18-8901 ORIGINAL

**IN THE**
**UNITED STATES SUPREME COURT**
**OCTOBER TERM, 2019**
**NO.**



*DANIEL H. JONES*
*Petitioner*
*Vs.*
*JAMES F. GOODWIN &*
*ROBERT H. MONTGOMERY, Jr*
*Respondents*

# ***PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI , OHIO***

*Petitioner, Daniel H. Jones, pro se, respectfully prays that a writ of certiorari issue to review the judgment and Order of the Appellate Court of the State of Ohio for the Sixth Judicial District, entered on January 17, 2019..*

*Daniel H. Jones, Petitioner, #443638*
*Turney Center Industrial Complex*
*1499 R.W. Moore Memorial Hwy.*
*Only, Tennessee. 37140-4050*
*Inmate pro se*

## *QUESTIONS PRESENTED FOR REVIEW*

### *i.*

*DID THE U.S. SIXTH CIRCUIT COURT OF APPEALS ERR IN DENYING THE PETITIONER'S ABSOLUTE RIGHT IN FILING AS WELL AS TO APPEAL HIS CIVIL ACTION IN FORMA PAUPERIS, CONSISTENT WITH 28 USC §1915 (2) & (4)?*

### *II.*

*DID THE LOWER APPELLATE COURT INTERVENE WITH ACTS OF CONGRESS AS WELL AS DECISIONS OF THIS U.S. SUPREME COURT INVOLVING AN ISSUE OF INJUNCTIVE RELIEF WHICH BARS SOVEREIGN IMMUNITY?*

### *III.*

*ARE THE U.S. APPELLATE COURTS VESTED WITH UNLIMITED POWER IN RESTORING AN ACCUSED TO HIS/HER RIGHT TO BE HEARD IN A STATE CIRCUIT OF PROPER JURISDICTION & VENUE?*

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## OPINION BELOW

*The Order of the Appellate Court of the State of Ohio, Sixth Judicial District, on January 17, 2019, which affirmed the Order of the United States District Court for the Eastern District of Tennessee, Knoxville Division, is attached hereto as Appendix "A" (A-1)). A copy of the Order of the United States DistrctCourt dated 11/13/18 denying the petitioner's civil complaint under* ***42 USC § 1983 & 28 USC § 1343(a) & (3),*** *is attached as ["A2"]*

## JURISDICTIONAL STATEMENT

*Jurisdiction is conferred upon this court by* ***28 USC §1257(a)*** *to review by Writ of Certiorari a final judgment rendered by the highest court of a state in which this case is of such imperative importance as to justify deviation from normal appellate practice and to require immediate determination in this court;* ***See*** ***28 USC §2101(c),*** *from which a decision may be had; Appendix "B" (3&4), Petitioner will further submit that,*

*i.] The date of the Order sought to be reviewed was entered on January 17,*

*2019, now being submitted under this Court's Rule 11.*

*ii.] Referencing this same Order and any further submissions as to suggestions for Rehearing(s), here too was denied by procedural Order and unfilled,* ***See appendix*** *["A3&4"].*

*iii.] To date, no cross-appeals have been filed with respects to this appeal.*

*iv.] Jurisdiction shall be conferred upon this court via* ***28 USC §2101(c).****to review on a Writ of Certiorari the judgment and order in question.*

*v.] Petitioner states that in accordance with the provisions of* ***28 US §2403(a), (b)*** *and this Court's Rule 29.4(b) & (c), he has timely served both State and U.S. Attorney and Solicitor Generals where gives rise to State and U.S. Constitutional issues of law.*

## ***CONSTITUTIONAL PROVISIONS***

*The following provisions of the United States Constitution are involved; Const, Amends, V. VI, VIII. & XIV.The test of said provisions are attached hereto as appendix "E" (1- ).as follows --*

### ***AMENDMENTS***

### ***V.***

***No person shall be held to answer for a capital, or otherwise Infamous crime, unless on a presentment or indictment by a grand jury. . . 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;***
***[Emphasis, mine]***

### ***Vi***

***In all criminal prosecutions, the accused shall enjoy the right to A fair and speedy and public trial, by an impartial jury of the state***

***And district wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be Informed of the nature of the accusation; to be confronted with the wtbnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.***

## ***VIII***

***Excessive bail shall not be required, nor excessive fines be imposed Nor cruel and unusual punishment inflicted.***

## ***XIV***

***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.***

## *FEDERAL STATUTES & RULES INVOLVED*

*The following provisions of federal statutes are involved;* ***28 USC §1915, 42 USC § 1983 28 USC §1343(a) (3),28 USC §1915 and F.R.Civ.P. 62(g) (1)****The test of said provisions are attached hereto as appendix "E" (1- ).as well as other state statutes and treaties relevant to this petition and made a part hereof.*

## *STATE CONSTITUTION INVOLVED*

*The following provisions of Tennessee Constitution are involved;* ***Art. I, ·§ 1 7, Art. I,§ 9 Art..II §1 and Art.II ,§2 which holds,***

*Art.i § 9*

*That in all criminal prosecutions, the Accused hath the right to be heard by Himself and his counsel, to demand the Nature and cause of the accusation against Him, and to have a copy thereof, to meet the Witnesses in his favor, and in prosecution By indictment or presentment, a speedy public Trial, by an impartial of the County in which The crime shall have been committed, and shall Not be compelled to give evidence against himself.*

*Art. I, § 17*

*That all courts shall be open, and every man, For an injury done him in his . . . person or Reputation , shall have remedy by due course Of law, and right and justice administered with- Out. . . denial or delay. Suits brought against the State in such manner and in such courts as the Legislature may by law direct.*
*[Emphasis, added]*

*Art.il, §1*

*The powers of the Government shall be divided Into three distinct departments; the Legislative, Executive, and Judicial.*

*Art.il, §2*

*No person or persons belonging to one of these de- Partments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.*

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## ***STATEMENT OF THE FACTS***

*As indicated by records (appended hereto) the petitioner is charged with four (4) indictments See Appendix "D" [D1-], all of which were dismissed in a General Session's Court at and subsequent a Preliminary Hearing, [ "D2-7a"]..*

*Yet, the state pursued each of the petitioner's offenses to a piecemeal prosecution; See ["C5-6"] with [B1-3], ["D1-3"] and, prior to "amending" either of the indictments whereupon indictment no. S53-127 was prosecuted by jury trial which ended after two days in a hung-jury, and upon reconvening on the third day "with" same jury, the petitioner was determined to be guilty of his offense, however, and prior to final sentencing, and also prior to a Waiver-Plea, indictment S52-468 (then Rape) was dismissed nolle prosequi, ["D5 & 5a"] and further indicated to be reduced to—erroneously—a lesser included offense of aggravated assault where the statutes do not provide---for rape offenses.["D3 & 5a"].*

*Moreover, this is one of the initial offenses that where dismissed in an earlier court ["D1"]. Nonetheless, in the outcome, the petitioner's sentence was levied at an aggregate term of thirty-one (31) year's punishment as a Class-B, Range-I Offender under **Tennessee's 1989 (2007) Sentence Reform Act** (hereafter, "The Act"), all in violation of its legislative application ["D10"]. where it should be equally noted that the state has infringed upon both the petitioner's fifth amendment right barring double-jeopardy as well as Tennessee's Const., Art.1 &2 §§ 1&2, i.e. the Separation of Powers Doctrine ["C1 &2 "], enacted to prohibit one court from encroaching upon another.. As a direct result of this, the petitioner has made prior attempts, e.g. ["B3 p.2"] ], to overcome*

*his conviction and sentence by first exhausting all state and federal remedies made available to him, until finally, on 7/28/17, in his most recent attempt ["B5"] ] now stems from a State-Tort Action [ Tennessee's Governmental Tort Liability Action—hereafter, GTLA] giving rise to an extensive journey through the Appellate system, pursuing this petition for Writ of Certiorari.["A1-4"], {"B5"] However, .the federal question of law sought to be reviewed has been raised at its trial level pursuant to petitioner's post-conviction motion under the state's Rule 36.1 and appealed [""B3"] to its highest level ["B2"].*

*Therefore, it is by reason of a "factual-showing" of circumstances an* ***"actual" controversy"*** *exist and remains unresolved justifying the petitioner's attempts to overcome his injustice ["C9-12"] via the states only corrective means—the GTLA, now warranting the issuance of this court's consideration in a Writ of Certiorari.["B5"].*

## ***AMPLIFIED REASONS FOR GRANTING THE WRIT***

*The first of reasons as to why a Writ of Certiorari should issue, is because of the U.S. Sixth Circuit's summary conclusion dismissing the petitioner's appeal due to his pauper status, which departs so far from the excepted and usual course of judicial proceedings, as well as to sanction such a departure, by a lower court ["A1"], as to call for an exercise of this court's supervisory powers.*

*Secondly, whereby a Congressional Act allows this petitioner to pursue "state-entities" for injunctive-relief and the lower U.S. Court of Appeal's decision conflicting with other U.S. Court of Appeals, as well as this U.S, Supreme Court on the same*

*issues of law. Third, where all U.S. Appellate Courts are vested with "unlimited" power in restoring the criminally accused to their right to be heard in [state] courts of proper jurisdiction and venue which have need to be settled by "this supreme-court" requiring immediate determination.["E1-9].*

## ***PROCEEDINGS BELOW***

*This Petitioner's Writ of Certiorari stems from a ["State"] Tort Claim filed with the Sullivan County Circuit Court of Blountville, Tennessee, and thereafter dismissed, Appendix-[B5], from which an appeal was taken to the Knoxville, Tennessee Court of Appeals,[B3]], and finally exhausted in its highest state Supreme Court; also denied per curium [B &2], being contrary to legislation—See ["B1"]*

*Having received no relief from either state-court, the petitioner then files a civil rights complaint under Title 42 USC §1983 and §1343(a), (3),[A2], where here as well his action was dismissed premised, first, upon his failure to defray the cost of his action, as well as his failure to state a claim upon which relief may be granted, and finally, because his defendants, who are state-court judges, are presumably cloaked with immunities. From there, an appeal was pursued to the U.S. Court of Appeals for the Sixth Circuit, and taken in good-faith, however, denied by its clerk [A-1, 3&4].Hence, a petition for reconsideration of the clerk's procedural order dismissing his appeal was filed; thereafter denied, As a last attempt to be heard thereon, this Petitioner filed a second petition suggesting ["A4"] a Rehearing En Banc, and here as well dismissed as being unfiled*

## *Appendices*

*"A"*



*"B"*



*"C"*

*Document*

*"D"*



*Appendices*

*"E"* *Document*

*CONSTITUTIONAL PROVISION;*



*FEDERAL STATUTES AND RULES INVOLVED;*

## *ARGUMENT*
## *I.*

## *WRIT OF CERTIORARI SHOULD ISSUE WHERE APPELLATE COURT DENIES PETITIONER'S RIGHT TO APPEAL PREMISED UPON HIS PAUPER STATUS*

*A conflict of interest arises, and, of constitutional proportions when the U.S. Circuits (as here) allows the [U.S.] District Courts to abuse their discretion when relying on clearly erroneous findings of fact, as well as applying the wrong legal standards reaching a conclusion---or, make a clear error in judgment, Boulger v. Woods,2019 [WL-944834;6CA].*

*Here, the lower court has devastated petitioner's legal right to appeal and review of his civil matter, F.R.Civ.P 3 (a) (4), and, because of his pauper status as would be consistent with 28USC §1915; Gardarising v. Malone,2011[WL-570803], where in "no event" he should have been denied ["A1"],["C3"], due to his inabilities to pay for initial filing fees.*

*In reaching back as far as 1892, Congress enacted the in forma pauperis statutes (IFP), now codified at 28 USC §1915, "to ensure that indigent litigants have meaningful access to the federal courts, Neitkze v.Williams, 490 U.S. 319, 324,109 S.Ct.1827; 104 L.Ed. 2d.338 (1989), currently reacting to a sharp rise in inmate litigation, Woodford v. Ngo,548 U.S.81.84, 106 S.Ct.2378; 165 L.Ed.2d.368 (2006)*

*Thereafter, Congress in 1996 enacted the Prisoner Litigation Reform Act (hereafter, PLRA), which installed a variety of measures designed to single out the bad claims [filed by prisoners] and facilitate consideration of the good; See Coleman*

*v.Tollefsson, 575 U.S.----,----135 S.Ct.1759,1762,191 L.Ed.2d.,5033 (2015). . . (Quoting) Jones v. Bock, 549 U.S.199, 204; 127 SCt. 910, 166 L.Ed.2d.798 (2007) which made no distinction between simultaneous payment and sequential recuoupment, Bruce v. Samuels, 136 S.Ct.627, 193 L.Ed. 2d.496 (2016).*

*Accordingly, with recognition to this manner of legislation involving the IFP analysis, prisoners release account balances would be irrelevant; See specifically 28 USC §1915(b) (4), ["E6"] Therefore, for this cause, this Supreme Court's intervention is required for purposes of issuing a Writ of Certiorari, 28 USC §2101(c), tolerating petitioner's absolute right reviewing his complaint in the U.S. District court, now revealing a constitutional issue of law, both State and U.S. See ["C8"], ["E4"].*

## ***ARGUMENT***
## ***II.***

***THE LOWER APPELLATE COURT INTERVENED WITH ACTS OF CONGRESS AS WELL AS DECISIONS OF THIS U.S. SUPREME COURT INVOLVING AN ISSUE OF INJUNCTIVE RELIEF WHICH BARS SOVEREIGN IMMUNITY.***

*Since initiating his GTLA with the Sullivan County Circuit Court, the petitioner proffered for review specifically two issues of law giving rise to a constitutional violation-* ***1.)*** *Double jeopardy and* ***2.)*** *Cruel and excessive punishment, both of which denied him a fair trial now requiring this court's consideration for injunctive relief,["E1-4"].*

*Here and basically, its the petitioner's contention that the lower court committed an act of double jeopardy [""C1,2 5 &" ] encroaching upon the jurisdiction of another court, after having his indictments tried and dismissed in a General Sessions Court, ["D4-D7b"], thereafter, proceeding to and tried in the Criminal Court "without" first amending the indictments. cf. State v. Larsen, 2013 [WL-118663; Tn.Ct.App.], where in context, double jeopardy violations arise only when an individual is twice placed in jeopardy for the same offense. Customarily, in Jury proceedings jeopardy attaches when the jury is sworn, and in non-jury proceedings (as here, preliminary hearings), jeopardy attaches when the first witness testifies, citing Crist v. Bretz,437 U.S. 28,35, 98 S.Ct. 2156,2160; 57 L.Ed.2d.24(1978). For only if that point has been reached (as here) does any subsequent prosecution of the accused bring the guarantee against double jeopardy even potentially into play, Crist at 437 U.S. 32,33, 98 S.Ct. at 2159.*

*Keeping in mind that the double jeopardy clause is binding on the states See Fransaw v. Lynaugh, 810 F.2d. 510 [CA 5, 1987]; through the fourteenth amendment to*

*the U.S. Constitution, whose clauses covers both imprisonment and monetary penalties even though its text mentions only harm to "life a or limb".*

***Secondly**, pursuant to and subsequent a piecemeal prosecution [Waiver of Plea] sentenced beyond his class of offense ["D10"] to a thirty one ("31") year term of punishment as a "Class-B felon", clearly in excess of that which is intended by legislation, cf. McConnell v. State, 12 S.W.3d. 795(2000),where the "Sentencing Reform Act of 1989 (2007)" did not provide for "coupling" different incarceration and release eligibility "[R]anges" as indicated in petitioner's instance, as well as opposed by the courts, ["B3 p.2"], ["D4a,5a,6a &7b"],In other words, legislation requires specifically only one range of punishment; TCA §40-35-209, McConnell at 4.*

*As stated in Preiser v. Rodriguez, 411 U.S. 475, **36 L.Ed.2d.433; 93 S.Ct. 1872 (1973)**, the question before this court is whether 'state' prisoners seeking such injunctive redress may obtain equitable relief under the **Civil Rights Act** ["E5"] even though the federal habeas corpus statute, i.e. §2254, clearly provides a specific remedy the question is of considerable and practicable importance*

*For if a remedy under the civil rights act is available, a plaintiff need not first seek redress in a state forum. In Jones v.Caruso, 569 F.3d.258 [6CA 2009], it was established that an Appellate Court may hear petitioner's arguments on appeal, and, as made feasible via F.R.Civ..P. 62 (g) (1) having their powers to be unlimited, particularly when the issue is one of law, and, further development of record is not necessary in considering the merits. as long established and re-affirmed in other U.S. Circuits e.g. Grey v. Wilburn, 270 F.3$^{d}$. 607 (8$^{th}$Cir..2001), where the Eleventh Amendment does not bar such relief; Grey, at pp. 5-6.*

*Referencing an issue of "[S]overeign immunity", this forum as well as other U.S. Circuits, Lewis v. Clarke,137 S.Ct.1295; 2017[WL-14471611], establishes that, in the context of lawsuits against either state, or their entities, courts should look to whether the "sovereign" is the real party in interest; here, the petitioner argues otherwise, to determine whether sovereign immunity bars the suit. . .citing Hafer v. Melo, 502 U.S. 21,25, 112 S.Ct.358, 116 L.Ed. 2d.301 (1997).*

*Here, the Supreme Court points out, that in making this assessment, courts may not simply rely on the characterizing of the parties to the complaint, but rather, must de termine in the first instance whether the remedy sought is "truly" against the sovereign; however, In the case sub judice; here it is not. Then, if the state* ***is the real party in interest****, it would be entitled to invoke the Eleventh Amendment's protection.*

*Similarly, lawsuits brought against employees – as such the petitioner's defendants are ["C11"] & ["C18"] – being* ***elected officials*** *in their "official capacities", may also be barred by sovereign immunity. Consider also the court's analysis in Kentucky v. Graham, 473 U.S. 159, 165-166, and 105 S.Ct. 3099, 87 L.Ed.114 (1985),*

*Therefore, taken in this light, and, to apply U.S.District Court Judge Caldwell's conclusion, See Martin v. Patterson, 2013 [WL-5574485; USDC, S.D.London, Ky.],; held, although the petitioner's §1983 claim must be dismissed in a civil complaint in the federal Courts, targeting state-officials "but", the State Tort Action (as here) may proceed, particularly where under [state] legislation; See ["C9,13 &18"],the state, if viewed to be the real party in interest has waived its immunity.*

*Further, and to this extent, our "U.S. Sixth Circuit" has previously held, that where involves a [State] Tort, it's more appropriate to have it resolved in a State Circuit Court*

*of proper Jurisdiction and venue. Coleman v. Governor of Michigan, 413 App'x 866, 8712 (6th Cir. 2011).*

*Next, where pertains to the petitioner's claims for relief, beginning with this initial defendant [Judge Montgomery,Jr.], a solid claim was forged when demonstrating a "discrepancy" in the proceedings, i.e., the sentencing method ["D1 &D10"] clearly negating a sentence not authorized by statute which invokes a federal question of law giving the lower appellate courts their jurisdiction and intervention ["E5 & E7"], and, as supported by record, whose sole excuse denying petitioner's request is that he failed to fulfill financial obligations prior to proceeding in the lower courts ["A1 &2"], who is not entitled to be allowed to proceed in forma pauperis and of course, being contrary to allowing access and jurisdiction overcoming his injustices in the lower courts.["E1-4"], ["D10"].Therefore, in its simplest terms, and where attaches the "stigma" of this former sentence, the Appellant's sole objective, and since his reincarceration is to seek injunctive relief, cognizant that the Eleventh Amendment does not erect a barrier against state-officials characterizing their acts while performed under color of state laws,* ***Hafer, supra.***

## ***ARGUMENT***

## ***III.***

### ***U.S. APPELLATE COURTS ARE VESTED WITH UNLIMITED POWER IN RESTORING AN ACCUSED TO HIS/HER RIGHT TO BE HEARD IN A STATE CIRCUIT OF PROPER JURISDICTION.***

*Next, where pertains to the petitioner's claims for relief, beginning with this initial defendant [Judge Montgomery,Jr.], a solid claim was forged when demonstrating a "discrepancy" in the proceedings, i.e., the sentencing method ["D1 &D10"] clearly negating a sentence not authorized by statute which invokes a federal question of law giving the lower appellate courts their jurisdiction and intervention ["E5 & E7"], and, as supported by record whose sole excuse denying petitioner's request is that he failed to fulfill financial obligations prior to proceeding in the lower courts ["A1 &2"], who is not entitled to be allowed to proceed in forma pauperis and of course, being contrary to allowing access and jurisdiction overcoming his injustices in the lower courts.["E1-4"], ["D10"]*

*.Accordingly, a decision may be disturbed by the [Appellate] court via* ***F.R.Civ.P.62(g)****(1)when district courts rely on clearly erroneous findings of fact, improperly applied the governing laws---or, used an erroneous legal standard, Welch v. Brown,551 Fed.App. 804[6CA 2014], therefore, to invoke a preliminary injunction, which is an extraordinary remedy that should be granted if the (petitioner) establishes that the circumstances clearly demand it citing Leary, at 228 F.3d. at 739 and to determine whether an injunction is appropriate, a [trial] court must consider 1.] Whether the (petitioner) has a strong Lakewood of success on the merits, 2.) Whether the (petitioner) will suffer irreparable injury "without" the injunction, 3.) Whether the issuance of the*

*injunction would cause substantial harm to others, and 4.) Whether the public interest would be served by issuance of the injunction . . . these considerations are "factors to be balanced, not prerequisites that must be met", Washington v. Reno, 35 F.3d. 1093, 1099[6th Cir. 1994].*

## *Conclusion*

*Wherefore, having now established the lower court's departure from the norms of Federalism, as well as this petitioner's entitlement to the relief herein requested, justice suggest that this Court consider the issuance of a Writ of Certiorari,*

*Respectfully submitted,*

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