

18-8139

No. 18A423

Supreme Court, U.S.

FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Louis A. Hardison — PETITIONER
(Your Name)

vs.

US Solicitor General RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Louis A. Hardison
(Your Name)

PO Box 595
(Address)

JOPLIN, MO 64801
(City, State, Zip Code)

417-438-0087
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. UNDER MISSOURI STATUTE RSMO 513.647 WHICH REQUIRES A TURNOVER ORDER OF SEIZED PROPERTY TO FEDERAL CONTROL EVEN BY STATE ACTOR'S WHO ARE DEPUTIZE AS FEDERAL LAW ENFORCEMENT UNDER RSMO 513.649.

THE QUESTIONED PRESENTED IS WHETHER UNDER MISSOURI STATUTE 513.607-613.647 DO THE STATE OF MISSOURI HAVE EXCLUSIVE IN REM JURISDICTION CONCERNING THE STATE LAW EXPRESSLY PROVIDES JURISDICTION AS AN INTEGRAL ELEMENT OF ITS STATUTORY WARRANT AND SEIZURE SCHEME EVEN WHEN STATE AND LOCAL GOVERNMENT FAILED TO INITIATE FORFEITURE PROCEEDINGS.

2. UNDER MISSOURI STATUTE RSMO 513.647.2 AND 18 USC 983(a)(1)(A)(iv) THE STATE OR LOCAL LAW ENFORCEMENT IS TO PROVIDE NOTICE TO PETITIONER.

THE QUESTIONED PRESENTED IS WHETHER UNDER THE FIFTH AND FOURTEENTH AMENDMENT OF THE US CONSTITUTION AND MISSOURI ARTICLE 1 SECTION 10 OF DUE PROCESS WAS PETITIONER DENIED HIS PROCESS DUE.

3. EIGHTH CIRCUIT PRECEDENT IN MADEWELL V DOWNS 68 F.3d 1030, 1042 (1995) SPECIFICALLY STATES THE STATE OF MISSOURI REQUIRES A TURNOVER ORDER BEFORE PROPERTY CAN BE TRANSFERRED TO FEDERAL CONTROL.

THE QUESTIONED PRESENTED IS WHETHER WHEN DETERMINING THE "REASONABLENESS" OF THE EIGHTH CIRCUIT IS IT APPROPRIATE TO JUSTIFY A DEVIATION FROM IT'S PRIOR PRECEDENT ON THE SAME SUBJECT MATTER.

4. UNDER FORMER ATTORNEY GENERAL ERIC HOLDER EXECUTIVE ORDER DATED JANUARY 16, 2015 CONCERNING STATE ADOPTION STATES: THE NEW POLICY WILL ENSURE THAT ADOPTION IS EMPLOYED ONLY TO PROTECT PUBLIC SAFETY AND DOES NOT EXTEND TO SEIZURES WHERE STATE AND LOCAL JURISDICTION CAN MORE APPROPRIATELY ACT UNDER THEIR OWN LAWS.

THE QUESTION PRESENTED IS WHETHER US ATTORNEY OF WESTERN DISTRICT OF MISSOURI, DISTRICT COURTS AND EIGHTH CIRCUIT ROUTINELY VIOLATED THIS EXECUTIVE ORDER TO CIRCUMVENT

THE QUESTION PRESENTED IS WHETHER US ATTORNEY OF WESTERN DISTRICT OF MISSOURI, DISTRICT COURTS AND EIGHTH CIRCUIT ROUTINELY VIOLATED THIS EXECUTIVE ORDER TO CIRCUMVENT MISSOURI FORFEITURE LAWS IN OBTAINING A TURNOVER ORDER, AND DOES THE SYSTEMIC FRAUD IN THE JUDICIARY OF THE FEDERAL COURTS IN MISSOURI INVITES ANARCHY AND TERRIBLE RETRIBUTION AND IMPERILS THE EXISTENCE OF THE GOVERNMENT WHEN THEY ARE THE LAW BREAKERS.

5. UNDER THE REQUEST FOR ADOPTION OF STATE OR LOCAL SEIZURES AND THE ASSET FORFEITURE POLICY MANUAL SEIZURE BY STATE AND LOCAL LAW ENFORCEMENT CHAPTER 14 SECTION B.3 30-DAY RULE FOR PRESENTATION FOR FEDERAL ADOPTION : A.1 SEIZURE BY A FEDERAL TASK FORCE OFFICER: THE TFO'S ACTIONS AND AUTHORIZATIONS FOR THOSE ACTIONS WERE RELATED TO HIS/HERS DUTIES AND AUTHORIZATIONS AS A STATE OR LOCAL LAW ENFORCEMENT AGENT.

THE QUESTION PRESENTED IS WHETHER WHEN A MISSOURI LAW ENFORCEMENT OFFICER NOT IN HIS CAPACITY AS A TASK FORCE OFFICER VIOLATED BOTH THE ASSET FORFEITURE MANUAL AND MISSOURI STATUTES THAT FORBIDS A STATE OR LOCAL LAW ENFORCEMENT TO TRANSFER SEIZED PROPERTY WITHOUT A TURNOVER ORDER. AND DO THE TIME LIMITS OF CAFA AND CAFRA APPLY.

6. THIS COURT HELD IN MCCOY V. LOUISIANA NO: 16-8255 (2018) THE SIXTH AMENDMENT GUARANTEES A DEFENDANT THE RIGHT TO CHOOSE THE OBJECTIVE OF HIS DEFENSE.

THE QUESTIONED PRESENTED IS WHETHER A ATTORNEY ASSIGNED UNDER 18 USC 3006(A) FAILURE TO KNOW OR PROPERLY APPLY LAW. INADEQUATE DISCOVERY OF FACTS AND FAILURE TO CONDUCT AN ADEQUATE INVESTIGATION COUNSEL ADMITS "HE'S UNFAMILIAR WITH WHAT IS A TURNOVER ORDER UNDER MISSOURI LAW AND HOLDS A BAR LICENSE FROM THE STATE OF MISSOURI AND CJA FORM 20 FORM ILLUSTRATES COUNSEL TOTALLY RELIED UPON THE GOVERNMENT TO DEFEND PETITIONER AMOUNTS TO INEFFECTIVE ASSISTANCE OF COUNSEL.

LIST OF PARTIES

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

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

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PETITION FOR A WRIT OF CERTIORARI

Louis Anthony Hardison respectfully petitions this Court for a writ of certiorari to review the Eighth Circuit Court of Appeals' denial of his motion for a certificate of appealability (COA) on the issue of whether the State of Missouri had "in rem" jurisdiction on the seized firearms 18 USC prohibited the Government from forfeiting the seized property and whether assigned counsel was ineffective and failure to assist Petitioner in providing a defense under this Court recent ruling under McCoy v Louisiana 16-8255 May 14, 2018.

OPINION AND ORDER BELOW

The Eighth Circuit's denial of Mr. Hardison's Motion for a COA in
Appeal No. 18-1244
is included in the Appendix at 1.

STATEMENT OF JURISDICTION

The United States District Court for the Western District of Missouri had original jurisdiction over Mr. Hardison criminal case pursuant to 18 U.S.C. § 3231 and jurisdiction over his civil case proceeding pursuant to 28 U.S.C. § 2255. The district court dismissed Mr. Hardison § 2255 motion on December 13, 2017. Mr. Hardison subsequently filed a notice of appeal on January 4, 2017, and a motion for COA in the Eighth Circuit was denied on July 6, 2017. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. This petition is timely pursuant to Supreme Court Rule 13.1.

RELEVANT STATUTORY PROVISIONS

This case involves the statutory application of 18 USC 983 (a)(2)(A),(a)(3), (a)(1)(A)(iv),(d)(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Counsel Clause of the Sixth Amendment of the United States Constitution provides:
In all criminal prosecutions, the accused shall have the assistance of counsel for his defense.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)
Pub. L. 104-132, 104, 110 Stat. 1214, 1219 (codified at 28 U.S.C. § 2255), provides in relevant part:

- (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.
- (h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--
 - (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
 - (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.
- (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be

searched, and the persons or things to be seized.

Due Process Clause states, "No State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

Due Process Clause states, No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. Amend V .

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STATEMENT OF THE CASE

Petitioner was recruited by the FBI in the summer of 2007; the purpose of the recruitment was to infiltrate various Islamic groups that they deemed a threat to the security of the United States.

They were a particular group of Somalian Nationals in Noel, Missouri of particular interest. During the recruitment phase Petitioner was taken to Kansas City, MO to speak with other Special Agents in knowing the details of what they wanted accomplish. During this meeting Petitioner informed the Agents that to do what they wanted Petitioner would need a firearm in case of emergency since "they" Somalians choice of weapon is a "machete". Few days later Petitioner was given permission to have a firearm. Petitioner was a paid Confidential Informant receiving \$1200.00 a month. Petitioner had gotten a .45 Caliber Derringer.

In 2009 Petitioner was arrested for purchasing a Charles Daly Shotgun at a neighbor along with the taking of the .45 caliber Derringer. Petitioner was charged with Possession of a Concealable Firearm. The State of Missouri dismiss the charges and return the firearms back to petitioner.

Petitioner case dealt with when a Dushawnne Hoyt called 911 stating that she had been assaulted by appellant, appellant had made a call to 911 stating that he is disable and he was the one assaulted. Appellant was on Long Term Disability from his employer and in the call appellant informed 911 he would be waiting outside. While waiting outside Neosho Police arrived and spoke with Petitioner a Officer Gold (App.) and Officer Fohey spoke with the alleged victim.(App.) Though Officer Gold report(App.) states Petitioner was intoxicated when he spoke at the door, the report is completely different from Officer Fohey.

At some point the officers entered appellant home without consent or a search warrant and subsequently found a .45 caliber Derringer and Intertac 9mm pistol was recovered and appellant arrested on three City of Neosho Ordinances:

1. Section: 215.060 Assault
2. Section: 215.630 Unlawful Use of Weapon
3. Section: 215.660 Unlawful Use of Drug Paraphernalia

Petitioner had bonded out on the charges.

During this time the alleged victim wrote a statement that an assault did not occur and was wondering if the sell of furniture would still hold valid. Ms. Hoyt statement also included

information that the Intertac 9mm was sold to appellant by Neosho City Attorney Steve Hays. Ms. Hoyt further stated these claims to Officer R. Schlessmann.

Then later on November 27, 2013 Newton County Prosecutor office filed a Criminal Complaint upgrading the three charges to felonies. (App.). The Criminal Complaint alleges that:

1. Appellant commit the charge of RSMO 565.073 Domestic Assault 2nd Degree
2. Armed Criminal Action RSMO 571.015
3. Unlawful possession of a firearm RSMO 571.070

Officer Gold then submitted two probable cause affidavit's 1. November 27, 2013 and 2. December 3, 2013 one sign by Gold the other is not. Officer Gold in both probable causes conveniently left out the Intertac 9mm pistol. The State in its criminal complaint also conveniently left out the Intertac 9mm pistol. The Complaint never alleged that appellant and victim had been residing together for sometime as "members of the same household". Then on December 4th , 2013, Missouri Highway Patrol/Task Force Officer ATF Robert Vaughan did a Firearm Trace Summary

During the course of any proceeding Newton County Prosecutor never began any CAFA proceedings under RSMO 513.607(6)(2). At no time did assigned counsel reminded the prosecutor or circuit court of it's obligation to start forfeiture proceeding. Petitioner was unaware of this procedure. Throughout the state case counsel for appellant during pretrial conference interviewed Officer Gold. During those interviews Officer Gold was ask how he obtains entrance into the home of appellant, and asked if Miranda Warnings were given since his report is absence of this. Further Officer Gold was ask why Officer Fohey report states firmly that the both arrived and that appellant and victim had been outside the residence.

On February 20th , 2014 then MSHP R. Vaughan went to the Neosho Police Department where Neosho Police Officers B. Fienne, B. Bershear "turnover" the seized firearms.(Ex.13). Then on February 22th , 2014 then MSHP /Task Force Officer (ATF) Robert James also with Troop D along with Vaughan went to Neosho Police Department and seized other property. At no time did Vaughan as a Task Force Officer never went before a Magistrate or District Court Judge to get a Seizure Warrant nor did ATF.

Appellant state case lasted until December 5th, 2014 where then Newton County Prosecutor, announced to the court “a new investigation was underway” and sought a continuance which was granted by the court until February 9th 2015.

On December 5th 2014 a federal grand jury indicted Petitioner on one count of violating 18 USC 922 (g)(1). December 17th 2014 members of Neosho Police came to Petitioner home and placed him under arrest and booked in Newton County Jail. Petitioner was transferred to Southwestern District Court before Magistrate Judge Rush who already been assigned A. Kozuth with the Federal Public Defenders before being found indigent. F.P.D. David Mercer was assigned but for unknown reasons was “terminated”. During the detention hearing Magistrate Judge D. Rush ordered Petitioner detain based against the Eighth Circuit precedent.

For five months beginning December 17th 2014 until May 21st 2015 counsel file one motion for continuance that motion. Petitioner filed several motions including Motion to Dismiss the Indictment, and Suppress and several Substitution of Counsel. On April 3, 2015 Magistrate Rush replied to appellant motions concerning the Dismissal/Suppress (App.), which he denied since it was the court who assigned Kozuth and order Petitioner not to file anymore motion accept through assigned counsel. Then on May 21st 2015 Magistrate Rush entertain Petitioner motion for Substitution of Counsel. During the hearing appellant explain to the court that Kozuth had done nothing for the case and would not appeal the court ruling to detain under 18 USC 3142 that the court used an “illegal” standard of “potential failure to appear”. (US v Orta 760 F.2d 887,891 8th Cir. 1985), that under 18 USC 3142 Appellant had been on bond for thirteen months never missed a court appearance, and not had any run-ins with law enforcement, no history of substance abuse and the escape was 30 years ago. The court then granted motion for Substitution of Counsel.

On May 26, 2015 Respondent was assigned, on May 28, 2015 during a pretrial conference before Magistrate Rush, counsel announced that he was ready for trial. Petitioner told trial counsel the “main” points of defenses to look at:

1. To get turnover order from Newton County Prosecutor.
2. To file a Motion under Classified Information Procedure Act (CIPA).
3. Petitioner ask counsel to get 2009 case from Newton County whereas the same .45 caliber Derringer is the same in the present case.
4. To get Certified Copies of the 911 call and the dispatch call signs of which officer arrived first. The recording the Government has been altered . Officer Gold report that petitioner made a call

and the call will show that Petitioner was outside the house. Further the call made by the alleged victim you can hear Petitioner stating he is going outside to wait for the police.

5. To get Petitioner hospital records that on November 24, 2013 Petitioner was taken to the hospital concerning his back at which time he learned he needed back surgery and the events alleged could not have occurred.

6. To address appellant Motion to Dismiss under Elkins v US 364 US 206, 223-224 where as Missouri RSMO 556.061 (14) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or

(b) It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception.

Petitioner stated to trial counsel this was one of the reasons why the case was dismissed by the state and given the language of Elkin a Fourth Amendment violation can not survive in federal court.

7. To obtain police report that appellant had been threatened with bodily harm by a "racist" neighbor who recently moved on Hillcrest Drive that appellant's home got broken into and racist graffiti of a "hangman noose", "swastika" and "nigger" been spray painted on the walls throughout the house, facing "imminent danger". (App.

8. That the Intertac 9mm was not charged in the state's Criminal Complaint nor Officer Gold probable cause affidavits.

9. Trial Counsel should file for a continuance that defendant is entitled to a continuance under the provisions of Title 18, United States Code, Section 3161(7)(B)(i)(iv), in that:

1. Trial on the current docket setting would result in a miscarriage of justice.

2. The case is significant in terms of the outcome because of the serious nature of the charges and it is unreasonable to expect counsel and the defendant to be ready for trial by the currently scheduled date in light of the forgoing.

3. Failure to grant the continuance would likely prevent undersigned counsel from being able to adequately complete vital work that needs to be done and prepare and present the defense case in a meaningful and constitutionally adequate means.

10. To contact Ms. Agi of Missouri P.D. Office and get case file and Investigator Patrick notes concerning Investigator Patrick interview with Officer Gold where he was ask how, and that Neosho City Attorney Steve Hays had sold the Intertac 9mm to Petitioner and all this was to protect the City Attorney. Missouri Highway Patrol have evidence to this and it's on the government CD labeled as "ATF Report".

11. Petitioner was offered a plea deal of 4 years and refused then the indictment came about. Had Petitioner taken the deal the indictment would had brought a significant higher penalty in the federal court.

12. To do a background check on the alleged victim. The alleged victim had been arrested in Newton County, Missouri on Unlawful Possession of a Firearm, Distribution of Control Substance (Meth), and Trafficking in Meth in Vinta, Ok. Ms. Hoyt bond was \$250,000.00 Cash Only. (App.)

13. To get Petitioner file from Ann Kozuth. Counsel stated there is no file concerning you.

14. Missouri Highway Patrol reports show Mr. Hays wanted Petitioner to sell firearms for him. Petitioner sought assistance from City Manager Troy Royer who contacted Missouri Highway Patrol. Upon learning that the Neosho Police Chief was involved and the history between us both Petitioner was reluctant to cooperative when it appeared Missouri Highway Patrol was only seeking to charge Petitioner. That was why the Intertac 9mm was excluded from the State charge.

Trial counsel assured Petitioner that these issued would be address. During another visit by trial counsel an argument ensued and Petitioner uncovered an email between AUSA McGull and trial counsel (App.) which the contents describes conflict of interest. On June 4th , 2015 during pretrial conference counsel stated " Given the recent appointment by myself as well as getting some new information today, I believe those five days extra would help me prepare a defense". Counsel admission that Petitioner did not want a continuance and yet he ask for 5 days only.

On June 12th 2015 respondent filed a Motion to Suppress. The Motion was riddle with errors such as:

1. Appellant was charged with 922(g)(1)(b)(B)
2. Had Mario Riley name in it trial counsel client.(App.)

The case laws include in the motion were all concerning vehicle searches were Riley was stopped by MSHP and none of the case reflect any decision's within the 8th Circuit jurisdiction. Petitioner brought this issue before the court the court advised Petitioner that he would allow Petitioner to file case "he felt was appropriate. On June 15th , 2015 trial counsel wrote Petitioner a letter describing the relationship of attorney/client as to how "unhappy" Petitioner was. Trial counsel continued with' You want to take one or two lines that does not deal with the issues. (App.) Further to take a plea and that unknown to appellant trial counsel had Ms. Hoyt as a witness. Upon seeing Ms. Hoyt and questioning respondent concerning this the government invoke the "rule". The court advised Petitioner if she going to testify she must leave the courtroom. Petitioner then address the court that she will not be testifying. Petitioner told trial counsel was to why she was on the defense witness list, that she does not have \$250,000.00 so how is she here and why not Officer Fohey.

Danny Gordon

The government called this witness who is employed by Newton County 911 Dispatch. The government played the altered 911 tape and respondent did not object to it's introduction. The government did not lay a proper foundation to the recording accuracy, nor respondent stipulated that it was authentic.

During cross-examination respondent ask this witness "have we ever met or talk before today?" Response: NO. (Ex.36). Further in the examination of Gordon trial counsel ask did you hear him say: "When he said he was stepping outside".

Trent Gold

The government the called Neosho Police Officer T. Gold. Gold testified that he alone at 4:00am responded to to a call being of domestic violence and it involves weapons. Further in his testimony Gold states appellant invited him into his home and though his own police report does not state how he gotten into the house. The government ask Gold " And at some point you were invited inside the residence, Yes. Respondent never objected to this leading question.

During cross respondent again ask this witness "Have we ever met or talked before I just introduce myself", NO (App.). In continuing to question Gold (App.) trial counsel ask concerning Officer Fohey report concerning why would a fellow officer write somethin completely different then your report Gold states he does not know. (App.). Further trial counsel elicit from Gold that in fact Petitioner was outside the home when Gold arrived.(App.). Trial counsel failed to question this witness concerning why there are no photographs of this alleged"green duffle" bag in the Petitioner home and why is there no photographs of the Intertac 9mm inside the home as they alleged, and was consent given to look into the bag.

Bradley Fienme

During the government on direct this officer stated “ I went into the duffel bag”. (App.). The government never produced any evidence of this alleged “duffel bag”. The government did not ask this witness if Petitioner gave consent to go into the bag. Officers who took photographs never submitted photo’s with this bag, the photos of the Intertac 9mm no photos in the home all were taken at Neosho Police Station. Appellant relayed this to trial counsel. During cross respondent would not ask this witness these questions.

After the case rested and exchange occurred between the parties were the government wanted the court to have transcripts the court stated “It took notes”, and the court as to trial counsel position on the issues stated: Exigent and Consent. The court ask about Miranda and respondent stated again only consent and exigent.

Petitioner was found Guilty by the court. Petitioner filed an Substitution of Counsel Motion. The motion was heard by Magistrate Judge D. Rush. The motion contain facts that trial counsel is not a “Super Lawyer” and that two weeks of representation is inadequate. Trial counsel did not investigate any of Petitioner’s claims. Trial counsel on May 28th, 2015 announced he was ready for trial on May 28th, 2015 only after being assigned on May 26, 2015. Trial counsel did not have a defense and the Motion To Suppress was an “embarrassment to the legal profession”.

The court granted the Petitioner motion. New trial counsel Robert Lewis email the government asking for a 3 point reduction in the fact that prior counsel should had ask for a continuance. During sentencing the government made a point to say Petitioner has a problem with alcohol. The district court in pronouncing sentence stated the court had viewed photos of the alleged victim outside the present of the trial. The court went on saying that domestic violence abuser often recant there story of abuse. Petitioner reminded trial counsel while on state probation in 2009 Petitioner had one violation concerning the same exact firearm in question. The State of Missouri does a Alcohol/Drug Assessment upon being release and Dr. Jeffery Tobin stated that Petitioner been on the run for 27 years he has no problem with either. There is no history the government is using what Magistrate Judge Rush used in detaining Petitioner. Petitioner has (1) BAC, Driving while suspended, and there is nothing in Petitioner criminal history of any form of domestic violence.

On direct appeal Petitioner was assigned to James Wyrsh. Petitioner told counsel of trial counsel failures in obtaining Petitioner FBI file and there was no consent. Mr. Wyrsh advised Petitioner that we would not attack a colleague under no circumstances. When told about the Public Authority Defense counsel stated the record is absent and he was prohibit to raise the issue. Mr. Wyrsh spoke with trial counsel who stated his research revealed that a a City Attorney is not a law enforcement officer it not a defense under equitable estoppel. Since Mr.

Wyrsh stance on not pursuing any ineffective assistance of counsel claims against trial counsel he pursued a Simmons defense.

The 8th Circuit denied direct appeal. Petitioner was released from USP Leavenworth on February 17, 2017 and filed his Motion to Vacate 18 USC 2255 on June 29, 2017. On December 13, 2017 the district court denied relief and on January 18, 2018 filed his Motion for Certificate of Appealability with the 8th Circuit. The Court records indicate they sent a letter to Petitioner requesting the \$505.00 fee or an IPF filing within 28 days. Petitioner never received such a letter when found out filed the IPF and ask the Court for permission to proceed. That Petitioner has had 10 cases before the court and never miss any filing deadlines.

15-2768-United States v. Louis Hardison

15-3941- United States v. Louis Hardison

16-2115-Louis Hardison v. Jacob Skouby, Jr., et al

16-3368-United States v. Louis Hardison

16-3520-United States v. Louis Hardison

16-3662-Louis Hardison v. Trent Gold, et al

16-3966-Louis Hardison v. Trent Gold, et al

17-1441-United States v. Louis Hardison

18-1141-Louis Hardison v. United States

18-1244-Louis Hardison v. United States

The Court decline request for COA. (See App. A)

REASON TO GRANTING THE WRIT

A. Whether the Eighth Circuit abandon their own precedent and that of 4th, 7th, 9th, 11th circuits and this Court in which they deemed that pretrial investigation, failure to obtain witness for the defense and interviewing government witness, counsel knowledge of the law is a violation of the duty of counsel for Sixth Amendment purposes.

Under prior Eighth Circuit ruling a defendant has the right to counsel throughout all stages of the proceeding. Trial counsel was assigned the afternoon of May 26th, 2015. Counsel then on May 28, 2015 told the court he was ready for trial and needing only five(5) extra days to assemble a defense. Though Petitioner had asked counsel to get the turnover order from Newton County Prosecutor, to get the FBI file of Petitioner and Certified Audio Recordings from Newton County Emergency Management/Dispatch Records of the Neosho Police call sign as to who arrived first at Petitioner's home it would take more than five (5) days. Counsel was ineffective for failing to properly prepare for trial with the enormous task of getting the needed material. Petitioner had filed numerous complaints against the Neosho Police Department namely Officer Gold that to get those complaints from Missouri Public Defenders Office. Since counsel elected to forego asking the court for an Investigator. The Eighth Circuit use of the "due diligence" requirement is stalled when as counsel is the Assistant to Petitioner and counsel refuse to follow Petitioner's wish on how the defense should go the due diligence is invalid. Counsel's failure to call Neosho Police Officer Austin Fohey as a witness on the Consent issue. This witness report goes to the heart of the government case that Petitioner was "outside" the home. Even though counsel elicited testimony from Officer Gold that Petitioner was in fact outside the home Petitioner was still found guilty of the charges. Trial counsel cross-examination of Officer Gold concerning the consent issue:

Q Were you able to tell whether or not he came out from the house or where he came from?

A. Yes. He was - came through the door and the door was open. I initially got there the door was shut.

Q So it was apparent to you he was inside the house when you got there, then he opened the door and walked right outside the front door when you got there?

A. Yes.

Petitioner sought review that Officer Gold provided perjured testimony.

Counsel is to provided whatever defense that does not run afoul. Counsel refusal to ask the government witness namely Officer Gold about did he provide any Miranda Warnings, the exchange between trial counsel and the court as to what the issues are Exigent and Consent. Counsel failure to question the audio recording of the alleged recording where the Government intentionally deleted the phone call of Petitioner which would proved Petitioner was outside the residence. During trial counsel during cross-examination of Danny Gordon stated:

Did he sound upset at point? Yes.

When he said he was stepping outside?

DG: It sounded like they both were still distraught at that time.

With Danny Gordon and Officer Gold trial counsel ask both of these witnesses the same question: My name is Brian Risley and I represent Mr. Hardison in this case. Have we ever met or talked before today? Each replied: No:

Trial counsel did not verify if in fact Danny Gordon was the actual dispatcher working that morning.

The Eighth Circuit McMillian Test: (4) That changes, additions or deletions have not been made in the recording,(5) That the recording has been preserved in a manner that is shown to the court.(6) That the speakers are identified.

Trial counsel being unfamiliar with both Missouri CAFA laws and CAFRA and 18 USC 983 counsel failed in having the Government produce Discovery of the Adoption. Trial counsel competence of this rule of law prohibited Petitioner a adequate defense. Counsel is also unfamiliar with Memorandum of Understanding between State and federal law enforcement agency, Asset Forfeiture Policy Manual concerning the actions of Task Force Officers. Seizures by a federal task force officer states:

The TFO's action and authorizations for those actions at the time of the seizure were related to his/her task force duties and were not conducted solely pursuant to his/her duties and authorizations s a stste or local law enforcement agent.

Trial counsel Motion to Suppress was a copy and paste of a former client Mario Riley. Counsel CJA form 20 illustrates how he sent much time he spent researching came to 5.5 hours for thirteen days of representation. (2.3 hrs a day).

Petitioner ask trial counsel to get his FBI file under Confidential Informant Procedural Act (CIPA). Other circuits have allowed a defendant to prove that they were under the direction of a government agency that they had no intention of breaking the law but were acting under the direction of that federal law enforcement agency. The FBI told Petitioner he was authorized to have firearms. When Petitioner was recruited he did not receive a package from the FBI showing a "Chain of Command" as to verify the words of the Special Agent. Petitioner reliance on the word of one of the most sacred law enforcement agency should be allowed to have this evidence to prove his innocence. Trial counsel never went before the court to get a continuance nor seek from the court permission to file the untimely Motion to Suppress. On December 19, 2014 US Magistrate Judge D. Rush made an Order On or before twenty days from the date of this order the parties shall file any relevant pretrial motions. (Rule 47). Further on June 8, 2015 pursuant to the directions of Honorable Chief Judge G. Kays:

Regarding all pretrial motions for continuance and possible changes of plea, it is ordered that any defendant who intends to file a motion to continue the trial of his or her case until the next joint docket which is July 13, 2015 shall file such a motion in a timely fashion. During Pretrial Conference trial counsel informed the court that he received new information and that he only needed five (5) extra days to provide a defense. From the conception of this case there's been many instances of wrong doing. Petitioner was detained under a illegal standard which the Eighth Circuit has rule illegal. Petitioner has no Alcohol/Drug history, an a Escape that been 30 years prior. Potential for failure to appear when in fact this case factors are the same of the state and Petitioner been on bond from November 27, 2013 until December 17, 2014 after a federal warrant was issued. This was brought to trial counsel attention during a conference. The undue delay of the indictment. Counsel reply to 2255 motion that Petitioner did not want a continuance goes against the record. Petitioner wanted counsel to provide assistance to his defense. Counsel is unfamiliar with the US Attorney Manual. Though counsel is part of the Criminal Justice Act a conflict of interest was at hand, the CJA program is counsel "Bread and Butter". His email to the government illustrates his loyalty. " Not sure what it's worth but this is case I was discussing as groundwork for possible presentation of defense we discuss. (Mario Riley).

The alleged victim was arrested in Vinta, Oklahoma on March 15, 2015 for Trafficking in Meth with a \$250,000.00 cash only bond and yet she was a defense witness. On March 2,3 2015 in Newton County Missouri Possession of a Controlled Substance with intent to distribute and unlawful use of a weapon. Ms. Hoyt is a convicted felon from Pennsylvania Both the State of Missouri and federal government offered ms. Hoyt plea deal to perjure her testimony. Ms. Hoyt is now a informant with the DEA in Philadelphia, PA. This was the new information counsel received during pretrial conference where he asked for five additional days.

McQueen v Swenson 498 F.2d 207, 211-220 (8th Cir. 1974)

Wolf v Britton 509 F.2d 304, 308-311 (8th Cir. 1975)

US v Griffin 922 F. 2d 1343, 1349-1356 (8th Cir. 1990)

Osagiede v US 543 F.3d 399, 409-410 (7th Cir. 2008)

Rovario v US 353 US 53, 63-65 (1957)

Thomas v Wyrick 535 F. 2d 407, 413-414 (8th Cir. 1976)

Tosh v Lockhart 879 F.2d 412, 414 (8th Cir. 1989)

House v Balkom 725 F.2d 608, 614-618 (11th Cir. 1984)

Johnson v US 506 F.2d 640, 646 (8th Cir. 1974)

Lawerence v Armontrout 900 F.2d 127, 130 (8th Cir. 1990)

Massiah v US 377 US 201, 205 (1964)

McCoy v Louisiana No: 16-8255 1-3 (Syllabus) (2018)

Coles v Peyton 389 F. 2d 224, 226 (4th Cir. 1968)

US v McMillian 508 F.3d 101, 104 (8th Cir. 1974)

Elkins v US 364 US 206, 223 (1960)

Giglo V US 405 US 150, 153-154 (1972)

Kyles v Whitley 514 US 419, 436-438 (1995)

Brady v Maryland 373 US 83, 87 (1963)

Lawrence v Armontrout 900 F.2d 127, 130 (8th Cir. 1990)

Lustig v US 338 US 74, 78-80 (1949)

Moore v Illinois 408 US 786, 810 (1972)

Payton v New York 445 US 573, 586 (1980)

Singer v Court of Common Pleas Buck County 879 F.2d 1203,1206-1207 (3rd Cir. 1989)

Thomas v Wyrick 535 F.2d 407, 413-414 (8th Cir. 1976)

Tosh v Lockhart 879 F.2d 412, 414 (8th Cir. 1989)

US V Bapista-Rodriguez 17 F.3d 1354, 1363-1368 (11th Cir. 1994)

US v Beasley 346 F.3d 930, 933-935 (9th Cir. 2003)

US v Blankenship 67 F.3d 673, 677-678 (8th Cir. 1995)

US v Conner 127 F.3d 663, 677-678 (8th Cir. 1997)

US v Davis 290 F.3d 1239, 1244 (10th Cir. 2002)

US v Juan 776 F.2d 256, 257-259 (11th Cir. 1985)

US v Lee 356 F.3d 831, 834 (8th Cir. 2003)

Us v Lopez No: 2:08-CR-94/ 8-12 (ED Tenn. Apr. 13, 2009)

US v Lopez-Lima 738 F. Supp. 1404, 1407-1415 (SD FLA 1990)

US v Mason 233 F.3d 619, 1001 (Ct. App. DC 2000)

US v Orta 760 F.2d 887, 890-892 (8th Cir. 1995)

US v Safya Roe Yassin Case No: 16-3024-CR-S- MDH (CIPA MOTION)(This Motion was filed by AUSA A. McGull before District Court Judge Harpool the same who represented government in Petitioner case.

US v Versaint 849 F.2d 827, 831-832 (3rd Cir. 1988)

B. There is a well developed Circuit Split on the question whether if a State Statute express language that seized property "in rem" remain exclusive to State's jurisdiction, that a turnover order must be obtain before seized property can be transferred to federal authorities, even when the State Statutes forbid State Law Enforcement detached to a Federal Law Enforcement Agency to circumvent state law.

Missouri Statute 513. 607.1 6 (2) states: Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting attorney of the county in which the seizure is effected or the attorney general; and if in the opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition for forfeiture. RSMO 513.605 states:

(3) "Criminal activity" is the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

- (a) Chapter 195, relating to drug regulations;
- (b) Chapter 565, relating to offenses against the person;
- (c) Chapter 566, relating to sexual offenses;
- (d) Chapter 568, relating to offenses against the family;
- (e) Chapter 569, relating to robbery, arson, burglary and related offenses;
- (f) Chapter 570, relating to stealing and related offenses;
- (g) Chapter 567, relating to prostitution;
- (h) Chapter 573, relating to pornography and related offenses;
- (i) Chapter 574, relating to offenses against public order;
- (j) Chapter 575, relating to offenses against the administration of justice;

- (k) Chapter 491, relating to witnesses;
- (l) Chapter 572, relating to gambling;
- (m) Chapter 311, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;
- (n) Chapter 571, relating to weapons offenses;
- (o) Chapter 409, relating to regulation of securities;
- (p) Chapter 301, relating to registration and licensing of motor vehicles;

(4) "Criminal proceeding", any criminal prosecution commenced by an investigative agency under any criminal law of this state;

RSMO 513.647 states: 513.647. Transfer of property seized by state to federal agency, procedure — transfer not to be made unless violation is a felony — property owner may challenge, procedure. — 1. No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the property was seized first review the seizure and approve the transfer to a federal agency, regardless of the identity of the seizing agency. The prosecuting attorney and the circuit judge shall not approve any transfer unless it reasonably appears the activity giving rise to the investigation or seizure involves more than one state or unless it is reasonably likely to result in federal criminal charges being filed, based upon a written statement of intent to prosecute from the United States attorney with jurisdiction. No transfer shall be made to a federal agency unless the violation would be a felony under Missouri law or federal law.

2. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the court a statement setting forth the facts and circumstances of the event or occurrence which led to the seizure of the property and the parties involved, if known. The court shall certify the filing, and notify by mailing to the last known address of the property owner that his property is subject to being transferred to the federal government and further notify the property owner of his right to file a petition stating legitimate grounds for challenging the transfer. If within ninety-six hours after the filing of the statement by the prosecuting attorney, the property owner by petition shows by a preponderance of the evidence that the property should not be transferred to the federal government for forfeiture, the court shall delay such transfer until a hearing may be held. If the court orders a delay in transfer, no later than ten days after the filing of a petition under this section and

sections 513.649 and 513.651, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the prosecutor has proved by a preponderance of the evidence that the investigation or seizure involved more than one state or that the nature of the investigation or seizure would be better pursued under the federal forfeiture statutes, the court shall order that the transfer shall be made.

RSMO 513.649 states: Peace officers or reserve officer working with federal agency subject to law. — Any property seized by state or local peace or reserve officers who are detached to, deputized or commissioned by or working in conjunction with the federal agency shall remain subject to the provisions of this section and sections 513.647 and 513.651.

The Eighth Circuit in two (2) rulings:

1. *Madewell v Downs* 68 F.3d 1030, 1042 (8th Cir. 1995): Although Missouri now has a statute specifically requiring a turnover order from the court before transfer of property to federal control.
2. *In re US Currency \$844,520.00* 136 F.3d 581, 583-584: With that background, let us examine what apparently happened in this case. Cole's car was stopped by a state patrol officer for speeding. He consented to a search of the car, and a concealed compartment was found. The officer arrested Cole, took him to the Highway Department, and called a member of the Highway Patrol Drug and Crime Control Unit, who in turn called a DEA Special Agent. They found the currency in question when the secret compartment was opened. Federal forfeiture proceedings were begun without an adoption, no doubt on the theory that the DEA agent had seized the currency. But that is pure fallacy. Cole, his vehicle, and everything in it were seized by the Missouri Highway Patrol when its officer made the initial traffic stop. By summoning a DEA agent and then pretending DEA made the seizure, the DEA and Highway Patrol officers successfully conspired to violate the Missouri Constitution, § 513.647 of the Missouri Revised Code, and a Missouri Supreme Court decision. Such action by federal law enforcers is contrary to the spirit, if not the letter, of the Department of Justice January 15, 1993, Adoption Policy and Procedure, issued by the Executive Office for Asset Forfeiture as Directive No. 93-1. See 1 David B. Smith, **PROSECUTION AND DEFENSE OF FORFEITURE CASES**, App. 7C (1997). This Directive 584*584 urges deference to the kind of state court proceedings that § 513.647 requires state and local law enforcers in Missouri to commence.

Missouri Highway Partrol/ Task Force Officer's Sgt. Robert Vaughan and Robert

James on February 20, 2014 went to the Neosho Police Department and removed the seized firearms and took them to Troop D Springfield, Missouri. Though the ATF decline the case these individuals took it upon themselves to circumvent Missouri CAFA laws. MSHP General Orders states:

General Order 42-01-0701, Item II-A-1: Any member who has knowledge of or reasonably suspects criminal activity or a violation of a state or federal law will take appropriate action if a violation of law is readily apparent or reasonably suspected, i.e., initiate an investigation, arrest the violator, submit the appropriate report, or report the activity to the appropriate official or agency.

General Order 42-01-0701, Item II-A-4: Any member who has knowledge of or reasonably suspects criminal activity or a violation of a state or federal law will take no action in a civil matter with the exception of complying with court orders, ex parte orders, and orders of protection as outlined in General Order 55-02, "Domestic Violence and Orders of Protection.

CAFA is a civil matter.

"They further went before a federal Grand Jury and testified that they seized the property change the events where the Grand Jury indicted Petitioner. The Grand Jury was mislead by the Government and that the Government was time-barred in instituting forfeiture proceeding against the seized property. The Newton County Prosecutor and the Missouri Attorney General intentionally did not file for forfeiture only to continue to circumvent Missouri CAFA. Missouri law proscribe that Petitioner is given the opportunity to a "Full and Fair" hearing.

The District Court denied Petitioner relief under 18 USC 2255 and Eighth Circuit denied Petitioner COA knowingly that Petitioner is entitled.

1. In re Seizure Warrant for \$374, 100. 00 825 F. Supp.2d 1002, 1003-1004 (WDMO 2011)
2. In re Seizure of Appx. 28 Gram of Marijuana 278 F. Supp. 2d 1097 (N.D. Cal. 2003)
3. Martin v Indiana State Police 537 F.Supp. 974, 983-989 (Dist. Ct. SD Ind. 2008)
4. Putnam v Unknown Smith 98 F.3d 1093, 1094 (8th Cir. 1996)
5. Scarabin v DEA 966 F.2d 989, 995 (11th Cir. 1992)
6. US v \$229,850.00 in US Currency 50 F.Supp. 3d 1171 (D. Ariz. 2014)

7. US v \$506, 231.00 in US Currency 125 F.3d 442, 447-479 (7th Cir. 1997)
8. US v Andrews Case No: 05-00029-01 (WDMO 2009)
9. US v One 1987 Mercedes Benz 2 F.3d 241, 244-245 (7th Cir. 1993)
10. US v One 1979 Chevrolet C-20 Van 924 F.2d 120, 122-123 (7th Cir. 1991)
11. US v \$506,231.00 In US Currency 125 F.3d 442, 447-449 (7th Cir. 1997)
12. Albin v Baka 160 F. 3d 923 926-932 (N.M. Ct. App. 2007)
13. Karpierz v Easley 31 SW 3d 505, 508-510 (Mo. Ct. App, WD 2000)
14. Karpierz v Easley 68 SW 3d 565, 569-572 (Mo. Ct. App. WD 2002)
15. State v Ebernez 805 SW 2d 359 (Mo. Ct. App. ED 1991)
16. State v Gray 21 SW 3d 847, 848-851 (Mo. Ct. App. ED 2000)
17. State v Hampton 817 SW 2d 470, 471-473 (Mo. Ct. App. WD 1991)
18. State v Sledd 643, 647-651 (Mo. Ct. App. WD 1997)
19. Johnson v Johnson 849 P.2d 1361 (AK 1993)

C. The Eighth Circuit's decision is incorrect and will have significant consequences in future cases where there is a Circuit Split concerning Due Process the Actual Notice Requirement

It's been long held by this Court that of seized property the claimants is to receive "Actual Notice" to contest the forfeiture. The Government place the seized firearms on their website knowing the Petitioner was held in custody. Before the indictment Missouri law along with 18USC 983(a),(1),(A)(iv) state: Notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency. Missouri Highway Patrol or Neosho Police Department failed to give notice. The impact of the the Eighth Circuit Petitioner would ask the Court to observe this Court ruling in *Olmstead v. United States*, 277 U. S. 438, at 469, 471 :

"In a government of laws," said Mr. Justice Brandeis, "existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by

its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

As part of the Civil Asset Forfeiture Reform Act of 2000(CAFRA), Pub. L. No. 106-185, 114 Stat. 202, Congress imposed new deadlines for the processing of civil forfeiture claims. Under CAFRA, when the federal government seizes certain types of property, it must generally provide notice of the seizure to interested parties as soon as practicable, but in no event later than 60 days after the seizure occurs. 18U.S.C. § 983(a)(1)(A). After receiving notice, a person with an interest in the property may file a claim with the relevant. Section 983(a)(1)(A)(i) provides in relevant part as follows: Except as provided in clauses (ii) through (v),in any non judicial civil forfeiture proceeding under a civil forfeiture statute, with respect towhich the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

The Government through Missouri Highway Patrol held the seized firearms without applying for a seizure warrant. The indictment alleges that on November 27, 2013 Petitioner Possess firearms. The Government also chose to wait to see if Petitioner would be convicted in Missouri which Petitioner would been facing a substantive amount of incarceration.

1. Dusenberry v US 534 US 161, 163-164 (2002)
2. English v FBI Case No: 8:14-CV-111 (D. Neb. 8-13- 2014), (Un-publish)
- 3.Gates v City of Chicago 623 F. 3d 389, 400 (7th Cir. 2010)
4. Glasgow v US DEA 12 F.3d 795, 796-799 (8th Cir. 1993)
5. Lobzun v US 422 F.3d 503, 506-509 (7th Cir. 2005)
6. Mesa Valderrama v US 417 F.3d 1189, 1196 (11th Cir. 2005)
7. Muhammad v DEA 92 F. 3d 648, 650-658 (8th Cir. 1996)
8. Us v Real Props at 7215 Longboat Dr. 750 F.3d 968, 972-974 (8th Cir. 2014)

9. US v Wilson 699 F.3d 789, 791 (4th Cir. 2012)

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Louis a. Hardison respectfully requests this Court grant the petition for writ of certiorari, that his sentence be vacated, and his case remanded for a new trial.

Respectfully submitted.

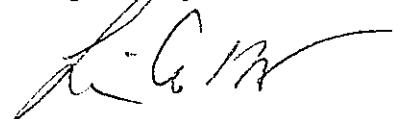
Louis Anthony Hardison

Petitioner

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,



/s/ Louis A. Hardison
Pro se

PO Box 595
Joplin, MO. 64801

February 19, 2019