IN THE SUPREME COURT OF THE UNITED STATES

JOHN CHAPMAN
Petitioner,
V.
THE STATE OF WYOMING
Respondent.

Case No. 18-6941

PETITION FOR REHEARING

COMES NOW; petitioner Pro Se, and hereby certifies that this petition for a rehearing is presented in good faith questioning the constitutionality of Federal and State Statute and not for delay. The court denied the writ of certiorari January 14, 2019 and therefore this petition is timely filed. The controlling effect of the Fourteenth Amendment is the right to due process and equal protection of the law. The U.S. Cont. art 7, § 14 Amendment states in part that: 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.

The Wyo. Stat. Ann §7-11-507, Wyoming Rules of Criminal Procedures, Rule 11 and Federal Rules of Criminal Procedures, Rule 11 contains an '*unequivocal expression*' that 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 any applicable forfeiture or potential loss of entitlement to federal benefits, unless the court personally addresses the defendant in open court and advises the defendant of the loss of that right. The failure of the court to comply with this requirement is an abuse of discretion, a violation of due process that results in a loss of jurisdiction to render the particular judgment of conviction because the legislature limited the court's jurisdiction by law, Statute and Rule to enter a judgment without due process.

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).

Wyoming Rules of Criminal Procedure Rule 11 states:

> **(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 potential loss of entitlement to federal benefits." (Emphases added)

Wyo. Const. art 1, § 24 states:

> "The right of citizens to bear arms in defense of themselves and of the state shall not be denied." (Emphases added)

Federal Rules of Criminal Procedure Rule 11 states:

> **(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." (Emphases added)

U.S. Cont. art 7, § 2 states:

> "The right of the people to keep and bear Arms, shall not be infringed." (Emphases added)

The court's failure to comply with these Federal and State Statute and Rules at sentencing is an abuse of discretion, a violation of due process that mandates the judgment and conviction be vacated and set aside. 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. A void judgment is not binding. 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).

ARGUMENT

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 (raping) his wife.

Petitioner is factually innocent, he did not engage in the conduct or a lesser included or inchoate offense or commit any other crime arising out of the information upon which he was convicted. There is relevant forensic scientific evidence that was not available at the time of trial because the prosecution withheld evidence from the discovery and petitioner's counsel at the time of trial. The specific forensic evidence is material to the case and is not merely cumulative of evidence that was known or reliant solely upon recantation of testimony by a witness against petitioner or merely impeachment evidence, it is forensic scientific evidence that establishes petitioners' factual innocence. Petitioner wanted to go to trial and would have gone to trial if not for counsels' personal conflict and failure to obtain the scientific forensic evidence that would have establishes petitioners' innocence.

The sentencing court lost jurisdiction to render the particular judgment when it failed to comply with the advisement requirements in open court at sentencing as required by law pursuant to Wyo. Stat. Ann §7-11-507, W.R.Cir.P., Rule 11 and F.R.Cir.P., Rule 11. This deprived petitioner of his federal rights to possess firearms pursuant to Wyo. Const. art 1, §24 and U.S. Cont. art 7, §2 without due process and affected the petitioner's ability to knowingly, willingly and intelligently make a choice among other choices when entering his plea. See Parks v. State, 325 P.3d 915 (Wyo. 2014); Cobb v. State, 312 P.3d 827 (Wyo. 2013); Pedraza v. State, 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.

A judgment obtained in violation of due process is void. There is nothing in the statutes which purports to or which could breathe validity into a judgment which is wholly void on account of being entered in the absence of jurisdiction over the defendant. A judgment which is wholly void is in legal effect a nullity; and consequently, no showing of merits is necessary in support of an application to have it vacated. 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, it is indicated that even though a void judgment is a nullity, 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, it is said under or apart from statutory provisions, invalidity of a judgment void for want of jurisdiction, as distinguished from a judgment merely voidable or erroneous, is ground for vacating it - at least if such invalidity is apparent on the face of the record.

Legislature has acted in a thoughtful and rational manner with full knowledge of existing law when it enacts a statute. Furthermore, the court has stated that it will not second-guess the wisdom of the 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. See Starrett v. State, 2013 WY 133, 286 P.3d 1033 (2012) and Balderson v. State, 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. . . Id. at P24 We therefore conclude that the firearms advisement was mandatory in this case, as it was in Starrett, because "exceptions not made by the legislature in a statute cannot be read into it." Starrett, ¶ 9, 286 P.3d at 1037 (quoting Hede v. Gilstrap, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005)). See also United States v. Nat'l City Lines, 80 F. Supp. 734, 741 (S.D. Cal. 1948) ("[A] statute general in its language is to be given general application. No exceptions will be read into a statute of such character."). Id. at

> P25 The district court's failure to advise Balderson as required by statute requires us to set aside the judgment of conviction and remand. . . .We presume that the district court will comply with W.R.Cr.P. 11 and 32 and §7-11-507 if that occurs.

Starrett, Supra, Id. at P18;

> Interestingly, the legislature in the State of Washington has made these policy decisions with both immigration consequences and firearms prohibition consequences. See State v. Breitung, 173 Wn.2d 393, 267 P.3d 1012, 1016-18 (Wash. 2011), 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. Id. at P19; "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 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 include that advisement or mandates that the court vacate and set aside the judgment and conviction. 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. 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. Joyner v. State, 174; 58 P3d 331, 337, (Wyo. 2002) and Emery v. Emery, 404 P.2d 745, 748-49, (Wyo. 1965). A judgment which is absolutely void is entitled to no authority or respect and thus, such a judgment may be collaterally attacked and impeached at any time, by any tribunal and will not be permitted it to encumber the record and entirely disregarded.

CONCLUSION

Petitioner present only those arguments for reconsideration that are supported by the record without resorting to speculation or equivocal inference and has identify a clear and unequivocal rule of law and facts that demonstrated his U.S. Constitutional rights have been transgressed in a clear and obvious, not merely arguable, way and is requesting that this court vacate and set aside his judgment and conviction. Petitioner is entitled the Fourteenth Amendment equal protection of the law and due process. The judgment entered against petitioner February, 2010 was entered in violation of due process and thus is void and may be impeached at any time, by any tribunal and will not be permitted it to encumber the record and entirely disregarded

WHEREFORE

Petitioner prays this Court order his conviction be vacated or in the alternative, remand his case back to the lower Courts with instructions to reinstate his direct appeal and appoint effective counsel to assist in the appeal process.

Petitioner requests that this Court provide whatever other relief it deems appropriate.

RESPECTFULLY SUBMITTED: this 28 day of January, 2019

BY: _____

John Chapman
26496 WMCE
7076 Rd 55-F
Torrington, WY
82240

IN THE SUPREME COURT OF THE UNITED STATES

JOHN CHAPMAN **Petitioner,** **V.** **THE STATE OF WYOMING** **Respondent.**	**Case No. 18-6941**

CERTIFICATION OF COUNSEL

COMES NOW; petitioner Pro Se, and hereby certifies that this petition for a rehearing is presented in good faith questioning the constitutionality of Federal and State Statute and not for delay. The judgment entered against petitioner February 5, 2010 was entered in violation of due process and is void. Grounds for review are as follows: To review an intervening circumstance of a substantial and a controlling effect of the U.S. Constitutional Fourteenth Amendment right to due process and equal protection of the law. A judgment obtained in violation of due process is void. The general rule is well stated in 50 C.J.S. Judgment § 499 (1997): 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 in which it is sought to be enforced or in which its validity is questioned, by anyone with whose rights or interests it conflicts. Thus, such a judgment may be collaterally attacked and impeached at any time, in any proceeding and will not be permitted to encumber the record and entirely disregarded by any tribunal.

WHEREFORE

Petitioner prays this Court grant his petition for a rehearing.

RESPECTFULLY SUBMITTED: this 28 day of January, 2019

BY: _____

John Chapman
26496 WMCF
7076 Rd 55-F
Torrington, WY
82240

IN THE SUPREME COURT
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JOHN CHAPMAN

Petitioner,

V.

THE STATE OF WYOMING

Respondent.

Case No. **18-6941**

PROOF OF SERVICE

I, John Chapman, do swear or declare that on this date, 28 day of January, 2019, as required by Supreme Court Rule 29 I have served the enclosed petition for reconsideration on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or delivered to a third-party commercial carrier for delivery within 3 calendar days.

The names and address of those served are as follows:

Wyoming Attorney General, 2320 Capitol Ave., Cheyenne, WY 82001

Office of the Clerk Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543-0001

I declare under penalty of perjury that the forgoing is true and correct. Executed on this 28 day of January, 2019

John Chapman
26496 WMCR
7076 Rd 55-F
Torrington, WY
82240

Appendix - A

AFFIDAVIT OF ELISABETH TREFONAS

I, Elisabeth M. W. Trefonas, declare as follows:

1. I have personal and actual knowledge of the following and, if called as a witness, could testify competently to the information below.
2. I was am counsel for the Petitioner in prior cases, including his habeas corpus petition in Case No. 14-CV-00250-NDF and I was his appellate counsel in Wyoming Supreme Court No. S-12-0085.
3. Petitioner was charged originally in two cases and separate Informations in Case No. CR-2008-167-J and Case No. CR-2009-224-J. On February 5, 2010, Petitioner entered into a plea agreement where he pled guilty to an amended Count I of Attempted Murder in the Second Degree and the additional charges were dismissed. He was sentenced that same day to "not less than 25 years nor more than 50 years" in the Wyoming State Penitentiary, with credit for 486 days of presentence incarceration already served. The Judgment and Sentence was filed February 9, 2010.
4. Petitioner sought to withdraw his plea agreement twice, once on February 11, 2010, and again on March 16, 2010. He filed a Motion for Appeal on March 17, 2010. This Motion to Withdraw Guilty Plea was addressed at a hearing on August 25, 2011, nearly 1.5 years after his request was made and almost 3 years after the initial Arraignment. Ultimately, the trial court denied Mr. Chapman's Motion.
5. Petitioner sought an appeal from the Judgment and Sentence and the Order Denying Defendant's Motion to Withdraw Plea of Guilty and I was assigned as an assistant public defender to investigate and draft his appeal, which was docketed as Wyoming Supreme Court case No. S-12-0085. I submitted Mr. Chapman's appeal brief on October 15, 2012.
6. I did not raise the argument that Mr. Chapman was not properly advised of his rights and/or his restrictions to firearms as a consequence of his guilty plea. I argued, for various other reasons instead, that his involuntary plea ought to be withdrawn.

7. Notably, the Appellee's Brief, on behalf of the State of Wyoming, was filed on November 27, 2012. The Wyoming Supreme Court issued its Decision denying the Appeal and issued its Mandate, divesting that Court of jurisdiction, on May 29, 2013.
8. I have, in fact, worked on numerous Wyoming Supreme Court Cases. One such case, *McEwan v. State,*2013 WY 158, 314 P.3d 1160 (Wyo. 2013), was overturned and remanded on the argument that I submitted concerning the trial court's failure to advise Ms. McEwan of her firearm rights and restrictions. I submitted Ms. McEwan's appeal brief on May 23, 2013. Her case was decided December 23, 2013.

9. I admit that between May 23, 2013, when I submitted Ms. McEwan's appeal on this issue, and when the Mandate in Mr. Chapman's case was issued on May 29, 2013, I did not raise the issue of the trial court's failure to advise Mr. Chapman of his firearm rights and restrictions.
10. As argued, in Plaintiff's Habeas Petition here, in addition to the Rule 11 advisements, pursuant to statute, "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... unless the defendant was advised in open court by the judge... of the collateral consequences that might arise from that conviction... and" the resulting impact that the disqualification may have on future any employment that requires use of a firearm. Wyo. Stat. § 7-11-507 (a)(i), (ii). *See Starett v. State,* 2012 WY 133, 286 P.3d 1033 (Wyo. 2012); 18. U.S.C. §922(g)(1),(9).
11. Thus, anytime a person in the State of Wyoming is convicted of a felony, the advisement that their right to bear arms will be terminated is *mandatory*, deemed so by the legislature and this Court, pursuant to statute. *Starett,* 2012 WY at ¶19
12. Notably, the case of *Starett v. State,* cited above, upon which I based my argument in *McEwan,* was decided on October 18, 2012. As of that date, it became known as law in Wyoming that the advisement of a defendant's firearm rights and restrictions was mandatory and then became an essential argument to overturn cases on appeal.

13. As stated above, despite the timelines of Mr. Chapman's Appeal in the Wyoming Supreme Court, I did not raise the issue of the trial court's failure to address him of his rights and restrictions concerning firearms when he entered his guilty plea.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge.

DATED this 12th day of October, 2015.

Elisabeth M. W. Trefonas
P.O. Box 2527, Jackson WY 83001
80 E. Pearl Ave., Jackson WY 83001
Phone: (307) 203-9019; Facsimile: (800) 572-6458

JURAT

County of TETON)
)ss.
State of WYOMING)

Subscribed and sworn to before me by Elisabeth Trefonas on this 12th day of October, 2015.

WITNESS my hand and notary seal.

CARLA DARTORA – NOTARY PUBLIC
COUNTY OF TETON
STATE OF WYOMING
My Commission Expires November 29, 2018

Notary Public / Court Clerk
My commission expires on: 11/29/2018