

**Leon Benson #995256**  
**Pendleton Correctional Facility**  
**4490 W. Reformatory Rd.**  
**Pendleton, Indiana 46064**

**Re:** Seeking Pro Bono &/or hired legal representation in Federal Habeas Corpus Petition to overcome procedural default in innocence case of Leon Benson, cause #49G02-9808-PC-134837 and Indiana Court of Appeals cause number #49A04-1604-PC-897.

Greetings,

My name is Leon Benson and I've been wrongfully incarcerated in the state of Indiana, since 1998, for the shooting death of Kasey Schoen. From the inception of this case & throughout the years of my incarceration I have maintained my absolute innocence. I have had hired representation & been pro se throughout my trial & appeal process up until now. My addition efforts in seeking relief from wrongful imprisonment has been in contacting every Innocent Project in the U.S. & publically campaigning for support in society & online ([www.freeleonbenson.org](http://www.freeleonbenson.org); [www.facebook.com/FreeLeonBenson](http://www.facebook.com/FreeLeonBenson)).

The complexity of my case is its based upon cross-racial, eyewitness misidentification and overwhelming trial and post conviction relief errors made by defense counsel. After these errors, while litigating my case pro se, I was forced to withdraw my PCR without prejudice in November 2009. I was able to re-file my PCR in November 2013 with legal counsel.

My PCR was re-filed by Indianapolis attorney Eric K. Koselke. The issues he petitioned to the court were;

- A) Ineffective Assistance of trial counsel, Timothy J. Miller (who has been disbarred since 2004), who failed to 1) properly investigate the case; 2) properly prepare defense investigator, James Hendrix, prior to his testimony; 3) call exculpatory eyewitness Dakari C. Fulton; 4) adequately cross-examine states witness Christy Schmitt; 5) object to the hearsay statements of state's witness Donald Brooks; 6) make an adequate offer of proof to James Hendrix objected testimony; 7) obtain and present to the jury the 911 call tape of state's witness Christy Schmitt; 8) move to suppress and object to a pre-trial and in court identification of Benson that were made as a result of a suggestive photo array; 9) to object to prosecutor misconduct.
- B) The state of Indiana failed to disclose an exculpatory eyewitness statement by state's witness Christy Schmitt (made 30 min after crime).

- C) The state of Indiana used a suggestive procedure when showing a pre-trial photo array of Benson to the witness in this case.
- D) Newly discovered evidence: 1) new vision and distance science by Geoffrey Loftus; 2) new visualization finger printing technique for discovering and analyzing latent fingerprint off bullet casings.

## **The Pros and Cons of PCR Results**

### **The Pros were:**

Fulton testified at the evidentiary hearing that he gave police a statement and positively identified, Joseph Webster, as the person he witnessed commit the crime. Fulton's testimony corroborated with evidence of gun type (380.) used in the shooting and described the same clothing state's witness, Christy Schmitt, described of the shooter wearing too.

Dr. Geoffrey Loftus testified about the science of vision and distance analysis, that he and colleagues developed in 2004, where he demonstrated how a person with 20/20 vision cannot recognize a face from a distance of 50 yards in broad daylight. And under poorer lighting conditions the lost of info triples (if at night viewing a face from 50 yards is like viewing one from 150 yards in broad day, either way it is scientifically impossible to recognize any face from such distances). Schmitt had less than 20/20 vision and viewed the shooter from 49 yards away at night. And her initial description of shooter greatly contradicted my physical features. Loftus also testified about the suggestiveness of photo array procedures; the data that showed high probabilities of eyewitness misidentification (i.e. cross racial identification) that was available to trial counsel in 1998-99.

### **The Cons were:**

In PCR hearing Koselke requested that court take away the presumption of counsel's trial strategy due to his refusal to appear at the PCR hearing. Trial counsel, Miller, was living in California and refused all advances to appear in Indiana court. And because PCR hearings are treated as "civil proceedings" there is no law to force witnesses that live out of state to appear. The court never made a ruling on Koselke's verbal motion in this case.

Koselke failed to put a crime stopper report and stolen gun report into evidence at PCR hearing. After Fulton testified that he witnessed Webster commit shooting, it laid foundation to place the "crime stopper report" into evidence that said Webster committed the shooting and the gun he used was his girlfriends,' Latasha Shepherd gun, which she reported stolen. Upon investigation, Shepherd did make a stolen gun report to police of a 380. automatic handgun (same gun type used in crime).

Koselke failed to even mention several issues in petitioners fact findings and conclusion of law (state failing to disclose exculpatory statement by Schmitt; state used suggestive photo array identification procedure; IAOC for failing to present 911 tape, for failing to suppress and object to suggestive photo array procedure and in court identification failure to adequately cross-examine Christy Schmitt). No reason was ever given to me by Koselke why he omitted these engrossing issues from trial record. These errors weakened my PCR arguments.

In fact, Koselke never fully developed the record the PCR hearing properly because he did not admit into the record Christy Schmitt's second statement made the day of the crime (8/8/98) at the police station; nor her deposition made in April of 1999; nor detective Alan Jones' deposition in April 1999. All of which would have shown that trial counsel was inadequate in his cross-examination of both these state's witnesses.

### **Rulings in Case**

On March 28, 2016, Amy Barbar, Magistrate denied my PCR. Her ruling was bogus. Stating that newly discovered evidence (vision and distance science) was merely impeaching; that is was trial counsel's strategy not to call Fulton because he was a drug dealer (although counsel never investigated Fulton nor located him while he was in the state's custody the whole time); that it was counsel's strategy not to object to Brook's hearsay statement because it was allowed in the first trial and this issue was already dealt with in the direct appeal (Benson v. State, 762 n.e.2d 748 (Ind. 2002), however these observations were erroneous and the first trial record and Benson's case law proves it. Koselke never contacted me after the PCR hearing in July 2015, except with an amendment for petitioners' facts and findings and conclusion of law motion (which was done without my permission); he withdrew from my case April 18, 2018.

Next, I hired attorney Ross Thomas of Indianapolis to appeal the PCR decisions with Indiana Court of Appeals. And court of appeals continued the same erroneous hum drum rulings as lower courts when they denied my appeal. And on February 15, 2018 the Indiana Supreme Court denied my Petition to Transfer.

### **Current Circumstances**

Due to my withdrawing my PCR without prejudice back in November 2009 until November 2013 I have procedurally defaulted according to the Antiterrorism and Effective Death Penalty Act (AEDPA), U.S.C.S 2244 (d)(1). Therefore, the only way I believe I can overcome this procedural default is in a Federal Habeas Corpus Petition using one of four options: 1) demonstrate why my default should be excused based elements outside my control; 2)

‘fundamental miscarriage of justice exception’, failure to observe state procedural rules, such as deadlines (see *Coleman v. Thompson*, 501 U.S. 722, 750); 3) show new evidence not presented in trial (Fulton testimony and vision science) that” is more likely than not that no reasonable juror would have convicted me” (see *Schlup v. Delo*, 513 U.S. 298 1995; *House v. Bell*, 547 U.S. 518 2006; *McQuiggin v. Perkins*, 185 L.E.D 2d 1019 2013); 4) PCR counsel was ineffective for wavering several IAOC issues (*Brown v. Brown*).

The reason I withdrew my PCR while I was pro se in 2009 was due to an attorney, Jeffery Baldwin making an appearance on my case without my permission. When I notified the court about the issue the judge ordered “petitioner must seek relief in civil jurisdiction”, while she erroneously denied Fulton as eyewitness in my, then, upcoming PCR evidentiary hearing. Therefore, in early 2010 I pursued civil action against Baldwin as the PCR judge ordered (*Benson v. Baldwin*, cause# 49K01-1005-SC-05050), but I was denied relief.

In addition, while I was in the SHU of Wabash Valley Correctional Facility, I had limited access to legal research materials, I was under tremendous psychological pressure due to prolonged isolation, and was not well versed in legal litigation. All of which caused my withdrawal.

## **Conclusion**

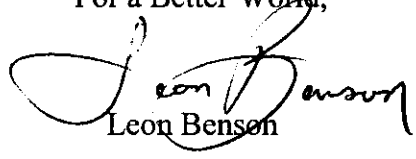
It is my belief that I have the constitutional foundation of “ineffective assistance of counsel” in my case to be granted an exception to procedural default. And not mention **I am Absolutely Innocent**. My heart is broken by an Indiana Justice system that suppressed and oppressed me and my legal claims of Innocence since 1998. When there is overwhelming evidence that demonstrates that it is “more likely than not” I am innocent and my remaining incarcerated is a miscarriage of justice. Therefore, I need your skilled assistance in this urgent matter. This assistance can be provided in one of three ways: 1) in taking on my case or in helping me prepare the Habeas Corpus Petition Pro Bono; 2) assisting me in preparing and litigating my Habeas Corpus for a reasonable fee; 3) being retained as my lawyer for a reasonable fee.

I am one of the few truly innocent people in prison. I could not live with the thought that all of my efforts to be exonerated were in vain when there is more than enough evidence present to granted me relief. The sad part of all this, is the fact that, the victim in this case and his family suffer injustice too, as long as the wrong man is incarcerated for Kasey’s brutal murder.

I humbly ask that you please take my letter seriously; because I would not spend your time if I were not being completely truthful about my moral & legal plight for justice.

Thank you for your duration. Now I humbly await your most earnest reply.

Sincerely  
For a Better World,

A handwritten signature in black ink that reads "Leon Benson". The signature is fluid and cursive, with the first name "Leon" and last name "Benson" clearly legible within the script.

Leon Benson