IN THE SUPREME COURT

OF THE UNITED STATES

JOHN CHAPMAN

Petitioner,

V.

THE STATE OF WYOMING

Respondent.

Case No. 18-6941

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT FOR THE STATE OF WYOMING

PETITION FOR WRIT OF CERTIORARI

PETITIONER
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QUESTION(S) PRESENTED

I. Whether or not the strictures of Federal Rules of Criminal Procedure Rule 11 and the Fourteenth Amendment due process were met concerning personal advisement by the court of the penalties provided by law because a failure to advise is an abuse of discretion, a violation of a constitutional right results in a void, not merely erroneous, judgment and thus, a judgment obtained in violation of due process is void and mandates that the judgment and conviction be set aside?

LIST OF *PARTIES*

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

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

I. Order denying petition for state habeas corpus

OPINIONS BELOW

For cases from **state courts**:

The opinion of the highest State Court to review the merits appears in appendix A to the petition and is unpublished.

JURISDICTION

For cases from the **state court**:

The date on which the highest state court decided petitioner's case was September 25, 2018. A copy of that decision appears at Appendix A.

The Court's decision is within the 90 days allotted to file this petition for Writ of Certiorari. Therefore, the jurisdiction of this Court is invoked over the immediate case under 28 U.S.C. §1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Cont. art 7, § 14 Amendment; 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.

2. The Wyo. Stat. Ann. § 7-11-507, provides as follows:

> (a) No judgment of conviction "shall" be entered upon a plea of guilty or nolo contendere to any charge which may result in the disqualification of the defendant to possess firearms pursuant to the provisions of 18 U.S.C. §§ 922(g)(1), (9) and 924(a)(2) or other federal law unless the defendant was advised in open court by the judge: (Emphases added)
>
> (i) Of the collateral consequences that may arise from that conviction pursuant to the provisions of 18 U.S.C. §§ 921(a)(33), 922(g)(1), (9) and 924(a)(2);

3. Federal Rules of Criminal Procedure Rule 11 **(b)** Considering and Accepting a Guilty or Nolo Contendere Plea. **(1)** The court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following: **(J)** any applicable forfeiture; **(O)** that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future. (Emphases added)

4. Wyoming Rules of Criminal Procedure Rule 11 **(b)** before accepting a plea of guilty or nolo contendere to a felony or to a misdemeanor . . . . The court must address the defendant personally in open court and . . . . Inform the defendant of, and determine that the defendant understands, the following: **(1)** the nature of the charge to which the plea is offered . . . . The potential loss of entitlement to federal benefits. (Emphases added)

5. Compare U.S. Cont. art 7, § 2 Amendment with Wyo. Const. art 1, § 24 provides that the right of citizens to bear arms in defense of themselves and of the State shall not be denied.

STATEMENT OF THE CASE

COMES NOW; petitioner *Pro Se,* and hereby petition for writ of certiorari because the Wyoming Court of last resort has decided an important question of federal law that has not been, but should be, settled by this Court. The Court of last resort has also decided an important federal question in a way that conflicts with their previous decisions and of other State Court of last resort decisions. When constitutional and statutory pervasions are violated by a United States Supreme Court, it should compel the Supreme Court of the United States to learn more about the case as it offends the U.S. Constitution and the morals of the United States as a whole and destroys the public's confidence in the judiciary system and therefore must be corrected.

Petitioner was initially charged with attempted first degree murder and conspiracy to commit first degree murder after he *allegedly* shot a man that was assaulting (rapping) his wife. Petitioner pled guilty to a reduced charge of attempted second degree murder in an oral plea and sentenced to a term of twenty-five to fifty years and Judgment was entered February 9, 2010, Case No. CR-08-167-J and.CR-09-224-J.

The trial court failed to comply with the required advisement in open court pursuant to the F.R.Cr.P. Rule 11 and Wyo. Stat. § 7-11-507, the district court also after imposing sentence failed to advise petitioner of his right to appeal his conviction as mandated by W.R.Cr.P. 32(c)(3), which states; "At the time of sentencing, regardless of the defendant's plea or trial, the court shall advise the defendant of the right to appeal the sentence or conviction" See Hauck, v. State, 113; 162 P3d 512 (Wyo. 2007); ("was effectively denied his direct appeal. . . The record shows that the district court, after imposing sentence, abrogated its duty to protect this right by failing to advise Hauck of his right to appeal his conviction."). The court has violated petitioner's Fourteenth Amendment rights to due process and equal protection.

Petitioners' trial counsel moved to withdraw as counsel 2/17/2010 [index at 200-201] and the court granted his request 2/23/2010 [index at 203] without filling the initial appeal. Counsel did nothing during that 10 day period while waiting for the court to grant his request to withdraw as counsel to perfect the initial appeal.

Although counsel had complied with the state's procedure for withdrawal of counsel, that procedure failed to "afford adequate and effective appellate review to indigent defendant" in that it did not reasonably ensure that petitioner's appeal would be resolved and accordingly, petitioner was constructively denied an appeal from which prejudice would be presumed.

The Supreme Court precedent in Harris v. Day, 226 F.3d 361, 365–67, (5th Cir. 2000);

> "An attorney seeking withdrawal on appeal is required to at least file a brief referring to anything in the record that might arguably support the appeal. This is required even if the attorney determines that the appeal is frivolous. If a petitioner can prove that the ineffective assistance of counsel denied him the right to appeal, then he need not further establish that he had some chance of success on appeal. Where a defendant is constructively denied the assistance of appellate counsel, discussion of prejudice is unnecessary. In the end, petitioner was afforded no representation at all on direct appeal, counsel constructively abandoned petitioner's direct appeals by failing to file briefs, by failing to at least file Anders briefs...Id. at 365–67 (violation of procedures for filing "no merits" appellate brief under Anders v. California, 386 U.S. 738 (1967) amounts to "constructive denial of counsel on appeal" and therefore is per se prejudicial)." Also see *United States v Cronic, 466 U. S. 648, (1984)* (Where a defendant is constructively denied the assistance of appellate counsel, discussion of prejudice is unnecessary.)

The "*constitutionally deficient*" performance of counsel is sufficient to constitute "*actual prejudice*" because the constructive denial of counsel essentially leaves petitioner without representation during court's decisional process therefore, prejudice would be presumed. This is sufficient to constitute "*actual prejudice*" in light of the premise concerning the representational standards set forth by the U.S. Supreme Court. See United States v Cronic, 466 U. S. 648; Cuyler v. Sullivan, 446 U.S. 335; Douglas v. California, 372 U.S. 353; Harris v. Day, 226 F.3d 361; Denton v. Stephens, 2015 U.S. Dist. 2:12-CV-0192. Also see Hughes v Booker 220 F.3d 346.

Based on the United States Supreme Court decision in Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985) holding "A defendant's first appeal from a criminal conviction in a state trial court to the state intermediate appellate court is an appeal as of right, not a discretionary appeal, thus triggering the due process to counsel" but, the court refuses to address the issue and denies petitioner's petitions.

However, petitioner after being abandoned by his counsel did timely *pro se* files an appeal. The judgment was entered February 9, 2010 therefore petitioner had until March 11, 2010 pursuant to the provisions of W.R.A.P. Rule 14.04, the pro se filing of a notice of appeal by an inmate confined in a penal institution is timely filed if that document is deposited in the institution's internal mail system on or before the last day allowed for filing.

November, 2016 the district court did an investigation of the court records {Index at 796-799} "order denying motion to docket and reinstate appeal" at # ¶13 & ¶15, determined that petitioner had in fact timely filed a *pro se* notice of appeal March, 2010 {index at 208-211}.

> 13. The Judgment and Sentence in the above-entitled action was filed on February 9, 2010. Chapman's "Motion to Appeal" is dated March 7, 2010, and file-stamped March 17, 2010. There is no written certification appended to the motion or stamp indicating the date of receipt by the prison institution's mailing system, as required by W.R.A.P. 14.04, to support a finding that the "Motion to Appeal" was filed on March 7, 2010. However, the envelope was post-marked March 15, 2010, and the Court finds this is the date the motion was "filed" as contemplated by a generous reading of the Wyoming Rules of Appellate Procedure. Accordingly, the "Motion to Appeal" was timely. See W.R.A.P. 14.02, 14.03(a) & 14.04.

However, to date this appeal is still pending review because the court refuses to docket it because appointed appellant counsel failed to timely perfect it.

Although, the court has said a failure to advise is an abuse of discretion, a due process violation and a judgment obtained in violation of due process is void the court has barred petitioner by the doctrine of res judicata from raising this argument in any other proceedings due to his counselor's failure to timely procure and perfect the initial appeal from conviction and

raise the court's failure to advise. The court's decision in Evitts v. Lucey, supra, "is that the mistake of an attorney will not justify the loss of the client's right to an appeal."

Appellate counsel may deliver "*deficient performance*" and prejudice a defendant by omitting a "*dead-bang winner*," which is defined as an issue which was obvious from the trial record and would have resulted in a reversal on appeal. Meade v. Lavigne, 265 F. Supp. 2d 849, 870. Also see Mayo v. Henderson, 13 F.3d 528, 533; Gray v. Greer, 800 F.2d 644, 646; United States v. Cook, 45 F.3d 388, 394-95; and Fagan v. Washington, 942 F.2d 1155, 1157.

> See Supra Cook, at 394-95 ("Conversely, an appellate advocate may deliver deficient performance and prejudice a defendant by omitting a "dead-bang winner," even though counsel may have presented strong but unsuccessful claims on appeal. Page v. United States, 884 F.2d 300, 302 (7th Cir. 1989). Although courts have not defined the term "dead-bang winner," we conclude it is an issue which was obvious from the trial record, see, e.g., Matire v. Wainwright, 811 F.2d 1430, 1438 (11th Cir. 1987) (counsel's failure to raise issue which "was obvious on the record, and must have leaped out upon even a casual reading of [the] transcript" was deficient performance), and one which would have resulted in a reversal on appeal. By omitting an issue under these circumstances, counsel's performance is objectively unreasonable because the omitted issue is obvious from the trial record. Additionally, the omission prejudices the defendant because had counsel raised the issue, the defendant would have obtained a reversal on appeal.")

Petitioner filed a State Habeas Corpus August 1, 2018 pursuant to the Wyoming Supreme Court's precedent under Hurst v. Meacham, 502 P.2d 997 (Wyo.1972) and Cardenas, v. Meacham, 545 P.2d 632; (Wyo.1976) ("Our holding that a defendant whose plea has been accepted in violation of Rule 11 should be afforded the opportunity to plead anew . . . We are persuaded that the disposal of the problem under the authority of McCarthy v. United States, 394 U.S. 459, is sound. In the last mentioned case the Court followed the rule of Heiden v. United States, 9 Cir., 353 F.2d 53 (1965), where that court held that when the rule is not fully complied with, the defendant's guilty plea must be set aside and his case remanded for another pleading, at which he may plead anew.")

In response the state argued in their motion to dismiss at 19-20 as follows;

> It is true that the trial did not advise Chapman regarding his firearms rights as required under Wyoming Statute §7-11-507, ... However, the remedy for such a failure is not the dismissal of the case, but a reversal of his convictions and a remand for further proceedings. Balderson v. State, 2013 WY 107, ¶ 26, 309 P.3d 809, 814 (Wyo. 2013)(reversing and remanding for further proceedings due to district court's failure to advise defendant of the potential loss of his firearm rights under Wyoming Statute §7-11-507).

The United States Supreme denied the petition for Writ of Habeas Corpus Sept. 25, 2018 and stated as follows;

> "A court does not lose jurisdiction over an action for failure to comply with statutory procedural requirements unless the statute contains an 'unequivocal expression' that the failure to comply shall result in a loss of jurisdiction. The writ of habeas corpus is not designed "to interrupt the orderly administration of the criminal laws by a competent court while acting within its jurisdiction."

However, petitioner was abandoned and constructively denied the assistance of counsel in the critical stage of his criminal process and deprived his initial appeal. The court's failure to adhere to the advisement requirement was a prejudicial error, and the failed to advise the petitioner of the penalty that resulted in pleading guilty infringes on the voluntariness (absent compliance with the rule) and mandates the petitioner's guilty plea be set aside and permit the petitioner to plead anew.

> "As stated in 30A Am. Jur., §693, p.659, the power of a court to vacate a void judgment is regarded as inherent and independent of any statutory authority. In the same text, on page 658, a court will not permit it to encumber the record and will vacate the ineffectual entry thereof on proper application at any time. Also, in 49 C.J.S. Judgments §267, pp.480-481, is ground for vacating it. It confers no rights and equitable relief is proper to prevent harm resulting from the fact that the judgment appears or purports to be valid. A.L.I. Restatement, Judgments, §117, p.565 (1942). Emery v. Emery, 404 P.2d 745, 749, (Wyo. 1965); we think the correct rule is as stated in 3 Barron & Holtzoff, § 1327, p. 412 (1958). It is said when the judgment is void there is no question of discretion on the part of the court; either the judgment is void or it is valid; and when the matter of its validity is resolved, the court must act accordingly. Joyner v. State, 174; 58 P3d 331, 337, (Wyo. 2002) A judgment obtained in violation of due process is void."

Argument –

The question here for decision is whether or not the strictures of Federal Rules of Criminal Procedure Rule 11 and the Fourteenth Amendment due process were met concerning personal advisement by the court of the penalties provided by law because a failure to advise is an abuse of discretion, a violation of a constitutional right results in a void, not merely erroneous, judgment and thus, a judgment obtained in violation of due process is void and mandates that the judgment and conviction be set aside.

The state courts of last resort have declined to address this question. Compare the *W.R.Cr.P. 11* with the *F.R.Cr.P. 11* advisement requirement, accepting a guilty or nolo contendere plea the court must address the defendant personally in open court and must inform the defendant of, and determine that the defendant understands, the following:

F.R.Cr.P. 11;

(J) Any applicable forfeiture;

(O) That, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

W.R.Cr.P. 11;

(1) The potential loss of entitlement to federal benefits.

In order to establish the voluntariness of the plea as required by the rule, there must be a record showing that the judge, personally addressing the petitioner, informed him of the penalty in order that the court may determine that petitioner had an "*understanding of the nature of the charge and the consequences of the [his] plea.*" For the judge to fail to address the petitioner in open court and advise him of the consequences of his plea and thereby determine if his plea is made voluntarily is error, strict compliance with the rule is required to ensure due process of law.

The right to bear arms is a constitutional right that petitioner cannot be deprived of without due process.

U.S. Cont. art 7, § 14 Amendment;

"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."

Compare U.S. Cont. art 7, § 2 with Wyo. Const. art 1, § 24 provides as follows:

U.S. Cont. art 7, § 2;

"The right of the people to keep and bear Arms, shall not be infringed."

Wyo. Const. art 1, § 24;

"The right of citizens to bear arms in defense of themselves and of the state shall not be denied."

Cited in:

Starrett v. State, 2013 WY 133, 286 P.3d 1033 (2012)

Cross references. —

As to advisement of loss of firearms rights upon conviction, see § 7-11-507

The Wyo. Stat. Ann §7-11-507 contains an '*unequivocal expression*' that failure to comply shall result in a loss of jurisdiction because the legislature limited the court's *jurisdiction to render the particular judgment* of conviction by the statute.

The Wyo. Stat. Ann. § 7-11-507 states:

> (a) **No judgment of conviction shall be entered** upon a plea of guilty or nolo contendere to any charge which may result in the disqualification of the defendant to possess firearms pursuant to the provisions of 18 U.S.C. 922(g)(1), (9) and 924(a)(2) or other federal law unless the defendant was advised in open court by the judge: (Emphasis added).

In Balderson v. State, 2013 WY 107, ¶ 14, 309 P.3d 809, 812 (Wyo. 2013);

> "We explained there are two distinct advisements required by § 7-11-507. Subsection (a)(i) requires the district court to advise a defendant pleading guilty or no contest to a felony of possible disqualification from possessing firearms under federal law, and subsection (a)(ii) requires notification that loss of the firearm privilege may affect the defendant's employment opportunities. Id. See also Parks v. State, 2014 WY 57, 325 P.3d 915 (Wyo. 2014); Cobb v. State, 2013 WY 142, 312 P.3d 827 (Wyo. 2013); Pedraza v. State, 2014 WY 24, 318 P.3d 812 (Wyo. 2014). The advisements are necessary to ensure the defendant enters his plea with knowledge of all potential consequences, and the failure to give them will result in reversal of the convictions. Balderson, ¶¶ 22, 25, 309 P.3d at 814."

Interestingly, the legislature in the State of Washington has made these policy decisions with both immigration consequences and firearms prohibition consequences. In State v. Littlefair, 112 Wn. App. 749, 51 P.3d 116 (Wash. App. 2002), review denied, 149 Wn.2d 1020, 72 P.3d 761 (Wash. 2003), the court considered the statute requiring advice of federal deportation consequences. Because the trial court had failed to advise the criminal defendant of those immigration consequences when the guilty plea was entered, the appellate court reversed and remanded. Id. at 126. Similarly, in State v. Breitung, [*1040] 173 Wn.2d 393, 267 P.3d 1012, 1016-18 (Wash. 2011), [*21] and State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (Wash. 2008), because the trial courts failed to advise the criminal defendants of the firearms prohibition consequences of their guilty pleas, the appellate courts reversed the convictions. Starrett, Supra, Id. at P18.

It was a due process violation for the trial court to have failed to comply with the strictures of F.R.Cr.P. 11 and personally address the petitioner in open court and inform him that he would be disqualified to possess firearms. He did not and could not have voluntarily pled guilty within the meaning of the rule unless the judge, on the record, personally addressed him to inform him of the consequences pursuant to F.R.Cr.P. 11 and Wyo. Stat. Ann. § 7-11-507 based on the United States Supreme Court decision under Starrett, supra Id. at P19;

> "In summary, we hold that we must apply our de novo standard of review to the issue before us because that issue requires our interpretation and application of a statute. We hold that Wyo. Stat. Ann. § 7-11-507 is clear and unambiguous; therefore, we must simply give effect to its plain meaning. We hold that, because the legislature has used the word "shall" in its language, "[n]o judgment of conviction shall be entered upon a plea of guilty . . . unless the defendant was advised in open court by the judge," this Court accepts the provision as mandatory and has no right to make the law contrary to what the legislature prescribed. The word "shall" is this statute intimates an absence of discretion. The advisement in Wyo. Stat. Ann. § 7-11-507 is required, and W.R.Cr.P. 32(b)(1)(E) mandates that the judgment of conviction upon Starrett's plea of guilty must include that advisement. The district court's failure to give Starrett that required advisement was a Rule 32 [*22] error. Consistent with our precedent dealing with Rule 32 error, we hold that the district court's failure to include in Starrett's judgment of conviction upon his plea of guilty the advisement required by Wyo. Stat. Ann. § 7-11-507 requires us to set aside Starrett's judgment of conviction and remand to that court with directions that he be permitted to plead anew. It is so ordered." Also see McEwan v. State, 314 P.3d 1160, (Wyo. 2013) and Parks v. State, 325 P.3d 915, (Wyo. 2014).

The United States Supreme Courts in the State of Washington as well as Wyoming has made these policy decisions with both immigration consequences and firearms prohibition consequences and repeatedly find that the firearm advisement is required and mandates that a judgment of conviction upon a plea of guilty must include that advisement. Both the U.S. Const. art 7, § 2; and Wyo. Const. art 1, § 24 provides that the right of citizens to bear arms in defense of themselves and of the State shall not be denied. Legislature has acted in a thoughtful and rational manner with full knowledge of existing law when it enacts a statute. (citing Redco Constr. v. Profile Props., LLC, 2012 WY 24, ¶ 37, 271 P.3d 408, 418 (Wyo. 2012)). The language of the statutes determines the result in this case. DiFelici v. City of Lander, 2013 WY 141, ¶ 31, 312 P.3d 816, 824 (Wyo. 2013) A court will not second-guess the wisdom of the Wyoming Legislature, and a court will not decide whether a statute embodies sound public policy. A court will presume that the Legislature has acted in a thoughtful and rational manner with full knowledge of existing law when it enacts a statute.

In particular, the Supreme Court has repeatedly found the word "shall" in a statute to be mandatory. Stutzman v. Office of Wyo. State Eng'r, 2006 WY 30, P17, 130 P.3d 470, 475 (Wyo. 2006) ("Where the legislature uses the word "shall,' this Court accepts the provision as mandatory and has no right to make the law contrary to what the legislature prescribed."); see also Merrill v. Jansma, 2004 WY 26, P42, 86 P.3d 270, 288 (Wyo. 2004); and In re DCP, 2001 WY 77, P16, 30 P.3d 29, 32 (Wyo. 2001). "The choice of the word "shall' intimates an absence of discretion . . . ." In re LePage, P12, 18 P.3d 1177, 1180 (Wyo. 2001).

The violation of a constitutional right results in a void, not merely erroneous, judgment. This is an ancient principle of the law and the privilege is 'imbedded in the constitution, and embodies the wisdom of some centuries of experience upon the subject.' Thus, a judgment which is absolutely void is entitled to no authority or respect, and therefore may be impeached at any time, in any proceeding." Joyner, Supra, and Emery, Supra at 748; A judgment is void if the court acted in a manner inconsistent with due process of law. The modern iteration of this constitutional rule is that a judgment rendered in violation of due process is void and not entitled to full faith and credit.

Fed. R. Civ. P Rule 60 provides;

> Courts to grant relief from void judgments - When confronted with a subdivision (b)(4) motion and a void judgment, courts must relieve the parties from such a judgment. **Once a judgment is determined to be void, there is no question of discretion on the part of the court**. 2-H Ranch Co. v. Simmons, 658 P.2d 68 (Wyo. 1983). (Emphasis added).
>
> The granting or denying of relief pursuant to Fed. R. Civ. P. 60(b)...is limited to **the question of whether there has been an abuse of discretion**. When a judgment is attacked pursuant to Wyo. R. Civ. P. 60(b)(4),...**there is no question of discretion in granting or denying relief - either the judgment is void, or it is valid**. Once that determination is made, the trial court must act accordingly...**It is void** only if the court that rendered it lacked jurisdiction of the subject matter,...or **if it acted in a manner inconsistent with due process of law**. Clark v. Huffer, supreme court of Wyoming 2016 WY 103; 382 p3d 1096. (Emphasis added).

Furthermore, the advisements are compulsory even though the petitioner may not actually be affected by the particular consequences. In McEwan v. State, supra, at 1166, the courts reversed the defendant's conviction because she was not given the firearms advisements when she pleaded guilty. The Court reached that conclusion even though McEwan had previously lost her firearms privileges as the result of a felony conviction and "she was not employed in an occupation that required her to carry a firearm, and we had no reason to believe that she [had or ever would] have aspirations to obtain such a job.

The doctrine or principle of *Stare decisis* mandates that petitioner be granted the same relief as other individuals whose situations are arguably indistinguishable. This doctrine or principle is that decisions stand as precedents for guidance in cases arising in the future is a strong judicial policy so fundamental in our law, and so congenial to liberty that the determination of a point of law by a court will be followed by a court of the same or a lower rank in a subsequent case which presents the same legal problem. The law requires that the court abide by the U.S. Constitutional Fourteenth Amendment, the right to Due Process and Equal Protection of the law. The Equal Protection triggers a distinct inquiry and emphasizes disparity in treatment by a state between classes of individuals whose situations are arguably indistinguishable. The trial court's failure to include the advisement required the court to set aside the conviction because a judgment obtained in violation of due process is void.

Where a defendant pled guilty before learning that pleading guilty would almost certainly result in deportation, it was an abuse of discretion to deny defendant's pre-sentencing motion to withdraw guilty plea because failure to advise defendant of immigration consequences could have at least plausibly motivated defendant to plead guilty rather than go to trial. United States v Bonilla 637 F.3d 980, (2011).

REASONS FOR GRANTING THE WRIT

(1) The right to bear arms is a constitutional right that petitioner cannot be deprived of without due process. The Court's failure to comply with F.R.Cr.P. Rule 11 and Wyo. Stat. Ann §7-11-507 advisement requirement in open court is an abuse of discretion. Both the F.R.Cr.P. Rule 11, and the Wyo. Stat. Ann §7-11-507 contains an '*unequivocal expression*' that failure to comply with the advisement requirement is a due process violation that shall result in the loss of jurisdiction and mandates that the judgment and conviction be vacated and set aside because it is void.

CONCLUSION

The right to bear arms is a constitutional right under the U.S. Cont. art 7, § 2 and Wyo. Const. art 1, § 24 Amendments. The F.R.Cr.P. Rule 11 and Wyo. R. Crim. P. Rule 11 requires the district court to advise a defendant pleading guilty or no contest to a felony in open court of all potential consequences and the potential loss of any entitlement to federal benefits. There are two distinct advisements required by Wyo. Stat. Ann. § 7-11-507(a)(i) and (ii), (1) requires the district court to advise a defendant pleading guilty or no contest to a felony of possible disqualification from possessing firearms under federal law and (2) requires notification that loss of the firearm privilege will affect the defendant's employment opportunities. The advisements are necessary to ensure the defendant enters his plea with knowledge of all potential consequences, and the failure to give them will result in reversal of the convictions. The advisements are compulsory even though the defendant may not actually be affected by the particular consequences. See Henry v. State, 2015 WY 156; 362 P3d 785, 788, (2015).

The court after imposing sentence also failed to advise petitioner of his right to appeal his conviction and counsel abandoned petitioner without procure and perfect the initial appeal.

Petitioner has been deprived of his Fourteenth and Sixth amendment rights due to his counsel's performance being constitutionally deficient and prejudicial for failing to timely procure and perfect the initial appeal and omitting a 'dead bang winner. A dead-bang winner is an issue which was obvious from the trial record, and one which would have resulted in a reversal on appeal and an appellate counsel's performance may be deficient and may prejudice the defendant only if counsel fails to argue a "dead-bang winner." See United States v. Cook, 45 F.3d 388, 394-95 (10th Cir. 1995);

> (Conversely, an appellate advocate may deliver deficient performance and prejudice a defendant by omitting a "dead-bang winner," even though counsel may have presented strong but unsuccessful claims on appeal.). Also see Banks v. Reynolds, 54 F.3d 1508, 1515 (10th Cir. 1995) ("An appellate advocate may deliver deficient performance and prejudice a defendant by omitting a 'dead bang winner,' even though counsel may have presented strong but unsuccessful claims on appeal.") (Quoting United States v. Cook, at 394-95 Fagan v. Washington, 942 F.2d 1155, 1157 (7th Cir. 1991) ("His lawyer failed to raise either [meritorious] claim, instead raising weaker claims. . . . No tactical reason -- no reason other than oversight or incompetence -- has been or can be assigned for the lawyer's failure to raise the only substantial claims that [defendant] had.").

The Sixth Amendment requires effective assistance of counsel at critical stages of a criminal proceeding. Its protections are not designed simply to protect the trial, even though ``counsel's absence [in these stages] may derogate from the accused's right to a fair trial." United States v. Wade, 388 U.S. 218, 226, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967). The constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice. This is consistent, too, with the rule that defendants have a right to effective assistance of counsel on appeal, even though that cannot in any way be characterized as part of the trial. See, e.g., Halbert v. Michigan, 545 U.S. 605, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005); Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985).

The validity of guilty plea requires that F.R.Cr.P. Rule 11 advisement requirements are fully met and the failure to do so is a due process violation and renders the judgment void and mandates that the judgment and conviction be vacated. As a matter of law the power of a court to vacate a void judgment is "independent of any statutory authority" and may be impeached at any time, in any proceeding and entirely disregarded by any tribunal. As a matter of law this Court has jurisdiction to vacate Petitioner's conviction. The correct rule is as stated in 3 Barron & Holtzoff, § 1327, p. 412 (1958). It is said when the judgment is void there is no question of discretion on the part of the court; either the judgment is void or it is valid; and when the matter of its validity is resolved, the court must act accordingly. Joyner v. State, Id. at 337, a judgment obtained in violation of due process is void."

Here is an important federal question that has not been, but should be, settled by this Court because the state court has so far departed from the accepted and usual course of judicial proceedings to call for an exercise of this Court's supervisory power. The court's failing to comply with the constitutional and statutory advisement requirements provisions at sentencing in open court has deprived petitioner of a constitutional right, the right to bear arms, is a due process violation that mandates that this court vacate and set aside the void judgment and conviction.

WHEREFORE

Petitioners prays that his conviction be vacated or in the alternative, remand back to the state with instructions to reinstate his direct appeal and appoint him effective counsel to assist in the appeal process and request that this Court provide whatever other relief it deems appropriate.

RESPECTFULLY SUBMITTED: this 26th day of November, 2018

BY: _____

John Chapman