No 17A1368

IN THE

SUPREME COURT OF THE UNITED STATES

TAJUAN MARNEZ WILLIAMS- PETITIONER

vs

SHERMAN CAMPBELL- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

By: Tajuan Marnez Williams (Pri No. 268475)
Carson City Correctional Facility
10274 Boyer Road
Carson City, Michigan 48811

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

OTHER

QUESTION(S) PRESENTED

I Should this Court review this case, de novo to address the importance to the public of the issue in keeping contraband items out of prisons and out of the hands of prisoners and the importance of the public to the issue in keeping prison officials from violating prison regulations in order to provide contraband items to prisoners

II Should this Court clarify the law as to whether, the violation of prison regulation renders the seizure of a prisoner's oral and written communications unreasonable within the meaning of the Fourth Amendment of the U S Constitution.

III Whether it should be settled by this Court,"if the violation of prison regulations by prison officials without authorization violates a defendant's Fourteenth Amendment U S Constitution rights under the laws when the unauthorized acts was committed to gather evidence in a criminal prosecution "

IV Whether it should be clarified by this Court as to whether, "the Stoudemire doctrine should apply in Petitioner's case and other case involving similarly situated prisoners "

V Whether it should be clarified by this Court whether,"a court order should be sought by prison official prior to recording a prisoner for non-penological reasons and, prior to releasing those private communications to the public "

VI Should this Court resolve the disagreement among the lower courts regarding the Cohen doctrine

VII Should this Court address whether the Cohen doctrine should equally apply to convicted prisons as to pre-trial detainees where Hudson did not contemplate cell searches and seizures instigated by prosecutors and law enforcement

VIII Whether this Court should review Petitioner's claim de novo were the appellate court's never reached the question presented by the Petitioner that the MDOC never received proper authorization for the transfer of Petitioner or placement of the recording device

IX Whether the Petitioner's case should be remanded, counsel appointed and an evidentiary hearing conducted were the Petitioner, on habeas review, presented "clear and convincing" evidence" of perjured testimony given by prison officials in State Court and explained that the State Court affirmed Petitioner's conviction on this false evidence

X Should this Court review Petitioner's claim de novo were the appellate courts below did not reach the merits of Petitioner's Fourth and Fourteenth Amendment U S Constitutional claims, where the courts rulings were based on perjured testimony of prison officials

XI Whether it should be settled by this Court, "if a convicted prisoner has a constitutional right to privacy and due process in his communications with a fellow prisoner who represents himself as a legal practitioner "

XII Whether it should be settled by this Court, "if the attorney-client privilege protects convicted defendants from the Government and its agents intrusions into the

privilege relationship, where the defendant's continues to seek legal advice from their trial counsels after being convicted and incarcerated in prisons "

XIII Whether this Court should clarify the law and resolve the disagreement among the lower courts as to the rational of Mr Justice Douglas concurring observation in Avery, regarding the principle of lay representation.

XIV Whether this Court should address the importance to the public of the issue as to the Tyler doctrine's applicability to this case, and other similarly situated convicted defendants

XV Should this Court determine whether the Petitioner knowingly and voluntarily waived his attorney-client privilege with his trial attorney when speaking with prisoner, James Hicks who the Petitioner reasonably believed was a "certified paralegal "

XVI Should this Court review Petitioner's claim de novo where the appellate courts either "ignored" or "mischaracterized" the facts and evidence supporting Petitioner's claim that his First and Fourteenth Amendment U S Constitutional rights where violated by the admission of prisoner James Hicks testimony and the related recorded evidence at his criminal trial

LIST OF PARTIES

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

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

Michigan Court of Appeals
201 W. Big Beaver Road
Troy, Michigan 48084

Michigan Supreme Court
Hall of Justice, 4th Floor
925 W Ottawa
Lansing, Michigan 48915

United State District Court
Eastern District of Michigan
231 W Lafayette Blvd , 5th Floor
Detroit, Michigan 48826

United States Court of Appeals
For the Sixth Circuit
100 East Fifth St , Room 540
Potter Stewart U S. Courthouse
Cincinnati, Ohio 45202

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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

OPINION BELOW

The opinion of the highest state court to review the merits appears at Appendix "III" to the petition and is reported at S C 14814 & (117)

The opinions of the Michigan Court of Appeals appears as Appendixes "I" and "II" to the petition and is unpublished

The opinion of the United States district court appears at Appendix "IV" and "V" to the petition and is reported at 2:15-CV-12914

The opinion of the United States Court of Appeals appears as Appendix "VI" and "VII" to the petition and is reported at Williams v Campbell, 2017 U S App LEXIS 27796 (6th Cir 2017) and Williams v Campbell, 2018 U S App LEXIS 7205 (6th Cir 2018)

JURISDICTION

The date the highest court decided my case was September 05, 2014 A copy of that decision appears at Appendix "III " No petition for rehearing was timely filed in my case

The opinion of the Michigan Court of Appeals appears at Appendix "I" to the petition and is unpublished A timely petition for rehearing was thereafter denied on the following date December 11, 2013, and a copy of the order denying rehearing appears at Appendix "II "

The date on which the United States district court decided my case was November 22, 2016 No petition for rehearing was timely filed

The date on which the United States Court of Appeals decided my case was June 28, 2017 A timely petition for rehearing was denied by the United States Court of Appeals on the following date March 21, 2018, a copy of the order denying rehearing appears at Appendix "VII "

An extension of time to file the petition for writ of certiorari was granted to and including August 18, 2018 on June 13, 2018 in Application No 17A1368.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U S Const amend I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

U S Const amend IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

U S Const amend XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 laws

STATEMENT OF CASE

Petitioner Tejuan Marnez Williams was tried in the Genesee County Circuit Court (Michigan) on, a charge of Murder in the First Degree along with a charge of Possession of a Firearm Petitioner was alleged to have murdered Janien Cobbin, a former girlfriend of his. The main evidence against the Petitioner was a audio recording in which Petitioner jokingly admitted to the murder. The recording was made by a cellmate, James Hicks while they were incarcerated in prison

On May 21, 2005 the Petitioner was arrested and charged with separate offenses of felon in possession of a firearm, carrying a concealed weapon, and felony firearm, stemming from the on-going murder investigation of Janien Cobbin He ultimately plead guilty to attempt felon in possession of a firearm and felony firearm offenses, and received a sentence of 36 months probation for attempted felon in possession and two years for felony firearm

While incarcerated at the Newberry Correctional Facility (hereafter NCF) Petitioner was housed with James Hicks. Mr. Hicks held himself out to be a "certified paralegal," who helped inmates with legal matters Petitioner consulted with prisoner Hicks and allowed him to see the Presentence Investigative Report (hereafter PSIR) in the Petitioner's 2005 weapons case This PSIR contained details about the present case Prisoner, James Hicks wrote to Muskegon Prosecutor's Office (Michigan) that he had information from Petitioner, Williams about the present case The Muskegon prosecutors then contacted the Flint Township Police (hereafter FTPD) who was investigating the Cobbin's homicide.

On December 12, 2006, Detective Russell Fries of the FTPD interviewed prisoner Hicks after he had been transferred to the Muskegon Correctional Facility (hereafter MCF). After the interview with prisoner, James Hicks,

Detective Fries wrote to Chris Chrysler at the Michigan Department of Corrections (hereafter MDOC) requesting a transfer of the Petitioner to MCF from NCF, in order to facilitate the investigation in the instant case The Petitioner had mere months before his release from prison (Exh "A")

Detective Fries and the MDOC arranged to have Petitioner, Williams transferred to the MCF and later placed in the same cell with prisoner, James Hicks The Petitioner's transfer order gave as the reason for the transfer a penological interest, which was not true (Exh "B")

Prisoner, James Hicks was given a radio by the MDOC personnel as a gift according to prisoner, James Hicks' testimony, that contained a digital recording device Prisoner Hicks was given a fictitious cover story about how the radio was obtained to ally any suspicions that Peitioner and other prison officials might have (Exh "C").

The MDOC's Inspector, Reymundo Moscarro, at the instigation of Detective Fries, wrote a property receipt that purported to show that a previously stolen radio was being returned to prisoner, James Hicks, as discussed in the recordings (Exh "C")

Ultimately, the radio and digital recording device was returned to prison official by prisoner, James Hicks after alleged incriminating statements were made by the Petitioner

Pretrial, the Petitioner filed a motion to suppress the testimony of Prisoner, James Hicks and the recorded statements obtained in violation of prison regulations, federal due process and federal Title III eavesdropping statute The Circuit Court, Judge Joseph J Farah (recused), denied Petitioner's motion by order stating:

> "The Court having considered the motions and briefs of the parties and oral arguments, Defendant's motions are hereby DENIED for reasons stated on the record "

Although, the Honorable Judge J Farah's order makes it appears that the trial court stated on the record its reasoning for denying the Petitioner's request to suppress the testimony of Prisoner, James Hicks and the recorded statements of the Petitioner, actually, there is nothing on the record to support the trial court's reasoning.(Exh. "D").

On January 22, 2010, Petitioner orally raised the issue of the admissibility of the statements alleged to have been made by him while within the MDOC The Honorable Judge Geoffrey Neithercut appointed and attorney to draft a motion and brief and argue it before the trial court Oral arguments were heard on February 01, 2010 The trial court entered an order denying Petitioner's motion dated February 09, 2010 (Exh "E")

The Petitioner with newly appointed, trial counsel Dennis Snyder, moved in the trial court a third time for suppression of his statements on the grounds of due process violations inregards to the MDOC providing prisoner, James Hicks with contraband items (i e Radio/Digital Recorder), and prisoner, Hicks violation of Petitioner's due process and rights to access of the courts Oral Arguments were heard before the Court on May 27, 2010 Thereafter, the trial court entered a order denying Petitioner's motion dated June 14, 2010

At trial, MDOC's Inspector, Moscarro stated that the radio with a recording device inside was contraband because it had been altered, and so the recording device and the radio was destroyed. However, Inspector, Moscarro stated that authorization for the placement of the contraband radio with the digital recording device embedded inside, in full control of prisoner, James Hicks, had been obtained from the chain of command, including the warden and the head of the MDOC's Internal Affairs Division (hereafter IAD)

The MDOC Inspector, Moscorro, also, stated that MDOC employees assigned to the property room removed Petitioner's photo album, photographs and some newpaper clippings and listed these items on a "Contraband Removable Slip,"

that, he then placed these items in a clear evidence bag with the "Contraband Removable Slip," on top and secured these items in a storage areas in his office

Thereafter, the MDOC Inspector Mascarro stated that he talked with the lead detective (Fries) on the case and advise him that he had found the items, and that they were being stored in a storage area in his office

At trial, the prisoner James Hicks admitted that he had read the Petitioner's newspaper articles confiscated by the MDOC, and the news articles indicated that the victim was shot at least twice in the head and neck area Prisoner Hicks stated that he read the Petitioner's PSIR, that disseminated information about this case. Prisoner, James Hicks, also, stated that, he read newspaper articles owned by the Petitioner during the recordings that disseminated information about this case

During trial, Detective Russell Fries, stated that, the Inspector had talked to him about the items that he (Mascorro) logged in on a contraband receipt that he had seized from the Petitioner's cell, that, he had asked the Inspector had he found any photographs or anything like that And the Inspector reply was,"Yes " The detective stated he then asked the Inspector to hold on to these items and put them in his property room

At trial, when asked by defense counsel, if this evidence is evidence that would benefits the Petitioner, the MDOC has lost it (these items), the Inspector, Mascarro's reply was "Yes "

After the prosecution's case concluded in Petitioner's conviction on October 04, 2010, and a Judgment of Sentence was entered on November 10, 2010 sentencing Petitioner to non-peroleble life in prison

Petitioner appealed as of right The heading of several of Petitioner's arguments on appeal, in pertinent, was:

EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS IN COMPLICITY

WITH THE FLINT TOWNSHIP POLICE AND THE PROSECUTORS OFFICE VIOLATED NUMEROUS PRISON POLICIES AND DEFENDANT"S FOURTH AMENDMENT AND DUE PROCESS RIGHTS WHEN THEY INTRODUCED A RECORDING DEVICE USED BY AN INMATE TO RECORD CONVERSATIONS WITHOUT AUTHORIZATION U S CONST AM VI,XIV

DEFENDANT"S CONSTITUTIONAL RIGHT TO PRIVACY AND DUE PROCESS WAS VIOLATED BY THE SURREPTITIOUS RECORDING OF PRIVATE CONVERSATIONS BETWEEN DEFENDANT AND HIS JAILHOUSE LAWYER: HIS ATTORNEY CLIENT PRIVILEGE WAS ALSO VIOLATED U S CONST AM I,XIV

The Michigan Court of Appeals (hereafter MCOA) granted a motion to remand At the hearing on remand, testimony was given by MDOC's IAD, Director, Stephen Marschke, that was to prove that, indeed, authorization from the MDOC's IAD was required, but that Director Marschke had no written evidence whatsoever that permission had been requested much less granted Although, Director Marschke testified that perhaps authorization had been given orally, Petitioner submitted proof by way of emails (obtained by the police department) that the recordings went ahead without authorization from either Director Marschke or Deputy Director (former), Dennis Straub (Exh "F")

Petitioner also submitted the policy directives as proof that numerous prison policies and MDOC Work Rules were violated, all without authorization from the proper authorities (Exh "G")

After, the evidentiary hearing was conducted in the trial court, and the trial court denied the Petitioner's motion for new trial The MCOA issued an unpublished, per curiam opinion dated October 15, 2013, affirming Petitioner's conviction (Appx "I") Petitioner filed a Motion for Reconsideration, and the MCOA denied this motion in an order dated December 11, 2013 (Appx "II)

Petitioner appealed to the Michigan Supreme Court (hereafter MSC), and that court affirmed the decision of the MCOA in an order dated September 05, 2014 (Appx "III")

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U S C § 2254 in the United States District Court for the State of Michigan

On August 27, 2015, the U S District Court's Magistrate Judge, Anthony P Patti denied Petitioner's motion for an evidentiary hearing, for discovery, and for the appointment of counsel, and granted his motion to expand the record (Appx "IV")

The Petitioner attached to his motion in the U S District Court, requesting an evidentiary hearing, "newly discovered evidence," a September 02, 2014, Detroit Free Press Article that referenced MDOC's IAD Director, Stephen Maschke and numerous lawsuits filed against the MDOC's IAD Director The Petitioner's motion included citations to the numerous lawsuits mention in the article, and, explained to the U S District Court Judge all of the mention lawsuits demonstrated MDOC's IAD Director, Maschke had the propensity to provide false testimony against Michigan prisoners and present false evidence in hearings involving MDOC prisoners (Exh "H")

The U S District Court Judge, Nancy G Edmunds denied the Petitioner's writ of habeas corpus without a Report and Recommendation or objections from the magistrate and Petitioner, in an opinion and order dated November 22, 2016 (Appx "V")

The Petitioner moved for a Certificate of Appealability, informa pauperis status, the appointment of counsel, a remand, and an evidentiary hearing in the United States Court of Appeals for the Sixth Circuit of the U S District Court judgment denying his petition for writ of habeas corpus The Court of Appeals for the Sixth Circuit issued an opinion and order denying Petitioner's request dated June 28, 2017 (Appx "VI")

Thereafter, the Petitioner moved for a rehearing in the United States Court of Appeals for the Sixth Circuit The Court of Appeals for the Sixth Circuit denied Petitioner's request for a rehearing and motion for a Certificate of Appealability in an order dated March 21, 2018. (Appx "VII")

ARGUMENT

I Jurists of reason would find it debateable whether the State and Federal lower appellate courts has decided an important question of federal law that has not been, but should be, settled by this Court, as to whether, the violation of prison regulations by prison officials in complicity with outside law enforcement, renders the seizure of Petitioner's oral and written communications unreasonable within the meanings of the Fourth Amendment and, whether the unauthorized acts of the Michigan Department of Corrections that resulted in the seizure of the Petitioner's oral and written communications denied the Petitioner his Fourteenth Amendment rights under the laws guaranteed by the U.S. Constitution.

The case presents a unprecedented problem underlying the Michigan Department of Corrections arbitrary violations of its policies designed to keep contraband out of its prisons, in order to assist outside law enforcement in non-penological criminal investigations

As a matter of first impression, Petitioner respectfully asks, this Court to seek guidance from existing caselaw, that supports Petitioner's position that the smuggling of contraband items into prisons and the providing of contraband items to prisoners by prison officials are known "unauthorized" and "arbitrary" acts, that has resulted in the violation of Petitioner's Fourth Amendment and Fourteenth Constitutional guaranteed rights

This Court has, long ago, admonished the possession of contraband items by prisoners See i.e., Bell v. Wolfish, 441 U.S. 441 (1979)(prevention of smuggling of druge, weapons and other contraband is a significant and legitimate prison security interest ") Polices designed to keep contraband out of jails and prisons have been upheld in cases decided since Bell See Hudson v Palmer, 468 U S 517 (1994)(recognizing, the constant fight against the

proliferation of knives and guns, illicit drugs, and other contraband"); Wolff v McDonnell, 418 U S. 539 (1974)(upholding, the inspection of mail from attorneys for contraband by opening letters in the presence of inmates")

The United States Court of Appeals for the Sixth Circuit, also, recognizes this well established admonishment of possession of contraband items by prisoners See Stoudemire v Mich Dep.t of Corr., 705 F.3d 560, 574 (6th Cir 2013)("We do not underestimate the importance of deterring and detecting contraband in prisons") As Justice Marshall concurring opinion is apt:

> "Contraband" is certainly a serious problem in a correctional setting but the main problem is to keep it from entering, rather than leaving, the correctional facility See Procunier v Martin, 416 U S 396, 424 (1914)(Justice Marshall, concurring).

All Federal and State courts, following this well established admonishment, has adhered to prison regulations and/or sought criminal prosecutions, in response to, the type of unauthorized and unlawful acts committed by the MDOC employees and prisoner, James Hicks in this case Petitioner's case is one of first impression.

Illustrative of the admonition by this Court of the practices employed by the MDOC employees are supporting caselaw from Federal and State courts Prison officials cases. E g., People v. Duke, 87 Mich App 618 (1978)(recognizing, "prison guard charged with possession of heroin after attempting to bring drugs into prison given to him by police"); Wilson v. Dep't of Corr., 2002 Mich. App LEXIS 766, *2 (2002)(recognizing, termination of library assistance for delivering contraband controlled substance to inmates"); see also, United States v. Gregory, 315 F 3d 637, 639 (6th Cir 2003)("a correctional officer charged with providing contraband in prisons"); United States v Roybal, 795 F 2d 382 (5th Cir 1986)("a correctional officer violation of federal contraband statute was indicted and convicted for

providing inmates with controlled substance and receiving money from an inmate"); United States v Coleman, 1993 US App LEXIS 341 (6th Cir 1993)("a prison guard was charged and convicted of attempting to provide a prohibited object to an inmate and attempting to possess cocaine with intent to distribute")

See also, Michigan Prisoner's cases E g , King v Sanders, 2014 U S Dist LEXIS 48528, 2-4 (E D. Mich 2014)(recognizing, "a prisoner's radio as contraband, but returned to prisoner because lawfully acquired and not altered"); Midgette v Mich Dep't of Corr , 1994 US App LEXIS 29280, *1-2 (6th Cir 1994)(recognizing, "if a prisoner with a learning disability is found to possess a tape player, which he received from a fellow inmate, these items may be confiscated by prison officials as contraband"); Dyer v Wardwick, 2012 US Dist LEXIS 119704, 8-9 (E D Mich 2012)(recognizing, inmate's possession of a 'walkman' to be contraband"); Carr v Booker, 2014 US Dist LEXIS 13048, 4-5 (E D Mich 2014)(recognizing items that was purchased outside of facility to be contraband");Lewis v Parker, 2014 US Dist LEXIS 103366, 3-4 (E.D Mich 2014)(recognizing, watch confiscated from prisoner without prison number as contraband"); Clardy v Mullens, 2002 US Dist LEXIS 152101, *5 (E D Mich 2002)(recognizing, a digital scale and other items as contraband received by inmate from prison employees")

None of these courts (above) has allowed, a prisoner to violate prison policies in order to possess "contraband" items, or, permitted, or given prison officials the authority to violate their regulations to provide "contraband" items to a prisoner Each of these courts has found such impermissible acts to be a violation of the State and Federal laws or well-established prison regulations

Therefore, the Federal and State lower courts opinions are contrary to Supreme Court precedent and public policy underlying contraband possession in

prisons making the Supreme Court's precedents and public policies outright,"meaningless " The State's appellate courts, the U.S District Court nor the Court of Appeals for the Sixth Circuit adequately or correctly resolved the Petitioner's Fourth and Fourteenth Amendments Constitutional claims

It is well settled, under Michigan law, a correctional officer, "is a position of public trust "[1]. To this end, the Sixth Circuit has recognized that, "it is axiomatic that the public places tremendous trust in prison employees that they will not conspire with inmates to violate the laws."[2]. The prison officials here by their "unauthorized" acts wilfully violated the "public's trust," and engaged in corrupt behavior against Petitioner below

This Court has held that, "only the need of prison officials to maintain order and security within the institution might override the inmate's right to privacy." Hudson, 468 U S at 522. This Court also holds that, "the applicability of the Fourth Amendment turns on whether "the person invoking its protection can claim a "justifiable," a "reasonable" or a "legitimate expectation of privacy" that has been invaded by government actions Hudson, 468 U S at 525.

Post-Hudson, the United States Court of Appeals for the Sixth Circuit, on point, set its law-of-the-circuit to include, "when Michigan Department of Corrections officials fail to follow procedures," "a Michigan prisoner makes a challengeable Fourth Amendment claim " See Stoudemire, 705 F 3d at 573

The Sixth Circuit applying Bell examined the Fourth Amendment framework guaranteed pretrial detainees limited privacy interest, in the context of a convicted prisoner in Michigan Stoudemire 705 F 3d at 571-72; Bell, 441 U S at 558, the prisoner in Stoudemire presented evidence that, a MDOC employee had received a reprimand for her failure to conduct a strip search "in a place which prevented the search from being observed by those not assisting in that

search, in violation of the MDOC's rules Stoudemire, 705 F 3d at 573 The Stoudemire, panel "identified a well-established right, that convicted prisoners do not forfeit all constitutional protections by reasons of their conviction and confinement in prison-- a right established by this Court long before the events in this case. See, Bell, 441 U S at 545.

The Stoudemire panel, also, emphasized a key point, which is, "Had the prison official (Dunagan) followed procedures, she would not have violated the prisoner (Stoudemire's) Fourth Amendment rights "

Thus, like Stoudemire this factor weighs in favor of a violation of Petitioner's Fourth Amendment rights by prison officials It is clear in this case, as in Stoudemire that prison personnel violated the following regulations, MDOC Policy Directive 04 04 110 et seq

The U S Eastern District Court of Michigan notes that, the MDOC P D 04.04 110 requirements applies to Michigan prisoners, employees and visitors "[3]. Per MDOC Policy, in the case of the discovery or use of a digital recording device * * * in a MDOC facility the memory card "shall" be 'erased' and if necessary the device should be retained as evidence for an administrative hearing See MDOC 04.04 110 ¶ (GGG) The violation of MDOC's P D 04 04.110 ¶ (GGG) is sanctionable. Yet, there was no sanctions imposed in Petitioner's case The MDOC's employees, per MDOC's P D 04.04 110 et seq , responsibility to control its facilities include the duty to prevent digital recording devices from entering the facilities". MDOC P.D. 04.04.110 ¶ (J).

Under existing case law, it has been the practice of the MDOC when,"a Michigan prisoner notifies the authorities and cooperate with authorities against a fellow inmate, an undercover officer, is presented to the fellow prisoner, and the undercover officer would wear a hidden recording device while in Michigan prisons This Court has recognized, this practice to be consistent with other law enforcement investigative techniques across

America "[4].

To this end, the U.S District Court of Michigan has recognized the inherent safety risk involved with prison officals at the instigation of law enforcement providing a Michigan prisoner with a contraband radio with a recording device embedded inside "[5].

The Petitioner, applying Hudson, Bell and Wolff, made the following arguments below: The MDOC employees falsified documents in violation of MDOC Work Rule 47 in order to provide prisoner James Hicks with the contraband radio and digital recording device used to record his conversation with Petitioner MDOC Rule 13 which states that, "All employees shall be familier with, enforce, and follow all Department rules, regulations, policies, and procedures An employee shall not undermine or interfere with the Department's efforts to enforce rules, regulations, policies, or procedures

Per MDOC Rules, in recording the communications between Petitioner and prisoner, James Hicks the MDOC employees violated MDOC Employee Work Rules 54 (2006)(Recording Devices), which prohibits recordings within the walls of the prison except for recordings routinely made as part of daily operations, used during interviews as part of an administrative investigation, or made with approval of the Regional Prison Administrator as part of a department approved investigation These exceptions were inapplicable to a law enforcement initiated investigation

In addition, the MDOC employees are prohibited from making unauthorized copies of communications which are routinely recorded and/or monitored as part of the daily operations of the Department (logbooks, security tapes, etc)

As argued below, MDOC P D Attachment C number 04 07 112c for Level I through III, provides that appliances must be purchased from the Standardized Property List, must be inscribed with the prisoner's identification number prior to being given to the prisoner, and must be on the prisoner's property

card. Section 13, 14 and 15 provides as follow that a Michigan prisoner may have:

> One radio [cassette tape player, or combination radio/tape player] provided it was legitimately purchased from a prior Standardized Property List, Standardized Appliance List or prior to the issuance of a Standardized Appliance List

On these facts, the Petitioner argued that, the prison employees violated MDOC Work Rule 20 which provides that an employee "shall not introduce * * * any other item not specifically authorized by policy in a facility where offenders are housed Further, they also violated, MDOC Work Rule 48 which prohibits employees from exchanging with, giving to, or accepting gifts or services from an offender "

As in Stoudemire, who was "similarly situated to Petitioner within the MDOC, "had the MDOC employees in Petitioner's case followed procedures, the Petitioner contends that,"they would not have violated his Fourth Amendment rights The Petitioner respectfully ask this Court to confirm this contention

Several years after Stoudemire, the Michigan Court of Appeals confirmed that, "a Michigan prisoner has a privacy right in his personal communications with others while in prison, that was not subject to disclosure to a third party (i e the public) absent a court order " See i e , Booth v Dep't of Corr., 2016 Mich App LEXIS 2229 (2016)

In Booth, the MDOC took adverse action against its employee Earl Booth (hereafter Booth) for his treatment of a prisoner housed in a medical facility The prisoner was talking on the phone with his mother at the time of the interaction Id at 1

The MDOC, employee Booth, thereafter, requested through the Michigan Freedom of Information Act (hereafter FOIA), the recording of the prisoner's

telephone conversation The MDOC denied the employees request and Booth filed a suit The Court of Claim closed the case

The Michigan Court of Appeals reversed, in relation to the recorded conversation The Court of Appeals panel, emphasized, "Booth" clarified at oral arguments before the court that a conversation between Booth and the prisoner may also be heard on the recordings, and it was access to this specific conversation-- not any private conversation between the prisoner and his mother-- that Booth sought Id at 2

On remand, the Court of Claims conducted an in-camera review of the recorded conversation between the prisoner and his mother and concluded that it was not subject to FOIA disclosure. Id Once again, Booth appealed

On appeal, the Michigan Court of Appeals found it was clear that the Court of Claims either did not engage in any balancing of Booth's interest as against the prisoners Id. at 5 Applying, the FOIA exemption, MCL 15 243(1)(a) The Court of Apeals reviewed the subject recordings The Court of Appeals found most of the recording to be personal in nature In doing so the Court stated: "Keeping in mind the privacy interest at stake, our description of the recording must remain minimalistic "

The Court, also, noted that Booth contended that prisoners had no privacy interest in his recorded conversation given his incarceration status and because the prisoner was in violation of a dress code Relying in part on Hudson, the Court of Appeals stated:

> "It is certaintly true that prisoners have a reduced privacy interest . This lack of privacy ensures prison safety and applies only to a prisoner's privacy interest in relation to prison and state personnel, not the general public There simply is not precedent for relying on a prisoner's reduced privacy interest to support disclosure of a prisoner's private and intimate information under FOIA Id , at 7

The Court of Appeals found that disclosure of any relevant and audible

portion of the recorded conversation could contribute to the public's understanding of the operations of the government Id at 9 The Court of Appeals remanded the case, and prohibited disclosure of any information on the recordings to a third party absent a court order Id , at 10

Unlike in Booth, there was no court order sought or issued in Petitioner's case to disclose his private communications made while in prison to the public at trial, as required by the Fourth and Fourteenth Amendments of the U.S Constitution

Arguably, since, the Sixth Circuit has recognized in Stoudemire when, as here, the MDOC fail to follow its procedures, "a similarly situated Michigan prisoner makes a challengeable Fourth Amendment claim," and, the Michigan Court of Appeals in Booth recognized that, "a similarly situated Michigan prisoner has a privacy interest when it comes to the prisoner's communications being disclosed to a third party absent a court order " It is apparent that the Federal and State lower courts erred in affirming the Petitioner's conviction on the grounds that his Fourth and Fourteenth Amendment U S Constitutional rights were not violated by prison officials

Furthermore, although, the Petitioner contends that this appears to be an issue of first impression in this Court, similarly, the United States Court of Appeals for the Second Circuit has address the issue of a search intended to bolster a prosecution's case " See United States v Cohen, 796 F 2d 20 (2nd Cir 1986)

The Second Circuit in declining to extent the Cohen exception to convicted prisoners, however, distinguished Hudson an invalidated a cell search that it found, as here, was intended solely to bolster the prosecution's case against a pretrial detainee Cohen, 796 F 2d at 23 There, the court noted that the record "clearly revealed" that the search:

"was initiated by the prosecutor, not prison officials

> The decision to search for contraband was not made by those officials in the best position to evaluate the security need of the institution, nor was the search even colorably motivated by institutional security concerns "Id

The Second Circuit harmonized Bell and Hudson Therein, the Court concluded that the search of a pretrial detainee must be related to institutional security concerns Cohen, 796 F 3d at 23-24

Courts have split regarding whether searches conducted for reasons other than institutional safety violate the Fourth Amendment One line of cases has followed the Cohen doctrine E g United States v Rollack, 90 F Supp 2d 263, 270 (S D New York 1999)(same); United States v Vasta, 649 F Supp 974, 984-985 (S D. New York 1986)("government conceding to violating the holding of Cohen, and stated it will not utilize the fruits of the search at trial"); United States v Clark, 2002 US Dist LEXIS 20645, *18 (S D Ohio 2002)("This court considers the Second Circuit decision in Cohen to be persuasive and will follow the same"); McCoy v State, 639 So 2d 163 (Fla Dist Ct App (1st Dist)(1994)(Following Cohen when police officer on direction of the assistant state attorney, search the defendant's pretrial detention cell for writings containing incriminating statements on the eve of trial"); Lowe v State, 203 Ga App 277 (Ga Ct App 1992)(holding inmates have some Fourth Amendment "where no institutional need is served by the search"); State v. Neely, 236 Neb 527, 530, 540-541 (1990)(warrantless search of defendant's property in locked jail inventory look for evidence of crime; suppress order affirmed");State v Henderson, 271 Ga. 264, 267-268 (1990)(agreeing with principle that warrantless search of cell solely at prosecutor request would be improper, search warrant would be required")

Some courts have concluded that the Hudson decision holds more broadly that inmates per se lack any Fourth Amendment privacy rights in their cell and lockers See United States v Reece, 797 F Supp 843, 846 (D Colo

1992)(concluding that a prisoner has no expectation of privacy in his cell, and lacks Fourth Amendment protections against unreasonable search and seizure"); State v Martin, 322 N C 229 (N C 1988)(holding the defendant lack any expectation of privacy in his cell, so the jailer had the right to inspect anything in his cell")

At least one court has applied the Cohen doctrine in the context of a convicted prisoner In Lutz v Collins, 2009 Tex App LEXIS 884, 8-9 (Tex App 4th Dist 2009)(applying Hudson), a convicted prisoner, David R Lutz, contended in his trial pleadings that the appellees violated the U S Constitution and the Texas Constitution by search and seizure of his papers by order of the Attorney General of the State of Texas

The inmate, Lutz's cell was searched by officers as part of an investigation into the filing of false financial statements by inmates Several documents were confiscated from the inmate's cell and copied by investigators, his original documents were returned to him with a list of which documents had been copied

The Court of Appeals, found, Cohen can be differentiated from the inmate's case because Cohen was a pre-trial detainee, while the inmate (Lutz) was a convicted felon and inmate in the custody of the Texas Department of Justice citing Cohen, supra at 21

The Court of Appeals stated: "While the search of Cohen's cell was in conjunction with the investigation into the crimes for which Cohen was awaiting proceedings "Lutz" was already serving his prison sentence and the search of his cell was in relation to an entirely different crime Id

The circumstances in the Lutz case are identical to those implicated here The prosecutor according to the lead Detective, Russell Fries testimony below, did what the prosecutor did in the Cohen and Lutz cases-- employed prison officials to seize evidence to build a case against the Petitioner

According to Hudson, prison officials must be free to seize from cells any articles which, in their view, disserve "legitimate institutional interests " Id at 528, n 8 Unlike, convicted prisoner, Lutz, the Petitioner raised several reason supporting his claim that the MDOC employees violated his Fourth Amendment right against unreasonable search and seizure, Petitioner of course pointed to, in addition to, the violation of prison regulations, that his personal papers, attorney-client correspondence was seized by prison officials where the documents seized did not contain information concerning imminent danger to inmates safety or prison security, but was seized to assist the prosecution's case as in Cohen and Lutz

This Court has held that, "the Constitution prohibits a State from treating letters and legal materials as contraband Hudson, 468 at 548, "if materials is examined and found not to be contraband, there can be no justification for its seizure " Hudson, 468, at 549. Per MDOC Policy, "a Michigan prisoner is authorized to possess personal photographs, MDOC P D 07 04 112(E), and MDOC P D 04 07 112(N), specifically, provides that, "a prisoner is authorized to possess legal documents [6].

Further, as set forth in MDOC P D 05 03 118, a prisoner is allowed to possess newspapers For MDOC Policies See i e , http://www Michigan gov/corrections [follow the "Publication and Information" link then follow the "Policy Directives" link];[7].

Although below, there was allegations made by the Petitioner that included personal letters and legal materials were also confiscated by the MDOC Inspector, Mascerro, the MDOC Inspector did not testify to confiscating these personal letters and, legal materials

However, the Petitioner contends that using circumstantial evidence the record supports that, prisoner James Hicks testified that he read letters from Petitioner's trial attorney and prisoner James Hicks also admitted that he

read Petitioner's PSIR.

At trial, the MDOC Inspector testimony included reading the "Contraband Removal Record," that stated the Petitioner was packed up to leave the prison on a writ It is undisputed that, the result of the pack up was because Petitioner was being arrest regarding this case, and was not allowed to take any property with him, this contention is supported by prisoner James Hicks testimony that the police came and pack Petitioner things up and took Petitioner's property to the prison property room.

In short, the seizure of Petitioner personal property was not done pursuant to established MDOC procedures, Hudson, 468 U S. at 530-36, although, the MDOC employees prepared a false "Contraband Removal Slip," and testified to the falsity of the procedures at Petitioner's trial and remand hearing on appeal in order obtain Petitioner's unconstitutional and wrongful conviction

In this case, there was no MDOC promugations governing this situation. The regulations of whether a prisoner, as here, can possess a digital recording device and contraband radio provided to the prisoner by prison officials and whether prison officials can seize oral and written communication of Michigan prisoner at the instigation of law enforcement, is moot and abstract within the MDOC.

Contrary to, the MCOA opinion that relied on the "material" false statements given by the MDOC employees to affirm Petitioner's unconstitutional and wrongful conviction and sentence (Appx "I")

Federal jurisprudence in Michigan recognized, at the time of Petitioner's case, the MDOC's Internal Affairs Division (hereafter IAD) handles investigations of allegations against employees of the MDOC exclusively Generally, unless involved in felonious conduct in conspiracy with an employee, MDOC prisoners do not fall under Internal Affairs jurisdiction "[8]. Further, any investigations conducted by the MDOC's IAD requires the results

of the investigation to be summarized in a report [9]. There was no obligation on the part of the MDOC's IAD, Stephen Maschke to investigate prisoner James Hicks complaint to outside authorities [10].

Moreover, the U S Eastern District Court of Michigan recognizes that, "the MDOC documents involving prison investigations are placed into a file, whether relevant or not,"[11]; "these MDOC records includes electronic monitor logs, and logbook entries for control centers "[12].

In addition, the U S District Court of the Michigan recognizes that, a MDOC's warden and MDOC's Regional Prison Administrator "chain of command" to go as follows: "A warden must seek approval from the Regional Prison Administrator in his chain-of-command, approval must then be given by the Personnel Director, the appropriate Deputy Director and the Director of the Department of Corrections "[13].

Under Michigan's statutory law, the Director of the MDOC is assigned the duty to supervise and control the MDOC [14]. The MDOC employees employed by State prosecutors and outside law enforcement according to statutory law, undermined the statutory authorities of the MDOC Director, Patricia Caruso, demonstrated by the Director's response to Petitioner's Michigan's Freedom of Information Acts (Exh "I")

In context, the Sixth Circuit has recognized that, "a warden would not consent to any contraband being brought into a prison "[15]. Per MDOC's policy, the warden is required to give written consent for the parties involved to utilize a digital recording device on prison grounds MDOC P.D 04 04 110 ¶ (J);[16].

Correspondingly, the U S District Court of Michigan is aware of the established practice that governs the transfer of Michigan prisoners, that gives the Central Office of the MDOC the final authority on Michigan prisoners transfers "[17]. Generally, prison officals (MDOC) prepare transfer documents

only in response to directions they receive from Central Office [18].

Further, the U S District Court of Michigan, also, acknowledges that, "the MDOC maintains records of the MDOC and Michigan State Police (hereafter MSP) when working in conjunction in criminal investigations including MDOC critical incident participation reports [19], these MSP investigation reports memorializes the result of each investigation [20].

These decisional caselaws, from the U S Western/Eastern U S District Courts and the Sixth Circuit Court of Appeals of Michigan contradicts the MDOC witnesses testimony recited in the MCOA's opinion, in pertinent, that:

> "DOC witness testified that the approval process was informal and that the DOC did not necessary make or retain records of the approval process " (Appx "I")

The reasoning of the MCOA never reached the question presented by Petitioner, i e , "Whether, the MDOC had obtained authorization?" not, "Whether the MDOC initiated the approval process?" the email presented below supports that approval was not obtained Under the totality of the the evidence presented, the MCOA never reached the merits of Petitioner's Fourteenth Amendment claim (Exh "F")

Furthermore, the MDOC's Inspector, Reymundo Mascarro confirmed the all to apparent truth, that Michigan prisoners are entitled to due process when it comes to prison policies At trial, the MDOC Inspector, Reymundo Mascarro testified that Petitioner was entitled to due process when it came to prison policies The reasoning of the MCOA decision "was based on an unreasonable determination of the facts," in light of the record before the State court See 28 U S C § 2254(d)(2)

Nonetheless, the Federal Constitution provides that, "the State cannot deny a person life, liberty or property without due process of law " As this Court notes in Wolff, 418 U S at 555-556, that prisoner's may claim the protections of the Due Process Clause " The Due Process Clause of the

Fourteenth Amendment has long recognized as assuring "fundamental fairness" in criminal proceedings See e g Lisenba v California, 314 U S 219, 236 (1941); Moore v Dempsey, 261 U S 86, 90-91 (1923)

Michigan jurisprudence, in context, has addressed a prisoners constitutional rights to evidence in criminal trials when the MDOC is involved, making the State's appellate court well aware that the MDOC had violated Petitioner's Fourth and Fourteenth Amendment U S Constitutional rights

Michigan criminal jurisprudence has found that, "it has been established that records are kept at (Michigan) prisons which could be easily made available to courts "[21]. Michigan courts also recognizes that,"it is a practice of defense attorneys to request "Discovery" of the circumstances surrounding the recording of their clients to prepare a defense for trial "[22].

Correspondingly, the State Courts recognizes,"the prosecution has a duty to obtain Michigan State Police files, and, to provide these files to the defense,"[23], and, the State prosecution is also required to exercise due diligence in seeking to ascertain the identities of any MDOC witnesses "[24].

Important to the case at bar, the Michigan Court of Appeals recognizes as part of a criminal defendants trial, "exhibits" such as MDOC documents that consist of contraband removal records, a request for State Police investigation, a defendant's basic information sheet, an evidence report, a photograph, and, a misconduct report "[25]. The MCOA notes, "the influence MDOC documents have on a jury determination of guilt "[26]. Based on existing caselaw from Michigan jurisprudence, in context, the MCOA should have known that the MDOC witnesses was providing false testimony below

This Court has made clear that, "the deliberate deception of a court and

jury by the presentation of known and false evidence is incompatible with the rudimentary demands of justice [27].

The Petitioner was denied his Fouteenth Admendment U S Constitutional rights where, the jury convicted the Petitioner on the perjurious testimony of MDOC's Inspector, Reymundo Mascarro, MSP, James McDonald and, where, the opinion of the Michigan Court of Appeals was based on the perjured testimony of the MDOC IAD's Director, Stephen Marschke

The "new evidence" presented by Petitioner in the federal lower courts below, would have "fundamentally altered Petitioner's legal claim," and, "placed the claim in a significant different posture," if an evidentiary hearing was held, where, the Petitioner disputed the State's facts with "clear and convincing" evidence,,"on direct review, that the MDOC employees had perjured themselves and the State appellate court(s) relied on this perjured testimony to confirm Petitioner's wrongful conviction 28 U S C § 2254(e)

It has been long established by this Court that, "the failure of an administrative agency to follow its own rules and regulations is a denial of due process of law See e g United States ex rel Accord v Shaughnessy, 347 U S 260. 268 (1954)(same); Vallin v United States, 374 U S 109 (1963)

The Petitioner made the argument below, that, although Accardi and Vallin deals with different agencies and different fact patterns, they stand for the proposition that administrative rules and regulations must be followed in order to comply with the requirements of basic fairness implicit in the concept of due process of law Cf Simmons v United States, 348 U S 397, 405 (1955)

The State and Federal lower appellate courts rulings are based primarily on the "doctrine of judicial restraint," "doctrine of judicial expediency,"

and "known false evidence" the State and Federal lower appellate courts reliance on these 'doctrines' and "false evidence" does not address the violation of Petitioner's Fourth and Fourteenth Amendment rights against the "unreasonable" and "arbitrary" actions of the Michigan Department of Corrections according to United States Supreme Court precedent

Because the State and Federal lower appellate courts did not reach the merits of Petitioner's Fourth and Fourteenth Amendment, because their rulings was based on the perjured testimony of the MDOC witness and, an misapprehension of the laws and facts in issue, Petitioner contends that federal habeas review is not subject to the deferential standard that applies under AEPDA to "any claim that was adjudicated on the merits in the proceedings below." See 28 U S C § 2254(d) Instead, the Petitioner seeks de novo review by this Court [28].

There are a variety of "compelling reason" why this Court should grant Certiorari in this case, including: (1) to the question whether the Petitioner makes a challegable Fourth Amendment claim, where, the MDOC fail to follow its procedures under the Stoudemire doctrine, (2) to decided whether the Petitioner makes a challengable Fourth Amendment claim where no court order was sought or issued under the Booth doctrine to disclose Petitioner's communications to a third party, (3) to resolve the controversy over whether the Cohen doctrine should apply to convicted prisoners.(4) because serious questions are raised concerning a denial of equal protections of the laws guaranteed by the Fourteenth Amendment, (5) to review the State court holdings that, was based on perjured testimony of prison official; (6) because the reliance of the Federal and State lower courts on known perjury committed by prison officials is a "compelling reason" to grant a writ of Certiorari, (7) to vacate the judgment below, and remand for further considerations based on the Petitioner's clear showing

that perjury was committed by prison officials and relied on by the State and Federal courts to affirm Petitioner's conviction, (8) to review the constitutionality of the actions of prison officials in transferring the Petitioner, recording the Petitioner and failing to document the results of the law enforcement investigation instigated investigation that was not contemplated in Bell, Hudson and Wolff, (9) because the case presents an issue of importance beyond the particular facts and parties involved in this matter, where, the practice of the MDOC and other authorities will become a practice that must be permitted at all prison institutions if the Court does not address the Constitutionality of the MDOC's action, (10) to address the doubts concerning the correctness of the holdings in Hudson, to resolve conflicting decisions from other courts where Hudson never contemplated searches of pre-trial detainees and convicted prisoners at the instigation of outside law enforcement, (11) address the importance to the public of the issue of prisoner rights to possess contraband items and the prison officials authority to allow a prisoner to possess contraband items, and (12) to review the lower State and Federal appellate courts rulings with respect to this case de novo because, "jurist of reasons would find their rulings on this issue debatable, and, the rulings of the State and Federal lower appellate courts raises important questions of federal law that should be decided by this Court

In the addition, the Petitioner invites this Court, to grant Certiorari to decided any crucial issues that has not been presented by Petitioner

For these reasons, Petitioner, Tajuan Marnez Williams ask that this Court grant this petition for a writ of Certiorari

ARGUMENT

II. Jurist of reasons would find it debatable whether the State and Federal lower courts has decided an important question of federal law that has not been, but should be settled by this Court, as to whether, Petitioner's Constitutional right to 'privacy' and 'due process' rights were violated by the surreptitious recording of his conversations believed to be 'private' between Petitioner and his "jailhouse lawyer," who held himself out to be a "certified paralegal," and, whether Petitioner's attorney-client privilege was also violated by the Governments intrusion

This claim presents several questions of first impression in this Court, as to whether: (1) a prisoner has a "privacy" and "due process" right in his communications with a prisoner who represents himself as a "certified paralegal," and (2) whether a prisoner who remained in contact with his trial attorney after his incarceration remains protected by the attorney-client privilege from government intrustion absent a valid waiver of the attorney-client privilege

There is scant caselaw on the question whether an attorney-client privilege applies when a prisoner erroneously believes that he or she is consulting with a legal practitioner, but the person who is being consulted is not licensed to practice law

Petitioner has found one case that has addressed this particular issue, and offers some guidance In United States v Tyler, 745 F Supp 423 (W D Mich 1990), a defendant sought to suppress evidence of statements he made to another that he believed as an attorney, based on the attorney-client privilege Defendant spoke with the individual and paid him money while in fact the individual was not an attornay The U S District Court of Michigan, granted the motion and held that the following criteria was required in order

to prove defendant's claim:

> "(1) that the individual frequently held himself out to defendant as an attorney; (2) the defendant genuinely and reasonably believed that the individual was an attorney; (3) that pursuant to this belief, defendant made confidential communications to the individual; (4) that the individual disclosed to the government the confidential communications he received from defendant; and (5) the government used these disclosures as a source of obtaining other evidence that it intended to use at the trial

In granting the defendant's motion, the U S District Court held that, "the attorney-client privilege applied to defendant's communication and prohibited the government from introducing the evidence either directly or indirectly The United State Court of Appeals for the Ninth Circuit has applied the Tyler doctrine E g Velasquez v Borg, 1994 U S App LEXIS 17069, 1994 WL 327328, at 1 (CA 9 1994)(stating, "because [petitioner] does not contend that he thought [the jailhouse lawyer] was authorized to practice law, he has not proven a violation of the attorney-client privilege as traditionally understood"); See also, State v Melendez, 834 P 2d 154 (Ariz 1992)(holding, "statements made by the inmate to his 'jailhouse lawyer' were confidential, and that allowing the "jailhouse lawyer" to reveal these statements in court would violate the due process clause of the state constitution") . The five criteria's of Tyler were met in Petitioner's case

This Court confronted the problem of inmate legal assistance in Johnson v Avery, 393 U S 483 (1969) The concurring, observations of MR JUSTICE DOUGLAS, are apropos of the case at bar: "Laymen-- in and out of prison--should be allowed to act as next-friend to any person in the preparation of any paper or document or claim, so long as he does not hold himself out as practicing law or as being a member of the bar " Avery, 393 U S at 491-492, 498

Under the rational of MR JUSTICE DOUGLAS concurrence in [Avery v Johnson,

supra], prisoner, James Hicks may not hold himself out as practicing law i e to be a "certified paralegal " In the context presented here, several courts agree with this rational. See e.g Gucci v Guess, 2011 U.S. Dist LEXIS 15 (2011); In re Grand Jury Subpoena Duces Tecum, 112 F 3d 910, 923 (1987)(recognizing the court has found the privilege applicable where the client reasonably believed that a poseur was in fact an attorney"); United States v Mullen & Co , 766 F Supp 620 (1991)(holding, "attorney/client privilege applies in confidential communications made to an accountant where the client was under reasonable, but mistaken, belief that the accountant was an attorney").

In this case, prisoner, James Hicks like the prisoner in Tyler reviewed all of Petitioner's legal materials and wrote letters on Petitioner's behalf to Petitioner's trial judge. Prisoner, James Hicks gained Petitioner's confidence and asked questions about the weapons conviction Petitioner was appealing, and also about the homicide case in which Petitioner was a prime suspect

Historically, inmate "paralegal" programs has long been recognized in Michigan prisons."[29]. Therefore, the Petitioner had a reason to believe that prisoner, James Hicks was a "certified paralegal" as he claimed Also, testimony elicited from several other prisoners at Petitioner's trial disclosed that prisoner, James Hicks held himself out to be a "certified paralegal." Within the bounds prescribed by JUSTICE DOUGLAS concurring, observations in Avery, and amplified in by the U S District Court for the Western District of Michigan in Tyler, prisoner James Hicks should not have been free to disclose Petitioner's private communications at the State's trial without violating Petitioner's First and Fourteenth Amendment rights

Simultaneously, the Petitioner had an on-going attorney-client

relationship with Kenneth Karasick, who had represented Petitioner in the Genesee County 2005 case, and continued to advise the Petitioner, because Petitioner was concerned that he could be charged in the instant case There was evidence submitted below, that showed that Petitioner stayed in contact with Mr Karasick during the time Petitioner was incarcerated with the MDOC

This Court has long held that, "the attorney-client privilege protects clients who made full disclosure to their attorneys, since sound legal advice and advocacy depends on full and frank communication See e g Fisher v United States, 425 U.S. 391, 403 (1976); Trammel v United States, 445 US 40, 51 (1980).

Petitioner, made this argument below, that his attorney-client privilege with Mr Karasick was violated when prisoner, James Hicks read his legal materials, surreptitiously as an agent of police, and then based his questioning on those materials Petitioner arguments also included that Petitioner did not knowingly waive his attorney-client privilege he held with Mr Karasick, where, prisoner, James Hicks as an "arm of the police," sought incriminating information This Court holds that, "waiver of a constitutional right must be knowingly and voluntary See i e Johnson v Zerbst, 304 U S 458, 464 (1938)

In the case at bar, Petitioner never knowingly and voluntarily waived his attorney-client privilege he maintained with trial attorney, Kenneth Karasick when speaking with prisoner, James Hicks who represented himself as a "certified perelegal," but was actually a government agent

This Court has insisted that prisoners be accorded those rights not "fundamentally inconsistent with imprisonment itself or incompatible with the objective of incarceration Hudson, 468 U S at 523 They enjoy the protections of due process " Id The State through the actions of prisoner,

James Hicks impeded Petitioner's right to seek post-conviction relief on his 2005 weapons conviction, in order to obtain evidence that lead to Petitioner's conviction on the 2007 murder charges

In order to comply with Avery, the prison officials were required to formulate and administer some alternative means by which Petitioner, could seek post-conviction relief, when they decided to use prisoner, James Hicks to facilitate the non-penological interest recordings The Petitioner's conviction is unconstitutional under the rules laid down by Mr Justice Douglas

The failure of the State and Federal lower appellate courts to take into account the holdings in, Avery, Fisher, Trammel, Hudson, Zerbst, and Mr JUSTICE DOUGLAS concurring observation in Avery, should demolish any claim that Petitioner is not entitled to relief

This Court should be convinced that, Avery, Fisher, Trammel, Hudson, Zerbst, and Mr JUSTICE DOUGLAS concurring observation in Avery, has not been complied with in this case, and restore the Petitioner's opportunity to regain his liberty like the defendant in Tyler, by ordering a new trial without the testimony of prisoner, James Hicks

For these reasons, Petitioner, Tajuan Williams asks this Court grant this Petition for writ of certiorari because:(1) to determine whether the Petitioner makes a valid "privacy" and "due process" claim under the Tyler doctrine, (2) to address whether the surreptitious recordings violated Petitioner's attorney-client privilege with his trial attorney, Kenneth Karasick, (3) to address whether the Petitioner knowingly and voluntarily waived his attorney-client privilege under the Zerbst doctrine, (4) to clarify the law as to whether the attorney/client privilege applies in confidential communications where a individual is under a reasonable, but mistaken belief that s/he is consulting a practitioner, (5) to review the

State and Federal lower appellate court's rulings de novo because, "jurist of reason would find their rulings on this issue debetable, where, the reasonings of the State and Federal lower courts "ignores" or "mischaracterizes" the Petitioner's claim, therefore, the Petitioner's claim has yet to be addressed on the merits, and the rulings of the State and Federal lower appellate courts raises important questions of federal law that has not been but should be decided by this Court

For these reasons, Petitioner, Tajuan Marnez Williams ask that this Court grant this petition for a writ of Certiorari.

Respectfully submitted,

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Date: August ____, 2018

FOOTNOTES

1 See, People v Olman, 443 Mich 971, 972-73 (2007)(Corrigan J , dissenting)

2 See, United States v. Gilliman, 315 F.3d 614, 619 (6th Cir 2003)

3 See, Everson v Mich Dep't of Corr , 222 F Supp 2d 864, 874 (E D Mich

2004); see also ABC v Mich Dep't of Corr , 2001 Mich App LEXIS 1519, n 1 (2001)(noting, "a news media representative 'shall' not be allowed to use or possess a camera or other audio or visual recording device while on a visit with a prisoner").

4 See, People v. Manetea, 1998 Mich App LEXIS 1845 (1988); see also Milton v Wainwright, 407 U S. 371, 372 (1972)(recognizing, "the use of police officer confined in a cell posing as an accused to obtain a confession"); Illinois v Perkins, 496 U S 252, 294 (1990)(recognizing, "the police placed an undercover agent in defendant's cell to obtain confession")

5 See, United States v O'Reilly, 2008 US Dist LEXIS 7473, *4 (E D Mich. 2008)(noting, "a prison informant at Ryan Correctional Facility (Michigan) placed in segregation for his own protection either because guard publically stated he was wearing a wire, or because he had cash against prison policy, the recording were never made")

6 See, Gordon v Good, 2014 Mich App LEXIS 589, 3-4 (2014)

7 see also Lockett v Suardini, 526 F 3d 866, 874 (6th Cir 2008)(explaining MDOC policy website")

8 See, Barber v Overton, 496 F 3d 449, 450 n 2 (6th Cir 2007)

9. See, Barber, 496 F 3d at 450

10 See, Proctor v. Applegate, 661 F Supp 2d 743, 775 (E D Mich 2014)(MDOC's IAD, Director, Stephen Maschke, "the IAD Section is not consitutionally obligated to investigate prisoner complaint")

11 See, Cannon v Berstein, 2015 U S Dist LEXIS 133951, *23 (E D Mich 2015)

12 See, Cannon, 2015 US Dist LEXIS at 22

13 See, Mohr v Mich. Dep't of Corr., 2006 US Dist LEXIS 18392, *7 (E D Mich 2006)(discussing MDOC's warden and RPA's 'chain of command')

14. See, MCL 791 203

15 See, United States v Gregory, 315 F 3d 637, 642 (6th Cir 2003)(noting, "warden testified he did not consent to any contraband in prison")

16 cf Scott v Norton, 96 Fed Appx 378, 379 (6th Cir 2004)(recognizing, "written approval from warden (Michigan) for inmate to possess audio tapes")

17. See, King v Zamiara, 2009 U S Dist LEXIS 97061, *17 (W.D Mich 2009)

18. See, Zamiara, 2009 U S Dist LEXIS 97061, at 23

19. See, Solomon v Mich State Police, 2011 U S Dist LEXIS 11673, 4-5 (W D Mich 2007)

20 Id ; Cf Walker v Brewer, 2014 U S Dist LEXIS 37550, *17 (W D Mich 2014)(noting, the MSP are required to maintain MSP incident reports with respect to on-going criminal investigations conducted within the MDOC")

21 See, People v Tripplett, 91 Mich App 82, 85 (1979)

22. See, People v Jackson, 2009 Mich App LEXIS 213, *12 (2009)(noting, "the defendant's "Brady" request of recording for purpose of a pretrial suppression motion"); People v Albert, 89 Mich. App 350 (1979)(noting, "a police officer recognized that tape-recorded statement he destroyed would have been requested by the defense")

23 See, People v Odom, 2014 Mich App LEXIS 34, 61-65 (2014)

24 See, People v Baskin, 145 Mich App 526, 535 (1985)

25 See, People v Nash, 2007 Mich App LEXIS 1904, 3-4 (2007)

26 See, Nash, 2007 Mich App LEXIS 1904 at 3-4

27. See, Giglio v United States, 405 U S 150 (1972); Napue v Illinois, 360 U S 264 (1959)

28 cf Romilla v Beard, 545 US 375, 390 (2005)("de novo review where State court did not reach prejudice prong of Strickland v Washington, 466 US 668 (1984)); Wiggins v Smith, 536 US 510, 534 (2003)(same)

29. See, Hadix v Johnson, 694 F Supp. 259, 272-273 (E D Mich 1988).