No. 18-7357

IN THE

SUPREME COURT OF THE UNITED STATES

David Frazier — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Fraizer
(Your Name)

P.O. Box 35440
(Address)

Memphis Tennessee 38184
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1). Is petitioners claims Time Barred Under The Favorable Termination Rule Founded under Heck V. Humphrey, 512 U.S. 477 (1994) When he brought the 1983 suit Nine months after such favorable Termination?

(2) Was the Order Granting the briefing Schedule too suggestive asto the claims petitioner had to address,as petitioner is pro-se?

(3). Is Haines V. Kerner, 404 U.S. 519 (1972) StillGood law?

(4) Did the Sixth Circuit violate the Fifth Amendment Equal protection by denying petitioners suit but Remanding a similarly Situated individuals identical claims?

(5) Is it ever proper for a court to dismiss a petitioners claims without allowing an amendment, or is it proper for courts to tail to address all substantive claims for relief?

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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TABLE OF AUTHORITIES CITED

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

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

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

[X] reported at 2017 U.S. App. Lexis 20579; 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[ ] is unpublished.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 B to the petition and is

[ ] reported at 2016 U.S. Dist. Lexis 150395; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] 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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was October 17, 2017.

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

[xxx] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Jan 24, 2018., 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. § 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

Atricle [IV] of the Constitution States: The Right of the people to be secured in their persons, houses, paters, and effects, against unreasonable searches and seisures, shall not be violated.

Atricle[v] States: No person shall be held for a capitol, of otherwise infamous crime, nor be deprived of life, liberty, or property, without the due process of law.

Article[VIII] States: Nor Cruel and Unusual Punishment inflicted.

Article[IX] States: The emueration in the constitution of certain rights, shall not be construed to deny or disparage other retained by the people.

Article[XIV] States: Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within it's jurisdiction the Equal protection of the laws.

Tennessee Code Ann §29-20-310(c)
Tennessee Code Ann §99-21-101
Tennessee Code Ann §40-35-104
Tennessee Code Ann § 40-2-146
Tennessee Code Ann §41-2-150
Tennessee Code Ann §40-20-111(b)
Tennessee Code Ann §40-35-210(c)

STATEMENT OF THE CASE

On June 16, 2004 Petitioner, through Counsel Richard Hughes, was able to come to an agreement dealing with two criminal evading arrest charges. The agreement was for petitioner to plead guilty to the two charges in exchange for concurrent 2 year sentences each.On July 19, 2004 the trial court and through the State A.D.A Crump accepted the guilty plea and pronounced the sentence. petitioner had several violations stemming from this conviction. In Sept 14, 2007 petitioner placed the courts on notice that his sentence calculation was in error. On Setp 17, 2007, Former Circuit Judge Carroll Ross entered an order granting petitioner credit with all time served in this case. Petitioner did not recieve the additional credit, this was too after several letters to various actors one being Sara Boring former Jail administrator, and the Tennessee Department of Correction. Petitioner did not recieve the credit complained of, instead was released from custody in 2008. Thus in 2010 petitioner was convicted under the Career Offender provision stemming from the use of these two convictions to 294 months. Some 14 years extra under the guidelines. Thus in 2013, Tennessee General Assembly approved and ratiifed Tennessee, Rule of Criminal Procedure 36.1. This provision was just like it's sister provision Rule 36, in that it allowed the motion to be filed at anytime, to seek the correction of an illegal sentence. While rule 36 only allowed you to correct clerical error's, both provisions at the time allowed these motions to be filed "at any time." Thus on September 23, 2013, petitioner filed a pro-se motion to correct an illegal sentence

pursuant to rule 36.1, claiming a violation of the Presumptive minimum sentence under Tenn. Code. Ann §40-35-210(c), because the maximum under the range of avalible punishment, while the standard range was indeed 1-2 years, under Blakley V.Washington, 542 U.S. 296 (2004) rational that range absent an jury find arrgavating factors the presumptive minimum which was one year was the minimum under Gomez V. State, 239 S.W. 733 (Tenn. 2007). Additionally on October 7, 2013, petiitoner through dilligent discovery filed another supplemental pleading, because in addition to the above violation of constitutional law, the court also violated the Statute Tenn.Code. Ann §40-20-111(b) and Tenn. R. Crim. P. 32(c)(3)(C) by promising concurrent sentencing, when such sentencing is unconstitutional. On November14, 2013 the trial court summarily denied the petition. On November 18, 2013, petitioner timley filed a notice of appeal. On June 16, 2014, the Tennessee court of Appeals on the State's conceeding on such matters, reversed stating the appeal is well taken, the trial courts dismissal, and remanded the case back to the trial court for a hearing consisteng with Tenn.R. Crim. P. 36.1. On July 21, 2014 through Newly appointed counsel, petitioner again was promised another illegal sentence. This is so despite clear guidance of Tenn. R. Crim. P. 36.1, and the Appellate court opinion in this case. The court in allowing petitioner to withdraw his July 19,2004 plea agreement did not do the following clear rule statements:

(1) Subsection (c)(3) States in relevant part of Rule 36.1: If The defendant chooses to withdraw his plea, the court shall file an order stating it's finding that the illegal provision

was a material component of the plea agreement, stating that the defendant withdraws his or her plea, and reinstating the original charge against the defendant.

(2) Because the A.D.A. Robinson in entering the judgments in this case entered corrected judgments, as mentioned above, once the court finds the material component of the plea, hence allowing him to withdraw the plea, the original charges against defendant was restored. Corrected judgments could not be entered.

Because of this violation of the clear rule's, on April 27, 2015 petitioner sought redress of these error's. Specifically Petitioner asked for specific performance of:

(1) either set-aside the plea and order, and file an original order and judgment in accordance with the rules text, or;vacat

(2) vacate thesentence and conviction and dismiss the case in the intrest of justice.

On August 20, 2015, the trial court granted petitioners petition, instead of the requested relief, ordered an evidentary hearing. Additionally he vacates the orders and corrected judgments as void-ab-initio. On December 15, 2015, the trial court starts out by violation the rule 36.1's text: Tenn.R. Crim. P. 36.1 States "Notice on any motion filed pursuant to this rule shall be promptly provided to the adverse party. If the motion states a colorable claim that the sentence is illegal, and if defendant is indegent and is not already represented by counsel, the trial court shall appoint counsel to represent the defendant. The adverse party shall have thirty days within which to file a written response to the motion.

The trial court did not appoint counsel to represent petitioner. Nor did the adverse party file a written response to the matter. Additionally the court did not give petitioner notice that such evidentary hearing was going to be held. After giving the State a second bite at the apple, along with subsequent case law dealing with such claims after the mandate issued in this case (August 20, 2014) and the same day the illegal order's and corrected judgments became "final", the trial court denies petitioners rule 36.1 motion stating that the convictions were purportedly expired, effectively re-instating the eariler July 19, 2004 original judgments and original plea agreement, which was the first basis of the court , State, and defendant agreeing to withdraw, because if it's illegality. In arguing that the measure taken by the trial court was also illegal, petitioner reminded the court that it would be a violation of ex-post facto to retroactively increase petitioners sentence, because of subsequent caselaw that is a departure from eariler caselaw, that would prove a disadvantage to petitioner. Additionally petitioner reminded the court that the judgment and argeed order had became final 30 day's after it's entry. Indifferent to petitioner acting pro-se, disregarded his arguements. In entering an order of dismissal December 30, 2015, the trial court ultimately make's petitioners whole case for petitioner, to be presented in federal forum.
In the order the trial court makes valid relevant points in favor of petitioner. First of which:
(1) agrees that the sentences imposed in this case are illegal. In recognizing that they are indeed illegal, the trial court quotes Tenn.R. Crim. P. 32(c)(3)(C) titled Mandatory Consecutive

sentences" Whether the judgments expresses or not, consequtive sentencing for felonies committed while released to bail. Thus under this rational the sentence's are not expired because only one sentence has been served.

(2) recognizes that the illegal nature was contained in the written negotiated plea agreement.

(3) recognizes albeit unproperly, that one of petitioners true motives in pursuing this motion was to vacate one felony conviction off his record, or agree to a new plea of identical terms (July 21, 2014) so he could there after challenge the length of his current, Federal prison sentence. (See State V. McClintock, 732 S.W. 2d 268, 271 (Tenn. 1987)) holding that facially invalid judgments may not be used to enhance a subsequent sentence. As biased as this order of dismissal is, this is but one of the myraid of due process violations.In any event petitioner would like to point to BUtler V. Eaton, 35 L.ED 713, 141, U.S. 240 (1891)(Stating:because Federal judgment complained of was based on an overturned State court decision, this court reversed the Federal judgment and remarked that the reversed State court decision "ought never to have existed". While litigation was still going in this case, petitioner in 2014 filed suit, the basis of which this case at at this stage, the various violations, of due and Equal protections guaranteed in the bill of rights. In 2016, the District court without allowing petitioner to amend and without service of such complaint to the adverse party, stating all actors qualified under absolute, and quasi-judicial immunties, and the rest of the issues time barred, dismissed the suit. The court also refused to exercise

it's discretion in the state questions of law the suit brought.Thus petiitioner timely filed a notice of appeal in 2017, the appellate court granted a "briefing schedule. The Briefing schedule was inadequate in it's issuance, in that it was too suggestive as to the issues petitioner needed to address. See Exhibit "A". Thus in 2017 the appellate court denied petitioners suit, stating some vague unintelligable answer petitioner did not understand. Additionally the court stated, since petiitoner did not address the remaining claims they were wiaved. Petitioner promptly filed an extension time to request rehearing/ enbanc, with the notation at the conclusion that the order granting the briefing schedule was too suggestive as to the issue I only had to address. Thus petitioner filed the timely rehearing / en banc in which the court denied with the same Skeletal order recieved in Case No. 17-7562 which this court denied review. (See Reforming The Federal Judiciary by Retired Judge Richard Posner). This is the writ that issed from the lower courts decisions. As a Pro-se, ANd having been "enlightened" to the practices of the lower courts handling of Pro-Se petitions, petitioner knows without a doubt, his Fifth amendment Equal protections has been violated.

REASONS FOR GRANTING THE PETITION

This is an extraordinary case that this court should review. The specific Bill of Rights that has been violated in this particular situation goes against the most fundamental guarantees that are afforded to individuals such as petitioner. Simply because petitioner is pro-se does not afford the courts to deny him acess to the judges. This type of systemic treatment toward pro-se litigants goes against the most fundamental under-pinnings Haines V. Kerner, 404 U.S. 519 (1972) were founded upon.But only so if it's treated as reliable and valuable weight under the professional norms of our American Jurisprudance. These unfair treatments of pro-se pleadings in today's courts, if exposed in other countrys for what it's worth in their own courts, one would expect better treatment of precedent set by this court. No Matter the race color or creed, if a court could justify a miscarraige of justice of the treatment of pro-se individuals such as in this case, then due process is just termology. The court here errored in two important ways:

(1). The Order granting the briefing schedule was too suggestive as to the claims petitioner could address or bring for consideration.

(2). when petitioner complained of this suggestiveness, The court should have allowed petitioner to at least amend his complaint. A Pro-Se individual simililarly situated enjoy's such allowance under most cases.

Thus if petitioners (pro-se) has to meet a threshold to trigger this allowance, did petitioner meet that threshold to be allowed

to amend his complaint with assistance of counsel? THis case is a clear example of a violation of Equal protection. Indeed, the Sixth Circuit has allowed one such case to prevail. In Harrison V. Michigan, 772 F. 3d 768 (July 10, 2013). Here the petitioner case was hinged upon erroneous sentencing of petitioner by the hands of State actors, Stemming from a 1986 Jury conviction. On collateral review, the Michigan Court of Appeals Held that Harrison had been improperly sentenced and ordered that a corrected judgment be issued. People V. Harrison, NO 279123, 2008 Mich App. Lexis. 1824 2008 WL4276544 (Mch.Ct. App Sept 16, 2008). In 2010 Harrison filed the instant action against the State of Michigan and a number of State actors. Seeking damages and a reduction in a subsequent unrelated prison sentence that he was still serving out the time this action was filed. The District court like this case dismissed the complaint holding that some of the defendants were immune from suit under the Eleventh Amendment; that the claims against the remaining defendants were-time barred. The court of Appeals reversed the District Courts Judgment and remanded the case for futher proceedings as to his time barred 1983 claim. In doing so the Court Held: With regard to the statute of limitations, however, the district court was mistaken when it concluded that controlling authority on the question of timeliness in Harrision's case was Wallace V. Kato, which invlolved a §1983 claim for false arrest, rather than invalid convictions or sentence. 549 U.S. at 389.THe latter situation, which form the cause of action here, is instead controlled by the Supreme court's opinion in Heck V. Humphrey, 512 U.S. 477 (1994). This court in Heck States: In order to recover damages for allegedly unconstitutional

convictions or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a Federal court's issuance of a writ of Habeas corpus, 28 U.S.C.§2254: Heck, 512 at 486-87)Emphasis Added).Relevant here in this case at bar, this court stated: On the other hand "if a district court determines that plaintiffs action, even if sucessfull, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit. In this case, just like Harrison's 1986 sentence has, in fact been "declared invalid by a State tribunal authorized to make such determination". Unlike Harrison, in this case, petitioner has twice had his sentence and conviction declared invalid by a state tribunal authorized to make such determination". These favorable terminations were made on July 21, 2014 when petitioner was allowed to withdraw his guilty plea, and agree to a new sentence, which lead to the second declaration of the sentence and convictions of invalidness on Dec,15 2015, when the Newly appointed trial judge voided as void ab-initio the july 21, 2014 judgments and order allowing petitioner to withdraw his plea. THus within the one year statute of limitations set out in Tennessee, petitioner filed the suit, Like Harrison, petitioner action is not untimely. In concluding the Harrison court stated: Applying either THe Ruff formulation of the accural standard or the Supreme court;s mandate in Hec k, the proper result here

is plain: the Statute of limitations applicatable to Harrison's §1983 complaint was not triggered until the Michigan court of Appeals issued it's ruling in 2008.As a result, that complaint was timely when filed in 2010, and Harrison is entitled to pursue his claim on the merits. We therefore reverse the district court's judgment nad remand the case for futher proceedings. Yet the Court without explaination other than the erroneous immunity issue denied petitioners motion even after agreeing petitioner was correct about the timeliness issue. As stated eariler, the order granting petitioners beiefing schedule was very suggestive that petitioner only offered partial arguements, specifically the timeliness.Had petitioner known that he had to address more he would have done so. In any event, to the extent that the court used Drain V. Leavy, 504 Fed App's 494 (Nov 9, 2012) for the proporsition that it forecloses petiitoners immunity issue is misplaced. WHile it's a grey area on who can be sued and who has ablolute Immunity, it cannot be the basis for petitioners claims being dismissed. That is so because:

(1) While petitioner did seek damages on judicial officers, he also sought injunctive relief as well.

(2) Futher, petiitoner sought damages against the State of Tennessee which was not addressed by either the District Court nor the COurt of APpeals.

This egregious measure of not addressing all of pro-se litigants claims should not be allowed to stand, especially in the face of allowing Pro-Se's to amend complaints.The Statement by the District court saying that petitioners petition was hard to follow, should

have been cause for allowing an amendment complaint with the assistance of counsel. Because, taken as true all of petitioners claims, in the face of this courts prior precdents, petitioner's similiraly situated suits should never had made it to this stage. Especially in the face of the case law petitioner relied upon for the proposition of the claims he advanced. See Harrison V. Michigan, 722 F. 3d 768 (July 10, 2013), where this court Denied Cert by the State. Indeed this court has held that Municipalities are included as persons within the meaning of section 1983, and therefore under the Statute. MOnell V. dept of Social Services, 436 U.S. 658 (1978).A suit against an individual in his official capacity is "only another way of pleading an action against an entity of which the officer is an agent". id See Monell, 436 U.S. at 690.

A municipality may be held liable only 'when execution of governments policy or custom, whether made by it's lawmakers of by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury. Futhermore, for Municipal liability, there must be an affirmative link between the policy and the particular constitutional violation alleged.' The claimant has the burden of proof for establishing the existance on an unconstitutional policy and demonstrating the link between the policy and the alleged injury at issue. Bennett, 410 F. 3d at 818-19(Qoutations and citations ommitted.) Plaintiff must prove that this particular injuries were "incurred because of the execution of policy or custom". Board of County Comm'rs of Bryan County V. Brown, 520 U.S. 397, 405 (1997).

Petitioner since bringing this suit has two adverse experiences of individuals cited in this suit for a total of three policy of custom pratices which were so permanent and well settled as to constitute a custom of usage with the force of law. See(COA6 Cunningham,2003 U.S. Dist Lexis 22109, 2003 WL 23471541 At *14)(qouting Monell, 436 U.S. at 691) The relevant constitutional violations suffered are as follows:

(1) In 2004, petitioner was sentenced illegally under Tennessee law: Tenn.Code. Ann§40-35-210(c) (Above the presumptive minimum). Tenn. Code. Ann§40-20-111(b) Concurrent/ COnsecutive sentencing statute.

(2) In 2014, petitioner again was sentenced illegally under Tennessee law: Tenn. R. Crim.P. 36.1 (c)(3).

(3) Then after complaining about this and seeking redress of the subsequent illegal sentence, in 2015 was again injured at the hands of various plaintiffs in this suit. This time The violation was under Tenn.R. Crim. P. 36.1, and a violation of the rule of Mandate/ law of the case doctrine, as well as Due process and Sixth amendment, Equal protection rights.

Petitioner will compound of the various custom of policy's that this court (Polk County) lives by the way of complete ignorance.

(1). Petitioner orginally suffered an illegal sentence by being sentenced to two concurrent sentences, the basis for the direct inducement to the guilty plea. This was constitutionally invalid under Tenn.Code. Ann §40-20-111(b), and Tenn. R. Crim. P. 32(c)(3)(C). These statutes mandates consecutive sentences, for persons released on bail subsequent to substaining a felony offense. Additionally, the trial court erroneously sentenced petitioner to additional time above the Maximum

sentence, under Tenn. Code Ann §40-35-210(c), Tennessee;s sentencing statute at the time petitioner was sentenced had a presumptive minimum sentencing shceme that was held to violate the Sixth Amendment right to a jury to find fact's to increase a individuals sentence.

Petitioner in this case was charged and convicted of two class-E felonies. The range in that class is .9 to 2 years. The Standard offender range is one to two years, with the presumptive minimum sentence being the maximum within the range under this courts holding of Blakely V. Washington, 542 U.S. 296(2004). Thus, because of the two, two year sentences, and being sentenced under the determitive sentencing policy or scheme, petitioners sentence started over. Bringing petitioner to do over, and illegal sentence twice, effectively placing a restraint upon petitioners liberty some 1,008 day's past the jurisdiction or authority to hold petitioner. Indeed in Deal V. Polk County 2007 U.S. Dist Lexis 33910 (may 8, 2007), the court Stated: Even 30 minute detention after being ordered released can work a violation of a prisoner's constitutional rights under the Fourteenth amendment. It has been long recognized that prisoners has a clearly established right to be released from prison once a Judge's order suspending his sentence becomes final because at that point the state loses it's lawful authority to hold the inmate. Therefore, any constitutional detention unlawfully deprives an inmate of his liberty, a person's liberty is protected by the due process clause of the Fourteenth Amendment.

IS HAINES V. KERNER, 404 U.S. 519 (1972) STILL GOOD LAW?

This court ruled in Haines V. Kerner, 404 U.S. 519 (1972) which stated this clear rule: Pro-se litigants pleadings are to be construed liberally and held to less strigent standard than formal pleadings drafted by lawyers; If a court can reasonably read a litigant pleadings to state a valid claim on which he could prevail, it should do so despite failure to cite proper legal authority; confusion of legal throries, poor syntax and sentence construction, or litigants unfamilarity with the pleadings requirements. The violation of this Precedent is clear in the case, in denying petitioner redress, the court refused to acknowledge their own precedent as well as this courts, Specifically Heck V. Humphrey, 512 U.S. 477 (1994). This court held that "inorder to recover damages for allegedly unconstitutional conviction or imprisoment, or for other harm caused by actions whose unlawfullness would render a conviction or sentence invalid, a §1983 plaintiff Must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order declared invalid by a state tribunal authorized to make such determination, or called into question by a Federal court's issuance of a writ of Habeas Corpus 28 U.S.C §2254". Heck, 512 U.S. at 486-87. In applying this rational, the Sixth Circuit in a near identical suit at the one at bar, Harrison V. Michigan,772 F. 3d 768 (July 10, 2013), in reversing and remanding to the district court for futher proceedings Held: In this case, Harrison's 1986 sentence has, infact, been "declared invalid by a state tribunal authorized to make such determination" that favorable termination occurred

when the Michigan court of Appeals reversed Harrisons sentence in 2008, holding that "[he] was improperly sentenced to consecutive terms for his convictions," and remanded the case for entry of a corrected judgment. The court stated that Harrisions then filed the instant §1983 suit in 2010, within Michigans three- year Statute of limitations. as a result, this Federal action is not untimely. Thus, petitioner here, tried to follow suit; The facts of petitioner case is near identical to Harrisons: Petitioner in June 16, 2014 recieved a remand from the Appeals court of the State of Tennessee. No. E2013-CCA_R3-CD (June 16, 2014) holding petitioner stated a colorable claim for relief, mandating the court to appoint counsel and hold an evidentairy hearing, unless the parties agree to waive the hearing. On July 21, 2014, petitioner through counsel was able to withdraw his July 19, 2004 guilty plea, and agree to a new sentence in the matter. The Mandate issued in August 22, 2014. Thus Petitioner filed within the one year statute of limitations period setout by Tennessee's tort statute, thus petitioners suit too, should have been reversed, and counsel appointed as in HArrison. Futher, relevant to this case is the fact that the avenue petitioner used to seek correction of his illegal sentence Tenn. R. Crim. P. 36.1(c)(3), just like the language in the remand from the appeals court stated: If the illegal sentence was entered pursuant to a plea agreement, the court shall determine whether the illegal provision was a material component of the plea agreement, if so, the court shall give the defendant an opportunity to withdraw his or her plea. If the Defendant chooses to withdraw his or

plea, the court shall file an order stating it's finding that the illegal provision was a material component of the plea agreement, stating that the defendant wishes to withdraw his or her plea, and re-instating the original charge against the defendnat. The trial court did not follow the plain language, instead, acting in it's usual custom or policy entered a general order allowing petitioner to withdraw his plea agreement, and entering corrected judgments, when the rule calls for the original charges to be reinstated. Indeed, nowhere in the rules text does it allow the entering of corrected judgments. Petitioner in April 2015, filed another rule 36.1 well after the Mandate issued and after the judgments became final, sought again redress complaining of the illegalness of such improper pratices of entering corrected judgments and enterning an order that did not conform with the clear rules text. Again in showing their custom of policy, the new trial judge grant's petitioners motion as stating a colorable claim for relief, voided the 2014 judgments and orders as being void-ab-initio treated the matter as validly pending from the remand, and held a evidentary hearing, where he the court again violated the clear fules text of Tenn.R. Crim. P. 36.1(b) in two key ways.

(1) The Rule requires that notice of any motion filed pursuant to this rule shall promptly be provided to the adverse party inwhich that party has 30 day's to file the response. This did not happen as no response was filed.

(2) The clear rule also States: If the motion states a colorable claim that the sentence is illegal, and if the motion states

a colorable claim that the sentence is illegal, and if the defendant is indigent and is not already prepresented by counsel, the trial court shall appoint counsel to represent the defendant. Again Not following clear rules and following their own custom or policy, the trial court did not appoint counsel, instead had standby counsel. Indeed, on remand the retired trial judge already appointed counsel. Thus No notice of the granting of the motion filed in April 2015 was sent to petitioner or counsel in this case. Indeed, no where in the rules text does it approve of such pratices. Indeed, their is precedent from this court condeming this such practices of not appointing counsel at critical stages of adverse proceedings See Hill V. United States, 368 U.S. 424(1962) See also Martinez V. Ryan, 566 U.S. 1 (2012) Trevino V. Thaler, 133 S. Ct. 1911 (2013).

Indeed, the standby counsel makes clear that no one except for the trial judge and A.D.A. know that a hearing was granted in this case. In the transcripts of the proceeding he states: Your honor, I'm not aware of that today, that it was even on the docket today. I actually thought that matter had been resolved. Thus again no notice was given to either party that this hearing was going to take place. This can be seen on Page 1 of attached transcripts. Again on page 9 standby counsel states I didn't know this matter on the docket.

(3) The Standby counsel should not have been the one to represent petitioner because it was a conflict as I filed ineffectiveness of assistance against him on the original motion to correct

an illegal sentence filed in 2014.

When appointing counsel for petitioner, petitioner pointed this out to the trial judge. Attached on Appendix "D" page 2 of the transcripts of the July 21,2014 hearing you can see me explain that it was a conflict because Richard Hughes entered My Original plea agreement and that he would not be able to represent me. Thus what ever confusion that happened afterward should not fall upon petitioner. This is their policy or custom to totally disregard law as interpreted to any individual acting pro-se, or otherwise within the realm of the public defenders office. One of the many errors complained of in this writ. The Appellate and District court ended this case too quick as the record was still building, petitioner listed Jane and John Doe's in this suit for a specific reason, because the known and unknown john doe individuals were still commiting folly. Indeed, the Sixth Circuit courts recognize that all but the plainly incompenent or htose who knowingly violate the law, are covered from various suits in various context's under some kinds of common-law interpreted immunity protections. This case, in it's infancy provided enough proof that the courts

(1) The courts was put on notice, as to the various rules, and complaints made by petitioner,

(2) All but the plainly incompentent, or those who wanted to do their own thing and violate the law of several mandatory language emcompassed statutes, where it clearly lost it's jurisdiction to sentence petitioner. Thus as stands today with the judgments in place now, petitioner is under illegal

constitutionally inform judgments.

THE FOURTEENTH AMENDMENT

The Sixth Circuit courts in interpreting this courts holding in West V. Atkins, 487 U.S. 42 (1988) in the case of Herndon V. shelby County, 2013 U.S. DistrLexis 110568 (July 13, 2013) in listing several individuals in meeting the deliberate indifference to effectuate his timely release. the court held: to pursue a Fourteenth Amendment claim under section 1983, a plaintiff Must allege (1) a violation (2) of a right secured by the Fourteenth Amendment, and that (3) the violation was committed by a person acting under the color of state law. Stating as to the first element, the defendants violation of a right "is measured against a backdrop of common law of tort principles, including the traditional elements of tort liability as well as defense to liability. Just one of the many claims this suit emcompasses was addressed. Petitioner to alleged a violation of deliberate indifference, by alleging that a certian individual was put on notice of a sentence miscalculation. Shorts V. Bartholmew, 225 Fed App'/x 46 51 (2007) at 53. Regarding tha under this courts holding in Board Of Comm'rs of Braian County V. Brown, 520 U.S. 379 (1997) that :deliberate indifference is a "Strigent standard of fault", requiring allegations that a municipal actor "disregarded a known or obvious consequence". The threshold level of the allegation made in ths case has been more than met, through clear rules, statutes, and clearly established State and Federal law on matters as petitioner brings in hope's that this court

apply's all the clear rules, statutes, and clearly established case law as stood when, all mandates had issued on the matter raised pro-se, and threshold as contemplated in this courts well settled principles found in Haines V. Kerner, 404 U.S. 519 (1972). Thus berofe petitioner goes futher and begin to guess the minds of this court as to their interpretation of complex issues this case brings pro-se, without professional help so far. petitioner will conclude that it be best to conclude in hopes that this petitioner has rightfully met the threshold requirements of these complex issues as petitioners case reflects.

* CONCLUSION *

In concluding petitioner states that it's important to this case that this court place a siginificant emphasis upon point one of this following sections points:

(1) Petitioner currently has a pending Federal, criminal case pending in this court in Case No 17-7562 (Jan 26, 2018 Docket) where the state Charges complained of in this suit is the basis for petitioners incarceration. As mentioned eariler the trial court re-imposes vacated convictions that were no less viod than the one's subsequently vacated in this case. so as stands today, and the law that was current in this case when all mandates issued in this case, under the rule of mandate. law of the case doctrine, in place at the date relevant to these cases pending (August 20, 2014) these two cases are exceptional in their circumstances, of one applies the law

as written, petitioners interpretation of the cases that has been granted relief on the issues make clear that this court should grant the writ to stop an substantial injustice, not just to petitioner, but to the public reliance of this case as stands, as it conflicts with similarly situated individuals that has been granted relief.

(2) Petitioner did not intentionally fail to address all claims presented. The order issued in this case was suggestive as to theonly claims petiitoner had to address in order to obtain relief. Thus the error should not fall upon the pro-se individual in situations as this where petitioner complains of cubsuggestive orders from courts.

(3) Petiitone know's that ignorance of the law is not an excuse, but perfection of such law's is excusable to pro-se's like petitioner in this case, this case, if read in the right context, one will see this luxuray was not afforded to petitioner, hence the reason for the Question posed:

Is Haines V. Kerner, 404 U.S. 519 (1972) Stil good law?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 3-15-18