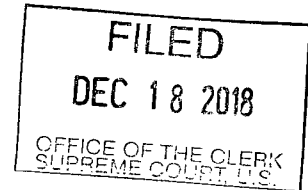


18-7135 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



IN RE WALTER EDWARD HARRINGTON - PETITIONER

ON PETITION FOR A WRIT OF HABEAS CORPUS

FEDERAL DISTRICT COURT, GRAND RAPIDS, MICHIGAN
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
my

PETITION FOR HABEAS CORPUS

WALTER EDWARD HARRINGTON #501309

PARNALL CORRECTIONAL FACILITY

1790 E. PARNALL RD.

JACKSON, MICHIGAN 49201-7139

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iii
INDEX TO EXHIBITS AND APPENDICES	v
EXTENUATING CIRCUMSTANCES	vi
OPINIONS BELOW (TIMELINESS)	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT WITH SUPPORTING LAW	7
SUMMARY	13
CONCLUSION	14
PROOF OF SERVICE	15

QUESTION PRESENTED

Did the lower/state courts lose subject-matter jurisdiction when Petitioner Harrington was arrested without a warrant, without a Probable Cause Hearing ever being held, and the conclusory Complaint later drafted did not show probable cause within the four corners of the complaint, nor were the complaint, nor warrant time/date stamped?

LIST OF PARTIES

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

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

COUNSEL FOR RESPONDENT

MICHIGAN ATTORNEY GENERAL

BILL SCHUTTE

P.O. BOX 30202

LANSING, MI 48909

RESPONDANT / WARDEN, J. BARRETT

COOPER STREET CORRECTIONAL FACILITY (JCS)

3100 COOPER STREET

JACKSON, MI 49201

TABLE OF AUTHORITIES CITED

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PAGE #

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STATUTES AND RULES

MCL 600.1974	* * * * *	11
MCL 764.1a	* * * * *	3, 11
28 U.S.C § 1738	* * * * *	11
MCR 2.107(G)	* * * * *	12
MCR 2.612(C)(1), (2) & (3)	* * * * *	12
MCR 6.102(A)	* * * * *	9, 11
MCR 6.104(G)(2)(a)	* * * * *	9
MCR 6.110(G)	* * * * *	9

OTHER

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Westlaw, Michigan Court Rules Practice (MCRP) 2612.13	* * * * *	12
Westlaw, Michigan Court Rules Practice (MCRP) 2612.18	* * * * *	11

INDEX TO APPENDICES

- (A) Filed Rule 60b Motion in Federal District Court in Grand Rapids, Michigan on 6/13/17, denied 11/13/17 using the old number 1:09-cv-122, and denied Certificate of Appealability again using the old number 12-1212.
- (B) Filed for Habeas Corpus in Michigan Supreme Court 3/16/17, #155476, Denied 5/31/17.
- (C) Filed for Habeas Corpus in Michigan Court of Appeals on 10/20/16 #335420 Denied 12/21/16.
- (D) Filed for Habeas Corpus in Michigan Circuit Court 8/18/16, denied 9/25/16. Filed for Habeas Corpus in Michigan District Court 6/27/16, denied 8/15/16.

The only issue ^{raised} above was lack of jurisdiction, which can be raised anytime and can't be forfeited or waived.

PRIOR APPEALS

- (E) Filed for certiorari in U.S. Supreme Court #12-10035, denied 10/7/13
- (F) Filed for Appealability and Habeas Corpus in Federal 6th Circuit 2/21/12 #12-1212, denied 9/14/12, denied en banc 10/31/12, denied by all members of the Court 11/15/12.
- (G) Filed for Habeas Corpus in Federal District Court, Kalamazoo, Michigan, 2/4/2009, #1:09-cv-122, denied 1/25/12 and denied Appealability.
- (H) Filed MCR 6.500 in Michigan Supreme court #136583, 5/30/08, denied 7/29/08.
- (I) Filed MCR 6.500 in Michigan Court of Appeals 10/29/07 3281560, denied 5/13/08.
- (J) Filed MCR 6.500 in Trial (Circuit) Court 8/29/07, denied 9/19/07.
- (K) Filed appeal in Michigan Supreme Court 5/31/06 #131336, denied 2/27/06.
- (L) Filed Motion for Reconsideration in Michigan Court of Appeals 3/9/06, denied 4/12/06.
- (M) Appellate Attorney filed Appeal of Right in Michigan Court of Appeals 6/16/05, #258401, denied 2/21/06.

EXHIBITS

- (A) COMPLAINT and WARRANT
- (B) State District Court Docket Sheet
- (C) Federal District Court Docket Sheet
- (D) Federal Circuit Court Docket Sheet
- (E) Denial of Motion #59, Docket Sheet #60.

THE EXCEPTIONAL CIRCUMSTANCES THAT WARRANT
THIS COURT'S DISCRETIONARY POWERS ARE:

The reviewing power of the U.S. Supreme Court in a criminal case is, on writ of habeas corpus, confined to the determination of the question whether the court which sentenced the prisoner had jurisdiction to try him for the offence whereof he was indicted and to sentence him to prison. See Ex Parte Carll, 106 U.S. 521 (1883).

Petitioner was arrested July 14, 2003, without a warrant. He was, and still is indigent. Petitioner asked for appointed attorney and filled out the required papers. The next afternoon the state District Court (Michigan) Judge gave petitioner the name and phone number of the next available attorney, then, without ANY attorney present in the Courtroom, petitioner was arraigned and the issue of bond was decided. The Complaint and Warrant (EXHIBIT A), issued after my arrest are not time/date stamped, and probable cause is not shown anywhere on the complaint AS required by this Court in Giordenello v U.S., 357 U.S. 480, 482 (1958) and culminating over 40 years later in a "Memorandum Decision" in Overton v. Ohio 534 U.S. 982 (2001); and no probable cause hearing was ever held, violating Riverside v. McLaughlin, 500 U.S. 44 (1991) (where this Court held that with a warrantless arrest a probable cause hearing must be held within 48 hours). ALL this is easily seen on the Docket sheet (EXHIBIT B) But with no attorney present to protect my rights these facts were overlooked. My Appellate Attorney also failed to present these jurisdictional issues in my only Appeal of Right.

Next, Petitioner filed a MCR 6.508 Appeal, albeit with other issues But no State Court ever answered the question of Jurisdiction. (see Appendices).

Next, Petitioner, in pro-per filed a habeas corpus petition in the U.S. District Court for the Western District of Michigan in Kalamazoo, Michigan. Case # 1:09-cv-122, Judge Janet T. Neff presiding with Magistrate Judge Ellen S. Carmody. Granted, petitioner is not a lawyer or even a law student, But pleadings done in pro-per "Should be Liberally construed." Haines v Kerner, 404 U.S. 519 (1972).

I now realize the issue of Jurisdiction was poorly raised within the issue of illegal arrest in my original petition for Habeas Corpus relief before Judge Janet T Neff, but as petitioner learned more about the Law, the Issue of Jurisdiction was re-written and submitted on 6-28-2011 (the original petition was submitted 2/12/09, so it had already been sitting over 2 years. (see EXHIBIT C, DOCKET #49). Six months later, on 1-23-2012, I resubmitted a very carefully detailed "Motion for Immediate Consideration due to Lack of Jurisdiction" (EXHIBIT C, DOCKET #59), but the day after the Court received the Motion, the FINAL OPINION and ORDER was issued (DOCKET #57 & 58 dated 1-24-2012) AND the MOTION was dismissed as "Moot" (DOCKET #60) (EXHIBIT D)

However, in the FINAL ORDER, the Federal District Court Judge likely did not realize the significance of Overton v. Ohio, 534 U.S. 982 (2001) stating:

"Petitioner mistakenly relies on Overton v. Ohio, 534 U.S. 982 (2001), a statement by Justice Breyer concerning the denial of certiorari in that case in reaching this conclusion []. That statement, however, is not an opinion of the Supreme Court and has no precedential value." ID Doc 57 Filed 01-24-2012, page 2-3 of 10, - page ID # 388-389.

Petitioner was denied a certificate of Appealability, case #12-1212.

Petitioner filed for Certiorari #12-10035, but the Supreme Court has ruled on this issue since 1958, Giordenello v U.S. supra, culminating in the "Memorandum Decision" in Overton v. Ohio, supra, and was denied certiorari.

Petitioner was advised to file a Habeas Corpus Petition in the state Courts raising only the issue of Jurisdiction so any relief is now exhausted, as Petitioner was denied leave in every Michigan State Court and now has no remedy left available in Michigan.

Since petitioner filed his Habeas Corpus Petition in the Federal District Court in Kalamazoo, he filed a Rule 60b Motion in the Federal District Court in Grand Rapids, Michigan, hoping to avoid Judge Neff but it was forwarded to her anyway. The Judge used the original # from her denial in 2009, case #1:09-cv-122 and denied relief, and the original number for the Federal Circuit Court, 12-1212 and denied a Certificate of Appealability, even though the law is very clear on the issue of Jurisdiction:

"A court at all times is required to question, sua sponte, its own Jurisdiction." Maxwell v. Dept. of Environmental Quality, 264 Mich. App. 567 (2004) and "On every writ of error or appeal, the first and fundamental Question is that of Jurisdiction, first, of this Court, and then of the court from which the record comes." Steel Co. v. Citizens, 523 U.S. 83, 94 (1998).

Clearly, this rule of Case Law is not being followed by the Lower Courts. Any and every ORDER issued by these Lower Courts is "VOID FROM THE BEGINNING" and issued in violation of their oath of office to uphold the Constitution and the supremacy clause.

I have served my minimum sentence of 15 years and still, I await an MSOP CLASS necessary for my release on parole, with no Idea of how much longer I will languish behind bars awaiting a class that I should have been able to complete years ago but was waived by a licenced psychologist, then a single parole board member overruled the licenced psychologist.

Jurisdiction can be raised at any time. See U.S. v. Adesida, 129 F3d 846, 850 (6th Cir. 1997) and "Jurisdiction is a courts statutory or Constitutional power to adjudicate a case and defects in it can never be forfeited or waived." U.S. v. Cotton, 535 U.S. 625, 630 (2002).

Petitioner is aware of all these facts and the proof is included in the EXHIBITS and appendices but I need this Court, the highest Court in this great nation, to grant the writ of Habeas Corpus and set me free, or this Court could REMAND BACK to a Lower Court with instructions, and a reminder that the Court "SHALL summarily hear and determine the facts, and dispose of the matter as Law and Justice require".

~~THESE~~ FACTS ARE MADE UNDER THE PENALTY OF PERJURY THAT THEY ARE TRUE, correct and not MISLEADING.

12-6-18

Walt Hamilton #501309

PAGE 3 of 3 VIII

P.S. WORKING typewriters are becoming very RARE in the MICHIGAN PRISON System.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue ~~and~~ review the judgement below.

LAST OPINIONS BELOW

[X] For cases from Federal Courts:

The opinion from the United States District Court Rule 60b dated 11/17/2017 adopted a prior habeas corpus number 1:09-cv-122 and Circuit Court number 12-1212, denying a certificate of appealability appears at Appendix A to the petition and is

[X] Unpublished.

[X] This Petition For Writ of HABEAS CORPUS IS TIMELY FILED ON 2-6-2018.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States District Court decided on my Rule 60B motion was November 28, 2017 (APPX A), using the numbers from my habeas corpus petition decided on January 24, 2012: District Court #1:09-cv-122 (APPX E), and denied a certificate of Appealability, Circuit Court # 12-1212, denied November 15, 2012 (APPX D)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a) and Supreme Court Rule 20, and the *U.S. Constitution*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION, Art. 1, § 9, cl 2:

"The Privilege of the Writ of Habeas Corpus shall not be suspended..." (emphasis added)

U.S. CONSTITUTION, Art. 4, §§ 1, 2, cl 1:

Section 1: "Full Faith and Credit shall be given in each State to public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." (emphasis added)

Section. 2. "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." (emphasis added)

U.S. CONSTITUTION, Art. 6, §§ 2-3

Section 2: "The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (emphasis added)

Section 3: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;" (emphasis added)

U.S. CONSTITUTION, Fourth Amendment:

"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 particularly describing the place to be searched, and the persons or things to be seized." (emphasis added)

U.S. CONSTITUTION, Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (emphasis added)

U.S. CONSTITUTION, Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." (emphasis added)

U.S. CONSTITUTION, Fourteenth Amendment, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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." (emphasis added)

28 USC § 1738

State & Territorial statutes and judicial proceedings; Full Faith and Credit

"The acts of legislature of any state, territory, or possession of the United States, or copies thereof, shall be authenticated by fixing the seal of the State, Territory, or Possession thereof.

"The records and judicial proceedings of any court of any State, Territory, or Possession, or copies thereof shall be proved or admitted on other courts within the United States and its territories and possessions by the attestations of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the attestation is in proper form." (emphasis added)

Michigan Compiled Law (MCL) 600.1974: Filing with the Court; Definition:

"The filing of pleadings or other papers with the court shall be made by filing them with the office of the Clerk of the Court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk." (emphasis added)

Michigan Compiled Law (MCL) 764.1a

"A Magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and finding 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." (emphasis added)

Michigan Court Rule (MCR) 2.110(G), Return for Examination for bind-over:

(1) Prosecutor's authorization for warrant, (2) proper complaint, (3) Register of Actions, (4) Examination return, and (5) Any recognizance's received.

STATEMENT OF THE CASE

Petitioner Harrington was arrested without a warrant at 8:00 pm on Monday, July 14, 2003. No Probable Cause Hearing was ever held, as required for any warrantless arrest (see Docket Sheet, Exhibit B). Probable Cause is not shown within the four corners of the conclusory Complaint, later drafted (Exhibit A) and neither the Complaint, nor warrant are time/date stamped.

The arresting officer, Trooper David Kaiser, from the Kalkaska (Michigan) State Police Post, admitted he was not a witness and had no personal knowledge of any crime (T 912) and he had no physical evidence that a crime happened or that Petitioner committed it (T 944). He had only coerced and contradicting stories of children but Petitioner was charged with five counts of CSC.

Even a first year law student should see that probable cause does not exist within the four corners of the complaint in the instant case, thus it is NOT a "proper complaint". By failing to present this issue to the State District or Circuit Courts, Counsel provided ineffective assistance.

The State Courts have never answered the question of jurisdiction.

Petitioner filed a Habeas Corpus in the Federal District Court in Grand Rapids, Michigan (Judge Janet Neff, case #1:09-cv-122), albeit with other issues, which was denied, but on this jurisdictional issue, the Court stated:

"Petitioner mistakenly relies on *OVERTON v OHIO*, 534 U.S. 982 (2001), a statement of Justice Breyer concerning the denial of certiorari in that case is reaching this conclusion []. That statement, however, is not an opinion of the Supreme Court and has no precedential value." Id Doc#57, Filed 01/24/12, Page 2-3 of 10, Page ID#388-389.

Petitioner was denied a Certificate of Appealability, Case #12-1212.

Petitioner filed for Certiorari, #12-10035, but this U.S. Supreme Court has ruled on this issue many times, culminating with *Overton*, and denied certiorari.

At that time Petitioner was advised to go back to the state Courts again to make sure this issue was properly exhausted, so I filed a Habeas Corpus petition in each State Court arguing ONLY this jurisdictional issue, but still never got a reasoned answer from any state Court. Following the State Court denials, Petitioner filed a Rule 60b Motion in the Federal District Court but again Judge Neff denied the Motion and denied a Certificate of Appealability.

Overton v Ohio is a "Memorandum Decision" and as in all the cases cited therein, the complaint in the instant case sets forth the statute(s) allegedly violated, it refers to Petitioner and says he committed the crime. "But nowhere does it indicate how [the trooper] knows, or why he believes that [Petitioner] committed the crime."

Excluding traffic violations, Petitioner has never before been convicted of any crimes. I do not deny doing this crime but I believe everybody MUST follow the laws and Petitioner's Earliest Release Date (15 years) ^{was July 13, 2018} ~~is only six months~~ away so I have served the time. Since the State Courts never obtained jurisdiction, I pray this Honorable Court will REVERSE this conviction with Prejudice to Reprosecution, and ORDER Petitioner's immediate release, or remand
BACK TO THE FEDERAL DISTRICT COURT WITH INSTRUCTIONS.

REASONS FOR GRANTING THE WRIT WITH SUPPORTING LAW

Petitioner was arrested without a warrant at 8:00 pm on 7/14/2003. The Complaint later drafted by Prosecutor Koop (P-27240, now deceased) and signed by Trooper Kaiser as complaining witness states: "The complaining witness says that on the date and the location above (MANICIONA TOWNSHIP, ANTRIM COUNTY, MICHIGAN), the defendant, contrary to law," then concludes with five (5) counts of CSC. The Complaint is not time/date stamped (See Complaint, EXHIBIT A). And, warrantless arrests require a Probable Cause Hearing within 48 hours, Riverside v McLaughlin, 500 U.S. 47 (1991), but no hearing was held as confirmed by the Docket Sheet.

FACT 1. The U.S. Constitution, 5th Amendment gives all people the right to an "indictment of a Grand Jury" but many states stopped using the Grand Jury in favor of a "Proper Complaint". A proper complaint MUST comply with the Fourth Amendment, but also "due process of law", of the 5th and 14th Amendments.

FACT 2. The basis for the trooper's conclusions, and any other operative facts are omitted from the complaint, so it is insufficient to establish jurisdiction. It is axiomatic that a complaint is an affidavit, and the:

"sufficiency of an affidavit ... is an assessment confined to the four corners of the affidavit." U.S. v West, 520 F3d 604, 612 (6th Cir. 2008): "[E]ach and every fact which contributed to the affiant's conclusions need not be spelled out in the complaint. However, the complaint MUST contain enough information for the magistrate to conclude that the charges are not capricious and are sufficiently supporting to justify bringing into play the further steps of the criminal process." People v Nash, 2012 Mich.App. Lexis 1824 (citing Jabin v U.S., 381 U.S. 214, 224-25 (1965) (emphasis added).

FACT 3. The State's bare bones, conclusory complaint fails to meet the minimum requirements established by Giordano v U.S., 357 U.S. 480, 487 (1958) (holding that probable cause must appear on the face of the complaint), and consistently followed by the U.S. Supreme Court for the past sixty (60) years. See Overt v Ohio, 534 U.S. 982 (2001) (a MEMORANDUM DECISION). See cases cited therein.

FACT 4. The prosecution is responsible for drafting and typing the complaints pursuant to the Michigan Judicial Institute ("MJI"), which was created by the Michigan Supreme Court in 1977. "The complaint and warrant are drafted by []: (1) the prosecuting attorney, in cases of alleged violations of state statutes, ..." MJI, Criminal Procedure - Monograph Series 1-2 (copyright 2003), Issuance of Complaints and Warrants, § 1.6, p. 14.

FACT 5. "All lawyers that represent criminal defendants are expected to know the laws applicable to their clients defense." Osagiede v U.S., 543 F3d 399, 409 (7th Cir. 2008). Since all prosecutors are lawyers and all lawyers are deemed to know the law, prosecutors must also know the law before they can enforce it.

FACT 6. In a Motion Hearing held on 2/19/2004, Prosecutor Charles Koop, said he had been a prosecutor for 14 years (p 17), thus, he knew the complaint was insufficient, however, that did not stop him from drafting and typing these insufficient charging instruments (Complaint & Warrant), and signing the "Warrant Authorized on" section of the complaint. Mr. Koop certified to the Magistrate that probable cause existed when, in fact, the complaint was insufficient under Federal law or the constitutions. So, the prosecutor knowingly committed "fraud on the court" by certifying that probable cause existed to initiate criminal process when, in fact, the complaint must fail under the Giordenello precedent. See Demanjuk v Petrovsky, 10 F3d 338, 356 (6th Cir. 1993) ("The Supreme Court has recognized a court's inherent power to grant relief for 'after-discovered fraud,' from an earlier judgment 'regardless of the term of [its] entry.'")

FACT 7. The 86th District Court failed/lacked the ability to "Certify and Transmit" what it did not have and no prosecutor's authorization for a warrant application or complaint exist on the Court Docket/Register of Actions. Further,

the "Complaint Felony" & "Warrant Felony" are not clerk time/date stamped so they are incompetent of the record and violated Petitioners 6th Amendment Right to be informed of the Nature and Cause of the accusation against him.

Without a "proper complaint" -- as required by both Court Rule [MCR 6.102(A), 6.104(G)(2)(a)] and Statute [MCL § 764.1a(1)] -- one of five essential documents required for the return of examination [MCR 6.110(G)], the Bindover to Circuit Court was INVALID. Hence, the District Court was STOPPED from filing said return; which is an absolute requirement for the Circuit Court to acquire personnel and subject-matter jurisdiction. People v Goscke, 457 Mich 442, 459 (1998), citing People v Evans, 72 Mich 367, 387-88 (1988) ("had no return been filed, the circuit court would not have acquired jurisdiction over the case or the accused,"), FURTHER, the prosecutor was STOPPED from filing an information. See People v Glass, 464 Mich. 266, 278 (2001). As shown above, the prosecutor acted in bad faith, violated his "Oath of Office", violated the public trust and committed fraud on the Court and these bad acts bar re prosecution.

FACT 8. Without a "proper complaint" the court DID NOT obtain subject-matter jurisdiction. In Steel Co. v Citizens, 523 U.S. 83 (1998) the Court stated:

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCordie, 7 Wall 506, 514, 19 L.Ed 264 (1868). "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes." Steel Co. 523 U.S. at 94.

FACT 9. Jurisdiction issues can be raised at any time. U.S. v Adesida, 129 F3d 846, 850 (6th Cir. 1997). "Jurisdiction is a courts statutory or constitutional power to adjudicate a case and defects in it can never be forfeited or waived." U.S. v Cotton, 535 U.S. 625, 630 (2002).

A "void judgment is a legal nullity and a court considering [the issue] has no discretion in determining whether it should be set aside." Jordan v Gillman, 500 F2d 701, 704 (6th Cir. 1974).

FACT 10. Since the knowledge of a testifying police officer is imputed to the prosecutor, Akwari v Booker, 572 F3d 252 (6th Cir. 2009), the prosecutor knew the trooper was not a witness and had no personal knowledge of any alleged crime (T 912) and no physical evidence whatsoever (T 944) so the trooper would commit perjury at a Probable Cause Hearing, violating Giglio v U.S., 405 U.S. 150, 153 (1972). This probable cause hearing is required within 48 hours for all warrantless arrests under Riverside, supra, but no Hearing was ever held.

"Where a complaint or affidavit is not shown to be based on personal observation of the complainant or affiant, the magistrate must be informed of some of the underlying circumstances on which the informant has based his conclusions and on which the affiant determined that the informant was credible and his information was reliable."
Spinelli v U.S., 393 U.S. 410 (1969)

FACT 11. Counsel was ineffective for failing to address the fact that the bare bones, conclusory complaint does NOT show probable cause for any arrest and could NOT support the independent judgement of a disinterested magistrate. Strickland v Washington, 466 U.S. 668, 693-696 (1984). Nor did Counsel notice there is NO record of a "Probable Cause Hearing" on the Docket Sheet (Exhibit B).

FACT 12. Without any testimony or other proof (i.e. evidence, affidavits or witnesses) to support the Complaint, the Court will find the magistrate had absolutely NO facts to: (1) confer jurisdiction; and (2) establish the required Fourth Amendment finding of probable cause to charge any crime(s) whatsoever.

"The question of jurisdiction does not depend on the truth or false hood of a charge, but upon it's nature: it is determinable on the commencement, not at the conclusion of the inquiry."
Fox v Martin, 287 Mich 147, 152 (1938).

FACT 13. The magistrate abandoned her "neutral and detached" function, and failed to safeguard the rights of the accused, acting in a manner inconsistent with due process of the 5th and 14th Amendments, becoming merely as a "rubber stamp" for the police. See Aguilar v Texas, 378 U.S. 108, 111 (1964).

5 All Courts (whether Judge or Magistrate) are "deemed to know the law and apply it in making it's decisions." See Lambrix v Singletary, 520 U.S. 518, 532 n.4 (1997); People v Cushman, 65 Mich.App. 161, 166 (1976).

FACT 14. Thus, the magistrate knew, or should have known, the complaint was insufficient to confer jurisdiction and joined the prosecutor and the trooper's conspiracy to commit FRAUD on the Court, the People, and the Defense.

FACT 15. "Fraud on the Court is perpetrated when some material fact is concealed from the court or when some material misrepresentation is made to the court. (Westlaw, MCRP § 2612.18).

In the instant case, the prosecutor clearly "concealed" and/or "misrepresented" the fact that the trooper didn't have probable cause since the victims testimony during interrogation contradicted each other. Without further investigation the trooper arrested Plaintiff without a warrant and violated Plaintiff's procedural and substantive rights as guaranteed by the Due Process and Equal Protection Clauses of the 5th and 14th Amendments, with the initiation of criminal process without a "proper complaint" as required by: (a) U.S. & State Constitutions; (b) U.S. & State Supreme Court precedents; (c) MCL § 764.1a; and (d) MCR 6.102(A).

FACT 16. The Papers titled "COMPLAINT FELONY" and "WARRANT FELONY" "show no time stamp or other indication that the [papers] w[ere] genuine and received for filing." Howard v Bouchard, 405 F3d 459, 486 (6th Cir. 2005)

FACT 17. The Constitutional prohibitions in Art. 1 § 9, cl. 2; Art. 4, §§ 1, 2, cl. 1; Art. 6, §§ 2-3, apply to the State Court papers that are not officially filed and therefore, not "filed or pending" as mandated by MCRs cited above, contrary to 28 U.S.C. § 1738; MCL 600.1974; U.S. v Lombardo, 241 U.S. 73, 76 (1916)(A paper is filed when it is delivered to the proper official and by him received and filed) which bars this conviction and mandate automatic reversal.

FACT 18. To "endorse" as mandated by MCR 8.119(C): "The clerk of the court shall endorse on the first page of every document the date on which it is filed."

Therefore, the Complaint and warrant are incompetent of the record and must be stricken from consideration. Howard, 405 F3d at 468.

"It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk. If the clerk docket papers on a date other than the filing date, the clerk shall note the filing date on the register of actions." MCR 2.107(G).

FACT 19. The importance of Court Records, Reports, and duties of the clerks, is beyond question. The Court Rule (MCR 8.119) uses mandatory language (must and shall) thirty-one (31) times to make clear the significance of the record.

"The word 'shall' is ordinarily 'the language of command.'" Alabama v Bozeman, 533 U.S. 146, 153 (2001)(internal citations omitted).

"'Must' does not allow for any choice. It means compulsion, obligation, requirement..." Websters New World Dictionary.

FACT 20. MCR 2.612(C)(3) authorizes a court to set aside a judgement for fraud on the court. The one year limitation of MCR 2.612(C)(2) and the doctrine of laches DO NOT APPLY when fraud on the court is alleged. See WESTLAW, MCRP § 2612.13. MCR 2.612(C)(1)(d) authorizes relief from a void judgement:

"A motion under this provision differs from a motion on other grounds in that there is no discretion on the part of the court. Relief must be granted if the judgement is void, and there is no time limit on attacking a void judgement. The one year limit is expressly inapplicable, and even the requirement that the motion be made within a 'reasonable time,' which seems literally to apply to all motions, under MCR 2.612(C), cannot be enforced on motions attacking a void judgement." See also Detroit Auto Inter-Insurance Exchange v Maurizio, 129 Mich.App. 166 (1983).

FACT 21. The right of a court to set aside for fraud is well established. U.S. v Throckmorton, 98 U.S. 61 (1878); Scott v Harper Recreation Inc., 444 Mich. 441, 446 n.3 (1979); NOVI v Children's Trust, 473 Mich 242, 254 (2005).

"Habeas lies to enforce the right of personal liberty; when that right is denied and a person is confined, the federal court has the power to release him. Indeed, it has no other power; it cannot revise the state court judgement; it can only act on the body of the petitioner." Fay v Noia, 372 U.S. 391, 430-31 (1963).

SUMMARY

The above crucial FACTS are of the highest magnitude and change the entire legal landscape in this matter. Petitioner was arrested without a warrant and no Probable Cause Hearing was ever held, as proven by the Docket Sheet (Exhibit B). Anyone, even a lay person can see that the Complaint in the instant case contains only the arresting officer's conclusions, without anything for the Magistrate to find probable cause as required by the 4th Amendment and due process of the 5th and 14th Amendments. The Complaint and Warrant (Exhibit A) (created later) are NOT time/date stamped thus, not part of any record. As a prosecutor for 14 years, he knowingly committed "Fraud on the Court" which is a "radical jurisdictional defect" which can be raised at any time and can never be waived.

"A radical defect in jurisdiction contemplates, we think,¹³ an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission."
People v Price, 23 Mich.App. 663, 671 (1970).

Since these state-court judgments were obtained in clear absence of jurisdiction--without a "proper complaint," without probable cause to charge a crime or issue a warrant, without a time/date stamp, they are inconsistent with due process--the proceedings were thus "coram non iudice, 'before a person not a judge.'" Burnham v Superior Court of California, 495 U.S. 604, 608 (1990), thus without effect, a mere nullity and void ab initio (from the beginning).

"[R]egardless of the procedures the state deems adequate for determining the preconditions to adverse official action, federal law defines the kind of process a state must afford prior to depriving an individual of a protected liberty or property interest." Ford v Wainwright, 477 U.S. 399, 428-29 (1986).

Petitioner has been unlawfully incarcerated ^{over} ~~almost~~ 15 years - since July 14, 2003, with a minimum sentence of 15 years - and this is a manifest Miscarriage of Justice so I Pray for this Honorable Court's swift action and justice. Please also remember that these pleadings are done in pro per and should be "liberally construed." Reines v Kerner, 404 U.S. 519 (1972).

CONCLUSION

WHEREFORE, the above analysis shows that Petitioner was arrested without a warrant requiring a Probable Cause Hearing within 48 hours, which was never held. Probable Cause does not exist within the four corners of the Complaint or Warrant (later created) so they're insufficient as a matter of law. There is no date/time stamp, so the Complaint and Warrant are NOT filed, thus the state Courts lacked jurisdiction and the conviction is VOID. Counsel was ineffective for failing to notice these facts. Therefore Petitioner Prays this Honorable Court will ORDER Petitioner's entire conviction reversed with prejudice to reprosecution, GRANT a Writ of Habeas Corpus, and ORDER Petitioner's Immediate and Unconditional Release, or remand back to the Federal District Court WITH INSTRUCTIONS.

DECLARATION & VERIFICATION

I declare under the pains of perjury that the foregoing is true and correct by personal knowledge, information and belief.

Dated 1/30/2018

Respectfully submitted,

Walt Harrington

Walter Edward Harrington 501309

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