

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MICHAEL PATRICK FORD -- PETITIONER

VS.

STATE OF ALABAMA -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

ALABAMA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

MICHAEL PATRICK FORD  
AIS# 291943 DORM-E-46A  
LIMESTONE CORRECTIONAL FACILITY  
28778 NICK DAVIS ROAD  
HARVEST, ALABAMA 35749-7009  
PETITIONER / PRO-SE

QUESTION(S) PRESENTED

(1). Does Your Petitioner have a Constitutional Right to his Guilty Plea Hearing transcripts to perfect an appeal ?

(2). Does a Circuit Court Clerk have a Constitutional duty to respond to Your Petitioner's request for Court documents to file an appeal ?

(3). Did the State Trial Court's refusal to allow Your Petitioner to purchase transcripts of the proceedings impede his ability to comply with State's Procedural Rules and Statute of limitations in violation of Due Process and Equal Protection of the Law ?

(4). Did the State Denying Access to Your Petitioner's transcripts, not responding to Your Petitioner, meet the standard for Equitable Tolling setforth by this Honorable Court's holding in Holland v. Florida, 560 U.S. 631, 649, 130 S.Ct. 2549, 177 L.Ed. 2d 130 (2010)

(5). Is this Your Petitioner's Third (3rd) Rule 32 petition or, in fact, his First (1st.) Rule 32 petition seeking post-conviction relief ?

(6). Is a State Court's Judgment void when it was rendered in violation of Due Process of law, under the Constitution of the United States 5th, 14th Amendment and Alabama Constitution of 1901 Article 1, Sec. 6 ?

(7). Did the Alabama Court of Criminal Appeals abuse its Discretion and/or Authority in violation of § 12-3-16, Ala.Code (1975) ?

## LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to \_\_\_\_\_  
review the judgment below.

OPINIONS BELOW

☒ For Cases from **state courts**:

The opinion of the highest state court to review the merits appears at  
Appendix D to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished

The opinion of the Alabama Court of Criminal Appeals court  
appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from **state courts**:

☒ The date on which the highest state court decided my case was 03-16-18.

A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was therefore denied on the following date:

01-12-18, and a copy of the order denying rehearing

appears at Appendix C.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Constitution of the United States 1st. Amendment APPENDIX-G
2. Constitution of the United States 5th. Amendment APPENDIX-G
3. Constitution of the United States 14th. Amendment APPENDIX-G
4. Constitution of Alabama 1901 Article 1 § 6 APPENDIX-G
5. Constitution of Alabama 1901 Article 1 § 13 APPENDIX-G

## STATEMENT OF THE CASE

1. 10-15-13 Petitioner Entered Guilty Plea, In Case No: CC-13-000-165, Alexander Division, Tallapoosa County Circuit Court Alabama.
2. 11-01-13 Petitioner was Sentenced to 87 Years in Case No: CC-13-000-165.
3. 12-26-13 Petitioner sent letter to Circuit Court Clerk Ref: Request for Transcripts / Oral Notice of Appeal. (No Response from the State).
4. 10-22-14 Request for Transcripts. (No Response From the State)
5. 09-16-14 Motion to Circuit Court Clerk Requesting Certified Copy of the Record. (No Response from the State)
6. 10-22-14 Motion for Circuit Court Clerks Office to Perform it's Duty. (No Response from the State)
7. 12-09-14 Motion for Discovery of Records and Transcripts. (No Response from the State).
8. 12-11-14 Rule 32 Petition / Motion to Proceed In Forma Pauperis / Request for Transcripts. (No Court Ruling in Case)
9. 01-23-15 Motion for Order for Transcripts. (No Response from the State).
10. 02-12-15 Motion to Withdraw Plea / Request for Transcripts. (Both Denied by Circuit Court: 03-12-15)
11. 04-07-15 Request for Circuit Court Orders Issued on 03-12-15.

12. 04-14-15 Formal Notice / Official Complaint to Circuit Court (Ref: Court Orders Issued on 03-12-15).
13. 04-28-15 Request for Order of Court for Transcripts. (No Response from the State).
14. 07-23-15 Request for Transcripts. (No Response from the State).
15. 05-16-15 Formal Complaint to Presiding Circuit Court Judge Ref: Court Reporter Aaron. (No Response from the State).
16. 06-06-16 Formal Complaint to Alabama Supreme Court Chief Judge Ref: Court Transcripts. (Response 07-28-16).
17. 07-06-16 Final Request for Transcripts sent to Court Reporter Aaron. (No Response).
18. 07-06-16 Motion for Order of Circuit Court to be Issued upon Court Reporter Aaron. (No Response from the State).
19. 07-20-16 Request for Transcripts. (No Response from the State)
20. 09-25-16 Petition for Writ of Mandamus (Alabama Court of Criminal Appeals) In: Ex parte M.P.F. Case# CR-15-1503, Ref: Court Transcripts. (Response from Court 11-21-16).
21. 11-16-16 Petitioner Sent Letter to Presiding Circuit Court Judge Tom Young Jr. Ref: Court Transcripts.
22. 12-05-16 Letter sent from Presiding Circuit Court Judge Tom Young Jr. to Your Petitioner, Ref: Transcripts being sent without cost to Your Petitioner.

23. 12-26-17 Received Uncertified Copy of Transcripts from Tallapoosa County Circuit Clerk's Office, almost Three (3) years after the First Request was sent back on 12-26-13.
24. 04-08-17 Sent 1st. Rule 32 Petition / Memorandum of Law / In Forma Pauperis after receiving Transcripts.
25. 04-19-17 Petition to proceed In Forma Pauperis **Granted** by Circuit Court Judge Ray Martin.
26. 05-26-17 State files Response to Your Petitioner's Rule 32 petition with Motion to Dismiss.
27. 06-16-17 Motion of Objection to the State / Motion for a Evidentiary Hearing.
28. 06-21-17 Received Tallapoosa County Circuit Court order Dismissing Rule 32 petition, from Circuit Court Judge Ray Martin.
29. 06-28-17 Sent Notice of Appeal / Court of Criminal Appeals Dockering Statement to Tallapoosa County Circuit Clerk's Office.
30. 07-30-17 Sent Appeal from Tallapoosa County Circuit Court to the Alabama Court of Criminal Appeals.
31. 09-25-17 Received Brief from Appelle, Attorney Generals Rule 52 Brief.
32. 12-08-17 Court of Criminal Appeals Affirmed Circuit Courts Judgement.
33. 12-22-17 Application for Rehearing sent to Alabama Court of Criminal Appeals.

34. 01-12-18 Order from Alabama Court of Criminal Appeals, Application for Rehearing Overruled.
35. 01-26-18 Filed Petition for Writ of Certiorari to the Alabama Supreme Court.
36. 03-16-18 Supreme Court of Alabama, Certificate of Judgement, **Writ Denied, No Opinion Issued.**
37. 12-16-18 Alabama Court of Criminal Appeals, Certificate of Judgement.

## REASONS FOR GRANTING THE PETITION

### GROUND 1

Did the Alabama Court of Criminal Appeals abuse it's Discretion when it failed to follow this Honorable Courts holdings, and the Alabama Supreme Courts Holdings pursuant to § 12-3-16, Supreme Court; Decisions; Superintendence.

The decision of the Supreme Court shall govern the holdings and decisions of the courts of appeals, and the decision and proceedings of such courts of appeals shall be subject to the general superintendence and control of the Supreme Court as provided by Constitutional Amendment No. 328.

### GROUND 2

The Alabama Supreme Court and the Alabama Court of Criminal Appeals failed to follow this Honorable Courts holdings for Equitable Tolling in cases like Holland v. Florida, 560 U.S. 632, 653, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010), and are in conflict with their own holdings in cases involving Equitable Tolling of the time limitations of Rule 32.2(c), Ala.R.Crim.P.. The Alabama Supreme Court in Ex parte Ward, 46 So.3d 888 (Ala.2007), stated; "We conclude, however, that the Court of Criminal Appeals erred in holding that Rule 32.2(c), Ala.R.Crim.P., creates a jurisdictional bar that precludes application of the doctrine of equitable tolling; therefore; we reverse its judgment in that respect and remand the cause for further proceedings."

Also in Martinez v. State, 75 So.3d 616 (Ala.2009), "The court pays particular attention to weather principles of equity would make the rigid application of a limitation period unfair and whether the petitioner has exercised reasonable diligence in investigating and bringing the claims. While Martinez's certiorari was pending, this Court issued its opinion in Ex parte Ward. Martinez did not have the benefit of Ward to afford him the opportunity to argue the equitable tolling of the limitations period. Accordingly, we reverse the judgment of the Court of Criminal Appeals and remand the case to that court for consideration of Martinez's claim that he is entitled to the remedy by the doctrine of equitable tolling"...

The Alabama Supreme Court stated in, Ex parte Ward, 46 So.3d 898 (Ala.2010)," In light of the fact that the doctrine of equitable tolling is a newly recognized exception to the limitations provision of Rule 32.2(c), that it was Ward who argued successfully before this Court that the doctrine should be adopted...summary denial of an inmates Ala.R.Crim.P. 32 petition for post conviction relief was reversed and case remanded for an **evidentiary hearing** because inmate should have an **opportunity** to present to the trial court his **evidence** and **arguments** in support of equitable tolling of the limitations period of Rule 32.2(c) for consideration on their merits." The Alabama Court of Criminal Appeals holdings in cases like State v. Hurst, 2016 Ala.Crim.App. LEXIS 77, stated;"applying the requirements set forth in Ward and Rule 32.3 Ala.R.Crim.P., to the circumstances presented in this case, we note that Hurst would be entitled to post conviction relief only if he: (1) properly pleaded the doctrine of equitable tolling in his Rule 32 petition; (2) subsequently disproved the States allegation that Rule 32.2(c) bars post conviction relief establishing his equitable-tolling claim by a **preponderance** of the **evidence** at an **Evidentiary Hearing**; and (3) proved his ineffective-assistance-of-counsel claim by a **preponderance** of the **evidence** at an **Evidentiary Hearing**." Also the Alabama Court of

Criminal Appeals stated in Ward v. State, 2017 Ala.Crim.App. LEXIS 8,"The United States Court of Appeals for the Second Circuit stated:"our case law suggest that a petitioner's legal papers and access to them are **not irrelevant** to his ability to file. A person is plainly **"prevented"** from filing a pleading for some period of time, if he is **deprived** of the sole copy of that pleading. To suggest that a petitioner is not diligent in such circumstances when he does not simply file a bare bones petition **does not** appropriately take into account the fact that,...petitioner's have but one bite of the apple. A petitioner must navigate not-insignificant procedural complexities in filing a habeas petition, **mistakes** can be **costly**...As noted in Nickels, errors in filing post conviction petitions are costly and frequently bar relief in subsequent petitions. As in Holland v. Florida, 560 U.S. 632 at 653, 130 S.Ct. 2549,177 L.Ed.2d 130, The Supreme Court in Holland found that a habeas petitioner had exercised **reasonable diligence** by writing his attorney 'numerous letters seeking **crucial information**." As in all of these cases they were

reversed and remanded back to the lower Court's because they concluded that a petitioner should have an **opportunity** to assert his claim that the doctrine of equitable tolling should be applied to the limitations period of Rule 32.2(c), Ala.R.Crim.P., and his Rule 32 petition considered on the merits of the case. The lower Courts have yet considered in full detail the facts in this case. They have failed to consider the extraordinary circumstances that Your Petitioner has had to go through to bring forth his claims in this case, or the diligence that this petitioner has shown since he gave **Notice of Appeal** back in **December 2013**. The standards for a petitioner in a Rule 32 Petition in Alabama is very high, without his transcripts Your Petitioner would not be able to give specific facts of the violations that accrued in his case, nor meet the strict standards set out in Rule

32.3 Ala.R.Crim.P., which states: "The petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief. The State shall have the burden of pleading any ground of preclusion, but once a ground of preclusion has been pleaded, the petitioner shall have the burden of disproving its existence by the preponderance of the evidence."

followed by Rule 32.6(b) Ala.R.Crim.P., "(b) Specificity. Each claim in the petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and a mere conclusion of law shall not be sufficient to warrant any further proceedings. And Rule 32.7.(d)

Ala.R.Crim.P., (d) Summary Disposition. If the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings, the court may either dismiss the petition or grant leave to file an amended petition. Leave to amend shall be freely granted. Otherwise, the court shall direct that the proceedings continue and set a date for hearing. As this Honorable Court can see

from these Rules, No pro-se petitioner or an Attorney could file a Rule 32 petition without a transcript, they would only be pleading a conclusion, not the facts of the case, which is required by these rules.

As this Honorable Court has held in cases such as Holland v. Florida, 560 U.S. 632, 130 S.Ct. 2549, 177 L.Ed.2d 130, a petitioner must meet two prongs for equitable tolling to apply. The First being extraordinary circumstances. In other words, what was the extraordinary conditions that caused the delay in the case that forced the petitioner to go past the time limitations for filing an appeal. In Your Petitioners case, it has been the State's refusal to allow Your Petitioner to get his Trial Transcripts. When Your Petitioner was sentenced on November 1, 2013, and sent a letter to the Circuit Court Clerk (Patrick Craddick) on 12-26-13 giving Notice of Direct Appeal, along with a Request for Transcripts, this was a Timely Notice of Appeal. (See Appendix E). Then on 01-23-14, after not receiving a response from the Circuit Court Clerk's office, Your Petitioner sent a Notice of Appeal Form, and a Court of Criminal Appeals Docketing Statement. Along with a second Request for Transcript form, and a letter asking how much the transcripts would cost and if this was the proper way to request the transcripts from the



Circuit Court Clerk's Office. When Your Petitioner attempted to file his Direct Appeal, Your Petitioner was denied In Forma Pauperis by the Trial Court, and denied access to his transcripts. Therefore, Your Petitioner was forced to forego his Direct Appeal until Your Petitioner could receive the transcripts that Your Petitioner would need to identify any specific violations that may have occurred in the Guilty Plea proceedings. In total Your Petitioner has sent to the State a Total of Nineteen (19) Request for Transcripts, Motions, Formal Complaints, and on 06-06-16 a Formal Complaint to the Alabama Supreme Court's Chief Judge in reference the States Refusal in allowing Your Petitioner to get his transcripts (See Appendix F ). Then on 09-25-16 Your Petitioner filed a Writ of Mandamus to the Alabama Court of Criminal Appeals in Ex Parte M.P.F., Case No: CR-15-1503. The Alabama Court of Criminal Appeals Presiding Judge Mary B. Windom sent a letter/order to Circuit Court Presiding Judge Tom Young Jr. telling him that this matter was to be handled by him. Then on 12-05-16, Your Petitioner received a letter from Circuit Court Judge Tom Young Jr., stating that the transcripts were being sent to Your Petitioner without cost. Which Your Petitioner received on or about 12-16-16. It has taken from 12-26-13 to 12-16-16 for Your Petitioner to get the trial transcripts that this Honorable Court has consistently recognized the value of a Court Transcript to a petitioner for his defence or to file an appeal. As this Honorable Court stated in Britt v. North Carolina, 404 U.S.226,30 L.Ed.2d 400, 92 S.Ct. 431 (1971),"As a matter of **equal protection**, a state must provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners; under such principle, the state must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal.

The Alabama Supreme Court in their own holdings in case like, Davis v. State, 38 So.3d 706 (Ala.2009), Ex parte Powell, 641 So.2d 772 (Ala.1994), have stated,"Alabama law recognizes that when an indigent defendant appeals a conviction or the trial court ruling in a post-conviction proceeding...a transcript of the proceeding must be made available to the defendant without cost."

The Alabama Supreme Court in Ex parte Powell, stated: "It is clear that in

Alabama, where the law provides for a direct appeal of a criminal conviction or of a ruling on a post-conviction motion, a transcript of the proceeding appealed from must be provided without cost to an indigent defendant whenever the proceeding is transcribed. Ala.Code 1975, §§ 12-22-190 and -191. This requirement is based on the United States Supreme Court's ruling in Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956), that an indigent defendant's constitutional right to equal protection is violated where a state provides defendants with the right of appellate review, but, in effect, denies adequate appellate review to those defendants who cannot afford to purchase a transcript of the proceedings. The supreme Court ruled that "destitute defendants must be afforded as adequate appellate review as defendants who have enough money to buy transcripts."

Alabama statute §12-22-190 states:" The legislature is aware that it has become settled law that a state may or may not authorize appeals from judgments of convictions in criminal cases and certain other related proceedings involving the life, liberty or property of a person convicted of a criminal offense; further, that if a state does provide for appeals in criminal cases and such other cases, defendants or petitioners adjudged guilty of crimes and who are **without funds and unable to pay the fees of the court reporter for transcribing the evidence or the fees of the clerk for preparing the record for review on appeal** may be denied equal protection of the law or due process of law. It is the purpose of this division to provide such defendants or petitioners with a transcript of the evidence, or a part thereof, and a record for proper and equal review in certain criminal cases and such other cases wherein it is made to appear that a convicted defendant is indigent and desires to take an appeal and obtain a judicial review of matters that occurred at his trial or hearing.

Under Alabama Statute §12-22-191," This division shall apply to all criminal cases tried in the courts of the State of Alabama where a **direct appeal** to the Supreme Court or Court of Criminal Appeals is provided by law, also to all related or collateral proceedings, including habeas corpus and coram nobis proceedings, involving the life, liberty or property of a person convicted of a criminal offense where an appeal is provided to the Supreme Court or Court of Criminal Appeals."

Under these Holdings and Statutes Your Petitioner had a legal right to his transcripts, ether when Your Petitioner Offered to pay for them, or when a free copy was requested. If as this Honorable Court has stated that a indigent defendants Constitutional Rights to **equal protection** of the law is violated by the State that denies a indigent defendant a copy of his transcript to file an appeal, how can any Court deny a defendant his Constitutional Right when that defendant makes an offer to pay for the transcripts, But the State refuses to respond to his request for transcripts, letters, and motions. This by any Court's standard must be considered as a **extraordinary circumstance**, and requires equitable tolling. As in Holland v. Florida, Holland was denied access to his legal papers, and his attorney failed to communicate with him. In Holland's case it was his attorney that caused the delay.

In Your Petitioners case it has been the Tallapoosa County Circuit Clerk's office and the Tallapoosa County Circuit Court, by their refusal to respond, they have violated Your Petitioners Constitutional Rights. As stated in part under the United States Constitution's 1st. Amendment," to petition the government for a redress of grievances." And the 5th. Amendment, provides that,"no person shall be deprived of life, liberty, property without due process of law." Followed by the 14th. Amendment," nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." As well as the 14th Amendment, as applied to the State of Alabama. Along with the Alabama Constitution of 1901, under Article 1 Sec. 6, Rights of Person in Criminal Prosecution states in part, "not be deprived of life, liberty, or property,, except by due process of law." Followed by Article 1 Sec. 13 Courts to be open; Remedies for all injuries; Impartiality of Justice."That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay." (See Appendix G page 1 & 2). This has also been a Denial of Access to Court, where the State has impeded Your Petitioner from filing a nonfrivolous post-conviction petition. The right of access to the Courts requires that an individual have "adequate, effective, and meaningful" access to Court procedures. Ryland v Shapiro, 708 F.2d 967,972 (5th.Cir.1983). As stated in Lewis v. Casey, 518 U.S.343,116 S.Ct. 2174, 135 Led 2d 606 (1996),"Interference with an inmates access to the courts constitutes a first amendment violation." Also stated in Wolff v McDonnell, 418 U.S. 539,94 S.Ct. 2963,41 L.Ed.2d 935 (1974),"The right of access to the courts is founded in the due process clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights."

The second prong that a petitioner must meet for equitable tolling is

reasonable diligence. As stated by the 11th Cir. in Smith v. Comm'r, Ala. Dept of Corr., 703 F. 3d 1266 (11th Cir. 2012), "with regard to diligence, the defendant is required to exercise reasonable diligence, rather than maximum feasible diligence. Holland, 130 S.Ct. at 2565. Our court like wise has noted that "due diligence...does not require a prisoner...to exhaust every imaginable option, but rather to make reasonable efforts."

In Aron v United States, 291 F.3d 708 (11th Cir. 2002), "the due diligence inquiry is an individualized one that must take into account the conditions of confinement and the reality of the prison system."

As the Alabama Court of Criminal Appeals stated in Ward v. State, 2017 Ala. Crim. App. LEXIS 8, "...our case law suggest that a petitioner's legal papers and access to them are not irrelevant to ability to file. A person is plainly prevented from filing a pleading for some period of time if he is deprived of the sole copy of that pleading".

As in Holland v. Florida, 560 U.S. 632 at 653, 130 S.Ct. 2549, 177 L.Ed.2d 130, This Honorable Court in Holland found that a habeas petitioner had exercised reasonable diligence by writing his attorney numerous letters seeking crucial information. As in Your Petitioners case, this Petitioner was seeking crucial information in his case. As this Honorable Court can see from (Appendix F), Your Petitioner has shown reasonable diligence in this case. Like in Holland, Your Petitioner sent letters, Request for Transcript Forms, and Motions, not to an attorney, but to the State. Your Petitioner filed request for his Court Documents to Three (3) different State Courts in attempt to get the Court Transcripts that Your Petitioner requested back on December 2013. It has taken Three (3) years to get the Court documents that this Honorable Court has stated that he had a right to under Britt v North Carolina, 404 US 226, 30 L.Ed.2d 400, 92 S.Ct. 431 (1971). There can be no doubt that by Your Petitioner being forced to go to not only the Trial Court, but the Alabama Supreme Court, and the Alabama Court of Criminal Appeals, and has filed Nineteen (19) separate Court Documents to get his transcripts so that Your Petitioner could file a effective appeal, must be considered extraordinary circumstance and more then reasonable diligence. There can be no doubt that Your Petitioner had a right and a need to his transcripts. That Your Petitioner was forced by the State to exhaust every imaginable option, both

when Your Petitioner offered to pay for the transcripts, or when Your Petitioner asked for a free copy of the transcripts.

The equitable tolling of the time limitations of Rule 32.2(c) Ala.R.Crim.P., should be applied or used, and should be available when it is necessary to prevent unfairness to a diligent plaintiff. The equitable tolling of the time limitations of Rule 32.2(c) Ala.R.Crim.P., in a Rule 32 petition was not allowed in the State of Alabama until the Alabama Supreme Court made equitable tolling of the time limitations available in a Rule 32 petition in its holding in Ex parte Ward, 46 So.3d 888 (Ala.2007). It was in this case that the Alabama Supreme Court ruled that the equitable tolling of the time limitations of Rule 32.2(c) Ala.R.Crim.P., Should be applied in a Rule 32 petition. But as in Holland v. Florida, 560 U.S. 632 at 653, 130 S.Ct. 2549, 177 L.Ed.2d 130, equitable tolling has only been used when a attorney fails to do their duty, and has allowed the time limitations to expire in a Rule 32 petition. In Your Petitioners case it was not an attorney that failed to do their duty, but it was in fact the State that failed to do its duty in allowing Your Petitioner to receive a copy of the Court documents that Your Petitioner needed, and had a Constitutional Right to, so that he could file a meaningful appeal. Which without these Court Documents, Your Petitioner would not be able to comply with the strict standards for a Rule 32 petition , under Rule 32.3 Ala.R.Crim.P., Rule 32.6(b) Ala.R.Crim.P., and Rule 32,7(d) Ala.R.Crim.P.. As the Alabama Supreme Court stated in its holding in Beckworth v. State, 190 So.3d 571 (Ala.2013), "At the pleading stage of Rule 32 proceedings, a Rule 32 petitioner does not have the burden of proving his claim by the preponderance of the evidence Rather, at the pleading stage, a petitioner must **only** provide 'a clear and specific statement of the grounds upon which relief is sought.' Rule 32.6(b),Ala.R.Crim.P. once a petitioner has met his burden of pleading so as to avoid summery disposition pursuant to Rule 32.7(d), Ala.R.Crim.P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof."

The Alabama Court of Criminal Appeals stated in Marshall v. State, 182 So.3d 573 (Ala.Crim.App.2014), "The burden of pleading under Rule 32.3 and Rule 32.6(b) is a

heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition. Rule 32,6(b) requires that the petition itself disclose the facts relied upon in seeking relief. Boyd v State, 746 So.2d 364,406 (Ala.Crim.App.1999). In other words, it is not the pleading of a conclusion "which if true, entitles the petitioner to relief." It is the allegation of facts in pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala.R.Crim.P., to present evidence proving those alleged facts."

As this Honorable Court can see from these holdings by the Alabama Supreme Court and the Alabama Court of Criminal Appeals, Your Petitioner would not know the facts required to meet these standards without a transcript. Furthermore, the Trial Court or the Assistant District Attorney never addressed, or ruled on the factual allegations set out in Your Petitioners Rule 32 petition pertaining to a clear ground for equitable tolling. As the Alabama Supreme Court stated in Ex parte Hodges, 147 So.3d 973 (Ala.2011), "When the State does not respond to a petitioners allegations, the unrefuted statement of facts must be taken as true."

In Glass v. Thomas, 2613 U.S. Dist.LEXIS 45441 (11th Cir.2013), "The 11th Circuit quoting Archie v. State, 6 SO.3d 566 (Ala.Crim.App.2008), "Archie's allegations were not refuted by the State, and thus must be taken as true. When the State does not respond to a petitioner's allegations, the unrefuted statement of facts must be taken as true. Therefore, we must remand this case for the Circuit Court to allow Archie an opportunity to present evidence to support his allegation that the failure to appeal was based on a clerical error and was not his fault."

When Assistant District Attorney Hall, did not **refute** Your Petitioners claim for equitable tolling, the Alabama Court of Criminal Appeals abused it's discretion when it did not follow the holdings of the Alabama Supreme Court and/or their own holdings and take the **unrefuted statements** for equitable tolling as true, and remand this case back to the Trial Court for an Evidentiary hearing, as provided for in Rule 32.9, Ala.R.Crim.P.. Instead the Alabama Court of Criminal Appeals allowed the State's Attorney Generals Office, to refute the facts that Assistant District Attorney Hall failed to refute. Therefore, allowing the State a chance to **correct** the short comings in the Assistant District Attorneys Brief. Furthermore, when Your Petitioner received his copy of the transcripts, they were not signed and **certified** by the Court Reporter. Therefore, it can not be considered as a **true**

copy of the proceedings.

### GROUND 3

Is this Your Petitioner's 3rd Rule 32 petitioner as stated by the State?

When the Assistant District Attorney responded to Your Petitioner's Rule 32 petition to the Trial Court he stated, "This is the third petition for post-conviction relief pursuant to Rule 32. The petitioner filed his three petitions on or about December 17, 2014, April 17, 2015, and April 12, 2017." This statement is **false** and **misleading** from the Assistant District Attorney. On or about December 17, 2017 Your Petitioner sent a Rule 32 petition to the Circuit Court Clerk's Office. Along with a request to proceed In Forma Pauperis. According to Rule 32.6(a), Ala.R.Crim.P., "the circuit clerk shall file a Rule 32 petition **only** after a filing fee is paid or a request to proceed In Forma Pauperis is granted." In the December 17, 2014 Rule 32 petition the Trial court **never** granted Your Petitioner's request to proceed In Forma Pauperis and **no** filing fee was ever paid in that case. Furthermore, there has **never** been a Court ruling on that case, and it does not show up on any Case Action Summary Sheets from the Circuit Clerks Office. As stated by the Alabama Supreme Court in Ex parte Chandler, 910 So.2d 763 (Ala.2005), "Absent payment of a filing fee under Ala. Code §12-19-70 or the granting of a request to proceed In Forma Pauperis, the trial court lacked **subject matter jurisdiction** to consider a post conviction petition. The trial court never granted the inmate in forma pauperis status as to the instant proceeding, and the trial court did not collect a filing fee from the inmate."

As stated in part under Carpenter v. State, 782 So.2d 848 (Ala.Crim.App.2000), "Section §12-19-70 provides that a filing fee shall be collected at the time a complaint or a post-conviction petition is filed, unless a verified statement of substantial hardship is approved, in which event the docket fee may initially be waived and then taxed as cost at the conclusion of the case. A trial court does not obtain jurisdiction of an action until either a filing fee is paid or the fee is properly waived according to §12-19-70."

Therefore, under Rule 32.6(a) Ala.R.Crim.P., and §12-19-70 the December 17, 2014 Rule 32 petition was never filed in accordance with these Rules.

Therefore, the December 17, 2014 Rule 32 petition can not be held against Your Petitioner, because it was never filed.

The April 17, 2015 case was not a Rule 32 petition, but in fact a **Withdraw of Guilty Plea Motion** pursuant to Rule 14.4(e) Ala.R.Crim.P., which states, "The Court shall allow withdraw of a plea of guilty when necessary to correct a manifest injustice."

There was no in forma pauperis granted, and no filing fee payed, due to this being a motion not a Rule 32 petition. In order for this to be considered a Rule 32 petition under Rule 32.6(a) Ala.R.Crim.P., Commencement of Proceeding; states in pertinent part; "The petition should be filed by using or following the form accompanying this rule. If that form is not used or followed, the court shall return the petition to the petitioner to be amended to comply with the form. The petition shall be accompanied by two copies thereof. It shall also be accompanied by the filing fee prescribed by law or rule in civil cases in the circuit court unless the petitioner applies for and is give leave to prosecute the petition in forma pauperis." As stated in Wilson v. State, 659 So.2d 154 (Ala.Crim.App.1994), "A defendant's "Writ of Error Corman Nobis / Motion to Withdraw Guilty Plea" was not in proper form where it was treated as a petition for post-conviction relief, and the circuit court correctly returned the writ to the Appellant pursuant to A.R.Cr.P. 32.6(a)." Therefore, under Rule 14.4(e) and Rule 32.6(a) Ala.R.Crim.P. the April 17, 2015 case **Can Not** be considered as a Rule 32 petition. Therefore, the April 12, 2017 case is in fact Your Petitioners **First** Rule 32 petition under Alabama Rules of Criminal Procedure. The Alabama Attorney Generals Office and the Alabama Court of Criminal Appeals have continued with the **false** and **misleading** statement made by the Assistant District Attorney. Once the Assistant District Attorney made this **false** statement and Your petitioner **Disputed** his claims, this caused a controversy and raises a material issue of facts or law. When a material issue is rased it must be addressed in order to resolve the controversy at a Evidentiary Hearing pursuant to Rule 32.9 Ala.R.Crim.P.. The Alabama Court of Criminal Appeals and the Trial Court abused its



Discretion when they failed to Remand this case back to the Trial Court for a Evidentiary Hearing this controversy of Material Issue of Facts. Along with the Alabama Supreme Court, when they failed in their Supervisory Role over the Alabama Court of Criminal Appeals and the Trial Court.

#### GROUND 4

The Alabama Supreme Court along with the Alabama Court of Criminal Appeals abused their discretion when they failed to follow this Honorable Courts holdings in Boykin v. Alabama, 395 U.S.283, 89 S.Ct. 1709, L.Ed.2d 274 (1968), along with Rule 14.4, Ala.R.Crim.P., Acceptance of a Guilty Plea; which states in part:(a)(1) Ascertainig that the defendant has a full understanding of what a plea of guilty means and it's consequences, by informing the defendant of and determining that the defendant of and determining that the defendant understands:

(i) The nature of the charge and the material elements of the offense to which the plea is offered;

(ii) The mandatory minimum penalty, if any, and the maximum possible penalty provided by law, including any enhanced sentencing provisions;

The Trial Court failed to follow both Rule 14.4(a)(1)(i) and Rule 14.4(a)(1)(ii) Ala.R.Crim.P., which is similar to Rule 11 Fed.R.Crim.P.. When a trial Court fails to follow Rule 14.4 Ala.R.Crim.P., a guilty plea can not be considered as being a **Voluntary and Knowing** Guilty Plea and must be considered a **Void Judgment**. Under Rule 14.4(a)(1)(i) Ala.R.Crim.P., requires that the nature of the charge and the material elements of the offense be explained so that the defendant understands what he is accused of. This gives **Real Notice** of the **True Nature** of the charges and is the **First and Most** universally recognized requirment of Due Process. As stated in George v. State, 774 So.2d 408 (Ala.Crim.App.2000), "In order for a guilty plea to be considered voluntary, the defendant must be advised of the nature of the charges and material elements of the offense to which the plea is offered."

The Trail Court violated Rule 14.4(a)(1)(i) Not Once but Twelve (12) Times.

Since the Trial Court failed to ascertain that Your Petitioner had a full understanding of the nature and material elements of the charges, and violated Your Petitioners Constitutional Rights under both the United States Constitution and the Alabama Constitution requirements of Due Process, Your Petitioners guilty plea **can not** be considered as a knowing and voluntary plea and is a **void judgement**.

Your Petitioner has clearly shown the Alabama Supreme Court and the Alabama Court of Criminal Appeals that the Trial Court **failed** to follow Rule 14.4(a)(1)(ii), Ala.R.Crim.P. By not giving Your Petitioner the proper **maximum** and **minimum** possible sentence guidelines Your Petitioner faced in his case. The Trial Court in its failure to follow Rule 14.4(a)(1)(ii), violated Your Petitioners Constitutional Right under Due process under the United States Constitutions 5th, 14th Amendment, and the Alabama Constitution of 1901 Article 1 §§ 6,13 as well as the United States Constitutions 14th Amendment, as applied to the State of Alabama. The Trial Court violated Rule 14.4(a)(1)(ii), **Seven (7) Times** involving **Two (2)** class A misdemeanors and **Five (5)** felonies. The Trial Court failed to give Your Petitioner any Sentence Guidelines for the Two class A misdemeanors. Since Your Petitioner was being punished by a sentence of imprisonment the Trial Court had a duty and was required under Rule 14.4(a)(1)(ii), Ala.R.Crim.P. to give Your Petitioner the minimum and maximum possible sentence that he faced for these two charges.

For the **Five (5)** class B felonies Your Petitioner was told by the Trial Court that, "for a class B felony, not more then 20 years or less then **2 years**." Your Petitioner was not informed that for the **Five (5)** class B felonies they had a mandatory enhanced sentencing provision which states that the minimum sentence that Your Petitioner faced was **Ten (10) years** not **Two (2) years** as stated by the Trial Court pursuant to §13A-5-6 (a)(6), which states in part; "A class B felony sex offense involving a child as defined in section 15-20A-4, not less then **10 years**." The Alabama Supreme Court stated in Cantu v. State, 660 So.2d 1026 (Ala.1995), "As stated in Boykin v. Alabama it becomes established that the defendant **must** be

informed of the maximum and minimum possible sentence as an **absolute Constitutional Prerequisite** to the acceptance of a guilty plea." Under Ex parte Rivers, 597 So.2d 1308 (Ala.1991), "It is well settled, moreover, that if the appellant's sentence could be enhanced under any of the enhancement statutes, the appellant should be informed of the additional sentence he could receive under the applicable enhancement statute."

Under the Alabama Supreme Court's holding G.E.G. v. State, 54 So.3d 949 (Ala.2010), "A defendant who enters a guilty plea simultaneously waves several constitutional rights... For this waiver to be valid under Due Process clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege' Johnson v. Zerbst, 304 U.S. 458,464, 58 S.Ct.1019, 82 L.Ed. 1461 (1938),...if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. ...it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts. McCarthy v. United States, 394 U.S. 459,466-67,89 S.Ct.1116,22 L.Ed.2d 418 (1969).

As stated in Ex parte Parks, 892 So.2d 372 (Ala.2004), "a plea based on **misinformation** as to the possible sentence was voluntary or involuntary can **never** be waved." The Alabama Supreme Court stated in Ex parte Peterson, 890 So.2d 990 (Ala.2004), "This Court stated that, it would seem to be a necessary corollary that a judgement entered on a void plea of guilty is itself void." The Alabama Court of Criminal Appeals quoted in Zimlich v. State, 872 So.2d 881 (Ala.Crim.App.2003), "The word 'void', in its strictest sense, means that which has no force and effect, is without legal effect, is incapable of being enforced by law, or has no legal or binding force." Black's Law Dictionary, 1573 (6th Ed.1990).

Therefore, as this Honorable Court has stated and the Alabama Supreme Court has stated that a involuntary guilty plea is a violation of Due Process, and a violation of Due Process is a violation of the United States Constitutions 5th, 14th Amendments Along with the Alabama Constitution of 1901 under Article 1 §§ 6,13, as well as the United States Constitutions 14th Amendment as applied to the State of Alabama. Then a void plea can not be upheld for if a void plea is incapable of being enforced by law and has no legal or binding force then the Nineteen (19) violations of Rule 14.4 (a)(1)(i), along with Rule 14.4(a)(1)(ii), Ala.R.Crim.P., that have occurred in this case can not be over looked and pushed aside, no matter what the charges Your Petitioner had in this case. When it comes to

The United States Constitution, and the Alabama Constitution what a person is charged with should not be a factor, but in this case it seems it has been from Your Petitioner having to fight for 3 years to get his transcripts that this Honorable Court has stated Your Petitioner had a right too, to Your Petitioner filing his Rule 32 petition. There can be no doubt that the charges Your Petitioner had played a large part in this case. The Alabama Supreme Court and the Alabama Court of Criminal Appeals abused their discretion when Your Petitioner showed them that the Trial Court failed to follow Rule 14.4 Ala.R.Crim.P., Nineteen Times. Rule 14.4 Ala.R.Crim.P. is very clear it states in part:"...the court **shall not** accept a plea of guilty without first addressing the defendant personally in the presence of counsel in open court:

(1)Ascertaining that the defendant has a full understanding of what a plea of guilty means and its consequences, by informing the defendant of and determining that the defendant understands:

(i) The nature of the charge and the material elements of the offense to which the plea is offered;

(ii) The mandatory minimum penalty, if any, and the maximum possible penalty by law, including any **enhanced sentencing provisions**;...

The meaning of a word in the law and/or Rule of Court **must** be taken at there full meaning. When Rule 14.4 Ala.R.Crim.P. states the words '**shall not**', and as the Courts have stated that a "defendant **must** be informed of the maximum and minimum possible sentence as a Absolute Constitutional Prerequisite to the acceptance of a guilty plea." The words **Shall** and **must** are mandatory when used in law. The statement that "the court shall not accept a plea of guilty", addresses the Statutory Jurisdiction / Authority of the Trial Court, to Adjudicate and/or decide the case. However, when the Trial Court failed to appraise Your Petitioner of the Mandatory Enhanced Sentencing Provisions of the minimum possible sentence that he faced. The Trial Court stated to Your Petitioner that;" for a Class B felony, not more then 20 years or less then 2 years." But in fact the minimum possible sentence Your Petitioner faced was in fact Ten (10) years pursuant to the Mandatory Enhanced Sentencing provisions of § 13A-5-6(a)(6).

Consequently, Your Petitioner has been prejudicially injured in that his Constitutional Rights under the United States Constitutions 14th Amendment as applied to the States: (1) No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; (2)"nor shall any State deprive any person of life, liberty, or property, without due process of law;" (3)"nor deny to any person within its jurisdiction the equal protection of the law." Boykin v. Alabama, 395 U.S.238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969)," If a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void."

Furthermore, Your Petitioner Filed these claims in his Rule 32 petition under Rule 32.1(a), Ala.R.Crim.P., which states in part: Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that:

(a) The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

As this Honorable Court can see from Rule 32.1(a) Ala.R.Crim.P. that it clearly falls under this Honorable Courts holdings in cases such as Boykin v. Alabama, 395, U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969), that the Constitution of the United States and the Constitution of the State of Alabama requires relief. The Alabama Supreme Court and the Alabama Court of Criminal Appeals have failed in their duty and their Supervisory Role over the Tallapoosa County Circuit Court, when they allowed **Nineteen** Constitutional violations of Due Process and Equal Protection of the Law to be over looked, when they had a Duty under the United States Constitutions 1st, 5th, and 14th Amendments, along with the Alabama Constitution of 1901 under Article 1 §§ 6, and 13, as well as the United States Constitutions 14th Amendment as applied to the State of Alabama. When they should have Remanded this case back to the Tallapoosa County Circuit Court for further proceedings.

GROUND 5

When Your Petitioner meet with his trial council on 10-15-2013 before court, Attorney Mark A. Treadwell Told Your Petitioner that the DA's office was offering Your Petitioner 20 years to plead guilty. Your Petitioner told his attorney that the only way he would plead guilty is to a 15 year sentence or less. That if he got more then 15 years Your Petitioner would not be eligible to get 'Good Time' (Correctional-Incentive-Time)(CIT) Which states under:§ 14-9-41 Deductions from Sentences of Correctional Incentive Time; Provided, however, no person may receive the benefits of correctional incentive time if he or she has been convicted of a Class A felony or has been sentenced to life, or death, or who has received a sentence for more than 15 years in the state penitentiary or in the county jail at hard labor or in any municipal jail. **No person may receive the benefits of correctional incentive time if he or she has been convicted of a sex offense involving a child as defined in section 15-20A-4 (26).** No person may be placed in class I if he or she has been convicted of an assault where the victims of such assault suffered the permanent loss or use or permanent partial loss or use of any bodily organ or appendage. No person may be placed in class I if he or she has been convicted of a crime involving the perpetration of sexual abuse upon the person of a child under the age of 17 years. Your Petitioners attorney told Your Petitioner that the DA's office would only take a 20 year sentence, Your Petitioner told his attorney that he could not take a 20 year sentence because that would be a death sentence at his age and since Your Petitioner had been dignosed with Parkinsons Disease and Post Tramatic Stress Disorder. Your Petitioner's attorney told him that he should take a "Blind Plea" that he know the Trial Judge and that the judge would not give Your Petitioner more then 15 years. Your Petitioner was induced by his attorney's advise, and took the Blind Plea. When Your Petitioner was sentenced on 11-01-2013, the Trial Judge sentenced Your Petitioner to 87 years.

If Your Petitioner's attorney had not given misleading and erroneous information Your Petitioner would have gone to trial. Your Petitioner's attorney know that 15 year sentence and CIT was a Substantial Material Factor in Your Petitioner's decision to plead guilty.

As the Alabama Supreme Court stated in Ex parte Coleman, 71 So.3d 627 (Ala.2010)," To prevail on a claim of ineffective assistance of counsel, a Rule 32 petitioner must show (1) that his counsel's performance was deficient, and (2) that he was prejudiced by the deficient performance, Strickland v. Washington, 466 U.S.668,687,104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In Ex parte Lawley, 512 So.2d 1370 (Ala.1997),"In the contex of a guilty plea proceeding, a petitioner must show that,

but for counsel's errors, the petitioner would not have pleaded guilty, but would have insisted on proceeding to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)." In Stith v. State, 76 So.3d 285 (Ala.Crim.App.2011), the Court of Criminal Appeals held: "(1) that erroneous advice about eligibility for parole and correctional-incentive-time ("CIT") credit rendered deficient performance by failing to advise the defendant that his sentence was not eligible for parole or CIT credits and (3) that the availability of CIT credits was a substantial material factor in the defendant's decision to plea guilty.

Your Petitioners attorney was ineffective when said attorney gave misleading and erroneous information Your Petitioner's attorney know or should have known that Your Petitioner was not eligible for Good Time/CIT, due to the charges. Your Petitioner has met the requirements of this Honorable Court's standard set by Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Your Petitioner has shown what his attorney said and did, and that his counsel's performance was deficient.

The Alabama Supreme Court along with the Alabama Court of Criminal Appeals had a duty under the United States Constitutions 1st, 5th and 14th Amendments, along with the Alabama Constitution of 1901 under Article 1 §§ 6, and 13, as well as the United States Constitutions 14th Amendment as applied to the State of Alabama. To Remand this Case back to the Trial Court pursuant to Rule 32.9 Ala.R.Crim.P. for an Evidentiary Hearing so Your Petitioner could present evidence to the material issue of facts in the case. When the DA's office responded to Your Petitioner's Rule 32 petition at the Trial Court level this caused a Disputed Issue of Material Facts in the Case. As stated in Black's Law Dictionary (8th Edition), the words Material Issue- An issue that must be decided in order to resolve a controversy. and Material Fact- A fact that is significant or essential to the issue or matter at hand. The only way these issues could be resolved is at an Evidentiary Hearing, at which time Your Petitioner could bring forth the facts and evidence to prove his case.

When Your Petitioner filed his Rule 32 petition with the Trial Court, Your Petitioner requested that a Certified copy of the Court Reporters Transcript of the

Plea Colloquy dated: October 15, 2013, Case No: CC-2013-165 be made a part of the Appellate Record and requested that the Trial Court take Judicial Notice of the Courts own Records in this case. Since the copy of the Court reporters Transcript that Your Petitioner was sent on 12-26-17, was **Uncertified** by the Court Reporter it can not be held that it is a True Copy of the Record. Therefore, by Your Petitioner requesting a Certified copy of the Court Reporters Transcript be made a part of the Record, the Courts would have a True Copy of the record to see what Your Petitioner said in his Rule 32 petition was in fact true. Furthermore, when Your Petitioner requested that the Trial Court take Judicial Notice of the Courts own records, to include all the Motions, Request for Transcripts, and Formal Complaints should have been made a part of the record when Your Petitioner filed his Appeal from the Trial Court to the Alabama Court of Criminal Appeals. Because this was not done the Alabama Court of Criminal Appeals did not have a complete record from the Trial Court. As the Alabama Court of Criminal Appeals stated in Carson v. State, 15 So.3d 544 (Ala.Crim.App.2008)," District Attorneys would be well advised when answering Rule 32 petitions presenting 'voluntariness' claims to take steps to generate transcripts of the guilty plea proceedings under attack when transcripts of those proceedings do not already exist."

But in this case the transcripts did exist. All the District Attorney had to do was read what was in the record. The District Attorneys office had a duty under § 12-17-184, (Dutes of the District Attorney) which states in part: It is the duty of every district attorney and assistant district attorney, within the circuit, county, or other territory for which he or she is elected or appointed: (12). To carefully read and check the record on appeal in all criminal cases appealed from the circuit court of their judicial circuit to the Court of Criminal Appeals or the Supreme Court of Alabama, and call to the attention of the trial judge any errors or discrepancies that may appear in the record. The District Attorney office violated this statute. It is clear with all the Constitutional violations that the Trial Court committed in this case, that the District Attorneys office should have requested an Evidentiary Hearing and/or made clear to the Trial Court all the Constitutional violations that were committed in this case. This has not happened in this case. As stated in Ex parte Ward, 89 So.3d 720 (Ala.2011),"Consistent with society's overriding concern with justice of the finding of guilt the courts, as well as the prosecution, **must be vigilant to correct a mistake.**"



## CONCLUSION

Your Petitioner, has made a clear case for Equitable Tolling in this case. There has not been a case like this one, that Your petitioner has been able to find in case law. Either in Federal Case Law or Alabama Case Law. As a petitioner acting pro-se in this case starting back in December, 2013, the Tallapoosa County Officials have used the disadvantageous of a pro-se defendant to withhold the transcripts that every Court has stated a petitioner has a Constitutional Right to. This Petitioner made offers to pay for the Transcripts as this Honorable Court can see from the latter that Your Peitioner sent on 01-23-14 (See Appendix D ). But the Tallapoosa County Officials **Refused** to respond. By Your Petitioner sending **Nineteen (19)** Court documents and letters to the Tallapoosa County Officials, both the Circuit Clerk and the Circuit Court. (See Appendix F ). This Honorable Court can see that most all of Your Petitioners request were Denied by Operation of Law, by them not responding to the request. What more does a pro-se defendant have to do to force Court official to respond. In this case Your Petitioner has been forced to use maximum feasible diligence, by going to **Three** different State Courts to get his transcripts. If what has been done to Your Petitioner by Court official was done by an Attorney, the case law shows us what would happen in these cases such as Holland v. Florida, 560 U.S. 632, 653, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010) and Ex parte Ward, 45 So.3d 888 (Ala.2007). The Petitioner has been granted Equitable Tolling in their case. Because the delay was not the fault of the Petitioner, as it's not the fault of this Petitioner. As the United States Constitution and the Alabama Constitution state, that all persons will not be denied life, liberty, or property with out due process of law, nor equal protection of the law, and justice shall be adminstered without sale, denial, or delay. No were in this case has this been done. There has not been true due process of the law, nor equal protection of the law. As this Honorable Court can see from the facts of this case, that it has taken from December, 2013 to

December, 2016 just to get a transcript so Your Petitioner could meet the strict standards set forth in Rules 32.3, 32.6(b), and 32.7(d) Ala.R.Crim.P. for a Rule 32 petition. Your Petitioner should not be denied the opportunity to present to the Judiciary allegations concerning violations of fundamental Constitutional Rights that the United States Constitutions 1st., 5th., and 14th., Amendments along with the Alabama Constitutions Article 1 Sec.6, and Article 1 Sec.13 says that every person has a right to. When a small Circuit Court Jurisdiction such as the Tallapoosa County Circuit Court allows politics of a small town to override the United States Constitution and the Alabama Constitution, there can be No due process or equal protection of the law. The denial and delay by the State has forced this pro-se petitioner to bring his claims to this Honorable Court, so that Your Petitioner can get equal protection of the law and due process of the law. By this Honorable Court Ruling in Your Petitioners favor, this will stop other pro-se Petitioners from having to spend years as in Your Petitioners case, getting the Court Records that a pro-se petitioner needs to file a meaningful appeal, and hold the State accountable for the delay. just like a Court would an Attorney. As this Honorable Court has stated in cases like Lewis v. Casey, 518 U.S.343, 116 S.Ct.2174, 135 L.Ed.2d.606 (1996) and Wolff v. McDonnell, 418 U.S.539, 94 S.Ct. 2963, 41 L.Ed.2d.935 (1974), "Interference with a inmates access to the courts constitutes a First Amendment violation." "The right to access the courts requires a adequate, effective, and meaningful access to the courts." How can a pro-se Petitioner have a adequate and effective appeal without the Court records that a Petitioner would need for an appeal? As this Honorable Court stated in Britt v. North Carolina, 404 U.S. 226, 30 L.Ed.2d.400, 92 S.Ct. 431 (1971), "the state must provide an indigent defedant with a transcript of prior proceedings when that transcript is need for an effective defense or appeal." After this Honorable Court made this holding in this case, the State's have had to give Indigent Defendant's transcripts for their defense or appeals. But, what about a pro-se Petitioner that has made an offer to pay for them, as Your Petitioner did. Doesn't a pro-se Petitioner that offers to pay for his transcripts have the same

rights as a indigent defendant? How can there be equal protection of the law, when a indigent defendant can get his transcripts and a pro-se defendant that offers to pay for his can't?

The next ground that Your Petitioner has brought forth, fall under this Honorable Courts holdings in Boykin v. Alabama, 395 U.S.283, 89 S.Ct.1709, L.Ed.2d.274 (1968), Johnson v. Zerbst, 304 U.S.458, 464, 58 S.Ct.1019, 82 L.Ed.1462 (1938), and McCarthy v. United States, 393 U.S.459, 466-67, 89 S.Ct.1116, 22 L.Ed.2d.418 (1969). As this Honorable Court has stated, a defendants guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore **void**. As stated under Rule 14.4 Ala.R.Crim.P., "...the court **shall not** accept a plea of guilty..." If this Honorable Court takes the words **void**, and **shall not** at there full meaning then the nineteen (19) violations of Rule 14.4 Ala.R.Crim.P. can not be upheld. Because as Black's Law Dictionary states the word '**void**' has no force and effect is incaple of being enforced by law, has no legal or binding force. The words '**shall not**' are mandatory words when used in law. In otherwords any violation of Rule 14.4 Ala.R.Crim.P. that makes a guilty plea involuntary and unknowing addresses the Statutory Jursisdiction and/or Authority of the Trial Court to Adjudicate and/or decide the case. Once the Trial Court violates Rule 14.4 Ala.R.Crim.P. this becomes a Constitutional violation of due process, and is therefore a violation of the United States Constitutions 1st., 5th., and 14th. Amendments along with the Alabama Constitution of 1901, Article 1 §§ 6, 13 as well as the United States Constitutions 14th. Amendment as applied to the State of Alabama. If a Court violates the United States Constitution and the Alabama Constitution those violations can **never** be waved, for if its a violation of due process and is void today, then it stands to reason that this same violation is still void a year later. Specially when these violations are not known or withheld from the defendant for some time. If these violations are not known or as in this case withheld from a defendant how can time be used against that

defendant? The Constitution of Alabama, like that of this Nation and other States, is the supreme law with in the realm and sphere of its authority. Subject only to the restraints resulting from the Constitution of the United States, the Constitution of Alabama is the highest form and expression of law. The Constitutions control is absolute whenever and to whomever its provisions apply, and every Officer, Exective, Legislative and Judicial is bound by their oath to support the Constitution, to vindicate and uphold its mandates, and to observe and enforce its full meaning. Therefore, a Judge and/or a Justice can never allow a violation of the United States Constitution, or the Alabama Constitution involving due process and/or equal protection of the law to be put on a time limit. As stated before if its void today then it is still void next year. Does the United States Constitution or the Alabama Constitution have an expiration date on them, did ower forefathers put a expiration date on the Constitution? If not how can an expiration date be put on a Constitutional violation know?

As Your Petitioner has shown this Honorable Court in Ground #3, the Assistant District Attorney of Tallapoosa County has clearly made a **False and Misleading** statement to the Courts, when he stated,"this is the third petition for post-conviction relief persuant to Rule 32." As Your petitioner has shown , this is in fact Your Petitioners 1st. Rule 32 petition. The Assistant District Attorney violated **Alabama Rules of Professinal Conduct** for an Attorney under Rule 3.3 (Candor Toward the Tribunal) (a) a lawyer shall not knowingly:

1. Make a **false** statement of **material fact** or law to a tribunal;

Along with **Rule 8.4 Alabama Rules of Professional Conduct.**

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violat the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(c) Engage in conduct involving **dishonesty, fraud, deceit or misrepresntation;**

(d) Engage in conduct that is **prejudicial** to the administration of justice;

(g) Engage in any other conduct that **adversely reflects** on his fitness to practice law.

Also as Your Petitioner pointed out in this Writ of Certiorari on page 25, under §12-17-184(12) **Dutys of the District Attorney**. "It is the duty of every district attorney and assistant district attorney, within the circuit, county, or other territory for which he or she is elected or appointed:

(12). To carefully read and check the record on appeal in all criminal cases appealed from the circuit court of their judicial circuit to the Court of Criminal Appeals or the Supreme Court of Alabama, and call to the **attention** of the trial judge any **errors** or **discrepancies** that may appear in the recorded.

The Assistant District Attorney violated all of these statutes, not only as an Attorney, but as the Assistant District Attorney of Tallapoosa County Alabama. Your Petitioner has clearly shown the Alabama Supreme Court and the Alabama Court of Criminal Appeals that Assistant District Attorney made a False and Misleading statement to the Courts, and that this is infact Your Petitioners 1st. Rule 32 petition. The Alabama Courts have failed in their dutys by allowing this **misrepresentation** to continue. Your Petitioner has stated Materral Facts on this ground, which could only be settled at an Evidentiary Hearing, which the Alabama Courts have failed to do.

Under Ground 5 Your Petitioner has shown this Honorable Court that Your Petitioner has meet the standerds setforth by this Honorable Court in Strickland v. Washington, 466 U.S.668,687,104 S.Ct.2052,80 L.Ed.2d.674(1984), for Ineffective Assistance of Counsel. Your Petitioner has shown, but for his attorneys **deficient** performance by giving **misleading** and **erroneous** information that Your petitioner would have gone to trial. The Alabama Rules of Court state that an Ineffective Assistance of Counsel claim maybe raised in a timely filed Rule 32 petition. Therefore, since this is in fact Your Petitioners 1st. Rule 32 petition, and Your Petitioner has made a strong case for Equitable Tolling, then this ground can be raised in this Rule 32 Petition.

Therefore, Your Petitioner prays that this Honorable Court will grant this Writ of Certiorari, so that there can be True due process of the law, and equal protection of the law. With all the Constitutional violations of the United States Constitutions 1st., 5th. and 14th. Amendments and the Alabama Constitutions Article 1 § 6, 13, this Petitioner has been forced by the Alabama Courts to appeal this case to the highest Court in this Country, this Honorable Court. The Alabama Courts have allowed politics and political concerns to rule this case, not the United States Constitution, nor the Alabama Constitution that the Alabama Courts have all sworn an oath to uphold. Your Petitioner has shown this Honorable Court how the Alabama State Courts have ruled against this Honorable Courts holdings, and how they have ruled against their own holdings. Your Petitioner prays that when this Honorable Court grants this Writ of Certiorari, it will allow other pro-se defendants a better opportunity to bring their claims to the Alabama Court of Criminal Appeals and/or the Alabama Supreme Court. When a small town Trial Court is allowed to withhold any Court records from a defendant and force a delay in that defendants appeal there can be No Equal Justice of the Law. Therefore, Your Petitioner has brought these claims to this Honorable Court, so that the United States Constitution and Alabama Constitution can be upheld. Since the Alabama Courts have failed to uphold them.

As stated when Justice is Delayed, then Justice is Denied.

**VERIFICATION UNDER OATH SUBJECT TO THE PENALTY FOR PERJURY**

I, Michael Patrick Ford, Ais# 291943, do hereby swear under the penalty of perjury by my signature below that to the best of my knowledge, information, and belief the statements contained in the foregoing are True and Correct.

DONE THIS 5 DAY OF JUNE, 2018.



Michael Patrick Ford  
Ais# 291943  
Appellant / Pro-se