 807-808 (1978).
- 27 2. Mr. Pohlschneider was convicted on the basis of demonstrably unreliable
28 evidence, in violation of his rights to due process as guaranteed under the Fifth
Amendment of the United States Constitution and under Article I, §§ 7 and 15

1 of the California Constitution. *California v. Green*, 399 U.S. 149, 189 (1970);
2 *Simmons v. United States*, 390 U.S. 377 (1968); *People v. Contreras*, 17 Cal.
3 App. 4th 813, 819 (1993).

4 3. Mr. Pohlschneider was deprived of his right under the Sixth Amendment of the
5 Constitution of the United States and under Article I, § 15 of the California
6 Constitution to the effective assistance of counsel during trial. *Strickland v.*
7 *Washington*, 466 U.S. 668, 686-87 (1984);

8 4. Newly discovered exculpatory evidence demonstrates that Mr. Pohlschneider
9 did not commit the crimes for which he was convicted. *In re Lawley*, 42 Cal.
10 4th 1231, 1238 (2008); *Herrera v. Collins*, 506 U.S. 390, 392 (1993). The new
11 evidence completely undermines the prosecution's entire case and points
12 unerringly to his innocence (*Lawley, supra*, at 1239); and,

13 5. These errors cumulatively deprived Mr. Pohlschneider of his right to due
14 process and effective assistance of counsel, compelling reversal. *Chambers v.*
15 *Mississippi*, 410 U.S. 284, 302 (1973); *People v. Hill*, 17 Cal. 4th 800 (1998).

16 IX.

17 This petition is based on the ground that Mr. Pohlschneider's conviction rests
18 upon false, misleading, and unreliable "scientific" evidence. The following facts now
19 known to Mr. Pohlschneider support this claim:

20 The jury, in the face of the testimony by the three children that Larry
21 Pohlschneider had never molested them, still concluded that he was guilty. That result
22 was only possible if the jury believed that the prosecution's "expert" testimony was
23 true and reliable *and* if they believed the children's coerced statements to the police,
24 implicating Petitioner. However, every piece of "evidence" upon which the
25 prosecution relied can be demonstrated to be false and highly unreliable.

26 Physician's Assistant Sandra Relyea's testimony that David had sustained more
27 recent sexual abuse than could have been perpetrated by Albert Harris was false. (RT
28 218:17-25.) Attached hereto as Exhibit F is the declaration of James Crawford-
Jakubiak, MD. Dr. Crawford-Jakubiak is one of the premier experts in forensic

1 pediatrics in the state. He is the Medical Director of the Center for Child Protection
2 (CCP) at UCSF Benioff Children's Hospital Oakland, in Oakland, California. He and
3 his colleagues evaluate approximately 1,000 cases of suspected child abuse each year.
4 He testifies regularly as an expert on child sexual abuse, the vast majority of the time
5 on behalf of the prosecution.

6 Dr. Crawford-Jakubiak has reviewed the medical examination reports prepared
7 by PA Relyea, who examined David, and Dr. Michael Vovakes, who examined the
8 two girls. He has also reviewed their testimony, and obtained and reviewed the
9 photographic images taken by the two medical professionals in the course of their
10 examinations of the children. Dr. Crawford finds that "the medical professionals in
11 this case did not follow the proper protocol in documenting child sexual assault exams,
12 did not provide proper supervision of the Physician's Assistant, and came to erroneous
13 conclusions at trial based on the medical evidence in the case and what is known about
14 injuries/conditions at the time." (Exh. F.)

15 Dr. Crawford-Jakubiak further noted several aspects of PA Relyea's
16 conclusions that were improper, unsupported by the evidence, or simply false. For
17 example, PA Relyea based her opinion that David had been abused very recently on
18 her purported observation that his sphincters were lax and abnormal, evidencing recent
19 sodomy. Dr. Crawford-Jakubiak asserts, "After reviewing the photos from David's
20 exam, I observed that the sphincters in these photos are 100% closed and there is
21 nothing in these images that in any way support a finding of laxity. It is very
22 uncommon to see a true abnormality in tone and there is no evidence of that type of
23 abnormality here." (Exh. F.)

24 PA Relyea also based her finding of recent sodomy on what she determined to
25 be David's incontinence, which she stated indicated recent abuse. (RT 198, 203.) Dr.
26 Crawford-Jakubiak rejected that conclusion, finding that "there is no evidence that
27 David was suffering from incontinence around the time of this examination." (Exh.
28 F.) PA Relyea's conclusion was inconsistent with David's medical history and a small
amount of stool indicated only David's failure to wipe his bottom thoroughly after

1 going to the bathroom, a “very common” occurrence among children his age. (Exh.
2 F.)

3 Moreover, further undermining PA Relyea’s testimony that incontinence is
4 evidence of sexual abuse, Dr. Crawford-Jakubiak observes, “Incontinence and the
5 presence of stool are not evidence of abuse and it is not true that it is common from
6 children who have been sexually assaulted to be incontinent and have a lax sphincter.
7 Encopresis, incontinence of stool, is not indicative of sexual abuse but of a medical
8 issue.” (Exh. F.)

9 Dr. Crawford-Jakubiak flatly rejects PA Relyea’s finding that evidence of
10 excoriation (scratching) in the perineal skin pointed to recent abuse. He explains,
11 “Scratching and excoriation on the perianal skin is usually a sign of bad wiping after
12 using the bathroom—a very common hygiene issue for young children.” (Exh. F.)

13 The above-mentioned improper, unsupported and false medical findings are
14 only a representative sample of the false medical testimony upon which Mr.
15 Pohlschneider’s conviction rests. The false and unreliable medical evidence is
16 discussed at greater length in the accompanying memorandum of points and
17 authorities.

18 X.

19 The conviction also rested upon additional false evidence. The prosecution
20 admitted the unsworn pretrial statements of the three children, in which they had
21 accused Mr. Pohlschneider of molesting them after he learned of their abuse by Albert
22 Harris and alerted the police to that abuse. The children subsequently made clear,
23 before and at the trial, that the accusations against Mr. Pohlschneider were false. As
24 adults, they have not wavered in their assertions that the pretrial accusations were
25 false. (Exhibits G, H, and I, respectively, are the Declarations of Ethel [REDACTED], Ashley
26 [REDACTED], and David [REDACTED].)

27 XI.

28 Given that the jury rejected the children’s trial testimony, the conviction
necessarily rested on their inherently unreliable pretrial statements, which were

1 obtained as the result of improper and highly suggestive methods used by Red Bluff
2 police detectives. The children's subsequent pretrial recantations and testimony that
3 Mr. Pohlschneider was innocent had far more indicia of reliability than the statements
4 that resulted from their interrogation.

5 In order to bolster the children's pretrial statements in the face of their trial
6 testimony to the contrary, the prosecution presented the testimony of Ray Carlson,
7 Ph.D, purporting to be an expert on "Child Sexual Abuse Accommodation Syndrome"
8 ("CSAAS"). The CSAAS expert testimony was misleading, used for an improper
9 purpose, and inadequately rebutted by the defense.

10 Kamala London, Ph.D., is a psychologist, professor of psychology, and a
11 renowned expert in the field of interrogations of children in child abuse cases.
12 (Exhibit J, CV of London.) Dr. London has reviewed the transcripts of the pretrial
13 statements made by the children in this case, as well as portions of the trial record and
14 police reports. (Exhibit K, Declaration of London.) She has concluded that the
15 interrogations of the children by Detectives Magrini and Flowerdew were improper
16 and rendered the children's statements unreliable. She has found interviewer bias; the
17 use of repeated interviews and repeated questions; the use of specific rather than open-
18 ended questions; the atmospherics of the interview, which communicated the
19 detectives' bias to the children; and the combining of various suggestive techniques,
20 which further compromised the reliability of the children's statements. (Exh. K.) The
21 extent of the improper techniques and their impact on the reliability of the statements
22 are set forth in the declaration of Dr. London and discussed in greater detail in the
23 memorandum of law. Ultimately, Dr. London concluded that "the methods used to
24 gather information from them rendered their statements unreliable." (Exh. K at
25 paragraph 11; Exhibit L, London Report.)

26 Thus, the convictions rested on unreliable accusations obtained via improper
27 interrogation of child sexual assault victims, inherently unreliable in themselves.
28 Those statements were then bolstered by the improperly admitted, misleading expert
testimony concerning CSAAS. The existence of a CSAAS syndrome has come under

1 substantial scrutiny and its evidentiary basis has been found lacking. Dr. London also
2 consulted in Mr. Pohlschneider's case on the issue of how the "evidence" of CSAAS
3 was used. Dr. London has authored studies and peer-reviewed articles on this issue.
4 (Exhibit M, London Report—CSAAS.) She concludes that the testimony of the
5 prosecution's expert, Dr. Carlson, was not based on an unbiased summary of the
6 scientific literature, but rather was based on clinical beliefs. Dr. Carlson did not cite to
7 any scientific literature outside of that by Roland Summit. Even then, he ignored
8 Summit's follow-up paper that cautioned against the misuse of CSAAS. (Exhibit N,
9 Declaration of Kamala London, Ph.D.)

10 Dr. London refutes Dr. Carlson's key testimony in this case that it is common
11 for children to flip-flop, that is, to make and then deny and then re-allege accusations
12 of abuse. Dr. London notes that, in fact, "the scientific literature does not support the
13 notion that children undergoing abuse frequently show this "flip-flopping" of
14 disclosures, denials, and recantations. There is no scientific literature to support the
15 statements [that Carlson testified to at trial]. In fact, the scientific literature shows that
16 denial and recantation are not common." (*Id.*) Dr. London reiterates that "the vast
17 majority of studies find recantation happens in fewer than 10% of cases." (Exh. N.)

18 Dr. London also refutes Dr. Carlson's assertion that "some aspects of it
19 [CSAAS] will always be there, yeah." (RT 41:5-9.) She notes, "The notion that some
20 aspect of CSAAS will be present in *all sexual abuse cases* was never put forth by
21 Summit and certainly is not supported by the contemporary scientific literature that
22 shows when children are directly asked about abuse, most will tell, especially if they
23 have told someone before. Further, recantation rarely occurs among children who
24 actually experienced sexual abuse." (Exh. N.)

25 Dr. London's declaration addresses additional aspects of Dr. Carlson's
26 testimony that were equally unfounded, misleading, and false. In sum, the testimony
27 of the prosecution's expert on CSAAS was so unreliable and misleading that its
28 introduction deprived Mr. Pohlschneider of a fair trial, thus violating federal and state
guarantees of due process, and entitling Mr. Pohlschneider to relief.

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XII.

Mr. Pohlschneider's conviction should be vacated because he was deprived of the effective representation of counsel at trial. As noted above and discussed at length in the memorandum of law, trial counsel utterly failed to mount an effective defense against the demonstrably false accusations against Mr. Pohlschneider. Counsel neither consulted with nor called any expert to rebut false medical testimony introduced against Mr. Pohlschneider. Counsel neither consulted with nor called any expert to demonstrate the inherently unreliable nature of the children's pretrial accusations resulting from their improper interrogation by agents of the state. Counsel neither consulted with nor called any expert to rebut the misleading CSAAS testimony. Counsel neither consulted with nor called an oncologist to testify to the debilitating effects of Mr. Pohlschneider's chemotherapy treatments. Michael Cassidy, M.D. is a Board-certified oncologist who has reviewed Mr. Pohlschneider's medical records and his trial testimony regarding his symptoms. He has submitted a declaration, Exhibit O, which corroborates that testimony and elaborates on the state of health and well-being typically experienced by patients undergoing such treatment. This further supports Mr. Pohlschneider's claim that his trial attorney had a duty to consult with a medical expert. Counsel essentially abdicated his role to serve as a guardian of Mr. Pohlschneider's right to a fair trial based on reliable evidence.

In the absence of readily available evidence to rebut each and every one of the prosecution's forms of evidence, the jury was left to the improper, false conclusion that the children were lying at trial and that Mr. Pohlschneider was guilty. Moreover, counsel failed adequately to cross-examine the children regarding the reasons they made falsely accusatory statements before trial, and failed to conduct the trial with a minimum level of competence necessary to demonstrate to the jury the falsity of the charges against Mr. Pohlschneider. The failure to mount a reasonable defense directly resulted in Mr. Pohlschneider's conviction of crimes he did not commit. Michael Rothschild, a criminal defense practitioner with extensive experience training other attorneys and law enforcement agencies on the issues relevant to allegations of child

1 sexual abuse, has provided a declaration, submitted as Exhibit P, that sets forth the
2 minimum standards of practice for preparing and trying such a case and demonstrates
3 how Mr. Pohlschneider's counsel was woefully inadequate in his preparation and
4 presentation of the defense. It is clear that Mr. Pohlschneider was prejudiced by
5 counsel's deficient performance. There could be no greater prejudice than to be
6 convicted notwithstanding available proof of innocence.

7 XIII.

8 Mr. Pohlschneider is also imprisoned in violation of his fundamental state and
9 federal rights because he is innocent. Newly discovered evidence undermines the
10 entire prosecution case and points unerringly to Mr. Pohlschneider's innocence. The
11 children, now grown, continue to attest to Mr. Pohlschneider's innocence. They have
12 never wavered in their accusations of Albert Harris.

13 The expert opinions of the witnesses whose declarations have been cited above
14 all provide key information to disprove, refute, or undermine the elements of the
15 prosecution's case against Mr. Pohlschneider. As the result of the negligence and
16 incompetence of trial counsel, none of that key evidence was obtained or developed at
17 the time of trial. Now that the necessary expertise has been gathered and brought to
18 bear on the "evidence" against Mr. Pohlschneider, it is clear that he was convicted *in*
19 *spite of his actual innocence*. No greater violation of his fundamental rights could be
20 shown. In light of the sworn declarations of the children, now grown, and the newly
21 gathered and presented evidence undermining the prosecution's entire case, it is
22 incumbent on the court to recognize the fundamental deprivation of rights that Mr.
23 Pohlschneider has suffered. The convictions must be vacated in their entirety.

24 XIV.

25 The cumulative effect of the many violations of Mr. Pohlschneider's
26 fundamental constitutional rights deprived him of a fair trial and resulted in a jury
27 verdict in which there can be no confidence. Even if the court were to conclude that
28 any one of the individual errors alleged herein failed, on its own, to deprive Mr.
Pohlschneider of a fair trial, in combination, these many errors clearly resulted in a

1 verdict in which this court should have no confidence. *In re Jones*, 13 Cal. 4th 552,
2 588 (1996). In light of the newly obtained and presented evidence undermining the
3 prosecution's evidence, the evidence of trial counsel's failures to mount an adequate
4 defense, and the continued assertions of the alleged victims in this case, there can be
5 no question that the trial Mr. Pohlschneider received was manifestly unfair and the
6 verdicts improper. Relief in habeas corpus is clearly warranted.

7 XV.

8 This petition is timely brought before the Court. Mr. Pohlschneider has filed
9 this petition for writ of habeas corpus as soon as possible after obtaining the evidence
10 necessary to support his claims. *In re Robbins*, 18 Cal. 4th 770, 784 (1998); *In re*
11 *Huddleston*, 71 Cal. 2d 1031, 1034 (1969).

12 XVI.

13 Mr. Pohlschneider's claim is based on the petition, accompanying
14 memorandum and exhibits, all records, documents, and pleadings on file with this
15 court, and any further material to be developed through discovery and at any future
16 hearing ordered.

17 XVII.

18 NCIP and its representatives have spent considerable time and financial
19 resources developing the evidence that supports this petition.

20 Mr. Pohlschneider has remained in constant communication with NCIP during
21 this time and NCIP staff attorneys and law students have visited Mr. Pohlschneider on
22 at several occasions. (Exhs. A, B.) Mr. Pohlschneider trusts the NCIP attorneys,
23 knows how much time and energy they have expended on his case, has confidence in
24 them, and therefore requests that this court appoint NCIP to represent him in further
25 proceedings related to this matter. (Exh. B.)
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6 XVIII.

7 WHEREFORE, Mr. Pohlschneider respectfully requests that this Court:

8 1. Take judicial notice of the transcripts, briefs and court records in *People v.*
9 *Pohlschneider*, Tehama Superior Court Case No. NCR54406; and California Court of
10 Appeal, Third Appellate District Case No. C037869 (Evid. Code, § 452, subs. (c) and
11 (d));

12 2. Issue an order directing Dr. Jeffrey Beard, Secretary of the California
13 Department of Corrections, to show cause why Mr. Pohlschneider is not entitled to the
14 relief sought;

15 3. Appoint NCIP to represent Mr. Pohlschneider in these proceedings;

16 4. After full consideration of the issues, grant the petition, vacate the judgment
17 of conviction of the Tehama County Superior Court No. NCR54406;

18 5. Conduct an evidentiary hearing to resolve any factual disputes; and,

19 6. Grant Mr. Pohlschneider such other and further relief as may seem just under
20 the circumstances.

21
22 Date:

Respectfully submitted,

23 Northern California Innocence Project at
24 Santa Clara University School of Law

25 By: _____

26 Maitreya Badami
27 Northern California Innocence Project,
28 for Petitioner,
Larry Pohlschneider

1 **VERIFICATION**

2 Maitreya Badami declares as follows:

- 3 1. I am the attorney for Larry Pohlschneider, the petitioner in the above-
4 captioned action.
- 5 2. I make this verification because petitioner is incarcerated in Chino,
6 California, which is outside the county in which my office is located, and
7 because the matters stated in the petition for writ of habeas corpus are more
8 within my knowledge than his.
- 9 3. I am informed and believe that the matters stated therein are true and, on
10 that ground, allege that the matters stated therein are true.

11 I declare under penalty of perjury under the laws of the State of California that
12 the foregoing is true and correct.

13
14 Executed this _____ at Santa Clara, California.

15
16 Respectfully submitted,

17
18 _____
19 Maitreya Badami
20 Northern California Innocence Project,
21 for Petitioner,
22 Larry Pohlschneider
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