

No. 68-CV-17-3061

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL CARLTON LOWE, SR. - PETITIONER

VS.

STATE OF MINNESOTA - RESPONDENT(S)
COMMISSIONER OF CORRECTIONS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI
Rice County District Court

MICHAEL CARLTON LOWE, SR
1101 LINDEN LANE
FARIBAULT, MINNESOTA 55021
PRO SE PETITIONER

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QUESTIONS PRESENTED

- I. Did the district court abuse its discretion by answering a federal question on petitioner's liberty interest in a state court?
- II. Did the district court violate due process by suspending habeas corpus without public safety requiring its suspension in the case of rebellion?
- III. Did the district court err by denying that habeas corpus should lie where a petitioner—after conviction, challenges the district court's jurisdiction; whether the sentence was authorized by law; or whether petitioner's fundamental right to due process has been violated?
- IV. Did the district court err by denying a hearing, where it appears from the petition and record that the facts established entitle him to discharge?
- V. Did the district court err by denying petitioner's writ setting forth sufficient facts to establish a *prima facie* case for his discharge?

LIST OF PARTIES

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

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

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STATUTES AND RULES

OTHER

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

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

OPINIONS BELOW

For cases from State Courts:

The Minnesota Court of Appeals decision in the companion case of: Lowe v. Tom Roy, Commissioner of Corrections, Case No. A13-0315, Minn. App. July 22, 2013; affirming the district court's order denying habeas corpus relief challenging that the district court lacked jurisdiction to impose an executed sentence by written warrant after pronouncing a stayed sentence; and that petitioner's stayed sentence was improperly executed in the absence of a preliminary or final revocation hearing.

Further, the Minnesota Court of Appeals decision in the companion case of: Lowe v. Tom Roy, Commissioner of Corrections, Case No. 66-CV-17-3061, Rice County District Court; the Rice County District Court denying habeas corpus relief challenging Hennepin County District Court's jurisdiction over the imposition of an executed sentence by written warrant; and that petitioner's stayed sentence was improperly executed in the absence of a preliminary or final revocation hearing, violating petitioner's due process and procedural due process substantive rights.

The Minnesota Court of Appeals decision to deny review on June 4, 2018 and failure to adhere to the apposite dispositions in: State v. Foreman, 1991 Minn. App.

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LEXIS 814; also State v. Staloch, 643 N.W. 2d 329 (Minn. App. 2002) both appear at Addendum (A) to this petition.

The Minnesota Supreme Court's , 2018 order granting leave to proceed in forma pauperis in the Minnesota Supreme Court on petition for review of the court of appeal's decision denying the petition for habeas corpus on June 4, 2018 weighs in favor of petitioner regarding the precept that the claim is not frivolous.

However, the Supreme Court's order granting petitioner leave to proceed in forma pauperis, in and of itself, exemplifies that petitioner was in fact entitled leave to proceed in forma pauperis in the Court of Appeals; and that the Court of Appeal's order denying relief was error based on the Minnesota Supreme Court's decision to grant leave to proceed in forma pauperis on the same case, where it was already granted in the district court because petitioner's financial status had not changed.

Further, petitioner offers proof of his continued status as a pauper, as recognized by the same district court, in a separate and current filing where in forma pauperis was granted him by the Rice County District Court on August 30, 2018 under case number **66-CV-17-3061** in a general case type and pleading, see the latter of the habeas pleading argued herein. **See also order attached at Addendum to this petition at B.** And, evidence that he was in fact placed on probation in the 2007 sentencing proceeding. **See Bureau of Criminal Apprehension-Criminal History Check Release in Addendum at A.**

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Further, petitioner's claim establishes merit where in regards to his claim, the sentence he received was a stay of execution, and that the record expelling the court's sentencing decree was that petitioner would serve 120 months on probation is in support of his claim based on the disposition in: State v. Foreman, 1991 Minn. App. LEXIS 814; also State v. Staloch, 643 N.W. 2d 329 (Minn. App. 2002) attached at Appendix ____ to this petition.

The Minnesota Court of Appeal's June 4, 2018 order affirming the district court's order denying sentencing relief is unpublished and appears at Appendix C to this petition.

JURISDICTION

The Order of the Minnesota Supreme Court (Petition Appendix B.) in this matter was entered August 30, 2018.

The Jurisdiction of this Honorable Court is invoked under **28 U.S.C. § 1257 (a)** where: The ambiguity of Minnesota Statutes **§ 590.01, subd. 4 (a) and 590.04, subd. 3** and their ability to place limitations on a defendant's substantive or remedial right to seek vacation and/or immediate release of an inmate from a district court sentence unauthorized by law under **Minn. Stat. § 589.01, subd. 4(f)** is drawn into question on the grounds of its being repugnant to the *Separations of Powers Doctrine* within Article 3 § 1 of the Minnesota Constitution and **Minn. Stat. 480.059**; and the preclusion of the Minnesota Supreme Court from enacting any statute or law which abridges the substantive rights of persons filing

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petitions for vacation of a sentence unauthorized by law or immediate release under **Minn. Stat. § 589.01, subd.4 (f).**

This petition is timely filed pursuant to **28 U.S.C. § 2101 (c)** stating: (c) "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The Fifth and Fourteenth Amendments of the United States Constitution are applicable here and provide petitioner the following protections in relevant part: "**...Nor shall any person be deprived of life, liberty, or property, without due process of law.**"

Further, a defendant's failure to object to the ambiguity of a probation condition at a revocation hearing does not result in a waiver of the issue, as the responsibility for stating the precise terms of a sentence rests squarely with the court.

Also, defendants have a constitutional right to an unbiased decision-maker at sentencing. The presence of an impartial judge is critical to ensure the fairness and integrity of the judicial process. Thus, judges must disqualify themselves whenever their impartiality might reasonably be questioned, including when they possess a personal bias or prejudice concerning a party. **Minn. Code Jud. Conduct 2.11(A),**

(A) (1). Appellate courts apply a presumption that the judge has discharged his/her duties properly.

However, under the circumstances of this case, the Appellate Courts rendered a decision, which did not adhere to the usual standard presumption, and instead gave its own judicial interpretation reasoning that “**the judge simply misspoke**” when he proffered his sentencing decree that “**petitioner would be placed on probation for 120 months,**” as his oral sentencing decree pursuant to **Minn. Stat. § 609.135** describing probation as something that may or may not be imposed as a condition of a stayed sentence, thus, suggesting that probation is not a part of the sentence. See **Minn. Stat. § 609.135, subd. 1(a) (1) (2007)** (stating that when a district court stays imposition or execution of sentence, the court may order intermediate sanctions “without placing the defendant on probation”).

Moreover, is the legal question: whether a reviewing court is entitled to interpret a sentencing judge’s judicial intent where the district court imposes an intermediate sanction by pronouncing a probationary period; and, if so, whether that orally pronounced sentence automatically resulting in a stayed sentence involves several considerations?

Legal Considerations & Federal Questions:

First, we must consider whether existing legal authorities directly address and answer the federal question before the court. Second, we consider whether the Lowe

term "sentence" is clearly defined as including any conditional probationary period imposed in connection with a stay. **Third**, we consider whether the district court's pronouncement of a **120 month** probationary period is determinative in this case. And **fourth**, we must consider the practical concerns associated with the conclusion that stayed sentences automatically result when a district court pronounces a probationary period.

Therefore, Minnesota Statutes §§ 609.135, 609.135, subd. 1(a) (1) (2007) (stating that when a district court stays imposition or execution of sentence, the court may order intermediate sanctions "without placing the defendant on probation") support petitioner's claim that his substantive right to seek immediate release from a sentence unauthorized by law was denied him by the Minnesota Supreme Court's order to grant or reinstate an *informa pauperis* order previously denied in the Minnesota Court of Appeals in its 2018 order denying review in the Minnesota Court of Appeals; and denying discretionary review in the Minnesota Supreme Court.

Thus, because the Hennepin County District Court in the instant case did specify that petitioner "would be on probation for 120 months," it is clear that presiding Judge Dennis J. Murphy intended that the sentence was stayed where he specifically ordered an intermediate sanction placing petitioner on probation for 120 months as a condition of the stayed sentence. See (S.T. 1083); also Pague v. State, 820 N.W. 2d at 277 Minn. App. LEXIS 101 (2012)

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Moreover, Minnesota Statute § 480.059, subd. 7. Effect upon statutes—establishes here in petitioner's favor that: "Present statutes, i.e. Minn. Stats. §§ 589.01, subd. 4 (f) (a) relating to the pleadings, procedure, and the forms thereof in civil actions shall be effective until modified or superseded by court rule.

If a rule is promulgated pursuant to this section which is in conflict with a statute, the statute shall thereafter be of no force or effect."

Additionally, Minn. Stats. §§ 589, and 589.01, subd. (4) were not named here by the legislature as statutes that would not remain in full force and effect, notwithstanding immediate release concerning matters of sentencing procedure unauthorized by law; and where the Rules of Criminal Procedure take precedence over Minnesota Statute.

The Minnesota state courts decisions in the paralleled cases of Pague v. State, 820 N.W. 2d at 277 Minn. App. LEXIS 101 (2012); and State v. Foreman, 1991 Minn. App. LEXIS 814 both effect the binding precedent of the *Stare decisis doctrine*¹ in this action, which holds the Minnesota Court of Appeals to the above-cited previously established decisions on identical issues before the Court.

Further, petitioner asserts that the case of Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756 (1973) holds sway over the lower court's decision in this matter upon

¹ *Stare decisis*: is a legal principle by which judges are obligated to respect the precedent established by prior decisions. The words originate from the Latin maxim *Stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.

the *verticality* premise of the *Stare decisis doctrine*, and is applicable to the matters before this honorable Court.

The Minnesota state courts decision in paralleled cases such as State v. Staloch, 643 N.W. 2d 329, 2002 Minn. App. LEXIS 471; State v. Foreman, 1991 Minn. App. LEXIS 814; also Pague v. State, 820 N.W. 2d at 277 Minn. App. LEXIS 101 (2012); State vs. Clayton Bellanger, Appellant, 2005 Minn App Unpub LEXIS 42005 Minn. App. Unpub. LEXIS 4, Case No. A04-1790; and State v. Austin, 295 N.W.2d 246, 249-50 (Minn. 1980)—before revocation of his lawful sentence to probation could be executed—establishes that petitioner satisfied in his petition for Discretionary Review of the Court of Appeals decision, he is entitled to the requested relief; or that an evidentiary hearing be held on the petition where relief has previously been granted based upon the following questions of inquiry, upon which Minnesota Courts have held in cases similarly situated and as follows:

- (1) Whether petitioner's written sentence as expressed within the warrant of commitment issued after the term in which the oral pronounced sentence had expired was valid? State v. Carlson, 178 Minn. 626, 228 N.W. 173 (Minn. 1929) (the court found that it lacked jurisdiction to modify the sentence after the expiration of the term at which the sentence was imposed);
- (2) Whether petitioner's written sentence was unauthorized by law and in violation of double jeopardy impediments? Rodriguez v. State, 441 So. 2d 1129 (Fla. App. 1983) (the court found that imposition of imprisonment was in fact a second sentence in violation of double jeopardy impediments);

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(3) Whether petitioner was denied his fundamental rights to a preliminary and final hearing under both the United States/ Minnesota Constitutions; Minnesota

Rules of Criminal Procedure 27.04; and Minnesota Statutes § 609.14?

Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972) (the court found that due process mandates preliminary and final hearings in the case of a probationer under the same conditions as are specified in the case of a parolee);

(4) Whether the district court's oral pronouncement of petitioner's sentence is controlling over the court's adverse written sentencing order imposed after the term of the court had expired? *State v. Staloch, 643 N.W. 2d 329, 2002 Minn. App. LEXIS 471*(*The appellate court ruled that the terms of defendant's oral sentence took precedence over contrary terms in his written sentence*);

(5) Whether petitioner's revocation of probation without affording him either a preliminary or final hearing, or counsel, violates of due process so as to entitle him correction of sentence unauthorized by law? *Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756 (1973) (the United States Supreme Court agreed that denial of both preliminary- final hearings and counsel violates due process protections)*

In any event, the above-cited questions of inquiry invoke both the verticality and binding precedent of the *Stare decisis doctrine* as applicable within this matter.

STATEMENT OF THE CASE

This case presents the related issues: whether a previously sentenced probationer is entitled to a hearing when his probation is revoked and sentence executed; and, if so, whether he is entitled to be represented by counsel at such hearing required by law; or whether the Minnesota Supreme Court owes deference to the lower court's interpretation of a law that ambiguously contemplates both criminal and administrative enforcement?

Additionally, there is also the issue as to whether the court's oral pronouncement of petitioner's sentence controls over the written sentencing order, when the oral sentence is not ambiguous.² Or, whether the rule of lenity required the Minnesota Court of Appeals here to resolve this ambiguity in favor of the defendant?

Further, is , whether after petitioner's receiving a lawful oral sentence to probation by the court, could the court add an additional adverse written sentencing order to imprisonment after the term in which probation was pronounced had expired— without violating the double jeopardy clause of the United States and Minnesota Constitutions?

Moreover, is whether the court lost jurisdiction to impose a second longer sentence, or execute the stay of execution or imposition of petitioner's 360 (180 x 2) month sentence in the absence of a probation violation, or without holding the required

² When an orally pronounced sentence is ambiguous, the written order is evidence that may be used to determine the intended sentence. See *United States v. Villano*, 816 F. 2d 1448 (10th Cir. (1987)).

preliminary or final revocation hearings? *State vs. Clayton Bellanger, Appellant, 2005 Minn App Unpub LEXIS 42005 Minn. App. Unpub. LEXIS 4, Case No. A04-1790*

The facts underlying Petitioner's Fifth and Fourteenth Amendment claims are set forth hereinafter.

Petitioner Michael Carlton Lowe, Sr., was found guilty by jury verdict on August 15, 2007 in Hennepin County District Court, Minnesota, for charges in violation of Minn. Stat. § 609.342, subd. 1 (e) (i); § 609.223, subd. 1; and 609.713, subd. 1 with respect to his live-in-fiancé.

The trial judge sentenced him to a stay of imposition of 360 (180 x 2) months, resulting from a double upward departure by "indicating" on record, petitioner "will be placed on probation for 120 months." (S.T. 1083)³ *State v. Foreman, 1991 Minn. App. LEXIS 814 (Minn. App. 1991) (the court's use of the word "suspended" indicated that the sentence had been stayed).*

Afterwards, the term in which the oral sentence was pronounced had expired, the district court issued a written sentencing order by warrant of commitment, adjudicating that petitioner be committed to the Commissioner of Corrections in Minnesota, for a term on all 3 counts to a period of 360 (180 x 2) months.

The written sentencing order was, and remains, adverse to petitioner's lawful oral sentence to probation and, was in fact, a second sentence illegally imposed by the

³ S.T. in this petition means the sentencing transcript referenced herein.
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court. Besides, the oral sentence to 120 months probation imposed by the court constituted petitioner's lawful and controlling sentence.

And, as pursuant to the rule of due process, the court was precluded from imposing the prison sentence "indicated" as a stay, by constitutional impediments against double jeopardy. *Rodriguez v. State*, 441 So. 2d 1129 (Fla. App. Dist. 1983).

In this matter, the record offers no grounds for revocation of petitioner's ordered 120 month probation, and stay of execution or imposition of sentence, which justify the court's actions to be in accordance with the Austin factors. See *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980)

Moreover, the record also does not reflect that the court afforded petitioner the required due process of a preliminary or final revocation hearing where he was represented by counsel; or where a request for counsel was refused by the court and, the grounds for refusal were succinctly stated in the record. *Morrissey v. Brewer*, 408 U.S. 47, 33 L. Ed. 2d 484, S. Ct. 2593

The Minnesota Supreme Court's order granting in forma pauperis and denying review, is in direct conflict with this honorable Court's ruling in the paralleled cases of *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756 (1973) and *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593 (1972). And, with rulings in other Minnesota State Courts upon issues similarly situated, i.e.: *State v. Fields*, 413 N.W. 2d 275 (Minn. App. 1987); also *State v. Hockensmith*, 401 N.W. 2d 277 (Minn. App. 1987).

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Therefore, the petitioner requests a writ of certiorari issue "because" the Minnesota Court of Appeals has decided an important federal question in a way that conflicts with its own [p]recedent, numerous decisions of the state court of last resort; and pursuant to the prosecution's presumption that the court owes **deference** to its interpretation of **Minnesota statute § 590** over **Minnesota Statute § 589**. This conflicts with the relevant decisions of this Court.

REASONS FOR GRANTING THE PETITION

I. THE MINNESOTA COURT OF APPEAL'S RULING IS FLAWED AND IN DIRECT CONFLICT WITH APPLICABLE RULES OF CRIMINAL PROCEDURE REGARDING THE GRANTING OF LEAVE TO PROCEED IN FORMA PAUPERIS.

This Honorable Court has ruled on the matter and held that, due process mandates that in forma pauperis be granted to indigent defendants, petitioners and movants during all collateral proceedings, if it is proven or known before the court that the litigant is unable to pay all costs or fees associated with the filing of his pleadings. **See Minn. Stat. 563.01, subds. (1)- (2); also 28 U.S.C. § 1915 (a)**

Here, petitioner had been granted informa pauperis in the Rice County District Court allowing him to file a petition for writ of habeas corpus regarding his claim that the Hennepin County District Court improperly revoked his stay of imposition or execution of sentence and imposed a 360 month executed sentence without the benefit of a preliminary or final probation revocation hearing.

Moreover, Minnesota Statute § 480.059, subd. 7. Effect upon statutes 589.01, subd. 4 (f) (a) relating to the pleadings, procedure, and the forms thereof in civil actions shall be effective until modified or superseded by court rule.

If a rule is promulgated pursuant to this section which is in conflict with a statute, the statute shall thereafter be of no force or effect.

Additionally, Minn. Stats. §§ 589, and 589.01, subd. (4) were not named here by the legislature as statutes that would not remain in full force and effect, notwithstanding immediate release concerning matters of sentencing procedure unauthorized by law; and where the Rules of Criminal Procedure take precedence over Minnesota Statute.

The Minnesota state courts decisions in the paralleled cases of *Pague v. State*, 820 N.W.2d at 277 Minn. App. LEXIS 101 (2012); and *State v. Foreman*, 1991 Minn. App. LEXIS 814 both effect the binding precedent of the *Stare decisis* doctrine¹ in this action, which holds the Minnesota Court of Appeals to the above-cited previously established decisions on identical issues before the Court.

Further, petitioner asserts that the case of *Gagnon v. Scarpelli*, 411 U.S. 778, S.Ct. 1756 (1973) holds sway over the lower court's decision in this matter upon

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whether there is probable cause to believe that he has violated his probation; (2) a final hearing prior to the ultimate decision whether his probation should be revoked; such hearings are required even where a probationer or parolee has not been released from custody prior to any revocation of probation—as in the case of this petitioner. *See Criminal Law § 110.5-revocation of probation-hearing.*

At a preliminary hearing to determine whether there is probable cause to believe a probationer has violated his probation, the probationer is entitled to notice of the alleged violation of probation, an opportunity to appear and to present evidence on his own behalf, a conditional right to confront adverse witnesses, and a written report of the hearing. *Criminal Law 110.5*

Therefore, it is upon this showing that petitioner has been deprived of his right to due process of law by the district court's refusal to hear petitioner's writ of habeas corpus claiming that his executed sentence is unauthorized by law on its merits; and consider that petitioner's lawful sentence pronounced by the court was to 120 months-probation; or that, the Minnesota Court of Appeal's order to deny collateral review of the Rice County District Court's order deeming petitioner's claim frivolous for the purpose of in forma pauperis is in direct conflict with rulings in paralleled cases involving granting in forma pauperis for appellate proceedings regarding the revocation of a stayed sentence without the benefits of a preliminary or final revocation hearing.

Moreover, the law quoted in the Minnesota Court of Appeal's decision in the case of *Lowe v. State, Case No, 66-CV-17-3061, Rice County District Court (2018)*

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is in violation of due process and the Minnesota Constitution's Separation of Powers doctrine; and does not apply to petitioner's claim that a jurisdictional defect exists based on the district court's revocation and execution of petitioner's probationary sentence —while imposing a second written sentencing order to imprisonment— after the term in which the orally pronounced sentence to probation had expired.

See Minn. Const. Art. III, § 1

II. THE MINNESOTA COURT OF APPEALS ABDICATED ITS DUTIES BY MECHANICALLY SIGNING VERBATIM THE STATE'S PROPOSED FINDINGS IN THE CASE OF LOWE V. STATE⁴ AND INCORRECTLY APPLYING ITS FINDINGS WITHOUT FAIRLY REVIEWING OR CONSIDERING THE ISSUES RAISED BY PETITIONER REGARDING REVOCATION OF PROBATION.

"[J]ustice is the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954) *cited in Shorter v. State*, 511 N.W. 2d 743, 747 (Minn. 1994).

In *Dukes v. State*, 621 N.W. 2d 246 (Minn. 2001), the Minnesota Supreme Court stated: "We agree that it is preferential for a court to independently develop its own findings. When we receive a verbatim adoption of one party's proposed findings, we will heed how findings were prepared when we conduct a careful and searching review of the record. *Id.* at 258

In *Dukes* the district court signed the state's proposed Findings of Fact, Conclusion of Law and Order the same day the proposed findings were submitted to that court. In *Dukes* unlike in this case, both parties were allowed a certain

⁴ 66-CV-17-3061, Rice County District Court (2018),
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amount of time to submit proposed findings and conclusions of law relevant to the case at issue.

The Minnesota Supreme Court criticized the district court's prompt, verbatim adoption of the state's proposed findings and order in Dukes (621 N.W. 2d at 258) and committed itself to taking "special care" in reviewing a record when the lower court did not prepare its own findings independently. Id. Admittedly, the Minnesota Supreme Court advised that if after sifting the evidence, it finds no clear error, verbatim adoption of a party's pleading standing alone will not be a ground for reversal. Id. at 259.

In this case, the flagrancy with which the Minnesota Supreme Court adopted the State's proposed findings and order in the case of Lowe v. State, 66-CV-17-3061, *Rice County District Court* (2018), and applied them to numerous other cases including petitioner's, without considering that:

Although Lowe involves the similar issues of a stayed sentence, revocation of stay, and execution of the stayed sentence by modification during stay—with an increase of Lowe's period of confinement, the same as petitioner here. Lowe turns on his initial filing of a petition for habeas corpus relief under Minn. Stat. § 589.04 (f)—contrary to Austin's filing for reverse and remand release from an invalid sentence under Minn. Stat. § 590—and differs from petitioner's case in that respect; and are not relevant to petitioner's request for vacation of his sentence unauthorized by law pursuant to the court's illegal revocation of his stay of imposition or execution; or

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the procedural matters involving the erroneous revocation of petitioner's probated sentence, which voids the court's sentencing judgment in its entirety.

The adopted findings in Lowe are not applicable to petitioner's issues before the court because: (1) petitioner's petition for writ of habeas corpus to vacate his sentence unauthorized by law does not involve a plea agreement for a stay of imposition, therefore, according to the Court's findings, petitioner's remedy is not subjected to **Minn. Stat. § 590** procedural bars or it's time limitations, but is controlled under **Minn. Stat. §589.04 (f)**.

Moreover, **Minn. Stat. § 244.09, subd. 5(2) (2004)** states: "Although the Sentencing guidelines are advisory to the district court, the court shall follow the procedure of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. Sentencing pursuant to the Sentencing Guidelines is not a right that accrues to a person convicted of a felony; it is procedurally based on state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing..."

In other words, **Minn. Stat. § 244.09, subd. 5 (2)** rejects a premise that Minnesota Sentencing Guidelines are a right that can be waived, or that the court is not bound to the guidelines standard because the guidelines are "advisory."

Based on the legislative intent set forth within **Minn. Stat. 589.04 (f)**, under which the legislature has clearly set the limitations on a defendant's right to seek immediate relief from a void sentencing judgment under **Minn. Stat. § 589.04 (f)**—

not under Minn. Stat. § 590.01, subd. 4 (1) (a) (2005) — petitioner is entitled to the requested relief.

Here, because petitioner's sentence was pronounced as a stay by the court in a proceeding to which the guidelines applied by operation of Minn. Stat. § 609.135, subd. 1(a) (1) (2007);

In addition, the Minnesota Supreme Court in *State v. Lucas*,⁵ has held that, "Where the legislature has expressed its intent unambiguously, it is not the place of the Court to substitute its own policy beliefs for that of the legislature."

On the basis of this argument alone, it is clear that the Minnesota Supreme Court's ruling in the instant case raises the strong presumption that the Court abdicated its responsibility to act as a neutral and detached arbiter of the issues raised in petitioner's Appellant pleadings. The Supreme Court acted as a mere scrivener-signing the proposed pleadings in Lowe, which was written by a party characterizing the facts as an advocate and not as a neutral.

The petitioner, serving a 30-year unauthorized sentence, is entitled to independent judicial review of his properly filed legal claims. Where, as here, the judicial officer relinquished their duty to conduct an independent review of petitioner's circumstances— which does not include any plea agreement or the filing of a post-conviction petition— and simply adopted Respondent counsel's pleading in Lowe v. State, 66-CV-17-3061 (2018) without any editing; thereby denying petitioner procedural due process. *See U.S. Const. amend. XIV; Minn. Const. art. 1 § 7.*

⁵ 589 N.W. 2d 91 (Minn. 1999)
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In conclusion, certainly a judge is entitled to adopt the reasoning of one side over the other in making a decision.

However, where the court's factual findings, legal analysis and commentary are all mirror reflections of the State's submissions, any presumption of impartiality is erased. The Code of Judicial Conduct dictates that a judge must perform the judicial duties of office impartially and diligently. *See Canon 1, Minnesota Code of Judicial Conduct.*

In this instance a page-by-page comparison of the State's proposal in Lowe and the court's order in several cases concerning petitions for writ of habeas corpus requesting vacation of unauthorized sentences were rubber stamped on __Feb. 26, 2018—not only petitioner's pleadings on the issue—showing convincingly that the Minnesota Supreme Court simply signed the State's pleading in Lowe and did not exercise independent, impartial consideration of petitioner's claims.

The problem with the Court's adopting an adversary's proposed findings in Lowe is exacerbated by the fact that here the Court did not address the particulars of the procedural manner in which petitioner's revocation of probation occurred without a preliminary or final hearing as addressed to the court.

A) The federal courts have been extremely critical when reviewing a lower court ruling which is, like here, just a carbon copy of one party's written submissions. *See Anderson v. Bessemer City, 470 U.S. 564, 571-72 (1985); In Re Alcock, 50 F. 3d 1456, 1459 n.2 (9th Cir. 1995); Robert v. Lowe*

Ross, 344 F. 2d 747, 752 (3rd Cir. 1965). In Roberts the case was remanded "for appropriate findings of fact and conclusions of law after a complete re-examination of the evidence and in light of the appropriate legal principles." Id at 753

In the instant case, this Honorable Court should apply its ruling from the paralleled cases cited to the issues in this matter, which are same and similar and require the same relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

"By"; Michael Carlton Lowe

Dated: 10/24/18

Lowe