

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

Dale Allen Hamer — PETITIONER
(Your Name)

VS.

DISTRICT OF TRAVIS COUNTY, TX RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT UNITED STATES COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

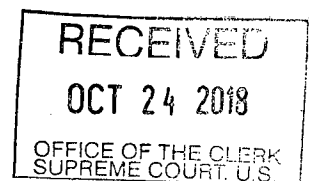
PETITION FOR WRIT OF CERTIORARI

DALE ALLEN HAMER,
(Your Name)

1699 FMI 980
(Address)

Huntsville, Texas 77343
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

That counsel's conduct fell below the wide range of attorney competence as a matter of law. Counsel's performance was deficient. That the record revealed no reasonable strategy in counsel's failure to investigate the probable cause or prior DWI's. Counsel coerced petitioner into pleading guilty or get 99-1 life on a unwarranted arrest, that petitioner is innocent of following. To review the preliminary hearing of the magistrate determines that a person brought before the magistrate after an arrest on probable cause, that the blood test within 72 hours of arrest. To review the preliminary hearing of the magistrate determines lines of the second arrest on the new indictment.

To review the Affidavit for Warrant of arrest and detention in cause No D-1-DC-14204145, and in cause No D-1-DC-15-904054. To review the ~~first~~ ^{first} indictment, and the second indictment that was dismissed by the state court on the same day of the plea. To review the subsequent indictments when both indictment allege the same conduct, same act, or same transaction. To review the enhanced penalties should petitioner be charged and convicted of a subsequent felony offense; Enhanced penalty for any subsequent DWI conviction; Possible impeachment of the petitioner's credibility in a judicial hearing as a result of a felony conviction within 10 years of of his prior DWI. That was in 1995 over the 10 years for the enhancement, counsel's deficient performance prejudiced the defense. To review the indictments that states misdemeanor Enhanced Habitual.

To review docket sheet that the petitioner right thumb print is not his.

To review the trial court's certification of Defendant's right to appeal, that the DH is not the petitioner's sentences.

To review the argument of the defendant on plea of guilty records that there was no hearing in open court herein at least two entire days prior to the present day. Of Oct 30th 2015.

1.043-4-X

To review the court's records, and transcript, and forged court's records. that petitioner waived the reading of the indictment / information, and that he was asked whether or whether he was guilty or not guilty as therein charged.

To review the plea of guilt, admonishments, Voluntary statements, Waivers, stipulation judicial confession, that the DH is not petitioner's.

To review the citizenship that the DH is not petitioner's. and that the sentencing Dale Hamer is my sentencing of page 4, but this was done after the plea of October 30th 2015.

To review ~~Page~~ Page 5, subscribed, and sworn to before me on this date: 10-30-2015. I further certify that the fingerprint shown on the docket sheet filed in this case is of the defendant's right thumb.

To review all court's records, Transcript's before the plea, and after the plea, That petitioner was denied MHMR counsel.

To review finding that petitioner had "committed an act within the jurisdiction of the transportation code);

To review finding that petitioner was in violations of any State, or federal traffic laws);

To review finding that petitioner's Warrantless Vehicle Searches was constitutional);

To review finding Affidavit for Warrant of arrest and Detention. Accused in possession of Alcohol or Drugs v No);

To review finding of Magistrate, Municipal court's sentencing of the Warrant for arrest, and Warrant for blood testings);

To review the denying petitioner request for judicial notice of adjudicative facts in establishing for the record's the definition of the term transportation);

To review the denying petitioner "repeated objections and request for a pre-trial hearings on motion to suppress, motion to to quash);

To review the finding that the incorporated limits of the city of Austin, County of Travis, Texas acting in the name of the state of Texas had standing to bring these charges against petitioner.

To review the finding that a clerk of the municipal court of the City or County had standing to act as the official on a complaint charging petitioner with an offense.

To review the finding that the clerk's affidavit was reliable or finding that the officer's sworn report was reliable.

To review finding that service of process was effective for conferring personal jurisdiction over petitioner in a transportation code case.

To review finding that the complaint filed in this case was sufficient to give petitioner constitutional notice of the cause and nature of the accusation against him.

To review finding that the complaint substantially sufficient to allege an offense.

To review finding application of the transportation code to petitioner private was not unconstitutional "as applied" to review refusing to allow petitioner to challenge the reliability of the testimony of the police officer.

To review finding the evidence sufficient to support petitioner conviction.

To review finding that the subject matter of the transportation code was not unconstitutional.

To review why would counsel for petitioner plead guilty to a word arrest? A study on unreliable drug field tests used by police officers at "investigatory" traffic stops.

To review that potentially leading to a significant reduction in investigatory stops if the study reveals strong findings of unreliability; seeks to have identifying information in a person's record.

To review that files related to a wrongful arrest that conviction and incarceration of innocent people ruins lives, destroys public trust in our justice system, harms public safety.

To review plain error, an error that is plain or obvious that affects his substantial rights and that seriously affects the fairness, integrity or public reputation of judicial proceedings.

LIST OF PARTIES

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

[2] 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:

1. Dale Allen Hamer, Petitioner. Magistrate Municipal court N/A
Judge Presiding: State court Hon. David Crain,
Attorney for petitioner William Hines.
Attorney for state Leslie Booker, Rosemary Lehmbers,
Attorney for state Angie Crecsy.
Velva L Price District Clerk. Travis County Texas, PO Box
1748 Austin, Texas 78767.
TDCJ- Parole Division, 8712 Shoal Creek Blvd, Austin, Texas
78757.
Court of Criminal Appeals of Texas P.O. Box 12308 Capitol
Station, Austin, Texas 78711.
Assistant Attorney General Susan San Miguel P.O. Box
12548, Capitol Station Austin, Texas 78711-2548.
2. United States Magistrate Judge Andrew W. Austin,
Magistrate Judge Sam Sparks.
United States Court of Appeals for the Fifth Circuit
Jennifer Walker Elrod United States Circuit Judge.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>Decision of state court of appeals Austin, Texas.</i>
APPENDIX B	<i>Court has denied motion for a evidentiary hearings.</i>
APPENDIX C	<i>Court denied motion for writ of mandamus.</i>
APPENDIX D	<i>Decision of state trial court State's original answer.</i>
APPENDIX E	<i>Federal court for the Western District of Texas.</i>
APPENDIX F	<i>The United State's court of appeals for the Fifth circuit.</i>

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>U.S. V. ROSS</u> , 1982 456 U.S. 798, 72 L. Ed 2d 572 (1992), ...	7
<u>U. S. LEXIS</u> 18,162 S. Ct. 2157, Art 18, 01, Art 1811.	
<u>United States V. Lean</u> , 468, 844, U. S. 897, 104, S. Ct. 3405, ...	7
3418, 82, L. Ed. 677. (1984);	
<u>State V. Pelier</u> , 422 U.S. 571, 95 S. Ct. 2313, 2320, 45, L. Ed ...	7
2d 374 (1975);	
<u>Carbin V. State</u> , 855 S.W. 3d 272 (Tex. Crim. App. 2002) ...	7
<u>Wright V. State</u> , 7, S.W. 3d 148, (Tex. Crim. App. 1999) ...	7
<u>Terry V. Ohio</u> , 372 U.S. 1, 1981 ...	7
<u>MARCOPOULOS V. STATE</u> , 2017 (Tex. Crim. App. LEXIS 1310, 2017 ...	8
<u>Wright V. State</u> , 7, S.W. 3d 148 (Tex. Crim. App. 1999) ...	8
<u>Hope V. Pelizer</u> , 536 U.S. 730 (2002) ...	8
<u>Greer V. City of Highland Park</u> , 884 F.3d 310 (6th Cir 2018) ...	8

STATUTES AND RULES

V.T.C.A. Penal code 49.04, (a) 49.09, 49.09 (b), 49.09 (f) ...	14
subsec. (e) (1), subsec (e) (2), as (e) (3); Sub. (f), (g); ...	14
Section 11 (b); (e) (4);	
Section 12, 42 (d); Section 12, 42 (d); Penal Code Ann	
§ 49.09 (f) ...	14
HB 34, (2017), SB 1849, HB 3147, (2017) ...	1 of 3
Federal Rules of Civil Procedure F.R.C.P. Rule 11, ...	19
11, 11(b), 1.3, 1.6, 3.1, 3.4, 8.1, 9.1, 9.2, 1.5, 1.2,	
Statutes ...	4-17

OTHER

Transportation code - Sec. 545.058 ...	1 of 3
Article 1.04 V.A.C.C.P. (S), at 44, 181 ...	8
Art 1.05 V.A.C.C.P. (6) art 1, § 10 ...	10
1, 14, Art 1 § 19, art 55.01. ...	10
Penal Penal code 39.10. (a) ...	4 of 17

CASES

PAGE Number:

<u>Carver v. State</u> , 227 S.W. 3d 1090 (2017)	8
<u>Frank v. Delaware</u> , 438 U.S. 154 (1998)	8
<u>McIntosh v. State</u> , 444 S.W. 3d 15 (Tex. Crim. App. 2014)	8
755 F. 3d 811 2014 U.S. APP. LEXIS 11807.	9
663 F. 3d 397, 385 2011 U.S. APP. LEXIS 2428	9
<u>U.S. v. Ramos</u> , cite as 443 F.3d 304 (3rd Cir. 2006)	9
<u>U.S. v. Troop</u> , 514 F. 3d 405.	9
526 F. 3d 214	9
<u>Cook v. State</u> , 902 S.W. 2d 471 (Tex. Crim. App. 1995)	10
<u>Smith v. State</u> , 299 S.W. 3d 200, 207 (Tex. Crim. App. 2009)	10
<u>State v. Mael</u> , 154 S.W. 3d 599, 601 (Tex. Crim. App. 2004)	10
<u>Smith v. State</u> , 309 S.W. 3d 10, 16 (Tex. Crim. App. 2010)	10
<u>State v. Dawlbo</u> , cite as 926 S.W. 2d 314 (Tex. App. Dallas)	11
<u>State v. Marmolejo</u> , cite as 855 S.W. 2d 295 (Tex. App. Austin 1993)	11
303, 15, 303, 3014	11
<u>Mahaffey v. State</u> , App. 1, Dist 1996 939, S.W. 2d 51	11
<u>State v. Fess</u> , App. 3, Dist 1993, 846, S.W. 2d 934, 144, 1(a)	11
<u>Tarras v. Rios</u> , cite as 869 S.W. 2d 555 (Tex. App. Corpus Christi, 1993), Hall 829 S.W. 2d at 184, Hernandez 127 S.W. 3d at 770-74.	11
<u>OSP</u> , 360 S.W. 2d 398, at Ex. Pate, Cannon, 546 S.W. 2d 266 (1976)	11
<u>Fitzgerald</u> , 505 F. 2d 1334, 1338, (5th Cir 1985)	12
<u>Truang</u> , 770 S.W. 2d 810 (1989); <u>ECV</u> , 8437 U.S. 391 (1963)	12
833 S.W. 2d 515	12
<u>Cook v. State</u> , cite 902 S.W. 2d 471 (Tex. Crim. App. 1995) [17, 18]	12
<u>Dendy v. Wilson</u> , 142 (Tex. 460, 179, S.W. 2d 269 (1944)	12
<u>Weekley v. Jones</u> , cite as 56 F. 3d 889 (8th Cir 1995)	13
<u>Jones v. Delo</u> , cite as 124 S.Ct. 1847 (2004)	13
<u>Drutkev v. Haley</u> , cite as 124 S.Ct. 1847 (2004)	13
<u>Thompson v. Louisville</u> , 362 U.S. 199, 80 S.Ct. 624, 4 L. Ed 2d 654 (1960)	13
<u>Jackson v. Virginia</u> , 443 U.S. 309, 99 S.Ct. 2481, 61 L. Ed 2d 560 (1999)	13
<u>Wainwright v. Sykes</u> , 433 U.S. 72, 91, 99 S.Ct. 2497, 53 L. Ed 2d 594 (1977)	13
<u>Mapp v. State</u> , cite as 187 S.W. 3d 655 (Tex. App. Houston 14th Dist (2006)	13
<u>Uribe v. State</u> , 136 S.W. 3d 258 (Tex. App. San Antonio 2004)	15
<u>Miller v. Florida</u> , 482 U.S. 423, 429, 107 S.Ct. 2446, 2450, 96 L. Ed 2d 351 (1987)	15

<u>Calder v. Bull</u>	3, U.S. (3 Ball) 386, 390 1, L. Ed. 648 ...	15
	(1798), 479 U.S. 960, 107, S.Ct. 455, 93 L. Ed. 2d 401 (1986)...	15
<u>Weaver v. State</u>	(App. 6 Dist 2001) 56 S.W. 3d 896, 875, ...	15
	S.W. 3d 557.	
<u>Robinson v. Hill</u>	507 S.W. 2d 521, 524 (Tex. S. Ct. (1994)) ...	15
<u>Lecroix v. Hanlon</u>	713 S.W. 2d 335, 337 (Tex. S. Ct. (1986)) ...	15
<u>Stram v. State</u>	208 S.W. 2d 683, 151 (Tex. crim. 435 (Tex. crim. ...	15
	App. (1948))	
<u>Norton v. Shelby Co.</u>	118 U.S. 425, 442, 6, S.Ct. 1121, 1125 (1885)	16
<u>Alexander v. Corkree</u>	294, F. 3d 626 (5th Cir 2002)	16
<u>Miller v. Davis</u>	150 S.W. 2d 973 (1941)	16
<u>Cook v. Cameron</u>	733 S.W. 2d 139, 140, 1987	16
<u>Seidel</u>	39 or 89 S.W. 3d 221, 225 (Tex. crim. App. 2001)	16
<u>Middletown v. Murff</u>	689 S.W. 2d 212, 217 (Tex. S. Ct. 1985)	16
	103 S.Ct. 3308	17
<u>Md. v. Alonzo-King</u>	133, S.Ct. 1958, 1970 2013	17
<u>Leifer v. Cooper</u>	132 S.Ct. 1376	17
<u>Nirsaari v. Galin Frye</u>	132 S.Ct. 1399, 402-3 (2012)	17
<u>Class v. U.S.</u>	138 S.Ct. 798 (2018)	17
<u>U.S. v. Olson</u>	880 F. 3d 873, (9th Cir 2018)	17

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

☒ For cases from **federal courts**:

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

- ☒ reported at 28 U.S.C. § 1254 is denied.; 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 E to the petition and is

- ☒ reported at COA is denied; 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 A to the petition and is

- ☒ reported at Denied without written order.; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the District Court 331st Travis County, TX court appears at Appendix D to the petition and is

- ☒ reported at Trial Court original answer not denied; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 6-7-2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 17, 2018, and a copy of the order denying rehearing appears at Appendix F.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 11-9-2016. A copy of that decision appears at Appendix A, B, C.

☒ A timely petition for rehearing was thereafter denied on the following date: 11-16-2016, and a copy of the order denying rehearing appears at Appendix N/A, B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A, N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment.	page's
Fifth Amendment.	2 of 4
Sixth Amendment, 14 th Amendment.	1 of 3
Seventh Amendment.	4 of 17
Eighth Amendment.	
Ninth Amendment.	
Tenth Amendment.	

STATEMENT OF THE CASE

On July 17th 2014 at approximately 18:13 officer Asular stop

Petitioner without probable cause.

Petitioner was not a "suspect of a DWI, or suspicion of

criminal activity."

Petitioner "did not violation any state or federal Transpor

tion laws by going on the improved shoulder to make a turn."

Officer Asular the foregoing information was taken from

Petitioner after being held for over (1) one hour. Petitioner was

not informed of his Miranda's rights at any time of his stop

or arrest.

At 19:14 the time that officer's Lane "7905, and Officer Konkel

6322 did the intoxilizer PBT two times, but officer stated

that the device was not working properly you need to go

to city jail to give a blood test. Warrant number "5W14079-

736 at 9:09 clock July 17th 2014.

The affidavit for warrant of arrest and detention July 17th

2014 at 9:52^{PM}. Cause No: 01-DC-14-204145, and that bond was

at 95,000 by the magistrate judge before the blood test could be

admitted as evidence if any within 48, 92 hours of arrest.

So how can a preliminary hearing be held without the

blood test results?

"Petitioner's lawyers was ineffective because he acted

below the standard demanded of a reasonably competent

attorney" and because counsel's errors affected the outcome

without the errors. That the officer's filing false police

reports that petitioner was in violation of the transportation

code by going on the improved shoulder, and that counsel is

was ineffective for failing to challenge the sufficiency

of the evidence that the officer had probable cause to stop

Petitioner in violation of his Fourth Amendment, it is evident

that parallel construction is generally in direct violation of

the Fourth Amendment and is therefore unconstitutional

behavior in many instances. However, that a claim of

judicial prosecutive goes to the "the very power of the

State to prosecute the petitioner."

On Aug 19th 2014, petitioner was indicted in case No. 01-DC-14-30415. Petitioner was giving an appellate attorney when petitioner talk to his attorney petitioner ask for copy of the blood tests. Counsel stated I will get it. Petitioner talk to same counsel again about the tests. Counsel stated we do not have it yet so petitioner filed motion to dismiss counsel. Petitioner also filed motion to quash indictment, motion to suppress evidence. Petitioner had new counsel when talking to counsel about the same facts of the blood tests, and probable cause. As time went by he begins to call so petitioner filed a second motion to dismiss counsel. New attorney for petitioner was William Hines, petitioner stated the same facts to his new counsel. Time also went by, but his counsel was the head counsel for the law firm of the two counsels that petitioner had dismissed. Petitioner stated to counsel to hold a hearing to challenge the reliability of the testimony of the police officers at the two grand jury it guy, on the probable cause. Petitioner's also need a Mental Health WITHIN counsel this is all on jail report by the WITHIN supervision for petitioner at the jail. This was filed by here move then one time for WITHIN counsel. In the indictments of Aug 19th 2014, it states intoxication and alcohol beverage offenses misdemeanor, but see Affidavit for arrest, accused in possession of alcohol, drugs. YES - NO. "Although the indictment properly to charged a misdemeanor and lacked an element necessary to charge a felony." The indictment states - driving while intoxicated F3, but it also states 49.04, 49.09 is a class B misdemeanor Enhanced Habitual. Tampering with a government records. On Sep 10th 2015 2:20 PM petitioner was reindictment for the same acts 01-DC-15-904054. Petitioner did not have notice of this new indictment, petitioner was not inform by counsel of the new indictment so the two indictments was running at the same time

On 10-30-2015, petitioner's counsel coerced petitioner into pleading guilty, but at the same time the district attorney for the state had a motion to dismiss the charge entitled and numbered criminal action in which the defendant is charged with the offense of 49.04, 49.09, 3rd on 10-30-2015 at 10:30 AM. Petitioner could not have waived his rights in open court by due form of law. Petitioner was not booked out on old indictment or rearrested on new indictment and no preliminary hearing by a magistrate judge or a new warrant on new indictment and was not informed of his Miranda's rights in open court on Oct 30th 2015.

Due to that the district court erred by continuing to hear the case despite his motion, alleging that the court had a duty to stop all court proceedings upon the challenge of constitutional jurisdiction "but failed to do so. And also that his counsel, judge had a duty to show and prove that the offenses alleged to have been committed in violation of transportation code X passing on the shoulder under probable cause.

Petitioner did not see why the district court judge statement should bar petitioner constitutional claims; this statement the court wrote: "was made to ensure petitioners understood the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; on a 11.09 application for writ of habeas corpus. It does not expressly refer to a waiver of the appeal right here at issue. And if it is interpreted as expressly including that appeal right, it was wrong as the state acknowledged of the plea agreement under these circumstances. Petitioner occurrence neither expressly nor implicitly waived his right to appeal his constitutional claims

Petitioner can file a 11.09 on the terms "confinement and restraint" at any time on a arrest of a indictment with guilty plea, enhanced, plea guilty, misdemeanor nor advice prior conviction, ineffective assistance of counsel, convicted involuntarily, investigative, confined to enhance, ineffective, custody, matter of law, transportation code, probable cause, jurisdiction, statutes.

REASONS FOR GRANTING THE PETITION

The Supreme Court has jurisdiction over subject matter and the parties pursuant to a petition for writ of certiorari. Jurisdiction is proper in either the district where the party is in custody or the district in which the state court convicted and sentenced him.

The point of the Fourth Amendment is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer in the often competitive enterprise of ferreting out crime.

The judges must determine the "historical facts," the events that occurred leading up to the stop or search, or decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. The courts must review findings of historical fact only for clear error and must "give due weight to inferences drawn from those facts by resident judge and local law enforcement officers."

For purposes of the automobile exception to the search warrant requirement of the Fourth Amendment, a probable cause determination must be based on objective facts that would justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers involved. See Ill. v. Ross (1982) 456 U.S. 798, 72 L. Ed. 2d 572 (1992); U.S. v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 3418, 82 L. Ed. 2d 377 (1987), Fourth Amendment exception to rule applies when police engage in willful or negligent conduct depriving the defendant of some right (Ill. v. State, 422 U.S. 531, 55 S. Ct. 873, 37 L. Ed. 2d 374 (1975)).

In Carbin v. State, 85 S.W.2d 912 (Tex. Crim. App. 2002) see - Ill. v. State, 7 S.W.2d 148 (Tex. Crim. App. 1999)

The U.S. Supreme Court articulated the standard officers require as a justification for this more intrusive action. Terry v. Ohio, 372 U.S. 1, 1963.

See U.S. Supreme Court automobile exception. On these facts that the officer had probable cause to stop petition. Accordingly, the Court reversed the first court of appeals' judgment and remanded the case. See MacCorquodale State, 2017 Tex. Crim. App. LEXIS 1310 (2017).

In Wright v. State, 7 S.W.3d 148 Tex. Crim. App. 1991 Law enforcement officers owe "wholly" distinct from their duty to detect investigate and prevent crime, the U.S. Supreme Court has categorized those as "community caretaking functions." In fact, the community caretaking doctrine is a broad term for three separate doctrines: "The emergency aid doctrine," "the automobile impoundment and inventory doctrine," and "the public servant doctrine." Each one of those doctrines acts as an exception to both the warrant requirement and the probable cause requirement of the Fourth Amendment.

Transportation Code Sec. 545.058, driving on improved shoulder, to accelerate before entering the main traveled lane of traffic, to pass another vehicle that is slowing or stopped on the main traveled portion of the highway, disabled, or appearing to make a "left turn," or to decelerate before making a right turn. Petitioner did this solely. HB 34, SB 1849, HB 3147.

That is, the Hamer, petitioner, must establish that: "the officers' actions under color of law state law violated their constitutional right and (2) the constitutional right in question was 'clearly established' at the time of the alleged violation so that a reasonable officer would have known that the conduct was unlawful. Horne v. Peizer, 536 U.S. 930 (2002)." See Greer v. City of Hissland Park, 834 F.3d 310 (7th Cir. 2018), see: Carver v. State, 229 S.W.3d 1090 (2017).

It is clear from the record that Officer Aguilar "4821 did not stop petitioner Hamer for DWI. But for a transportation code that is legal 545.058, above. When a warrant was invalid, in the affidavit must independently establish probable cause, or the warrant will be invalid. Franks v. Del. Ave, 438 U.S. 154 (1978). McBirtch v. State, 444 S.W.3d 15 Tex. Crim. App. 2014). It will be deemed an illegal stop.

The state had to prove "beyond a reasonable doubt" petitioner had violation of a transportation code in open court before the plea agreement. An attorney's duty is to take possession - not responsibility for the conduct of a case.

Petitioner filed his motion to suppress evidence on his

arrested on July 17th 2014. Motion filed 17th day of Nov. 2014. That petitioner was arrested without probable cause that petitioner was not in violation of any state traffic laws. See 755 F.3d 811, 2014 U.S. App. LEXIS 11807, also see, 663 F.3d 394, 385, 2011 U.S. App. LEXIS 2428, also see, U.S. v. Ramos, cite as 443 F.3d, 304 (3rd Cir 2006).

In U.S. v. Elliott, cite as 107, F.3d 810 (10th Cir 1999) If the officer continues to question the driver in the absence of either set of circumstances, any evidence derived from that questioning (or a resulting search) is impermissibly tainted in Fourth Amendment terms. Reversed and remanded. All case above was reversed and remanded. U.S. Terry v. Ohio, 392 U.S. 1, 28, 88, 5 Ctr 1808, 1884, 20 In C. A. S. Hox, 2008 when considering the denial of a motion to suppress evidence the court of appeals reviews the district court's factual findings for clear error and its Fourth Amendment U.S. v. Troop, 514 F.3d 405.

From what constitutes "seizure" within meaning of Federal Constitution's Fourth Amendment-Supreme Court Cause for arrest-Supreme Court case 287, F.3d 998 Motion to suppress evidence obtained. Probable cause include, "Instituting habeas corpus proceedings for the purpose of obtaining the arrestees release from custody, instituting a common law action for false imprisonment or a statutory action for violation of civil rights or both.

In 526 F.3d 914 That the district court erred by continuing to hear the case despite this motion alleging that the court "had a duty to stop all court proceedings upon challenge of constitutional jurisdiction" but failed to do so. And that the judge had a duty to show and prove that the offenses alleged to have been committed.

Petitioner also filed motion to quash indictment and information. It is readily apparent that the majority would hold article 44.181 of the code of criminal procedure unconstitutional violation of article 1.04 U.S.C. P. 151.

Most rights and procedural matters may be waived, but jurisdiction matters may not be.

On October 3rd 2015 at 10:30 AM the state's motion to dismiss the above entitled and numbered criminal action in which the defendant is charged with the offense of DWI 49.04. Penal code, in case no. 1430415.

The court of appeals held that "order dismissing prior case was void to extent it sought to prohibit state from filing new information, and there was not authority for dismissing present cause. State v. Nollan cite as 920 S.W. 2d 314 Tex. App. Dallas. Authority to dismiss.

State v. Marmolejo, cite as 855 S.W. 2d 295 Tex. App. Austin (1993) Criminal law 303.15, 303.301A Trial court may not dismiss prosecution on its own motion pursuant to plea bargain.

Dismissal for DWI conviction could be used to enhance sentence for subsequent DWI conviction, where court that dismissed earlier conviction lacked authority to do so. Mahaffey v. State, App. 1, Dist 1996 937 S.W. 2d 51, but see State v. Foss, App. 3, Dist 1993, 846 S.W. 2d 934 indictment and information 144.1(a)

Torres v. Rios, cite as 809 S.W. 2d 555 (Tex. App. Corpus Christi, 1993), because the refusal to reinstate

addition on the merits, we cannot say that the error's was harmless. Tex. R. App. 81(b)(4), appellant's point of error is sustained. The dismissal is reversed and the cause is remanded to the trial court with instruction to reinstate it on the courts docket.

For a subsequent indictment when both indictments allege the same conduct, same acts or same transaction, Hall 899 S.W. 2d at 184, Hernandez, 127 S.W. 3d at 770-74 we reverse the trial court order and remand the cause to the trial court 2008, Tex. Crim. App. Lewis 1568.

That petitioner's counsel would allow a trial or conviction for a felony in a court lacking lawful jurisdiction of the subject matter for want of a valid indictment constitutes a prima facie showing the presiding court failed to meet all the requirements under the STRICKLAND test, where... If the trial court was without jurisdiction for (any reason) the judgment rendered by it is void. ... 2008 S.W. 2d 398, at F. Pate Cunningham S.W. 2d 200 184(c)

Whenever the actions of counsel operate to deprive the trial of fundamental fairness as it has in Appel-
cant's case, the 14th Amendment due process clause has
been violated. See Fitzgerald 505 F.2d 1334, 1338 (5th
Cir. 1985). A judgment of conviction or sentence, or
both obtained in violation of due process or due course
of law is void for want of jurisdiction for the
court to enter such judgment. Evarte 770 S.
W.2d 810 (1989); see Fay 937 U.S. 391 (1963) and must be
reversed as a matter of law, where Art. 2, § 13, V.A.
C.P. requires

833 S.W.2d 515. The state may, with the consent of the court,
dismissal, waiver or abandonment occurs after verda-
ry attaches. The state is barred from later litigating
those allegations.

Look v. State, 210 S.W.2d 471 Tex. Civ. App. (1995) [17, 18]
Moreover, a construction of Art. V, § 12 (b) which places
the constitutional definition of an indictment within
the purview of Art. I, 14(b) is problematic because it
subjects a constitutional and statutory construction
that the legislature lacks the authority to enact a
statute which conflicts with a provision of the consti-
tution in Ready v. Wilson, 142 Tex. 460, 179 S.W.2d 209
(1944) the Texas Supreme Court expressed this proposition
as follows:

The power to make laws is vested there... However,
the legislature does not have the power to enact any
law contrary to the provisions of the constitution. If
any law or part thereof, undertakes to nullify the
protection furnished by the constitution, such law, or
part thereof, that conflicts with the constitution is
void. Accordingly, the constitution in indictment as
received by Art. 21.07, 29.08 (1), supra, the indictment is
insufficient to confer subject matter jurisdiction.
Reversed and remanded. Verano v. Ann. Tex. C.P. App.
1, 141, Indictment and Information 55, 71, 2, (3) 2019
Tex. App. LEXIS 817.

In a hearing to determine the admissibility of
evidence under Tex. R. Evid. 104(a), the trial judge makes
a legal ruling to admit or exclude evidence based
upon the relevance and reliability of the factual

information submitted by the parties. A trial court abuses its discretion if, in making its ruling on the admissibility of the evidence, it relies on information that is not shown to have sufficient indicia of relevance and reliability to serve as the factual basis for the trial court's ruling.

2016 TEXAS APPELLATE 9531
Article 1, Section 29, states, to guard against transgressions of the legislative powers herein delegated, we declare that everything in the Bill of Rights is excepted out of the general powers of government and shall forever remain inviolate and all laws contrary thereto or to the following provisions shall be void, Tex. Const. art. 1, § 29.

WEEKLEY, V. JONES cite as 56 F.3d 889 (8th Cir. 1995)
Petitioner was denied effective assistance of counsel, counsel did not hold a hearing on psychiatric evidence. JONES V. DELO cite as 56 F.3d 878 (8th Cir. 1995)
Petitioner is "actually" innocent "of the traffic stop.

Because, as all parties agree, there is no factual basis for respondent's conviction as a habitual offender, it follows inexorably that respondent has been denied due process of law. Thompson v. Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654 (1960) and in Jackson v. Livingston, 443 U.S. 307, 99 S.Ct. 978, 61 L.Ed. 2d 560 (1979) and because that constitutional error clearly and concededly resulted in the imposition of an unauthorized sentence, it also follows that respondent is a "victim" of a miscarriage of justice. Mannix v. State, 433 U.S. 72, 91, 97 S.Ct. 2499, 53 L.Ed. 2d 594 (1977) entitled to immediate and unconditional release, but as a result of a conspiracy of justice made by the prosecutor, judge, and his attorney, respondent was also erroneously convicted and sentenced under Texas' habitual offender law, § 12.42.(a)(2) supra.

Niles v. State, cite as 187 S.W.2d 655 Tex App. Houston [1947] 2006. Defendant was sentenced outside the state by reason for his prior driving while intoxicated DWI conviction.

which was designated a class A. B. misdemeanor due to an earlier conviction, and therefore the conviction was voided. V.T.C. A. Penal code § 49.04(a) two Penal codes 48.09, 48.10.

Historical and Statutory Notes, Acts 2001 97th, 1991 96th, 1981 95th, 1971 94th, 1961 93rd, 1951 92nd, 1941 91st, 1931 90th, 1921 89th, 1911 88th, 1901 87th, 1891 86th, 1881 85th, 1871 84th, 1861 83rd, 1851 82nd, 1841 81st, 1831 80th, 1821 79th, 1811 78th, 1801 77th, 1791 76th, 1781 75th, 1771 74th, 1761 73rd, 1751 72nd, 1741 71st, 1731 70th, 1721 69th, 1711 68th, 1701 67th, 1691 66th, 1681 65th, 1671 64th, 1661 63rd, 1651 62nd, 1641 61st, 1631 60th, 1621 59th, 1611 58th, 1601 57th, 1591 56th, 1581 55th, 1571 54th, 1561 53rd, 1551 52nd, 1541 51st, 1531 50th, 1521 49th, 1511 48th, 1501 47th, 1491 46th, 1481 45th, 1471 44th, 1461 43rd, 1451 42nd, 1441 41st, 1431 40th, 1421 39th, 1411 38th, 1401 37th, 1391 36th, 1381 35th, 1371 34th, 1361 33rd, 1351 32nd, 1341 31st, 1331 30th, 1321 29th, 1311 28th, 1301 27th, 1291 26th, 1281 25th, 1271 24th, 1261 23rd, 1251 22nd, 1241 21st, 1231 20th, 1221 19th, 1211 18th, 1201 17th, 1191 16th, 1181 15th, 1171 14th, 1161 13th, 1151 12th, 1141 11th, 1131 10th, 1121 9th, 1111 8th, 1101 7th, 1091 6th, 1081 5th, 1071 4th, 1061 3rd, 1051 2nd, 1041 1st.
An offense under section 48.04, except as provided by subsection (f), in subsection (1) follows "under subsection (d), deleted" and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; added a new subsection (2) renumbered former subsection (2), and as renumbered, substituted "within 10 years of the latest date before the date on which the offense for which the person is being tried was committed," retained former subsection (f) as subsection (9); and added a new subsection (f).
Section 3 of Acts 2001 97th, 1991 96th, 1981 95th, 1971 94th, 1961 93rd, 1951 92nd, 1941 91st, 1931 90th, 1921 89th, 1911 88th, 1901 87th, 1891 86th, 1881 85th, 1871 84th, 1861 83rd, 1851 82nd, 1841 81st, 1831 80th, 1821 79th, 1811 78th, 1801 77th, 1791 76th, 1781 75th, 1771 74th, 1761 73rd, 1751 72nd, 1741 71st, 1731 70th, 1721 69th, 1711 68th, 1701 67th, 1691 66th, 1681 65th, 1671 64th, 1661 63rd, 1651 62nd, 1641 61st, 1631 60th, 1621 59th, 1611 58th, 1601 57th, 1591 56th, 1581 55th, 1571 54th, 1561 53rd, 1551 52nd, 1541 51st, 1531 50th, 1521 49th, 1511 48th, 1501 47th, 1491 46th, 1481 45th, 1471 44th, 1461 43rd, 1451 42nd, 1441 41st, 1431 40th, 1421 39th, 1411 38th, 1401 37th, 1391 36th, 1381 35th, 1371 34th, 1361 33rd, 1351 32nd, 1341 31st, 1331 30th, 1321 29th, 1311 28th, 1301 27th, 1291 26th, 1281 25th, 1271 24th, 1261 23rd, 1251 22nd, 1241 21st, 1231 20th, 1221 19th, 1211 18th, 1201 17th, 1191 16th, 1181 15th, 1171 14th, 1161 13th, 1151 12th, 1141 11th, 1131 10th, 1121 9th, 1111 8th, 1101 7th, 1091 6th, 1081 5th, 1071 4th, 1061 3rd, 1051 2nd, 1041 1st.

The change in law made by this Act applies only to the enhancement of punishment at the trial of an offense committed on or after the effective date of this Act. This Act, the enhancement of punishment at the trial of an offense committed before the effective date of this Act, is covered by the law in effect when the offense was committed and the former law is continued in effect for that purpose. For purposes of this section an offense was committed before the effective date of this Act if any element of the offense occurred before that date. Art 2001 97th, 1991 96th, 1981 95th, 1971 94th, 1961 93rd, 1951 92nd, 1941 91st, 1931 90th, 1921 89th, 1911 88th, 1901 87th, 1891 86th, 1881 85th, 1871 84th, 1861 83rd, 1851 82nd, 1841 81st, 1831 80th, 1821 79th, 1811 78th, 1801 77th, 1791 76th, 1781 75th, 1771 74th, 1761 73rd, 1751 72nd, 1741 71st, 1731 70th, 1721 69th, 1711 68th, 1701 67th, 1691 66th, 1681 65th, 1671 64th, 1661 63rd, 1651 62nd, 1641 61st, 1631 60th, 1621 59th, 1611 58th, 1601 57th, 1591 56th, 1581 55th, 1571 54th, 1561 53rd, 1551 52nd, 1541 51st, 1531 50th, 1521 49th, 1511 48th, 1501 47th, 1491 46th, 1481 45th, 1471 44th, 1461 43rd, 1451 42nd, 1441 41st, 1431 40th, 1421 39th, 1411 38th, 1401 37th, 1391 36th, 1381 35th, 1371 34th, 1361 33rd, 1351 32nd, 1341 31st, 1331 30th, 1321 29th, 1311 28th, 1301 27th, 1291 26th, 1281 25th, 1271 24th, 1261 23rd, 1251 22nd, 1241 21st, 1231 20th, 1221 19th, 1211 18th, 1201 17th, 1191 16th, 1181 15th, 1171 14th, 1161 13th, 1151 12th, 1141 11th, 1131 10th, 1121 9th, 1111 8th, 1101 7th, 1091 6th, 1081 5th, 1071 4th, 1061 3rd, 1051 2nd, 1041 1st.

Further, only felonies may be used to enhance punishment under section 12.42(a) the habitual offender statute. The disjunctive language of section 48.04(b), "a conviction ... may be used for purposes of enhancement under this section or ... under the habitual offender statute" but not under both, assumes a section 12.42(a) conviction must be for a felony offense. For Penal code Ann § 48.09(f) (version 2001) (emphasis added), misdemeanor convictions may not be alleged to enhance punishment under section 12.42(a).

In Horton the U.S. Supreme Court held that [an] unconstitutional act is not law; it confers no rights, imposes no duties; affords no protection; it creates no office.

unconstitutional act.

This overruling by the Texas Legislature amounts to an Bill shall contain more than one subject. 25 mandatorily 435 (Tex. Crim. App. 1948) constitutional provision that no S. Ct. 1986; 508 S.W.2d 683, 151 Tex. Crim. (Tex. S. Ct. 1974); Leary v. Hanlon, 713 S.W.2d 335, 337 Tex. Texas Constitution see Robinson v. Hill, 509 S.W.2d 521, 524. than one subject, in violation of Art. 3, Sec. 35, of the interest, causing Senate Bill No. 34 to contain more relation, directly or indirectly, to any criminal penal Section 971, Tex. Civ. Statutes Art. 5765, had and has no

for discretionary review granted, reversed 87 S.W.2d 557. DWI Weaver v. State, (App. Dist. 2001) 56 S.W.3d 896, Petition convictions was committed within 10 years of current will be state failed to prove that defendants prior DWI meanor class B DWI, rather than ordered an acquittal, to third-degree delinquency while intoxicated DWI to a misde-

Count of appeals returned judgment convicting defendant (1986), and now reverse.

We granted certiorari, 479 U.S. 960, 107 S.Ct. 455, 93 L. Ed. 2d 401 Quitting Calder v. Bull, 3 U.S. (3 Dall) 386, 390, 1 L. Ed. 648 (1798) 482, 483, 429, 167 S.Ct. 946, 945, 96 L. Ed. 2d 351 (1987) law annexed to the crime, when committed, Miller v. Florida punishment, and inflicts a greater punishment than the Post facto laws include "every law that changes the Pius any... Ex post facto law" U.S. Const., Art. 1, § 10 Ex The Ex post facto clause provides that "No State shall...

the restrictions applicable to a valid judgment. of rule 22.3, is not applicable in the instant case were and 22.2, Texas Rules of Appellate Procedure, the restriction over the parties and issue presented pursuant to Rule 22.1 Jurisdiction: This Court has subject-matter jurisdiction To set aside judgment.

United v. State 136 S.W.2d 258 Tex. App. San Antonio (1944) Section 48.09(5) is limited by Section 12.42(d), see also misdemeanor DWI under Section 12.41(d) insofar as felony DWI and does not apply to the use of a active language of Section 48.09(b) applies only to a The habitual offender statute, it follows that the disun-

It is in legal contemplation as ~~operation~~ inoperative as though it had never been passed; Norton v. Shelby Co. 118 U.S. 425, 442, 6 S.Ct. 1121, 1125 (1885); see Alexander v. Cockrell, 294 F.3d 626 (5th Cir. 2002) (unconstitutional statutes [Bills] is void ab initio, having no legal effect at all, though it had never been passed. The Texas Supreme Court held: "It is not an act is unconstitutional. It is not law at all." Miller v. Davis, 150 S.W.2d 973 (1941).

The Texas Penal Code is the completion of statute which create the causes of action for the prosecution of alleged offenses, declared criminal by statute. The States' District Courts jurisdiction depends upon art 5, sec 8, Texas Constitution, and the [Penal] Statutes, however, when the Penal Statutes is void, no foundation for conviction, and sentence, exists except as stated, 182 S.W.2d, 439 (Tex. Crim. App. 1944) (a void law affords no basis for criminal prosecution).

Being that a void Penal Statute provides no basis for prosecution, the trial court has no jurisdiction of the subject matter, no jurisdiction to enter the judgment and lacks the capacity to act as a court in the prosecution of the case. Resulting in the courts judgment being void. Look v. Cameron, 733 S.W.2d 137, 144 (1987)

Under Texas law, a "void judgment" is a nullity from the beginning, and is attended by none of the consequences of a void judgment, for example, the court held, "all proceedings founded upon a void judgment are equally worthless because the judgment can never bind non bar anyone..." the fact that the void judgment has been affirmed on review in an appellate court for an order or judgment reviewing or reviewing it entered adds nothing to its validity, such judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time." Ex Parte Spaulding, 627 S.W.2d 445 (1985).

Even though soundings contrary to what is being brought to the courts attention, the trial court's period of plenary power has not expired where the courts did not have subject matter jurisdiction when it entered the void judgment. Miller v. Davis, 150 S.W.2d 973 (1941).

The Texas Supreme Court discussed the effect of a void judgment upon the continuing jurisdiction of the trial courts when, however, the judgment is not merely erroneous, but an absolute nullity, it can have no dividing force, or effect, either in the tribunal in which it is rendered, or in any other in which it may be brought in to question and such void judgments, though imposed by the court when rendered to be final, will neither in law or fact exhaust or put an end to its jurisdiction or power over an action properly before it, unquestionably, therefore, the court may, at least at a certain time, be elapsed as will warrant the presumption of a discontinuance or statement of action, vacate its entry, and recall any orders with which may have issued thereon, and proceed with the court cause to its final and proper termination.

103 S. Ct. 3308. An attorney's duty is to take professional responsibility for the conduct of a case.

Mid v. Alonzo King 133 S. Ct. 1958, 1970 (2013)

Letier v. Cooper 132 S. Ct. 1776 - In effective assistance of counsel, counsel was ineffect in petitioner's plea offer on Oct. 30, 2015.

Misonouri v. Colin Foye, 132 S. Ct. 1399, 402-3 (2012).

However, the district court judge's statement, "should bar Hammer's petition for constitutional claims," this statement, the court wrote, "was made to ensure petitioner's understanding the terms of any plea agreement provision waiving the right to appeal or to collaterally attack the sentence," it was wrong, Class v. U.S. 138 S. Ct. 798 (2018). See U.S. v. Wilson, 880 F.3d 873 (7th Cir. 2018), petition for rehearing denied, 880 F.3d 873 (7th Cir. 2018). That the state dismisses all charges. State v. Marmolejo, cite as 855 S.W.2d 275 (Tex. App. Austin 1993) (Criminal law 303.15, 303.30(a) Trial court may not dismiss prosecution on its own motion pursuant to plea bargain.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dale Allen Hamer

Date: 5th day of october 2018