NO.

IN THE

SUPREME COURT OF THE UNITED STATES

TYRONE MASON,

Petitioner,

v

SHAWN BREWER,

Respondent.

On Petition for Writ of Certiorari to

The United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

By: Tyrone Mason
Inmate Number #181987
Robert G. Cotton Correctional Facility
3510 N. Elm Road
Jackson, Michigan 49201

NOTICE

This document was prepared with the assistance of a non-attorney inmate with the Michigan Department of Corrections Legal Writer Program.

QUESTIONS PRESENTED FOR REVIEW

I. DOES ARTICLE 1 § 9 cl. 2 OF THE UNITED STATES CONSTITUTION PROHIBIT SUSPENSION OF THE WRIT OF HABEAS CORPUS AND IMPLICITLY GRANT THE PETITIONER AN INALIENABLE RIGHT TO SEEK AND RECEIVE RELIEF ON A WRIT OF HABEAS CORPUS?

II. IS 28 USC § 2244 ET SEQ IN CONFLICT WITH THE MANDATE OF THE NINTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

III. DID THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AS WELL AS THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT IMPERMISSIBLY ERR IN REJECTING PETITIONER'S GROUNDS FOR EQUITABLE TOLLING?

LIST OF PARTIES INVOLVED

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REFERENCE TO OPINIONS BELOW

Petitioner was convicted of two counts of first degree criminal sexual conduct and sentenced to 40 to 120 years' imprisonment on December 16th, 1985.

The Michigan Court of Appeals affirmed Petitioner's convictions on direct appeal in an unpublished, per curiam opinion dated July 21st, 1988. . *See, People v Mason, No. 91388*

The Michigan Supreme Court denied leave to appeal. *See People v Mason, 432 Mich. 879 (1989).*

On March 27th, 2015, Petitioner filed a motion for relief from judgment. The trial court denied this motion.

On August 3rd, 2016, the Michigan Court of Appeals denied Petitioner's application for leave to appeal. *See People v Mason, 2016 Mich App Lexis 2473, Attached hereto as Appendix A.*

On January 31st, 2017, the Michigan Supreme Court denied leave to appeal. *See People v Mason, 500 Mich. 934, 889 NW2d 257 (2017) Attached hereto as Appendix B.*

On or about June 9th, 2017, Petitioner filed a motion for equitable tolling along with a petition for writ of habeas corpus before the Honorable Stephen J. Murphy III, In the United States District Court for the Eastern District of Michigan, Southern Division, and on March 29th, 2018 the Honorable Judge Murphy III found no grounds for equitable tolling of the limitations period and granted Respondent's motion to dismiss. *See Mason v Brewer, 2018 US Dist Lexis 52412, Attached hereto as Appendix C.*

On July 19th, 2018 the United States Court of Appeals for the Sixth Circuit denied leave to appeal. *See Docket No. 18-1475, Attached hereto as Appendix D.*

STATEMENT OF JURISDICTION

The Order sought to be reviewed was entered on July 19th, 2018 by the United States Court of Appeals for the Sixth Circuit.

The jurisdiction of this Court is invoked under *28 USC §1254(1).*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions"

Article I § I states:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I § 8, in part, states:

> "The Congress shall have the Power To . . . "

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> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

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Article I § 8, in part, states:

> "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof."

Article I § 9 of the United States Constitution states:

> "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

The Ninth Amendment states:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Statutory Provisions:

The Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28 USC § 2244(a) provides:

> (a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a

judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that as not presented in a prior application shall be dismissed unless-

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this section.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has not authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(e) In a habeas corpus proceeding brought in behalf of a person in custody

pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused the fact to appear in such record by the exercise of reasonable diligence.

28 USC § 2244(d) provides:

"(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

STATEMENT OF THE CASE

Following a jury trial in Recorder's Court for the City of Detroit, Petitioner was convicted of two counts of first degree criminal sexual conduct. On December 16th, 1985, Petitioner was sentenced to 40 to 120 years' imprisonment. The Michigan Court of Appeals affirmed Petitioner's convictions on direct appeal. *See, People v Mason, No. 91388 (dated July 21st, 1988).* The Michigan Supreme Court denied leave to appeal. *See People v Mason, 432 Mich. 879 (1989).* Then on February 25th, 1991, the trial court denied Petitioner's motion for resentencing. And on September 13th, 1991, the Michigan Court of Appeals denied Petitioner's delayed application for leave to appeal. Petitioner did not seek leave to appeal in the Michigan Supreme Court.

On September 18th, 2014, Petitioner attempted to file a motion for relief from judgment in the trial court. The trial court ordered the motion returned without filing for failure to comply with *Michigan Court Rule 6.502(D).* Then on March 27th, 2015, Petitioner filed another motion for relief from judgment. The trial court denied this motion. The Michigan Court of Appeals subsequently denied Mason's application for leave to appeal on August 3rd, 2016, *(See People v Mason, 2016 Mich App Lexis 2473; attached Appendix A),* and on January 31st, 2017, the Michigan Supreme Court likewise denied leave to appeal. *See People v Mason, 500 Mich. 934, 889 NW2d 257 (2017); attached Appendix B).*

Thereafter, on or about June 9th, 2017, Petitioner filed a motion for equitable tolling along with a petition for writ of habeas corpus before the Honorable Stephen J. Murphy III, In the United States District Court for the Eastern District of Michigan, Southern Division. Respondent did not file a response to the motion and, instead, filed a motion for dismissal of the petition for failure to comply with the limitations period. On March 29th, 2018 the Honorable Judge Murphy

III found no grounds for equitable tolling of the limitations period and granted Respondent's motion to dismiss. *See Mason v Brewer, 2018 US Dist Lexis 52412.* Finally, on July 19th, 2018 the United States Court of Appeals for the Sixth Circuit denied leave to appeal. *See Docket No. 18-1475.*[1]

At issue in the case at bar is whether the federal courts rejection of Petitioner's motion for equitable tolling comports with dictate issued by the United States Supreme Court. Petitioner contends, with all due respect, that the decisions issued by the United States District Court for the Eastern District of Michigan, Honorable "Stephen J, Murphy III" as well as the United States Court of Appeals for the Sixth Circuit erred in rejecting the grounds asserted by Petitioner in support of his request for equitable tooling of the AEDPA's statutory one-year limitation period.

[1] From September 18th, 2014 through July 19th, 2018 Petitioner had the assistance of the Legal Writer Program.

REASONS FOR GRANTING THE PETITION

I. ARTICLE 1 § 9 cl. 2 OF THE UNITED STATES CONSTITUTION PROHIBIT SUSPENSION OF THE WRIT OF HABEAS CORPUS AND IMPLICITLY GRANT THE PETITIONER AN INALIENABLE RIGHT TO SEEK AND RECEIVE RELIEF ON A WRIT OF HABEAS CORPUS.

Article I § 9 cl.2 of the United States Constitution provides:

> "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

The plain and unambiguous language of *Article 1 § 9 cl. 2* guarantees every citizen of the United States an inherent constitutional right to habeas corpus review unless in cases of rebellion or invasion the public safety may require a temporary suspension of the writ. Ineluctably, as of this date no rebellion and/or invasion is occurring in the United States which may require suspension of the writ.

However, the AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28 USC § 2244") imposes a one-year limitation period from which the American People are required to file a petition for a writ of habeas corpus or face the possibility of not being able to file the writ. *See 28 USC § 2244(d).* Even though there are exceptions to the one-year limitation period, for example "equitable tolling" the Act nevertheless, suspends the writ because it imposes significant hurdles an applicant must over-come in order to have the writ considered on the merits after expiration of the one-year limitation period. The clear and unambiguous language of *Article I § 9 cl. 2* of the United States Constitution imposes no such limitation period. Indeed, *Article I § 9 cl. 2* provides that the writ shall not be suspended except in cases of rebellion or invasion; neither of which are applicable at this time.

In *Boumediene v Bush, 553 US 723; 128 SCt 2229; 171 LEd2d 41 (2003)* this Honorable

Court has said:

> "The United States Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply. Even when the United States acts outside its borders, its powers are not absolute and unlimited but are subject to such restrictions as are expressed in the Constitution."
>
> To hold the political branches have the power to switch the Constitution on or off at will is quite another. The former position reflects this Court's recognition that certain matters requiring political judgments are best left to the political branches. The latter would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not this Court, say "what the law is." Citing *Marbury v Madison, 5 US 137, 1 Cranch 137, 177, 2 LEd 60 (1803).*

Petitioner respectfully submits, *the United States Constitution* "is the supreme law" and any and every Act of Congress inconsistent with the Constitution is a nullity. *See e.g., Gibbons v Ogden, 22 US 1 (9 Wheat 1), 6 LEd 23 (1824).* Further, that "which is fixed by the constitution, Congress have no power to change." *See e.g., Cohens v Virginia, 19 US 264 (6 Wheat 264) 5 LEd 257 (1821).* In addition, "neither the executive, nor the legislative, nor the judicial branches of the Federal Government can act except through a power conferred by the Constitution. Whenever a particular power is exercised the limitation placed upon it by the Constitution must be observed." *See e.g., DeLikma v Bidwell, 182 US 1; 21 SCt 743; 45 LEd 1041 (1901).* These mandates have long been the corner-stone of American Jurisprudence.

Indeed, in *Holland v Florida, 560 US 631; 130 SCt 2549; 177 LEd2d 130 (2010)* this Honorable Court stated:

> We recognize that AEDPA seeks to eliminate delays in the federal habeas review process. But AEDPA seeks to do so without undermining basic habeas corpus principles and while seeking to harmonize the new statute with prior law, under which a petition's timeliness was always determined under equitable principles. AEDPA's present provisions . . . incorporate earlier habeas corpus principles. When Congress codified new rules governing this previously judicially managed area of law, it did so without losing sight of the fact that the writ of habeas corpus plays a vital role in protecting constitutional rights. It did not seek to end every

> possible delay at all costs. The importance of the Great Writ, the only writ explicitly protected by the Constitution, Art I § 9, cl, 2, along with congressional efforts to harmonize the new statute with prior law, counsels hesitancy before interpreting AEDPA's statutory silence as indicating a congressional intent to close courthouse doors that a strong equitable claim would ordinarily keep open. *Id at 648-649* (Internal Citations Omitted).

If Congress sought to harmonize the new statute with prior law, it must do so without offending the United States Constitution. That is not the case here. The Petitioner has been and is being denied the privilege of the writ of habeas corpus. The United States Constitution does not contain a provision or time limit for seeking the great writ nor are there any requirements mandating that an applicant hurdle certain barriers prior to filing the writ. The Constitution simply and unequivocally provides the writ may not be suspended unless in cases of rebellion or invasion. In the instant matter, the great writ has been suspended, contrary to the express provisions found in *Article I § 9 cl. 2.* See also, *Hamdi v Rumsfeld, 542 US 507, 525; 124 SCt 2633; 159 LEd2d 578 (2004)("All agree that absent suspension the writ of habeas corpus remains available to every individual detained within the United States).*

Petitioner is mindful of this Honorable Court's ruling in *Felker v Turpin, 518 US 651; 116 SCt 2333; 135 LEd2d 827 (1996)*(concluding, inter alia, that the AEDPA did not suspend the writ of habeas corpus in violation of the Constitution's suspension clause. See *Article I § 9 cl. 2.* However, Petitioner argues that his particular case is distinguishable. The United States Supreme Court denied Felker's writ of habeas corpus on the merits. The Court found that the two issues presented therein did not materially differ from numerous other claims previously adjudicated and that Felker failed to comply with Rule 20.4(a) of the Supreme Court. It is obvious that the writ was not suspended in Felker's case as this Honorable Court reviewed and rejected Felker's claims.

In Petitioner's particular case, the "at issue" writ of habeas corpus has never been

reviewed nor rejected. Indeed, it is the Petitioner's first and only application for a writ of habeas corpus. This is a significant and paramount difference to the Felker Case. That is, Felker received his privilege when he filed and this Court addressed the merits of his habeas corpus petition. Petitioner, on the other hand, has not received the privilege nor has a court of competent jurisdiction addressed the merits of his claims.

In conclusion, Petitioner submits that the *AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28 USC § 2244")* is contrary to and in violation of the foregoing constitutional dictates. Therefore, this Honorable Court should declare the *AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28 USC § 2244")* unconstitutional and void.

II. 28 USC § 2244 ET SEQ IS IN CONFLICT WITH THE MANDATE OF THE NINTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The *Ninth Amendment* provides:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

While it is true that Congress has the constitutional power: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Power, and all other Powers vested by this Constitution in the Government of the United States, or in any Department of Office thereof;" it is not true that Congress can make a law that effectively will deny or disparage constitutional rights of the people. For example, the *AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28 USC § 2244")* which denies to or disparages against the filing of the great writ of habeas corpus if certain limitation periods are not met. The Great Writ was well established far in advance of Congress's enactment of the *AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28*

USC § 2244"). See e.g., *Ex parte Milligan, 71 US 2 (7 Wall 2) 18 LEd 281 (1866) and Ex parte Bollman, 8 US 75 (4 Cranch 75) 2 LEd 554 (1807).*

This Honorable Court has consistently reaffirmed the preferred place of the Great Writ. See e.g., *Fay v Noia, 372 US 391, 399-401; 83 SCt 822; 9 LEd2d 837 (1963)*("We do well to bear in mind the extraordinary prestige of the Great Writ, habeas corpus ad subjiciendum, in Anglo-American Jurisprudence; the most celebrated writ in the English law . . . It is a writ of antecedent statute, and throwing its roots deep into the genius of our common law . . . It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I. . . . Received into our own law in the colonial period, given explicit recognition in the Federal Constitution . . ., incorporated in the first grant of federal court jurisdiction, Act of September 24, 1789, c. 20 §14, 1 Stat. 81-82, habeas corpus was early confirmed by Chief Justice John Marshall to be a 'great constitutional privilege . . .")(internal citations omitted); *Smith v Bennett, 365 US 708; 81 SCt 895; 6 LEd2d 39 (1961)*("Throughout the centuries the Great Writ has been the shield of personal freedom insuring liberty to persons illegally detained").

As Chief Marshall said in *Ex parte Bollman, 4 Cranch 75, 95* ***"for if the means not be in existence, the privilege itself would be lost, although no law for its suspension should be enacted."*** Enactment of the *AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28 USC § 2244")* no matter how well intended abridges the mandate of the *Ninth Amendment* as the Act serves to disparage and deny Petitioner the right to seek release from illegal restraint via the Great Writ of Habeas Corpus. On this basis alone, the *AEDPA ("Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, codified at 28*

USC § 2244") has deprived Petitioner of the privilege of the Great Writ.

III. THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AS WELL AS THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT IMPERMISSIBLY ERRED IN REJECTING PETITIONER'S REASONS FOR EQUITABLE TOLLING.

On or about June 9th, 2017, Petitioner moved for equitable tolling and submitted a petition for writ of habeas corpus in the United States District Court for the Eastern District of Michigan, Southern Division. Case No. 2:17-cv-11940. On March 29th, 2018 the Honorable Judge Murphy III found no grounds to equitably toll the one-year limitation period and granted Respondent's motion to dismiss. *See Mason v Brewer, 2018 US Dist Lexis 52412.* See attached Appendix C. Lastly, on July 19th, 2018 the United States Court of Appeals for the Sixth Circuit denied leave to appeal. *See Docket No. 18-1475; see attached Appendix D.*

In this case sub judice it cannot be said, with any degree of certainty, that the Petitioner has not been diligent in pursuing his rights. Specifically, after the conclusion of direct appeals in 1989, the AEDPA and hence, the one-year limitation period was not created and in any event, Petitioner, due to mental illness did not understand the ramifications of the AEDPA until it was explained to him during the instant post-conviction proceedings. Despite the long delay Petitioner has been diligent in pursuing his rights. For example, in 1994 Petitioner sought post-conviction review.

Then, in January of 2000 the "National Legal Professional Associates" issued a "MEMORANDUM" regarding an evaluation of the Petitioner's case to "Jeffrey Brandt" Esq., and recommended that Petitioner pursue several viable issues. However, due to financial

difficulties[2], Petitioner was unable to pursue the recommendation. Then, in early 2003, Petitioner's elderly mother obtain the services of attorney "Robert R. Elsey." Mr. Elsey contacted "Brian Stretcher" of the National Legal Professional Associates concerning a "rough draft brief" prepared by them in December of 2002. However, and again due to a lack of financial resources, the case ground to a halt. Despite a lack of resources, the Petitioner, with the assistance of prisoner paralegals, managed to send letters to various organizations (religious and otherwise) hoping to acquire assistance.

One such organization, the "Mt. Zion Missionary Tabernacle, Inc." in 2010 offered to assist Petitioner, but again, for unknown reasons, that too petered out sometime in or about 2013. Lastly, in 2014 Petitioner was granted access to the "Legal Writer Program" who provided assistance with seeking post-conviction review. The Legal Writer Program has prepared all of the Petitioner's pleading, concluding with the decision to deny relief issued by the Michigan Supreme Court in January of 2017. See attached Appendix B.

On or about September 25th, 2014 Petitioner filed for post-conviction relief via a Motion for Relief from Judgment, under Michigan's post-conviction rule *MCR 6.500 et seq.*[3] In the Motion, Petitioner raised nine grounds for relief, i.e.:

1. Defendant was denied his due process right to a meaningful review/appeal of his warrantless arrest, trial court's lack of subject matter jurisdiction, unfair trial and constitutional infirm conviction, as guaranteed by the U.S. Constitution amendments V, VI, and XIV, due to the ineffective assistant of appellant counsel.

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[2] It must be understood that Petitioner's sole source of legal expenses was from his elderly mother who is on a fixed, social security based income. In addition, due to incarceration, it is wholly impossible for a mentally ill incarcerated individual to earn a retainer free. Petitioner urged the Court to TAKE JUDICIAL NOTICE that Petitioner's retired elderly mother was/is the sole provider of financial resources to the attorneys who on and off represented this Petitioner.

[3] The identified motion for relief from judgment was prepared by a prisoner paralegal assigned to the Legal Writer Program. The pleading was not and could not have been prepared by the Petitioner without the assistance of the paralegal.

2. Defendant's right to be free from an unreasonable search and seizure under the US Const Am IV, XIV, and Michigan Const 1963, art 1, § 11 was violated when police officers forcibly entered defendant's mother's home and conducted a search and seized defendant without consent or a proper warrant.

3. The trial court did not have proper subject-matter jurisdiction of the instant case, in violation of US Const. Am. IV, V, and XIV, and Michigan Const. 1963, art 1, § 2, 11, 17, and 20, which caused a "radical jurisdictional defect" based on 1): a warrantless arrest was issued, 2): a failure to timely file a proper complaint, 3): a failure to timely file a proper information, and 4): herein "due process" violations of the US Const. Ams, and Mich Const. Statutory provisions resulted in a "manifest of constitutional error" and defendant's conviction is constitutionally infirm.

4. The trial court abused its discretion by sua sponte removing defendant's appointed trial counsel and appointing new counsel because counsel challenged the court's decision in the case, and violated defendant's due process right to a fair and impartial trial as guaranteed by the US. Const. Amends. V, VI, XIV, and Michigan Const 1963, art 1, § 17.

5. Defendant was denied due process of law when the trial court exceeded its jurisdiction by amending the information at the close of proofs, by adding a new charged offense without first providing defendant a preliminary examination on the new added offense, creating a jurisdictional defect in the proceedings and double punishment for the same offense, in violation of the US Const. Am. V, VI, XIV and Mich. Const. 1963, art. 1, §15.

6. Prosecutor's failure to produce a res gestae witness, the doctor who examined the victim after the alleged crime, deprived defendant of his due process right to confront the evidence against him as guaranteed by the US Const. Am. V, VI, and XIV.

7. The prosecutor's improper arguments that defendant possessed a knife, gun and screwdriver during the commission of the offense, at trial (although the weapons charge was dismissed at the preliminary examination), were so prejudicial that defendant was denied his right to a fair and impartial trial as guaranteed by the US Const Am V, VI, XIV, and Michigan Const 1963, art 1, §17.

8. Defendant was deprived of effective assistance of trail counsel, when counsel failed to object to the state's introduction of hear-say testimony from a medical report, failed to object to the court amending the information at the close of proofs which added a second and new charge to the original information, failed to file a motion to quash due the court's

> lack of subject matter jurisdiction, failed to have defendant plead not guilty by reason of insanity, or in the alternative, to more aggressively seek a plea arrangement, and the cumulative effect of counsel's deficient performance, in violation of US Const Am. VI, XIV, and Michigan Const 1963, art. 1, §17 and § 20.

On December 1st, 2015, the trial court entered an order denying Petitioner's motion for relief from judgment. On August 3rd, 2016 the Michigan Court of Appeals rejected Petitioner's application for leave to appeal. On January 31st, 2017 the Michigan Supreme Court issued an order denying leave to appeal.

Petitioner does not deny that he missed the deadline because, at the time his direct appeal concluded in 1989, the AEDPA had not yet been enacted. Moreover, even had the AEDPA been applicable in 1989, Petitioner's long and extensive history of mental illness, illiteracy and being heavily medicated, (still existing to this day) would have deprived the Petitioner of the ability to file in a timely manner, let alone have constructive knowledge of filing requirements.

Moreover, the attached Appendix E demonstrates that Petitioner was suffering from severe physical and mental matters during the time periods in question, including, but not limited to, attempted suicide. The Petitioner suffered then and continues to suffer today the same conditions. Had Petitioner been in good health and not suffering from mental illness, then it would be proper to subject him to the AEDPA's one-year statute of limitations. However, in this particular case, subjecting Petitioner to the AEDPA's one-year statute of limitations would be manifestly unjust.

As evidenced from the foregoing record, Petitioner has diligently pursued his rights but due to extraordinary circumstances, i.e., lack of resources and mental illness and medical issues, he was not realistically able to bring a habeas corpus petitioner sooner. These factors alone should constitute an extraordinary circumstance, and when considered cumulatively with the fact

that no one attempted to explain to petitioner his rights and time limits concerning habeas corpus jurisprudence until his recent enrollment in the State's Legal Writer Program, should compel this Honorable Court to conclude that Petitioner has diligently pursued his rights and that the lower federal courts opinion is clearly erroneous.

Based upon the foregoing points, as articulated in the record below, and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the court below. The petition for a writ of certiorari should be granted as Petitioner was denied his federal constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Executed this ____ day of October, 2018.

Respectfully submitted,

/S/ Tyrone Mason

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