NO. 19-5248

OCTOBER TERM 2019

IN THE SUPREME COURT OF THE UNITED STATES

GARRY RANDALL WEST, PETITIONER,

VS.

JASON BRYANT, WARDEN, JCCC, RESPONDENT.

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

Garry Randall West, #173249
James Crabtree Correctional Center, Unit 5-S
216 North Murray Street
Helena, Oklahoma 73741

PRO SE

QUESTIONS PRESENTED

1. **IN RE: PORNGRAPHIC MATERIAL; PORN, PORNGRAPHIC PICTURES AND IMAGES:**

A) Can a pornographic conviction of Possession of Child Pornography stand where the Supreme Court of the United States RULED that such pictures/images IS LEGAL and permissible pursuant to : U.S.C.A. 1; U.S.C.A. 4; U.S.C.A. 14, Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389; Ashcroft v. ACLU, 122 S. Ct. 1700?

B) Does Petitioner have a **Free Speech Protection** and safeguard protected under the Free Speech Constitution Amendment safeguarded by Due Process pursuant to U.S.C.A. 1, 5, 14; Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389; Ashcroft v. ACLU, 122 S. Ct. 1700? C) Does Petitioner have a **Right to Privacy** in a non-working, torn up and defunct laptop computer and cell phone data, stored data consisting of child pornography, pornography pictures, and images? (Some, much of which Petitioner was not aware of, not Petitioner's own, or, belonging to someone else, other than Petitioner?) U.S.C.A. 1, 4, 5, 14 (Material was not Petitioner's and Petitioner *knew nothing* about any pornographic images!)? D) Did Oklahoma exceed their scope and enter arbitrariness in making and framing its new, but changed, child pornography laws in not considering the legality, legalness of First Amendment Free Speech laws, constitution violating the United States Supreme Court precedent striking down the laws as unconstitutional in part pursuant to U.S.C.A. 1, 14; Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389; Ashcroft v. ACLU, 122 S. Ct. 1700?

2. **IN RE: SEARCH AND SEIZURE VIOLATIONS:**

A) Was a search warrant required to see, find, obtain and seize, and to tear apart a computer that was torn up and defunct in search of child pornography, pornography, and pornography images? B) Is the stored data on cell phones and on computers protected by the right to privacy? New Rulings: **Carpenter v. U.S.**, 138 S. Ct. 2206 (2018); **Byrd v. U.S.**, 138 S. Ct. 1518 (2018); **Collins v. Virginia**, 138 S. Ct. 1663 (2018). C) Was a search warrant required for the police to detain, threaten, coerce, duress Petitioner while holding him in custody for nearly three (3) hours in forcing Petitioner to confess and tell the police where the cell phone with cell phone data was stored, and also the torn up defunct laptop-cell phone-equipped computer with computer data and alleged stored pornographic pictures was stored and not working? D) Was the police conduct arbitrary where no special or exigent circumstances existed? (Non-violent situations?) E) Was the search warrant violative and wrongfully implemented two (2) years *AFTER* the fact? F) Was the detainment of Petitioner wrongful and excessive?

3. **IN RE: SEARCH OF PETITIONER'S TORN UP, DEFUNCT CELL PHONE-EQUIPPED LAPTOP COMPUTER, CELL PHONE, DATA:**

A) Was the warrantless search and seizure of Petitioner's workplace valid? **B)** Was the warrantless search and seizure of Petitioner's torn up, defunct laptop-cell phone-equipped computer with computer data valid? **C)** Did the Stillwater Police Detective violate Petitioner's constitutional rights by creating images of child pornography *himself* to submit as Exhibit(s) of his own evidence by downloading the one (1) pornographic video from "any user" or "any web address" *not linked to Petitioner* in which the Petitioenr had no knowledge or did not know anything about such file or images, pictures, pornography or child pornography? **D)** Did Petitioner have and maintain the constitutional right to privacy? **E)** Did the Police wrongfully create their probable cause? **F)** Was the Fruits of the Poisonous Tree doctrine violated? **G)** Was the lack of consent by both the Petitioner was the business owner, Ms. Fitch, to search Petitioner's workplace without a search warrant violative? **H)** Was the length of delay in holding Petitioner inside a police-dominated environment in the workplace parking lot and without a search warrant violative?

4. **IS PETITIONER ENTITLED TO RELIEF DUE TO THE NEW RULINGS HANDED DOWN BY THE UNITED STATES SUPREME COURT RULING THAT:** the search and seizure of cell phones, computer, laptops, **DATA**, in a torn up, non-working defunct computer without a warrant, which is violative and unconstitutional pursuant to U.S.C.A. 1, 4, 5, 14 pursuant to **Carpenter v. U.S.**, 138 S. Ct. 2206 (2018); **Byrd v. U.S.**, 138 S. Ct. 1518 (2018); **Collins v. Virginia**, 138 S. Ct. 1663 (2018); **U.S. v. Garcia**, S Ct. (2018)?

5. **IN RE: MIRANDA WARNINGS VIOLATIONS:**

A) Was ***Miranda*** violated? **B)** Was Petitioner entitled to **Miranda v. Arizona** warnings, safeguards, and protections? **C)** Was Petitioner entitled to the rights to counsel? **D)** Was self-incrimination violated? **E)** Was the Fruits of the Poisonous Tree violated?

6. **IN RE: SUPPRESSION OF EVIDENCE:** **A)** Should the porno, child pornography and picture images have been suppressed? **B)** Should the evidence have been suppressed? **C)** Was the Fruits of the Poisonous Tree violated?

7. **IN RE: DOUBLE JEOPARDY VOILATIONS:** **A)** Was double jeopardy violated by stacking picture images one on top of the other (The multiplicity of child pornography pictures arising out of the same offense, same scheme, and same transaction)? **B)** Is the counting and separating of child pornography images from a single occurrence and single picture file unconstitional and violative to the constitution?

8. Was Petitioner entitled to Relief due to others/someone else other than Petitioner may have committed the crime?

9. **A)** Was exhaustion satisfied as futile? **B)** Should the Tenth Circuit Court of Appeals have entertained Petitioner's claims actions even though the claim(s) was futile and non-exhausted?

10. Was the Due Process, fairness, and the judicial proceedings violative due to the Court's fixed, pre-fixed, pre-determinate opinions, bias, prejudice, and beliefs?

11. Was Petitioner entitled to a hearing?

12. Was Ineffective Assistance of *Retained* Counsel violative as well as expert violations which highly and severely prejudiced Petitioner?

13. Was Ineffective Assistance of *Retained* Appellate Counsel violated?

14. Was **Stone v. Powell** misapplied – wrongfully and incorrectly applied?

15. Did the Trial Court hold Petitioner's Pro Se action and pleadings to the more harsh, stringent, too difficult, of Pro Se standards and review?

16. Was Ex Post Facto violated in Petitioner's charging and sentencing?

17. Did the lower courts wrongfully apply parole review?

18. Was exhaustion violative?

19. **A)** Was Petitioner procedurally barred?

B) Should the procedural bar have been excused?

20. Should the Tenth Circuit Court of Appeals have GRANTED Petitioner's Pro special request?

21. Should the Tenth Circuit Court of Appeals have GRANTED Petitioner's Pro plain error review and relief?

22. Did the United States District Court wrongfully review Petitioner's case under the A.E.D.P.A. standards?

23. Was Petitioner denied fairness and a full, fair, and meaningful opportunity to obtain relief in the Tenth Circuit Court of Appeals due to the case confusion and mix up?

LIST OF PARTIES

All parties to this action appear at the caption of this case on the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Garry Randall West, respectfully prays that a Writ of Certiorari issue to review the judgments below.

OPINION BELOW

1. The OPINION of the United State Court of Appeals for the Tenth Circuit appeals to this Petition at APPENDIX A of which the Opinion was unpublished, respectfully.
2. Timely Motion for Rehearing/En Banc is attached to this Petition as APPENDIX C. The Ruling of the United States District Court is located at APPENDIX E, F attached to this Petition.

JURISDICTION

The dates on which the United States Court of Appeals decided this case entity was on: **APPENDIX A,** February 7, 2019 – Tenth Circuit Court of Appeals Order denying the Certificate of Appeallability (COA); **APPENDIX B,** February 25, 2019 – Order Granting Petitioner's Motion for an Extension until **March 25, 2019**; **APPENDIX C,** March 8, 2019 – Order denying the Petition for Rehearing; **APPENDIX D,** March 14, 2019 – Letter from the Tenth Circuit Court of Appeals over Re-hearing and Motion to Clarify; **APPENDIX E,** February 28, 2019 – U.S. Magistrate Judge's Report and Recommendation; **APPENDIX F,** March 22, 2018 – District Court Judge's Order adopting the Report and Recommendation, and Judgment denying the Writ of Habeas Corpus. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

CONSTITUTION AND STATUTORY PROVISIONS INVOKED

1. **United States Constitution Amendment** 1: The absolute constitutional right to freedom of publications, privacy, pictures, images, expressions, symbols, right to one's own views, freedom of speech, protection from government infringements, encroachment, arbitrary actions, behavior and invasions.

2. **United States Constitution Amendment 4**: The absolute constitutional right to privacy, safety and security, protections against government arbitrary conduct and invasions, security of persons and effects, prohibition against government force, unreasonable searches and seizures.
3. **United States Constitution Amendment 5**: The prohibition against double jeopardy violations, due process safeguards, private property safeguards, life, liberty, and property safeguards.
4. **United States Constitution Amendment 6**: Criminal prosecutions safeguard, jury trial, right to counsel, effective assistance of counsel, witnesses, evidence, compulsory process safeguards.
5. **United States Constitution Amendment 14**: Due process safeguards guarantees, equal protection of the laws; life, liberty, and property safeguard guarantees.

STATEMENT OF THE CASE

Petitioner was at his workplace in Stillwater, Oklahoma when Stillwater Police arrived there to invade his workplace and place of business, and to *look for* and seize a **computer, a cell phone-equipped laptop**, which was torn up! The equipment sought was defunct and was not a working computer/laptop/cellular phone-equipped system. The computer seized was stowed in a secure server room of the workplace and had not been used for quite some time.

Petitioner had absolutely **no knowledge** of pornographic nudity images to ever to on such computer whatsoever, and Petitioner *still does not know* what the 'images' were. His retained lawyer, the district attorney, and also the district judge would not, and still have not, permitted the Petitioner to see, review, object, or even contest or make any outcry over the pornographic images claimed to be stored on the laptop computer whatsoever!

By the Stillwater Police Investigator's own testimony at preliminary hearing, **NO IMAGES WERE EVER FOUND ON THE SEIZED LAPTOP COMPUTER!**

Without any warrant and by force and fear, by threats and verbal abuse, police manipulation, the Police *forced* Petitioner to tell them where the torn up defunct, non-working computer was located within the workplace, which was later found and seized in the business storage area within a caged server room, within a computer bag on a shelf, stowed "behind a box"!

The Police Detective *himself* testified in court that he went into other locations on the internet (websites, peer-to-peer [P2P] connections, locating "any user on the internet") to look for a particular [video] file which

he could use to make an arrest and to submit as evidence to make a conviction. The detective used the term "any user", as he described in court, to search for, download, review, and from which he could extract images to create evidence himself, **NOT THE PETITIONER**, onto a Microsoft Word* document which he could submit as an exhibit in court!

When the detective was questioned by counsel in court regarding how he determined child pornography existed on Petitioner's suspect computer, the detective testified that he had tried to connect to Petitioner's computer via an internet P2P connection, but was not successful. He then testified that he searched the internet for "any user" other than Petitioner that may possess the particular [video] file he was looking for, and ultimately finding one that he could use to obtain a warrant to search Petitioner's residence in Perkins, Oklahoma, which is approximately ten (10) miles outside the police jurisdiction of Stillwater, Oklahoma.

When the Stillwater Detective, assisted by local authorities in Perkins, Oklahoma, and the Iowa Tribal Police arrived at Petitioner's residence in Perkins, Oklahoma, he could not locate a suspect computer of interest, he remained at the residence and dispatched another Stillwater Detective to travel from Perkins to Stillwater to locate Petitioner's workplace and look and seize any suspect computer. **NO WARRANT WAS EVER ISSUED FOR PETITIONER'S WORKPLACE IN STILLWATER, OKLAHOMA!** Petitioner was located at his workplace approximately seventeen (17) miles from his residence. There he was detained with questions for nearly three (3) hours in the workplace parking lot where he was surrounded by an entourage of police dominance. Petitioner was not allowed to speak with, or even to re-enter the business to speak his employer Ms. Fitch. **PETITIONER DID NOT EVER GIVE CONSENT FOR A WARRANTLESS SEARCH OF HIS WORKPLACE!** Even though Petitioner was placed under extreme duress into uttering two (2) words, "server room", **THE UTTERANCE WAS NEVER HIS CONSENT FOR A WARRANTLESS SEARCH**! Even **THE BUSINESS OWNER NEVER CONSENTED FOR A WARRANTLESS SEARCH**! Ms. Fitch testified in court that she NEVER GAVE HER CONSENT for a warrantless search of her business in Stillwater, Oklahoma!

The suspect computer/cell phone-equipped laptop computer was never in open view to the public or even to any person entering Petitioner's workplace, but was sought out, located, and seized by Stillwater police without a warrant. Upon departure from the room where the suspect computer was stored, the detective also entered into Petitioner's office, located in another part of the workplace building, and seized Petitioner's

(* or other Software to produce documents)

Apple iPhone 4 without anyone's permission and without a warrant. He then left the premises with the police entourage and reported back to the detective at Petitioner's residence in Perkins, Oklahoma.

It was testified in court that *after* forensic procedure was performed on the seized laptop, **NO ILLEGAL IMAGES OR FILES WERE EVER FOUND!** There was **NOTHING FOUND ON THE COMPUTER** which the police sought in their search of Petitioner's residence in Perkins, Oklahoma. Petitioner's retained lawyer, the district attorney, and also the district judge would not, and still have not, permitted the Petitioner to see, review, object, or even contest or make any outcry over the pornographic images claimed to be stored on the laptop computer whatsoever!

SUPREME COURT OF THE UNITED STATES

RULE 10 REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. Exceptional importance for as stated herein below.
2. **A)** Porno. **B)** Pornographic material. **C)** Pornographic, child pornography, pictures, graphics, and images: **i)** The United States Supreme Court ruled as legal and permissible. **ii)** First Amendment right to pornography, pornographic images and material. **iii)** Right to privacy. **vi)** Constitutional safeguards and protections of the 1st, 4th, 5th, and 14th Constitutional Amendments.
3. Stored data on computers and laptops.
4. Stored date on cell phones.
5. Warrant violations, search violations, police arbitrary conduct and behavior.
6. National importance of having the United States Supreme Court to INTERVENE and GRANT the Writ of Certiorari REVERSING and REMANDING the action back to the Tenth Circuit Court of Appeals.
7. Constitutional violations as stated herein.
8. The United States Court of Appeals for the Tenth Circuit entered a decision that is: **A)** in conflict with the United States Supreme Court; **B)** in conflict with the Tenth Circuit's own precedents; **C)** in conflict with other United States Circuit Courts of Appeals with the same extreme importance; **D)** a decision of grave importance of federal questions in ways that conflicts with State Court decisions of last results and that of the United States District Courts; **E)** the lower Court's Ruling decisions that have departed from the accepted usual course of the judiciary proceedings; **i.)** warrants, **ii)** search warrants, **iii)** warrant violations, **iv)** warrant necessities, **v)** arbitrary conduct and behavior, **vi)** threats, coercion, duress,

trickery, force, **vii)** 4th Amendment violations, **viii)** 14th Amendment violations; **F)** a conflict to relevant decisions of the United States Supreme Court and the lower courts DEMANDING Supreme Court intervenance.

9. Conflicts and violations of the **NEW RULINGS HANDED DOWN BY THE UNITED STATES SUPREME COURT**, the Tenth Circuit Court of Appeals, and lower Federal Courts that were **IGNORED, OVERLOOKED,** and **DISREGARDED**.

10. Compelling reasons as listed and set forth herein above.

PETITIONER'S PRO SE GROUNDS FOR RELIEF

GROUND 1:

A. A pornographic conviction of child pornography cannot stand where the United States Supreme Court RULED that such animated (anime) images are legal and is permissible.

B. Petitioner, at all times, has a **FREE SPEECH PROTECTION** and safeguarded **FREE SPEECH** constitutional right to nudity and pornography.

C. Petitioner does have a constitutional RIGHT TO PRIVACY in pornography, anime child pornography, even in a non-working torn up defunct cell phone-equipped laptop computer, cell phone, in its data and **stored data** (even which Petitioner had no knowledge of and had not ever seen) which **belonged to SOMEONE ELSE – OTHERS!**

D. Oklahoma exceeded its scope entering arbitrariness in framing, making, creating child pornography laws failing to consider the legality of **FREE SPEECH**-protected constitutional rights violating the constitution and United States Supreme Court precedent, which Petitioner has a due process liberty interest.

FACTS:

The Stillwater Police searched and seized a place of business without a warrant! GROUND 2, Infra. By threats, force and fear, obtained a laptop computer equipped with cell phone technology and data that was torn up, defunct and not working that was stored in a secure storage room in a computer bag and behind a box, in a security caged area where Petitioner store personal and business-related items for travel, which had been **IN STORAGE** for quite some time. Petitioner had no intent and no knowledge of possessing child

pornography images/pictures and, still to this day, has not even seen the alleged pornographic material the police created – made – fabricated and submitted as their evidence! Petitioner's retained lawyer, the district attorney, and also the district judge would not, and still have not, permitted the Petitioner to see, review, object, or even contest or make any outcry over the pornographic images claimed to be stored on the laptop computer whatsoever – the evidence that Stillwater Police Detective admitted in court that *he*, not the Petitioner, searched for, downloaded from "any user", extracted images from, and created in a Microsoft Word document! **NO IMAGES WERE EVER FOUND ON COMPUTER!**

Petitioner MOVES for Certiorari Granted pursuant to U.S.C.A. 1, 5, 14; Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389; Ashcroft v. ACLU, 122 S. Ct. 1700 (2018), demanding that: such pornography is legal, not-illegal!

The **RIGHT TO PRIVACY** is a must and is **DEMANDED** pursuant to the constitution and this Court's precedents, Supra. Franks v. Delaware, 98 S. Ct. 2674 – even in **PRIVACY OF SEXUAL MATERIAL!** Mapp v. Ohio, 81 S. Ct. 1684 **INCLUDING ELECTRONIC DEVICES!** Silverman v. U.S., 81 S. Ct. 679; U.S. v. Waller, 426 F.3d 838.

Even the **EXPECTATION TO PRIVACY** is protected which is a liberty interest protection! "Private effects", "Offices", "Baggage", which this Court must enforce pursuant to **CASES**, *Supra*. Katz v. U.S., 88 S. Ct. 507; Minn v. Olsen, 110 S. Ct. 1684; Minn v. Dickerson, 113 S. Ct. 2130; Arizona v. Gant, 129 S. Ct. 1710; U.S. v. Ponce, 95 S. Ct. 2574; Hudson v. Palmer, 104 S. Ct. 3194, which the Tenth Circuit Court **IGNORED** and **DISREGARDED** their **OWN RULINGS** over the expectation to privacy, ignoring Supreme Court precedent, *Supra*, and the Constitution which is in conflict to this Court, and other United States Courts of Appeals which demanded relief. **CASES**, *Supra*. U.S.C.A. 1, 5, 14; U.S. v. Hocker, 333 F.3d 1206 (10th Cir.); U.S. v. Jones, 947 F.2d 1430 (10th Cir.); U.S. v. Dortch, 199 F.3d 193 (10th Cir.) – "Computer disk"!; U.S. v. Garson, 199 F.3d 1446; U.S. v. Lambert, 461 F.3d 1064 (10th Cir.); U.S. v. Jones, 132 S. Ct. 945; Maryland v. King, 133 S. Ct. 1958; U.S. v. Garcia, S.Ct. (2018); Kois v. Wisconsin, 92 S. Ct. 2245, **OBSENITY** legal – permissible! Nudity! **PRIVATE THOUGHTS** protected. Stanley v. Georgia, 89 S. Ct. 1243. **GROUND 2**, Infra. **RIGHT TO PRIVACY**.

GROUND 2:

A. A search warrant is required to enter the workplace or home to search, find, seek, obtain, tear apart, tear down, a computer – laptop – cell phone and stored data from a computer, laptop, cell phone that was worn up, non-working and defunct in search of child pornography, pornography, and pornographic images.

B. The **STORED DATA** on cell phones and computers is protected by the Liberty Interest in the **RIGHT TO PRIVACY** and by the **NEW RULINGS** handed down in 2018 by this Court.

C. A search warrant is required for the police to detain, threaten, coerce, duress Petitioner, holding Petitioner in custody for an extensive period of time forcing Petitioner to make utterances or to confess, enabling police to form an assumption as to where a torn up non-working computer would be stored – which **WAS NEVER A CONFESSION OR PERMISSION TO SEARCH AND SEIZE!!!**

D. The police conduct was arbitrary. No exigent circumstance existed, or ever existed, even by Detective's own testimony.

E. The warrant, two (2) years after the fact, was violated prosecution conceded in.

F. The **DETAINMENT** of Petitioner was wrongful, violative, and excessive!

FACTS:

As Petitioner saw working at his place of employment office, Stillwater Police Detectives, with multiple police-uniformed officers arrived in commando manner, surrounding Petitioner's vehicle in the business parking lot. Offers remained in the parking lot while detectives entered the business and confronted Petitioner, ultimately escorting him out of the business and into the police-dominated circle around his vehicle. There, he was told to remain and not leave and was repeatedly interrogated and verbally harassed for approximately three (3) hours. The police had all entrances and exits of the parking lot blocked, even the Petitioner's vehicle in its parking space. Police ordered Petitioner where to stand inside police circle.

It is clear that the **PETITIONER WAS NOT FREE TO LEAVE** and was in custody! The police detective in-charge became very violent! The police were hostile and belligerent, horrifying Petitioner and horrifying his employer, Ms. Fitch, who remained in her office and was not permitted by police to speak to Petitioner. Petitioner was not permitted by police to speak to his employer. **NO *MIRANDA* WARNINGS WERE EVER GIVEN WHATSOEVER!** The police threatened Ms. Fitch and Petitioner. Petitioner was not allowed access to a bathroom, a telephone, or even his winter coat outside in the freezing January morning.

NO WARRANT was ever produced whatsoever for Petitioner's workplace in Stillwater, Oklahoma. Only a search warrant was ordered for Petitioner's residence in the Town of Perkins, Oklahoma, located approximately seventeen (17) apart from the City of Stillwater, Oklahoma police jurisdiction. The probable cause for dispatching another detective to locate Petitioner in another city was based solely on his personal "hunch" that another computer *must exist elsewhere* from the residence, simply because of the absence of any working computer at Petitioner's residence. He used the implied authority of a defective search warrant for a Perkins, Oklahoma residence to justify a continued/expanded search in the City of Stillwater, Oklahoma, to locate and seize Petitioner's personal cell phone-equipped laptop computer at Petitioner's workplace, which is clearly outside the scope and jurisdiction of the search warrant for Petitioner's residence. Petitioner was held in the parking lot while Ms. Fitch was harassed inside her business. They were kept separate from one another and received violent comments and threats, verbal abuse and battering. Petitioner, to save his employer from getting her business shutdown by police threats to do so, and to save his employer from further police harassment, uttered only two (2) words, "server room", which **WAS NEVER PERMISSION TO SEARCH AND SEIZE** within the confines of the business-workplace property. The police had repeatedly 'promised' Petitioner they were there to totally demolish in retaliation of Petitioner not telling them *where* a computer was located in the business, even the location of Petitioner's data and his personal cell phone.

The police then entered into the secured closed area "server room" of the business to search and seize without a search warrant for that particular location in Stillwater, Oklahoma, a torn up defunct non-working cell phone-equipped laptop computer, its stored data and peripheral contents in the computer bag which was stowed on a shelf in a caged area and behind a box – which Detective Little testified was not in plain view – containing specific equipment that Petitioner was not allowed to visually inspect or identify as his own, which may contain data that was not his or that he knew anything about. The Police took the cell phone-equipped computer from the business server room to the Stillwater Police Department in Stillwater, Oklahoma for analysis, and NOT to the Perkins Police Department or to where Petitioner's residence was being searched in Perkins, Oklahoma. There, they tore it into pieces and, having not found any illegal files/images on the computer's hard drive, they proceeded to generate their own evidence of child pornography using other in-house hardware and software.

Petitioner MOVES the United States Supreme Court to GRANT CERTIORARI, pursuant to: The police exceeded their scope by a wrongful entrance, search, confiscation of torn up, defunct, non-working computer, pulling up/downloading data, stored data of child pornography which was not Petitioner's own, but that of which the police produced/created; the Stillwater Police themselves.

Petitioner MOVES the United States Supreme Court for RELIEF pursuant to U.S.C.A. 1, 4, 5, 14; U.S.C.A. 4, 14; Carpenter v. U.S., 138 S. Ct. 2206 (2018); Byrd v. U.S., 138 S. Ct. 1518 (2018); Collins v. Virginia, 138 S. Ct. 1663 (2018); U.S. v. Jones, 132 S. Ct. 945; U.S. v. Garcia, S. Ct. (2018). The police exceeded their scope constituting a violative government wrongful intrusion demanding relief. Arbitrary, forceful, and unreasonable. U.S.C.A. 4, 14; Oklahoma Constitution, Article II, Section 7, 30; Compu v. Cuber, 962 F.Supp.1015; Florida v. Jardines, 133 S. Ct. 1409; U.S. v. Dire, 332 U.S. 581; Kyllo v. U.S., 533 U.S. 27.

No exigent circumstances *ever* existed whatsoever! Even the Detectives testified in court that no exigent circumstances existed at any time and that they could have procured a search warrant prior to arriving at Petitioner's workplace, but all stated "they didn't need it." Petitioner was non-violent and fully cooperated to every extent. Petitioner made no threats. He had no gun or weapon. He did not ever try to flee. Petitioner put nobody – even himself – in harm's way. The police were **BULLYING** the Petitioner and his employer, Ms. Fitch, which **DEMANDS RELIEF** pursuant to the Tenth Circuit Court's precedent, which is in conflict, ignored, and disregarded. U.S. v. Anderson, 981 F.2d 1560 (10th Cir.); U.S. v. Rhiger, 315 F.3d 1283 (10th Cir.); U.S. v. Flowers, 336 F.3d 1222; U.S. v. Reeves, 524 F.3d 1161 (10th Cir.).

The police **CREATED** their own fabricated reasons to warrantless entry at Petitioner's workplace to seize and confiscate the electronics! **NO DANGER whatsoever existed** toward the police or anyone at Petitioner's home and business. U.S. v. Chaves, 163 F.3d 687, 691. The police conduct is outrageous and battering! Kirk v. Louisiana, 122 S. Ct. 2458; Minn v. Olson, 110 S. Ct 1684; U.S. v. Stewart, 867 F.3d 581 (10th Cir.), which **DEMANDS RELIEF**. Grandy v. North Carolina, 135 S. Ct. 1368; City of Los Angeles v. Patel, 135 S. Ct. 2443; U.S. v. Cantu, 230 F.3d 148. There was a clear police-dominated atmosphere of trickery, coercion, and duress. There was wrongful solicited confession and police misconduct of outrageous barbarianism that cannot sustain a conviction. U.S.C.A. 4, 5, 14; Florida v. Royer, 400 U.S. 491; Colorado v. Connelly, 107 S. Ct. 515; Malloy v. Hogan, 84 S. Ct. 1489; U.S. v. Griffin, 7 F.3d 1312 (10th Cir.).

The **RIGHT TO PRIVACY**, even in the workplace, is demanded! See, **GROUND 1**, *Supra*, Bond v. U.S., 529 U.S. 334; Hatch v. Reardon, 204 U.S. 152; Illinois v. Lidster, 540 U.S. 419; U.S. v. Perez, 640 F.3d 272; Alderman v. U.S., 394 U.S. 165; Connolly v. Medale, 58 F.2d 629. Such images, to the right to privacy is legal! See, Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389; Ashcroft v. ACLU, 122 S. Ct. 1700 (2018), **GROUND 1**, *Supra*, Stanley v. Georgia, 89 S. Ct. 1243; **GROUND 2**, *Supra*. Kois v. Wisconsin, 92 S. Ct. 2245. **NO IMAGES OF CHILD PRONOGRAPHY WAS EVER FOUND ON COMPUTER!**

GROUND 3:

A) The **WARRANTLESS SEARCH** and seizure of Petitioner's workplace was not valid nor was it permissible – it was outrageous! **B)** The search, seizure, and confiscation of Petitioner's torn up, non-working, defunct computer, cell phone-equipped computer, laptop, cell phone, data, stored data was violative. **C)** Stillwater Police Detective Greg Miller violated Petitioner's constitutional rights by **HIMSELF CREATING** media/word publishing document of child pornography that *he downloaded and extracted* from internet site(s), I.P. addresses, not linked to Petitioner or that which Petitioner knew nothing about. Petitioner had no knowledge of such images existing on his computer. **D)** Petitioner at all times maintained a constitutional right to privacy! **E)** The police wrongfully created their probable cause on a "**hunch**". **F)** The **FRUITS OF THE POISONOUS TREE DOCTRINE was violated.** **G)** Petitioner gave no voluntary consent for the police to enter his workplace office and server room to search and seize any equipment.

FACTS:

The warrant for Petitioner's residence was invalid! Some type of warrant that was served at Petitioner's residence in Perkins, Oklahoma was not even in Petitioner's name. See, ORIGINAL RECORD (O.R.) 34-35. Some of which was falsified even as to the type of item(s) to be collected and seized. **The State of Oklahoma Prosecution even conceded** at Petitioner's Post-Conviction Hearing by admitting on the Record – **three (3) years *after conviction* – that the search warrant for Petitioner's residence (O.R. 34-35) could not be explained and had no connection whatsoever in [his] case**. At that hearing, the State immediately submitted some type of *corrected warrant* to the Record without presentation to / or objection from the defense! The search and invasion of Petitioners workplace was not conceded to, but objected to! Police brutality and arbitrariness existed and is clear! **GROUND 1, GROUND 2,** and **GROUND 4** are invoked here and with case law. **Petitioner MOVES the Court to GRANT CERTIORARI and REVERSE**

due to the aforesaid in that the police cannot seize or search for data or information, even digital data without a valid warrant! Data, information and material, no matter what it regards is private, sensitive, confidential, and is extremely privileged! See, U.S.C.A. 1, 4, 14; Carpenter v. U.S., 138 S. Ct. 2206 (2018); Byrd v. U.S., 138 S. Ct. 1518 (2018); Collins v. Virginia, 138 S. Ct. 1663 (2018); Riley v. California, 134 S. Ct. 2473 (2018); U.S. v. Garcia, S. Ct. (2018); U.S. v. Jones, 132 S. Ct. 945; Maryland v. King, 133 S. Ct. 1958; Butler v. Michigan, 77 S. Ct. 524.

The computer, laptop, cell phone-equipped laptop was inoperable! It was non-working and defunct. The Police Detective Greg Miller testified he search the internet to find file(s), video, images, pictures of child pornography download and to wrongfully assess his findings to the Petitioner! **HE ADMITTED THIS ACT IN COURT! HE CREATED THE EVIDENCE** and material, not the Petitioner! No evidence – nothing whatsoever – was ever linked to Petitioner proving his intent over any of this! The seized computer was broken and torn up! Petitioner still has **NOT SEEN OR REVEWED** the evidence held against him in court. His lawyer, the district attorney, and even the Judge kept this material from Petitioners review. **RELIEF is DEMANDED** pursuant to U.S. v. Cabot, 325 F.3d 384; Rhoden v. Morgan, 864 F. Supp. 598! U.S. v. Kuchinski, 469 F.3d 853; Barton v. State, 648 S.E.2d.660. **NO CONSENT EXISTED!** There were force and threats by police. There was wrongful intrusion which was strictly violative and **DEMANDS REVERSAL!** Petitioner asks for same. U.S.C.A. 4, 14. Trickery, manipulation violative. GROUNDS 1, 2, 14, *Supra, Infra.* U.S. v. Ivy, 165 F.3d 397, 402. U.S. v. Hogan, 38 F.3d 1148, 1150 (10th Cir.); Turlock v. Freeh, 372 F.3d 394; U.S. v. Reeves, 524 F.3d 1151 (10th Cir.); Florida v. Jardines, 133 S. Ct. 1409; U.S. v. Jones, 132 S. Ct. 945; Saeger v. Avila, 930 F.Supp.2d 1009. **IMPROPER LENGTH OF DELAY** in holding Petitioner, including parking lot interrogation of 2 to 3 hours in freezing Oklahoma weather with no coat permitted, no breaks, no restroom access, is **EXCESSIVE** and offends due process **DEMANDING RELIEF** pursuant to coercive violations. Florida v. Royer, 400 U.S. 491; U.S. v. Chaves, 163 F.3d 687, 691; U.S. v. Jones, 132 S. Ct. 945; U.S. v. Hauk, 412 F.3d 1179; U.S. v. Hogan, 38 F.3d 1148 (10th Cir.); Rodriquez v. U.S., 134 S. Ct. 1609; Sea Bolt v. Oklahoma, 152 P.3d 235; U.S. v. Edwards, 242 F.3d 928 (10th Cir.); Worthrop v. Tippett, 265 F.3d 372; Colorado v. Connelly, 107 S. Ct. 515. **FRUITS OF THE POISONOUS TREE DOCTRINE** over **WARRANT VIOLATIONS** was severely violated and **DEMANDS RELIEF** pursuant to Franks v. Delaware, 98 S. Ct. 2674; Mapp v. Ohio, 81 S. Ct. 1684; Wongsun v. U.S., 83 S. Ct. 407; U.S.A. v. Sawyer, 92 F.3d 707; Worthrop v. Tippett, 265 F.3d 372; Lucas v. State, 704 P.2d 1141; U.S. v. Schaefer, 501 F.3d 1197.

GROUND 4:

From **GROUNDS** 1, 2, 3, above, Petitioner is entitled to RELIEF pursuant to the **New 2018 Rulings** as handed down by the United States Supreme Court; **New Rulings over: Stored data on cellular-equipped devices**, right to privacy, and sensitivity of material and information, even digital information which could contain pornography applies. **COMPUTERS, CELL PHONES, LAPTOPS, CELL PHONE-EQUIPPED COMPUTER DEVICES, and STORED DATA**, which should apply equally and directly to torn up, defunct, non-working computers and cell phones. Warrant violations **pursuant to Carpenter v. Arizona, 138 S. Ct. 2206 (2018); Byrd v. U.S., 138 S. Ct. 1518 (2018); Collins v. Virginia, 138 S. Ct. 1663 (2018); U.S. v. Garcia, S. Ct. (2018).**

GROUND 5: IN RE: MIRANDA VIOLATIONS:

A) Miranda v. Arizona was strictly and abusively violated. **B)** Petitioner was still entitled to Miranda v. Arizona warning(s), safeguards, protections, and due process. **C)** Petitioner was entitled to the **RIGHT TO COUNSEL. D) SELF-INCRIMINATION** was violated. **E)** Fruits of the Poisonous Tree violated.

FACTS:

GROUNDS 1, 2, 3, above are invoked here. **Petitioner was held IN CUSTODY** by multiple police officers and was surrounded and circled in his workplace parking lot for **2 to 3 hours! The interrogation never stopped until police got what they were looking for.** The Stillwater Police Detective who conducted the confrontation at Petitioner's workplace was extremely verbally violent, harsh, and belligerent! He was extremely rude to both Petitioner and to his employer. The Detective's interrogation to Petitioner was threatening and also the business owner Ms. Fitch, who was made to emotionally breakdown and cry. Petitioner was horrified! Not one time did any of the police read Petitioner his *Miranda* warning rights! No warrant ever existed for the Stillwater business. The only warrant was a defecting search warrant for the Petitioner's residence in Perkins, Oklahoma, 17 miles from the Stillwater business. **There was no right to counsel advisements.**

The **POLICE FORCED** a solicited statement from Petitioner due to the Police threats over the business and to Ms. Fitch! Petitioner said, *by intimidation, force and against his will* [solely because police threatened Petitioner his workplace would be shutdown and that he would be fired and that such devastating news would *destroy* the reputation of the business], the exact words "server room". **Petitioner's words were NEVER CONSENT OR PERMISSION TO SEARCH AND SEIZE.** The police then, and only then, went

into the business and, by fabrication, told Ms. Fitch "he said [it] is in the server room, and I need to go in and get it". Ms. Fitch NEVER CONSENTED to the detectives desire to look around, search, and seize and item. She was upset and extremely intimidated by the police presence inside and outside of her business. She was TOLD by the detective to show him to the server room which was locked. The detective entered the server room that contained a plethora of computer servers and equipment (both operable and non-working or being stored) looked around, and eventually retrieved a computer bag from a storage shelf behind a box. The bag contained a non-working red Acer cell phone-equipped laptop computer, other peripheral devices containing data, and personal documents. The detective seized the bag and its contents without verifying with Petitioner that the property belonged only to him. After leaving the server room, he entered into a different part of the business and retrieved an Apply iPhone cell phone from Petitioner's office desk. The computer was junked and torn up! Petitioner was never allowed to see or verify ownership of equipment prior to seizure.

The Writ of Certiorari **SHOULD NOW BE GRANTED** pursuant to U.S.C.A., 1, 4, 5, 6, and 14. Petitioner was guaranteed to be warned and advised of his protected and safeguarded rights against incriminating statements, force, fear, police-manipulation, deception and trickery, coercion, duress, violative statements. There existed police arbitrary conduct and behavior! There was no right to counsel advised! Petitioner had no free will! The elicited words "server room", were fabricated by police into a statement to Ms. Fitch of "he said [it] is in the server room, and I need to go in and get it", which is where the police raided and obtained the torn up, defunct non-working cell phone-equipped laptop computer and its sensitive data. The wrongful detainment *in itself* is strictly violative – violative government intrusion by force and fear.

Petitioner MOVES the Court to GRANT CERTIORARI and REVERSE pursuant to: Miranda v. Arizona, 86 S. Ct. 1602; Arizona v. Fulmanante, 111 S. Ct. 1246; Brown v. Mississippi, 56 S. Ct. 461; Edwards v. Arizona, 101 S. Ct. 1880; Saeger v. Avila, 930 F.Supp.2d 1009; Jackson v. Deno, 84 S. Ct. 1774.

The **RIGHT TO COUNSEL** was strictly violated and **DEMANDS RELIEF** pursuant to U.S.C.A. 6, 14. The interrogation of 2 to 3 hours in custody within the police-dominated environment in the Petitioner's workplace parking lot was also strictly violated and demands relief. See, Miranda v. Arizona, 86 S. Ct. 1602; Edwards v. Arizona, 101 S. Ct. 1880; Johnson v. Zerbst, 304 U.S. 1019; Gideon v. Wainright, 83 S. Ct. 792; Kirby v. Illinois, 92 S. Ct. 1877; Brewer v. Williams, 97 S. Ct. 1232; Deck v. Missouri, 544 U.S. 622. **Pitfall Protection:** Hamilton v. Alabama, 82 S. Ct. 147; Escobedo v. Illinois, 84 S. Ct. 1758. **Miscarriage of Justice** and the "incriminating statement" were strictly violative. U.S. v. Wade, 87 S. Ct. 1926.

SELF-INCRIMINATION and the **RIGHT TO PRIVACY** are guaranteed and is **DEMANDED**. U.S.C.A. 5, 6, 14. **CASE LAW**, *Supra*. Sharp v. Rolling, 793 F.3d 1216 (10th Cir.); Miranda v. Arizona, 86 S. Ct. 1602; U.S. v. Wade, 87 S. Ct. 1926; Gilbert v. California, 87 S. Ct. 1951; Gideon v. Wainright, 83 S. Ct. 792; Escobedo v. Illinois, 84 S. Ct. 1758, *Supra*. The utterance "server room" should have been suppressed. **FRUITS OF THE POISONOUS TREE** should have been GRANTED and evidence suppressed as **ABOVE STATED:** Franks v. Delaware, 98 S. Ct. 2674; Wongsun v. U.S., 83 S. Ct. 407; Mapp v. Ohio, 81 S. Ct. 1684.

GROUND 6:

A) The evidence, pornography, child pornography and picture images should have been suppressed. **B)** The evidence should have been suppressed. **C)** The Fruits of the Poisonous Tree was severely violated.

FACTS:

GROUNDS 1, 2, 3, 4, 5, above are invoked here as stated above. The police kept Petitioner in custody for 2 to 3 hours and applied their abuse upon him and his employer-business owner Ms. Fitch. There were clear threats to Petitioner, to the business owner, and to the business operations. Ms. Fitch was so horrified that she had a breakdown and cried! No *Miranda* warnings whatsoever were ever issued. The police kept pounding their demand to search even outside in the freezing Oklahoma weather. Petitioner was not allowed to wear his coat, have restroom access, or to speak with his employer about what he should do to prevent the business from being intruded without a warrant. The police promised both Petitioner and Ms. Fitch they would proceed in ransacking the business, all of which would get Petitioner fired and the reputation of the business would be destroyed.

The Petitioner and Ms. Fitch, who were kept separated, suffered extreme humiliation and embarrassment from the police insults, intimidation, and ridicule! On top of all this, Petitioner, who could feel the detective's breath on his face from the closeness of the interrogation, was forced to utter two words, "server room", which was never uttered as permission to search, even without a search warrant. Petitioner's utterance was **NEVER CONSENT OR PERMISSION TO SEARCH AND SEIZE.**

The business server room was an internally-located secured area of the workplace that was not public accessible or even in plain view to anyone without administrative clearance and access privileges. No one had access to the server room except on a limited need basis or with permission. All access doors were kept locked. By fabrication, police told Ms. Fitch "he said [it] is in the server room, and I need to go in and get

it". Ms. Fitch **NEVER CONSENTED** to the detectives desire to look around, search, and seize and item. Because of the detective's twisted words, she testified in court that she acquiesced and unlocked the server room door. The police then went searching inside the server room among a plethora of computer server equipment and stored items and eventually settled on seizing a computer bag (the first one he found) which was stored on a high shelf behind a box with other parts and equipment.

The detective did not attempt to verify the ownership of the computer bag and its contents with Petitioner to verify ownership to the Petitioner or to the business. He seized the computer bag and exited the server room and entered, without permission, *another part* of the business and confiscated Petitioner's cell phone from his office desk even without permission of Ms. Fitch. The seized equipment and sensitive technology-based data was taken from the workplace and transported by Stillwater Police to the Stillwater Police Department, and not to the original jurisdiction of Perkins, Oklahoma [17 miles away] where the Stillwater Police Detectives were assisting Perkins Police and Iowa Tribal Police in searching Petitioner's residence by means of a defective search warrant.

Having found no illegal material on the seized Acer laptop computer, the Stillwater Detective then proceeded to use his department's own forensic equipment and software to compile a Microsoft Word* document said to contain child pornography images that they could submit to the court as evidence of child pornography. **THE POLICE ADMITTED AND CONCEDED TO IN COURT.** Petitioner did not know, nor has ever seen or been allowed to object to the document of images presented to the court!

Petitioner MOVES to the Court to **GRANT CERTIORARI and REVERSE** holding that any and all evidence should have been suppressed pursuant to the aforesaid. **GROUNDS 1 – 5**, *Supra.* Self-incrimination. Right to counsel. The Fruits of the Poisonous Tree doctrine. U.S.C.A. 1, 4, 5, 6, 14; Jackson v. Deno, 84 S. Ct. 1774; Arizona v. Roberson, 108 S. Ct. 2093; Schnedkloth v. Bustamonte, 93 S. Ct. 2014; Simpson v. Jackson, 615 F.3d 421; Sharp v. Rolling, 793 F.3d 1216 (10th Cir.); U.S.A. v. Gomez, 269 F.3d 1023.

INVOLUNTARY COERCED CONFESSIONS are strictly violated and **DEMANDS SUPPRESSION** of any and all evidence seized and/or obtained pursuant to U.S.C.A. 1, 4, 5, 6, and 14; Miranda v. Arizona, 86 S. Ct. 1602; Lilly v. Virginia, 119 S. Ct. 1887; Arizona v. Fulmanante, 111 S. Ct. 1246; Arizona v. Roberson, 108 S. Ct. 2093; Florida v. Royer; 400 U.S. 491; Miller v. Fenton, 106 S. Ct. 445; U.S. v. Revels, 510 F.3d 1269 (10th Cir.); U.S. v. Griffin, 7 F.3d 1512 (10th Cir.); U.S. v. Sawyer, 441 F.3d 890 (10th Cir.); U.S. v. Harwood, 470 F.2d 322 (10th Cir.).

(* or similar software)

: Franks v. Delaware, 98 S. Ct. 2674; U.S. v. Harwood, 470 F.2d 322 (10th Cir.); Wongsun v. U.S., 83 S. Ct. 407; Mapp v. Ohio, 81 S. Ct. 1684, *Supra.*

GROUND 7: IN RE: DOUBLE JEOPARDY VIOLATIONS:

Double Jeopardy was strictly violated by **STACKING** images of child pornography **ONE ON TOP OF THE OTHER! MULTIPLICITY** of child pornography images arising out of the **SAME** offense, **SAME** scheme, **SAME** transaction, **SAME** occurrence, from a **SINGLE** picture image is unconstitutional and violative to the constitution.

FACTS:

The police created the pictures of which they admitted [in court]in doing. They were looking specifically for one hundred (100) or more images so they could, by Oklahoma Statute 21 § 1040.12(A), charge Petitioner with "Aggravated Possession of Child Pornography". The police created **THEIR OWN IMAGES** by wrongfully assessing the pictures to Petitioner from a **SINGLE** act and occurrence! The police counted the pictures **SEPARATELY**. One (1) page, one (1) disc, One (1) page/sheet containing 100 images on the **SAME/PAGE SHEET**! Not one (1) count, but one hundred (100) counts/images – 100 changes – **STACKING** the picture images one on top of the other – multiplicity out of a **SINGLE** act or occurrence and charged Petitioner individually, which offends double jeopardy prohibitions and due process.

Petitioner MOVES the Court to **GRANT CERTIORARI and REVERSE** pursuant to U.S.C.A. 5, 14; U.S.C.A. 1, 14; **SAME** offense, **SAME** scheme, 810 P.2d 1298; **SAME** offense, **SAME** scheme, 755 P.2d 105; **SAME** offense, **SAME** scheme, 747 P.2d 312; **SAME** offense, **SAME** scheme, 358 P.3d 280!

STACKED, MULTIPLICITY charges and offenses out of the **SAME** act, **SAME** transaction is strictly violative! **SINGLE** offenses. **SAME** scheme violates double jeopardy DEMANDING RELIEF pursuant to U.S. v. Parra, 2 F.3d 1058 (10th Cir.); U.S. v. Martinez, 16 F.3d 1101 (10th Cir.); U.S. v. Xavier, 2 F.3d 1281; Williams v. Singletary, 78 F.3d 1510; Brown v. Oklahoma, 177 F.3d 577 – (Oklahoma!)

DUPLICATE offenses is violative. U.S. v. Frazier, 89 F.3d 1501; U.S. v. Dunford, 148 F.3d 385; U.S. v. Prestenbach, 230 F.3d 780; U.S. v. Podell, 869 F.2d 328; Mansfield v. Champion, 992 F.2d 1098 (10th Cir.); Oklahoma Constitution, Article II, Section 21; 11 O.S. 27-127; 22 O.S., §815.

MULTIPLICOUS counts, act, out of one, a **SINGLE** transaction is prohibited! U.S. v. Morris, 247 F.3d 1090 (10th Cir.). **SINGLE OFFENSES ONLY!** Hayes v. Fairwell, 482 F.Supp.2d 1180. Petitioner MOVES the Court to **DECLARE THE STATUE UNCONSTITUTIONAL.**

GROUND 8:

Petitioner is entitled to RELIEF due to others – **SOMEONE ELSE, OTHER THAN PETITIONER** – may have committed the offense.

FACTS:

With regards to Petitioner's torn up, defunct non-working cell phone-equipped laptop computer, cell phone, and stored sensitive data, **PETITIONER PROVED AND EVEN THE STATE'S EXPERT WITNESS CONCEDED** that: multiple **OTHERS, OTHER THAN PETITIONER** used and **HAD ACCESS** to said torn up computer equipment, whom may have put the material on the hard drive! However, said computer was in a storage room inside a storage bag and behind a box and **computer was NOT BEING USED!** Petitioner did not see nor know about any child pornography images and, still to this day, has not ever seen, reviewed, or been presented inspection of evidence of images the Stillwater Police Detective created, compiled, and submitted to the Court. Petitioner submitted to the lower court's verification of same. Court Transcripts clearly read that the State's Expert Witness referred to "any user" on the internet, meaning "others", "Someone else", "somebody", "another resident", "Other people", or "whoever" was sharing the suspect video file on the "Wireless" P2P network. **ACTUAL INNOCENCE IS PLED!**

Petitioner MOVES the Court for the Writ of Certiorari be **GRANTED** pursuant to U.S.C.A. 5, 6, 14; Banks v. Reynolds, 54 F.3d 1508 (10th Cir.). The lower courts ignored and disregarded Williamson v. Reynolds, 904 F.Supp.1529 (Oklahoma!); Williamson v. Ward, 110 F.3d 1508 (10th Cir.); Mitchell v. Oklahoma, 136 F.3d 671; Henderson v. Sargent, 926 F.2d 706 Aff'd 939 F.2d 586; Driskoll v. Delo, 71 F.3d 701; Foster v. Delo, 71 F.3d 701; Foster v. Delo, 54 F.3d 463; Toney v. Gammon, 79 F.3d 693; Dorsey v. Irvin, 56 F.3d 425; Jones v. Wood, 114 F.3d 1002; Harris v. Artus, 288 F.Supp.2d, 126 S. Ct. 1727; Skinner v. Switzer, 131 S. Ct. 1289; Cherrix v. Braxton, 131 F.Supp.2d 756.

GROUND 9:

A) Exhaustion was satisfied. **B)** The 10th Circuit Court should have entertained Petitioner's claim action even the claims were non-exhausted and **FUTILE.**

FACTS:

Petitioner moved the 10th Circuit Court by specific Motion to entertain his non-exhausted claims of actual innocence, factual innocence; jury violations, police/prosecutorial misconduct violations due to, among other reasons, any return to the State Court(s) would be out of time as well as **FUTILE!** No remedies available which include miscarriage of justice violations, constitutional violations, etc., and interest of justice.

Petitioner MOVES the Court to GRANT CERTIORARI AS **FUTILE** pursuant to: U.S.C.A. 5, 6, 14; 28 U.S.C. 2254; Rhroden v. Morgan, 846 F.Supp.598; Buck v. Davis, 137 S. Ct. 759; Trevison v. Thaler, 133 S. Ct. 1911. **FUTILE, lack of remedies**: Clayton v. Gibson, 199 F.3d 1162 (10th Cir.); Williams v. Jones, 571 F.3d 1086; Sena v. New Mexico, 109 F.3d 652 (10th Cir.); Banks v. Reynolds, 54 F.3d 1508 (10th Cir.). **CONSTITUTIONAL Violations**: Ward v. Jenkins, 613 F.3d 692; Hollis v. Davis, 941 F.3d 1471; Selzer v. Workman, 644 F.3d 984 (10th Cir.). MANIFEST INJUSTICE: Rockwell v. Yukins, 217 F.3d 421.

GROUND 10:

Due process was violated. Fairness was violative. Judicial proceedings were violative due to the Court's fixed, pre-fixed, pre-determinate, pre-made opinions, beliefs, bias, and prejudice. Judicial conflict of interest.

FACTS:

The Court, District Attorney/Prosecutor, and Petitioner's paid Lawyer(s) had their own meetings and discussions in Chambers with the Judge and (among one another) to discuss Petitioner's fate! None would ever allow the Petitioner to see, review, or object to the material(s) submitted in court alleged to be evidence of child pornography – even at Petitioner's sentencing! In the 10th Circuit Court's Report and Recommendation, **ALL PARTIES OF THE COURT REFUSED TO REVIEW** or even look at Petitioner's **EVIDENCE** and **PETITIONER'S TABLE OF EXHIBITS, VOLUME I – VOLUME IV.** This was deliberate DENIAL to access of evidence, an impartial tribunal, and access to the courts. The State Trial Judge presided over multiple hearings and proceedings sealed the alleged pornographic images. Petitioner's paid Lawyer *sold him out*, betraying and deceiving him. The Judge, the District Attorney, and all Counsel had already made up their minds on what sentence to give Petitioner. Script writing, play writing Petitioner's fate! Fixed! Pre-made! Pre-fixed! See, O.S.Supp.2017 5, Ch. 1, App. 3-A, Rule 7.1.

Petitioner MOVES the Court for CERTIORARI GRANTED pursuant to: U.S.C.A. 5, 6, 14; 28 U.S.C. 2254; Tummey v. Ohio, 47 S. Ct. 437; 20 O.S. § 1401; Oklahoma Constitution, Article III, Section 6; U.S. v. Young, 105 S. Ct. 1038; Bracy v. Gramley, 117 S. Ct. 1793; Irvin v. Dowd, 81 S. Ct. 1639; Murphy v. Florida, 95 S. Ct. 2031. Petitioner asks for **SAME**.

GROUND 11:

Petitioner submits to the Court that he was entitled to a hearing over the miscarriage of justice, judicial violations, procedure violations, constitutional violations, A.E.D.P.A. standards violations. Refusal to consider the Records or Petitioner's evidence and **PETITIONER'S TABLE OF EXHIBITS, VOLUME I – VOLUME IV** to expand the Record, to substantiate the Grounds for Relief, Judges wrongful decision.

Facts and evidence remain in dispute! Unsettled! There are search and seizure violations. Petitioner was harmed by Ineffective Trial and Appellate Counsel. There were Suppression of Evidence violations, lack of fairness in State Courts and Federal Court. There was Police abuse, arbitrariness, in their exceeding their scope. The Police created, generated their own manufactured evidence. There are violations of actual-factual innocence, cause, prejudice, and procedural bar violations.

Petitioner MOVES the Court to GRANT CERTIORARI pursuant to **28 U.S.C. 2254**; **U.S.C.A. 4, 5, 6, 14**; **Ford v. Parratt**, 673 F.2d 232; **Ford v. Wainwright**, 106 S.Ct 2595; **Keeney v. Reyes**, 112 S.Ct. 1715; **Parks v. Delo**, 33 F.3d 933. **Townsend v. Sain**, 83 S.Ct. 745. **Miscarraige of Justice**; **Medias v. Barnes**, 71 F.3d 1308 (10th Cir.); **Miller v. Champion**, 161 F.3d 1249 (10th Cir.); **Church v. Sullivan**, 942 F.2d 1501 (10th Cir.); **Osborne J. Shillinger**, 861 F.2d 612 (10th Cir.); **Cannon v. Mullin**, 383 F.3d 1152 (10th Cir.). **Martinez v. Collins**, 979 F.2d 1067. **Jamison v. Lockhart**, 975 F.2d 1377.

GROUND 12: INEFFECTIVE ASSISTANCE OF RETAINED COUNSEL VIOLATIONS

FACTS:

Petitioner, in good faith, paid his lawyer in full! Petitioner asked the lower Courts for pro se special review of unexhausted/non-exhausted claims, *Supra*. Plain Error Review was ignored and disregarded in lower Courts.

Counsel failed to:

a. adequately review and examine the Original Record for errors and violations.

b. adequately investigate Petitioner's case into its entirety.

c. investigate **OTHERS**!, and **WHO ELSE** did have access to, and used, the cell phone-enabled laptop computer, cell phone, equipment, and stored data without Petitioner's knowledge and consent which includes, but is not limited to, the **WIRELESS NETWORK**, including Hackers, etc., all of which the Record satisfied, verified and supported.

d. failed to be prepared for the Preliminary Hearing.

e. failed to notice and act upon blatant errors and violations in the case and the **SEARCH WARRANT** entity that is not even connected to the case entity.

f. *Miranda* violations, *Supra*.

g. failed to Discover the **SEARCH WARRANT** defectiveness and violations of Petitioner's home.

h. failed to secure, use and consult with experts and expert witnesses.

i. failed to effectively communicate with and consult with Petitioner, which Counsel was retained-paid to do!

j. failed to properly question the State's expert witness challenging Stillwater Police Detective Miller.

k. failed to inform the Court where Petitioner was charged-indicted under the **WRONG STATUTE** failing to adequately and diligently challenge same and failing to challenge Prosecution's case to a full, fair and meaningful adversarial challenge and testing.

l. failed to challenge the incriminating statement(s), self-incriminating statement(s).

m. failed to challenge the **STATE'S OWN WORK PRODUCT** by wrongfully assessing child pornography to Petitioner that is not even his!

n. failed to challenge Police planting evidence on Petitioner which likely belonged to **OTHERS, SOMEONE ELSE**, *Supra*, pictures, images, material, etc. The Police assess "Any User" and downloaded what they could pull up which is not even mine! NOTE: Petitioner's computer, laptop, cell phone data was torn up and not even workable! It was in storage in a secure area.

: **NO MATERIAL OR PORNOGRAPHIC IMAGES FOUND ON THE COMPUTER!!!**

Petitioner MOVES for CERTIORARI BE GRANTED pursuant to: **U.S.C.A. 6, 14**; **U.S.C.A. 4, 5, 14**. It is DEMANED that Counsel, retained or otherwise, put Prosecutor's case to a full, fair and meaningful adversarial testing and challenge which highly prejudiced with passion Petitioner due to Counsel's deficient performance. **Strickland v. Washington**, 104 S.Ct. 2052; **Hunter v. Moore**, 304 F.3d 1066; **Lufkins v. Solem**, 716 F.2d 522.

Deficient performance failing to challenge the evidence and exactly pin-pointing how, where, and exactly from who the evidence was obtained. Hadley v. Groose, 97 F.3d 1322; Dorsey v. Kelly, 112 F.3d 50; Jones v. Wood, 114 F.3d 1002; Cheung v. Maddock, 32 F.Supp.2d 1150. Factual-actual innocence. Hart v. Gomez, 174 F.3d 1067; Scientific entities. House v. Balcom, 725 F.2d 608; Thomas v. Lockhart, 738 F.3d 304. Failure to consult with and have a working relationship with work product with the Petitioner is extremely violative. Crandall v. Barnes, 144 F.3d 1213.

It is DEMANED that Counsel develop evidence to Petitioner's behalf especially evidence that helps and develops actual innocence. Soffar v. Dretke, 368 F.3d 441.

IN RE: EXPERTS: Scientific experts that made the outcome of the Case In Chief different. **CHALLENGE** the defunct computer, laptop, cell phone and stored data, the Detective's procedure, the websites he used, the material he downloaded, the [18] files, none of which is Petitioner's, the "Any Users" the Detective testified that he used to download evidence from, the wireless setup, the hacking, and what the Detective testified that he downloaded and what **HE WANTED TO DOWNLOAD!** The wireless setup, the hacking, the examination of hard drives! All from a junked, torn up, non-working computer, computer parts, etc! **Grounds 1, 2, 3, 4, 5, 6,** *Supra.*

Petitioner MOVES for CERTIORARI RELIEF to this issue pursuant to **U.S.C.A. 4, 5, 6, 14**. **Paine v. Massie, 339 F.3d 1194 (10th Cir.)**; **Sims v. Livesay**, 970 F.2d 1575; **U.S. v. Smithers,**

212 F.3d 306; **U.S. v. Tarricone**, 996 F.3d 1414; **Dando v. Yukins**, 461 F.3d 91; **Davel v. Hollins**, 261 F.3d 210; **Richter v. Hickman**, 578 F.3d 944; **Duncan v. Ornoski**, 528 F.3d 1222; **Miller v. Anderson**, 1255 F.3d 455; **Richey v. Bradshaw**, 498 F.3d 344; **Schell v. Witek**, 181 F.3d 1094; **U.S. v. Crisp**, 324 F.3d 26; **Egie v. Yukins**, 485 F.3d 364. Computers. **Gersten v. Senkonski**, 466 F.3d 588; **Ake v. Oklahoma**, 105 S.Ct. 1087; **U.S. v. Tarricone**, 996 F.3d 1414; **U.S. v. Barnes**, 687 F.2d 659; **Bell v. Miller**, 500 F.3d 149; **Collier v. Turpin**, 155 F.3d 1277; **Toney v. Gammon**, 79 F.3d 693.

GROUND 13: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

FACTS:

Petitioner's Appellate Counsel only raised three (3) Appellate Grounds for Relief on the Direct Appeal. 1) Suppression of Evidence, 2) Double Jeopardy, 3) 85% Sentence was improper. Appellate Counsel writes the law in 2A Vernon's Law Okla. Forms 2d, Section 1.6, Child Pornography, which is no excuse for what he did for Petitioner. O.S. Supp. 2017 5, *Supra*.

Appellate Counsel failed to:

a. adequately review and examine the Original Record for errors and violations.

b. challenge Trial Counsel Ineffectiveness.

   i. investigate **OTHER** users, **OTHER** person's access to the hardware, *Supra*.

   ii. lack of preparedness-readiness for the Preliminary Hearing.

   iii. object to search warrant violations.

   iv. discover when the search warrant was issued for Petitioner's residence in Perkins, Oklahoma.

c. challenge the Trial Counsel's failure to secure experts – expert witnesses.

d. challenge Trial Counsel's inability to communicate with Petitioner.

e. challenge Trial Counsel's questioning of the State's Expert Police Detective witness.

f. challenge that Petitioner was tried under the wrong Oklahoma Statute / Indictment.

g. to Appeal the Denial of Suppression Motion.

h. raise the illegality of the warrantless search, seizure, circumstances surrounding same.

i. failure to properly argue double jeopardy violations.

j. challenge the conviction and the Case In Chief.

Failing to raise grounds for relief highly and severely prejudiced Petitioner of which Certiorari should be GRANTED pursuant to: **U.S.C.A. 6, 14**; **U.S.C.A. 4, 14**; **U.S.C.A. 5, 14**. **Logan v. State**, 293 P.3d 969; **Jones v. Cowley**, 28 F.3d 1067 (10th Cir.); **Abels v. Kaiser**, 913 F.3d 821 (10th Cir.); **Cargle v. Mullins**, 317 F.3d 1196 (10th Cir.); **Loveland v. Hatcher**, 231 F.3d 640; **U.S. v. Witherspoon**, 231 F.3d 293; **U.S. v. Galloway**, 56 F.3d 1239 (10th Cir.); **Maples v. Coyle**, 171 F.3d 408; **Del Valle v. U.S.**, 497 F.Supp.2d 346; **Showers v. Beard**, 635 F.3d 625; **Sanders v. Cotton**, 398 F.3d 572; **Maples v. Tate**, 388 F.3d 187; **U.S. v. Reinhart**, 357 F.3d 521.

SUPREME COURT PRECEDENT: **Pursuant to : Glover v. U.S.**, 121 S.Ct. 696; **Evitts v. Lucy**, 105 S.Ct. 830; **Anders v. California**, 87 S.Ct. 1396.

GROUND 14:

Stone v. Powell was misapplied, wrongfully and incorrectly applied.

FACTS:

The Court Ruled that **Stone v. Powell** barred and banned Petitioner from any type or kind of Relief whatsoever to, among other reasons, the claims were adjudicated on its face, in the State Court. That: the 4th Amendment claims were barred. That: the litigation in State Court was "fair" proceedings.

For this reason, Petitioner MOVES this Court to REVERSE and INTERVENE due to: the lower Court proceedings were not fair! Petitioner did not receive proper nor adequate Review. He

did not receive a full, fair and meaningful opportunity to colorize, ripen or mature the claims. His Post-Conviction proceedings and appeal were unfair!

A miscarriage of justice occurred. Actual-factual innocence was not considered. The Police planted evidence on Petitioner, downloading a creating the child pornography images and material that were not even Petitioner's. **OTHERS** were involved, *Supra*. There was hacking! "Any User" was relied on by Stillwater Police Detective to acquire child pornography evidence to use for arrest and conviction. There were constitutional violations, Ineffective Trial and Appellate Counsel, interest of justice, and 4th Amendment claims in artfully pled and in artfully argued! The proceedings were biased, prejudiced. There was prosecutorial misconduct. There were never any Hearings on Post-Conviction Relief. The Direct Appeal was deficient. There were *Miranda*, self-incrimination, right to counsel violations. There was coerced confession, duress, involuntariness violations. Bullying. The lower Courts ignored and disregarded the aforesaid which made the proceedings unfair.

Stone v. Powell should have been waived and my case should have gone forward and with a Hearing and with appointment of Counsel for same. Due Process was violated!

GROUND 15:

The Trial Court held Petitioner's Pro Se petition actions and pleadings to the more harsh, stringent, too harsh, too hard of Pro Se standards of review.

FACTS:

Petitioner, at all times mentioned herein, was Pro Se and the lower Courts were obviously too hard, too complicated, too harsh, too stringent where Petitioner is a certified layman! Pro Se. The only help and assistance that I received is from other prisoners. My money is drained due to my previously retained street lawyers! I can't afford more lawyers. I can only submit my case the best

that I can. It is like the blind leading the blind. There has been no Pro Se leniency or special treatment whatsoever.

Petitioner MOVES the Court to GRANT CERTIORARI due to the lack of Pro Se leniency, special privileges, special treatments pursuant to **U.S.C.A. 4, 5, 6, 14**; **Holland v. Florida**, 130 S.Ct. 2549; **Haines v. Kerner**, 404 U.S. 519; **U.S. v. Wynn**, 292 F.3d 226; **Waldron v. Jackson**, 348 F.Supp.3d 877; **Galdindo v. Johnson**, 19 F.Supp.2d 697.

GROUND 16: EX POST FACTO

Protections and Safeguards were violated in Petitioner's charges and sentencing.

FACTS:

Petitioner was sentenced to Oklahoma Statutes enacted **AFTER** the fact. The 85% Rule in this case violated Petitioner's Liberty Interest in earned credits as well as parole. 85% crime assessments were not **SPECIFIALLY ENUMERATED** in Oklahoma Title 21 O.S., § 13.1 until **AFTER** November 1, 2017, five (5) years **AFTER** Petitioner's alleged crime occurred. Petitioner's crime was not specifically listed in Section 13.1 and did not apply to Petitioner at all.

REMAND for RE-SENTENCING was DEMANDED!

No 85% sentence enhancement assessments existed nor were enacted at the time of Petitioner's case entity. Only **AFTER** finality did it exist on § 13.1, not until **SEVERAL YEARS AFTER** finality did the 85% Rule come into law! **21 O.S., § 13.1**; **22 O.S., § 12.1**.

Petitioner MOVES the Court to GRANT CERTIORIARI on **EX POST FACTO** violations and REVERSE pursuant to: **U.S.C.A. 1, 4, 5, 6, 14**; **U.S.C.A. Article 1, Section 9, cl. 3**, Petitioner is shielded from arbitrary New Law Enactments as well as Due Process Protections and Safeguards. **Kellogg v. Shoemaker**, 46 F.3d 503; Change is strictly violative. **Smith v. Scott**, 223 F.3d 1191 (10th Cir.); **Fender v. Thompson**, 883 F.2d 303. **AFTER** the fact is strictly violative. **Fleming v. Oregon**, 998 F.2d 721.

DISADVANTAGE! violates Ex Post Facto law enactments! **Lynce v. Mathis**, 117 S.Ct. 891; **Mickens v. Vaughn**, 321 F.3d 374; **Dyer v. Bowlen**, 465 F.3d 280. Prejudicialness strictly violative, unconstitutionality

violative! **Hunter v. Ayers**, 337 F.3d 1007; **Fletcher v. Reilly**, 433 F.3d 867. **Miller v. Florida**, 107 S.Ct. 2246!

: **MORE HARSHER LAWS** violate Ex Post Facto and **INCREASED – ENHANCED PUNISHMENT!** **Wilkinson v. Dodson**, 125 S.Ct. 1242, which cannot be increased. **Peugh v. U.S.**, 509 U.S. 530. **Miller v. Florida**, 107 S.Ct. 2246! Lindsay v. Washington, 15 S.Ct. 797; **Gall v. Parker**, 231 F.3d 265; **Weaver v. Graham**, 101 S.Ct. 960; **Dyer v. Bowlen**, 465 F.3d 280; **Mickens v. Vaughn**, 321 F.3d 374; **Mickens v. Board**, 699 P.2d 792.

GROUND 17:

The lower Courts wrongfully applied parole review.

FACTS:

The Federal District Court and Tenth Circuit Court Ruled that Petitioner has "no federal due process rights in the parole or parole process" – no liberty interest in parole eligibility.

For this reason, Petitioner MOVES the COURT to GRANT CERTIORARI and INTERVENE Ruling that: Petitioner does have **LIBERTY INTEREST** Due Process Protection and Safeguard in parole, parole review and release, and, earned credits, fairness and judicial review and explanations pursuant to **Gordon v. Parole Board**, 175 P.3d 461. Arbitrary violations. **Caston v. Parole Board**, 200 P.3d 772; **Jenkins v. Parole Board**, 309 P.3d 1115. Conduct. **Hearn v. Nelson**, 496 F.Supp.1111; **McQuillion v. Duncan**, 306 F.3d 895.

A **LIBERTY INTEREST** in **EXPECTATIONS.** **Board v. Allen**, 107 S.Ct. 2415; **Franklin v. Shields**, 569 F.2d 784. False information. **James v. Robinson**, 863 F.Supp.275. Due Process Protections. **Young v. Harper**, 117 S.Ct. 1148. States created a **LIBERTY INTEREST**, **Sandlin v. Conner**, 115 S.Ct. 2293; **Bermundez v. Duenes**, 936 F.2d 1064. "Possibility" of parole created a **LIBERTY INTEREST. U.S.C.A. 5, 14; Scott v. Board**, 669 F.2d 1185; **Harvey v. Horan**, 285 F.3d 298. Arbitrariness violations. **Hawkins v. Freeman**, 166 F.3d 267. Due Process Protection in "**EXPECTATIONS**" to parole as well as earned credits. **Greenholtz v. Nebraska**, 442 U.S. 1; **McQuillion v. Duncan**, 306 F.3d 895. Fair decisions. **Black v. Potter**, 631 F.2d 233; Race. **Candelaria v. Griffin**, 641 F.3d 868 (10th Cir.). Capriciousness.

Gambino v. Morris, 134 F.3d 156. Miscarriage of justice protections. **Jennings v. Virginia**, 34 F.Supp.2d 375.

LIBERTY INTEREST in State Law. **Sandlin v. Conner**, 115 S.Ct. 2293; **Whitford v. Boglino**, 63 F.3d 527; **Wilkinson v. Austin**, 125 S.Ct. 2384; **Huston v. Doings**, 960 F.2d 718; **Neal v. Martinez**, 131 F.3d 818.

GROUND 18: EXHAUSTION WAS VIOLATIVE

FACTS:

Petitioner, on its face, tried to raise claims in the Trial Court and in the Federal District Court and in at the Tenth Circuit Court of Appeals. Petitioner moved the Court to waive the exhaustion which the lower Courts ignored and disregarded. Pro Se leniency should have been allowed, but the lower Courts held Petitioner's Pro Se actions to the more stringent standards of review, *Supra*; *Miranda*, double jeopardy, lack of available remedies, above stated. Including defectiveness, constitutional violations, miscarriage of justice, lack of State and Federal corrective process, procedural bar violations, manifest injustice, and plain error review, *Infra*.

Petitioner MOVES the Court to GRANT CERTIORARI pursuant to **U.S.C.A. 4, 5, 6,14**; **28 U.S.C. 2254 (C)(b)(1)**. **Wallace v. Cody**, 951 F.2d 1170 (10th Cir.); **Harris v. Champion**, 15 F.3d 1538 (10th Cir.)!

Defectiveness: **Trevino v. Thaler**, 133 S.Ct. 1911. **Rhoden v. Morgan**, 846 F.Supp. 598!

All relevant facts still have not been determined. Facts are still in dispute. Police and Prosecutorial misconduct. Constitutional violations, State and Federal. **Satterlee v. Wofenbarger**, 453 F.3d 362; **Sturgeon v. Chandler**, 552 F.3d 604. Due Process Protections and Safeguards. **Grass v. Reitz**, 643 F.3d 579; **Pope v. DOC**, 680 F.3d 1271. Pro Se leniency, *Supra*. **Hollis v. Davis**, 941 F.2d 1471. Futile! **Selsor v. Workman**, 644 F.3d 984 (10th Cir.). **28 U.S.C. 2254 (b)(1)(b)(ii)**; **Allen v. AG**, 80 F.3d 569.

Procedural Bar, *Infra*, and Time Bar excuses exhaustion. **Grey v. Hoke**, 933 F.3d 117; **Slutzker v. Johnson**, 393 F.3d 373; **Franklin v. Johnson**, 290 F.3d 1223. Manifest Injustice. **Rockwell v. Yukins**, 217 F.3d 421.

Statute of limitations problems and lack of remedy availability waives exhaustion. **Sena v. New Mexico**, 109 F.3d 652 (10th Cir.); **Banks v. Reynolds**, 54 F.3d 1508; **Clayton v. Gibson**, 199 F.3d 1163 (10th Cir.); **Williams v. Jones**, 571 F.3d 1086.

GROUND 19:

a. Petitioner should not have been procedural barred.

b. The procedural bar should have been waived and excused.

FACTS:

Petitioner did not receive fairness in the State and Federal Courts. a "very limited review", "very limited grounds". Such restrictiveness surely denied Petitioner Due Process and adequate Review of his actions seeking Redress. The Court Ruled that simply because claims were not raised on Direct Appeal he was procedurally barred and *res judicata* issues applied when it did not. The Court failed to consider Petitioner's Pro Se status, his Constitutional violations, special circumstances, Counsel violations and the Police and Prosecutorial misconduct. Procedural Bar should have been waived, but it was not. Actual and factual innocence should have also been considered. Appellate Counsel violations.

Petitioner MOVES the Court to GRANT CERTIORARI pursuant to:

i. Ineffective Assistance of Counsel and Appellate Counsel waives procedural bar and *res judicata*. **28 U.S.C. 2254**; **Buck v. Davis**, 137 S.Ct. 759; **Martinez v. Ryan**, 132 S.Ct. 1309.

ii. **The Supreme Court RULED that Procedural Bar, default, *res judicata* cannot stand simply because claims were not raised on Direct Appeal**, which also applies to Post-Conviction actions. Petitioner MOVES for same to be applied to him pursuant to **28 U.S.C. 2254**; **U.S.C.A. 4, 5, 6, 14**. Harris v. Reed, 109 S.Ct. 1038; **Massare v. U.S.**, 123 S.Ct. 1690; **Kaufman v. U.S.**, 89 S.Ct. 1068; **Johnson v. Munoy**, 830 F.2d 508; **Reed v. Ross**, 104 S.Ct. 2901; **Sena v. New Mexico**, 109 F.3d 652 (10th Cir.).

iii. Conflicts in the law. "Very limited review", "very limited grounds" for relief is extremely hamperous to Petitioner which should also waive procedural bar. Violations of the Constitution, due process violations. Miscarriage of justice. Interest of justice. Evidence and material facts

still in dispute. "Any Ground", "any common law" can be raised on Post-Conviction Relief. **22 O.S., § 1080 (A)(D)(f). Cooper v. Oklahoma**, 116 S.Ct. 1373; **Walker v. AG**, 167 F.3d 1339 (10th Cir.). Pro Se leniency should have been GRANTED, *Supra.* **Holland v. Florida**, 130 S.Ct. 2549. Flexibility. Too rigid standards. Pro Se special privileges. **U.S. v. Wynn**, 292 F.3d 226; **Richey v. Bradshaw**, 498 F.3d 344; **EGEi v. Yukins**, 485 F.3d 364.

iv. Miscarriage of Justice. The interest of justice. Actual-factual innocence. Constitutional violations, cause, prejudice, police and prosecutorial misconduct, which the Petitioner showed cause and how he was prejudiced as above stated. Procedural Bar should have been waived. Petitioner asks for same pursuant to **Murray v. Carrier**, 106 S.Ct. 2639; **Sanders v. U.S.**, 83 S.Ct. 1068; **Nickerson v. Roe**, 260 F.Supp.2d 875; **Shulp v. Delo**, 115 S.Ct. 851; **McQuiggin v. Perkins**, 133 S.Ct. 1924; **House v. Bell**, 126 S.Ct. 2064; **Dretke v. Texas**, 541 U.S. 386; **Statcher v. Netherland**, 944 F.Supp.1222; **Gravley v. Mills**, 87 F.3d 779; **Thomas v. Goldsmith**, 979 F.2d 746.

v. Ineffective Counsel and Ineffective Appellate Counsel waives Procedural Bar which cause and prejudice and defectiveness has been shown above-stated which Petitioner MOVES for RELIEF to this issue pursuant to the **CASE LAW**, *Supra.* **22 U.S.C. 2254. U.S.C.A. 5, 6, 14. Ford v. Georgia**, 111 S.Ct. 850; **Meeks v. Singletary**, 963 F.2d 316; **Ballinger v. Kerby**, 3 F.3d 1371 (10th Cir.); **English v. Cody**, 146 F.3d 1257 (10th Cir.); **Clemmons v. Delo**, 124 F.3d 944. **Roberts v. Sutton**, 217 F.3d 1337; **Banks v. Reynolds**, 54 F.3d 1508 (10th Cir.); **Robinson v. Ignacio**, 360 F.3d 1044; **Slutzker v. Johnson**, 393 F.3d 373.

GROUND 20: THE 10TH CIRCUIT COURT OF APPEALS SHOULD HAVE GRANTED PETITIONER'S SPECIAL REQUEST.

FACTS:

Petitioner submitted his special request Motion to the Court whom ignored and disregarded same.

i.) To declare Oklahoma child pornography newly enacted laws, unconstitutional. ii.) Actual, factual, innocence. Others accessed the junked-out, torn up cell phone-equipped laptop computer, cell phone and stored sensitive digital personal data. Others hacked, *Supra.* iii.) Evidence insufficiency. iv.) Police and prosecutorial misconduct. v.) Constitutional violations. vi.) Free speech protections and safeguards. vii.) Right to privacy. viii.) Unjustified government intrusions, abuse, arbitrariness, invasions.

Petitioner MOVES the Court for CERTIORARI GRANTED pursuant to: U.S.C.A. 5, 6, 14; 28 U.S.C. 2254; Rhroden v. Morgan, 846 F.Supp.598; U.S. v. Cabot, 325 F.3d 384; Barton v. State, S.E.2d 660; McDonald v. State, 548 S.E.2d 361; U.S. v. Kuchinski, 469 F.3d 853! U.S. v. Dobbs, 629 F.3d 1199 (10th Cir.)!

: Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389!; U.S. v. Stevens, 130 S. Ct. 1577; Kios v. Wisconsin, 92 S. Ct. 2254: Butler v. Michigan, 77 S. Ct. 524; Stanley v. Georgia, 89 S. Ct. 1243; Carey v. Population Services, 97 S. Ct. 2010.

GROUND 21: PLAIN ERROR REVIEW AND RELIEF PETITIONER WAS ENTITLED TO SHOULD HAVE BEEN GRANTED.

FACTS: Petitioner moved for Plain Error Doctrine Review and Relief due to, among other reasons as actual-factual innocence, miscarriage of justice, the interest of justice, constitutional rights violations. Fairness violations. Due process violations. Manifest injustice. A victim of the circumstance and situation. Prejudice, wrongful, inaccurate review and determinations. Unpreserved exhaustion violations. The lower courts ignored and disregarded same.

Petitioner MOVES the Court for CERTIORARI GRANTED pursuant to: U.S.C.A. 5, 6, 14; 28 U.S.C. 2254; U.S. v. Vonn, 122 S. Ct. 1043; U.S. v. Olano, 507 U.S. 725; Henderson v. U.S., 133 S. Ct. 1131; U.S. Mitchell, 1 F.3d 235.

GROUND 22: THE UNITED STATES DISTRICT COURT WRONGFULLY REVIEWED PETITIONER'S CASE UNDER THE A.E.D.P.A. STANDARDS OF REVIEW.

FACTS: The Magistrate Review was incorrect and prejudicial to Petitioner due to, among other reasons, the computer was junk, trash, torn up and non-working, and were subject to decisions contrary to clearly established federal law and an unreasonable determination from the facts presented, and the Petitioner's actual/factual innocence. Others accessed the seized computer. The computer was sitting in storage. Reasonable minds would disagree that Petitioner had sole access/use of computer equipment stored in the workplace server room that was seized by police. The police admitted in court that [he, Detective Miller] downloaded a [video] file of child pornography [a "file" from "any user" on the internet] from an unknown used on the internet to use as probable cause and as evidence to charge

and convict the Petitioner who knew absolutely nothing about it and had not even seen it, reviewed it, or even got a chance to object to it during Trial.

The Court ignored and disregarded **EVIDENCE** and **PETITIONER'S TABLE OF EXHIBITS, VOLUME I – VOLUME IV**, a lack of federal law presented which is no fault of Petitioner. Facts and conclusions wrong and inaccurate. A lack of full review and correctness. A lack of full review and correctness. A lack of a meaningful, fair and full opportunity to litigate his claims. *Miranda* warnings violations. Coercion, duress, forcefulness, bullying the Petitioner. Badgering the Petitioner. Self-incrimination by police intimidation violations. Due process and fairness violations. Right to privacy. The right to pornography. Action no frivolous. Length of detainment. Wrongful, violation interrogation, lack of challenge to scientific defunct non-working computer equipment and the websites/internet locations the police downloaded their probable cause evidence from. Expert violations. Testing. Technology testing. Police exceeded their scope. No exigent circumstances ever existed! Warrant violations. The State of Oklahoma conceded to: "**No Child Pornography Was Found On Computer!**" "No images found!" 85% Rule sentencing requirements. Ex Post Fact violations. Petitioner detainment for 2 to 3 hours!

Petitioner MOVES the Court for CERTIORARI GRANTED pursuant to: U.S.C.A. 5, 6, 14; 28 U.S.C. 2254; **i.)** unreasonable Review of Miranda v. Arizona, 86 S. Ct. 1602;* Counsel violations: Battlefield v. Gibson, 236 F.3d 1215 (10th Cir.); Hunter v. Moore, 304 F.3d 1066; Jones v. Wood, 114 F.3d 1002. **ii.)** clearly established federal law pursuant to, and unreasonable interpretation. Contrariness. Holley v. Yarborough, 568 F.3d 1091. Sex Cases. Taylor v. Maddox, 366 F.3d 992; Cudjo v. Ayers, 698 F.3d 792. **iii.)** which include Ineffective of Counsel violations. 28 U.S.C. 2254 (b)(1), (bii), (D)(1), (D)(2), (F); Wiggins v. Smith, 123 S. Ct. 2257; Rompilla v. Beard, 125 S. Ct. 2456; Smith v. Cain, 126 S. Ct. 2064; Caliendo v. Warden, 365 F.3d 691. **iv.)** Reasonable Jurist view, Counsel violations, *Supra.* O.S. Supp.2017 5, Ch. 1, App. 3-A, Rule 7.1: communications concerning a lawyer's services:

> "A lawyer shall not make a false or misleading communications about the lawyer of the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whiole not materially misleading."

Not procedurally barred. Buck v. Davis, 137 S. Ct. 759; Martinez v. Ryan, 132 S. Ct. 1309; Trevino v. Thaler, 1335 S. Ct. 1991. **v.)** state law cases only. No federal law cited. "Case cite quotes" which do not have to be listed to obtain relief with the "constitution". Can obtain relief in itself. Book versions do not have to be used. Picard v. Conner, 92 S. Ct. 509; Chacon v. Wood, 36 F.3d 1449; Daughtery v. Conner, 257 F.3d 750. **vi.)** the Magistrate Judge has a duty and obligation to review the Record into its entirety which included the evidence and Petitioner's **PETITIONER'S TABLE OF EXHIBITS, VOLUME I – VOLUME IV**, which clearly substantiated Petitioner's

(* Also, Anderson v. Terhune, 518 F.3d 781.)

Grounds for Relief which the Court ignored and disregarded. Such were files, reports, exhibits, details, evidence, and hearing! 28 U.S.C. 2254, Smith v. Cain, 132 S. Ct. 627.

GROUND 23: PETITIONER WAS DENIED FAIRNESS AND A FULL, FAIR, AND MEANINGFUL OPPORTUNITY TO OBTAIN RELIEF IN THE TENTH CIRCUIT COURT OF APPEALS DUE TO THE CASE CONFUSION AND MIX UP.

FACTS: Petitioner is PRO SE and a full layman. His time was running out. He was desperate to perfect and file his case due to over-stringent prison law library and prison mail system constraints and delays due to prison administrative rules and frequent lockdowns. Petitioner submitted a hand-written request for a Re-hearing, but, moved to an "extension of time" to get further help and assistance and perfect and submit the properly formulated and prepared En Banc Re-hearing to the Tenth Circuit Court which was granted on **February 2, 2019. APPENDIX B**, *Supra*. Re-hearing **disregarding** the Extension of Time. **APPENDIX C**. Petitioner even submitted a Motion to Clarify, Notice, Retraction Motion which was mailed in the prison mail system to the Tenth Circuit Court of Appeals on **March 17, 2019**. On **March 14, 2019**, the Clerk would not recall the mandate or act on the mistake made by the Court. **APPENDIX D**. The Court failed to Review Petitioner's supplemented Certificate of Appeallability (COA).

Petitioner MOVES the Court for GRANT CERTIORARI due to the Tenth Circuit Court's **MISTAKE** in failure to act on his properly submitted Re-hearing En Banc Review and related Motions which could have obtained RELIEF, making the outcome different and beneficial to Petitioner.

RELIEF

The United States Supreme Court REVERSE the Tenth (10th) Circuit Court of Appeals' Ruling and the United States District Court for the Western District of Oklahoma's Ruling, and **ORDER A HEARING WITH THE APPOINTMENT OF COUNSEL**.

CONCLUSION

The Petition for a Writ of Certiorari should be GRANTED.

Respectfully submitted,

(Resubmitted)

Garry Randall West

July 8, 2019
Date:

Garry Randall West, #173249
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