18-8174

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Jack D. Hall — PETITIONER
(Your Name)

vs.

United States federal district court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth circuit court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jack D Hall
(Your Name)
Kinross Corr. fac.
4533 W. Industrial Park Drive
(Address)

Kincheloe Michigan 49788
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Should this Supreme Court Grant Certiorari, to determine this question of first impression "Dose the specific langauge of Federal Habeas Corpus Rule 8(a), provide for that: A federal district court judge's decision on whether or not to grant evidentairy hearing, must be in the form of an written order, with sufficient facts and law, that makes appellate review possible, when a federal district court judge elects not to appoint a magistrate judge to over see evidentairy hearing decision?

2. Should this Supreme Court Grant Certiorari, to determine this question of first impression. "Dose Due Process and Equal Protection under the Fifth, Fourteenth Amendment, provide, and would require that a decision under statutory federal habeas corpus rule 8(a), be in the form of a written order, signifying that a federal district court judge has completed and complied with the statutory commands, when a federal disttrict court judge elects not to appoint a magistrate judge to over see evidentairy decision?"

3. Should this Supreme Court Grant Certiorari, to determine this question of first impression. "Should due process and equal protection under the Fifth, Fourteenth, and redress under the First Amendment of the constitution, require that federal habeas corpus rule 8(a), require that federal district court judges who elect not to appoint a magistrate judge that the judge's opinion should contain sufficient facts and law when determining whether the State Court, violated petitioner's right to full and fair evidentairy hearing under a "Brady," violation claim, when petitioner asked the State Court's for evidentairy hearing, in accordance to Townsend v Sain, Supra?

4. Should this Supreme Court Grant Certiorari, to determine this question of first impression. Should due process and equal protection under the Fifth, Fourteenth and redress under the First Amendment, of the Constitution, requiring that this written order under habeas corpus rule 8(a), evidentairy hearing determination, must be filed with the clerk of the court and servered upon all parties, where petitioner waould have 28 days to file a motion to alter or amend the order under civil rules of procdure rule 59, when a district court judge who elect not to appoint a magistrate judge to over see evidentairy hearing decision?"

5. "Should This Supreme Court's legal reasoning found in Schlagenhuf v Holder, be applied here to petitioner's issues of first impression, concerning federal habeas corpus rule 8(a), language construction in the questions presented here, where the court found in Holder, that: "It's the duty of this Supreme Court to directly forumlate and put in force statutory rules," granting certiorari, to set forth clear language for rule 8(a), evidentairy decision, by a federal judge who elects not to appoint a magistrate judge to make evidentairy decision?"

7. Did the Sixth Circuit Court have the power to decide the merits of petitioner's writ of mandamus?

8. "Should this Supreme Court in exercising it's appellate review, apply this court's holdings found in Cheney Supra,: "That the writ may not issue, while altermative avenues or relief remain availible," to the Sixth Circuit Court's panel's May 23 2018, opinion?"

(a), "To use Cheney Supra, to determinate, whether the Sixth Circuit Court's panel mistakenly applied petitioner's pleadings after August 13, 2009, and before January 18, 2018s, filing of petitioner's writ of mandamus, to determine whether these were, within the definition of the meaningful and alternative avenuse to deny petitioner's writ of mandamus, requiring this Supreme Court to Remand the Writ back to the Sixth Circuit Court's panel?"

9. In vewing, that rule 8(a), dose absolutely provide for the written order, on evidentairy hearing decision. "Dose, the federal district court's docket journals; The January 28, 2008s district court's order; and the August 13, 2009s Judgment, provide sufficient document evidence, to conclude that federal district court Judge Ludington, did not compy with federal habeas corpus rule 8(a), in providing a written order on evidentairy decision, to warrant remand, back to the Sixth Circuit Court, to have judge Ludington answer the accusations set forth in petitioner's writ of mandamus?"

10. "Should petitioner's question on, "Whether federal district court judge Ludington abuse his discretion, when he failed to comply with rule 8(a), evidentairy decision to petitioner's pleadings, be considered an issue of first impression," as to allow the Sixth Circuit's panel to reach the merits of the writ on remand?"

11. "Should this Supreme Court find that the Sixth Circuit Court's panel failed to answer all the questions, under the panel's own authority used in their May 23, 2018s, opinion from Goetz Supra?"

12. "Did the Sixth Circuit Court's Panel in it's May 23, 2018 opinion, terminated it's inquire after just applying the first factor from Sixth Circuit Court Case Law of John B. v Goetz, leaving the rest of the factors, unaswered, requiring Remand, to answer the writ to determine whether the writ should be issued?"

13. "Should this Supreme Court apply, this Court's reasoning found in Schlangenhuf Supra; "That determination of whether the court of appeals had the power to determine all the issues presented in petitioner writ of mandamus, this Supreme Court should Remand the writ back to the Circuit Court's panel, to determine the unaswered questions presented in petitioner's writ of mandamus?"

LIST OF PARTIES

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

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

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was May 23, 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: October 11, 2018, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment Article One Provides:

Congress shall make no law respecting an eastablishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment provides:

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 Miltia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence 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.

Fourteenth Amendment provides:

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

On January 18, 2007, petitoner filed a federal petition for a writ of habeas corpus. The petition contain several various claims, all most all of the claims dealt with perjury, manufacturing of evidence, and petitioner's factual innocence. These claims centered around petitioner's MCR Post-Conviction 6.500, motion, where petitioner raised a Newly Discovered Evidence Claim, stating that evidence was with-held, thus creating a "Brady Violation," petitioner also asked all of the State Courts for an evidentairy hearing.

On January 23, 2007, the federal district court ordered that State respond to the petition.

On August 20, 2007, petitioner filed two motion. First motion was leave to file a supplemental brief. Second motion was to proceed to the merits of the claims.

On Feburary 26, 2008, federal district court's order, granting motion to file supplemental brief, denying petitioner's motion to proceed to the merits of the claims.

On October 17, 2008, Petitioner sent a letter to the federal district court asking how long before a decision would be made in petitioner's case.

On August 13, 2009, Federal District Court made an order and judgment, denying petition for writ of habeas corpus, granting a certificate of appealability, and granting leave to proceed in the forma of pauperis on appeal.

On September 28, 2010, petitioner filed a notice of appeal.

On January 28, 2011, order from Sixth Circuit Court of Appeals, dismissed Petitioner's case, as the Notice of Appeal was not timely filed. See Petitioner's Appendix (C), January 28, 2011, court's opinion.

On March 29, 2011, petitioner's Attorney Suzanna Kostovski, filed a Rule 60(b)(6), motion, for issuance of August 13, 2009s, federal district court's opinion Nunc-Pro-Tunc.

On June 29, 2011, district court denied petitioner's 60(b)(6), motion.

On October 9, 2013, United States Supreme Court denys Petitioner's 60(b)(6), motion.

On November 5, 2014, Petitioner's Attorney Suzanna Kostovski, files a second rule 69(b)(6), motion to federal district court asking the court to file a late rule 59, motion to alture the August 13, 2009s district judgment.

On June 8, 2015, federal district court denied petitioner's Second 60(b)(6), motion.

On March 27, 2017, the United States Supreme Court denied petitioner's rehearing in second 60(b)(6), proceedings. See Petitioner's Appendix (A), Federal district Court's Docket journals from petitioner's writ of mandamus, Appendix (D) here. These docket journals provide the Supreme Court with a clear record of petitioner's pleadings over the past 9, years, since petitioner found out that there was a judgment in petitioner's 2254 petition.

On January 15, 2018, petitioner filed a writ of Mandamus in the Sixth Circuit Court of Appeals. petitioner asserted that Federal District Court Judge Thomas L. Ludington failed to obey the commands set-forth by congress; United States Supreme Court and his Oath of Office. The Writ of Mandamus, demonstrated this assertion, under the guise of, "Judges Abuse of Discretion," during petitioner's 22 U.S.C. § 2254, federal habeas corpus proceedings. Petitioner alledged that Judge Ludington failed to follow statutory federal habes corpus rules, Rule 8(a), Where Ludington failed to make a determination of whether or not petitioner was entitled to a federal evidentiary hearing.

And as a result of this failure of no evidentairy determination, created a structual error within the entire federal habeas corpus proceedings, requiring the court to

vacate the entire August 13, 2009s, federal district court's judgment in 2254 proceedings. see Petitioner's Appendix (D), Petitioner's January 15, 2018s, writ of Mandamus.

On May 23, 2018, Court of Appeals denied and dismissed the writ. See Petitioner's Appendix (A), theMay 23, 2018s, Sixth Circuit Court's Opinion.

On July 2, 2018, petitioner filed a motion for rehearing and rehearing En-Banc. See petitioner's Appendix (E), petitioner motion for rehearing.

On October 11, 2018, Circuit Court denied motion for rehearing. See Petitioner's Appendix (B), Circuit Court's October 11, 2018s Opinion.

REASONS FOR GRANTING THE PETITION

This petition for a writ certiorari, or remand, before this United States Supreme Court, involves two parts. Frist part of this writ deals with the validity and construction of Federal Habes Corpus Rules, Rule 8(a), as it applies to the determination of whether or not to grant a federal evidentairy hearing. Second part, deals with the failure of the Sixth Circuit court of Appeals, to answer the merits, leaving questions unanswered, improper dismissal of the writ of mandamus.

Part One: Dose the language of Federal Habeas Corpus Statutory Rule 8(a), provides for an interlocktory order, with findings of facts and law, whether or not an evidentairy hearing should be granted? Dose rule 8(a), provide for that parties may file a motion to alture the order in accordance to federal rules of civil procedure rule 59, when a federal district court Judge elects, not to appoint a magistrate judge to make evidentairy determination?

"Petitioner answered all these questions in a frim no," rule 8(a), dose not specifically provide for an order on evidentairy decision, nor dose it provide for the oreder to be served upon all parties, nor dose the rule provide for a party to file a motion for reconsideration.

Federal habeas Corpus Rule 8, provides: Part 8(a),

"If the petition is not dismissed, the judge must review the answer, any transcripts and record of state-court proceedings and any material submitted under rule7, to determine whether evidentairy hearing is warranted."

art 8(b), "A judge may under 28 U.S.C. § 636(b), refer the petition to a magistrate judge to conduct hearing and file proposed findings of facts and recommedations, for dispostition, when they are filed, the clerk must propty serve copies of the proposed findings and recommedations on all parties, with in 10 days after being served, a party may file an objection as provided by local rule.

Petitioner asserts that: "The language of federal habeas corpus statutory rule 8(a), dose not explicty provide for the, "enforcement of an evidentairy decision." Rule 8(a), does not set-forth any commands that the decision must be in a written order. Nor dose rule 8(a), provide that petitioner must be notified of that decision. Rule 8(a), dose not command anything of what a federal district court judge's responsibility is, when he elects not to appoint a magistrate judge to assist in evidenatiary hearing determination.

In stressing this point, looking at the characterization of the lanauge of rule 8(b), congress made absolute specific demands upon a magistrate judge, who has been appointed by a federal district court judge. The magistrate judge is commamanded under 28 U.S.C § 636(b), to file their proposed evidentairy findings, and recommendation, to promptly provide the clerk of the court with these findings. Also Rule 8(b), commands that, the clerk of the court serve petitioner with a copy of these recommendations. Finally petitioner has 10, days to file an objection.

Even when, reviewing habeas corpus rule 11, which provides that: "The federal rules of civil proceedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these rules.

Petitioner asserts that: "Rule 11, the key langauge here is the word "may," rule 11, dose not give a direct command to a federal district judge that he "must," apply any of the federal rules of civil procedure, that might be able to be applied in this unique habeas rule 8(a), determination. Second, congress or advisory committe would have included, eitherin the body of rule8(a), or committe notes, if any of the rules of civil procedure must be imployed to carry out the evidentairy decision, just as the commanded a magistrate judge in rule 8(b).

With no enforcement for evidentairy decision in place in rule 8(a). Petitioner

now turns this court's attention, to what is required for that evidentairy decision. In viewing the Advisory Committe Notes, provides that, a federal district judge is to make findings of facts, in applying 28 U.S.C. 2254(e)(2). And if these restrictions in (e)(2), are not applicable to petitioner being granted or denied federal evidenatiry hearing. Then the judge must apply the Pre-A.E.D.P.A., standard of review found in Townsend v Sain, 372 U.S. 293, 83 S.Ct 745; 9 L.Ed.2d 770 (1963).

In demonstrating how petitioner has suffered harm, by Judge Ludington, and the lack of a written order under rule 8(a). Petitioner made several requests for a federal evidentairy hearing in petitioner's 2254, federal habeas petition. In Petitioner's Appendix (G), from petitioner's writ of mandamus. (Each of these pages contains a request for an evidentary hearing for that particular claim presented in petitioner's habeas petition. Each of these hearing request was from the result of a "Brady violation," raised in state court. These requests demonstrated, how the police manufactured evidence; perjury committed at petitioner's trial; and manufactured evidence in a search warrants. Petitioner presented the circuit court's panel with the actual claims litigated in petitioner's habeas petition. See petitioner's Appendix (G), from petitioner's writ of mandamus, Petitioner's federal habeas petition, pages 27, 101, 104, 163, 166, 169,). See also petitioner's appendix (N), from petitioner's writ of mandanus, petitioner's actual perjury claim from habeas petition. Next reason for evidentairy hearing was needed to establish prejury surrounding the DNA, evidence collected in the case, where the DNA did not match petitioner, an it established that, "Petitioner was factually innocence, of all the crimes, inwhich petitioner was convicted of." See Petitioner's Appendix (H), Pages 163-170, Petitioner's actual innocence claim, from petitioner's writ of mandamus.

In petitioner's writ of mandamus, petitioner claimed that evidentairy hearing was also necessary to determine whether, "The State Trial Court, violated petitioner's rights to full and fair hearing," when petitioner presented his, "Brady Claim to the State

state trial court," in a newly discoved evidence motion under MCR 6.500, proceedings.

Because, judge Ludington failed to make a ruling under Rule 8(a), petitioner has been forced to endure being held in a state prision against his constitutional rights, claiming that document evidence proves that he is factually innonence, with out proper redress, and determination under rule 8(a), of whether petitioner was entitled to a mandatory federal evidentairy hearing as provided for in Townsend v Sain, 372 U.S. 293; 83 S.Ct 745; 9 L.Ed.2d 770 (1963). See Petitioner's Appendix (E), December 10, 2003, Newly Discovered evidence motion and brief in support, page 14, requesting evidentairy hearing, from petitioner's writ of mandamus.

With the lack of clarity in the Langaugue of rule 8(a), and because, "no case law exist anywhere on a rule 8(a), violation,' "this is absolutely an issue of frist impression." Petitioner finds himself in a simmilar predicament, as the United States Supreme court did in, Schlagenhuf v Holder, 379 U.S. 104; 85 S.Ct 234; 13 L.Ed.2d 152 (1964), where, this court was presented with an unanswered question of frist impression. This Supreme court, concluded, in its opinion that: "normally we would advise remand, on the writ, when issues were left unresolved, by lower court during a mandamus proceedings. Because, the question presented, concerns the construction and application of federal rules of civil procedure. This court explained that it was the supreme court's duty to formulate the necessary guidelines and put in force the rules." Id at U.S. 111-112.

Focusing on the United State Supreme Court's duty, If the roll of this United State's Supreme Court, is to serve the constitution, then the application of Schlagenhuf's frame-work analysis to statutory rules, should serve as a procedural mirror here, reflecting the same logic, as to why petitioner's questions concerning rule 8(a), creates a contrversay, that should be discussed in full, in this Supreme court's proper form granting certiorari to decide these very importain issues.

Petitioner asserts that: "Petitioner should be given the same treatment and consideration of his questions of first impression as the court did in Sclagenhuf here, of whether federal habeas corpus rule 8(a), and whether it protect a prisoner's constitutional rights to re-dress, and how rule 8(a), effective evidentairy hearing decisions, by a federal judge who elect not to appoint a magistrate judge, for evidentairy determination.

In viewing similatires, petitioner asserts that: "Both Schlangenhuf and petitioner met the standard for a proper writ of mandamus. Schlangenhuf presented his writ of mandamus, based in part on unsurpation of judical powers, claiming that the district court had no authority to subject his civil rules of procedure, rule 35. Id., U.S. at 110. Petitioner's writ of mandamus was premised on judge's abuse of discretion.

The Schlangenhuf court went on to find that rule 35, action is free of constitutional difficulty. Id., U.S. at 114. Petitioner asserts, the court here should consider petitioner's claims here are more serve than Schlagenhuf, because rule 8(a), is born, with constitutional duties, that rule 8(a), determination has the ability to correct a State court's decision and set free a convictioned State prisoner.

Petitioner asserts that: "State prisioners are entitled to relief on federal habeas proceedings, upon proving that their detention violates the fundamental liberties of the person. Haeas corpus, safeguards against Stat action, by the federal constitution; the opportunity for redress, which propose the opportunity to be heard, to argue, and to present evidence, must never be totally foreclosed. Because, the entire purpose of the writ of habeas corpus is to safeguard a person's freedom from detention in violation of constitutional guarantees."

Looking at the Fourteenth Amendment of the Constitution, viewing that the civil rights statutes that were enacted sects 1877, 1878, rev. They enacted that all persons

within the jurisdistion of the united states shall have the same rights in every sate and territory to make and enforced contracts, to be sue, be parties, give evidence, and to the full and equal benefit of all laws, and proceedings for security of person and property. It is the state which is prohibited from denying to any person with in its jurisdition the equal protection of law. Va v Rives, 100 U.S. 313 (1879).

By the Fourteenth Amendment, the powers of the States in dealing with crime within their borders are not limited, but no state can deprive particlar persons or classes of person of equal and impartial of justice, is due process, and when secured by the law of the state. The Constitutional requiston is satisfied and due process is so secured by law operating on all alike, and not subjecting the individual to the arbitrary exercise of the power of goverment, unrestraint by established principle of private rights and distributive justice. Caldwell v Texas, 137 U.S. 692 (1890)

28 U.S.C. § 1343; Civil rights and Elective Franchies, provides:

Part (A). The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

Part (3). To redress the deprivation under the color of the state law, statute, ordinance, regulation, custom or by any act of congress provideing for equal rights of citizens or of all the persons with-in the jurisdiction of the united State or by any act of congress providing equal rights of citzens or persons within the jurisdiction of the united states.

The federal courts should be held to this same due process, when it involves statutory rules, imposed by congress, commanding that a decision in a particular procedure be done, clearly its this supreme court's duty to make sure, that judges clearly understand how that is to be done. This is how this court not only serves the constitution, but speaks for the constitution.

In summary, petitioner asserts that: "The Fourteenth Amendment's Due Process, should guide a decision under Rule 8(a). Its long been held that the United State Federal Government, is the last door between a citizen and the weight of the State with all of its resources. With the complexity of petitioner's historical facts, and the law that is need to be applied, in making an evidenatairy hearing decision. Due Process would require that Federal Habeas Corpus Rules 8(a), needs commands for that particular enforcement of evidentairy hearing decision. This enforcement should be in the form of a written order, with facts and law, explaining the judge's reasons for his decision.

Second, this would signify finalization of the decision under rule 8(a). Third, this would demonstrate that the federal judge has complied with congress' comands of rule 8(a). Fourth, there needs to be commands defining the responsibility of the clerk of the court, requiring the Clerk to promply serve all parties, the federal judge's order.

Fifth, there needs to be commands in the rule8(a), that allowes the order to be corrected or altered, under the provisions set-forth be Civil Rules of Procedure, Rule 59. These instructions need to be set forth in clear language, as to confine a federal district court judge, who elects not to appoint a magistrate judge under rule 8(b), to make federal evidentairy hearing decision.

With all these commands would make Circuit Court Appeallate review possible, and would serve the admistration of the court as not only being better, in its review of the process, but it would serve justice, as the constitution requires.
In viewing this as the supreme court's duty, to guide the lower courts. Supreme Court Justice Somymotor, had recently stated that, Supreme Court Justice Kanavana, is now family, and that being true, then it would only seem fitting that this Supreme Court should view it's lower district court as an extended family, and provide them with the tools and guidance needed for proper evidentairy determination.

Part 2. Did the Sixth Circuit Court of Appeals prematurely terminate petitioner's Writ of Mandamus, when it mistakenly read and applied case law, thus leaving the merits of the writ unaswered, requiring this Supreme Court to exercise it's appellate review, to remand the Writ of Mandamus back to the Sixth Circuit Court of Appeal's panel to answer the writ.

Petitioner answers this question: "Yes," This Supreme Court should remand the writ of mandamus, to answer the merits.

Petitioner asserts that: "This is not a case where, the Sixth Circuit Court's panel considered the merits, against Federal District Court Judge Thomas L. Ludington, instead the court's panel relied on it's mistaken reading of John B. Goetz, 531 F.3d 445 (6th Cir. 1977). The panel prematurely terminuated its inquire, without reaching the weighty of, whether federal district court judge Ludington complied with federal statutory rules of habeas corpus, rule 8(a), thus creating a structual error in the entire mechanics in 2254, proceeding requiring vacating the federal district court's August 13, 2009s judgment.

In the court's panel's determination of whether petitioner's claim was subject to mandamus relief. Thie panel's review of the first factor of the five factors, to determine whether a writ should be issued, as stated in Goetz, Supra, provides that: "The party seeking the writ has no other adequate means such as a direct appeal to attain the relief desired." Id., 531 F.3d at 457.

Petitioner asserts that: "Its this point in time, after the court's panel applied this first factor, is where the panel terminated it's inquire of petitioner's writ of mandamus. Gleaming from the panel's May 23, 2018s, opinion, the panel mistakenly interrupted this first factor, by applying petitioner's past court filings after the August 13, 2009s federal district court's judgment, and before petitioner's January 7, 2018s, filing of petitioner's writ of mandamus."

Petitioner's case here, now some-what reflects some of the same type of problems this supreme court in Cheney v United State Dist Court, 542 U.S. 367; 124 S.Ct 2576; 159 L.Ed.2d 459 (2004). This supreme court defined that a petitioner must satisfy only three condictions before a writ of mandamus may issue:

Frist condiction, "the party seeking issuance of the writ must have no other adequate means to obtain the relief he desire. A condiction designed to ensure that the writ will not be used as a subsitute for the regular appeal process. Id U.S. at 380-81.

It was clear in Cheney, that the respondents preliminary argument was that the mandamus petition was jurisdictionally out of time. This court rejected this argument finding that rule 4(a), by its plain terms applies only to filing of notice of appeal. It is inapplicable to mandamus petition, under the all writs act of 28 U.S.C. § 1651. Id. U.S. at 378.

The Court's review of the facts found that: "Even though the NEPDG had been desolved, the district court held, however that FACA'S substantutal requirement could never be enforced against the vice present, and other government, particpants on the NEPDG, under the mandamus act 28 U.S.C. § 1361. The district court recognized the disclosure duty must be clear and non discretinary for mandamus to issue. Id. U.S. at 375.

Petitioner asserts that: "Profoundly Cheney's district court found a clear duty to disclose. Perspectively, This Supreme Court should agree here in petitioner's case that! "There was an absolute clear duty under the statutory langauge in federal habeas corpus Rule 8(a), that a decision must be made, and that enforcement could he had against Federal District Court Judge Ludington for failure to carry-out this duty, that petitioner had an indisputable right to that decision under rule 8(a).

The very essences of Civil liberty certain consist in the rigts of every individual to claim the protection of the law, when ever he receives an injury. One of the first duties of government is to afford that protection. Because where there is a legal right, there is also a legal remedy, by suit or action or law when ever that right is invaded.

It is directed upon federal judges to take an oath, to support this oath certainly applies in an especial manner to follow the rules set before them. If not, why dose a judge swear to discharge his duties agreeably to the constitution and laws of the United States? See 28 U.S.C. § 453. Viewing this rationally this Supreme Court has found that nobody is above the law, not even the Present of the United States. Id., Cheney, 542 U.S. at 382.

Petitioner asserts that: The facts and allegations against Federal District Court Judge Ludington, removes this case from the category of commonplace challenging an interlocktory order from the district court, where appelate review is unavailable." Upon viewing the jurisdiction of the Sixth Circuit Court of Appeals is exclusively appellate, it authority to issue writs of mandamus is restricted by statute to thoses cases in-which the writ is in aid of that jurisdiction. Because its common authority is not confind to the issuance of writs in aid of jurisdiction already qcquired by appeal, but extends to those cases which are within its appellate jurisdiction, that could be defeated and the purpose of the Statute authorizing the writ, could be thwart by abuse of a judge's actions in not following statutory rules.

In Summary, Petitioner's Writ of Mandamus, should be found to be an appropriate remedy in this particular instance. First petitioner's challenge was based on abuse of discretion in the district court for failure to follow federal statutory rules. Second that being so, the Court of Appeals had the right in mandamus proceedings, to inquire into the application of Habeas Corpus Rule8(a), during petitioner's 2254 proceedings. Third, this issue presented in Mandamus was an issue of first impression.

Finding that petitioner was not allowed to make a timely appeal, becasue he did not receive the federal district court's August 13, 2009s opinion, to make a timely notice of appeal. And, as in Cheney supra, petitioner's mandamus here should be guided by lateches, not by appellate rule 4(a). Petitioner had no meaningful appeal to obtain relief from the abuse suffered by the failure of the district court to make a determination under rule 8(a), when petitioner filed the writ of mandamus. See Petitioner's Appendix (C), Circuit Court of Appeal's opinion dated January 28, 2011.

Leaving petitioner's writ of mandamus, unaswered, dose not promote justice, nor dose it serve the constitution, because this writ is one of the most powerful tools a person has, and this supreme Court's intent should lie with having the merits of the accusation put to the test. This Supreme Court clearly spoke in Schlagenhuf v Holder Supra, U.S. at 111, 112, that if we believe that the court of appeals had the power to determine the issues presented in the writ of mandamus, "this court would remand the writ of mandamus back to the court of appeal to answer the undecided questions" Id. See also Roche v Evaporated Milk Ass'n, 319 U.S. 21; 63 S.Ct. 938; 87 L.Ed.2d 1185 (1943).

Here in petitioner's case remand is absolutely necessary, because all the questions necessary for determining the vilidity of whether petitioner should be granted a writ of mandamus, was left unaswered by the court's panel. These unaswered questions are clear by the court's panel's lack of defining a cumulative ballance conclusion of all the five factors, as cited by the panel's own authority cited in their May 23, 2018s, opinion of John b. v Goetz, Supra.

In viewing how the Court of Appeal's Panel mistakenly applied John b v Goetz, in Goetz the defendants filed a writ of mandamus, when the district court denied their motion for stay of the order. The appellate court found that mandamus relief

was approriate because, defendants had not other adequate means to obtain relief. The Circuit Court's Panel in petitioner's case, applied petitioner's past possible relief filings, as have adequate means to obtain relief, at the time in-which petitioner filed his writ of mandamus on January 18, 2018. It is clear by the panel's May 23, 2018, opinion they applied Sixth Circuit Case Law, of Goetz Srpra, in an improper matter, becasue goetz, is about furture filings. By improperly answering factor one from Goetz's first factor improperly, this Supreme Court must assume that factor one is unaswered because, a wrong application, is the same as no answer at all.

Finally in viewing the failure of Federal District Court Judge Ludington, to make an evidentairy hearing determination under Habeas Corpus Rule 8(a), thus, denied petitioner a determination of whether petitioner recived, Full and Fair Hearing in State Trial Court in MCR 6.500, proceedings, asking for evidentairy hearing. See petitioner's Appendix (C), petitioner's September 16, 2003, MCR 6.500, motion pages 31, 51 asking for State evidentairy hearing. See also Petitioner's Newly Discovered Evidence Motion dated December 10, 2003, page 14, requesting State evidentairy hearing on a Brady, violation, both from Petitioner's writ of mandamus here listed as Petitioner's Appendix (D).

Finality, in respect to final judgment, in context of petitioner's federal habeas petition proceedings. Under Civil rules of Federal Procedure Rule 54(b), and U.S.C. 28 § 1291, this court should consider that: There can be no final judgment in petitioner's case when the federal district court did not apply all the rule commanded upon him, for proper determination of all of petitioner's claims in habeas petition, creating a structual error which effected all the claims in the August 13, 2009s judgement in-which could never be considered final according to law. See Townsend v Sain Supra.

After 9, years of pleadings, the merits of those years of plight, are now, finally upon this Supreme Court's door step one last time. "Petitioner is more than hopping

and praying that this problem can be resolved." If this Supreme Court's majority will find that, and agree with petitioner, that federal habeas corpus rule 8(a), lacks proper language for command for a written order, when a federal district court judge elect not to appoint, a magistrate judge to make evidentairy hearing decisions. Finding also that this is a significant issues, and the Sixth Circuit Court of Appeal's panel's May 23, 2018s opinion is erroneous.

Therefore, it would be easy for the majority of this Supreme Court to find that, petitioner would suffer irreparable harm, if the May 23, 2018s decision is not corrected. Petitioner has made a strong case here, and it should be the duty of this Supreme Court to Grant Certiorari, to fix federal habeas corpus rule 8 (a),.

"But if the majority of this Supreme Court , finds that Rule 8(a), dose absoultely provide for that written evidentairy hearing decision order." Then the Majority here should find that petitioner has presented sufficient document evidence, in the form of the District Court's own Docket Journels and Orders, which absolutely proves that petitioner did not get a decision and written order on rule 8(a), determination. With this evidence the majority of this Supreme Court could find that the Circuit Court's panel abused its discretion. Then it would not be hard for this majority to find in light of this, that the entire writ of mandamus was left unaswered.

"Remand, then would be absoulutely necessary here, because the majority could find that petitioner has made serious accusations, that a federal district court judge failed to obey the command of Federal Habeas Corpus Rules, Rule 8(a). And that Federal District Court Judge Thomas L. Ludington should be held to answer, why he did not follow the rules. Therefore, remand is the only correct answer here. See First Amendment of the United State's Constituition rights on redress. See petitioner's Appendix (A), Federal District Court's Docket Journels, from Petitioner's Writ of Mandamus, Petitioner's Appendix (D), here in, this document proves no hearing determination was made.

Therefore, Petitioner Prays that this Honorable United States Supreme Court Either Grants Certiorari, to hear arguments on Rule 8(a), and it commands for written opinion. Or Grant Remand back to the Sixth Circuit Court of Appeal for determination of the merits of the Writ of Mandamus.

CONCLUSION

The petition for a remand or writ of certiorari should be granted.

Respectfully Submitted,

Jack D. Hall

Dated January 7, 2019.