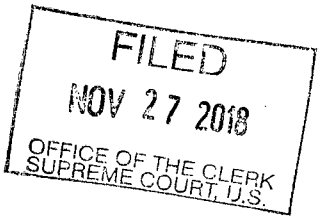
No. 18-7731



IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY EDWARD CIAVONE

Petitioner,

VS.

CONNIE HORTON, WARDEN

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Anthony Edward Ciavone #317010
Chippewa Correctional Facility
4269 West M-80
Kincheloe, Michigan 49784

[10] QUESTIONS PRESENTED

This Court held in Hollingsworth v Perry, 558 US 183 (2010), that its Rule 10(a) provides that "this Court will consider whether the courts below have so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of its supervisory power." This Court has "interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of judicial process." This Court insists that courts comply with the law. Id. US at 196. In cases in which ignored proof demonstrates judicial officers engaged in fraud on the court and caused fraudulent judgments to be made, this Court has supervisory power, to investigate and overturn those judgments. See Chambers v NASCO, Inc., 501 US 32, 44 (1991). Also see S & E Contrs v U.S., 406 US 1, 40 (1972)(SCt has supervisory power over the lower courts "by proof of fraud or such gross error as to warrant the implication of fraud.").

1.] Whether Supervisory Power of this Court is necessary to investigate and correct an extrinsic fraud upon the lower courts where irrefutable evidence proves federal judicial officers conspired and fabricated a State court competency hearing transcript, illegally authenticated and used it, disobeyed statutory procedures in obtaining records from State court, concealed and misrepresented proof of the fraud, then deceived others that the transcript is an official record of the State court; to deny Petitioner of his entitlement to relief?

2.] Whether Supervisory Power of this Court is necessary to reverse the lower courts' rulings where those courts used a void State court competency hearing transcript, to deny petitioner entitlement to relief, that was requested for challenge during State appeal, which was denied because no record existed to transcribe, and has not been filed in State court to date?

3.] Whether Supervisory Power of this Court is necessary to force the lower courts to adhere to binding precedents that have held where there are disputed facts concerning fraud on the court, the district court is required to conduct an evidentiary hearing to determine the truth?

4.] Whether Supervisory Power of this Court is necessary to reverse the lower courts' rulings and vacate petitioner's conviction because the lower courts made rulings that he was allowed to waive his Court Order for evaluation of mental competence to stand trial with report due, contrary to 18 U.S.C. § 4247(b),(c)'s mandatory language that the evaluation shall be conducted?

5.] Whether Supervisory Power of this Court is necessary to vacate the lower courts' rulings because they never acquired jurisdiction because Michigan did not have personal jurisdiction over petitioner when it violated the mandatory statutory procedures of 18 U.S.C. § 4247(b),(c), of a valid Order [to have him evaluated for competence to stand trial], as held by this Court's binding precedents?

6.] Whether Supervisory Power of this Court is necessary to reverse the lower courts' rulings where they ignored binding precedents on issue that Due Process requires competency hearings to be adequate, i.e., a determination of competency cannot be made without expert testimony by psychiatrist, and without introduction of psychiatric history; when they considered the fabricated competency hearing transcript?

7.] Whether Supervisory Power of this Court is necessary to reverse the lower courts' rulings where those courts ignored petitioner's claim and evidence that proves Michigan secretively, involuntarily, and illegally drugged him unconscious with tranquilizers, sedatives, and sleeping pills well beyond the FDA's recommended dosages, during his trial, and ignored this Court's ruling in Riggins v Nevada, 504 US 127, 134 (1992), that held that such acts are unconstitutional?

8.] Whether Supervisory Power of this Court is necessary to reverse the lower courts' rulings where those courts never consider five volumes of trial transcripts, as required by House v Bell, 547 US 518, 537-39 (2006) before opining that petitioner has not met the exceptional or extraordinary circumstances in support of his new evidence of actual innocence to overcome the gateway to defaulted claims?

9.] Whether Supervisory Power of this Court is necessary to reverse the lower courts' rulings for ignoring binding precedent of Thacker v Bordenkircher, 557 F2d 98, 99 (6th Cir 1977), where it holds that it is error for the district court to rely upon the findings and conclusions of a State appellate court without first reviewing the trial transcripts when deciding a constitutional challenge?

10.] Whether Supervisory power of this Court is necessary to reverse lower courts' rulings where those courts ignored binding precedents that allow reopening a case where newly discovered evidence proves extrinsic fraud on the court, void judgments, and jurisdictional defects occurred that resulted in fraudulent made judgments of claims already litigated?

PARTIES TO THE PROCEEDINGS

There are no parties to the proceedings other than those listed in the caption. The Petitioner is Anthony Ciavone, an inmate. The Respondent is Connie Horton, Warden of the Michigan Department of Corrections' Chippewa Correctional Facility.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS AND ORDERS BELOW

The July 19, 2018, Order of the United States Court of Appeals for the Sixth Circuit, denying application for COA and successive petition, and affirmed the district court's denial of petitioner's recusal motion; is published as Ciavone v Horton, 2018 U.S. App. LEXIS 20171; appears at Appendix A-1.

The September 14, 2017 Opinion and Order of the United States Eastern District Court of Michigan, denying Motion for Relief from Judgment pursuant to Fed.R.Civ.P. Rule 60(b), denyiny motion for recusal and disqualify judge, and denied Motion to Supplement 60(b), is not published and appears at Appendix A-2.

The March 23, 2017, Order of the United States Court of Appeals for the Sixth Circuit denied authorization to file 28 U.S.C. § 2244(b), and denied other motions, is published as In re: Anthony Ciavone, 2017 U.S. App. LEXIS 5646; appears at Appendix A-3.

The August 8, 2016, Order of the United States Court of Appeals for the Sixth Circuit (After Remand) affirming the district court's denial of the 28 U.S.C. § 2254, is published as Ciavone v Woods, 2016 U.S. App. LEXIS 14885; appears at Appendix A-4.

The June 19, 2015, Opinion and Order of the United States Eastern District Court of Michigan, (After Remand) denying the habeas petition and granting COA on competency claims, is published as Ciavone v Mackie, 2015 U.S. Dist. LEXIS 176580;

appears at Appendix A-5.

The March 25, 2015, Order of the United States Court of Appeals for the Sixth Circuit, granting both parties motions to remand, is published as Ciavone v Woods, 2015 U.S. App. LEXIS 23017; appears at Appendix A-6.

The December 8, 2014, Order of the United States Court of Appeals for the Sixth Circuit, denying COA and other motions, is not published and appears at Appendix A-7.

The August 4, 2014, Opinion and Order of the United States Eastern District Court of Michigan, denying motion to compel Respondent to comply with Rule 5 Materials, is not published and appears at Appendix A-8.

The January 31, 2014, Opinion and Order of the United States Eastern District Court of Michigan, denying habeas petition, is published as Ciavone v Mackie, 2014 U.S. Dist. LEXIS 11908; appears at Appendix A-9.

BASIS FOR JURISDICTION IN THIS COURT

The decision of the United States Court of Appeals for the Sixth Circuit was issued on July 18, 2018.

A timely Petition for Rehearing with Suggestion for Rehearing En Banc was denied on October 22, 2018; and a copy of the Order denying Petition for Rehearing; appears at Appendix A-10.

The Petition for Writ of Certiorari's timely filing deadline is January 22, 2019, which was filed long before that date.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C.S. § 241; appears at Appendix B-1

18 U.S.C.S. § 1001; appears at Appendix B-2

18 U.S.C.S. § 1503; appears at Appendix B-3

18 U.S.C.S. § 4241(a), (b); appears at Appendix B-4

18 U.S.C.S. § 4247(b), (c); appears at Appendix B-5

28 U.S.C.S. § 753(b)(5); appears at Appendix B-6

28 U.S.C.S. § 2243; appears at Appendix B-7

28 U.S.C.S. § 2244(b)(2); appears at Appendix B-8

28 U.S.C.S. § 2245; appears at Appendix B-9

28 U.S.C.S. § 2254(d)(2); (e)(1),(2)(A)(ii),(B); (f); (g); appears at Appendix B-10

U.S. Const. Amend. 14; appears at Appendix B-11

STATEMENT OF THE CASE

In 2004, in front of separate juries, Petitioner was tried with co-defendant, William Hill for the robbery and murder of an eighty-five year old woman that occurred in December of 1999. No physical evidence liked Petitioner to the murder, but three witnesses who had motive for falsely testifying against him claimed he bragged murder to them. Petitioner was found guilty of first-degree murder and felony murder, and was sentenced to natural life in prison.

At the onset of Petitioner's 9-29-2003, 36th district court preliminary exam before Judge, Jeanette O'Banner-Owens; trial counsel, Sanford Schulman introduced, orally [off the record], Petitioner's life-long psychiatric records, as follows:

> "diagnoses began in the first grade and progressed as he got older, and at some point was certified as "learning disabled and emotionally impaired." Further school records show that he was operating academically at a fifth-to-seventh grade level when he was in the eleventh grade. The school psychologist determined that "he is unable to distinguish fantasy from reality."" (School records; App. C-1);
>
> "thought process is tangential, shows flight of ideas, magical thinking, extensive system of beliefs in his mind and powers, accusing police of being out to get him, has dramatic affect, his speech is sometimes incoherent, uses inappropriate words, sentences peculiarly formed [both verbal and written], presents exceedingly manic, ideas difficult to follow, "needs to constantly be brought back to the subject", racing thoughts, Bipolar [if not delusional] (St. John's Hosp. psych records; App. C-2).

and introduced a St. John's Hospital Neurodiagnostic Report establishing that on 8-22-2003, Petitioner was diagnosed with having an "intrinsic brain disease" where the circuity in his frontal lobe short circuits, thus, interrupting thought process (Neurodiagnostic Report; App. C-3).

Judge O'Banner-Owens found that there was a bona fide doubt regarding whether Petitioner was incompetent to stand trial pursuant to 18 U.S.C. § 4241(a), and issued the following Order:

> "Court Orders Defendant to submit forthwith to an examination at the Certified Forensic Facility of the psychiatric clinic of this Court for evaluation of mental competence to stand trial. Report due within 60 days from the date of this Order." (Comp. Order; App. C-4);

then adjourned the proceedings until the forensic report was filed with the court, as written on the register of actions (Entry for 9-29-03; App. C-5).

While in the County Jail, Petitioner was taken to the psych floor and told that he must take medication. When Petitioner refused, Jail staff held him down and forced a tranquilizer upon him, for no apparent reason, then when he woke, told him that if he doesn't take the medication willingly, then it will be forced on him. Not wanting to be assaulted again, Petitioner complied. (Pet.'s affidavit; App. C-6). As proof that Petitioner was taking psych meds involuntarily, his 10-12-03 psych record reads: "Pt. has been taking his medication as ordered" (App. C-7); and 11-7-03 record reads "will continue to encourage med compliance" (App. C-8).

On 11-3-2003, Petitioner was taken to the State's forensic center in Ann Arbor, Michigan, to be evaluated for competence, which is supported by his Wayne County Jail psych record dated 11-5-2003:

> "Client was evaluated for competency on 11-03. "I don't remember how it was." He then went on to explain that he refused to sign anything there because he didn't know if he should." (Psych record; App. C-9).

Upon Petitioner's arrival at the forensic center, he was greeted by William Meyer who asked him to sign a piece of paper showing he arrived, and when he refused, Meyer asked him a question. In response to the question, Petitioner told Meyer that he did not understand. Meyer asked the same question again, and when Petitioner gave Meyer a confused look, Meyer asked Petitioner "you really do not understand what I asked you?" Petitioner responded "no, I do not." Meyer then left the room and returned with the two Wayne County sheriffs who transported Petitioner to the forensic center who then cuffed him and transported him back to the Jail (Pet.'s affidavit; App. C-10).

The sedatives forced upon Petitioner caused him to remain in a trance that kept him from being concerned about his case. Then one day, Petitioner woke up on the floor of a prison cell, after the drugs wore off, wondering how he ended up there

and that he needed to prepare for trial, only to later realize, that he had already been convicted. During an investigation, Petitioner discovered:

A. That for reasons unknown, five weeks before his trial, on 3-1-2004, the Jail's psychiatrist ordered that he take: 20 mgs of Zyprexa per day, 50 mgs of Atarax (3 X a day), and 25 mgs of Benedryl (2 X a day), through to the date of April 30, 2004 (Med Order; App. C-11); in which his trial was held from April 14th until 27th.

B. According to the FDA's Drug Guides for these drugs, Petitioner had taken double the maximum dosage of the major tranquilizer called Zyprexz, with 50 mgs beyond the maximum dosage of the major sedative called Atarax, with the sleep aid called Benedryl, that guaranteed his unconsciousness; as proven:

> [Zyprexa] states: "RECOMMENDED DOSAGE RANGES: ...If the 5 mgs dosage is used, the dose may be increased to a maximum of 10 mgs as needed and tolerated.
> EFFECTS OF OVERDOSE: Reports of 67 overdoses were made during clinical trials. The patients who took the largest dose had drowsiness and slurred speech.
> WHILE TAKING THIS DRUG, OBSERVE THE FOLLOWING: Other Drugs; Olanzapine [Zyprexa] taken concurrently with * any sedative drugs (prescription or nonprescription) can cause excessive sedation." (App. C-12);
>
> [Atarax] states: "SPECIAL WARNINGS ABOUT ATARAX: This medication can cause drowsiness. ... activity that requires full mental alertness is not recommended until you know Atarax. The maximum dosage is 100 mgs.
> OVERDOSE: The most common symptom of Atarax overdose is excessive calm." (App. C-13);
>
> [Benedryl] states: "HOW THIS DRUG WORKS: Sedative action used to help people fall asleep.
> POSSIBLE SIDE EFFECTS: Drowsiness (diphenhydramine [Benedryl] is the most sedating antihistamine).
> WHILE TAKING THIS DRUG, OBSERVE THE FOLLOWING: Other drugs: diphenhydramine may increase the effects of * all drugs with sedative effect..." (App. C-14).

C. Petitioner's parents, Louis and Sally witnessed him sleeping at trial with his head laying on the defense table (Parents' affidavits; App. C-15), along with the jury who while deliberating, gave the judge a note asking "what medications was Anthony taken if any?" And because the judge was never made aware of the medications

he was on, told the jury that there was no evidence of any medications before directing them to ignore their concerns (TT 8 pgs 3-4; App. C-16).

D. The forensic center director, William Meyer denied in a letter dated 7-18-2007, that they have no record of any contact with Petitioner. (Letter; App. C-17); which caused him to inquire into his trial attorney as to why he was not evaluated. Attorney Schulman responded by letter dated 11-12-2007, that states he reviewed a forensic evaluation report that found him competent. (Letter; App. C-18).

E. A judicial officer placed a fraudulent entry in the State courts' register of actions to read that on 12-17-2003, a competency hearing was held where Petitioner waived his evaluation and is competent, that was recorded by reporter, Jodi Matthews CRJM233 (App. C-19). No court reporter by the name Jodi Matthews existed at the State's 36th district court (Pet. Affidavit; App. C-20), to have recorded such a hearing, and the court reporters certification title CRJM [Court Reporter Jodi Matthews] never existed according to MCR 8.108(G)(7) (MCR; App. C-21), and #233'rd court reporter retired decades prior to 2003.

F. The Michigan Court of Appeals' 1-11-2008 letter states they searched the trial court's records and were unable to locate any records related to a competency evaluation, waiver, or hearing (App. C-22).

G. 19 documents which revealed 107 pieces of material evidence that was mostly contained within the trial discovery materials, that indisputably proves that the State's three main witnesses conspired to/and fabricated their entire testimonies to frame Petitioner to the murder, by falsely testifying that he bragged the murder to them, which was to seek revenge against him for allegedly having tipped the police to their arrest. Due to the sure amount of evidence involved that proves this fact, is so lengthy that Petitioner had no other choice, but to place all this demonstrative evidence in the Appendix as D-1 and its proof in Appendix E, due to page limitation of this Writ. Moreover, the issue raised in this writ, is not what

Petitioner's new evidence of actual innocence proves, but that the district court and Sixth Circuit never considered the new evidence against the trial transcripts, as required because the transcripts were never filed with district court [infra] for those courts to opine whether he presented extraordinary or exceptional circumstances in support that he was framed [infra].

Prior to Petitioner discovering that he was tried while incompetent and drugged during trial, he caused the Michigan Court of Appeals to grant his pro se remand motion for evidentiary hearing for new trial based on trial counsel's ineffectiveness for failing to investigate the discovery where evidence laid to acquit him. Appellate counsel, Christine Pagac expanded those grounds, then during the hearing abandoned his evidence. During the 8-22-08 ginther hearing against Pagac, she testified that when she Ordered the transcript for the 12-17-03 competency hearing, she was told no record existed because it was waived. At which time, Pagac had attorney Daniel Rust introduce attorney Schulman's fraudulent 11-12-07 letter to deceive the court that he was evaluated (Trans. pgs 1, 13-15; App. C-23). Pagac then deliberately misrepresented the medications Petitioner took during trial (Trans pgs 16-19; App. C-23), and deliberately perjured concerning his actual innocence evidence by stating no evidence exists to prove such or that trial counsel was ineffective; thus, the court concluded Pagac was not ineffective (Dist. Ct. DK#25, trans. #15). The State's appellate court never investigated whether Petitioner's new evidence rebutted Pagac's 8-22-08 testimony, but just affirmed the trial court's findings that Pagac was not ineffective.

Incorporated into Petitioner's new evidence of actual innocence that was placed in Appendix D-1 and its proof in Appendix E, is also the very proof that appellate counsel, Pagac committed fraud on the court by deliberately concealing and misrepresenting his new evidence of actual innocence, which is only to establish that the fraud on the court in this case, concealed his innocence and that he was

framed.

Petitioner raised several constitutional claims in his writ of habeas corpus, some defaulted, some not. To overcome the defaulted claims, Petitioner attached new evidence as exhibits to his petition in support of his claim of actual innocence that met the gateway showing. Of the non-defaulted competency claims, Petitioner attached the above evidence as exhibits in demonstrating that his constitutional rights were violated where the State violated the Order to have him evaluated, drugged him unconscious during trial, courts were without personal jurisdiction to adjudicate his case, and trial counsel was ineffective for failing to insure he was competent at trial.

Due to the State's trial court relied on its 12-17-03 docket entry, in denying Petitioner's motion for relief from judgment claim that his due process rights to be evaluated were violated, in denying him relief; Petitioner moved the federal district court to Order Respondent's attorney, Bruce Edwards to produce the 12-17-2003 competency hearing transcript. In response to the district court's 9-27-2013 Order, Edwards filed the following response:

> "Upon receipt of the Court's order the undersigned asked the Attorney General's Appellate Divisions Habeas Section Secretary in charge of Rule 5 Materials (Kimborly Musser) to ask her contact in the Wayne County clerk's office to search for the transcript. Ms. Musser exchanged e-mails with Debra D. McGinnis "chief court reporter." Ms. McGinnis first advised that this had been a 36th District Court proceeding and that the supervisor was going to their archives to retrieve the notes from the hearing (if in fact one occurred on the record) and see if someone could transcribe them. Ms. McGinnis subsequently advised Ms. Musser that she had received information from the 36th District Court Supervisor and that the Supervisor did not have "those notes for the hearing on 12-17-2003."
>
> The undersigned also communicated with his contact in the Wayne County Prosecutor's Office (attorney Jason Williams) to ask if he would take steps to try and locate the transcript. Mr. Williams advised via e-mail that he and another attorney went to his officers' off-site storage facility. The appellate materials for Petitioner's file were located and it included many transcripts but no transcript for 12-17-03.
>
> Thus, the State is unable to produce a transcript from 12-17-03 of any hearing, if one was in fact held, when Petitioner was determined to be competent to stand trial." (10-11-13 Response; App. C-24).

District court ignored Petitioner's 10-24-2013 motion to compel Edwards to file

five volumes of trial transcripts he failed to file with his Rule 5 Materials, so to support his actual innocence claim (Dk# 42; App. C-24), then denied his second motion at DK# 69. (Denial; App. A-8). Even the Sixth Circuit denied Petitioner's motion to compel Respondent to file missing trial transcripts for review of 28 U.S.C. § 2244(b) application. (3-23-17 Denial; App. A-3).

When the district court granted COA on competency claims and denied the habeas claims in its 1-31-14 Opinion, it never considered trial transcripts in determining whether Petitioner's new evidence of actual innocence meets the extraordinary or exceptional circumstances to overcome gateway of his defaulted claims, but relied on the State's appellate court's findings in determining that Petitioner's actual innocence claim was without merit. (App. A-9, pgs 28-30). Due to the district court having placed in that Opinion, that the parties assumed at various stages of the State court proceedings that Petitioner was evaluated at the Third Circuit Court Psychiatric Clinic and not at the State's center for forensic psychiatry (App. A-9, pg 17, fn. 1); on 11-3-2014, Petitioner filed a Judicial Misconduct Complaint against Judge Battani [Complaint #06-14-90124] for having ex parte communications with Respondent and acting as a lawyer for Respondent (App. C-26) because not one person ever assumed such. When Judge Battani was served her copy of the complaint on 11-19-2014; on 12-23-2014, Bruce Edwards filed a Motion to Vacate and Remand in the Sixth Circuit, to have Judge Battani consider the 12-17-03 competency hearing transcript that was attached to his motion, which presented that he received the transcript directly from federal court reporter, Nefertiti Matthews after he located her and had her transcribe and certify the record on 12-16-2014 (Motion; App. C-27) and (12-17-03 Trans; App. C-28).

Petitioner filed a 60(b),(d) motion in response, claiming that the transcript had been fabricated. On 3-25-2015, the Sixth Circuit granted both parties' remand motions, and denied Petitioner's motion for alleging fraud upon the court (Order; A-

6). While in the district court, Petitioner filed a motion challenging not only that no certificates from the State court clerk and judge, were filed in either State or federal court as required by 28 U.S.C. §§ 2245, & 2254(g), nor was the transcript ever filed in State court, to be considered in any other court; and challenged the jurisdiction of the transcript as being void because it was never filed in State court to be used on appeal in State court; but also challenged the contents of the transcript, which was entirely contradicted by credible evidence.

In proving such, Petitioner presented that though the transcript presents:

A. An attorney prior to Schulman requested for the competence evaluation (App. C-28, pgs 3-4); Schulman's 11-12-07 letter states he requested the evaluation (App. C-18); and Petitioner's father Louis' affidavit presents that he retained Schulman in Sept. 2003, which was prior to the request for evaluation (App. C-29);

B. Petitioner and his family were present at the hearing (App. C-28, pgs 5-7); Petitioner and his family have denied being at the hearing (Affidavit; App. C-30);

C. Petitioner gave testimony that he was visited by attorney Schulman many times prior to the hearing (App. C-28, pgs 5-6); Petitioner's Wayne County Jail attorney visiting records prove Schulman never visited him once until 3-29-2004 (App. C-31);

D. A competency evaluation has not been done in the several months that Petitioner has been waiting his exam in the jail (App. C-28, pg 3); not only does Schulman's letter state he reviewed an evaluation report (App. C-18); but also Petitioner's 11-3-03 jail psych record states he went to the forensic center (App. C-8);

E. Schulman's grounded in the fact that if Petitioner was evaluated, he would have been found competent (App. C-28, pg 4); Schulman knew of Petitioner's life-long psych records that present him as incompetent (App. C-1, C-2, C-3);

F. Petitioner as giving competent testimony (App. C-28, pgs 5-6); Petitioner's psych records presents otherwise (App. C-1, C-2, C-3);

G. Petitioner was present at hearing (App. C-28); Petitioner's jail transfer records show that on 12-17-03 he was sent to bullpin cell to await transfer to court at 2:43 am and also at 5:29 am, which cannot be accurate, but could only imply that he was sent back to his cell at 5:29 am; as there are no other logs for returning to the jail from the court (App. C-32).

H. Federal district court reporter, Nefertiti Matthews who's certification number is CSR#5915 (Credentials; App. C-33) transcribed and certified the State court record (Certification; C-34); presents two serious errors:

1. Matthews admitted she is also known as Jodi Matthews (App. C-35), which is prohibited by Michigan statute [MCL 450.1217] to conduct business under an assumed name, to prevent the imposition of fraud, which is what she did when she used not only her assumed name, but also the fabricated certification #CRJM233 she put next to her name when she fabricated the 12-17-03 docket entry (App. C-19); and,

2. Matthews' alleged actions are contrary to the Michigan Court Rule 8.108, as she was required to obey while employed by the State; as follows:

> "(C) Records Kept. All records, as defined in MCR 8.119(F):
>
> > "... Court recordings, log notes ..., and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceeding and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(2)(b)" (App. C-36),
>
> and regardless of format, that are created and kept by the court reporter or recorder belong to the court, **must** remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). ... At the conclusion of the trial of the case the reporter or recorder **shall** ... safely keep them in the court according to the Michigan Trial Court Case File Management Standards. If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recordings, which **must** be returned to the court upon filing of the transcript.
>
> (D) Transfer of Records; Inspection. If the court reporter or recorder ... is removed from office..., records he or she created and kept in each case pursuant to subrule (C) **must** be transferred to the clerk of the court in which the case was tried. ... On order of the court, a transcript **shall** be made from the records and filed as a part of the public record in the case.

> (F) Filing Transcript. (1) On Order of the trial court, the court reporter or recorder shall make and file in the clerk's office a transcript of his or her records...
>
> (G)(1)(a) Only reporters, recorders... certified pursuant to this subrule may... prepare transcripts of proceedings held in Michigan courts..." (App. C-21)

which presents that based on the known facts of this case, Matthews did not retrieve any record from any State court, to have transcribed the alleged 12-17-2003 competency hearing, to produce a transcript; but fabricated it and lied about it coming from the State court's records. Furthermore, Petitioner argued that according to the above rules, and those setforth in 28 U.S.C. § 753, a federal court reporter cannot transcribe any State court record; and Matthews violated both the State and federal court reporter rules in the production of the transcript.

In considering the transcript against Petitioner's competency claims, the district court ignored, downplayed, and misrepresented all of the above evidence, and after defending Matthews' and Respondent's claim that the record always existed in State court, just couldn't be located; opined in its 6-19-15 Order that "Certified copies of public records, such as the transcript at issue here, are self-authenticating and require no extrinsic evidence of authenticity in order to be admitted. Fed.R.Evid. 902(4)", then denied his petition and granted COA on his competency claims. (App. A-5).

In the Sixth Circuit's 8-8-2016 Order, the court treated Petitioner's evidence and claims just like the district court did, and Affirmed the district court's Opinion and Order. (App. A-4).

Upon the State's trial court having provided Petitioner a letter dated 6-21-2016 that reads:

> "pursuant to your letter dated June 2, 2016, please be advised that I do not show that your 12-17-03 transcript was ordered to be transcribed in the Wayne County Circuit Court" (Letter; App. C-37);

Petitioner filed a Motion for Relief from Judgment under Fed.R.Civ.P. R. 60(b)

(2),(3),(4),(6), based on the above newly discovered evidence that irrefutably proved that the competency hearing transcript Matthews produced and certified did not come from the State court, but was fabricated. Also due to Petitioner also having discovered new evidence that his appellate counsel, Pagac's actions constitute as fraud upon the court, in concealing, misrepresenting, and fabricating material evidence while under oath in State court ginther hearing, of his evidence of actual innocence, medications taken at trial, and trial incompetence; raise a claim in both the 60(b) motion and in a supplemental motion. The claims raised in the 60(b) involved extrinsic fraud, void judgments, jurisdictional defects, newly discovered evidence, and obstruction of justice. The proof was attached as exhibits and cited from the exhibits of the habeas petition. Petitioner also filed a motion for Judge Battani to recuse herself, as being the person who orchastrated the fabrication of the transcript.

In the district court's 9-14-2017 Opinion and Order, Judge Battani ignored all of the evidence attached to Petitioner's above motions, and opined:

> "The Court rejected Petitioner's arguments regarding the authenticity of the disputed transcript during the course of this case because they are devoid of merit.
>
> Petitioner offers the same arguments challenging the authenticity of the disputed transcript that have previously been rejected by this Court and the Sixth Circuit. A Rule 60(b) motion is properly denied where the movant attempts to use the motion to re-litigate the merits of a claim and the allegations are unsubstantiated. ... Because Petitioner offers no new reason to doubt the authenticity of the disputed transcript, and because his motions constitute nothing more than a re-hashing of the arguments already rejected by this Court and the Sixth Circuit, Petitioner's motions do not demonstrate entitlement to relief from judgment";

and misrepresented the evidence introduced to recuse, to that of being based entirely on adverse rulings by omitting the argument of being accused of orchastrating the fabrication of the transcript. (App. A-2, pgs 4-5).

The Sixth Circuit's 6-19-2018 Order denying Petitioner's motions and COA, and affirming the district court's denial of recusal; is based on the same

misrepresentation of, and omission of, the evidence the district court omitted and misrepresented. After having construed Petitioner's supplemental 60(b) motion, as an application under 28 U.S.C. § 2244(b); the Sixth Circuit denied it for having failed to present exceptional or extraordinary circumstances in support of his claim that he was framed. (App. A-1).

When Petitioner first received the State's trial court's 6-21-2016 letter, he attached it as an exhibit to his Rehearing with Suggestion for Rehearing En Banc that was filed before his 60(b) motion, to influence the En Banc court to grant him a rehearing based on that newly discovered evidence. At which time, the attorney for Respondent, gave Matthews a copy of that letter, which is established by the fact that on 12-13-2016, Nefertiti Matthews filed for an "Order For Production of 12-17-2003 Competency Exam Transcript" using her assumed name of Jodi Matthews, in the State's trial court (State Ct. Docket; App. C-38). Petitioner did not discover Matthews' guilty conscious about having fabricated the 12-17-03 transcript, until 3-30-2018, which is when he requested the State's trial court's docket to see if something else was filed, in which the 3-30-2018 date is printed on bottom of the docket page (App. C-38). As of the last date of 2-16-2018 on the State's trial court docket, the State court never filed a 12-17-2003 transcript, which establishes nothing other then, there is no record to transcribe.

REASONS FOR GRANTING THE PETITION

1. The writ should be granted because the Constitution, Statutory law, and binding precedents forbids federal judicial officers from engaging in illegal activity of fabricating a State court record, authenticating and using it, and concealing and misrepresenting the proof of its fabrication, and deceiving others into assisting them with denying Petitioner of his constitutional rights to his entitlement to relief.

This Court, as long ago as Mooney v Holohan, 294 US 103 (1935), stated that deliberate deception of a court by the presentation of false evidence is incompatible with "rudimentary demands of justice."

The inherent power of this Court is to vacate judgments upon proof that a fraud has been perpetrated upon the court. "This historic power of equity to set aside fraudulently begotten judgments is necessary to the integrity of the courts, for tampering with the administration of Justice in this manner involves far more than an inquiry to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently within the good order of society." Moreover, this "Court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud." Chambers v NASCO, Inc., 501 US 32, 44 (1991) (citations omitted). "Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law." U.S. v Payner, 447 US 727, 744 (1980), quoting McNabb v U.S., 318 US 332, 345 (1943).

The elements of fraud on the court include conduct: 1) on the part of an officer of the court; 2) that is directed at the judicial machinery itself; 3) that is intentionally false, wilfully blind to the truth, or is in reckless disregard for the truth; 4) that is a positive averment or a concealment when one is under a duty to disclose; and 5) that deceives the court. Demjanjuk v Petrovsky, 10 F3d 338, 348 (6th Cir 1993). In order "for a claim of fraud on the court to succeed, the fraud

must have been committed by an officer of the federal habeas trial or appellate courts," Buell v Anderson, 48 Fed Appx 491, 499 (6th Cir 2002); and "that the deceit actually subverted the judicial process by preventing the judicial machinery from performing in the usual manner to impartially adjudge the case presented." Rodriguez v Schwartz, 465 Fed Appx 504, 508 (6th Cir 2012). "When an attorney departs from that standard [integrity and honest dealing with the court] in the conduct of a case he perpetrates fraud upon the court." Computer Leasco, Inc. v NTP, Inc., 194 Fed Appx 328, 337 (6th Cir 2006) quoting Demjanjuk, supra, at 356. Although fraud upon the court generally involves a deliberately planned scheme to subvert the integrity of the judicial process, reckless disregard for the truth is also sufficient. Thompson v Bell, 373 F3d 688, 730 (6th Cir 2004), citing Hazel-Atlas Glass Co. v Hardford-Empire Co., 322 US 238, 245 (1944), in part. Moreover, the Court in U.S. v Craft, 105 F3d 1123 (6th Cir 1997) held:

> "Acts that distort evidence to be presented or otherwise impede administration of justice are violations of statute prohibiting obstruction of justice, an act of...fabricating documents used or to be used in judicial proceedings would fall within statute if intent is to deceive court." Id. at 1128, citing 18 U.S.C. § 1503.

28 U.S.C. § 2254(f), requires that an Order exist from the federal district court to the State court to produce a record. "The clerk of court shall not permit any original record or paper to be taken from the court, without an Order from the Court." In re Amendments to Rules 1 & 10, 108 US 1, 3 (1882); Rainey v W.R. Grace & Co., 231 US 703, 707 (1914). No such Order exists in this case. Transcripts do not come from court reporters to parties, but from court clerk to parties. In all cases the clerks shall deliver a copy of the printed record to each party. Wade v Wilson, 396 US 282, 286 fn. 3 (1970); In re Amend..., 108 US at 4. Only the clerk of the court prints the record which must be examined by him or her to see if it conforms to the copy certified and to the transcript on file, and delivers it to the parties. In re Amend..., 108 US at 4; Bean v Patterson, 110 US 401, 402-403 (1884). "The clerk of the trial court shall forthwith transmit...such matters of record as are

pertinent to the appeal, with his certificate, to the clerk of the appellate court..." Ray v U.S., 301 US 158, 165 (1937). The transcript should not have been considered as official because it did not come from court clerk. 28 U.S.C. § 753(b)(5).

28 U.S.C. §§ 2245, 2254(g), provides the procedures of the federal district court in retrieving a copy of the official records of the State court, must be achieved by filing certificates retrieved from the State court clerk and judge, that the record being retrieved to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court, shall be filed with the district court and in the State court in which the proceedings were held, in order to be admissible in federal court. Also see, Clinton v Missouri P. Railway, 122 US 469 (1887), which held:

> "...the transcript from the State court becomes part of the record of the case in the federal court.... The federal judge can know nothing about what takes place in the State court, personally, and cannot therefore certify to it. It comes to him as certified by the court in which the proceedings were had. ... It is already a record of another court transcribed and certified to his court..." Id. at 475.

Only the judge and clerk of the court where the proceeding was held, can certify and authenticate its own records, which is proven by attestation, seal of the court, and certificates. Spears v Spears, 162 F2d 345, 347 (6th Cir 1947); Gilpin v U.S., 252 F2d 685, 687 (6th Cir 1958); Turnbull v Payson, 95 US 418, 422 (1877); Cooke v Avery, 147 US 375, 388 (1893); Garneau v Dozier, 100 US 7 (1879). Moreover, when the district court Judge self-authenticated the 12-17-03 competency hearing transcript under FRE 902(4), to consider it in denying Petitioner's competency claims, did so illegally because federal rules of evidence are only to be applied in federal criminal prosecutions, as held by this Court in McNabb v U.S., supra, US at 341.

"The remedy prescribed by the statute must be the remedy that "law and justice require, 28 U.S.C. § 2243." Reed v Farley, 512 US 339, 369 (1994). This Court has agreed to correct, at least on direct review, "violations of a statutory provision that "embodies a strong policy concerning the proper administration of judicial

business..."" Khanh Phuong Nguyen v U.S., 539 US 69, 78, 81 (2003).

Due process requires court reporters who record proceedings, are required to file their recordings of the case in the office of the court clerk. Armstrong v Egeler, 563 F2d 796, 797 (6th Cir 1977); Apache County v Barth, 177 US 538 (1900); 28 U.S.C. § 753(b). Only a court reporter employed with that court, can transcribe notes recorded at that court. See Norvell v Illinois, 373 US 420, 421 (1963); U.S. Use of Air Comfort, Inc. v Jones Coal Co., 325 F2d 877, 878-79 (6th Cir 1963). The court reporter's transcript shall be verified by the Judge who presided over the proceeding. U.S. v McDowell, 305 F2d 12, 14 (6th Cir 1962).

"Consistent with procedural due process, a State court's affirmance of a petitioner's conviction upon a seriously disputed record, whose accuracy the petitioner has had no voice in determining, cannot be allowed to stand," Chessman v Teets, 354 US 156, 164 (1957); should hold the same in this case where Petitioner's evidence that disputes the genuineness of the 12-17-03 transcript were ignored.

The facts of this case support Judge, Marianne Battani, A.A.G Bruce Edwards, and Court Reporter, Nefertiti Matthews all participated in the fabrication of the transcript and concealed evidence of the fraud and fabrication of the transcript; which is "circumstantial evidence that reasonably tends to prove that" these judicial officers were "involved in a conspiracy had a conscious commitment to a common scheme designed to achieve an unlawful objective", Monsanto Co. v Spray-Rite Serv. Corp., 465 US 752, 764 (1984), to commit fraud on the federal courts, to deny Petitioner of his due administration of justice; violated 18 U.S.C. § 241. Nefertiti Matthews fabricated the transcript, in violation of 18 U.S.C. § 1001.

For the Sixth Circuit to have stated in its 8-8-2016 ruling that the State court had the record the whole time and it was available to the parties, and therefore, is not the type of additional evidence prohibited by Cullen v Pinholster, 131 SCt 1388 (2011) (App. A-4, pg 4), while knowing the evidence proves to the contrary; presents them as accomplices to the misconduct.

Though the Sixth Circuit held in Carland v Heckler, 233 F. 504 (6th Cir 1916), that Michigan law "forbids the carrying on or transacting of any business in the State under any assumed name or any other than the real name..." Id, at 505-506; was not concerned when Nefertiti Matthews' admitted that while she was employed at the State's court, she used the assumed name of Jodi Matthews to conduct judicial business (App. C-35) where her assumed name and a fabricated certification number was placed on the State's docket (App. C-19), that deceived everyone into believing that such a competency hearing was held on 12-17-03, Petitioner was found competent, and that such a record was filed. This "Court has particularly stressed the need to use supervisory powers to prevent the federal courts from becoming accomplices to such misconduct." U.S. v Payner, supra, US at 744.

Accordingly, because the State courts have repeatedly stated that they have never possessed such a record nor had Matthews retrieved such a record from their court, proves that the federal judicial officers engaged in fraud on the courts by using a fabricated transcript to make fraudulent judgments; this Court should investigate and correct the fraud, and prosecute those who violated federal criminal laws; and vacate Petitioner's conviction.

2. Petitioner's Due Process rights were violated when the State court denied him a copy of the competency hearing transcript when he ordered it during State appeal, to challenge the alleged judgment; which were violated again when the lower courts used that void transcript in deciding his constitutional challenges.

The Due Process Clause of the Fourteenth Amendment provides that States are required to provide petitioners with requested transcript because it is needed for an effective appeal. Britt v North Carolina, 404 US 225, 227 (1971). Transcript not available for appellate review violates Due Process. Hardy v U.S., 375 US 277 (1984). Transcript not available to analyze the facts to assure the federal right to competency determinations have not been violated, violates Due Process. Drope v Missouri, 420 US 162, 175 (1975). Such a denial of a transcript, blocked Petitioner from access to an appeal afforded to others. Mayer v Chicago, 404 US 189, 195-96 (1971). Something more than mere speculation that the transcript was requisite to a

fair appeal before State court must be shown. Jackson v Renico, 179 Fed Appx 249, 252 (6th Cir 2006).

[Assuming arguendo] that had the competency hearing actually occur and occurred as written in the transcript, and Petitioner was given that transcript upon his request; then he would have argued the claims as presented in Reasons 1, 3, 4, 5, and 6, of the REASONS FOR GRANTING THE PETITION.

The transcript of the record must be filed with the court where proceeding occurred within the time of taking an appeal, otherwise, there's no jurisdiction to entertain that transcript. See, Green v Elbert, 137 US 615, 621 (1891). When a transcript is not filed with the court on time, the appeal must be dismissed for want of prosecution. U.S. v Fremont, 59 US 30, 37 (1856) (Mr. Justice Catron concurring). Due to the alleged 12-17-03 competency hearing record/transcript not being filed in the State's circuit court, there is no jurisdiction to entertain that record in federal habeas courts. Rhea v Smith, 274 US 434, 439, 441-442 (1927). Transcript not filed with State court within 90 days, is a nullity. Pulley v Norvell, 431 F3d 258, 259 (6th Cir 1970). "Where, no transcript of the record in the county court, whether perfect or imperfect, was filed in the district court, and it was on this ground, of the entire failure to have any transcript whatsoever of the proceedings in the county court filed within sixty days, as well as the absence of all sufficient effort to do so, that the dismissal of the case was sustained." Clinton, supra, US at 477. No court has authority to extend the period of time, to allow an appeal to be taken, once the time to undertake that appeal has lapsed. U.S. v Hark, 320 US 531, 533 (1944).

Accordingly, the federal courts have no jurisdiction to use a void transcript to reach the merits of a claim; therefore, this Court should reverse all of the lower courts' rulings made as a result of the void transcript.

3. Petitioner's constitutional rights to a federal district court evidentiary hearing, were violated when the lower courts who knew of his indisputable proof that a fraud on the habeas courts occurred that involves disputed facts; ignored their inherent duty to hold a hearing to determine the truth of the fraud.

A hearing is proper for determining whether the counsel for Respondent and third parties perpetrated fraud on the court and defiled justice. Universal Oil Products Co. v Root Refining Co., 328 US 575, 580 (1946). A party is entitled to an evidentiary hearing based upon allegations that habeas counsel was aware of the fraud is sufficient, Workman v Bell, 484 F3d 837, 843 (6th Cir 2007), and when an allegation of fraud on the habeas courts was committed by habeas counsel. Buell v Anderson, supra, at 499, 500.

This Court held in Hazel-Atlas, supra, US at 249-250, fn. 5, "we do not hold, and would not hold, that the material questions of fact raised by the charges of fraud against Hartford could, if in dispute, be finally determined on ex parte affidavits without examination and cross-examination of witnesses." In other words, that on allegations of fraud on the federal courts, requires an evidentiary hearing rather then rely on affidavits and documents presented in support of the fraud.

"[W]here there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of petitioner's claims," Turner v U.S., 183 F3d 474, 477 (6th Cir 1999), or when "relevant facts are in dispute." Ceasor v Ocwieja, 655 Fed Appx 263, 287 (6th Cir 2016). It is only by holding an evidentiary hearing that the truth of Petitioner's allegations can be assessed. Isble v U.S., 611 F2d 173, 175 (6th Cir 1979). When Petitioner presented an affidavit [and proof] containing "a factual narrative of the events that is neither contradicted by the record nor 'inherently incredible'" and the government offers nothing more than "contrary representations" to contradict it, Petitioner is entitled to an evidentiary hearing. Valentine v U.S., 488 F3d 325, 334 (6th Cir 2007).

Accordingly, if this Court does not vacate Petitioner's conviction or grant other relief that would reverse his conviction based on other Reasons in this Writ; this Court should remand this case back to the district court before a different judge, for a full evidentiary hearing, to resolve all disputes of evidence, and oversee this case while before the lower courts to ensure his constitutional rights and

federal laws are not continuously violated.

4. Petitioner's constitutional rights not to be tried while incompetent were violated when Michigan did not have him evaluated for competence to stand trial as Ordered, and demanded by 18 U.S.C. § 4247(b),(c), after he shown proof that he's incompetent; when State court alleged he waived his evaluation, and the lower courts contrary to controlling law allowed the alleged waiver to stand.

"The Due Process Clause of the Fourteenth Amendment prohibits the prosecution of a criminal defendant who is incompetent to stand trial." Medina v California, 505 US 437, 439 (1992); Drope v Missouri, 420 US 162, 172 (1975).

While knowing the State court found reasonable cause to believe that Petitioner may have presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, upon a motion filed by his attorney, met the standard under 18 U.S.C. § 4241(a), to be evaluated, was therefore, Ordered to be evaluated pursuant to 18 U.S.C. § 4247(b) with a report due pursuant to § 4247(c), which can be ordered prior to the hearing, 18 U.S.C. § 4241(b), but must follow the provisions set forth in 18 U.S.C. § 4247(b),(c); which holds:

> "A psychiatric or psychological examination ordered pursuant to this chapter **shall** be conducted by a licensed or certified psychiatrist or psychologist..." (See, § 4247(b)); and,
>
> A psychiatric or psychological report ordered pursuant to this chapter **shall** be prepared by the examiner designated to conduct the psychiatric or psychological examination, **shall** be filed with the court with copies provided to the counsel for the person examined and to the attorney for the government..." (See, § 4247(c));"

the Sixth Circuit affirmed the district court's opinion that Petitioner was allowed to waive his evaluation, (App. A-1, pg 5), and ignored its own precedent in U.S. v Pina, 724 Fed Appx 413, 419 (6th Cir 2018) which enforced the above statutes in Pina. The "use of the word "shall" in statute indicates a mandatory intent unless a convincing argument to the contrary is made." U.S. v White, 887 F2d 705, 710 (6th Cir 1989). Judges must enforce statutes as Congress wrote them and the President approved them, without adding or subtracting features that the Judges deem to be wise policy. See, e.g., Michigan v Bay Mills, 134 SCt 2024, 2033-34 (2014).

For the Sixth Circuit to go against the statutes and its own precedent in Pina, and allow Petitioner's due process violation stand uncorrected, presents to being accomplices to the misconduct that occurred in district court.

This Court in Pate v Robinson, 383 US 375 (1963) held:

> "It is contradictory to argue that a defendant may be incompetent, and yet knowingly and intelligently waive his right to have the trial court determine his capacity to stand trial." Id. US at 384.

"A trial judge may not put a defendant to the choice of forgoing his right to a competency exam." Porter v McKaskle, 466 US 984, 986 (1984), citing Cf. Simmons v U.S., 390 US 377, 393-394 (1968). "The correct course was to suspend the trial until such an evaluation could be made." Drope v Missouri, 420 US 162, 181 (1975). The court in Berchany v Johnson, 633 F2d 473 (6th Cir 1980), Ordered that petitioner's writ of habeas corpus was to be granted if the State did not vacate his conviction because the State failed to have him evaluated as Ordered. Id. at 474.

Accordingly, because the lower habeas courts have ignored their duty to uphold controlling law; this Court should vacate Petitioner's conviction.

5. Due to the fact that Michigan did not obey the mandatory procedure setforth in 18 U.S.C. § 4247(b),(c), to have Petitioner evaluated as mandated by the valid Order; his Due Process rights were violated when Michigan and the lower courts adjudicated his case without personal jurisdiction over him.

Once the State court in this case issued an Order to have Petitioner evaluated to determine his competence to stand trial, under the federal statutory procedures pursuant to 18 U.S.C. § 4247(b),(c), Michigan was required to have him evaluated and file a psychiatric report. The State court adjourned the proceedings against Petitioner until he was evaluated and the report was filed with the court. An Order issued based on statutory language to perform a specific duty, a judge is without jurisdiction to take an action other than that mandated by the statute. Stratton v St. Louis S.R. Co., 282 US 10, 13-16 (1930). The validity of a court order depends on the court having jurisdiction over the subject matter and the parties. Ins. Corp of Ireland, Ltd. v Compagnie de Bauxites de Guinee, 456 US 694, 701 (1982). Without personal jurisdiction "the court is powerless to proceed to an adjudication."

Ruhrgas AG v Marathon Oil Co., 526 US 574, 584 (1999). When the lower courts decided the merits of this case without jurisdiction, they went "beyond the bounds of authorized judicial action and offended the fundamental principles of separation of powers." Steel Co. v Citizens for Better Env't, 523 US 83, 94 (1998) (Emphasis added). "Personal jurisdiction must be analyzed and established over each defendant independently." Burger King Co. v Rudzewicz, 471 US 462, 475 (1985). "The requirement of personal jurisdiction flows from the Due Process Clause and protects an individual liberty interest. "The requirement that a court have personal jurisdiction is a due process right that may be waived either explicitly or implicitly."" Bauxites, 456 US at 703-705. However, until competency of a defendant is determined after having been ordered to be determined, he cannot be held to knowingly or intelligently consent to anything or have "waived" any right. Pate v Robinson, 383 US 375 at 384 (1963). Moveover, due to the fraud on the State court in concealing whether Petitioner had been evaluated or not, prevented him from acknowledging that the courts lacked personal jurisdiction, and the minute he realized the jurisdictional defect, he raised the claim. Therefore, the right was never abandoned. See, U.S. v Olano, 507 US 725, 733 (1993) ("forfeiture is the failure to make the timely assertion of a right").

This case presents a 12-17-03 competency hearing transcript, which states that the evaluation that was ordered, was not conducted. "Despite the action of the trial court, the absence of jurisdiction may appear on the face of the record and the remedy of habeas corpus may be needed to release the prisoner from a punishment imposed by a court manifestly without jurisdiction to pass judgment." Bowen v Johnston, 306 US 19, 26 (1939). "The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus." Johnson v Zerbst, 304 US 458, 468 (1939). "A federal court generally may not rule on the merits of a case without first determining that it has jurisdiction ... "Without jurisdiction the court cannot proceed at all in any

cause"; it may not assume jurisdiction for the purpose of deciding the merits of the case." Sinochem Int'l Co. v Malay Int'l Shipping Corp., 549 US 422, 431 (2007). "Federal courts have an independent obligation to ensure that they do not exceed their scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlooked or elect not to press." Henderson v Shinseki, 562 US 428, 434 (2011). "Despite a federal court's threshold denial of a motion to remand, if, at the end of the day and case, if a jurisdictional defect remains uncured, the judgment must be vacated." Caterpillar Inc. v Lewis, 519 US 61, 77 (1996).

Accordingly, because neither the State or federal habeas courts had personal jurisdiction over Petitioner, this Court should vacate his judgment of conviction.

6. The fabricated transcript demonstrates that Petitioner's Due Process rights to an adequate hearing on determining his competence, were violated where no expert testimony from psychiatrist was given at the hearing and none of his psychiatric records that seriously disputes his competence was never before the court, for a proper determination of his competence.

None of Petitioner's psychiatric records demonstrating him as having "a poor grasp on reality", "inability to distinguish 'fantasy from reality'", "is Bi-polar if not delusional", and "displays a need to constantly be brought back to the subject", with an intrinsic brain disease, which are just some of his symptoms; appear on the 12-17-2003 competency hearing transcript to establish he received an adequate hearing on his competence. Not only does Due Process require an adequate competency hearing to include expert testimony from a licensed psychiatrist to inform the court whether s/he believes the defendant to be competent or not, but also to include Petitioner's prior psychiatric opinions on competence to stand trial. Competency determination cannot be made without expert opinion by psychiatrist. Ake v Oklahoma, 470 US 68, 83 (1985).

"The due-process right to a fair trial is violated by a court's failure to hold a proper competency hearing where there is substantial evidence that a defendant is incompetent." Filiaggi v Bagley, 445 F3d 851, 858 (6th Cir 2006) (citing Pate v

Robinson, supra, US at 385-86. During a hearing there may be submitted evidence of the accused's mental condition. U.S. v Geier, 521 F2d 597, 600 (6th Cir 1975).

Accordingly, if this Court decides to allow the fabricated transcript to stand, then it should reverse Petitioner's conviction for not receiving an adequate competency hearing.

7. The lower courts ignored, concealed, and misrepresented Petitioner's claim and irrefutable evidence that demonstrates Michigan secretively, involuntarily, and illegally drugged him with tranquilizers, sedatives, and sleeping pills well beyond the FDA's recommended dosages, then the trial court Judge who witnessed he laid unconscious throughout his entire trial, deceived the jury that he had not been medicated; undoubedly proves his due process rights not to be involuntarily drugged at trial were violated as held by Riggins v Nevada, 504 US 127, 134 (1992).

Similar to Harper [v Washington, 494 US 210 (1990)], Petitioner provided proof that the State of Michigan and various individuals violated his right to due process by forcing him to consume double the legal dosage of Zyprexa, with more than the legal dosage of Atarax, with Benedryl, which are all antipsychotic drugs against his will. Based on Harper's situation of being involuntarily drugged during his trial; this Court in Riggins v Nevada, 504 US 127 (1992), held that "a prisoner's interest in avoiding involuntary administration of antipsychotic drugs is protected under the Fourteenth Amendment's Due Process Clause. "The forcible injection of medication into a nonconsenting person's body," ... represents a substantial interference with that person's liberty." Id. US at 134, quoting Harper, US at 229.

In order to involuntarily force antipsychotic drugs upon a prisoner to not violate due process, is where a determination is made that "the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest." Riggins, US at 135, quoting Harper, US at 227. In order for a determination to exist, there would have to be a record. See, e.g. Riggins, US at 135.

The purpose as so it would seem, to determine whether antipsychotic medications are necessary to accomplish an essential State policy, is to do so on the record; to prevent secrecy of medicating defendants during trial. Id. There is nothing in Petitioner's psychiatric records to so much as even suggest that he should be

medicated, as he never posed a threat on either himself or anyone else or gave any indication of such, for him to have been involuntarily sedated during the dates of his trial. The evidence in this case presents that Petitioner was secretively drugged to keep him quiet while the State concealed his incompetence and convict him while incompetent.

For Petitioner's trial judge to sit and witness him knocked unconscious throughout the entire trial without so much as even questioning why he was sleeping when the judge had a constitutional duty to raise the question of his competency sua sponte where facts are brought to the court's attention which raise a "bona fide doubt" as to the competence of Petitioner; violated his due process rights. Drope v Missouri, supra, US at 180; USCA 14; U.S. v White, supra, at 709. The trial judge knew that Petitioner's competence was once in question. Therefore, the judge had a duty to continuously observe Petitioner in case of a change in his condition that may result in him becoming incompetent. Porter v McKaskle, supra, US at 987.

When the trial judge deceived the jury as to their question as to whether Petitioner was medicated, by telling them there was no evidence of any medication and directed them to ignore their concerns (App. C-16); this Court has found that in such situations the judge was wrong for misleading the jury. Bollenbach v U.S., 326 US 607, 612-613 (1946).

The evidence in this case establishes that Petitioner's Due Process rights were violated where the State-court continued to prosecutor him while he slept throughout his trial, as a result of the sedatives, adding to his incompetence. Drope v Missouri, supra, US at 171-172. Thus, caused his constitutional rights to a fair trial to be violated. Michigan v Tucker, 417 US 433 (1974).

Accordingly, Petitioner's conviction should be reversed.

8. Petitioner's Due Process rights were violated when the lower courts decided his new evidence of actual innocence without the required trial transcripts, as held by House v Bell, 547 US 510, 537-39 (2006) before opining that he has not met the extraordinary or exceptional circumstances in support that he was framed or that appellate counsel deliberately concealed proof of his actual innocence.

This Court held in House v Bell, 547 US 518 (2006) that:

> "prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." This formulation "ensures that petitioner's case is truly 'extraordinary,' while still providing petitioner a meaningful avenue by which to avoid a manifest injustice." In the usual case the presumed guilt of a prisoner convicted in state court counsels against federal review of defaulted claims. Yet a petition supported by a convincing Schlup gateway showing "raise[s] sufficient doubt about [the petitioner's] guilt to undermine confidence in the result of the trial without the assurance that that trial was untainted by constitutional error"; hence, "a review of the merits of the constitutional claims" is justified." Id. US at 537.
>
> "Although "[t]o be credible" a gateway claim requires "new reliable evidence--whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence--that was not presented at trial." Id. US at 537.
>
> "The habeas court must consider "'all the evidence,'" old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under "rules of admissibility that would govern at trial." "Based on this total record, the court must make "a probabilistic determination about what reasonable, properly instructed jurors would do." Id. US at 538.
>
> Because an actual-innocence "claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record. If new evidence so requires, this may include consideration of "the credibility of the witnesses presented at trial." Id. US at 538.

When the district court and the panel below, repeatedly denied Petitioner's motions to compel Respondent to file the five volumes of missing trial transcripts, so that they could consider his new evidence of actual innocence to pass the gateway to defaulted claims; the lower courts intentionally violated his due process rights by not obeying the mandatory requirement held in House, that they must consider the trial transcripts.

When the panel below ruled that Petitioner has not established his actual innocence by clear and convincing evidence for filing 28 U.S.C. § 2244(b)(2) application[s], without considering the relevant trial transcripts; violated his Due Process rights under House.

When Petitioner filed the required motion under F.R.App.P. Rule 10(e), to cause the Sixth Circuit to remand his case back to the district court pursuant to Adams v

Holland, 330 F3d 398 (6th Cir 2003), which held:

> "A district court must make a review of the entire State court trial transcript in habeas cases, and where substantial portions of that transcript were omitted before the district court, a habeas case should be remanded to the district court for consideration in light of the full record," Id, at 406;

the Sixth Circuit denied Petitioner's motion without reason.

Petitioner not only claims he is actually innocent, but was framed by the State's three main witnesses, has demonstrated to the lower courts through new evidence, the jury never heard; and has supplemented that evidence in Appendix D, to prove he was framed; to state that no barriers should stand in his way of proving such to regain his freedom.

Accordingly, this Court should reverse the lower courts' rulings and oversee this case before the lower courts to insure a miscarriage of justice doesn't continue to occur, or review the new evidence itself and determine whether Petitioner's new evidence is truly deserving of having his defaulted claims decided on their merits.

9. Petitioner's due process rights were violated when the lower courts ignored binding precedents that required them to consider his new evidence against the trial transcripts when deciding constitutional challenges, as oppose to relying upon the findings of the State courts.

The Due Process requirement of House v Bell, required the habeas courts to consider the trial transcripts in deciding whether Petitioner's new evidence of actual innocence allows his defaulted claims to be considered on their merits. Id. US at 537-538. The district court and lower panel violated Petitioner's Due Process rights by their refusal to file the missing trial transcripts with the district court, so to consider them as required by House, so that at a minimum, the federal habeas courts could determine whether the State court's judgment "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2); and to determine whether Petitioner could overcome the burden of rebutting the presumption of correctness by clear and convincing evidence, § 2254(e)(1) or (e)(2)(A)(ii), (B).

The Sixth Circuit ignored its own precedent in Thacker v Bordenkircher, 557 F2d 98 (6th Cir 1977), which held:

> "In a federal habeas corpus action presenting a substantial constitutional challenge to proceedings in a State court, it is error for a district court to rely upon the findings and conclusions of a State appellate court without first reviewing the State trial court transcript," Id, at 99;

when Petitioner argued that the district court relied on the State appellate courts' findings and conclusions (App. A-9, pgs 28-30), as the trial transcripts were never filed in district court, to be reviewed. This violation of Petitioner's due process rights denied him from establishing relief under § 2254(d)(2); (e)(1), (e)(2)(A)(ii),(B) based on his new evidence.

Accordingly, this Court should reverse all of the lower courts' rulings that were based on State courts findings and conclusions without considering the trial transcripts in considering his new evidence [and claims].

10. The lower courts denied Petitioner of his Due Process rights to re-litigate his fraud on the court, void judgments, jurisdictional defects, and constitutional claims raised in his 60(b) motion based upon newly discovered evidence; when they denied reopening his case contrary to binding precedents.

The State court's 6-21-2016 letter (App. C-37) was newly discovered evidence that irrefutably proves that the 12-17-03 competency hearing transcript did not come from State court, which gave Petitioner authority under Fed.R.Civ.P. Rule 60(b)(2),(3), to bring a new action to relitigate his claims that fraud on the habeas courts occurred; as held by Sixth Circuit precedent in Computer Leasco, Inc. v NTP, Inc., supra, which held:

> "[W]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception ... a new suit may be sustained to set aside and annual the former judgment or decree, and open the case for a new and fair hearing." Id. at 334.

In which when newly discovered evidence involves after-discovered fraud, relief will be granted against judgments regardless of the term of its entry. Hazel-Atlas, supra, US at 244. This Court held in U.S. v Beggerly, 524 US 38 (1998) that:

> "Independent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of "injustices which, in certain instances, are deemed sufficiently gross to demand a departure"

from rigid adherence to the doctrine of res judicata." Id. US at 46, citing Hazel-Atlas, US at 244.

The newly discovered evidence of the State's 6-21-2016 letter, established that the lower courts' judgments resulting from decisions involving the fabricated competency hearing transcript, were void; which gave Petitioner authority under Rule 60(b)(4) to relitigate his claims that the transcript was void and caused void and fraudulent judgments to be made.

This Court in Gonzales v Crosby, 545 US 524 (2005) held:

> "Any claim that has not already been adjudicated must be dismissed unless it relies on ... or new facts showing a high probability of actual innocence. 28 U.S.C. § 2244(b)(2)," Id, US at 530.

Petitioner raised a claim in his habeas petition that appellate counsel was ineffective for failing to investigate his new evidence of actual innocence, so to establish that he meets the House and Schlup v Delo, 513 US 298 (1995) gateway to get his defaulted claims decided on their merits. As part of that claim, Petitioner argued that his new evidence demonstrates entitlement under § 2254(d)(2) and § 2254(e)(1) and (e)(2)(A)(ii), (B). Then after the district court ruled on that claim; did Petitioner discover newly discovered evidence and new facts that were never presented to the district court within his petition, that appellate counsel was not just ineffective for failing to investigate, but had committed intrinsic fraud upon the State trial court by intentionally concealing and misrepresenting material evidence of his new evidence of actual innocence. Therefore, the new evidence of appellate counsel's fraud gave Petitioner authority under 60(b) or § 2244(b)(2). Being that Petitioner had already been pursuing relief under 60(b), raised that claim with his other claims in that motion.

Upon Petitioner having discovered new evidence of appellate counsel's fraud upon the State court, after district court decided petition, allows re-[litigation] of the total claim [of counsel's ineffectiveness and fraud] under Hazel-Atlas. Hazel-Atlas is to be read as an expansion of the limits set by U.S. v Throckmorton [98 US 61 (1878)], in attacking judgments generally ... Hazel-Atlas allows a judgment to be

attacked on the basis of intrinsic fraud that results from corrupt conduct by officers of the court.

This Court in Gonzales, also held:

> "Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence," Id, US at 528;

which gave Petitioner authority to file his 60(b) motion because the State court's 6-21-2016 letter, presented newly discovered evidence that extrinsic fraud on the habeas courts occurred, which exposed void judgments, jurisdictional defects, and other misconducts having occurred in the litigation of his habeas petition.

Due to the fact that the district court and panel below completely ignored and concealed the existence of the State's circuit court's 6-21-2016 letter [and the new evidence of appellate counsel's fraud on the State court], in ruling on his 60(b) claims, as claims relitigated without ever mentioning the newly discovered evidence; was to prevent their exposure of the fraud on the habeas courts and their misconduct of not upholding the law.

Accordingly, this Court should investigate and correct the fraud on the lower courts and punish those who engaged in such misconduct; and vacate Petitioner's conviction.

In Closing

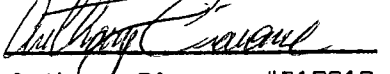
No matter what authorized procedure Petitioner pursues to expose the fraud that the lower courts engaged in, if he had to first exhaust in those courts, those courts would continue to commit fraud by making fraudulent judgments, to prevent him from gaining any relief that he may be entitled to.

CONCLUSION

The Writ of Certiorari should be Granted.

Date: November 30, 2018

Respectfully Submitted,



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