No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

DAVID V. ROCK — PETITIONER
(Your Name)

vs.

CHARMAINE BRACY — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6th Circuit, U.S. Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David V. Rock
(Your Name)

5701 Burnett Rd. ; P.O. Box 640
(Address)

Leavittsburg, Ohio 44430
(City, State, Zip Code)

(330) 898-0820
(Phone Number)

QUESTION(S) PRESENTED

1.) O.R.C.2901.45(A)...every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof is upon the prosecution. IS NOW REPEALED
Accordingly to any enhancement case one is presumed guilty until proven innocentby a preponderance of evidence, only then does a burden-shift occur purusant to State v. Wright, 2015-Ohio-2601; State v. Brooke, 113 Ohio St.3d 199; AND O.R.C2945.75(B)(3); Is this fair and just to our justice system?

2.) If we can agree in US v. Agurs, NN4 "if omitted evidence such as Ñ(APPX 1) and (APPX 3) to the grand jury, this would create a reasonable doubt to probable cause that otherwise would not exist, showing constitutional error has been commited. Shouldn't the constitution protect defendant and reverse defendant's conviction?

3.) If "constitutionally infirm" convictions are presented a "firm" to the grand jury, presented firm to defense and presented firm to the COurt. Can it be said that defendant gave a knowing, intelligent, and voluntary plea? OR Is the plea void?

4.) Is it proper for a Court of Appeals to rule contrary to an already decided EXCEPTION Steverson v. Summers, 258 F.3d 520, HN6

"11. the Court recognized an exception, allowing petitioners under 2254 and 2255 "that challenge an enhanced sentence on the basis that the prior conviction used to enhance the sentence was obtained where there was a failure to appoint counsel in violation of the Sixth Amendment, as set forth in Gideon v. Wainwright See also Daniels, 121 S.Ct. at 1583.
In addition, pluralities from both cases suggest another exception. In Daniels, the plurality stated that "there may be rare cases in which no channel of review was actually available to a defendant with respect to a prior conviction, due to no fault of his own. Daniels 121 S.Ct. at 1584, A pluralty in Coss elaborated.
...a state court may, without jurisdict, refuse to rule on a constitutional claim that has been properly presented to it.
...actual innocence of the crime for which he was convicted, and he could not have uncovered in a timely manner. See APPENDIX(S)

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APPENDIX 4 Affidavit of Kenneth D. Sutherland; Case No. 95-TRC-9727 & 97-TRC-3446; accompanied by post conviction petition with APPENDIX D ; Filed September 16, 2011; Document affirms all audio documentation is detroyed on case no. 95-TRC-9727 & 97-TRC-3446

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STATUTES AND RULES

434.01(A).....4

2901.45(A)...every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof is upon the prosecution.....

OTHER 4511.19(A)(1)No person shall operate any vehicle, streetcar or trackless trolley within this state, if, at the time of the operation, any of the following apply:(a)-(i)

4511.19(B)No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this state, if at the time of the operation, any of the following apply:(1)-(4)

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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 **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[x] reported at 2017 US Dist. Lexis 180259; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is Decision without published opinion

[x] reported at 2017 Ohio LEXIS 1763; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Court of Common Pleas, Lake County court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 17, 2018.

Motion for Recondisderation was filed May 1, 2018, or about

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 9-13-17. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment.....pg.5, 8 QP No.4

Maxim "For every wrong there must be a remedy".....pg.9

Bazelon, "The Realities of Gideon and Argersinger".pg.9

STATEMENT OF THE CASE

On or about November 14, 1997, defendant David Rock was indicted for criminal charges including underage driving under the influence of alcohol or drugs, a felony in the 4th degree, without 'Probable cause'. The charge was enhanced stating that defendant had previously been convicted of or pled guilty to three violations of O.R.C.4511.19 (A) or 4511.19(B) within the previous six years.

Specifically, the indictment references Willoughby Municipal Court case no. 95-TRC-09727, Mentor Municipal Court case no. 97-TRC-1819, and Willoughby Muncipal Court case no. 97-TRC-03446; See Appx(1), (1)-1, (1)-2; Appx(2), (2)-1; and Appx(3), (3)-1, (3)-2;

The record is devoid of any compliance with federal and/or criminal rules necessary to take 'uncounseled' plea elements for "probable cause" to enhance. A quick glance at Appx(1) shows:

On or about November 2, 1995 defendant appeared in Willoughby Muncipal Court and entered a plea of 'not guilty'. On or about November 16, 1995 defendant withdrew his plea and entered a plea of 'no contest' to a violation of local ordinace 434.01(A), to wit: OVI defendant found guilty by Judge Allen and sentenced to (30) days in jail, (25) days suspended and ordered to serve (5) days in jail or complete a (3) day driver intervention program and (2) days of community control.

With regard to case no. 95-TRC-09727, defendant entered his 'no contest' plea "without counsel". Appx(4) shows that Willoughby Municipal Court (WMC) records are devoid of any communication between the court and defendant, as to whether the court adequately explained the consequences of defendant's 'no contest' plea.

The journal entries and docket sheet fail to reflect any presence of an attorney appearing on behalf of defendant and fails to reflect that defendant validly waived his right to counsel. Both Appx(1), (1)-1; and Appx(3) journals contain a box and space next to: "attorney waived" where the court could have writeen whether defendant waived counsel and circled entry above "defendant appeared, Constitutional rights and pleas explained." However, these two spaces involving defendant's rights are left blank and it must be concluded that Mr.Rock never in fact waived his right to counsel.

Furthermore, Appx(3) shows:

On or about May 22, 1997 defendant appeared in (WMC) and entered a plea of 'no contest' to an OVI offense, a violation of O.R.C.4511.19 (A)(1)(a), underage. Judge Allen acepted defendant's plea found him guilty. Defendant was sentenced to (180) days in jail, (165) days suspended and ordered to serve (15) days in jail or (5) days in jail and (18) days of electronically monitored house arrest.

Case No. 95-TRC-09727 and Case No. 97-TRC-03446 do NOT contain any verbal communication between defendant dan the court explaining the ramifications of Mr. Rock's 'no contest' pleas, though in 97-TRC-03446 Mr. Rock did sign a form explaining the waiver of his criminal rights, AFTER his request for counsel was approved and appointed by Magistate Lefferts on 5-1-1997. On 5-8-1997, his Sixth Amendment right to counsel was DENIED and stripped by Judge Allen, thus vacating defendants PUBLIC DEFENDANT. Defendant felt he didn't have a right to an attorney unless he personally secured one outside of court, which he couldn't afford, so in order to avoid a (1) year jail sentence, the State adviced to sign the boiler plate waiver, as DUS & DUI together are (6) months a piece.

This denial of the right to counsel is repugnant to our State and Federal Constitution. The Ohio Supreme Court in State v. Tymcio, 42 Ohio St.2d 39 says:

> "When an accused is financially able, in whole or in part, to obtain the assistance of counsel, but is unable to do so for whatever reason, appointment of counsel **must be provided.(Emphasis Added).** See also Toledo v. Garman, 2013-Ohio-4413

August 25, 2010 Attorney Gregory Gentile performed his due diligence by sending a letter to the (WMC) Clerk of Courts requesting all documents relating to case no. 95-TRC-09727 & 97-TRC-03446. In response Chief Bailiff for (WMC), returned an affidavit stating he was unable to locate any audio recording of either court proceeding and "the Court can not therefore establish that a colloquy occurred between the Court and David Rock at his sentencing/conviction hearing" nor can the Court establish as to whether "David ROck made a knowing, voluntary, and intelligent waiver of counsel in Case Numbers 95-TRC-09727 and 07-TRC-03446."

Therefore as case records do not show Mr. Rock was fully and adequately adviced of the consequences of an 'uncounseled' plea. These two convictions are "constitutionally infirm" and cannot be relied upon for enhancement, as Mr. Rock asserts he did not make a knowing, intelligent, and voluntary waiver of counsel in either case.

Excluding (2) "constitutionally infirm" convictions leaves only (1) prior conviction within six years. As prosecutors are attorneys, the hold an ethical duty to inform the grand jury concerning unreliable convictions without an attorney. For these reasons, it is clear that the Lake County Court of Common PLeas through its grand jury was without jurisdiction to indict petitoner with a felony enhancement Herein, this case must be vacated.

October 18, 2011, Lake County dismissed defendant's claim of innocence of enhancement and denied even a hearing, thus stated defendant's

"claims are barred by the doctrine of res judicata." As counsel instructed "we hit a brick wall" it wasn't until 2017 I grasped an understanding of my rights. As such, the State must disclose all documents and tangible things exculpatory relating to the case and they didn't.

September 13, 2017, the Supreme Court of Ohio sua sponte dismissed petitoners habeas corpus.claiming petitioner.

October 30, 2017 the Northern District of Ohio dismissed habeas corpus claiming petitioner must be "in custody" citing Maleng v. Cook 490 US 488, 490; yet they ignore the exception to the general rule.

April 17, 2018, the U.S. District Court of Appeals, 6th CIrcuit Clerk of Court, Deborah S.Hunt cite two conflicting cases, as defendant's case fit all exceptions mentioned in Lackawanna Cty.Dist. Attorney v. Coss, 532 US 394; and Steverson v. Summers, 258 F.3d 520 and HN6 fits perfectly, instead she sites "reasonable jurists could not debate the district court's dismissal of this petitone and motion for a certificate of appealability is DENIED."

REASONS FOR GRANTING THE PETITION

In this case subjudice at every avenue the State has denied a hearing and procedurally ruled against the petitioner. Never, not once, has the State in its multiple responses ever addressed the real issue, that is, "were constitutionally infirm priors used to enhance?" Was counsel denied, as a result of these 'uncounseled' pleas? "Denial of counsel makes a conviction and all ensuing custody void" Kanz v. Wis., 84 Federal Appx. 677 Also See Romito v. Maxwell, 10 Ohio St.2d 266.

Three exceptions are clearly present and must be PRECEDENT, as is relevant. Viewing it as a "case within a case" shows, First, a "failure to appoint counsel" Steverson v. Summers, 258 F.3d 520, HN6; happened See (Appx(1), (1)-1, (1)-2); Denial of counsel also happened See (Appx(3), (3)-1, (3)-2); Secondly, in both cases the plurality fits where record shows "there may be rare cases in which no channel of review was actually available to a defendant with respect to a prior conviction, due to no fault of his own." Steverson, See case history (Appx(A-D)) "as trial counsel has a duty to conduct both factual and legal investigation on behalf of his client"...failure to conduct""...amounts to ineffective representation by counsel" Cole v. Peyton, 389 F.2d 224

The sixth amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel. Johnson v. Zerbst, 304 US 458, 462;

What this court, in a Writ case needs to focus on is NOT the procedural smoke the State will assert, but to ask of the State were "constitutionally infirm" priors used to enhance to a felony? If so this Court must "correct such flaws". Jackson v. Virginia, 443 US 307, 319; One judge had the courage to dissent in petitioners favor and state in plain and no uncertain terms:

"We are being asked to consider simple facts: whether the dockets of appellant's prior convictions which are in our clerk's office and are part of the public record, show he made uncounseled pleas? If so, it is clearly ineffective assistance of counsel." NP52 In this day of computerized records, including our clerk's court dockets, it is no burden to obtain and review such records. The trial courts regularly rely on their dockets. The facts contained therein are not subject to questioning. In a case such as this, we should take judicial notice of the relevant dockets, to determine if appellant's prior convictions arose from uncounseled pleas. If so, appellant pleaded guilty, **in effect, to a non-existent crime." (Emphasis Added)** State v. Baiduc, 2007-Ohio-4963

Unfortunately, as Judge Bazelon pointed out, many jurists, including the Chief Justice of the U.S., believe that between 75 and 98% of trial attorneys in this country are deficient. Bazelon, "The Realities of Gideon and Argersinger," Vol. XXXIII, N.L.A.D.A. Briefcase (No.3, 1976) pp.57, 60 See Also Bazelon, "Ineffective Assistance of Counsel" 42 Cincinnati L.Rev.1 (1973).

Even more troublesome ...courts rarely find counsel ineffective.

Now it remains for this, the court of last resort NOT to just rule on this Writ, but to expeditiously hold a hearing, one that this petitioner HAS NEVER HAD, hear all the arguments, review the journal entries submitted to the grand jury, in fact, get the grand jury transcripts and if in fact as petitioner alleges and factually knows, reverse petitioner's conviction, and refer the prosecutor to the Disciplinary Counsel for their intentional conduct as a message to prosecutors to give honest, ethical guidance to the grand jury.

Failing this, anyone of us or you are subject to prosecutorial misconduct in the future. The legal Maxim "For every wrong there must be a remedy" uniquivically applies now to the petitioner and this is the last possible remedy, it is the Writ of Certiorari.

CONCLUSION

It is frustrating to be in this position. Petitioner's counsel clearly was so inefective, its as if there was no attorney. Petitioner was wrongfully convicted of a felony instead of a misdemeanor, petitioner doesn't deny his guilt, however, petitioner should not

be wrongfully incarcerated where the judicial system failed him. He stood innocent until proven guilty beyond a reasonable doubt, yet the prosecution knowingly included infirm OVI's to indict.

Petitioner's counsel was either ignorant of the law or woefully negligent and the trial judge failed to inquire whether the prior's were proper to enhance.

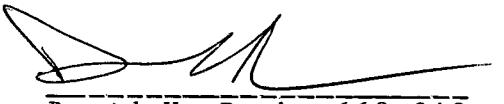
Petitioner believes this court is duty bound to send a message to the various players in the judicial system not to play loose with the U.S. Supreme Courts rulings on infirm enhancements and scrutinize the priors before accepting a plea, certainly the typical defendant wouldn't know this and is duped into a plea which is repugnant to our system of justice.

"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." Johnson v. Zerbst, 304 US 458, 464(1938)

If justice is to have any meaning and subject to this court ascertain that what petitoner contends is TRUE, which he does, the Court has a duty not to turn a blind eye to this manifest injustice and correct the underlying conviction to a misdemeanor.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: 7-11-18