

No.

18-9625

IN THE
SUPREME COURT OF THE UNITED STATES

LAWTON F. TYSON,
Petitioner

v.

THE STATE OF TEXAS
Respondent



On Petition For Writ of Certiorari
Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

Nunc Pro Tunc

Lawton F. Tyson
Petitioner Pro Se
Telford Unit
3899 State Hwy. 98
New Boston, Texas 75570

QUESTION(S) PRESENTED

(1) WERE PETITIONER'S "DUE PROCESS & EQUAL PROTECTION OF THE LAWS" RIGHTS, PRIVILEGES & IMMUNITIES VIOLATED, WHEN THE TRIAL COURT HAD "TRIED, CONVICTED AND SENTENCED" PETITIONER WITHOUT PROPER AND LAWFUL JURISDICTION BECAUSE THE GRAND JURY INDICTMENTS HAD NOT BEEN RETURNED?

(2) WERE PETITIONER'S DUE PROCESS & EQUAL PROTECTION OF THE LAWS" RIGHTS, PRIVILEGES & IMMUNITIES VIOLATED THROUGH PROSECUTOR-AL MISCONDUCT, VIOLATING HIS RIGHT TO A "FAIR AND MEANINGFUL TRIAL" BY THE LAWS OF THE TEXAS JUDICIAL PROCEEDINGS AND THE UNITED STATES CONSTITUTION?

(3) WAS THE JUDGEMENT OF THE COURT VOID FOR LACK OF JURISDICTION: NEW EVIDENCE THAT: INDICTMENTS BEFORE THE TRIAL COURT AND SAID INDICTMENTS EX DOLO MALO AS DISTRICT ATTORNEY PLACED FRAUDULENT INDICTMENTS BEFORE THE TRIAL COURT AND SAID INDICTMENTS WERE NOT A PRODUCT OF ANY TERM OF GRAND JURY? DISTRICT ATTORNEY CANNOT PRODUCE ANY EVIDENCE EXCEPT PRIMA FACIE TO THE CONTRARY.

(4) DISTRICT ATTORNEY CAN PRODUCE NO EVIDENCE THAT ARTICLE 19.06 T.C.C.P. WAS CONSTITUTIONALLY APPLIED BY COUNTY COMMISSIONERS CONCERNING PETITIONER'S GRAND JURY SELECTION PROCESS IN VIOLATION OF HIS 6th & 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND DID NOT REPRESENT A FAIR CROSS-SECTION OF THE COMMUNITY IN VIOLATION OF THE JURY SELECTION SERVICE ACT OF 1968.

(5) WERE PETITIONER'S "DUE PROCESS, EQUAL PROTECTION, AND DOUBLE JEAPORDY(ONLY IF RETRIED)" RIGHTS, PRIVILEGES, & IMMUNITIES VIOLATED, WHEN HE HAD TO STAND TRIAL UNDER INDICTMENTS WHICH THE PROSECUTION KNEW TO BE BASED UPON ITS OWN FRAUD AND PERJURED TESTIMONY, CONSTITUTING FRAUD UPON THE COURT?

(6) DID THE LOWER TEXAS COURTS ABUSE THEIR DISCRETION IN DENYING PETITIONER'S WRITS? IN DENYING AN EVIDENTIARY HEARING CONCERNING EVIDENCE OF FRAUD? IN ITS "RUBBER STAMPED" RULINGS RESULTING IN A PROCEDURAL BAR? UNDER THE MERGER DOCTRINE IN THE COURT OF CRIMINAL APPEALS DENIALS OF MANDAMOUS REQUESTS CONCERNING JURISDICTION OF THE COUNTY MAGISTRATE JUDGE'S DENIAL OF PETITIONER'S WRITS AND EVIDENTIARY HEARING DENIALS-ALL MANDAMOUS ACTIONS? WERE THE COURT'S WRONG IN DISMISSING AND CAUSING A PROCEDURAL BAR PETITIONER'S WRITS OF HABEAS CORPUS AS SUBSEQUENT WRIT APPLICATIONS? HOW CAN THE TRIAL COURT IN ITS FINDINGS AND ORDER(EXHIBIT) C FIND THAT PETITIONER'S WRIT APPLICATIONS DO NOT MEET THE REQUIREMENTS FOR CONSIDERATION AS SUBSEQUENT APPLICATIONS FOR WRIT OF HABEAS CORPUS FOR FAILURE TO ESTABLISH ONE OF THE EXCEPTIONS TO THE SUBSEQUENT WRIT BAR BUT THEN RECOMMEND THAT THEY BE DISMISSED AS SUBSEQUENT APPLICATIONS AND THE SAME FINDINGS OCCUR IN THE TEXAS COURT OF CRIMINAL APPEALS? IS THIS AN ABUSE OF DISCRETION OR ~~SHOWING~~ THAT THEY DO NOT HAVE TO FOLLOW THEIR OWN FINDINGS OF LAW?

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:

The Attorney General for the State of Texas has not been involved in this case and it is my understanding that they will not due to allegations of fraud and criminal conduct.

Tarrant County DA Wilson filed suit against Texas Attorney General over this indictment issue, results not known.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
5,6,7,8,9,10,11,12,13,14,15,16	
REASONS FOR GRANTING THE WRIT	17,18
CONCLUSION	18

INDEX TO APPENDICES

APPENDIX A-DECESION TO THE TEXAS COURT OF APPEALS

APPENDIX B-DENIAL OF REHEARING MOTIONS

APPENDIX C-DENIAL OF TRIAL COURT

APPENDIX D-DENIAL OF MANDAMUS ACTIONS

APPENDIX E-UNSWORN DECLARATION OF BILLY THOMAS SHOWING TRIAL COUNSEL HAD A CONFLICT OF INTEREST WITH PETITIONER AND DID NOT AND COULD NOT PROPERLY REPRESENT HIM, NOR ATTACK INDICTMENTS

APPENDIX F-2nd COURT OF APPEALS DENIAL OF OUT-OF-TIME APPEAL TELLING PETITIONER TO FILE AN 11.07 HABEAS ACTION
APPENDIX G-SHOWS A SUPPLEMENTAL CLERK'S RECORD WAS RECEIVED BY THE COURT OF CRIMINAL APPEALS BRINGING ALL FEDERAL QUESTIONS (EXHAUSTION) BEFORE ALL TEXAS STATE AND THE HIGHEST COURT BY 11.07, MEMORANDUM OF LAW, TRAVERSE BRIEF, AND ALL FILINGS THAT THE STATE OF TEXAS TRIED TO COVER-UP

TABLE OF AUTHORITIES CITED

	PAGE NUMBER
<u>TEXAS CASE LAW</u>	
COOK V. STATE, 902 S.W. 2d 471, 2d 471-71(Tex. App. 1995)	6, 9
EX PARTE ADAMS, 768 S.W. 2d(Tex. Crim. App. 1989)	10, 11
EX PARTE KING, 134 S.W. 3d 500-502(Tex. Crim. App. 2004)	16
EX PARTE DRAKE, 883 S.W. 2d 213, 215(Tex. Crim. App. 1994)	16
EX PARTE LEWIS, 587 S.W. 697, 701(Tex. Crim. App. 1979)	16
EX PARTE MCCAIN, 67 S.W. 3d 204, 207(Tex. Crim. App. 2002)	16
EX PARTE SEIDEL, 39 S.W. 221(Tex. Crim. App. 2001)	4
EX PARTE SPAULDING, 687 S.W. 2d 745	4
KING V. STATE, 473 S.W. 2d 43, 45(Tex. Crim. App. 1971)	6
GUTIERREZ V. STATE, 354 S.W. 2d1(Tex. App.-Texarkana 2011)	4
<u>TEXAS CONSTITUTION</u>	
art. I § 10	4, 6, 9, 11
art. § 12	6
art. § 19	4, 6
art. V	6
art. V § 12(b)	4, 6, 9, 11
<u>TEXAS CODE CRIMINAL PROCEDURE T.C.C.P.</u>	
art. 1.14(b)	16
art. 19.06	12, 13
art. 20.02	7
art. 20.02(b)	10
art. 20.012(c)	6, 7
art. 21.25	4, 17
art. 21.03	11
art. 21.03(3)(9)	7
art. 27.03(3)	6
art. 32.01	6, 11
art. 40.03(6)	16
<u>TEXAS GOVERNMENT CODE</u>	
§ 37.01	4, 11
§ 37.02	4, 11
§ 37.09(1)(2)	4
§ 37.171(2)	4, 11
§ 37.09(17)(2)	11
§ 37.10	7
§ 37.10(a)(2-5)	6
§ 39.01	4, 11
§ 39.02	4, 11
§ 39.03	4, 11
§ 39.06	11
§ 39.10	4
§ 71.01	11
§ 552.301	5, 6
<u>F. SUPP. CASE LAW</u>	
U.S. V. TEXAS, 252 F. Supp. 234-254	18
<u>NINTH CIRCUIT CASE LAW</u>	
U.S. V. BAAURTO, 49 F. 2d 781(9th Cir. 1974)	14

FIFTH CIRCUIT CASE LAW
RILEY V. COCKRELL, 339 F.3d 308(5th Cir. 2003)

4

FLORIDA CASE LAW

BOOKER V. STATE, 503 So. 2d 888(Fla. 1987)	14
COX V. BURKE, 706 So. 2d, 43, 47(Fla. 5th DCA 1998)	14
STATE V. BOOKER, 314 So. 2d 136(Fla. 1975)	14

ALASKA SUPREME COURT CASE LAW

ADAMS V. STATE, 598 P. 2d 503, 510(Alaska 1979)	14
KEITH V. STATE, 612 P. 2d 977, 980-81(Alaska 1980)	14

SIXTH CIRCUIT AND FIRST CIRCUIT CASE LAW

ALLEY V. BELL, 405 F. 3d 371, 373(6th Cir. 2005)(en banc)	13
DEMJANJUK V. PETROVSKY, 10 F. 3d 388(6th Cir. 1993)	13
STANDARD OIL, INC. V. RILEY STOKES CORP., 71 F. 3d 44-47-48 (1st Cir. 1995)	13

UNITED STATES SUPREME COURT CASE LAW

BOYD V. U.S. 166 U.S. 616	8
BRADY V. MARYLAND, 373 U.S. 383	10,11
BRANDBURG V. HAYES, 408 U.S. 665(1972)	8
CARTER V. CARTER COAL CO., 289 U.S. 238	8
COSTELLO V. UNITED STATES, 315 U.S. 60, 85-86(1942)	7
DONNELLY V. DE CHRISTOFORO, 416 U.S. 637, 648-49, S. Ct. 1889, 1874, 40 L. Ed. 2d 431(1974)	14
GLASSER V. UNITED STATES, 315 U.S. 60, 85-86(1942)	13
HAZEL ATLAS CO. V. HARTFORD CO., 322 U.S. 238(1944)	13
ILLINOIS V. SOMERVILLE, 410 U.S. 458, 35 L.Ed. 2d 425, 93 S.Ct. 1066(1973)	15
MESAROSH V. U.S., 352 U.S., 1 L.Ed. 2d 1, 77 S.Ct. 1(1956)	15
MIRANDA V. ARIZONA, 384 U.S. 436	9
NAUPE V. ILLINOIS, 360 U.S. 264, 3 L.Ed. 2d 1217, 79 S. Ct. 1173(1957)	15
STANDARD OIL CO. OF CAL. V. UNITED STATES, 429 U.S. 17(1976)	13
SMITH V. TEXAS, 311 U.S. 128, 130(1940)	12
STIRONE V. U.S., 381 U.S. 212(1960)	7,12
U.S. V. CALANDRA, 414 U.S. 388(1974)	8
VACHOM V. NEW HAMPSHIRE, 414 U.S. 478	8
WILLEY V. COASTAL CORP., 503 U.S. 131, 136-37	18

UNITED STATES CONSTITUTION

Amendment 5	3,5,7,9,11,15
Amendment 6	3,11,12
Amendment 14	3,5,6,11,12,13
UNITED STATES SUPREMACY CLAUSE ART. vi	3,7,16

OTHER RESOURCES UTILIZED

HB 2150	12
[BR. CIOES, JHAIL WAXNER MOORE'S FEDERAL PRACTICE, p. 6.02, 6.19-6.23(2nd Edition)1982]	8
12 MOORE'S FEDERAL PRACTICE § 60.21[4][a](3d. ed. 2000)	15
MOORE'S FEDERAL PRACTICE, <i>supra</i> at § 60.21[4][b] § [c]	15
JURY SELECTION SERVICE ACT OF 1968	12

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished. The signed opinion was sent to the Texas Court of

Criminal Appeals and Petitioner has no copy but included DA's "rubber stamped" response-the same. 1.

The jurisdiction of signing magistrate judge was challenged by mandamus. Also the findings of law by the trial court and adopted by the court of Criminal Appeals do not match their order. Are the writs subsequent habeas applications or not?

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

[] 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: _____, 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. § 1254(1).

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

The date on which the highest state court decided my case was 8-29-18 _____. A copy of that decision appears at Appendix A _____.

[X] A timely petition for rehearing was thereafter denied on the following date: 9-25-18 _____, 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. § 1257(a).

Hopefully this Court will find that certiorari is the correct avenue to pursue rather than return to a federal district or 5th circuit court of appeals as Petitioner will have a bar to receiving relief as they could be viewed as successive writs even though the law and the lower Texas courts findings do not support this under jurisdiction Ex parte action 28 U.S.C. § 2241!

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment No person shall be held to answer for a capitol, or otherwise infamous crime, unless on 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.

6th Amendment In all criminal prosecutions, the accused shall enjoy the right to a 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 and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defence.

14th Amendment-Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Art. I § 9, cl:2 The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the public safety may require it.

UNITED STATES CONSTITUTION SUPREMACY CLAUSEThis Constitution, and the laws of the United States which shall be made in Pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.....

STATEMENT OF THE CASE

Petitioner has discovered as the District Attorney cannot produce records requested through the use of the Texas Open Records Act, that there is no record of his indictments being returned or presented to the judge or clerk of his trial court by the foreman of the Grand Jury during any session after his arrest in 2003 in Tarrant County, Texas. Said indictment was infact a "fraud" upon the court and did not confer proper jurisdiction on the court, thus in violation of Texas Penal Codes and Statutes: sections 37.01; 37.02; 37.09(1)(2); 37(10)(a)(2)(3)(4)(5); 37.171(2); 39.01-03; and 39.06; as well as 71.01; United States Constitution Amendments 5 and 14; Texas Constitution, art. I section 10 and 19; article V section 12(b); Texas Code of Criminal Procedure article 21.25; Criminal Law Keynote-1032(1); Indictment Information Keynote-10.1(2,3,6).

No person shall be held to answer for a capitol or otherwise infamous crime unless presentment of an indictment of a Grand Jury. DA Tim Curry testifying to the veracity of said documents was in violation of penal code section 39.10. The District Attorney's office currently cannot produce any cerified documents to dispute petitioner's claims. Therefore rendering all previous proceedings of the trial court "null and void", including but not limited to the convictions and sentences of petitioner during the guilt innocent findings of the trial court. [Ex parte Seidel, 39 S.W. 3d 221(Tex. Crim. App. 2001) ("A void judgement is a nulity from the beggining, and is attended by none of the consequences of a valid judgement. It is entittled to no respect whatsoever because it does not affect, impair, or create legal right"); Ex parte Spaulding, 687 S.W. 2d 745; see also GUTTIERREZ V. STATE, 354 S.W. 3d1(Tex. App-Texarkana 2011) ("A void judgement is a nullity and can be attacked at any time, a judgement of conviction for a crime is void when: (1)the document purporting to be a charging instrument, i.e. indictment, information, or complaint, does not satisfy the constitutional requisties of a charging instrument, thus the trial court in petitioners convictions has no jurisdiction over him."); RILEY V. COCKRELL, 339 F. 3d 308(5th Cir. 2003)].

Petitioner Tyson asserted his habeas corpus to the Tarrant County

court of conviction and the Texas Court of Criminal Appeals without relief granted and also the denial of his motion for reconsideration rehearing also denied. Trial Court Habeas Corpus #'s C-3-W011338-0870880-E, C-3-W011339-0899697-E, and #'s WR-62,931-13, & WR-62,931-14, with rehearing motions denied 9-25-18.

Tyson also asserted that his habeas proceedings were appropriate for remedy and relief purposes of his "null and void" convictions and sentences he is now serving and the trial court was without lawful Constitutional jurisdiction to try, convict, and sentence petitioner Tyson to 99 years in 0870880 and also in 0899697 to 5 (20 year) stacked sentences although 4 were reversed on direct appeal 13 years ago, without any proper charging instrument being presented to the judge or clerk of his trial court prior to the trial proceedings inwhich petitioner Tyson was to answer the charge inscribed within the alleged indisctments; based and founded on newly discovered evidence of no indictment being presented as is lawfully required, and that the efficacy of the verdict of petitioner's guilt, conviction and sentence is "null and void" and has no effect and demands that a retrial of guilt and innocence be conducted and/or an order of acquittal be ordered in this matter; in respect of the State of Texas violating his Constitutional Rights of the United States Constitution 5th and 14th Amendments to "Due Process(both substantive and procedural due process components)), and the Equal Protection of the Laws," thus depriving petitioner Tyson of his liberty without due course of the laws.

GROUND ONE

The petitioner urges this Court that: "The current claims/grounds could not have been previously presented in a Direct Appeal or Habeas Action because the factual and legal basis was unavailable on the date these previous actions were filed. The Texas Court of Criminal Appeals and Trial Court were wrong and abused their discretion denying his recent Habeas Actions.

Information requested and denied by District Attorney Sharon Wilson through the Texas Open Records Act by Josie Cruz could not have been discovered earlier as such an act allowing refusal of these records was repealed on Sept. 2016, under the Public Information Act, §552.301 of the Texas Government Code, a non-agent of a person

charged with a crime such as petitioner can now be obtained and should have been given to requestor Josie Cruz. The fact that the Tarrant County District Attorney's office cannot produce this information should be viewed as "new evidence" and should have been looked into with an evidentiary hearing requested by either the trial court or the Texas Court of Appeals in light of petitioner's concrete claims of "Fraud" on his Habeas Applications before the courts. Petitioner urged the trial and Appeals Court to set aside and vacate his judgements in his convictions pursuant to the TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 27.03(3) due to his indictments not being presented by a lawfully impaneled grand jury. Petitioner urges this Supreme Court that his Constitutional Rights embodied by the Texas constitution and the United States Constitution were violated under the Due Process and Equal Protection of the Law Clause of the 14th Amendments. The Texas constitution article V and article I, § 12, and article V § 19 which guarantees petitioner a substantial right to be indicted by a grand jury. [COOK V. STATE, 902 S.W. 2d 471-475(Tex. Crim. App. 1975); Texas Constitution article I, § 10], and T.C.C.P. article 32.01. An indictment is a written charging instrument presented to a court by a grand jury charging a person with an offense. [Texas Constitution article V § 12(b)]. The indictment by a grand jury protects citizens like petitioner against arbitrary accusations by the government. [KING V. STATE, 473 S.W. 2d 43, 45(Tex. Crim. App. 1971)]. In petitioner's cases he never was indicted by a grand jury in violation of his 5th Amendment rights to the United States Constitution as well as State protections under the Texas Constitution and the laws set forth and enacted by the Texas Legislature in the TEXAS CODE OF CRIMINAL PROCEDURE. The district Attorney "rubber stamped" a signature on petitioner's indictments claiming that said charging instruments were passed down by a lawfully and impaneled grand jury, which makes such instruments a product of FRAUD BEFORE THE COURT. There is no record transcripts of said proceedings that either of petitioner's indictments were presented to a grand jury. District Attorney Sharon Wilson's failure to respond to an open records request simply shows she cannot produce these records.

Pursuant to T.C.C.P. article 20.012(c), the attorney representing

the state shall maintain and posses all records other than stenographers notes made under this article and any typewritten transcripts of said records except as provided by article 20.02.

"Petitioner urges this Court that "If there is no record, there is no evidence that said indictments were the product of the grand jury(only *prima facie*). The minutes along with the transcripts of said proceedings would reveal that such a proceeding took place. District Attorney Sharon Wilson cannot produce these records, this is why she refuses. Furthermore, being that none exists or can be produced in the record." It is plain that the District Attorney's office in Tarrant County in their haste and real to obtain indictments and convictions, tampered with official government documents, by "rubber stamping" the grand jury foreman's signature and name, knowing that said instruments were presented in violation of Texas Penal Code § 37.10 and T.C.C.P. article 21.03(3)(9), along with the United States Constitution. The temptation to cut corners and ignore Constitutional rights of Petitioner in order to gain ascendancy, prosecutors in making grand jury presentation. The grand jury convives as a body of lay-persons acting in secret, unfettered by tecnical rules of procedure or evidence. [COSTELLO V. U.S., 350 U.S. 362(1956)], charged to indict no one in favor, this bulkwark against chambers proceedings and was essential to basic liberties that have been incorporated in the 5th Amendment to the United States Constitution. That the Constitution contends: "That no persons shall be held to answer a capitol or otherwise infamous crime, unless on a presentation or indictment of a grand jury." In the United States Supremacy Clause of the Constitution, set fourt in article VI, explicitly states, the Constitution, and the Federal Laws are the Supreme law of the Land, It dictates that state laws and policies are void if they directly conflict with Federal Laws. The Texas Court of Criminal Appeals in its decesion to not grant relief on Petitioner's habeas actions conflict. Interpreting a grand jury between the individual and the government serves the purpose of limiting indictment for higher crime to those offenders charged by a group of ones fellow citizens acting independently of the prosecutor and the court. [STRONE V. U.S., 381

212(1960). In this independent position, grand juries preform two distinct roles(1) it serves as to make sure all accusations are investigated and presented to the trial court all persons suspected of wrong doing (2) equally so, protecting the individual against oppressive and unfounded government prosecution. [U.S. V. CALANDRA, 414 U.S. 388(1974); BRANDBURG V. HAYES, 408 U.S. 665(1972)]. It is true of course that prosecutors, by virtue of their own positions, have gained such influence over grand juries that these bodies of historic independence has eroded. [BR. CIPES, JHAIL WAXNER MOORES FEDERAL PRACTICE, p.6.02, 6.19-6.23(2nd edition)1982)]. After all it is the prosecutor who draws up the indictment, calls and examines witnesses, advises the grand jury as to the laws and is in constant attendance during the proceedings. It is beyond question, that a conviction based on a record lacking any relevant evidence as to the crucial element of the offense charged violates Due Process. [VACHOM V. NEW HAMPSHIRE, 414 U.S. 478]. There is not law that authorizes the grand jury proceedings to not be recorded, not to be recorded on record. At any time the legislature failed to produce such laws; its own legislative act being contrary to the United States Constitution is not law. [CARTER V. CARTER COAL CO., 298 U.S. 238]. If it is law, it will appear on the books, if not found there, this is not the law. [BOYD V. U.S., 116 U.S. 616]. In Petitioner's indictments, they were never passed down by a grand jury. The attorney for the state must have some records of some kind, however, the District Attorney's Office(Sharon Wilson D.A.) cannot produce from their file as required any records of grand jury proceedings from her predecessors. She does not have them! Because no records can be produced, this Supreme Court must vacate judgement and set aside the indictments, for violations of Petitioner's substantial Constitutional Rights. Furthermore, this Court should, as should have the Texas Court of Criminal Appeals, in its findings of "facts and conclusions of law" should rule: The trial court in Petitioner's indictments had no jurisdiction of any kind over Petitioner Tyson or subject matter, as well as also rule proceedings in the trial court were both null and void. Furthermore, a prosecutors as officer of the court, is

sworn to ensure that justice is done, not simply to obtain an indictment and conviction. The claim and exercise of a Constitutional right cannot be converted into a crime. Petitioner Tyson urges this Supreme Court that: "Where rights secured by the United States Constitution are involved, there can be no rule making legislation that can or which would "abrogate" the seizure clause of the 5th and 14th Amendments". [MIRANDA V. ARIZONA, 384 U.S. 436]. The court and the attorney for the state were obligated to follow the law, something they failed to do in Tyson's indictments. The Tarrant County, Texas prosecutor had no authority to create or change law as was done. The 5th Amendment requires that a valid indictment, and that evidence be provided to substantiate such, instead of *prima facie* version that the court relied upon. The law is such that a dismissal of an indictment is justified to achieve two objectives: (1) to eliminate prejudice to petitioner and; (2) to prevent prosecutorial impairment of the grand juries independent role. The illegal unprofessional tactic of the Tarrant County, Texas prosecutor signing as if it was presented by a grand jury, when in fact no record can be produced to support that the grand jury actually passed upon the indictment is a host of criminal acts, and "fundamentally infirm." Such abuse of power and authority of public office indeed is evil personified: [COOK V. STATE, 902 S.W. at 475; Texas Constitution article I § 10]. This honorable Supreme Court should not allow the Texas Court of Criminal Appeals to simply sweep these acts under the rug and ignore these abuses. A systemic problem could also exist.

GROUND TWO

Petitioner Tyson urges this Supreme Court that, Tarrant County, Texas District Attorney testified to the veracity of his indictments, had committed perjury, fraud, abuse of official capacity, abuse of office, and official oppression, along with violating his Constitutional Rights, by taking blank indictments and passing them off as being returned by a grand jury.

Petitioner urges this Court that the Court of Criminal Appeals was wrong in its denial as: This could not have been discovered from due diligence earlier because the state prevented petitioner from retrieving such information from the District Attorney's

files, and the secrecy of grand juries as codified in T.C.C.P. article 20.02(b) that transparency was not available as a result of the code being repealed on September 2016. A concerned citizen Josie Cruz sent an information request to District Attorney Sharon Wilson requesting information which was denied as they have none of the evidence requested, this is why they refused to produce it. Others have also tried and were infact told that this information could not be produced. The District Attorney placed before the court indictments that were ex dolo malo. This also as stated above is a systemic problem concerning hundreds if not thousands of Texas inmates, the purpose of the safeguards that are incorporated into the United States Constitution as well as the Bill of Rights is to safeguard citizens from arbitrary actions such as these by the government or those acting in the name of government. Petitioner presents to this Supreme Court that there is no record that his case was infact presented by a grand jury to the court, which constitutes Brady material: [BRADY V. MARY-LAND, 373 U.S. 83(1963)], the state failed to do its affirmative duty to disclose all material, exculpatory evidence to the defense under Brady. Evidence is material only if these is a reasonable probability that, had evidence been disclosed to the defense, the result would have been different. [EX PARTE ADAMS, 768 S.W. 2d 281(Tex. Crim. App. 1989)]. Petitioner would urge the Court: If the information was devulgued to the defense, the outcome of the proceedings would have been different; and that the chances stand greater than 51% that the case would have been "dismissed or resulted in an acquital" based upon the prosecutorial misconduct in the actions of the Tarrant County, Texas District Attorney's Office of "intentionally or knowingly" committing acts of "fraud, perjury, falsifying state governmental documents, and violating Petitioner's Constitutional Rights", for the purpose of obtaining a conviction instead of seeing that justice was served.

GROUND THREE

Petitioner realized through an independant source and others who were told this information could not be produced and the failure to produce it that this information doesn't exist. Their is no records of Petitioner's indictments being returned by any

term of the grand jury after his 2003 arrest. *Prima facie* evidence with no records is not sufficient, especially with forged signatures. Petitioner's indictments were a fraud before the court and in violation of the following statutes and penal codes §§ 37.01; 37.02; 37.09(1)(2); 37.10(a)(2)(3)(4)(5); 37.171(2); 37.01; 39.02; 39.03; 39.06; & 71.01; Statutes: United States Constitution Amendments 5th, 6th, & 14th; V.T.C.A. Constitution Article I § 10, I § 19, V § 12(b); V.T.C.P. Article 21.25, Criminal Law Keynote-1032(1), Indictment and Information Keynote-10.1(2,3,6). Petitioner Tyson has an absolute right to an indictment by a grand jury, [see T.C.C.P. article 32.01]. Petitioner urges the Court that disclosures by District Attorney's office in other instances and the failure to produce in Tyson's cases show their is no record to support that Petitioner's causes were infact presented to the grand jury by the former District Attorney Tim Curry or his subordinates' constitutes Brady Material. [see BRADY V. MARYLAND, 373 U.S. 83(1963)]. The state of Texas had an affirmative duty to disclose all material, exculpatory evidence to the defense if there was a reasonable probability that had evidence been disclosed to the defense, the result would have been different. [EX PARTE ADAMS, 768 S.W. 2d 281(Tex. Crim. App. 1989)]. Petitioner would also urge the Court: If the information was devulgued to the defense the outcome of the proceedings would have been different. Tyson's cases would have been dismissed with prejudice. Prosecutorial Misconduct: Petitioner also urges the Court that: District Attorney testified to the veracity of the indictments before the Court, and thereby committed perjury, fraud, abuse of official capacity, abuse of office, official oppresion, violation of Peitioner's Constitutional Rights, by taking a blank indictment and passing them as being generated as returned by any grand jury of Tarrant County, Texas prior to sentencing & trial. Petitioner finally urges this Court that: The District Attorney's claim that he placed the indictment before the court was *ex dolo malo*. The purpose of the safeguards that are incorporated in the United States Constitution as well as the Bill of Rights is to safeguard citizens from these types of arbitrary actions of the government or those acting in the

name of government.

GROUND FOUR

The State of Texas in its repeal of article 19.06 T.G.C.P. offered new evidence that the grand jury selection in Tyson's causes was in violation of the Jury Selection Act of 1968. The Jury Commissioners were not selecting a fair cross section of the community and purposely excluded Blacks/Hispanics from serving on grand juries that allegedly passed upon Petitioner's indictments.

The Tarrant County District Attorney's Office does not have and cannot produce the names, ages, races & genders of the grand jurors that indicted Petitioner in causes 0899697 or 0870880.

This Court is urged that: Said article 19.06 was unconstitutionally applied and makes such article unconstitutional for Jury Commissioners placing friends and family members on grand juries for purpose of indictment, and such could not have been discovered by Petitioner Tyson through due diligence. It is apparent that Petitioner could not have discovered this until State Legislative body revealed in its passing of HB 2150 that article 19.06 in its application was in violation of the Equal Protection Clause. Petitioner also urges this Court that: The history of the jury selection process in the courts throughout this country has condemned this practice as inherent invidious intent of those with the mind to discriminate as in Tarrant County, Texas. The court's prior cases are instructive. The 6th Amendment to the United States Constitution's provisions for jury trials is made binding on the states, including Texas, by virtue of the 14th Amendment also to the United States Constitution, the inquiry in whether the presence of a fair cross-section of the community on venires, panels, or lists from which petit/grand juries is drawn is essential to the fulfillment of the 6th Amendment's guarantee of an impartial jury trial in criminal prosecutions. This Supreme Court has unambiguously declared that the American concept of jury trial contemplates a jury drawn from a fair cross-section of the community. A unanimous Court stated in [SMITH V. TEXAS, 311 U.S. 128, 130(1940)], that "[I]t is part of the established tradition in the use of juries as instruments of public justice that a jury be truly representative of the community." To exclude racial groups from

the jury service was said to be "at war with our basic concept of a democratic society and a representative form of government." A state jury system that resulted in systematic exclusion of negroes/hispanics as jurors was therefore held to violate the Equal Protection Clause of the 14th Amendment to the United States Constitution. [GLASSER V. UNITED STATES, 315 U.S. 60, 85-86(1942)], in the context of a federal criminal case and the 6th Amendment's jury trial requirements, stated that "[O]ur notions of what a proper jury is, is developed in harmony with our basic concepts of a democratic society and a representative government," and repeated this Court's understanding that the jury "be a body truly representative of the community"..... and not the organ of any special group or class."

It is clear that the repeal of article 19.06 by the Texas State Legislature constitutes new evidence as well as Brady Material and that the current claims and issues have not nor could not have been presented previously in another application, because article 19.06 was not yet repealed as the factual or legal basis were unavailable...

GROUND FIVE

The actions of the prosecution against Petitioner also constitute Fraud on the court. The elements of fraud on the court are conduct: 1) on the part of an officer of the court; 2) that is directed at the judicial machinery itself; 3) that is intentionally false; 4) that is a positive averment or a concealment or a concealment when one is under a duty to disclose; and 5) that deceives the court. see DEMJANJUK V. PETROVSKY, 10 F.3d 388, 348(6th Cir. 1993); also see ALLEY V. BELL, 405 F.3d 371, 373(6th Cir. 2005)(en banc). Fraud on the court is clear!

Federal courts long ago established the rule that they would not alter or set aside a judgement after the expiration of the term at which the judgements were finally entered. HAZEL-ATLAS CO. V. HARTFORD CO., 322 U.S. 238(1944) overruled on other grounds by STANDARD OIL CO., INC. V. RILEY STOKER CORP., 71 F.3d 44, 47-48(1st Cir. 1995).

Thus, substantive misconduct is more likely to result in an affirmed dismissal with prejudice or default than simple procedural misconduct.

Substantive misconduct as in Petitioner's indictments more clearly and directly subvert the judicial process and the integrity of the judicial system. An evidentiary hearing should have been held by the trial court or the Court of Criminal Appeals should have ordered one as Petitioner requested by mandamus, before the dismissal of a case with prejudice. Substantive misconduct such as brought by Petitioner is and should have been subject to less tolerance than procedural misconduct, rather than swept under this rug as the trial court and Texas Court of Criminal Appeals has done. Also, false or misleading statements given under oath as is the case here concerning issues central to a case may however lead to fraud and dismissal. See COX V. BURKE, 706 So. 2d 43, 47(Fla.5th DCA 1998). Prosecutorial misconduct as in Petitioner's indictments constitutes fraud on the court when the fraud, as was done, corrupts the very integrity of the judicial process. Also, a cause of action for fraud on the court may be brought at any time, and any order, judgement, or decree, obtained by fraud on the court may be recalled and set aside at any time, whether entered in a criminal or civil case. See STATE V. BOOKER, 314 So. 2d 136(Fla. 1975). This includes an order denying a motion for post conviction relief. See, BOOKER V. STATE, 503 So. 2d 888(Fla. 1987).

The Alaska Supreme Court has held constantly that courts should not hesitate to reverse a conviction when a substantial flaw in the underlying indictment is found, regardless of the strength of the evidence against the accused or the fairness of the trial leading to the conviction. KEITH V. STATE, 612 P.2d 977, 980-81(Alaska 1980); ADAMS V. STATE, 598 P.2d 503, 510(Alaska 1979). "The function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible against the wall. His function is to vindicate rights of the people as expressed in the laws and give those accused of a crime a fair trial". Supreme Court Justice Douglas in DONNELLY V. De CHRISTOFORO, 416 U.S. 637, 648-49, S. Ct. 1869, 1874, 40 L.Ed. 2d 431(1974). Under U.S V. BASURTO, 407 F.2d 781(9th Cir. 1974), the prosecutor has a correlative duty to not permit a person to stand trial, as was done to Petitioner, when he knows that perjury permeates

the indictment.

Whenever the prosecutor learns of any perjury committed before the grand jury, he is under a duty to immediately inform the court and opposing counsel--and jury so that appropriate action may be taken. This did not happen! Petitioner's Due Process Rights under the 5th Amendment to the United States Constitution will also be violated if Petitioner is retried on these indictments even if reindicted, because he stood trial under indictments which the prosecutor knew were based partially on perjured testimony. This Court reiterates this position in many prior decisions. ILLINOIS V. SOMERVILLE, 410 U.S. 458, 35 L.Ed 2d 425, 93 S.Ct. 1066(1973). This Court even held in NAUPE V. ILLINOIS, 360 U.S. 264, 3 L.Ed. 2d 1217, 79 S. Ct. 1173(1959) that the prosecution's use of false testimony at trial required a reversal of the conviction and the same result applies when the prosecution allows a defendant, as Petitioner, to stand trial on an indictment which it knows to be based in part upon perjured testimony. The consequences to Petitioner of perjured testimony given before the grand jury are no less severe than those of perjured testimony given at trial, and in fact may be more severe as petitioner had no means of cross-examining or rebutting perjured testimony or even the fraud committed by the prosecution before the grand jury. MESAROSH V. U.S., 352 U.S. 1, 1 L.Ed. 2d 1, 77 S. Ct. 1 (1956). In Petitioner's cases, the prosecutor committed the fraud. The fraud committed by the prosecution in Petitioner's indictments attempted to defile the court and did.....12 MOORE'S FEDERAL PRACTICE § 60.21[4][a](3d. ed. 2000).

Although perjury alone will normally not serve to vacate a judgement, it is considered fraud on the court when it involves or is suborned by an attorney such as the prosecutor as was done in Petitioner's indictments. See generally MOORE'S FEDERAL PRACTICE, *supra*, at § 60.21[4][b] & [c]. What the prosecutor did to Petitioner constituted fraud upon the court and was simply unconscionable. Petitioner's judgements should be vacated!

GROUND SIX: MERGER DOCTRINE INVOKED!

PLEASE INCORPORATE BY REFERENCE ALL 5 ABOVE GROUNDS WTH 6.

When a habeas petition involves due process rights, such as here,

Texas Law allows the filing of a habeas application regardless of if the matter was in fact exhausted as these rights can never be lost nor waived. see EX PARTE KING, 134 S.W. 3d 500-502(Tex. Crim. App. 2004); also EX PARTE MCCAIN, 67 S.W. 3d 204, 207(Tex. Crim. App. 2002). The habeas corpus is also used to attack Constitutional violations. see EX PARTE DRAKE, 883 S.W. 2d 213, 215(Tex. Crim. App. 1994). Also, as stated above, violation of the right to Due Process as was done to Petitioner is a fundamental right. Also since the fraud used by the prosecution was not disclosed, the harm that was done is clear and granting habeas relief was in fact the proper remedy by the lower Texas Courts. see EX PARTE LEWIS, 587 S.W. 2d 697, 701(Tex. Crim. App. 1979). Also, petitioner's writs consisted of new evidence as he met the 4 part requirement required by Texas law: (1) The evidence of fraud was not known at the time of trial; (2) The reason the fraud was not known was not due to lack of Petitioner trying; (3) The evidence would have been admissible and should have been explored by the Courts; and (4) No reasonable juror would have convicted Petitioner in light of this evidence of fraud as he would have been acquitted as he should now. T.C.C.P. § 40.03(6). Federal law also has similar provisions. see TITLE 28 § 2254. Also the Supremacy Clause of the United States Constitution should be supreme. UNITED STATES SUPREMACY CLAUSE article vi. The trial court even lacked subject matter jurisdiction over Petitioner's cases due to its fraud and the Constitutional violations against Petitioner should have been explored with an evidentiary hearing. Also although Texas law requires objections be made before trial if the indictment is defective, see T.C.C.P. § 1.14(b)(West 2009), there is no evidence that his trial counsel could have known about the fraud. Even if trial counsel had known about the fraud, from the attached exhibit, it is clear that this would have never happened. (Billy Thomas Unsworn Declaration). This whole attempt at "rubber stamping" District Attorney Wilson's District Court says they do not meet criteria for successive writs, but then dismiss them as such? by the Tarrant County District Court and Court of Criminal Appeals. The Court of Criminal Appeals rubber stamps the District Court are they or aren't they Exhibit C?? ruling Tyson's habeas applications were not successive writs and causing him a procedural bar from continuing is absurd, especially when the Tarrant County DA has the evidence and they refuse an "evidentiary hearing. Petitioner has no other way to prove his case.

REASONS FOR GRANTING THE WRIT

This cover-up of criminal behavior and unconstitutional actions by the courts of Texas are unconscionable, but not unexpected given Texas Legal History. Petitioner knows that he cannot get any relief in any Federal Court in the 5th Circuit nor either in the 5th Circuit. This is why he brought these issues directly to this Honorable Supreme Court.(Are they or are they not successive writs?) This Supreme Court enforces the protections offered by the United States Constitution, as they have interpreted them. These standards simply serve as minimum standards that states must abide by, but states are free to provide greater protections than those required under federal law. Texas completely misses the mark. The Tarrant County District Attorney concerning Petitioner's indictments has acted in bad faith and now it along with its sister court's continues to do so. They are ready to sweep all this under the rug although it is Petitioner's understanding that due to a suit by D.A. Wilson against the Texas Attorney General's Office, the Texas Attorney General's Office refuses to become involved in these fraud issues.

Also, this may be systemic ~~abuse~~. As this writ application is being screened by this Honorable Court, dozens and dozens of habeas applications are being filed throughout the state of Texas in many many counties. Soon it could number in the hundreds and in the very near future thousands. This Court needs to exercise its discretionary authority and grant this writ as the same types of responses are being received throughout Texas. This matter needs to be resolved. Petitioner shows violations of not only the United States Constitution, Texas Constitution and Texas Laws, but also United States, this Courts stare decisis, something that should not be allowed to stand. This case is important to hundreds if not thousands of inmate citizens, many like Petitioner with Honorable discharges from the Armed Services. It may be one of the most important cases in Texas history concerning fraud and criminal activity. The cover-up attempt by the Texas court's was erroneous and should be resolved immediately.

Although a decision by this Supreme Court will be law and affect many many others now and in the future. Petitioner urges this

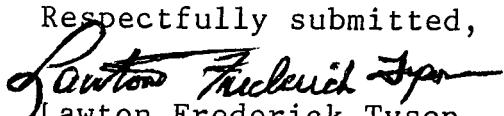
Supreme Court that: He is unlawfully being held in TDCJ-ID under indictment that were not lawfully passed/presented by a grand jury. The District Attorney's office has acknowledged in several other cases that they cannot produce a record of these or similar cases that substitutes these causes having been passed down by a grand jury. They do not have this in Petitioner's cases either. The Tarrant County, Texas District Attorney's office committed fraud on the court also by its presentation of these indictments and a host of other violations. This constitutes new evidence that could not have been discovered by due diligence because of the secrecy of the Texas grand jury proceedings. If there is no record that can be produced of the indictments as being lawful, then Petitioner's judgements must be vacated and his indictments set aside. Whenever it appears that the court lacks jurisdiction over subject matter, the court is delegated to dismiss the actions. [Willy v. coastal corp., 503 U.S. 131, 136-37; U.S V. TEXAS, 252 F. Supp. 234, 254]. To try a person for a crime the court must have proper and lawful jurisdiction. There must be a record that supports the indictment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Nunc Pro Tunc

Respectfully submitted,


Lawton Frederick Tyson

Date: 14-29-19