

STATE OF MINNESOTA
COUNTY OF BECKER

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Kenneth Eugene Andersen,

Petitioner,

Case No. 03-CR-07-171

**PETITION FOR POST-
CONVICTION RELIEF**

vs.

State of Minnesota,

Respondent.

I. INTRODUCTION

The Petitioner, Kenneth Andersen, (hereinafter “Mr. Andersen”) by and through his attorney, Zachary A. Longsdorf, Esq., respectfully petitions this Court for post-conviction relief pursuant to Minnesota Statute §590.01 and alleges:

II. PRIOR PROCEEDINGS

A. PROCEEDINGS IN WHICH PETITIONER WAS CONVICTED

Mr. Andersen was indicted for first degree murder related to the killing of Chad Swedberg on April 13, 2007. He was tried in the State of Minnesota, County of Becker, Seventh Judicial District, District Court with the Honorable Peter Irvine presiding. After a jury trial, on June 4, 2008, Mr. Andersen was convicted of first-degree murder. On June 12, 2008, Mr. Andersen was sentenced to a mandatory sentence of life in prison.

B. DIRECT APPELLATE REVIEW

Mr. Andersen made a direct appeal of his conviction to the Minnesota Supreme Court, claiming (1) the search-warrant application contained material misrepresentations and did not

otherwise provide probable cause, (2) there was insufficient evidence, (3) that the state should be required to prove that it did not derive evidence of monitoring and recording Mr. Andersen's phone conversations with counsel, and (4) that the trial court committed plain error in questioning certain jurors about events taking place outside the courtroom. The Supreme Court upheld the conviction in an opinion dated June 30, 2010. *State v. Andersen*, 784 N.W.2d 320 (Minn. 2010).

C. POSTCONVICTION PROCEEDINGS

On December 10, 2010, Mr. Andersen filed a petition for postconviction relief making claims of: (1) newly discovered evidence of another person in the vicinity at the time of the murder, (2) a Sixth Amendment violation when hearsay evidence from a firearms expert was admitted, (3) discovery violations when the state failed to disclose evidence that Al Baker disposed of a .30 caliber rifle until after trial, (4) prosecutorial misconduct, (5) due process violations when Mr. Andersen's phone calls with his investigator were monitored, (6) ineffective assistance of trial counsel, and (7) ineffective assistance of appellate counsel. That petition was summarily denied on January 19, 2011. Mr. Andersen appealed to the Minnesota Supreme Court, which affirmed in an opinion dated March 20, 2013. *Andersen v. State*, 830 N.W.2d 1 (Minn. 2013).

On September 27, 2016, Mr. Andersen filed a petition for postconviction relief making claims of (1) ineffective assistance of trial counsel, (2) newly discovered evidence of an undisclosed witnessed interview that showed innocence and was also a *Brady* violation, (3) newly discovered evidence of innocence, and (4) actual innocence and cumulative error. That petition was summarily denied on March 1, 2017. Mr. Andersen appealed that denial, and the matter was reversed and remanded for an evidentiary hearing based on two (2) of Mr.

Andersen's newly discovered evidence claims. *Andersen v. State*, 913 N.W.2d 417 (Minn. 2018). After an evidentiary hearing held on October 23, 2018, the district court again denied Mr. Andersen's claims. Mr. Andersen appealed. The Minnesota Supreme Court affirmed the denial of Mr. Andersen's petition. *Andersen v. State*, opinion released March 11, 2020 (Minn. 2020).

III. FACTS

Mr. Andersen relies upon the statement of facts contained in the Memorandum of Law submitted in support of this petition.

IV. GROUNDS FOR RELIEF

1. Mr. Andersen has obtained newly discovered evidence, including discovery of previously unknown empty shell casings, believed to be .308 caliber Winchesters, recovered from the scene of the accident as the result of a grid search of the area.

2. Mr. Andersen's conviction was obtained in violation of his constitutional rights under cases such as *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

3. Mr. Andersen was denied his right to defend himself when the prosecution conducted an inadequate and incompetent investigation that resulted in the failure to uncover the newly discovered exculpatory evidence.

4. Actual Innocence/Interests of Justice. There is a lack of evidence upon which to base Mr. Andersen's conviction and the combination of cumulative error in this matter dictate that Mr. Andersen be granted a new trial in the interests of justice.

V. RELIEF DESIRED

Petitioner prays as follows:

1. That an Order be issued for an evidentiary hearing where proof of the allegations herein can be offered.
2. That an Order be issued directing the Respondent to produce Petitioner at all hearings held by this Court.
3. That after a hearing on the merits, an Order be issued directing that the Petitioner's conviction be set aside and the Petitioner discharged from further custody, or in the alternative, granting him a new trial.
4. For such other and further relief as law and justice may require.

Dated: May 27, 2020

Longsdorf Law Firm, P.L.C.

s/ Zachary A. Longsdorf

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