

H.R.H. Andrew J. Avitabile
c/o WDOC – 23916 – WHCC
P.O. Box 160
Newcastle, WY (Near) 82701
Non-Domestic; Non-Federal

ORIGINAL

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SUPREME COURT, U.S.

19-5880
Case No. _____

IN THE UNITED STATES SUPREME COURT

H.R.H. Andrew J. Avitabile,
(aka Larson by coercion only),
Petitioner,

vs.

WARDEN, WYOMING HONOR AND CONSERVATION CAMP (WHCC),
Respondent.

** All Parties to this litigation are contained within the above Caption. **

**PETITION FOR WRIT OF CERTIORARI ON STATE HABEAS
FROM THE WYOMING SUPREME COURT**

Questions Presented

- Q 1) What are the necessary components for the trial court to be complete and hold jurisdiction over a case and was Avitabile's trial court complete?
- Q 2) Does an actual conflict of interest create a situation in which constructive denial of counsel exists, requiring the case to be overturned?
- Q 3) Was Avitabile constructively denied counsel at trial by an attorney who worked to ensure a conviction for the prosecution?
- Q 4) Did the U.S. State Department ever revoke the exequatur from the Italian Royal Families?
- Q 5) Was the Wyoming State District Court capable of having jurisdiction over a European Royal without first contacting the US State Department and secondly transferring the case to Federal District Court to cure want of jurisdiction?
- Q 6) Did the Petitioner's Trial Court have jurisdiction over 1) the subject matter; 2) the person; 3) the location of the alleged crime?
- Q 7) Did Petitioner ever legally change his name to "Andrew J. Larson"?
- Q 8) Is Petitioner Andrew J. Avitabile or Andrew Larson; and what is the basis for that decision?
- Q 9) Is it constitutionally allowable for a State to pass a statute that presumes guilt and places the burden of proving innocence upon the defendant?
- Q 10) Is Wyoming Statute 6-2-311 unconstitutional and is Wyoming using this statute to convict innocent men of crimes they never committed?
- Q 11) Does the evidence show that the crime that Avitabile is accused of never occurred and should Avitabile be released because his guilty plea was coerced despite his being innocent?
- Q 12) Can the State of Wyoming or the Wyoming Supreme Court change the name of a litigant or the name in a caption without the consent of the parties involved without the litigant requesting his name be changed?

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Constitutional Provisions Involved

United States Constitution

United States Constitutional Amendment V

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitutional Amendment VI

Rights of the accused.

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 the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitutional Amendment XIV

Section 1. [Citizens of the United States.]

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.

Wyoming Constitution
Article 1. Declaration of Rights

§1. Power inherent in the people.

All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.

§2. Equality of all.

In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.

§3. Equal political rights.

Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

§6. Due process of law.

No person shall be deprived of life, liberty or property without due process of law.

§7. No absolute, arbitrary power.

Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

§8. Courts open to all; suits against state.

All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct.

§9. Trial by jury inviolate.

The right of trial by jury shall remain inviolate in criminal cases. A jury in civil cases and in criminal cases where the charge is a misdemeanor may consist of less than twelve (12) persons but not less than six (6), as may be prescribed by law. A grand jury may consist of twelve (12) persons, any nine (9) of whom concurring may find an indictment. The legislature may change, regulate or abolish the grand jury system. (As amended by Laws 1980, Senate Joint Resolution No. 1, p. 528.)

§10. Right of accused to defend.

In all criminal prosecutions the accused shall have the right to defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process served for obtaining witnesses, and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed. When the location of the offense cannot be established with certainty, venue may be placed in the county or district where the corpus delecti [delicti] is found, or in any county or district in which the victim was transported. (As amended by Laws 1975, Senate Joint Resolution No. 2, p. 474.)

§11. Self-incrimination; jeopardy.

No person shall be compelled to testify against himself in any criminal case, nor shall any person be twice put in jeopardy for the same offense. If a jury disagree, or if the judgment be arrested after a verdict, or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy.

§12. Detaining witnesses.

No person shall be detained as a witness in any criminal prosecution longer than may be necessary to take his testimony or deposition, nor be confined in any room where criminals are imprisoned.

§17. Habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion the public safety may require it.

§35. Ex post facto laws; impairing obligation of contracts.

No ex post facto law, nor any law impairing the obligation of contracts, shall ever be made.

§36. Rights not enumerated reserved to people.

The enumeration in this constitution, of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

§37. Constitution of United States supreme law of land.

The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land.

Statutory Provisions Involved
Model Penal Code

Model Penal Code 213.4. Sexual Abuse

A person is guilty of sexual abuse when the person:

- (a) Subjects another person to sexual contact (defined as any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party), and:
- (b) Does so without the consent of the other person.

GRADE: Misdemeanor or felony. The grading for sexual abuse increases from a misdemeanor to a felony if the sexual contact is achieved by forcible compulsion, the other person is incapable of consent by reason of being physically helpless, or the victim is a minor.

Model Penal Code 213.1. Rape

A person is guilty of rape when:

- (a) The person engages in sexual intercourse with a female (who is not his wife in most jurisdictions), and:
- (b) Compels the female to submit by force or threat of imminent death, serious physical injury, extreme pain, or kidnapping, to be inflicted on anyone, or
- (c) Has substantially impaired the female's power to appraise or control her conduct, by administering or employing without her knowledge drugs, intoxicants, or other means for the purpose of preventing resistance, or

The female is incapable of consent by reasons of being unconscious or physically helpless, or

- (d) The female is incapable of appraising the nature of her conduct by reason of a mental disease or defect or
- (e) The female is less than 10 years old.

The degree of felony may vary depending upon whether serious physical injury or the threat of serious physical injury occurred, the mental or physical status of the victim or the age of the victim.

Rape is a crime of violence and is often charged in conjunction with other crimes involving physical assault. While rape is generally viewed as a crime committed by males against females, there are state statutes that do not limit the victim to only one sex. Consequently, courts have affirmed rape charges when the victim is a male.

1 NOTE: Sexual Offenses.

The term sexual offenses includes numerous offenses. These offenses are defined by a variety of considerations, including the nature of the offenders conduct and the age or capacity of the victim. Statutes that address sexual offenses recognize that enhanced punishment is warranted when the victim is especially vulnerable.

When the offense involves a minor, some jurisdictions have comprehensive sexual offense statutes. One example is Maryland's Sexual abuse of a minor statute:

Maryland Statutes for Sexual abuse of a minor:

- (a) Definitions.
 - (1) In this section the following words have the meanings indicated.
 - (2) Family member has the meaning stated in 3-601 of this subtitle.
 - (3) Household member has the meaning stated in 3-601 of this subtitle.
 - (4) (i) Sexual abuse means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.
 - (ii) Sexual abuse includes:
 1. incest;
 2. rape;
 3. sexual offense in any degree;
 4. sodomy; and
 5. unnatural or perverted sexual practices.

(b) Prohibited.

- (1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.
- (2) A household member or family member may not cause sexual abuse to a minor.
- (c) Penalty. A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years.
- (d) Sentencing. A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for:
 - (1) any crime based on the act establishing the violation of this section; or a
 - (2) violation of 3-601 of this subtitle involving an act of abuse separate from sexual abuse under this section.

Wyoming Statute §6-2-301 et seq.

§6-2-301. Definitions.

- (a) As used in this article:
 - (i) Actor means the person accused of criminal assault;
 - (ii) Intimate parts means the external genitalia, perineum, anus or pubes of any person or the breast of a female person;
 - (iii) Physically helpless means unconscious, asleep or otherwise physically unable to communicate unwillingness to act;
 - (iv) Position of authority means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian, health care provider or any other person who, by reason of his position, is able to exercise significant influence over a person;
 - (v) Sexual assault means any act made criminal pursuant to W.S. 6-2-302 through 6-2-319;
 - (vi) Sexual contact means touching, with the intention of sexual arousal, gratification or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts;
 - (vii) Sexual intrusion means:
 - (A) Any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or
 - (B) Sexual intercourse, cunnilingus, fellatio, analingus or anal intercourse with or without emission.
 - (viii) Victim means the person alleged to have been subjected to sexual assault;
 - (ix) Health care provider means an individual who is licensed, certified or otherwise authorized or permitted by the laws of this state to provide care, treatment, services or procedures to maintain, diagnose or otherwise treat a patient's physical or mental condition;
 - (x) This article means W.S. 6-2-301 through 6-2-320.

§6-2-303. Sexual assault in the second degree.

- (a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:
 - (i) The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children, and the victim reasonably believes the actor will execute this threat. To retaliate includes threats of kidnapping, death, serious bodily injury or extreme physical pain;
 - (ii) The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;
 - (iii) The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;
 - (iv) The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;

(v) Repealed by Laws 2007, ch. 159, 3.

(vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit;

(vii) The actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system;

(viii) Repealed by Laws 2018, ch. 80, 3

(ix) The actor is an employee or volunteer of an elementary or secondary public or private school who, by virtue of the actors employment or volunteer relationship with the school, has interaction with the victim who is a student or participant in the activities of the school and is more than four (4) years older than the victim.

(b) A person is guilty of sexual assault in the second degree if he subjects another person to:

(i) Sexual contact or sexual intrusion in the persons capacity as a health care provider in the course of providing care, treatment, services or procedures to maintain, diagnose or otherwise treat a patients physical or mental condition;

(ii) Sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in W.S. 6-2-302(a)(i) through (iv) or paragraphs (a)(i) through (vii) and (ix) of this section.

(c) Repealed by Laws 1997, ch. 135, 2.

§6-2-306. Penalties for sexual assault.

(a) An actor convicted of sexual assault under W.S. 6-2-302 through 6-2-304 who does not qualify under the criteria of subsection (b) or (d) of this section shall be punished as follows:

(i) Sexual assault in the first degree under W.S. 6-2-302 is a felony punishable by imprisonment for not less than five (5) years nor more than fifty (50) years;

(ii) Sexual assault in the second degree under W.S. 6-2-303 is a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years;

(iii) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than fifteen (15) years;

(iv) Repealed by Laws 1997, ch. 135, 2.

(b) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, who has previously been convicted of any crime containing the same or similar elements as the crimes defined in W.S. 6-2-302 through 6-2-304 and who does not qualify under the criteria of subsection (d) of this section shall be punished as follows:

(i) and (ii) Repealed by Laws 2007, ch. 159, 3.

(iii) Sexual assault in the first or second degree under W.S. 6-2-302 or 6-2-303 is a felony punishable by imprisonment for not less than twenty-five (25) years or for life; or

(iv) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than twenty (20) years.

(c) Repealed by Laws 2007, ch. 159, 3.

(i) and (ii) Repealed by Laws 2007, ch. 159, 3.

(iii) Repealed by Laws 1997, ch. 135, 2.

(d) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor under W.S. 6-2-316 through 6-2-317, shall be punished by life imprisonment without parole if the actor has two (2) or more previous convictions for any of the following designated offenses, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere and which convictions were for offenses committed after the actor reached the age of eighteen (18) years of age:

(i) A crime defined in W.S. 6-2-302 through 6-2-304 or a criminal statute from another jurisdiction containing the same or similar elements as a crime defined by W.S. 6-2-302 through 6-2-304.

(ii) Repealed by Laws 1997, ch. 135, 2.

(iii) Repealed by Laws 2007, ch. 159, 3.

(e) An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere and which convictions were for offenses committed after the actor reached the age of eighteen (18) years of age.

§6-2-308. Criminality of conduct; victim's age.

(a) Except as provided by subsection (b) of this section, if criminality of conduct in this article depends on a victim being under sixteen (16) years of age, it is an affirmative defense that the actor reasonably believed that the victim was sixteen (16) years of age or older.

(b) If criminality of conduct in this article depends upon a victim being under twelve (12) years or under fourteen (14) years, it is no defense that the actor did not know the victim's age, or that he reasonably believed that the victim was twelve (12) years or fourteen (14) years of age or older, as applicable.

§6-2-309. Medical examination of victim; costs; use of report; minors; rights of victims; reimbursement.

(a) A law enforcement agency receiving a report of a sexual assault may, with the victim's consent, arrange for an examination of the victim by a licensed health care provider acting within the scope of the provider's practice. The examination may include a medical examination and treatment, evidence collection and evaluation, and appropriate referrals for follow-up treatment and services. Upon consent of the victim to release of the results of the examination, the evidence, record and reports shall be delivered to the law enforcement agency.

(b) Repealed by Laws 2006, ch. 77, 2.

(c) Repealed by Laws 1991, ch. 130, 2.

(d) Repealed by Laws 2006, ch. 77, 2.

(e) If a report of a sexual assault is received from a minor victim, and the parents or guardian of the minor cannot be located promptly with diligent effort, the examination provided for by subsection (a) of this section may be conducted with the minor's consent. If a report of a sexual assault is received alleging a minor as the victim and a parent or guardian is the suspected perpetrator, the parent or guardian who is the suspected perpetrator shall not be notified pursuant to this section.

(f) Repealed by Laws 2006, ch. 77, 2.

(g) Except as provided by subsection (j) of this section, the costs of any examination relating to the investigation or prosecution of a sexual assault shall be billed to and paid by the investigating law enforcement agency. These examination costs shall include the following:

(i) The cost of gathering evidence; and

(ii) Any other examinations authorized by law enforcement to aid in the investigation and prosecution of the sexual assault.

(h) Except as provided by subsection (j) of this section, any examination costs directly incurred by a sexual assault victim that are not covered by subsection (g) of this section, or other collateral source, shall be submitted to the victim services division within the office of the attorney general for determination of eligibility for payment from the crime victims compensation account established by W.S. 1-40-114. All requests for compensation from the account shall be subject to the eligibility guidelines set forth in the Crime Victims Compensation Act, W.S. 1-40-101 through 1-40-119.

(j) A convicted offender of a sexual assault shall be ordered to reimburse any costs incurred under subsections (g) and (h) of this section and any other costs incurred as a direct result of the sexual assault.

(k) Each victim reporting a sexual assault shall be informed of the rights enumerated in this section, the victim's rights to informed consent and the victim's rights as a victim of crime. The victim shall also be informed of available medical, legal and advocacy services.

(m) The examinations authorized by this section shall remain confidential healthcare information unless the victim or the victim's parent or legal guardian executes a release of medical information for the purpose of prosecution to the county attorney, the state of Wyoming or any relevant court. However, if the report of sexual assault described in subsection (a) of this section results in the filing against any person of a criminal charge, or the filing of a petition alleging a delinquent act which would be a felony if committed by an adult, the written report disclosing the results of an examination made pursuant to this section shall be made available to the person charged or his counsel upon demand.

§6-2-311. Corroboration unnecessary.

Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault.

Wyoming Rules of Evidence Rule 404.

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of Accused. - Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. - Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness. - Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

“Under ADA (42USCS §§ 12101 *et seq.*), courts are **required to ensure equal access** to handicapped individuals, including those with psychiatric disabilities, and **clearly a mentally ill defendant requires legal representation** to communicate with court and gain complete access to court system.” *State v. Ehrenberg, (1994, Law Div.) 284 NJ Super 309; Federal Code Service, Title 42, Chapter 126, § 12132, II, H, 58, Case Annotations.* (Emphasis added). Persons in Kowalski's situation, who have mental impairments and learning disabilities, are particularly handicapped as self representatives. *Kowalski v. Tesmer, 543 US 125, 140 (2004)*, [and therefore **need** the assistance of trained counsel in **any** court situation.]; “The Americans with Disabilities Act of 1990 (“ADA”) mandates equal access to the courtroom for all Americans.” *Janssen Pharmaceutica N.V. v. Mylan Pharms., Inc, 2007 US Dist Lexis 20807.*

42 USCS §12112 (b) (5) (A), states that a failure to accommodate is itself an act of discrimination that violates the ADA, See *Brown v. City of N. Chi., 2006 US Dist Lexis 47371 (7th Cir 2006)*, rehearing denied, 131 S Ct 310 (2006); *Wis. Cnty. Serv. V. City of Milwaukee, 18 AD Cas 918 (2007 CA7 Wis)*; 42 USCS §12112 (b) (5) (A) and 42 USCS §§ 12101 *et seq.*

Jurisdiction
US Supreme Court Jurisdiction

This Court holds Jurisdiction as the decision being contested was rendered by the Wyoming Supreme Court, the court of last resort in Wyoming on June 25, 2019, for which a timely Motion for Rehearing was immediately submitted and refused to be filed by the Wyoming Supreme Court on July 11, 2019, less than 90 days ago. Andrew J. Avitabile has exhausted all State remedies available to him leaving jurisdiction squarely within this Court's jurisdiction. This Court has jurisdiction over the immediate matter pursuant to Rule 10 (b & c).

Wyoming Constitution Article 5

§2. Supreme court generally; appellate jurisdiction.

The supreme court shall have general appellate jurisdiction, co-extensive with the state, in both civil and criminal causes, and shall have a general superintending control over all inferior courts, under such rules and regulations as may be prescribed by law.

§3. Supreme court generally; original jurisdiction.

The supreme court shall have original jurisdiction in quo warranto and mandamus as to all state officers, and in habeas corpus. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of a person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any district court of the state or any judge thereof.

Wyoming Statutes

§1-27-104. Petition to be made to nearest judge.

Petition for a writ shall be made to the court or judge most convenient in point of distance to the applicant. A more remote court or judge may refuse the writ unless a sufficient reason is stated in the petition for not applying to the more convenient supreme or district court or judge.

Wyoming State Court Rule 13.01 (d)

(d) Writs of habeas corpus, mandamus, prohibition, quo warranto or any prerogative writ shall be treated as a writ of review under these rules. In any petition made to the supreme court for a writ to be issued in the exercise of its original jurisdiction and for which an application might have been lawfully made to some other court, the petition shall set forth the circumstances why, in the opinion of the petitioner, the writ should issue originally from the supreme court and not from such other court. The petition shall also name the real party or parties in interest, or whose interest would be directly affected by the proceedings.

Duxstad v. Duxstad, 16 Wyo. 396; 94 P. 463; 1908 Wyo. LEXIS 30.

"The Supreme Court shall have original jurisdiction in quo warranto and mandamus as to all state officers, and in habeas corpus. ... Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of a person held in actual custody, and may make such writs returnable before himself or before the Supreme Court, or before any district court of the state or any judge thereof."

Foster v. Warden of Wyo. State Penitentiary, 489 P.2d 1166, 1971 Wyo. LEXIS 258 (Wyo. 1971).

"The proper remedy is an application for a writ of habeas corpus to the [Wyoming] supreme court."

Prior or Related Appeals

H.R.H. Andrew J. Avitable (Andrew) filed a direct appeal that was denied in 2006, subsequent to a knowingly fraudulent Andres Brief by an appointed appellate counsel who was working under a conflict of interest and an appellate court that actively participated in the case to coach the appellate attorney as to how it wanted her to proceed so that it could rule in her favor. Appointed counsel refused to proffer any of the meritorious arguments Andrew presented her and kept stating that she did not believe him, just as his appointed defense counsel did during the trial phase of Andrew's case.

Andrew filed an unsuccessful Post-Conviction Relief Petition that was denied in 2007 in which he attempted to present his claims; however, being a mentally handicapped person, he was incapable of adequately arguing his claims without the assistance of an attorney. That petition was denied due to the claims not having been presented to the appellate court despite Avitable arguing that his attorney deliberately abandoned his needs. The post-conviction court refused to acknowledge that the reason the claims were not presented to the appellate court was because the appointed appellate counsel refused to aid her client and made the knowingly fraudulent claim that Andrew's claims were frivolous despite the evidence showing the crime he was convicted of never happened.

Andrew filed a federal habeas that failed for which the Wyoming Federal District Court withheld their decision until his time to appeal their erroneous decision had elapsed. The 10th Circuit Court of Appeals refused to entertain the appeal because the time-limit had already expired.

Andrew filed a habeas in both the District Court and the Supreme Court based upon the fact that he was not the person prosecuted in that his name was not Larson, but Andrew; and that he never changed his name. Andrew also provided the courts with evidence of his European Royal Title and the fact that the trial court never had jurisdiction over the case due to the Foreign Sovereign Immunities Act causing a "Want of Jurisdiction" that could have only be overcome by transferring the case to the Federal Court System. These habeas failed.

Andrew filed the state habeas that this petition is appealing, but instead of arguing against the claims Andrew proffered, the State fraudulently claimed that Andrew had presented claims of "ineffective assistance of counsel," which is not a jurisdictional claim, when Andrew had clearly argued "constructive denial of counsel," which is a jurisdictional claim, along with several other jurisdictional claims that were not argued against. The only argument the State offered other than the aforementioned was that because Italy is no longer a monarchy, the state court held jurisdiction despite federal court rulings to the contrary. The Wyoming Supreme Court ignored Andrew's filings and his evidence and only quoted the Wyoming Attorney General's false contention that Andrew had presented the argument of "ineffective assistance of counsel."

Throughout all of Andrew's filings, the State's argument was always the same ... It was not presented to the appeals court so Andrew could not present it now despite Andrew presenting the arguments to the appeals court in the form of a letter because he did not have help and did not know what a "brief" was. The State has never contested Andrew's claims or provided any legitimate arguments against any of his claims; they only argued that the courts should not entertain them because of the appeal being mishandled. There MUST be a way to overcome an appointed counsel's deliberate errors when they intentionally sabotage a defendant's case because they had a conflict of interests that they concealed from the defendant until after manipulating the case to an unjust conclusion. No other filings have been made.

Statement of Subject Matter

This Court holds jurisdiction because H.R.H. Andrew J. Avitabile (Andrew) received a decision that contradicts the federal courts' rulings, including those handed down by this Court. Andrew's filing was denied by the highest court in Wyoming, the court of last resort in Wyoming.

Andrew's habeas was based upon the primary jurisdictional ground of constructive denial of the assistance of counsel both at trial and again at appeal. Andrew presented several secondary arguments to support his primary ground that some provided an individual jurisdictional ground in their own right and warranted overturn of his conviction, but were used within his filing to support the primary ground of constructive denial of counsel.

Andrew further provided the Wyoming Supreme Court with other supporting claims for his primary jurisdictional ground that themselves are not jurisdictional in nature, but did show how appointed counsel deliberately went to the extreme to sabotage his case and ensure a conviction for the prosecution. In fact, defense counsel functioned more as a prosecutor than did even the prosecutor. Counsel completely and utterly abandoned her duty to her client and went so far as to try to gain a longer sentence than the court or prosecutor were asking for through lying to the trial court on the record by stating that there was not a written plea agreement after coercing Andrew to sign a written contract agreement that failed to comport with the sentence he had been promised. The terms of the plea agreement changed twice, once before court (from no prison time to 0-20 years) and once during court (from 0-20 years to 5-Life); therefore, the plea was not knowing or voluntary and Andrew was told he could not refuse it because he had signed the written plea agreement (under coercion). In the end, Andrew received two (2) sentences of fifteen (15) to twenty (20) years for a crime that the evidence clearly shows never happened from a court that never held jurisdiction over the case in the first place and exceeded the speedy trial time limit, when he was promised that he would never get prison time and would only see probation with groups if he would finally acquiesce to the arranged plea agreement.

The trial judge did give Andrew 329 days pre-trial confinement credit on both the top number and the bottom number; however, the Wyoming Department of Corrections refusing to give him the 329 days on both numbers with the claim that it only applied to one number unless the judge specifically stated it was to be credited to both sentences. They are using the verbiage to increase Andrew's sentence by 329 days, which violates the integrity of the contract entered into and makes the plea both unknowing and involuntary because it extends Andrew's sentence from fifteen (15) to twenty (20) years to the sentence of fifteen (15) years and three hundred twenty-nine (329) days to twenty (20) years and three hundred twenty-nine (329) days, which is almost sixteen (16) years to almost twenty-one (21) years.

Pursuant to *Strickland v. Washington*, *Johnson v. Zerbst* and *Cuyler v. Sullivan* a constructive denial of counsel is plain error that can never be harmless and is one of the few situations in which prejudice is not needed to be proven because it is presumed.

Wyoming is using an unconstitutional statute (W.S. §6-2-311) to coerce people into unwanted plea agreements and to convict people of a crime regardless of guilt or innocence. This statute denies *due process* and makes the trial process obsolete as the burden shifts from the prosecution proving guilt beyond a reasonable doubt to the defendant needing to prove innocence. The only thing necessary after this statute has been recognized is the punishment process. The outcome is that Wyoming is incarcerating innocent people and wasting the taxpayers' money to house and care for these people. Furthermore it assaults the GNP as well as the tax base and productivity those people could be contributing. The final result is that the US economy suffers dearly and the remaining citizens are forced to support those who are illegally incarcerated as well as their families, while the rest of the world views the United States as a nation of perverts because of how many men are incarcerated for sexual assaults. The other countries do not see the illegitimacy of the convictions, only that was a sexual assault conviction.

Statement of the Issues

1. The Wyoming Supreme Court refused to address Andrew J. Avitabile's (Andrew) claims and provided a ruling that contradicts the law, federal courts' rulings as well as the US and Wyoming Constitutions.
2. Wyoming is using unconstitutional statutes to convict and keep men incarcerated.
3. The Wyoming Supreme Court is abandoning its own rules and laws to help the Wyoming Attorney General win unjust results against innocent men as well as men who did not receive a fair trial.
4. Andrew was constructively denied the assistance of counsel at trial.
5. Andrew's appointed defense counsel was burdened by an actual conflict of interest. Defense counsel was friends and a co-worker with the accusatory ex-wife's close personal friend as well as the divorce lawyer representing Andrew's accuser while both cases were occurring simultaneously and the divorce hinged upon the verdict of the criminal case.
6. Andrew's appointed defense counsel and investigator clearly demonstrated hostility towards him and refused to believe any information either he or his supporters provided, including the accusatory ex-wife's family (brother – Erik Larson and father – Rod Larson) who confirmed that she had raised the same fraudulent accusations against her first husband when she was divorcing him.
7. Andrew's defense investigator was burdened by an actual personal conflict of interest. The investigator was in a romantic relationship with the accuser's divorce lawyer in the contemporaneous divorce.
8. Andrew's defense counsel worked more as a prosecutor than a defense counsel.
9. Andrew's defense team went out of their way to sabotage his case and ensure the longest possible sentence they could get for him.
10. Andrew's defense team concealed evidence from the trial court.
11. Andrew's defense team fabricated fraudulent evidence that they provided to the trial court to prejudice the court against him (a false claim of a deadly weapons charge that never happened).
12. Defense counsel coerced Andrew to accept a guilty plea he did not want and was contrary to his best interests by the use of an unconstitutional statute and lies.
13. Defense counsel refused to comply with the Americans with Disabilities Act in relation to Andrew's case despite verbally confirming that she knew he was autistic. Instead, she manipulated his mental handicap of autism to coerce the guilty plea.
14. Andrew's defense counsel lied to the trial court to the detriment of Andrew in an effort to gain a larger sentence for him. Defense counsel lied three (3) times that there was no written plea agreement in an effort to change the terms of the plea agreement from probation only to 2 sentences of 0-20 years and then a second time to 2 sentences of 5 years to Life.
15. The evidence clearly shows the crime Andrew was convicted of never actually took place.
16. The alleged victim of rape was still a virgin at the time of Andrew's arrest, making most of the accusations against him physically impossible for him to have committed.
17. Andrew suffered (and still does suffer) a genito-urinary obstruction (scar tissue) from injuries beginning in the 2nd grand and continuing through just before marriage to his accuser.
18. Appointed appellate counsel constructively denied Andrew the assistance of counsel on direct appeal.
19. Appellate counsel was burdened by an actual conflict of interest.
20. Appellate counsel filed a knowingly fraudulent Anders brief and worked with the appellate judge to overcome Andrew's complaints of abandonment from his appellate attorney.
21. The Public Defender's Office lied to Andrew by claiming that the appellate counsel was contracted from outside of the office because of conflicts of interest when case law shows she worked for the Wyoming Public Defender's Office as a "Special Assistant Public Defender."

Statement of the Case

The United States Constitution as well as the Wyoming Constitution guarantees a defendant the assistance of counsel without conflicts of interest for their defense unless they knowingly and voluntarily waive that assistance and/or the conflict of interest. The constitution also guarantees that counsel be a single minded advocate for defense that marshals the defendant's cause to ensure that the prosecution's charges get the adversarial testing that makes the United States' Court System work.

The United States' Court System prides itself on guaranteeing a defendant that they are presumed innocent until proven guilty and that the proof of guilt must measure the muster of assigning guilt beyond a reasonable doubt. Reasonable doubt does not mean beyond all doubt but only that doubt that a reasonable juror might possess which would bring into question whether the defendant is innocent or guilty. The US Court System is one based upon a defendant being presumed innocent until proven guilty, but Wyoming has enacted a law that presumes guilt and places the burden that is supposed to be on the prosecution upon the defendant to prove his case and his innocence.

The United States' Legislature enacted the Americans with Disabilities Act (ADA) to ensure that individuals with handicaps received equal benefits as those who do not have the same disabilities. To accomplish this, the ADA is a guide that presents required reasonable accommodations. This does not mean that all accommodations be made, only those that are reasonable be provided. The failure to make a reasonable accommodation for a handicapped individual is an act of discrimination that violates the ADA under 42 USCS . To prevent this from happening, the ADA abrogates the 11th Amendment's Immunity Clause and the Federal Courts have ruled that it is a valid abrogation in many circumstances; especially those in which the 14th Amendment Due Process protection attaches.

In the immediate case, the constructive denial of counsel that was caused by the defense team's actual conflicts of interest violated all the aforementioned protections and more. To accomplish the incarceration of H.R.H. Andrew J. Avitable defense attorney lied to Andrew and the trial court and utilized unconstitutional Wyoming Statute §6-2-311 to manipulate his autism so that he would finally agree to the guilty plea he never wanted. Andrew's requests for a trial were in vain. The result of these conflicts is that an innocent man was convicted and incarcerated for a crime that the evidence clearly shows never happened despite that man possessing a European Royal Title that divested the trial court's jurisdiction before the case began.

Furthermore, the violations of Andrew's rights did not begin at trial. The beginning of the abuses this man suffered started prior to arrest with a 4th Amendment Miranda Violation, not including those he suffered at the hands of an abusive wife who physically abused him and did everything possible to force her children to remain dependent upon her for everything including turning the lights on and off.

The violations did not end at conviction but continue to this day in that the Wyoming Supreme Court refuses to comply with federal law, US Supreme Court rulings, federal court rulings, state law, federal and state court rules and international treaties. Furthermore, the Wyoming Department of Corrections has committed numerous violations of Andrew's rights ranging from constitutional rights violations to PREA violations by a female sergeant while incarcerated in the WSP facility. Andrew presents this filing in the attempt to rectify the wrongs done to him so he may resume his life. He knows he may never go back to being a law enforcement officer or an emergency medical technician, but he can return to a somewhat normal life.

Statement of the Facts

Andrew Larson was initially charged with six (6) counts of sexual assault in the second degree. Larson was convicted of two (2) charges of sexual assault via a coerced guilty plea and sentenced to two (2) consecutive terms of incarceration of fifteen (15) to twenty (20) years each. H.R.H. Andrew J. Avitabile unsuccessfully appealed this conviction and followed-up with all the post-conviction remedies he could find. H.R.H. Andrew J. Avitabile now presents this Court the immediate filing in the hopes to correct the injustice this man has experienced.

Standard of Review

Pursuant to United States' Supreme Court Rule 10, H.R.H. Andrew J. Avitabile (Andrew) may bring a Petition for Writ of Certiorari to the US Supreme Court if he has exhausted his claim in the court of last resort within the state he is being held or has exhausted his claim within the 10th Circuit Court of Appeals. In the immediate case, Andrew exhausted his claims in the Wyoming Supreme Court, the court of last resort in Wyoming. The result of his efforts was an abandonment of the law as well as the Wyoming and US Constitutions and the rulings handed down by this Court. Andrew now petitions this Court for a Writ of Certiorari to correct the manifest injustices in his case and to determine whether the statutes Andrew views as unconstitutional are in fact contrary to what the Constitution and the precept of the Court mandate.

Under Wyoming State Constitutional Article 1, § 17; Article 5, § 3(IV); Article 5, § 10; and W.S. § 1-27-101 *et seq.* Andrew was able to present the Wyoming Supreme Court with a habeas filing at any time provided that habeas is based upon jurisdictional grounds only. Andrew could have presented his filing to either the local district court or the Wyoming Supreme Court. Andrew could have provided other arguments that are not jurisdictional as long as they are only in support of the jurisdictional grounds he claimed, which he did.

Statement of Case

COMES NOW, Petitioner, H.R.H. Andrew J. Avitable, a European Royal who is mentally handicapped due to autism (diagnosed as “Kanner’s Syndrome by the Autism Research Institute (Case #40,729) and Asperger’s Syndrome by the Wyoming Department of Corrections; and ruled to have been proven by the Wyoming Workers’ Compensation Court in case #2008-000861), 30 documented serious head injuries and one heat stroke (aka “Larson” under coercion only)(hereinafter Andrew), the *pro se* litigant in the above captioned case, and Petitions this Court for a Writ of Certiorari pursuant to Rule 10 (b & c), prepared under Rule 33.2 (*in forma pauperis*) and timely pursuant to Rule 13.1 (less than 90 days from the date of the ruling being contested herein). Andrew has endeavored to comply with Rule 14 in every manner he can, as he understands it, and served his opposition’s attorney pursuant to Rule 29. Andrew presents this Petition to address issues he believes have never before been addressed despite being presented to the Wyoming Supreme Court (WSCt) and to correct erroneous decisions that violate not only federal law and previous federal court rulings, but also international treaties and the rights of many. In support of this filing Andrew states the following:

1. First and foremost, your petitioner is “Andrew J. Avitable,” born in Fort Dix, New Jersey on May 19, 1967 to Airman Andrew J. Avitable and his wife Cleon LaNell Carver, as evidenced in his birth certificate, not “Andrew Larson.” He was raised in Yonkers, New York for the majority of his childhood as evidenced in his educational records. He has never changed his name to Larson despite the efforts of numerous people to try to force him to accept the unwanted alias as evidenced in WDOC Director Lampert’s two letters to Andrew and Andrew’s one in response dated: 8/20/15 (2 page Lampert’s Letter), 8/29/15 (2 page Andrew’s Letter) and 12/1/15 (3 page Lampert’s Letter) that were entered into Wyoming Federal District Court Case # 1:16-cv-00244-ABJ. On September 19, 2014, Andrew reverted the illegally changed of spelling of his family’s last name that was effectuated by Andrew’s great-aunt in the 1930’s against everyone’s wishes from Avitable to Avitable. Nobody knew how to fix the problem at that time, so it remained in the bastardized version until 2014 when Andrew corrected it via Royal Decree and offered anyone wishing to

contest his action 10 business days to file their objection to his royal decree (specifically the State of Wyoming and the United States Government). Nobody responded, so now it is too late to be contested and has been accepted as true by all. Furthermore, numerous entities within the executive branch of both governmental bodies have demonstrated their acceptance of this change in writing through their letters of response.

2. Andrew apologizes in advance for any miscommunication or difficulty in the reading of this filing as one of the side effects of his mental handicaps is the inability to communicate adequately while under emotional trauma, mental stress, total despair and/or uncontrollable injustice. Thus, the inability to adequately communicate leads to increased stress which leads to an exacerbation of the entire problem creating a perpetual cycle resulting in an environment primed for coercion through the manipulation of his handicaps. This process is plainly seen and abused by others.
3. In relation to US Supreme Court Rule 10 Andrew states:
 - a. The WSCt has rendered a decision that contradicts all four: rulings from other state courts of last resort, their own previous court rulings, rulings from federal district and circuit courts and rulings that hail from this Court. They have also rendered rulings that contradict federal laws, state laws, international treaties and both the US and Wyoming Constitutions. Finally on this matter, Wyoming has shown a clear bias against one litigant in the effort to support the cause of another litigant to serve political agendas instead of supporting justice in direct violation of the Wyoming and US Constitutions.
 - b. The State of Wyoming has passed legislation that directly contradicts the US Constitution as well as the Wyoming Constitution; and the WSCt refuses to address these problems when they are presented to them by litigants.
4. The WSCt, the court of last resort in Wyoming and the highest court in the State of Wyoming, by its actions, has abandoned its duty to provide fair and equitable rulings and relegated that duty to the Wyoming Attorney General's Office (AG), a part of the executive branch of government in Wyoming, making the Wyoming Government functionally only a two branch form of government

despite the State of Wyoming being outwardly declared a three branch republic. With the AG providing the rulings for the WSCt, the entire integrity of the court system has collapsed in that the AG's position is necessarily contrary to many of the litigants (civil if they are suing the State and criminal because the AG seems to have abandoned justice and only focuses on gaining and maintaining convictions). This and many of the events that occurred within Andrew's case create a situation in which the justices are functioning as adversaries against litigants like Andrew instead of being the unbiased tribunal required under the Wyoming and US Constitutions.

- a. The WSCt accepts the AG's misstated and distorted summations of what the litigants present as though the litigant actually rendered said summations without question, showing that the WSCt apparently has not bothered to read the filings presented by the appellants and only waits for the AG to provide the court with what it should respond with as many of the rulings are completely off base and make absolutely no sense in relation to what the petitioner/movant has filed.
5. When the problems were brought to the Wyoming Governor, he passed the concerns to the AG to be handled, who in turn placed the responsibility to investigate the criminal activity of Wyoming Officials back into the hands of those breaking the law and violating people's rights to investigate their own malfeasance. This clearly constitutes a cover-up and has resulted in Andrew remaining illegally incarcerated for a crime that the evidence definitively shows never happened.
6. Andrew now looks to this Court to correct the manifest injustices within his case as well as the illegal statutes that blatantly violate the primary foundational provision of the court system within the United States; being that one is innocent until proven guilty, with a secondary requirement that one be provided enough of a description of the accusations against them to demonstrate what provisions of the statutes were violated so they can be defended against the charges. In the immediate case, there was no actual description other than a quoting of the statutes that did not provide the elements needing to defend against.
 - a. One of the coercive tactics that Wyoming Public Defender's Office Defense Attorney Ms. Joy McMurtry used to force Andrew to accept the plea agreement she had arranged was to inform

him that Wyoming Statute §6-2-311 states nothing more than, "Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault." This statute does not provide any type of provision for overcoming the unconstitutional presumption of guilt, making it impossible for a defendant to win a case if it is claimed that they committed a sexual assault regardless of how compelling the contradictory evidence is.

b. Another statute that Andrew is aware of that is unconstitutional but does not apply to his case and has been used to convict men of greater sentences than would be applicable is 6-2-201. That statute presumes an aggravating factor that one must prove is inaccurate without being able to demonstrate that the alleged victim lied because one cannot defame or re-victimize the victim in the eyes of the court; therefore, when an alleged victim lies about an event happening or the way an event happened, their statements cannot be contested or shown to be fraudulent and the accused, if innocent as in this case, is the actual victim as are the taxpayers who are paying the expense of the court and the incarceration of said individual.

7. Andrew submitted a state habeas petition based primarily on the jurisdictional argument of constructive denial of counsel in item #2, which was clearly articulated as follows:

Avitabile's primary argument is a constructive denial of counsel that made the trial court incomplete and robbed it of jurisdiction to hear his case. To support his claim he presents this Court with examples of how his attorney abandoned her constitutional duty to him. The examples he provides range from a failure to investigate and actual conflicts of interest to perjury within the court hearings to increase the sentence he was to receive as demonstrated in the trial transcripts. Avitabile also provides this Court with the fact that the violations of his rights began before his arrest as did the conflicts of interest. Avitabile provides non-jurisdictional issues that are only presented to bolster his claim and show how his defense team sabotaged his case.

This was supported by the following case law:

"A constructive denial of the assistance of counsel violates the 6th and 14th Amendments as it equates to a denial of the assistance of counsel and prejudice is presumed." *Cronic*, supra 466 US at 658 & n.24 (1984); *Osborn v. Shillinger*, 861 F2d 612, 629 (10th Cir 1988); CONSTITUTION OF THE UNITED STATES – AMENDMENT 6 – Rights of the accused – CASE ANNOTATIONS – IX. RIGHT TO ASSISTANCE OF COUNSEL FOR DEFENSE – G. Prejudice as Resulting From Ineffectiveness of Counsel – 2. Particular Matters – 1239. Miscellaneous; *Rickman v. Bell*, 118 S Ct 1827 (1998); PART VII ADJUDICATION OF THE MERITS – Vol. 2: CHAPTER 32 THE DETERMINATION WHETHER TO GRANT RELIEF: SECTION 2254 (d) -- § 32.2

Prerequisites to section 2254(d)'s application; *Smith v. Robbins*, 120 S Ct 746 (2000); *Schmidt v. State*, 738 P.2d 1105 (Wyo 1987); Moore's Federal Practice – Criminal – Vol 27: Chapter 644 Right to and Appointment of counsel – E. RIGHT TO EFFECTIVE ASSISTANCE OF CONSEL - § 644.61 Standards for effective assistance of Counsel – [6] Raising Ineffectiveness on Motion to Vacate Conviction; *Hull v. Kyler*, 190 F.3d 88, 112 (3d Cir. 1999)

8. However, the AG falsely argued that Andrew presented the claim of "ineffective assistance of counsel," which is not a jurisdictional claim and the WSCt took the AG's fraudulent contention that was contained within a "Motion to Dismiss" and reiterated it by stating:

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS ¶ This matter came before the Court upon a "Petition for State Writ of Habeas," filed herein June 10, 2019. After careful review of the petition, the materials attached thereto, the "Motion to Dismiss Petition for Writ of Habeas Corpus," the materials attached thereto, and the file, this Court finds the petition should be denied. This Court has limited the reach of habeas corpus to contesting the district court's jurisdiction over the subject matter, jurisdiction over the person of the defendant, or its authority to render the particular judgment. *Ex parte Madson*, 25 Wyo. 338, 169 P. 336, 337 (1917); *Weldon v. Wyoming Department of Corrections*, 963 F. Supp. 1098, 1101 (D. Wyo. 1997) aff'd 127 F.3d 1110 (10th Cir. 1997); Wyo. Stat. Ann. §1-27-125; *Nixon v. State*, 2002 WY 118, ¶ 12, 51 P.3d 851, 854 (Wyo. 2002) ("Review in a state habeas corpus action is not time limited, but is seriously limited in scope so that defendants may only raise a claim going to the subject matter or personal jurisdiction of the court. *Hovey v. Sheffner*, 16 Wyo. 254, 265-67, 93 P. 305, 307-08 (1908)."). Petitioner has not established any meritorious jurisdictional claim. It is, therefore, ¶ **ORDERED** that the petitioner, Andrew Joseph Larson, be allowed to proceed in this matter in *forma pauperis*; and it is further ¶ **ORDERED** that the Petition for Writ of Habeas Corpus, filed herein June 10, 2019, be, and hereby is, denied. ¶ **DATED** this 25th day of June, 2019. ¶ **BY THE COURT:** ¶ /s/ ¶ **MICHAEL K. DAVIS ¶ Chief Justice**

9. Either the WSCt did not bother reading Andrew's filing or it is obviously showing an unconstitutional bias against Andrew because Andrew's second paragraph specifically demonstrated the AG's contention was fictitious. The concern of unconstitutional bias if further proffered in that the WSCt's rules specifically allowed Andrew a 15 day time limit to submit a response to the State's Motion to Dismiss and the WSCt rendered its decision in a mere 5 days. Andrew received both the AG's Motion and the WSCt's decision on the same exact day. Furthermore, the WSCt's rules allow a 20 day reply time to the AG's response if the AG would have submitted a response instead of the Motion to Dismiss. In either event, the WSCt demonstrated a clear and intentional unconstitutional bias against Andrew, making its decision

infirm and requiring overturn because it was based solely upon the fiction created by the AG instead of “After careful review of the petition, the materials attached thereto, the “Motion to Dismiss Petition for Writ of Habeas Corpus,” the materials attached thereto, and the file.”

10. Andrew prepared (with the assistance of others) and filed a “Motion for Rehearing” as is prescribed in the WSCt’s rules within the time limit allowed because of the fact that the court had not even addressed the issues he presented and only reworded the AG’s motion to provide as a decision, but the WSCt refused to file the Motion for Rehearing with the statement on July 11, 2019 that:

RE: Docket # S-19-0132 ¶ Motion for Rehearing en banc on Petition for State Writ of Habeas ¶ Dear Mr. Larson: ¶ We received the above referenced pleading today, but are unable to file it as your petition was denied on June 25, 2019, and the case is now closed in the Wyoming Supreme Court, pursuant to Rules 13.01(d) and 13.07(b) of the Wyoming Rules of Appellate Procedure. I have copied portions of those rules below from our website: ¶ Rule 13. The petition for a writ of review. ¶ 13.01. Generally ¶ (d) Writs of habeas corpus, mandamus, prohibition, quo warranto or any prerogative writ shall be treated as a writ of review under these rules. ¶ 13.07. Writ of review. ¶ (b) If the petition for writ of review is denied, then the case shall be closed upon entry of the order denying review and no petition for reconsideration or rehearing will be allowed. ¶ I am enclosing another copy of the order denying your petition for your convenience.

11. At the same time, Wyoming Supreme Court Rule 9 *et seq.* states the following:

9.06. Abbreviated opinions

(a) The supreme court by unanimous vote may, *sua sponte*, enter an abbreviated opinion affirming or reversing the judgment or order of the district court for the reason that it is clear that affirmance or reversal is required because:

- (1) the issues are clearly controlled by settled Wyoming law or federal law binding upon the states;
- (2) the issues are factual and there clearly is sufficient evidence to support the jury verdict or findings of fact below;
- (3) **summary judgment was erroneously granted because a genuine issue of material fact exists;** or
- (4) the issues are ones of judicial discretion and there clearly was or was not an abuse of discretion.

(b) An abbreviated opinion will provide the ultimate disposition without a detailed statement of facts or law. Such abbreviated opinions shall be published.

(c) A petition for rehearing of a case decided under this rule may be served and filed pursuant Rule 9.08.

9.08. Petition for rehearing

(a) A petition for rehearing of a case in the appellate court may be filed no later than 15 days after the decision is rendered. The petition shall be accompanied by a brief covering the points and authorities upon which the petitioner relies. The petition and brief may be combined and filed as one document. A copy of the petition and the brief shall, within the time above specified, be served upon all parties. There shall be no oral argument on

petitions for rehearings unless argument is requested by the appellate court.

(b) Rule 1.01 applies.

The term "rehearing" indicates that a case is for reargument and resubmission. - *Wyoming Bancorporation v. Bonham*, 527 P.2d 432 (Wyo. 1974).

Petitions for reargument permitted - Although the Supreme Court has no rule and has rendered no decision pertaining to reargument, former Rule 14, W.R.C.P. permits an application for rehearing, and therefore petitions for reargument will be permitted under this rule. *Wyoming Bancorporation v. Bonham*, 527 P.2d 432 (Wyo. 1974).

12. Rules 9 and 13 contradict each other and when the state court makes a procedural error or shows a deliberate bias on behalf of one litigant by a judge, there MUST be a way for the litigant to contest the judge's erroneous decision if it contradicts the law and have the entire panel of judges review the decision for legitimacy. In the immediate case, Andrew clearly showed within his petition for habeas corpus that the trial court exceeded its jurisdiction by appointing an attorney, defense investigator and appellate counsel who were burdened by actual conflicts of interest, a coerced guilty plea via the manipulation of his mental handicap of autism, a trial court that exceeded its speedy trial time limit before the defense attorney coerced the defendant to sign a waiver of speedy trial, that he was not the person charged, that his attorney lied on the record to his detriment to try to gain a longer sentence for him, that his attorney refused to provide a defense of any kind and kept telling him that she did not believe anything he said and showed hostility towards him, that the trial court had a serious structural error that was prejudicial, that neither trial nor appellate counsel was willing to do any type of investigation into any of the defenses he raised, that the trial court did not hold jurisdiction under 28 USCS §1631, that the trial court relied upon false statements to gain an infirm conviction, as Andrew's ex-wife lodged the same false allegations against her first husband when she divorced him and that the AG was not promoting justice, but only convictions.

Reliance by victim on false statements is an essential element of criminal fraud notwithstanding fact that statute does not require such reliance. *State v. Jones*, 73 N.M. 459 (1964).

13. All resulting in the constructive denial of counsel at both trial and appeal for one who had not waived his right to counsel.

Unless a court has exceeded its jurisdiction, its decision is not subject to attack by means of a writ of habeas corpus, no matter how erroneous it may appear. *Miskimins v. Shaver*, 8 Wyo. 392, 58 P. 411, 1899 Wyo. LEXIS 18 (Wyo. 1899).

14. In the end, the WSCt has done nothing more than act as an enforcer for the wishes of the AG's Office in Wyoming, which is demonstrated by the statement placed into writing by Wyoming Senior Appellate Counsel Eric Alden in his letter to Inmate Donald Daves on January 19, 2011 (quoted below). Mr. Alden did not retire from the WPDO until 2018, so the statement was not motivated by animosity towards the system, only honest feelings that are spreading throughout the country because of the injustices observed and the inability to get those injustices correct, while wasting the taxpayers' money. Eric Alden stated:

(Quote) I would like to offer you some hope but find that difficult to do with any honesty. Many people in this country believe that we have a justice system that has something to do with justice. Apparently you have been led to believe this in the past. I hate to disabuse you of that small comfort. We call this a justice system because that makes people feel good and believe that this country is something special. In fact, it is simply a punishment system. ¶ In my experience with the Wyoming Supreme Court, which is fairly extensive, they will do anything to avoid overturning even the smallest conviction. This attitude is similar to the Wyoming Legislature which will do anything to cause people to be convicted and incarcerated or worse. This attitude is derived from the Wyoming voters who will elect anyone who tells them people are evil. (They think this means *other* people until they find out, too late, that it meant them.) The motives for these three groups are fear of being voted out of office by the Court, hatred and narcissism by the elected officials and stupidity by the voters. **(End Quote)**

15. Furthermore, Andrew provided evidence of the fact that his attorney had coerced an involuntary guilty plea through the manipulation of his autism and isolation for 329 days with the false allegations that his support structure had abandoned him because he was persisting in his request for a trial and that they allegedly did not believe in his innocence when in fact the opposite was the truth. The final weight that broke Andrew's will to fight any more and his will to live was when the defense attorney advised Andrew that there was no way for him to win because W.S. §6-2-311 stated "Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault." This left Andrew with absolutely no way to defend himself because the trial court presumed he was guilty and defense counsel told Andrew that there was no way he could defend himself because of his autism.

16. If this Court were to actually delve into the record to make a fair analysis of Andrew's experiences with the court system, it would learn that Andrew had an unfair trial in which he was coerced to plead guilty against his wishes, that on appeal he was again abandoned, at post-conviction a summation of the AG's response was nothing more than: so what .. we violated his rights ... but that doesn't count. The Court would also find that every filing that Andrew presented to the courts were disregarded without anyone providing any type of analysis of the claims. The Court would also see that Andrew presented meritorious claims deserving of relief that have never been addressed and that Andrew did, through a letter to the WSCt present his claims to that court during direct appeal, but because the WSCt had no interest in serving justice, the judge provided the negligent appointed appellate attorney with instructions as to how she could overcome the complaints Andrew was raising against her because of that abandonment. The WSCt sent Andrew one version of the decision that had no instructions on it and sent his attorney a faxed copy that had instructions as to what he wanted the appellate attorney to argue so he could rule in her favor and violate Andrew's rights.
17. Throughout this case, Andrew has been denied due process as well as any of the other protections of the Constitution and federal laws. This Court's rulings have been ignored as have those of the other federal courts. The international laws have been denied and as a result of all of this, an innocent man was incarcerated for a crime that clearly did not occur by anyone; one that was fabricated to ensure a win in the divorce for the accuser, Andrew's ex-wife Ingrid who made the same exact accusations against her first husband when she was divorcing him (as evidenced by her brother Erik Larson's letter to the court).

WHEREFORE, Andrew prays this Court will investigate his claims and provide him with a fair and just resolution to the violations of his rights. Andrew has clearly shown a manifest injustice in that Wyoming has the wrong person in custody as they prosecuted a person who does not exist and then incarcerated a person they never had jurisdiction over; a person for whom the evidence shows a crime was never committed; a person who was constructively denied the assistance of counsel and is illegally

incarcerated. Andrew prays this Court will, in light of the aforementioned statements and evidence, take into consideration the facts of this case and overturn his illegal conviction as the trial court never held jurisdiction; and order his immediate release from the illegal constraints placed upon him in the custody of the WDOC; and whatever other considerations this Court deems appropriate, including a new trial. In the alternative, Andrew prays this Court will remand the case with instructions to ensure that both the Constitution and Federal Laws are followed.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury pursuant to W.S. 6-5-301; 28 USC 1746; 18 USC 1621 that the above information contained in the foregoing filing is true and correct to the best of my knowledge. My declaration under the penalty of perjury with my signature constitutes an affidavit swearing the accuracy of the information contained within this document as true to the best of my knowledge and understanding. The use of a Notary Public does not constitute any waiver of Royal Authority or Privileged Status and is only used as a means of properly identifying the signatory.

I therefore place my hand as seal upon this document on the date below.



H.R.H. Andrew Joseph Avitabile

WITNESS TO THE HAND AND SEAL

Subscribed and sworn as being true under the penalty of perjury pursuant to W.S. 6-5-301; 28 USC 1746; 18 USC 1621 by: H.R.H. Andrew Joseph Avitabile, before me this 20 day of ~~July~~^{August}, 2019. Said individual satisfactorily demonstrated in the aforementioned evidence to be the individual whose signature is subscribed hereon, and solemnly affirmed that he has firsthand knowledge of the facts contained herein and that the facts are true, correct and complete to the best of his knowledge, understanding and belief.

State of Wyoming)
) ss
County of Weston)

Notary Public

*The WDOC Employees refuse to provide
notary services unless I change my signature
to what they want. I have filed a formal
complaint with the Wyoming Secretary of
State.*

My commission expires

witnessed by
signed Fane Sellers
Printed Fane Sellers

signed William Morris
Printed William Morris