Certified Mail No. 7017-1070-0000-8749-3967

No. 18-6723

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Duane Noel — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Duane Noel
(Your Name)

F.C.I. Allenwood Low, P.O. Box 1000
(Address)

White Deer, PA 17887
(City, State, Zip Code)

None-inmate
(Phone Number)

QUESTION(S) PRESENTED

1. WHEN THE DISTRICT JUDGE HAS "A DIRECT, PERSONAL, SUBSTANTIAL, PECUNIARY INTEREST" IN THE OUTCOME OF THE PROCEEDING IS PETITIONER'S RIGHTS TO DUE PROCESS VIOLATED WHICH INCORPORATES COMMON-LAW REQUIRING RECUSAL OR DOES A STRUCTURAL ERROR OCCUR OR BOTH ?

2. WHETHER DISTRICT JUDGE THOMAS L. LUDINGTON, REFUSING TO USE MR. NOEL'S (ECF NO. 196, BRIEF IN SUPPORT OF HIS § 2255 MOTION), TO ADJUDICATE THE MERITS OF (ECF NO. 187, MOTION TO VACATE UNDER 28 U.S.C § 2255), MAKING THE § 2255 PROCESS INEFFECTIVE AN INADEQUATE TO TEST THE LEGALITY OF MY DETENTION, IN VIOLATION OF THE UNITED STATES CONSTITUTION AND THE AEDPA OF 1996 ?

3. HAS DISTRICT JUDGE THOMAS L. LUDINGTON, COLLUDED WITH THEIR ILLEGAL SEARCH WARRANTS SCHEME, BY PURPOSELY DISCRIMINATING, AGAINST RACE, AGAINST CIVIL RIGHTS, THE PURPOSELY INJUSTICE DONE, BEING PARTIAL AND BIAS TO DEPRIVE MR. NOEL, THE PETITIONER'S, A "NEGRO CITIZEN", A "CLASS OF AFRICAN AMERICAN TO EQUAL PROTECTION OF THE LAWS AND OF EQUAL PRIVILEGES AND IMMUNITIES" ?

LIST OF PARTIES

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

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

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INDEX TO APPENDICES

TABLE OF STATUTES AND AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

[ ] reported at ORDER DENYING COA; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

[ ] reported at DENYING 28 U.S.C.§ 2255; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.
MOTION FOR FINDINGS AND CONCLUSION 10/13/2016
SEE APPENDIX EXHIBIT 3

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

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 11/28/17.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 1 and 21, 2018, and a copy of the order denying rehearing appears at Appendix 4 and 5

[X] An extension of time to file the petition for a writ of certiorari was ~~granted~~ filed to and including CLERK OF COURT (date) on AUGUST 8, 2018 (date) in Application No. ___A_____. SEE APPENDIX EXHIBIT 5

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

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

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution 4th, 5th, 6th, 10th, 14th Amendment and Article VI.

Michigan Constitution of 1963, Article 1 § 11, Article 1 § 2, Article 1 § 17 and Article 1 § 20.

Michigan Compiled Law M.C.L § 764.1a(1), M.C.L. § 764.1a(3), M.C.L. § 761.1(f), M.C.L. § 600.8511(d), M.C.L. § 333.7401(2)(a)(iv), M.C.L. § 766.13, M.C.L. § 780.653.

28 U.S.C. § 453 and 28 U.S.C. § 2255

United States Congress

Cong. Globe, 39th Cong., 1st Sess. 2766 (1866)

Cong. Globe, 30th Cong., 1st Sess. 2459 (1866)

STATEMENT OF THE CASE

This case is about purposely discriminating, against race, against civil rights, and the injustice that started in the city of Saginaw, Michigan, when two unsupervised Saginaw County Prosecutors and two Bayanet detectives conspired to go in disguise on the premises of 1123 Brown Street, three times, in their illegal search warrants scheme, with three falsified affidavits in application for search warrants, that Mr. Noel had committed crimes in violation of Michigan drug laws M.C.L. § 333.7401(2)(a)(iv) for selling crack cocaine in controlled buys to confidential informants August 3, 2007, July 24, 2008 and September 4, 2008.

On September 4, 2008 search of Mr Noel, home Noel was arrested without a Arrest Warrant or a State criminal complaint and his money was seized, these warrants were deficient because they were issued in reliance on knowingly, deliberately and intentionally reckless falsity with a disregard for the truth and was not supported by oath or affirmation. Here in this matter, in fact, Bayanet detectives Carrie Guerrero and Tim Larrison, couldn't get a Arrest Warrant or a State Felony Criminal Complaint on Mr. Noel, for selling crack cocaine in these "sham" controlled drug sales to confidential informants out of Mr. Noel's home because, no such controlled drug sales to confidential informants had occurred, Mr. Noel was lodged in the Saginaw County jail. See. (Appendix Exhibit A, B and C).

Pursuant to their conspiracy, on September 5, 2008, Mr Noel, was arraigned before Hon. Kyle Higgs Tarrant, on a improper defective State Criminal Complaint void on its face, in violation M.C.L. § 764.1a(1), MCR 6.101(B) and M.C.L. § 764.1a(3). A court has the authority to issue a arrest warrant "only upon a proper felony crimina complaint under Michigan Court Rules and Michigan Compiled Law Annotate MCR 6.102(A) and M.C.L. § 764.1a(1). Herein this matter, no judge or magistrate was not at all presented with this facially void improper defective felony criminal complaint, to issue a valid arrest warrant for Mr. Noel's arrest. See (Appendix Exhibits A, B, C and D).

Pursuant to their conspiracy, to hide the facts Saginaw County Prosecutor George

Best, on September 15 and 17, 2008, pulled Noel's Court file from the Saginaw County docket to deny Mr. Noel his State of Michigan Created Liberty Interest in a Preliminary examination for a probable cause determination and handed the fruits from the poison tree's to Alcohol Tobacco and Firearms, Special Agent, Aaron Voogd, out the back-door of the Saginaw Courthouse. Violating Mr. Noel 14th and 10th Amendment Rights. See (Appendix Exhibits E and F).

Pursuant to their conspiracy, on September 17, 2008, Mr. Noel was arraigned U.S. District Court for the Eastern District for the Northern Division, in federal criminal complaint as a felon in possession of firearms, Special Agent, Aaron Voogd, omitted out the falsified affidavits that was used to get in Mr. Noel's home. On September 24, 2008, Tim larrison testified to the Grand Jury and ommitted out the falsified affidavits that were used to get in Mr. Noel's home, Mr. Noel was indicted. See (Appendix Exhibits G, H and I).

Mr. Noel filed a civilsuit against Bayanet and District judge Thomas L. Ludington. See (Appendix Exhibits K and Q).

Herein this matter, specifically, district judge Thomas L. Ludington is purposely not using (ECF No. 196, Brief in Support of his § 2255 Motion), to adjuicate the merits of (ECF 187, Motion To Vacate § 2255 Motion) making the § 2255 process ineffective and inadequate to test the legality of Mr. Noel's detention in violation of The United Statitution and the AEDPA of 1996. Making ECF No. 237, Opinion Denying Habeas Corpus and C O A incorrect and wrong, because it was not adjudicated using Mr. Noel's (ECF No. 196, Brief in Support of his § 2255), in reference to (ECF No. 187, Motion To Vacate § 2255).

District judge Thomas L. Ludington, has colluded with their illegal search warrant schemeconspiracy and is purposely discriminating, against race, againt civil rights, the purposely injustive being done, being partial and bias to directly deprive Mr. Noel, the petitioner, a "Negro Citizen" a "Class of African American to equal protection of the laws and of equal privileges and immunities as a Michigan and United States Citizen.

REASONS FOR GRANTING THE PETITION

This is a case about purposely discriminating, against race, against civil rights and the injustice that started in the city of Saginaw, Michigan,

When two unsupervised Saginaw County Prosecutors and two Bay Area Narcotics Enforcement Team (hereinafter "Bayanet") detectives conspired to go in disguise on the premises of 1123 Brown Street, three times, in this illegal search warrants scheme, to deprive the petitioner, home owner Mr. Noel, a "Negro citzen", a "class African American to equal protection of the laws and of equal privileges and immunities, for the purpose of depriving, either directly or indirectly, as a Michigan citizen and a United States citizen".

This matter was illegally transferred without approve authority by unsupervised Saginaw County Prosecutors, to the Federal District Court, to start the process over to cover up their illegal search warrants scheme conspiracy.

Mr. Noel filed a civil lawsuit Case No. 1:09-cv-12960-TLL-PJK, against the Bayanet detectives in this matter, before Mr. Noel's October 21, 2009, Franks / Suppression hearing was held before District Judge Thomas L. Ludington. District Judge Thomas L. Ludington, denied application to proceed in forma pauperis and dismissed the civil lawsuit without prejudice. See (Appendix Exhibit K).

On August 24, 2010, Mr. Noel, filed a civil lawsuit Case No. 2:10-cv-13355-PJD-MJH, against Bayanet detectives and District Judge Thomas L. Ludington, it was dismissed without prejudice. See (Appendix Exhibit Q).

District Judge Thomas L. Ludington, has colluded with their illegal search warrants scheme conspiracy, by purposely discriminating, against race, against race, against civil rights, the purposely injustice, being partial and bias to directly deprive Mr. Noel, the petitioner, a "Negro citzen", a "class of African American to equal protection of the laws and of equal privileges and immunities as a Michigan and United States citizen, as to similar state citizen individual of race and classes of

People of different race.

The two unsupervised Saginaw County Prosecutors who conspired with these two Bayanet detecives in this illegal search warrants scheme, has so far departed from the accepted and usual course of judicial proceedings to deprive Mr. Noel, the petitioner, a "Negro citizen," a "class of African American to equal protection of the laws, and of equal privileges and immunities through the State of Michigan Created Liberty Interest in a preliminary examination for a probable cause determination, as a Michigan citizen and a United States citizen, as to similar situated individual State of Michigan citizen of race and classes of people of different race, and to sanction such a departure by the unsupervised Saginaw County Prosecutors office, by pulling fraud upon the Saginaw County 70th Judicial District Court system, as to call for an exercise of the U.S. Supreme Court's supervisory power to redress this purposely discriminating, against race, against civil rights, this purposely injustice being done, being partial and bias against Mr. Noel.

The Federal District Court has so far departed from the accepted and usual course of judicial proceeding to directly deprive Mr. Noel, the petitioner, a "Negro citizen," a "class of African Americam to equal protection of the laws and of equal privileges and immunities, purposely discriminating, against race, against civil rights, the purposely injustice being done, being partial and bias against Mr. Noel, as to similar Michigan citizen and United States citizen and classes of Michigan citizen and classes of United States citizens, and to sanction such a departure by the Federal District Court, as to call for an exercise of the U.S. Supreme Court's power to redress this matter. The petitioner, Mr. Noel, will show herein and contends.

The Fourth Amendment provides:

> "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 particular describing the

place to be searched, and the persons or things to be seized."
United States Constitution Amendment 4th.

The Fourth Amendment is applicable to state officials through the Due Process Clause of the Fourteenth Amendment. See Wolf v. Colo., 338 U.S. 25, 27-28 (1949), overruled on other grounds by Mapp v. Ohio, 367 U.S. 643 (1961); see also Elkins v. United States, 364 U.S. 206, 223 (1960) (barring use in federal courts of evidence seized by state officers in violation of the 4th Amendment).

In Overton v. Ohio. 151 L.Ed.2d 317 (2001), the the Fourth Amendment provides "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." See e. g., Ex Parte Burford, 3 Cranch 448, 451, 2 L.Ed. 495, 496; Nathason v. United States, 290 u.s. 41, 47, 54 S.Ct. 11, 78 L.Ed 159 (1933); Giordenello v. UNITED States. 357 U.S. 480, 486, 2 L.Ed.2d 1503, 78 S.Ct. 1245 (1958); Wong Sun v. United States, 371 U.S. 471, 481-482. 9 L.Ed.2d 441, 83 S.Ct. 407 (1963); Aguilar v. Texas, 378 U.S. 108. 112 n 3, 12 L.Ed.2d 723, 84 S.Ct. 1509 (1964).

In Edwards v. Balisok, 520 U.S. 641, 647, 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997) ("Criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him"). In Williams v. Pennsylvania, 136 S.Ct. 1899, 1903, 195 L.Ed.2d 132, 2016 LEXIS 3774 (2016). This Court's precedents set forth an objective standard that requires recusal when the likehood of bias on part of the judge "'is to high to be constitutionally tolerable"'. Caperon v. A.T. Massey Coal Co., 556 U.S. 868, 872, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) (quoting Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 l.ed.2d 942 (1955), the objective risk of bias is reflected in due process maxim "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.

The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case. Tumey v. Ohio, 273 U.S. 510, 523, 47 s.ct. 437, 71 L.Ed 749, 5 Ohio Laws Ads. 185, 25 Ohio L. Rep. 236 (1927); Rippo v. Baker, 197 L.Ed.2d 167, 168, 2017 U.S. LEXIS 1571 (2017); Crater v. Galaza, 491 F.3d 1119, 1132 (6th Cir. 2006); Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986). The Court has little trouble concluding that a due process violation arising from the participation of an interest judge is a defect "not amendable to harmless-error review, regardless of whether the judge's vote was dispositive. Puckett v. United States, 556 U.S. 129, 141, 129 S.Ct. 1423. 173 L.Ed.2d 266 (2009) (emphasis deleted).

I. STATE OF MICHIGAN MATTER

It is axiomatic that a Search Warrant, Arrest Warrant and Felony Criminal Complaint must be supported by probable cause to satisfy the dictates of the Constitution of Michigan of 1963, Art. 1, § 11 and the U.S. Const. 4th and 14th amendments.

a, Probable Cause Defined

> Probable cause to arrest exist when facts are sufficient to cause a fair-minded person of average intelligence to believe that the defendant committed the crime alleged. People v. Ward, 226 Mich 45, 50 (1924); All search warrants, including the underlying affidavits, are to be read in a common sense and realistic manner. Illinois v. Gates, 462 U.S. 213, 230-232 (1983); People v. Champion, 452 Mich 92, 115 (1996) ("Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed").
>
> In Overton v. Ohio, 151 L.Ed.2d 317, (2001), that the Fourth Amendment provides "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." See e. g., Wong Sun United States, 371 U.S. 471, 481-482, 9L.Ed.2d 441, 83 S.Ct. 407 (1963); Ex Parte Burford, 3 Cranch 448, 451, 2 L.Ed 495, 496; Nathanson v. United States, 290 U.S. 41, 47, 54 S.CT. 11, 78 L.Ed 159 (1933); Giordenello v. United States, 357 U.S. 480, 486, 2 L.Ed.2d 1503, 78 S.Ct. 1245 (1953).

b. Signature and Oath of Complaining Witness

M.C.L. § 764.1a(1) requires the complaint to be sworn before a magistrate or clerk. Thus, if a clerk has not already done so, the court should administer the oath or affirmation to the complaining witness and have him or her swear to the complaint. MCR 6.101(B) also require that a complaint be signed and sworn in front of the magistrate.

M.C.L. § 764.1a(3) provides:

> "The magistrate may require swon testimony of the complainant or other individuals. Supplememtal affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both."

Although affidavits are not required to support a probable cause determination under MCR 6.102(B), if affidavits are used, they "must be verified by oath or affirmation." MCR 2.11(3)(A). Regarding the necessary verification MCR 2.114(B)(2) provides:

> "If a document is requireed or permitted to be verified, it may be verified by
>
> "(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or
>
> "(b) except as to an affidavit, including the following signed and dated declaration: 'I declare that the statements above are true to the best of my information, knowledge, and belief.'"

c. Persons Who May Issue Arrest Warrants

The Code of Criminal Procedure states that "magistrate" may issue warrants

for apprehension of persons charged with felony, misdemeanor, or ordinance violations. M.C.L. § 764.1. A "magistrate" is defined to include district court judges and municipal court judges. M.C.L. § 761.1(f). Additionally, M.C.L. § 761.1(f) provides that "[t]his definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of crimiinal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate." No provision of M.C.L. § 761.1 allows probate judges to issue arrest warrants.

District court magistrates have the authority to issue arrest warrants. See M.C.L. § 600.8511(d), which states in part: "[a] district court magistrate shall have the following jurisdiction and duties ...: to issue warrants for the arrest of a person upon the written authorization of the prosecuting or municipal attorney."

d. Allegation That Establish the Commission of an Offense

A court has the authority to issue a warrant under the court rules only if presented with a proper complaint and upon finding of probable cause.

MCR 6.102(A). M.C.L. § 764.1a(1) provides:

> "A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk."

Two Saginaw County Prosecutors and two Bayanet detectives conspired to go in disguise on the premises of 1123 Brown Street, three times, falsifying under oath in sworn affidavits for search warrants that Mr. Noel had commited crimes three times in controlled drug buys selling crack cocaine to confidential informants violating Michigan's drug laws M.C.L. § 333.7401(2)(a)(iv), in this illegal search warrants scheme, to deprive the petitioner, home owner Mr. Noel, a "Negro citizen," a "class of African American to equal protection of the laws and of equal privileges

and immunities, for the purpose of depriving, either directly or indirectly, as a Michigan citizen and a United States citizen."

These three search warrants and falsified affidavits in application for search warrants are not supported by probable cause, from Bayanet, detectives, Carrie Guerrero on August 3, 2007, and Tim Larrison on July 24, 2008 and September 24, 2008. See (Appendix Exhibits A, B and C, Search Warrants, Affidavits and Returns). Are deficient because they were issued in reliance on knowingly, deliberately and intentionally reckless falsity with a disregard for the truth was not supported by oath or affirmation,

Pursuant to their conspiracy, on September 4, 2008, Bayanet, detectives, Tim Larrison swore to a falsified affidavit in application for search warrant, based on Larrison's falsified affidavit a search warrant was issued and Mr. Noel's home was searched. Mr. Noel was arrested and his money seized, without probable cause, without an arrest warrant and felony criminal complaint on Mr. Noel for selling crack cocaine in controlled drug buys to confidential informants out of his home because, in fact, no such controlled drug sales to confidential informants had occurred at Mr. Noel's residence. Mr. Noel was lodged in the Saginaw County jail.

Pursuant to their conspiracy, on September 5, 2008, Mr. Noel, was arraigned before Hon. Kyle Higgs Tarrant, District Judge, on a improper defective Felony Criminal Complaint, without the requisite signature in violation of M.C.L. § 764.1-a(1), which requires the complaint to be sworn before a magistrate or clerk. See (Appendix Exhibits D and E, Felony Criminal Complaint and Order Regarding Pretrial Release). Thus, if a clerk has not already done so, the court should adminster oath or affirmation to the complaining witness and have him or her swear to the complaint. MCR 6.101(B) also require that a complaint be signed and sworn in front of the magistrate, and see M.C.L. § 764.1a(3) provides:

> "The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before and individual authorized by law to administer oath. The

> factual allegation contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both."

No judge, clerk or magistrate required signatures was on the Felony Criminal Complaint and it was not subscribed to, nor was it sworn to before the required judge, clerk or magistrate, plus none of these affidavits in application for search warrants that was used in this illegal search warrants scheme to unreasonable get in Mr. Noel's home three times, was not based upon personal knowledge and under oath or affirmatiom to support the Felony Criminal Complaint, making this Felony Criminal Complaint void on it face. A court has the authority to issue a arrest warrant only upon a proper Felony Criminal Complaint under Michigan Court Rules and Michigan statute MCR 6.102(A) and M.C.L. § 764.1a(1). Here in the matter, no judge or magistrate was not at all presented with this facially improper and defective Felony Criminal Complaint to issue a warrant against Mr. Noel in this matter. See (Appendix Exhibits A, B, C and D, Search Warrants, Affidavits, Returns and Defective Felony Criminal Complaint).

The allegation that started the judicial process in Saginaw County 70th Judicial District Court with these falsified affidavits in application for search warrants was, that Mr. Noel had committed crimes in violation of Michigan's drug laws M.C.L. § 333.7401(2)(a)(iv) for selling crack cocaine in controlled drug buys to confidential informants August 3, 2007, July 24, 2008 and September 4, 2008 out of his home when, in fact, Bayanet detectives Carrie Guerrero and Tim Larrison could not get a Arrest Warrant or a Felony Crimial Complaint on Mr. Noel for selling crack cocaine in these sham controlled drug buys to confidential informants out of Mr. Noel's home because, in fact, no such controlled drug sales to confidential informants had occurred in violation of Michigan's drug laws M.C.L. § 333.7401(2)(a)(iv) out of his home. In violation of the 4th and 14th U.S. Constitution Amendments and the Constitution of 1963, Art. 1, § 11. See e.g., People v. Ward, 226 Mich 45, 50 (1924); People v. Champion, 452 Mich 92, 115 (1996); Illinois v. Gates, 462 U.S. 213, 231-232 (1983);

Overton v. Ohio, 151 L.Ed.2d 317 (2001); Ex parte Burford, 3 Cranch 448, 451, 2 L.Ed 496; Nathanson v. United States, 290 U.S. 41, 47, 54 S.Ct. 11, 78 L.Ed 159 (1933); Aguilar v. United States, 378 U.S. 108, 112 n 3, 12 L.Ed.2d 723, 84 S.Ct. 1509 (1964); Giordenello v. United States, 357 U.S. 480, 486, 2 L.Ed.2d 1503, 78 S.Ct. 1245 (1958); Wong Sun v. United States, 371 U.S. 471, 481-482, 9 L.Ed.2d 441, 84 S.Ct. 407 (1963). See (Appendix Exhibits A, B, C and D, Search Warrants, Affidavits, Returns and Felony Criminal Complaint).

The case of the State of Michigan vs. Robert Duane Noel, had been scheduled for Preliminary Exam Conference on September 15, 2008 at 10:30 AM and the Preliminary Examination on September 17, 2008 at 10:00 AM before the Hon. Kyle Higgs Tarrant, District Judge. See (Appendix Exhibit F, Notice Prelim Exam Conference and Preliminary Examination). By this action Mr. Noel remained in legal limbo, still in jail, improperly seized in restraint of his liberty, while Bayanet detectives and the the unsupervised Saginaw County Prosecutor's totally covered their tracks.

Pursuant to their conspiracy, Bayanet detectives and the unsupervised Saginaw County Prosecutor's hatched a new plot against Mr. Noel by contacting the Alcohol Tobacco and Firearmarms, Special Agent, Aaron Voogd, to turn the guns found in these illegal searches and seizures into a federal crime, again to hide the three falsified affidavits in application for search warrants in this illegal search warrants scheme conspiracy. See (Appendix Exhibit G, Investigaion Report ATF, Special Agent, Aaron Voogd). Which Bayanet detective Tim Larrison falsely stated that him and Carrie Guerrero made multiple controlled drug buys from Mr. Noel to confidential informants out of Noel's home.

Pursuant to their conspiracy, the unsupervised Saginaw County Prosecutor, now deceased, George Best, did not want the Hon. Kyle Higgs Tarrant, District judg, to see the "glaring deficiences" in the falsified affidavit in application for search warrants, the improper facially defective Felony Criminal Complaint, both of them lack probable cause because the affidavits in application for search warrants and

the improper facially defective Felony Criminal Complaint was not supported by personal knowledge and by oath or affirmation, among other things, in violation of Noel's State of Michigan Constitution of 1963, Art. 1, § 11; M.C.L. § 780.653; and the United States Constitution 4th and 14th Amendment.

Pursuant to their conspiracy, on Speptember 15 and 17, 2008, the unsupervised Saginaw County Prosecutor, now deceased George Best, violated his fiduciary duty of trust by pulling fraud upon the court to subvert the interegrity of Noel's scheduled preliminary examine conference and the preliminary examination by pulling Noel's court file both times from the Saginaw County Court docket. Saginaw County Prosecotor George Best done this pursuant of their conspiracy, to deny Mr. Noel of his State of Michigan Created Liberty Interest in Noel's preliminary exam conference and preliminary examination for a probable cause determination on the abinitio that started the legal process in Saginaw County 70th Judicial Court.

The Saginaw County Prosecutor, George Best, violated his fiduciary duty of trust by pulling fraud upon the Saginaw Court because Mr. Noel's case was not adjudicated on the merits by District Judge, Kyle Higgs Tarrant, through Noel's scheduled preliminary examination for a probable cause determination, to determine if these falsified affidavits in application for search warrants and not supported by the affiants personal knowledge and not supported by oath or affirmation were properly issued for these three searches and seizures and whether there was sufficient evidence to prosecute Mr. Noel in this illegal search warrants scheme conspiracy.

Mr. Noel's court appointed attorney Russell Perry Jr., was very ineffective in his assistance and violated his fiduciary duty of trust to his client and joined this illegal search warrants scheme conspiracy, by simply letting the Saginaw County Prosecutor, George Best, to pull Noel's Court file from the Saginaw County Court docket to deprve Noel of his scheduled preliminary examination, which Russell Perry Jr., had a fiduciary duty to secure his client's Noel's State of Michigan Created Liberty Interest Right, to a probable cause determination through a preliminary

examination, this wa not done, violating Mr. Noel's 6th Amend. U.S. Const.

e. The State Of Michigan Created Liberty Interest In A Preliminary Examination For A Probable Cause Determination

In Cooper v. Lafler, 376 Fed Appx. 563, 575 (6th Cir. 2010) (Rather than using a grand jury system, Michigan utilizes a preliminary examination where a district judge or magistrate judge "determine[s] whether probable cause exists to believe that a crime was committed and that the defendant committed it." People v. Lowery, 274 Mich App. 684, 684, 736 N.W.2d 586, 589 (2007) (citing People v. Perkin, 468 Mich 448, 452, 662 N.W.2d 727, 730 (2003)); People v. Johnson, 8 Mich App. 462, 466, 154 N.W.2d 671 (1967); Holz v. City of Sterling Heights, 465 F.Supp.2d 758, 771 (E.D.-Mich 2006); People v. Northey, 231 Mich App. 568, 591 N.W.2d 227, 230 (1998); People v. Hammond, 161 Mich app. 719, 411 N.W.2d 837, 838 (1987). See generally Mich Court Rule MCR 6.110(D); and Mich Comp. Laws M.C.L. § 766.13. If the district court finds that there is sufficient evidence, the defendant is bound over to the circuit court to stand trial. Although the state need not prove its case beyond a reasonable doubt to have a defendant bound over, the district court must focus "his or her attention to whether there is evidence regarding elements of the offense, after examining the whole matter." People v. Green, 255 Mich App. 426, 444, 661 N.W.2d 616, 627 (2003) (quoting omitted). For a felony charge, a defendent may appeal the bindover decision to the circuit court, the Michigan Court of Appeals, and the Michigan Supreme court. See id at 434, 661 N.W.2d at 621.

Pursuant to their conspiracy, in this illegal search warrants scheme to hide the facts Saginaw County Prosecutor George Best , pulled Noel's Court file from the Saginaw County Court docket to deny Mr. Noel his State of Michigan Created Liberty Interest in a preliminary examination for a probable cause determination and handed the fruits from the poison tree's to Alcohol Tobacco and Firearms, Special Agent, Aaron Voogd, out the back-door of the Saginaw County Courthouse. This was done to purposely not afford Mr. Noel a vehicle by which to exhaust his State of Michigan Constitutional right through the Michigan Court system to hide this illegal seearch warrants scheme conspiracy in violation of the State of Michigan Constitution of

1963, Art. 1, §§ 2, 11, 17, and 20; and the united States Constitution Amendments 4th, 5th, 6th, 10th and 14th. In Wolff v. McDonnell, 418 U.S. 539 558, 41 L.Ed.2d 935, 952 (1974) (qouting Dent v. West Virginia, 129 U.S. 114 , at 123, 32 L.ed 623, 9 S.Ct. 231, we think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the state. The touchstone of due process is protection of individual against arbitrary action of government (1899)).

The unsupervised Saginaw County Prosecutor, now deceased, George Best, never made a motion request for a "Nolle Prosequi", latin for not wishing to prosecute, this was not done nor was authorized to be done by any Saginaw County Judicial District Judge. The unsupervised Saginaw County Prosecutor, now deceased, George Best, was not authorized to strike a foul blow against Mr. Noel to deny his Fourteenth Amendment Right of the U.S. Constitution in his State of Michigan Created Liberty Interest in his preliminary examination for a probable cause determination. Herein George Best, representing the State of Michigan, abridge the privileges or immunities of Mr. Noel a citizen of the United States; and the State of Michigan deprived Mr. Noel a "Negro citizen" of life, liberty, and money-property, without due process of law; and denied Mr. Noel a person within the jurisdiction of Michigan to equal protection of the laws of Michigan. See Berger v. United States, 295 U.S. 78, 88, 79 L.Ed 1314, 1321 (1935).

The Fourteenth Amendment provides;

> 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 (U.S. Const. Amend. 14, § 1).

Even in explaining the relevance of the Due Process Clause to the Senate, Jacob Howard of Michigan emphasized its role in protect[ing] the black man in his fundmental rights as a citizen with the same shield which it throws over the white man (Cong. Globe, 39th Cong., 1st Sess. 2766 (1866)). Likewise, in explaining the

amendment to the House of Representatives, Thaddeus Stevens emphasized the goal of equality, but in doing so, mentioned the judicial protections to be afforded to blacks:

> Whatever means of redress is afforded to one shall be afforded to all. Whatever laws allows the white man to testify in court shall allow the man of color to do the same. These are great advantages over their present codes...Now color disqualifies a man from testifying in courts, or being tried in the same way as white men (Cong. Globe, 39th Cong., 1st Sess. 2459 (1866)).

As the Supreme Court of Wisconsin put it in 1872:

> The object of [the Fourteenth] [A]mendment was to protect [blacks] especially from and arbitrary exercise of the power of the state governments, and to secure for [them] equal and impartial justice in the administration of the law, civil and criminal. But its design was not to confine the states to a particular mode of procedure in in judicial proceedings (Rowan v State, 30 Wis. 129 (1972)). See also Twining v. New Jersey, 211 U.S. 78, 100-01 (1908).

II. ILLEGALLY TRANSFERRED A STATE OF MICHIGAN MATTER TO THE FEDERAL COURT VIOLATING MR. NOEL'S DUE PROCESS BECAUSE THE STATE OF MICHIGAN STILL HAS NEVER LOST JURISDICTION IN THIS MATTER

Pursuant to their illegal search warrants scheme conspiracy, on September 17, 2008, Alcohol Tobacco and Firearms (ATF), Special Agent, Aaron Voogd, joined this illegal search warrants scheme conspiracy and in furtherence of their conspiracy, kidnapped Mr. Noel from the Saginaw County jail without a arrest warrant and without probable cause, the State of Michigan never ceded jurisdiction to the United States to transport Mr. Noel to the United States District Court for the Eastern District of Michigan, Norhtern Division and there's no evidence in or on the record violating Mr. Noel's 10th U.S. Constitution Right to the laws in the State of Michigan, among other things. **See Bond v. United States, 134 S.Ct. 2077, 2101 (2014).**

Mr. Noel, was arraigned on a improper and defective federal criminal complaint

as a felony in possession of firearms, the improper and defective federal criminal complaint did not have these search warrants, falsified affidavits in application for search warrants and returns, that was used to unreasonable search Mr. Noel's home three times attached in support of the federal criminal complaint.

Herein this matter, the federal criminal complaint, search warrants and falsified affidavits in application for search warrants both failed to meet minimal Constitution standards because they were not supported by oath or affirmation. See, (Appendix Exhibits A, B, C, G and H, Search Warrants, Falsified Affidavits and Returns; Alcohol Tobacco & Firearms (ATF), Investigation Report, Special Agent, Aaron Voogd; Federal Criminal complaint). Mr. Noel was detained on the charge Special Agent, Aaron Voogd purposely omitted these three search warrants, falsified affidavits and returns, pursuant to their illegal search warrant scheme conspiracy.

Pursuant to their conspiracy, on September 18, 2008, Mr. Noel was appointed CJA 20 Attorney Russell Perry Jr., the same state attorney Mr. Noel had in this state matter who violated his fiduciary duty of trust and his duty of loyalty to his client Mr. Noel, by letting the unsupervised Saginaw County Prosecutor, now deceased, George Best, pulled his client court file from the Saginaw County Court docket to deny Mr. Noel's U.S. Const. 14th and 10th Amendment Rights, Due Process and State of Michigan Created Liberty Interest in a preliminary examination for a probable cause determination, among other things. See (ECF No. 2). See e.g., Osborn v. Shillinger, 861 f.2d 612, 625 (10th Cir. 1988); Frazer v. United States, 18 F.3d 778, 782-83 (9th Cir. 1994); Strickland v. Washington, 466 U.S. 668, at 692 (1984); United States v. Cronic, 466 U.S. 648, at 666 (1984).

On September 24, 2008, Bayanet, detective Tim Larrison, was call to testify to the Grand Jury proceeding. Larrison omitted facts from the grand jury, that Bayanet, detectives, Carrie Guerrero on August 3, 2007 and Tim Larrison on July 24, 2008 and September 4, 2008, swore in falsified affidavits in application for search warrants. that Mr. Noel committed crimes in violation of Michigan drug laws M.C.L. §

333.7401(2)(a)(iv) for selling crack cocaine in controlled drug buys to confidential informants out of his home. To establish probable cause to illegal unreasonable search and seize things out of Mr. Noel's home three times in their illegal search warrants scheme fishing expeditions. See (Appendix Exhibits A, B, C and I, Saerch Warrants, Falsified affidavits in application for Search Warrants and Returns; and Grand Jury Transcripts Pg. 17 Ln. 22-25, Pg. 18 Ln. 1-25, Pg. 19 Ln. 1-21). Mr. Noel was indicted in a three count indictment, count three was dismissed in the interest of justice, counts one and two is the subject of this petition for writ of certiorari.

The omitting out facts from the grand jury by Bayanet, detective Tim Larrison was done pursuant to their conspiracy, in furtherence to cover up their illegal search warrants scheme.

Mr. Noel, same state appointed attorney Russell Perry, was appointed again as Noel's federal appointed attorney. Russell Perry let unsupervised Saginaw County Prosecutor, now deceased, George Best, pull Noel's state court file from Saginaw County Court docket, to deny his client's Mr. Noel's due process, 14th Amendment of the United States and the State of Michigan Created Liberty Interest in a preliminary examination conference and preliminary examination for a probable cause determination. Russell Perry violated his fiduciary duty of trust and his duty of loyalty by not securing his client's Mr. Noel State of Michigan Created Liberty Interest in a preliminary Exam conference and preliminary examination for probable cause determination.

Mr. Noel state matter, would have ended in Saginaw County 70th Judicial District Court because the search warrants and falisfied affidavits was based on knowingly, intentionally and deliberately reckless falsity with a disregard for the truth and not supported by oath or affirmation, lacking probable cause. This improper defective state felony criminal complaint was void on it face, was not signed by complaining witness, judge, clerk, magistrate and was not sworn to or subscribed before a magistrate judge to be issued a proper legal arrest warrants for Mr. Noel's

arrest.

Feferal appointed attorney Russell Perry had already joined this illegal search warrants scheme conspiracy when I was in state court, pursuant to their conspiracy, Russell Perry, Assistant United States Attorney (hereinafter "AUSA") AUSA Nancy Arbaham and District Judge Thomas L. Ludington, waivered Mr. Noel's speedy Trial Rights for all-time, among other things, I fired Russell Perry. See (Appendix Exhibit J, ECF No. 40, Stipulation and order for Continuance---Waivering Speedy Trial Rights; and ECF Nos. 41 and 42, Order granting re 39 Second Motion for Withdrawal of Attorney Russell Perry Jr., appointment of Federal Defender as substitute Counsel and Notice of Attorney Appearence: Kenneth R. Sasse appearing for Robert Noel).

Mr. Noel, filed a civil lawsuit Case No. 1:09-cv-12960-TLL-PJK, against the Bayanet, detectives in this matter. Before his October 21, 2009 Franks / Suppression hearing was held in front of district judge Thomas L. Ludington. District judge thomas L. Ludington, denied application to proceed in forma pauperis and dismissed the civil lawsuit without prejudice. See (Appendix Exhibit K, Opinion and order Dismissing Complaint and Denying Application to proceed in Forma Pauperis).

Federal defender substitute counsel Kenneth Sasse, filed re 56 Motion for determination of Counsel's Role, and the court issued a Order Granting Defendant's Motion For Determination of counsel's role, appointing standby counsel. See (ECF No. 68).

III. (A) PRE-TRIAL MOTION

At the October 21, 2009, Franks / suppression hearing Mr. Noel, made a undisputed substantial preliminary showing with a offer of proof, that Bayanet detectives Carrie Guerrero on the date of August 3, 2007, and Tim Larrison on the dates of July 24, 2008 and September 4, 2008, knowingly, deliberately and intentionally with malice swore under false pretense using reckless falsity with a disregard for the truth, under oath is Saginaw County 70th Judicial district Court to magistrate

judges, that Mr. Noel had committed crimes violating Michigan's drug laws M.C.L. § 333,7401(2)(a)(iv), for selling crack cocaine to confidential informants in Controlled drug buys out of his home, to establish probable cause.

AUSA MS. ABRAHAM: "But this is not a drug case and the government has no obligation to produce a laboratory report or prove, in fact, that the substance that was seized prior to the execution of the warrant was, in fact, cocaine base. I believe that is sufficient probable cause in a field test to support the issuance of the warrant. The defendant is not charged in any way with any type of drug offense here.

MR. NOEL: I object to that because she's saying that -- it is important and crucial. When we get down to specifics, that's what led to the search in the house. We know it's not -- we have in here some firearms, that's the charge, but you said you got some drug from that address and you said it was a controlled buy. They said there was a field test report, and then there's suppose to be ladoratory reports with it.

THE COURT: Stop. Stop. My understanding is there was a field test with respect to one and not the other?

MR. NOEL: No, there was a field test on both. Your Honor, What I'm saying is they got these things on a warrant, they make an allegation with no proof. It's crucial that we get down to it because the motion I got here is knowingly and intentionally lying with reckless disregard for the truth.

MS. ASRAHAM: If he needs it, he can subpoena the Michigan State Police lab if it even exists.

MR. NOEL: Objection.

MS. ABRAHAM: It does not form the basis of the claims in the indictment --

MR. NOEL: Yes, it do.

MS. ABRAHAM: -- To support the charges.

MR. NOEL: Your Honor?

MS. ABRAHAM: The government is not in possession of those lab reports.

See (**Appendix Exhibit O**, ECF No. 171, TRANSSCRIPT of Motion held on October 21, 2009, Pg. 68 Ln. 4-25, Pg. 69 Ln. 1-14).

[# ONE] District judge Thomas L. Ludington, let the AUSA Nancy Abraham, subvert the integrity of the Franks / Suppression hearing proceeding, by suppressing and

concealing the truth, these alleged controlled drug buys did formed the basis of the searches and seizures at Mr. Noel's home which formed the basis of the indictment of Mr. Noel on the gun charges in the indictment, AUSA stopped the judicial machinery of the court so it couldn't perform in the usual manner its impartial task of adjudicating a determination of if probable cause really existed for the issuing of these search warrants that were presented for adjudication at the Franks / Sppression hearing.

Herein this matter, Mr. Noel was denied a Full and Fair Franks / Suppression hearing. the fact-finding proceduce employed was not adequate for reaching a very reasonable correct results, Mr. Noel had been locked up for 14 months and after waiting patiently for this Franks / Suppression hearing district judge Thomas L. Ludington was partial letting the AUSA Nancy Abraham pull a stunt like this to stop the court from reaching the truth. See Townsend v. Sain, 372 U.S. 293, 313-14, 9 L.Ed 770, 83 S.Ct. 745 (1963); United States v. Bennett, 905 F.2d 931, 934 (6th Cir. 1990); franks V. Delaware, 98 S.Ct. 2674, 2681, 438 U.S. 154 (1978).

The district court gave AUSA Nancy Abraham, a opportunity to furnish records after 14 months in the eleven hour to substantiate the alleged controlled drug buys, which the AUSA Nancy Abraham did not substantiate these alleged controlled drug buys that was falsfied in affidavits in application for search warrants, to establish probable cause. See (Appendix Exhibit L, Ledal Aid Defender Association of Detroit, 3, pages).

[# TWO] District judge Thomas L. ludington, interferred with Mr. Noel's Faretta Rights at the Franks / suppression hearing held October 21, 2009, by applying and using standby counsel Kenneth Sasse motion to suppress (ECF No. 51), violating Mr. Noel's Faretta Rights. See Faretta v. California, 422 U.S. 806, 843, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975 ; McKaskle v. Wiggins, 465 U.S. 168, 177-178, n 8, 79 L.Ed.2d 122, 104 S.Ct. 944 (1984).

Here Mr. Noel exerted his Faretta Rights to bring his own Franks claim to the

Court's attention in his own motion to suppress in (ECF No. 20), because no controlled drug buys to confidential informants never occurred at Mr. Noel's home on the dates of August 3, 2007, July 24, 2008 and September 4, 2008. Mr. Noel's Motion is totally different than his standby counsel Kenneth Sasse.

District judge thomas L. Ludington, purposely done this to discriminate against race, against civil rights, being partial and bias, the purposely injustice done by, trying to cover up for this illegal search warrants scheme, by using standby counsel Kenneth Sasse motion (ECF No. 51) in the court's analysis and opinions (ECF No. 72, Pgs. 3, 4, 5 and 6; and ECF No. 86, Pgs. 2, 3, and 4). Here district judge Thomas L. Ludington, would states: The first search, giving rise to count 1, took place August 3, 2007, and is the subject of defense counsel's motion to suppress filed at Docket No. 51 and Defendant own motion Docket No. 20; and The second search, giving rise to count 2, to place on July 24, 2008, and is also subject to defense counsel's motion to suppress filed Docket No. 51 and Defendant own motion at Docket No. 20. See (Appendix Exhibits M and N, ECF No. 72 Pgs 1, 2, 3 and 4; and ECF No. 86 Pgs. 1, 2, 3, 8 and 9). See(ECF No. 237 at Pgs. 10-11).

Here Mr. Noel, did not have a fair chance to present his own Franks motion in his own way, by district judge Thomas L. Ludington, purposely interferring with Mr. Noel's Faretta Rights in Noel's case, by using standby counsel counsel Kenneth Sasse motion in Docket No. 51. It shouldn't have been used at all, it violated Mr. Noel's Faretta Rights. See Mckaskle v. Wiggins, 465 U.S., at 184. Nor does the Constitution require judges to take over chores for a pro se defendant that would normally be attended to by trained counsel as a matter of course. Faretta recognized as much. "That right of self-representation is not a license to abuse the dignity of the courtroom, neither is it a license not to comply with relevant rules of procedural and substantive law." Faretta v. California, 422 U.S., at 835, n 46, 45 L.Ed.2d 562, 95 S.Ct. 2525.

The defendant, and not his lawyer or the state, will bear the personal consequences of a conviction. it is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of "that respect for the individual which is the lifehood of law." Illinois v. Allen, 397 U.S. 337, 350-351, 25 L.Ed.2d 353, 90 S.Ct. 1057 (1970) (Brennan J., concurring). Mr. Noel was denied of his right to self-representation and this is not subject to the harmless error analysis but requires reversal per se. See McKaskle v. Wiggins, 465 U.S., at 177 n 8 (1984)

[# THREE] On October 21, 2009, Franks / Suppression hearing held, the Court gave Mr. Noel a opportunity to supplement his already filed suppression motion, Mr. Noel, filed ECF No. 78, Precedent Legal Authority of Michigan Compiled Law Statutory Affidavit Requirement M.C.L.A. § 780.653, in counts 1, 2, 3, and Search Executed September 4, 2008. Which was label wrongly as a affidavit on the Docket Sheet, lets get the record straight, that (ECF No. 78) is not a affidavit.

In pages 2 and 4 of (ECF No. 78), Mr. Noel's states: As a matter of constitutional law, after Illinois v. Gates, Michigan Court's continued to follow Aguilar - Spinelli, in accord with the higher standards set by the Michigan Constitution of 1963, Art 1, § 11.

On pages 3, 4, 8 and 9 of (ECF No. 78), Mr. Noel, states: The State of Michigans Standard, Affidavit Supporting Search Warrant Statutory Affidavit Requirement of M.C.L.A. § 780.653(a)(b).

On page 10 of (ECF No. 78), Mr. Noel, states: This is a clear violation of Michigan Compiled Law Statutuory Affidavit Requirement M.C.L. § 780,653(a)(b), and Michigan Const. of 1963, Art. 1, § 11. Search and Seizures provides:

> "The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any please or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation."

The Michigan Constitution similar to Federal Constitution Amendment 4th, Search and Seizure provides:

> "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 warrant 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."

On the bottom of page 10 and at the top of page 11, of ECF No. 78, Mr. Noel, states: The magistrate judge here certainly could not judge for himself the persuasiveness of the unidentified sources alleged facts relied on to show probable cause in the faulty affidavits submitted August 3, 2007 in count in 1, July 24, 2008 in count 2, and September 4, 2008 affidavit for search that was executed and no charges resulted.

To approve these affidavits will open the door to easy circumvention of the rule announced in Nathanson v. United States, 290 U.S. 41, 47, 54 S.Ct 11 (1933) and Giodenello v. United States, 357 U.S. 480, 485, 78 S.Ct. 1245 (1958). A Police officer who arrived at a suspicion, belief or mere conclusion that narcotics were in someone's possession could not obtain a warrant. But he could convey this conclusion to another police officer, who could then secure the warrant by swearing that he had received reliable information from a credible person that the narcotics were in someone's possession. Aguilar v. Texas, 378 U.S. 108, 114, 84 S.Ct. 1509, 1514 (1963); Spinelli v. United States, 393 U.S. 410, 424, 89 S.Ct. 584, 593 (1969); People v. Hawkins, 468 Mich 488 (2003).

Mr. Noel, cites United States Supreme Court case's precedent along with the State of Michigan case's to support (ECF No. 78), because the unsupervised Saginaw County prosecutor, now deceased George Best, pulled Mr. Noel's court file from the Saginaw County Court Docket, to deny Mr. Noel his State of Michigan created liberty interest in a preliminary examination for a probable cause determination and any other State of Michigan court remedies, violating his fiduciary duty of trust and

State of Michigan duty of loyalty. To hide and cover up this illegal search warrants scheme conspiracy that was used illegally, improperly and unreasonably in searches and seizures of Mr. Noel's home three times, this unsupervised Saginaw County prosecutor George Best, illegally transferred Mr. Noel's state matter to the federal court's pursuant of their illegal search warrants scheme conspiracy, to charge Mr. Noel with the fruits from these unreasonable searches and seizures.

In Nathanson v. United States, it states:

> "Constitutional provision prohibiting unreasonable searches and seizures held applicable to search warrants issued UNDER ANY STATUTE, including revenue and tariff statutes. U.S.C.A. Const. Amend. 4th.

Id., 290 U.S., at 47, 54 S.Ct., ar 13.

All unreasonable searches and seizures are absolutely forbidden by the Fourth Amendment. In some circumstances a public officer may make a lawful seizure without a warrant; in others he may act only under permission of one. Here in present case Mr. Noel's home at 1123 Brown Street, in the City of Saginaw, Michigan, was the place of these searches and seizures on the dates of August 3, 2007, July 24, 2008 and September 4, 2008, the private dwelling of Mr. Noel's. The challenged warrants is said to constitute adequate authority therefor.

The amendment applies to warrants under (M.C.L. § 780.653) statute, revenue, tariff, and all others.

Under the Fourth Amendment, an officer may not properly issued a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under OATH or AFFIRMATION. Mere affirmance of belief or suspicion is not enough. Id., 290 U.S., at 46-47.

Here in this matter, the three search warrants and falsified affidavits in application for search warrants are not supported by oath or affirmation. See (Appendix Exhibits A, B and C, Search Warrants, Falsified Affidavits and Returns).

Mr. Noel, also cited the United States Supreme Court precedent case of Giordenello v. United States in the supplement to suppress (ECF No. 78) which provide as follows:

> "Criminal Rules 3 and 4 provide that an arrest warrant shall be issued only upon a written and sworn complaint (1) setting forth 'the essential facts constituting the offense charged,' and (2) showing 'that there is probable cause to believe that (such) an offense has been committed and the defendant has committed it * **. The provision of these Rules must be read in light of the constitutional requirements they implement. The language of the Fourth Amendment, that "*** no Warrants shall issue, but upon probable cause, supported by Oath of Affirmation, and particularly describing *** the persons or things to be seized ***," of course applies to *** arrest as well as search warrants. See Ex parte Burford, 3 Cranch 448, 2 L.Ed. 495; McGrain v. Daugherty, 273 U.S. 135, 154-157, 47 S.Ct. 319, 323, 71 L.Ed. 580."
>
> "The protection afforded by these Rules, when they are viewed against their constitutional back-ground, is that inferences from the facts which lead to the complaint '*** be drawn by a neutral and deteched magistrate instead of being judge by the officer engaged in the often competitive enterprise of ferretting out crime. Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, (2 L.Ed. 436."

Giordenello v. United States, 357 U.S. 480, at 485-486 (1958).

Herein this matter, district judge Thomas L. Ludington, has colluded with their legal search warrants scheme, by purposely denying (ECF No. 78) discriminating, against race, against civil rights, the purposely injustice done, by being partial and bias to directly deprive Mr. Noel, the petitioner, a "Negro citizen", a "class of African American to equal protection of the laws and equal privileges and immunities as a Michigan citizen and United States citizen, as to similar State and United States citizen of individual race, as to similar class of State citizen and class of United States citizen of different race.

The United States Constitution is the Law of the Land, followed by treaties, followed by Statutes and the United States Supreme Court case precedent. Herein Mr. Noel cites in (ECF No. 78) the United States Constitution and United States

Supreme Court case precedent in, Nathanson v. United States, **Giordenello** v. United States, Aguilar v. Texas and Spinelli v. United States, in support of (ECF No. 78). See (Appendix Exhibit P, Precedent Legal Authority of Michigan Compiled Law Statutory Affidavit Requirement M.C.L.A. § 780.653, In Counts 1, 2, 3, and Search Executed September 4, 2008). United States Constitution Article VI.

District judge Thomas L. Ludington, decision denying Mr. Noel's supplement motion to suppress in (ECF No. 78) is "Contrary to, [and] involved an unreasonable application of clearly established Federal Law and establish United States Constitution, herein Nathanson, Giordenello, Aguilar and Spinelli, provides sufficient guidance for resolving these illegal searches and seizures at Mr. Noel's residence three times, that was not support by Oath or Affirmation. Herein this matter, as stated, in Giordenello, probable cause for a search warrant is the same probable cause for a arrest warrant, these Bayanet detectives Carrie Guerrero and Tim Larrison could not get a arrest warrant nor a complaint on Mr. Noel because he never sold any drugs in any controlled drug buys to confidential informants out of his home.

Ignorance is no excuse for the law, the United States Constitution is for every person of color and United States Supreme Court case precedent is for every person of color, here this district judge Thomas L. Ludington is discriminating, against race, against civil rights, the purposely injustice being done, being partial and bias to directly deprive Mr. Noel, the petitioner, a "Negro Citizen", a "class of African American to equal protection of the laws and of equal privileges and immunities as a Michigan citizen and United States citizen".

As evidenced at 28 U.S.C. § 453, Congress requires an additional oath or affirmation of all Federal Judges as follows:

> "I, ---, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as --- under the Constituion and laws of the United States. So help me God".

On August 24, 2010, Mr.Noel, filed a civil lawsuit Case No. 2:10-CV-13355-PJD-MJH, against Bayanet in this matter and district judge Thomas L. Ludington, it was dismissed without prejudice. See (Appendix Exhibit Q).

III. (B), 28 U.S.C. § 2255 PROCEEDING

In Edwards v. Balisok, 520 U.S. 641, 647, 117 S.Ct. 1584, 137 L.ED.2d 906 (1997) ("Criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him"). In Williams v. Pennsylvania, 136 S.Ct. 1899, 1903, 195 L.ED.2d 132, 2016 U.S. LEXIS 3774 (2016). This Court's precedents set forth an objective standard that requires recusal when the likehood of bias on part of the judge "'is to high to be constitutionally tolerable'." Caperon v. A.T. Massey Coal Co. 556 U.S. 872, 129 S.Ct. 2252, 173 L.ED.2d 1208 (2009) (quoting Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.ED.2d 712 (1975). In re Murchison, 349 U.S. 133, 75 S.Ct. 623, L.ED.2d (1955), the objective risk of bias is reflected in due process maxim "no man can be judge in his own case and no man is permitted to try cases where he has an interest in the outcome.

The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case. Tumey v. Ohio, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.ED 749, 5 Ohio Laws Ada 185, 25 Ohio L. Rep. 236 (1927); Rippo v. Baker, 197 L.ED.2d 167, 168, 2017 U.S. LEXIS 1571 (2017); Crater v. Galaza, 491 F.3d 1119, 1132 (6th Cir. 2006); Aetna Life Ins. Co., v. Lavoie, 475 U.S. 813, 106 S.Ct. 1580, 89 L.ED.2d 823 (1986). The Court has little trouble concluding that a due process violation arising from the participation of an interest judge is a defect "not amendable to harmless-error review, regardless of whether the judge's vote was dispositive. Puckett v. United States, 556 U.S. 129, 141, 129 S.Ct. 1423, 173 L.ED.2d 266 (2009) (emphasis deleted).

On September 5, 2014, magistrate judge Patricia T. Morris, issued her Magistrate

Report and Recommendation (ECF No. 214). only pointing to Mr. Noel's pro se motion to vacate under 28 U.S.C. § 2255 (ECF No. 187). On May 2, 2014. Mr. Noel filed his Brief in Support of re 187 Motion to Vacate under § 2255 which is (ECF No. 196) the meat and potatoes to Mr. Noel's § 2255 Motion. Mr. Noel filed his objections to the Magistrate's Report and Recommendation (ECF No. 216 at Pgs. 6-8).

On January 14, 2015, district judge Thomas L. Ludington, issued a Order Overruling in part objections, rejecting Report and Recommendation and Returning the matter back to the magistrate judge Patricia T. Morris for further consideration. (ECF No. 220).

On May 20, 2015, four months and six days later magistrate Paticia T. Morris, issued a second Magistrate Report and Recommendation (ECF No. 233), only pointing to Mr. Noel's pro se motion to vacate (ECF No. 187). Mr Noel filed a second objection in (ECF No. 234 at Pgs. 4-5), for the same reason he filed in his first objection in (ECF No. 216 at 6-8). Magistrate Patricia T. Morris, purposely is not looking at Mr. Noel's (Brief in Support of his § 2255 Motion, ECF No. 196), because it is the meat and potatoes that substantiate the merits to Mr. Noel's claims in (ECF No. 187). [# FOUR] Rule 4(b) of the Special Rules That Governs Section 2255 Proceedings. The Initial Consideration By The Judge, directs and provides:

> "The judge who receives the motion and the filings associated with the § 2255 motion, should examine the filings and "if it appears from the motion, and any attached exhibits," that there can then be cause to dismiss (Rule 4(b), emphasis added).

However, specifically in this case, Mr. Noel, filed a 135 page Brief in Support of his § 2255 Motion (ECF No. 196), which is the Meat and Potatoes that substantiate Mr. Noel's merits to his claims in his § 2255 motion (ECF No. 187). Which the district judge Thomas L. Ludington, apparent disappointment, displeased and dissatisfaction with Noel's (ECF No. 196, Brief in Support of § 2255), that district judge Ludington, is purposely violating Mr. Noel's procedural Due Process under the 5th Amendment of the United States Constitution by not using Mr. Noel (ECF No. 196, Brief is Support

§ 2255 Motion) to adjudicate the merits of Mr. Noel's (ECF No. 187, Motion To Vacate § 2255). See Hamdi v. Rumsfeld, 542 U.S. 507, at 529 (2004).

Mr. Noel, assert the same as the court did in Tumey v. Ohio, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed 749, 5 Ohio Laws Ads 185, 25 Ohio L. Rep. 236 (1927), because on August 24, 2010, Mr. Noel, filed a civil lawsuit Case No. 2:10-cv-13355-PJD-MJH, against Bayanet detectives in this matter and district judge Thomas L. Ludington, who has colluded with their illegal search warrants scheme with two unsupervised Saginaw County Prosecutors and these two Bayanet detectives. See (Appendix Exhibit Q).

The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case. As here in this matter, district judge Thomas L. Ludington, has "a direct, personal, substantial, pecuniary interest" in Mr. Noel's 28 U.S.C. § 2255 Motion, in the outcome, to cover up their illegal search warrants scheme conspiracy, which district judge Thomas L. Ludington has joined. Id., 273 U.S. at 523; Rippo v. Baker, 197 L.Ed.2d 167, 168, 2017 U.S. LEXIS 1571 (2017; Crater v. Galaza, 491 F.3d 1119, 1132 (6th Cir. 2006).

Herein Mr. Noel also point to the Supreme Court of the United States precedent case in In Re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed 942 (1955), the objective risk of bias is relected in Due Process Maxim "no man can be judge in his own case and no man in permitted to try cases where he has an interest in the outcome.

Herein this matter, distrcit judge Thomas L. Ludington, violated 28 U.S.C. § 453, which Congress requires an additional oath or affirmation of all Federal Judges as follows:

> "I, Thomas L. Ludington, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as --- under the Constitution and laws of the United States. So help me God."

District Judge Thomas L. Ludington, has colluded with their illegal search warrants scheme conspiracy, by purposely discriminating, against race, against civil rights, the purposely injustice, being partial and bias to directly deprive Mr. Noel, the

petitioner, a "Negro citizen", a "class of African American to equal protection of the laws and of equal privileges and immunities as a Michigan and United States citizen, by refusing to use Mr. Noel's brief is support of his § 2255 motion (ECF No. 196) to adjudicate Mr. Noel's (ECF No. 187, Motion to Vacate under § 2255), as to similar situated state citizen individual of race and classes of people of different race. See Edwards v. Balisok, 520 U.S. 641, 647, 117 S.Ct. 1584, 137 L,Ed,2d 906 (1997).

[# FIVE] To begin with Noel's first claim in his § 2255 reference to (ECF Nos. 187 and 196), appellate counsel Joseph West was constitutionally ineffective under the Sixth and Fifth Amendment, to movant's detriment, when counsel failed to competently litigate a Sixth Amendment Speedy Trial Act violation issue on appeal. See (ECF No. 196, Brief in Support of Mr. Noel's § 2255 Motion) has substantiate merit.

District judge Thomas L. Ludington, has usurped federal law as for ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668, at 688 and 694, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), clearly established precedent by the United States Supreme Court and injecting Sixth Circuit case law as authority to deny my first claim citing Dupont v. United States, 76 F.3d 108, 110 (6th Cir. 1996) and Clemons v. United States, 3:01-cv-496, 2005 WL 24169-95 at * 2 (E.D. Tenn. Sept. 30, 2005).

In the Court's Opinion (ECF No. 237 at Pg. 7 of 22, footnote 1), district judge Ludington, is misrepresenting facts, saying, Noel has not provided any specific examples of incompetence other than the refusal to raise specific issues that Noel wanted to be argued. However, if this Honorable Supreme Court of the United States, look at (ECF No. 196 at Pgs. 4-7, Brief in Support of § 2255 Motion), you will see specific examples of how appellate counsel Joseph West failed to raise a Speedy Trial issue competently, a dead bang winner on Mr. Noel's appeal of right under Zedner v. United States, 547 U.S. 489, 164 L.Ed.2d 749 (2006).

District judge Ludington, is trying to hide behind the Sixth Circuit's Opinion

(ECF No. 177 at 3-4), which the Sixth Circuit Court of Appeals has never heard Mr. Noel's claim of ineffective assistance of appellate counsel and it has never been raised or decided by the Sixth Circuit.

[# SIX] In Noel's second claim in his § 2255 reference to (ECF No. Nos. 187 and 196), appellate counsel Joseph West was constitutionally ineffective under the Sixth and Fifth Amendment, to movant's detriment, where counsel failed to competently litigate a Fourth and Fourteenth Amendment violation on Mr. Noel's appeal of right.

District judge Thomas L. Ludington, has usurped federal law as for ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668, at 688 and 694, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), clearly established precedent by the United States Supreme Court. The district judge Thomas L. Ludington, failed to address Mr. Noel's second claim in (ECF No. 196 at Pgs. 8-18, Brief in Support of § 2255 Motion) to adjudicate Mr. Noel's (ECF No. 187, Motion to Vacate under § 2255).

District judge Ludington, is trying to hide behind the Sixth Circuit Court of Appeals Opinion (ECF No. 177 at 5), which the Court of Appeals has never heard Mr. Noel's claim of ineffective assistance of appellate counsel and it has never been raised or decided by the Sixth Circuit.

[# SEVEN] Noel's third claim in his § 2255 reference to (ECF Nos. 187 and 208), district judge Ludington, is misrepresenting facts, Mr. Noel's third claim is not identical to his second claim, Mr. Noel did indicate that he was abandon his third claim in his (ECF No. 196 at i) brief in support of his § 2255 motion. But since it relate back to his original (ECF No. 187, Motion to Vacate under § 2255), Mr. Noel filed a Supplemental Issue to Petitioner's Motion under 28 U.S.C § 2255 to Vacate (ECF No. 208). Let get the record straight, this is not a Motion for Leave to Supplemental; it a Supplemental Issue To Petitioner's Already Filed Motion. See (Appendix Exhibit R).

Mr. Noel, has articulated a dead bang winner in (ECF No. 208), district judge Ludington, did not want to address because of its has substantiate merits under

State and Federal law. Here district judge Ludington, is very partial and bias in this matter and he's doing anything and everything to deny Mr. Noel relief. But (Appendix Exhibit R), speak's for itself. See Edwards v. Balisok, 520 U.S. 641, 647, 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997).

[# EIGHT] Mr. Noel's fifth, sixth, seventh, eighth, tenth, twelveth, fourteenth and fifteenth claims in his § 2255 (Brief in Support of his § 2255, ECF No. 196), reference to (ECF No. 187, Motion to Vacate § 2255), which distrcit judge Ludigton, refused to use Mr. Noel's (ECF No. 196, Brief in Support of his § 2255 Motion) to adjudicate the merits of Mr. Noel's (ECF No. 187, Motion to Vacate of § 2255). This is a direct violation the 5th Amendment of the United States Constitution, by not using Rule 4(b) of the Special Rules That Governs Section 2255 Proceedings, violating Mr. Noel's Procedural Due Process.

Which Rule 4(b), clearly states. The Initial Consideration By The Judge, directs and provides:

> "The judge who receives the motion and filings associated with the § 2255 motion, should examine the filings and "if it appear from the motion, and any attached exhibits," that there can then be cause to dismiss (Rule 4(b), emphasis added).

However, specifically, in this case, district judge Ludington is not using (ECF No. 196, Brief in Support of his § 2255 Motion), to adjudicate the merits of (ECF. No. 187, Motion to Vacate § 2255 Motion), making the § 2255 process ineffective and inadedquate to test the illegality of detention in violation of the United States Constitution and the AEDPA of 1996. Making ECF No. 237, Opining Denying Habeas Corpus and COA) incorrect and wrong because it was not adjudicated using Mr. Noel's (ECF No. 196, Brief in Support of his § 2255), in reference to (ECF No. 187, Motion to Vacate § 2255). See (Appendix Exhibits S).

[# NINE] Mr. Noel, filed a Motion for Findings and Conclusions, pursuant to the Federal Rules of Civil Procedural 52(a)(1). (ECF No. 239). In (ECF No. 239 at Pgs. 10-13, 13-18 and 18-24) Mr. Noel, raise specific issues, first, second and fifth

from his § 2255 Motion and Brief in Support of § 2255 Motion (ECF Nos. 187 and 197). District judge Ludington, denied relief at (ECF No. 242 at Pgs. 2-3). See (Appendix Exhibit T, Finding and Conclusion, Denied).

Mr. Noel, filed and requested a certificate of appealability and was denied. See (Appendix Exhibit U).

On December 11, 2017, Mr. Noel, filed a Petition For a En Banc Rehearing or a Penal Rehearing, which both was denied. See (Appendix Exhibits V and W).

As stated in Elkins v. United States, 364 U.S. 206, 221-223, 4 L.Ed.2d 1669, 80 S.Ct. 1437 (1960) (Impressive as is this experience of individual states, even more is to be said for adoption of the exclusionary rule in the particular context here presented - a context which brings into focus considerations of federalism. The very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts. Yet when a federal court sitting in an exclusionary state admits evidence lawlessly seized by state agents, it not only frustrates state policy, but frustrates that policy in a particularly inappropriate and ironic way.

For by admitting the unlawfully seized evidence the federal court serves to defeat the state's effort to assure obedience to the Federal Constitution. In states which have not adopted the exclusionary rule, on the other hand, it would work no conflict with local policy for a federal court to decline to receive evidence unlawfully seized by state officers. The question with which we deal today affects not at all the freedom of the states to develop and apply their own sanctions in their own way. Cf. Wolf v. Colorado, 338 U.S. 25, 93 L.Ed 1782, 69 S.Ct. 1359 (1949).

Free and open cooperation between state and federal law enforcement officers is to be commended and encouraged. Yet that kind of cooperation is hardly promoted by a rule that implicitly invites federal officers to withdraw from such association and at lest tacitly to encourage state officers in the disregard of constitutionally protection freedom. If, on the other hand, it is understood that the fruits of an

unlawful search by state agents will be inadmissible in a federal trial, there can be no inducement to subterfuge and evasion with respect to federal - state cooperation in criminal investigation. Instead, forthright cooperation under Constitutional standards will be promoted and fostered.

It must alwaysbe remembered that what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures. Without pausing to analyze individual decisions, it can fairly be said that in applying the Fourth Amendment this Court has seldom shown itself unaware of the practical demands of effective criminal investigation and law enforcement. Indeed, there are those who think that some of the Court's decision have tipped the balance too heavily against the protection of that individual privacy which it was the purpose of the Fourth Amendment to guarantee. See Harris v. United States, 331 U.S. 145, 155, 183, 195, 91 L.Ed 1399, 1408, 1424, 1430, 67 S.Ct. 1098 (dissenting opinion); United States v. Rabinowitz, 239 U.S. 56, 66, 68, 94 L.Ed 653, 660, 661, 70 S.Ct 430 (dissenting opinion). In any event, while individual cases have sometimes evoked "fluctuating differences of view," Abel v. United States, 362 U.S. 217, 235, 4 L.Ed.2d 688, 684, 80 S.Ct. 683, it can hardly be said that in the overall pattern of Fourth Amendment decisions this Court has either unrealistic or visionary.

There, then, are the considerations of reason and experience which point to the rejection of a doctrine that would freely admit in a federal criminal trial evidence seized by state agents in violation of the defendant's constitutional rights. But there is another consideration-the imperative of judicial integrity. It was of this that Mr. Justice Holmes and Mr. Justice Brandies so eloquently spoke in Olmstead v. United States, 277 U.S. 438, at 469, 471, 72 L.Ed 944, 952, 953, 48 S.Ct. 564, 66 ALR 376, more than 30 years ago. "For those who agree with me," said Mr. Justice Holmes, "no distinction can be taken between the Government as prosecutor and the Governement as judge." 277 U.S. at 470. (Dissenting opinion). "In a government of laws," said Mr. Justice Brandies, "existence of the government will be imperilled if it

fails to observe the law scrupulously. Our Government is potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to because a law unto himself; in invites anarchy. To declare that in the administration of the criminal law the end justifies the means-to declare that the Government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." 277 U.S. at 485. (Dissenting opinion).

This basic principle was accepted by the Court in McNabb v. United States, 318 U.S. 332, 87 L.Ed 819, 63 S.Ct. 608. There it was held that "a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law." Id., 318 U.S. at 345. Even less should the federal courts be accomplices in the willful disobedience of a Constitution they are sworn to uphold.

Mr. Noel's, assert the herein as in Beck v. Ohio, 379 U.S. 89, at 96, 13 L.Ed. 2d 142, 85 S.Ct. 223 (1964) (An arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the arrest or search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment. "Whether or not the requirement of reliablity and particularity of the information on which an officer may act are more stringent where an arrest warrant is is absent, they surely cannot be less stringent than where an arrest warrant is obtained. Otherwised, a principle incentive now existing for the procurement of arrest warrants would be destroyed." Wong Sun v. United States, 371 U.S. 471, 479, 480, 9 L.Ed.2d 441, 450, 83 S.Ct. 407. Yet even in cases where warrants were obtained, the Court has held that the Constitution demands a greater showing of probable cause than can be found in the present record. Aguilar v. Texas, 378 U.S. 108, 12 L.Ed.2d 723, 84 S.Ct.

1509; Giordenello v. United States, 257 U.S. 480, 2 L.Ed.2d 1503, 78 L.Ed 1245; Nathanson v. United States, 290 U.S. 41, 78 L.Ed 159, 54 S.Ct. 11. The Court has made clear that the Giordenello decision rested upon the Fourth Amendment, rather upon 4 of the Federal Rules of Criminal Procedure. See Aguilar v. Texas, 378 U.S. 108, at 112, note 3, 12 L.Ed.2d 723, at 727, 84 S.Ct. 1509.

The Aguilar and Nathanson cases involved search warrants rather than arrest warrants (herein just like Mr. Noel's case, which involves three search warrants rather than a arrest warrant), but as the Court has said, "The language of the Fourth Amendment, that '... no Warrant shall issue, but upon probable cause ...' of course applies to arrest as well as search warrants." Giordenello v. United States, 357 U.S. 480, at 485-486, 2 L.Ed.2d 1503, at 1509, 78 S.Ct. 1245.

Herein, district judge Thomas L. Ludington's participation in Mr. Noel's Motion to Vacate under § 2255 (ECF No. 187) violated due process, because judge Ludington has a "direct, personal, substantial, pecuniary interest" in the outcome. See Tumey v. Ohio, 273 U.S. at 532. In Williams v. Pennsylvania, 136 S.Ct. 1899, 1909 (2016) (The Court has little trouble concluding that a due process violation arising from the participation of an interested judge is a defect not "amendable" to harmless-error review, regardless of whether the judge's vote was dispositive. Puckett v. United States, 556 U.S. 129, 141, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009) (Emphasis deleted). The deliberation of an appellate panel, as a general rule, are confidential. As a result, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decisionmaking process. Indeed, one purpose of judicial confidentially is to assure jurists that they can reexamine old ideas and suggest new ones, while both seeking to persuade and being open to persuasion by their colleagues.

As Justice Brennan, wrote in his Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986), concurrence:

"The desription of an opinion as being 'for the court' connotes more

> than merely that the opinion has been joined by a majority of the participating judges, Tt reflects the fact that these judges have exchanged ideas and arguments in deciding the case. It reflects the collective process of deliberation which shapes the Court's perceptions of which issues must be addressed and, more importantly, how they must be addressed. And, while the influence of any single participant in this process can never be measured with precision, experience teaches us that each member's involvement play a part in shaping the court's ultimate disposition." 475 U.S. at 831, 106 S.Ct. 1580, 89 L.Ed.2d 823.
>
> These considerations illustrate, moreover, that it does not matter whether the disqualified judge's vote was necessary to the disposition of the case. The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party. See id., at 831-832, 106 S.Ct. 1580, 89 L.Ed.2d 823 (Blackmun, J., concurring in judgment).

Herein this matter, district judge decision in denying Mr. Noel § 2255 Motion to Vacate was determinative in the outcome, where judge Ludington has a "direct, personal, substantial, pecuniary interest" in Mr. Noel's Case. Here Federal District judge Thomas L. Ludington, was very successful in persuading the United States Court of Appeals for the Sixth Circuit to accept his position--an outcome that does not lessen the unfairness to the affected party. A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Id., 136 U.S. at 1909.

See Harris v. March, 679 F.Supp. 1204 (4th Cir. 1987) (quoting James C. Fox Judge) provides as follows:

> "Nowithstanding all of the above, however, the mere fact that an individual may hold the keys to the Courthouse door does not imply that he may enter with disregard for his actions therein or disdain for the rights of all other parties to the litigation. As the Court has taken pains to note, the issue of racial discrimination in this nation is long-standing and remains a terribly serious one. Charges of racism, if proven carry an enormously stigmatizing affect, Accordingly, such charges should only be level after careful investigation, thoughtful deliberation, and never without a **reasonable basis in law and fact.** Id., 679 F.Supp. at 1221.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert D. Noel

Date: September 7, 2018