**IN THE**
**SUPREME COURT OF THE UNITED STATES**
**NO._____**

**JASON BROOKS**
**Petitioner,**

**-vs-**

**CYNTHIA COFFMAN, Colorado Attorney General**
**LOU ARCHULETA, Warden**
**Respondents**

**ON PETITION FOR A WRIT OF CERTIORARI**
**TO THE UNITED STATED COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

**Jason Brooks #150014 Pro Se**
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**P.O. Box 6000**
**Sterling, CO 80751**

## QUESTIONS PRESENTED

Whether a federal *appellate court* can deny making a merits determination for a petitioner's failure to exhaust state remedies, when the petitioner's alleged failure to exhaust is determined only upon a still pending state court appeal? In this circumstance, if an appellate court—in conflict with the district courts finding—denies the appeal premised upon a premature application only, it would necessarily disqualify the claim from being raised in any other court, at any other time, preventing petitioner an opportunity to file a second habeas petition once the claim is exhausted. The ultimate question that needs to be resolved is, "Whether a federal *appellate court* can hold a petition *on appeal* in abeyance until the pending state court appeal is determined in order to prevent the claim being forever disqualified?" In this case the Tenth Circuit ultimately denied granting a Rule 60(b)(6) motion to re-open the judgment, even after the pending state court appeal was finally resolved, resulting in petitioners claims being forever disqualified from being heard in any other court, at any other time.

## PARTIES

The petitioner is Jason Brooks, a prisoner now being held at the Sterling Correctional Facility in Canon City, Colorado. The respondents are Cynthia Coffman, attorney general of the State of Colorado, and Lou Archuletta, the Warden of the Fremont Correctional Facility.

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## DECISIONS BELOW

The decision of the United States Court of Appeals for the Tenth Circuit is unreported. It is cited at *Brooks v. Archuleta*, 717 Fed. Appx. 831 (10th Cir. Colo. April 5, 2018) and a copy is attached as Appendix A to this petition. The order of the United States District Court denying the Rule 60(b) motion is unreported and not cited anywhere. A copy is attached as Appendix B to this petition.

The order of the state trial court that the Tenth Circuit determined to be still pending is unpublished and reported at *People v. Brooks*, 2017 Colo. App. LEXIS 852, *cert. denied*, *Brooks v. People*, 2017 Colo. LEXIS 995 (Colo., Nov. 13, 2017); a copy is attached as Appendix C to this petition. The notification by the Colorado Judicial Branch that Brooks would be subjected to an interest assessment penalty is attached as Appendix D to this petition, which provides the merits and basis for Brooks' entire habeas petition.

## JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on April 5, 2018. An order denying a petition for rehearing was entered on May 1, 2017, and a copy of that order is attached as Appendix E to this petition. Jurisdiction is conferred by 28 U. S. C. § 1254(1) and the ability for GVR (if necessary) is conferred by 28 U.S.C. § 2106.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

In July 2015', Brooks was notified by the Colorado Judicial Branch that he was required to pay interest on his criminal restitution order pursuant to C.R.S. § 18-1.3-603(4), beginning September 12th, 2015.[1] On August 10, 2015, Brooks filed a state postconviction motion pursuant to Crim. P. 35(c), claiming:(1) Trail counsel was ineffective for failing to advise Brooks that post-judgment interest

[1] *See again* Restitution Order, Appendix D

would be imposed on the amount ordered for restitution; (2) The plea agreement was breached by the imposition of post-judgment interest.

After reviewing the state postconviction motion, Weld County Court Judge Timothy Kerns stated, "Defendant raises issues of ineffective assistance of counsel. The allegation raised in Defendant's motion are specific, and if true, raise an issue of whether restitution interest can be ordered or whether there is other relief under C.R. Crim. P. 35(c)," attached as Appendix F. Judge Kerns additionally prevented any restitution interest from being applied to Brooks restitution and further felt that Brooks' could not be procedurally barred from filing the C.R. Crim. P. 35(c) application because the restitution interest penalty was about to be imposed. Judge Kerns then ordered a status conference to commence on November 13, 2015.

For reason still unknown, Brooks was precluded from attending the status conference ordered by Judge Kerns on November 13, 2015. Judge Kerns ordered counsel be provided to Brooks and Alternate Defense Counsel ("ADC") appointed attorney Hollis Whitson. Upon Brooks' never ending attempts to contact Ms. Whitson without success, on or about January 8, 2017, Brooks filed a motion in the Weld County Court affirmatively declining counsel.

Unbeknownst to Brooks, the Weld County Court had transferred the case to another division in January 2016', where Judge Julie Hoskins presided. Once Judge Hoskins received Brooks' motion declining counsel, she went on to deny

Brooks postconviction motion *sua sponte* on January 13, 2016, procedurally barring Brooks claims that Judge Kerns had spent almost 6 months adjudicating. Judge Hoskins ruling, however, was not just a tortured application of law in diametrical opposition to Judge Kerns findings, but in making the ruling Judge Hoskins violated numerous Canons of the Codes of Judicial Conduct. Specifically, pursuant to Colorado Rule of Judicial Conduct, Canon (C)(1)(a), Judge Hoskins should have disqualified herself from ruling on the case because she had direct knowledge of disputed evidentiary facts concerning the proceedings; namely, she knew Judge Kerns had already established that Brooks could not be procedurally barred from raising the issues due to the exceptions noted in Crim. P. 35(c)(2)(IV) and § 16-5-402(2)(d).

Judge Hoskins denied the motion *sua sponte* on January 13, 2016, holding that Brooks was procedurally barred from filing the application based upon rules Crim. P. 35(c)(3)(VII) of the Colorado Rules of Criminal Procedure and Colo. Rev. Stat. § 16-5-402, a copy of the ruling is attached as Appendix G. Because Brooks was specifically told by the Colorado District Court previously that those rules were independent and adequate state procedural grounds, *see* *Brooks v. Archuleta*, 2015 U.S. Dist. LEXIS 17885 at * 15(D. Colo. 2015), Brooks believed he could seek review from the federal court immediately because the Tenth Circuit has held that federal habeas courts should not require the petitioner to return to state court if

the state court made a definitive ruling that the applicant was procedurally barred from raising the claim. *Anderson v. Sirmons*, 476 F.3d 1131, 1137-38 (10th Cir. 2007). Since Brooks could establish *cause* and *prejudice* pursuant to *Coleman v. Thompson*, 501 U.S. 722, 750 (1991) and *Murray v. Carrier*, 477 U.S. 478, 488 (1986), he felt there would be absolutely no problem raising the claim in federal court. There is simply no way Brooks could have figured out that he would be subjected to the interest provision until it was actually imposed. This was an objective factor external to Brooks that impeded his (and his counsel's) efforts to comply with the State's procedural rules. *Id.*at 488; thus, establishes *cause* for his inability to comply with the State's procedural rules. Prejudice is clear, as Brooks immense exposure to financial liability will eventually exceed five times his stipulated amount of $5 million restitution ($25 + million), which he was promised would never be exceeded. *See United States v. Pogue*, 865 F.2d 226 (10th Cir. 1989) (defendant can realistically claim prejudice due to restitution amount and immense exposure to financial liability).

Because Brooks believed he did not have to exhaust his state remedies pursuant to *Anderson*—Brooks immediately sought authorization to file a second or successive habeas petition under 28 U.S.C. § 2254, arguing that the State improperly induced his plea with an unfulfillable promise of a specified restitution obligation and arguing the plea agreement was only recently breached by the

imposition of post-judgment interest. *In re Brooks*, 2016 U.S. App. LEXIS 23786 (10th Cir. 2016). Justice Gorsuch noted the following:

> "Brooks' own allegations indicate he did not appeal the state trial court's adverse ruling on his breach claim—thereby failing to exhaust the issue through the requisite "one complete round" of state court review, *O'Sullivan v. Boerckel*, 526 U.S. 838, 845, 119 S. Ct. 1728, 144 L. Ed. 2d 1 (1999). This omission raises potentially fatal exhaustion and/or anticipatory procedural bar obstacles. *See Frost v. Pryor*, 749 F.3d 1212, 1231-32 (10th Cir. 2014)." *Id.* at * 4.

At the time, however, Plaintiff believed he had a *prima facie* illegal sentence, so another reason for not immediately appealing the Crim. P. 35(c) ruling made by Judge Hoskins in January 2016' was to enable the trial court to retain jurisdiction to rule on a Crim. P. 35(a) petition, which could not be procedurally barred. Had Brooks appealed the January 2016' ruling, the district court would have lost jurisdiction to rule on the 35(a); however, Judge Hoskins still rubber-stamped a denial of the 35(a) motion *sua sponte*, in a 31 word ruling (a copy of the

ruling is attached as Appendix H). Brooks then appealed the issue through to the Colorado Supreme Court.[2]

Despite Justice Gorsuch stating there was "*potentially* fatal exhaustion and/or anticipatory procedural bar obstacles," the holding in *Anderson* should have permitted Brooks the opportunity to have the claim adjudicated on the merits. Justice Gorsuch using the terms "potentially" fatal also seemed directory to Brooks filing *pro se* in the district court. The Colorado District Court, however, was "not persuaded that the state court's determination that the Rule 35(c) motion Mr. Brooks filed in August 2015' was both untimely and procedurally barred excuses his failure to appeal to the Colorado Court of Appeals and fairly present his newly-arising federal constitutional claim to the state appellate courts." Brooks v. Archuleta, 2016 U.S. Dist. LEXIS 188418 at *7-8 (D. Colo). This finding resulted in the district court dismissing the case. The Tenth Circuit, however, denied the petition on a different failure to exhaust theory, stating ""Brooks filed a habeas petition with the federal district court *before the Colorado Court of Appeals reached a decision*." Brooks v. Archuleta, 681 Fed. Appx. 705, 706 (10th Cir. Colo. Mar. 13, 2017). The Tenth Circuit must have recognized that Brooks did actually appeal the issues raised in the August 2015' Crim. P. 35(c) postconviction motion in his March 2016' Crim. P. 35(a) petition, but the arguments were still pending in

[2] See again attached Appendix C

the CCOA at the time the Tenth Circuit was considering Brooks appeal. The Tenth Circuit should have held the petition in abeyance at that time to allow a merits determination, which is the issue now before this Court that must be resolved, but instead the Tenth Circuit dismissed the appeal, which has barred Brooks from having this claim adjudicated on the merits in any other court, at any other time due to the district court's dismissal on a different failure to exhaust theory.

Brooks had been entirely perplexed how the Tenth Circuit could have seemingly denied his petition upon an appeal of the *wrong* case (his 35(a) petition), which is reason he sought certiorari review from this Court. *Brooks v. Archuleta*, 138 S. Ct. 132, 199 L. Ed. 2d 188 (U.S., Oct. 2, 2017). Brooks also had no understanding how the Tenth Circuit made this determination, which is reason he filed his initial Rule 60(b)(6) motion, which was also denied. *See Brooks v. Archuleta*, 702 Fed. Appx. 790 (10th Cir. Colo., Aug. 18, 2017). In that appellate decision, the Tenth Circuit stated:

> "Mr. Brooks also argued in his Rule 60(b) motion, and again in his request for a COA now before us, that we misconstrued the facts in our March 2017 order denying his request for a COA to appeal the district court's denial of his 28 U.S.C. § 2254 petition. Recall that the district court denied his petition as unexhausted because he failed to appeal the state trial court's

January 2016 order. But, according to Mr. Brooks, we misconstrued that ruling, and instead concluded that he failed to exhaust his state remedies by filing his petition before the Colorado Court of Appeals had decided his appeal of the trial court's April 2016 order. Mr. Brooks raised this argument in his Petition for Rehearing with Suggestion of Rehearing En Banc after the panel issued its March 2017 order. The panel considered and rejected this argument. *See* Brooks v. Archuleta, No. 16-1344, Order at 1, 717 Fed. Appx. 831 (10th Cir. Apr. 5, 2017). We decline to reconsider it now." Brooks v. Archuleta, 702 Fed. Appx. at 794 n.2.

While the tenth Circuit stated it "considered and rejected" this argument, the basis for the Courts ruling has been kept under a veil of secrecy, as there has been no finding of fact or conclusion of law on how this ruling has been determined. The Tenth Circuit never wavered a bit and was 100% confident that it did not make a mistake in its holding that Brooks simply filed his habeas petition "before the Colorado Court of Appeals had decided his appeal." Due to Brooks being a *pro se*, indigent, incarcerated Plaintiff, only after thousands of hours of legal work did his understanding of this case make any logical sense.

After Brooks thoroughly exhausted his state remedies, and after the Colorado Supreme Court denied certiorari on the issues in November of 2017',

Brooks filed his second Rule 60(b)(6) motion attempting to re-open the judgment, since the "pending" appeal the Tenth Circuit had identified was finally exhausted. While Brooks did not believe the CCOA would address the issues raised in the denial of the August 2015' Crim. P. 35(c) petition in the appeal of the March 2016' Crim. P. 35(a) petition, the CCOA did consider Brooks' arguments from the former petition, which the Tenth Circuit must have recognized. The CCOA opined—just as the Weld County Court did in its January 2016' order procedurally barring Brooks claims[3]—that Brooks was precluded from raising the arguments because they were second and/or successive, substantiating the Weld County Courts ruling and proving exhausting of the claim was futile. The CCOA stated:

> "[S]ubject to certain exceptions not applicable here, Crim. P. 35(c)(3)(VI) and (VII) require a district court to deny a Crim. P. 35(c) motion if the issues raised therein either were raised and resolved, or could have been raised, in a prior appeal or postconviction proceeding. *See* People v. Rodriguez, 314 P.2d 230, 249 (Colo. 1996)("Rule 35 proceedings are intended to prevent injustices after conviction and sentencing, not to provide perpetual review.")...Here, defendant's claim that his plea is invalid is similar to, if not ***identical*** to, the claim he raise in his August 2015 postcoviction motion."

[3] See again Appendix G

COA Opinion, 16CA0755, announced June 29, 2017, pg. 5-6, Appendix C.

In its denial of Brooks second Rule 60(b)(6) motion, the district court choose to cherry pick Brooks statements and—for the first time ever—all the sudden decided to believe Brooks' previous assertion that "the Rule 35(a) motion raised a state law issue that 'will never have anything to do with' his federal claim in this action."[4] In making this statement, however, the district court ignored the CCOA's ruling in its entirety and focused on Brooks' belief of what would "possibly" happen in a decision of that appeal. Brooks had no reason to believe the CCOA would make a determination on the validity of his plea—he only believed the CCOA would make a determination on the legality of his sentence. The Tenth Circuit must have recognized, and believed, that the CCOA was going to remand the case, otherwise in would not have entirely dismissed the holding in *Anderson v. Sirmons*, supra. The fact remains, however, that Brooks' exhausted his state remedies and a state's successive bar cannot preclude federal habeas review.

Even though the CCOA did not address the merits of Brooks' claim about the validity of his plea, it did consider the argument, and this Court has concluded that neither prior determination *nor waiver* provides an independent and adequate state ground for denying review of federal claims. *Cone v. Bell*, 556 U.S. 449, 465

[4] See Appendix B, pg. 4.

(2009). In *Cone*, this Court decided a state court's refusal to consider the merits of a claim because the claim was previously determined is not a proper basis for denying federal habeas review. Lebere v. Abbott, 732 F.3d 1224, 1229 (10th Cir. 2013)(*citing* Cone, 556 U.S at 466). Problem is, Brooks' claim about the restitution interest penalty has never been decided on the merits in state or federal court and *Cone's* contribution was to confirm that, "[w]hen a state court declines to find that a claim has been waived by a petitioner's alleged failure to comply with state procedural rules, our respect for the state-court judgment counsels us to do the same...we have no concomitant duty to apply state procedural bars where state courts have themselves declined to do so" Cone, 556 U.S at 468-469.

Further, rules 35(c)(3)(VI) and (VII) of the Colorado Rules of Criminal Procedure are *not* adequate state grounds to deny federal habeas relief pursuant to *Cone.*, nor is Colorado's statute of limitations for collateral attacks pursuant to Colo. Rev. Stat. § 16-5-402. Contrary to the Colorado District Court specifically telling Brooks previously that these rules "are adequate because they are applied evenhandedly by Colorado courts," Brooks v. Archuleta, 2015 U.S. Dist. LEXIS 17885 at *15, the two trial court judges in this case (Judge Kerns and Hoskins), came to diametrically opposed viewpoints on how these state court rules should have applied to Brooks in adjudication of his August 2015' Crim. P 35(c) petition—proving they are not applied "evenhandedly." Judge Kerns determined

that the rules could not apply at all, which is reason he continued the case and eventually appointed counsel;[5] Judge Hoskins declared both rules did apply and sabotaged the case after the nearly six months of adjudication that was in process by Judge Kerns.[6] Brooks was taking the direct advice of the Colorado district court and precedent in *Anderson* while deciding not to immediately appeal the January 2016' order. Considering what also happened with the sudden changing of divisions in the Weld County Court and Judge Hoskins obdurate failure to consider what Judge Kerns was adjudicating, Brooks was left without any understanding of what had occurred, or why it occurred under such strange circumstances.

The Colorado district court has made material misstatements in its ruling that lead Brooks on a wrong path seeking legal redress. The statements opined explaining to Brooks that "the Court finds that Rules 35(c)(3)(VI) and (VII) are independent because they rely on state rather than federal law. The rules also are adequate because they are applied evenhandedly by Colorado courts," is not a truthful statement. *See* Brooks, 2015 U.S. Dist. LEXIS 17885 at *15. The Tenth Circuit has specifically stated that, "Generally, when a state court dismisses a federal claim on an 'independent and adequate' procedural ground, the doctrine of procedural default forecloses federal review. Coleman, 501 U.S. at 729-32. The question, then, is whether the application of the state's successive bar presents a

[5] See again Appendix F
[6] See again Appendix G

barrier to federal review. *Not necessarily*." Lebere, 732 F.3d at 1229. The Tenth Circuit has stated that, "[t]he Court's decision in *Cone* controls the outcome of this case. As in *Cone*, LeBere raised a state-law nondisclosure claim on direct appeal and, based on the same facts, a Brady claim on post-conviction review. And, as in *Cone*, the post-conviction court applied the state bar on successive claims in declining to reach the merits [which is exactly what the CCOA and Judge Hoskins did in denying Brooks claims]. If the application of the successive bar in *Cone* did not affect the availability of federal review, the same should be true for a nearly identical rule here." *Id.* at 1230. As such, the decision in *Lebere* and *Cone* should control the outcome of Brooks' case—the successive bar the CCOA (and Weld County Court) used to deny Brooks on June 29, 2017 is not a valid reason to deny habeas relief—and because Brooks did raise these "identical" claims to the CCOA—as the CCOA itself identified—they are now exhausted. The Tenth Circuit also clarified that Rules 35(c)(3)(VI) and (VII) of the Colorado Rules of Criminal Procedure are:

> "Notwithstanding some minor textual differences, then, the two rules are coextensive...More than that, they are cut from the same cloth. Both rules represent legislative tweaks on the common law doctrine of res judicata, both are modeled on the Supreme Court's decision in *Sanders v. United*

States, 373 U.S. 1, 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963), and both were created to serve the same principle—finality. Rodriguez, 914 P.2d at 249; Sherman, 172 P.3d at 916; Bledsoe v. State, No. W2000-02701-CCA-R3-PC, 2001 Tenn. Crim. App. LEXIS 744, 2001 WL 1078269, at *3-4 (Tenn. Crim. App. Sep. 14, 2001) (unpublished); Johnson, 1994 Tenn. Crim. App. LEXIS 162, 1994 WL 90483, at *13; Bates, 1993 Tenn. Crim. App. LEXIS 298, 1993 WL 144618 at *5; Anderson, supra, 48 Tenn. L. Rev. at 607 n.3, 611, 626, 659. Much like the doctrine of res judicata, their application goes to a previous determination of the merits of a case, which is what the Court was driving at in *Cone* when it said a procedural bar covers *claims that have not been fairly presented*, not claims that have been presented more than once. *See* Cone, 556 U.S. at 467." Lebere, 732 F.3d at 1231.

Rules 35(c)(3)(VI) and (VII) of the Colorado Rules of Criminal Procedure are *not* adequate state grounds to deny federal habeas relief pursuant to *Cone*., nor is Colorado's statute of limitations for collateral attacks pursuant to Colo. Rev. Stat. § 16-5-402. Brooks claim must be adjudicated on the merits because he has exhausted his state remedies.

## BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district court had jurisdiction under the general federal jurisdiction conferred by 28 U.S.C. § 1331.

## REASONS FOR GRANTING THE WRIT OR GVR

Title 28 U.S.C. § 2106 appears on its face to confer upon this Court a broad power to GVR: "The Supreme Court or any other court of appellate jurisdiction may . . . vacate . . . any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances." *Lawrence v. Chater*, 516 U.S. 163, 166, 116 S. Ct. 604 (1996). "In an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the "potential for unequal treatment" that is inherent in our inability to grant plenary review of all pending cases raising similar issues, *see United States v. Johnson*, 457 U.S. 537, 556, n. 16, 73 L. Ed. 2d 202, 102 S. Ct. 2579 (1982)." *Lawrence*, 516 U.S. at 167.

**A. Conflicts with decisions of Other Courts.**

While Plaintiff has limited resources available to him and is not formally trained in the law, he has found no cases that identify the issues that have been presented in this petition. It would appear that an appellate court could refuse to grant re-opening the judgment premised upon Rule 60(b)(6) because a failure to exhaust—within the plain meaning of such process—is not deemed an "extraordinary circumstance" in which a Rule 60(b)(6) motion should be granted. *See* Buck v. Davis, 137 S. Ct. 759, 197 L. Ed. 2d 1, 21-22 (2017). Of course this Court could now announce that Rule 60(b)(6) would be the appropriate remedy to quell the issues that have given rise to this petition; namely to give instruction that would allow a federal appellate court discretion to re-open the judgment if the appellate court's refusal to reach the merits of an applicants petition is premised only upon a still pending state court appeal.

**B. Importance of the Questions Presented**

This case presents basic questions of fundamental fairness, routine due process procedures, and the interest of judicial economy, which is of great public importance. This Court has an independent duty to scrutinize the application of state rules that bar review of federal claims. Lee v. Kemna, 534 U.S. 362, 375 (2002). Although the State is obliged to "prosecute with earnestness and vigor," it

"is as much [its] duty to refrain from *improper* methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88 (1935). The State of Colorado hid a $25 + million interest penalty from Brooks for sixty-five months in order to illegally induce his plea and then procedurally bar his ability to collaterally attack the validity of his plea after finally imposing the penalty. Preventing Brooks the ability to have this claim adjudicated on the merits defies the very spirit of the Due Process Clause of the United States Constitution.

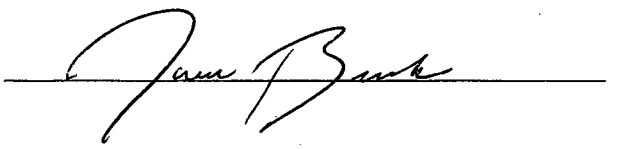
Accordingly, this Court has held that when the State withholds from a criminal defendant evidence that is material to his guilt or *punishment*, it violates his right to due process of law in violation of the Fourteenth Amendment. *See Brady v. Maryland*, 373 U.S. 83, 87 (1983). In *United States v. Bagley*, 473 U.S. 667, 682 (1985) (opinion of Blackmun, J.), this Court explained that evidence is "material" within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. In other words, favorable evidence is subject to constitutionally mandated disclosure when it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419, 435 (1995); *accord*, *Banks v. Dretke*, 540 U.S. 668, 698-699 (2004); *Strickler v. Greene*, 527 U.S. 263, 290 (1999).

Had Brooks known of this excessive interest penalty, he would have undoubtedly gone to trial and would not have accepted any plea. As such, there is no justification for preventing Brooks the ability to challenge the voluntariness of his plea. Brooks' entire case was premised upon a financial crime and restitution was intimately related to the criminal process. In fact, the U.S. District Court for the District of Colorado upheld Brooks' conviction because the Plaintiff's "explanation that he was conceding only civil liability and not criminal culpability is belied by the fact that restitution was part of his plea agreement in a criminal case and was imposed as part of the criminal judgment." *Brooks v. Archuleta*, 2015 U.S. Dist. LEXIS 63341, *21 (D. Colo.). Restitution in this case was the very justification for the sentence being imposed and upheld. Restitution is a consequence of a criminal conviction and because of its close connection to the criminal process—especially in fraud cases in which the fraud loss is the heartbeat of the entire case—it would be uniquely difficult to classify a known $51,000 monthly interest penalty in such case as being outside a direct consequence when the defendant is being sentenced premised upon his inability to pay restitution.

## CONCLUSION

For the foregoing reasons, certiorari or GVR should be granted in this case.

Respectfully submitted on this 26th day of July, 2018.



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