NO: 19-6349

ORIGINAL

IN THE

SUPREME COURT OT THE UNITED STATES

TERM,_____

JARVAS JAVON BRINKLEY,
Petitioner,

-V-

RANDEE REWERTS, (WARDEN),
Respondent.

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

Respectfully Submitted:

Jarvas Javon Brinkley, Inmate # 324670
Carson City Correctional Facility
10274 Boyer Road
Carson City, Michigan 48811-9746
In/Propria/Persona

Dated: 09, 20, 2019 A.D.

QUESTION PRESENTED

DOES THE DECISIONS BELOW CONFLICT WITH THE DECISIONS OF OTHER U.S. CIRCUIT COURTS OF APPEALS AND STATE APPELLATE COURTS, AND MISAPPLY THIS COURT'S DECISIONS IN **STRICKLAND V WASHINGTON, AND LAFLER V COOPER,** VIOLATING PETITIONER JARVAS JAVON BRINKLEY'S CONSTITUTIONAL RIGHTS UNDER THE **FIFTH, SIXTH,** AND **FOURTEENTH AMENDMENTS**?

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases: **Page (s):**

INDEX OF AUTHORITIES
(Continues....)

INDEX OF AUTHORITIES
(Continues....)

UNITED STATES CONSTITUTION

MICHIGAN CONSTITUTION OF 1963

UNITED STATES FEDERAL STATUTES

MICHIGAN COMPILED LAWS AND STATUTES SERVICES

MSA:

MICHIGAN COURT RULES

PRAYER

Petitioner JARVAS JAVON BRINKLEY, humbly requests that a **"Writ OF Certiorari"** be issued, in order to review the Judgements and Orders of the Michigan Supreme Court, which was entered on: **July 2,nd 2019, at SC # 158565** and the Michigan Court Of Appeals, which was entered on: **August 30th, 2018 (UNPUBLISHED)**, at **COA #337437**, and **PRAYS** that this Honorable Court will Grant him any and all relief from the constitutional violations that has occurred against him.

OPINIONS AND ORDERS BELOW

The Order of the Michigan Supreme Court is reported as **"People Of The State Of Michigan v Jarvas Javon Brinkley, Case No. 158565,"** (July 2nd 2019), and is attached as **Appendix "A,"** The Decision of the Michigan Court Of Appeals a " Per Curiam" Decision, the Judgement is reported as **"People Of the State of Michigan v Jarvas Javonn Brinkley, Case No. 338437,"** and is attached as **Appendix "B."**

JURISDICTION

The judgement of the Michigan Supreme Court, was entered on July 2nd 2019, entering its denial of Petitioner Jarvas Javon Brinkley's leave to appeal, and The Michigan Court Of Appeals judgment was entered on August 30th, 2018. Therefore, this Petition is being filed within the ninety (90) day time requirements of these two (2) court decision dates.

Jurisdiction therefore, is conferred upon this Honorable Court pursuant to **U.S.S.Ct. Rule 13.1,** and the **First Amendment of The United States**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the **Fifth, Sixth** and **Fourteenth Amendments** to the United States Constitution, which reads in pertinent parts:

"No person shall be deprived of life, liberty, or property, without due process of law..." (Fifth Amendment).

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed....' and to have the assistance of counsel for his defense." **(Sixth Amendment)**;

"...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." (Fourteenth Amendment).

This case also involves the State of Michigan's Constitutional provision of 1963, which read in pertinent parts:

"No person shall be denied the equal protection of the laws..." **(Article 1, Section 17)**;

"No person shall be ...deprived of life, liberty or property, without due process of law." **(Article 1, Section 17)**; and

'In every criminal prosecution, the accused shall have the right to a speedy trial and a public trial by an impartial jury...; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and as provided by law, when the trial court so orders, to have such reasonable assistance as may be necessary to prosecute an appeal.:" **(Article 1, Section 20).**

PARTIES TO THE PROCEEDINGS

Petitioner, **Jarvas Javon Brinkley** was the party-petitioner in the Michigan Court of Appeals, and later, was the party-petitioner in the Michigan Supreme Court.

The **PEOPLE OF THE STATE OF MICHIGAN** was the part-respondent in this petition within the Michigan Court of Appeals , and later, the was the party-respondent in this petition within the Michigan Supreme Court.

These two (2) **Parties** are the very same **parties** in the case at bar, and at all times this case was Captioned as: "**The People of the State of Michigan vs. Jarvas Javon Brinkley."**

Both **Parties** maintain their business and office address as: Carson City Correctional Facility, Boyer Road, Carson City, Michigan 48811-9746, located in the City of Carson City, for the State of Michigan.

STATEMENT OF THE CASE

A. Facts

I. Under Michigan's **Self-Defense Act (SDA)** statutory provisions **MCLS Section 780.972(1),** a defendant can raise the self-defense act if there is evidence that show defendant had an honest and reasonable belief that the use of deadly force was necessary to prevent imminent death, great bodily harm, or sexual assault to himself or to another, is allowed to use deadly force as provided by common law." **MCLS 780.972(1).**

On January 20th, 2017 A.D., Petitioner Jarvas was found guilty, by way of a jury trial, of first-degree premeditated murder, contrary to **MCLS, Section 750.316**, and felony-firearm, contrary to **MCLS Section 750.227b, MSA Section 28.424(2).**

On February 23rd, 2017 A.D., Petitioner Jarvas was sentenced to imprisonment to serve a Mandatory Life Sentence prison term without parole, and a Two (2) Year prison term for the Felony-Firearm conviction.

B. Claims and Proceedings Below

Petitioner Jarvas sought his Direct Appeal within the Michigan Court of Appeals, raising three (3) Constitutional issues for review: **1)** Sufficiency of the Evidence, **2)** Evidence of Illegal Firearm, and **3)** Ineffective Assistance of Counsel, under the Standard 4 Rule for filing Supplemental Brief Issues. On August 30th, 2018 A.D., the Michigan Court of Appeals issued its Unpublished **Per Curiam** Decision, Denying Petitioner Jarvas's three appellate issues.

See **Exhibit "A"** attached hereto. Petitioner Jarvas then sought his Leave To Appeal to the Michigan Supreme Court, raising the very same issues for appellate review. On July 2nd, 2019 A.D., the Michigan Supreme Court Denied Petitioner Jarvas's leave to appeal, in a one (1) page three (3) Liner decision. See **Exhibit "B"** attached hereto.

The County Prosecutor filed opposing arguments to Petitioner Jarvas's claims to the state

Appellate Courts. See **Enclosures.**

REASONS FOR GRANTING THE WRIT

I.

THE MICHIGAN COURT OF APPEALS, AND THE MICHIGAN SUPREME COURT DENIED PETITIONER JARVAS JAVON BRINKLEY'S STATE AND FEDERAL CONSTITUTIONAL CLAIMS IN DIRECT CONFLICT WITH THE UNITED STATES CONSTITUTION AND HOLDINGS OF THIS COURT, OTHER CIRCUIT COURTS, AND THE STATE APPELLATE COURTS OF MICHIGAN.

Overview

A. Sufficiency of the Evidence. A petitioner can challenge the Constitutionality of a conviction, if he can show that the evidence the prosecutor relied upon was contrary to the United States Constitution, Holdings by the United States Supreme Court, other Circuit Courts, and holdings by the State Appellate Courts.

Petitioner Jarvas contends that the Michigan Court of Appeals' August 30, 2018 Per Curiam Decision runs contrary to Michigan's "Stand Your Ground" Statute, and therefore is a "Mis-conception of the law and fact." In **People v. Thomas, 223 Mich App 9, 11**

(1997), the Court ruled that: "Mis-conceptions of the law and fact denies the defendant the due process and equal protection of the law that the United States Constitution guarantees to all persons charged with committing a criminal offense. For example, **MCLS Section 780.972 (2)(1)**, clearly reads: "An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies: (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of, or imminent great bodily harm to himself or herself or to another individual."

See **People v. Conyer, 281 Mich App 526 (2008):** "Under MCL 780.972, there is no duty to retreat if the person has not committed or is not committing a crime and has a legal right to be where they are at the time they use deadly force. Because MCL 780.972 of the Self-Defense Act, MCL 780.971 et seq., constitutes a substantive change to the right of self-defense, it applies prospectively only." Therefore, this substantive change and statutory right, applies prospectively to Petitioner Jarvas, and the state appellate courts were wrong in their decisions, constituting a **"misconception of the law,"** violating Petitioner Jarvas's right to due process and equal protection of the law.

Furthermore, the cases relied on by the MCOAs,' such as **People v. Dykhouse, 418 Mich 488, 501 (1984), People v. Morrin, 31 Mich App 301, 329 (1971)**, are a **mis-application of law and fact**, where in both of these cited cases, **Dykhouse, supra,** and **Morrin, supra,**

clearly addressed the pre-meditation elements, and the "to think about beforehand" elements of the crime. Petitioner Jarvas strongly contends that he did think about it beforehand, and strongly felt that his life was in danger, therefore, Petitioner Jarvas was thinking only of defending himself, and did not "pre-meditate" to kill, but only to defend himself, especially where he "honestly and reasonably" believed that the use of deadly force was necessary to prevent imminent death or imminent great bodily harm to himself. Petitioner Jarvas meets the standards announced in **People v. Heflin, 434 Mich 482, id. At___503 (1990).**

Heflin, supra, ruled that a "....defendant may lawfully use deadly force when he feels he is in danger of death or great bodily harm...and a court must give instructions that specifically inform the jury, as required by Michigan's law, that the use of deadly force is lawful where one is in danger of death or grave bodily harm..." **Id. at___502-504.**

As Petitioner Jarvas previously argued within his Brief on Direct Appeal, the prosecutor did, and has not met his burden of proof beyond a reasonable doubt that Petitioner Jarvas did in fact "premeditated" to kill Mr. Tommie Allen. See **People v. Giacalone, 242 Mich 16, 21 (1928),** the "....circumstances of the crime must be viewed from the standpoint of the accused alone, and that if they are sufficient to induce in him an honest and reasonable belief that he is in danger of great bodily harm or loss of life, he is justified or excused in killing." **Id at___21.**

In accord with the cardinal rule of **"Criminal Law and Procedure,"** applicable to all claims of self-defense, is that the killing of another person is justifiable homicide if, under all the

circumstances, a defendant honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force. A claim of self-defense first requires proof that a defendant acted in response to an assault. Where a defendant charged with murder asserts that he killed in self-defense, his state of mind at the time of the act is material because it is an important element in determining his justification for his belief in an impending attack by the deceased. However, it has long been clear in Michigan that the right of self-defense commences and ceases when real or apparent necessity begins and ends. **Estate of Jackson v. Hardaway (In re Hardaway), 558 B.R. 831, LEXIS 3627, Eastern District of Michigan, Southern Division (Decided October 5, 2016, U.S. Sixth Circuit Court of Appeals). Id. at___HN6 Defenses, Burdens of Proof.**

Petitioner Jarvas asserts that he was not in the commission of committing any sort of a crime, he had a legal right to be where he was at the time of the crime, and he had an honest and reasonable belief that his life was in serious harm. The deceased confronted the petitioner, and constantly pursued the petitioner. When the petitioner tried to leave, the deceased followed behind the petitioner with something his hands. Even though Petitioner Jarvas's belief may have been wrong, "...the guilt of the circumstances as they **'appear'** to him, and he will not be held responsible for a knowledge of the facts, unless his ignorance arises from fault or ignorance." **Pond v. The People, 8 Mich 150, (1860), id. at___175, 182. (Emphasis added. Bold, Underlining Mine).**

Contrary to clearly mandated statutes, both state and federal, as well as decades of

old case law and court precedents, the prosecutor wishes for the courts to rule on "the guilt of the circumstances" based on the prosecutor's **'theory'** of the case. Now see **People v Camerson, 52 Mich App 463 (1974),** ruling that: "For an accused to prevail on a claim of self-defense, it must be shown that under all of the circumstances as they **appeared** to him at the time, he was in danger of suffering death or great bodily harm." **Id. at___465.**

(Emphasis added. Underlining, Bold Mine).

The prosecutor's theory of the case only violates Petitioner Jarvas's state and federal constitutional rights under the **Fifth, Sixth** and **Fourteenth Amendments** to the United States Constitution. The Constitutional standards and requirements as to the case at bar, are by both statutory provisions and sound settled case law as to what Petitioner Jarvas was thinking at the time of the circumstances surrounding the crime. Therefore, this case should be decided based on the mandates of statutory provisions and decided case law.

II. Evidence of Illegal Firearm. Statutory requirements also provide the bases for an exception to a rule under certain circumstances. The **SDA** of **MCLS Section 780.972, et seq.** is one of those provisions. The recently decided case of **People v. Kupinski, 2018 WL No. 3186188, 7 MA (June 28th, 2018),** following the conclusions reached in **People v. Guajardo, 300 Mich App 26, 40 (2013), id. at___fn 2,** held that: "The Self-Defense Act (SDA), 780.971 et. seq., has since 'codified the circumstances in which a person may use deadly force in self-defense or in defense of another person without having the duty to retreat.'" **Id. at___708.**

Notwithstanding the codification, "a felon possessing a firearm is not precluded from raising self-defense under the SDA when there is evidence that would allow a jury to conclude that criminal possession of a firearm was 'appropriately justified.'" **Guajardo, supra, 832 N.W.2nd 409 (2013). Id. at___fn 2.**

Now see **People v Macard, 73 Mich 15 (October Term, 1888),** where nearly One Hundred

Thirty One (131) years ago, the Michigan Supreme Court held:

"It is not necessary for a person, if without fault, when suddenly assaulted upon the public highway, or upon his own premises, and when an instants delay may be at the expense of his own life, to retreat before using deadly force." **Id. at___17, 21.**

Therefore, the MCOAs' August 30th, 2018 "Unpublished" Per Curiam Decision, with the cited cases relied upon, is a **"misconception" of the law**, and is contrary to other court holdings, as well as the holdings from this United States Supreme Court's various holdings regarding the elements of "self-defense" requirements. Furthermore, the MOCAs' August 30th, 2018 Decision is wrong because, it is also contrary to other holdings by the United States Circuit Courts of Appeal, once again, posing a violation of due process and equal protection of the law under a **"misconception" of the law.** See for example, **People v. Thomas, 223 Mich App 9, 11 (1997),** where this court granted a reversal of a sentence, and a remand back to the lower court stating: "A sentence that is based on a misconception of law is invalid." **Id. at___9.** The court went on to state: "Generally, a sentence is invalid where, as here, it is based on a misconception of law," citing **People v Whalen, 412 Mich 166, 169-70; 312 N.W.2nd 638 (1981), id. at___11.**

Petitioner Jarvas's conviction for premeditated murder, and senteithout parole are invalid, especially where they were based on a **"misconception" of the law** as to Petitioner Jarvas's fault and guilt at the time of the crime, where all of the circumstances at the time **appeared** to him that his life was in danger of imminent death, or great bodily harm.

Equally so, the Michigan Supreme Court's July 2nd, 2019 one (1) page, three (3) liner Decision is also wrong, where this Court Order is totally **void** of any mandated **"findings of fact,"** and **"conclusions of law,"** in accord with **MCR 2.517 Findings by Court**, which clearly reads as follows:

(A) Requirements.

(1) In actions tried on the facts without a jury or with an advisory jury, the court **SHALL** find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

The failure of the state supreme court to provide Petitioner Jarvas with the required findings of fact, and conclusions of law, denies him his due process and equal protection rights to challenge the court's July 2nd, 2019 decision within the federal appellate courts. The **First Amendment** to the United States Constitution grants Petitioner Jarvas the right to challenge the government's adverse actions, and at any time. Also, the State of Michigan's Constitution of 1963, **Article I, Section 20,** grants Petitioner Jarvas the right to appeal his conviction and sentence, which reads in pertinent parts: "In every criminal prosecution, the accused **SHALL** have the right....to an appeal as a matter of right..." These appellate procedures that Petitioner Jarvas is now litigating, are a paramount part of his appeal,

Petitioner Jarvas strongly contends that his right to an appeal is being denied to him, and hampered by the Michigan Supreme Court's failure to provide the required "findings of fact, and conclusions of law." This is because Petitioner Jarvas does not know what to appeal, since the Order Denial does not state, or list, how the Court **"found the facts"** that it relied on to deny Petitioner Jarvas's appellate claims, and what case law it relied on in its **"conclusions of law."**

Just nine (9) years ago, The United States Sixth Circuit Court of Appeals denounced this sort of unconstitutional judicial behavior when it addressed the states' post-appellate procedural Claims. See **Guilmette v Howes, 624 F.3rd 286 (6th Cir. 2010),** where it held: ".... the state supreme court's order was unexplained [meaning that the text of the order fails to disclose the reason for the judgment] , and the last reasoned state court decision was on the merits, the state courts never enforced a procedural bar to **Guilmette's** claims, mainly because the courts did not specifically identify which subparagraph of the 6.508(D) rule their affirmance relied on." **Id. at___290.** Therefore, **MCR 2.517(A)(1)** applies in the case at bar, and the state supreme court was required to provide Petitioner Jarvas with the "findings of fact," and "conclusions of law."

It is, therefore, Petitioner Jarvas contention that, both state appellate courts' decisions in the case at bar, have presented "a clear split " in other Michigan State Court's decisions, as well as this U.S. Supreme Court's decisions, and fundamentally misapplies this court's **"due process"** and **"equal protection of the law"** settled cases and judicial analysis. Thus, Petitioner Jarvas is entitled to the relief that he seeks.

III. Ineffective Assistance of Counsel.

Petitioner Jarvas filed his own "Standard 4 Brief," alleging ineffective assistance of counsel knowing fully that, on direct appeal, the trial attorney was not going to file a claim of "Ineffective Assistance of Counsel" against himself. Neither did Petitioner Jarvas know that he was supposed to "...preserve a claim of ineffective assistance of counsel by moving, in the trial court, for a new trial or an evidentiary hearing under People v Ginther...." Page 5 of the Michigan Court of Appeals' Unpublished August 30, 2018 Per Curiam decision.

It must be kept in mind the main fact that Petitioner Jarvas is not a member of the American Bar Association, or the Michigan Bar Association, and therefore, does not, or did not know anything about the law or trial court procedures, in order to do what the MCOA's Per Curiam decision stated that Petitioner Jarvas should have done. This reasoning by the MCOA is analogous to asserting Petitioner Jarvas is an attorney.

Petitioner Jarvas contends that trial counsel should have withdrew from the case at bar, if he actually felt the case was not winnable. Counsel went to trial because he felt there was a chance that Petitioner Jarvas could probably prevail on a defense of "Self-Defense," contrary to trial counsel's questioning during the third day of the trial, outside the presence of the jury.

Petitioner Jarvas contended, and still maintain, the claim that the prosecutor's plea deal offer was not thoroughly explained, or encouraged by trial counsel. In **Lafler** v **Cooper,**

566 U.S. 156; 132 S.Ct. 1376; 182 L.Ed.2d 398 (2012), the U.S. Supreme Court held:

1) Petitioner was prejudiced by counsel's deficient performance in advising petitioner to reject the plea offer and go to trial, and 2) The proper remedy for counsel's ineffective assistance was to order the state trial court to reoffer the plea agreement, and then, if petitioner accepted the offer, the state court could exercise its discretion regarding whether to resentence." **Id. at___1391.**

Rompilla v Beard, 545 U.S. 374; 125 S.Ct. 2456; 162 L.Ed.2d 360 (2005): "...defense counsel's failure to examine file on defendant's prior conviction fell below the level of reasonable performance.....such failure was prejudicial to defendant, warranting habeas relief on grounds of ineffective assistance of counsel."; **Peoples v Lafler, 734 F.3rd 503, 510 (6th Cir. 2013)**: "Counsel was ineffective in not impeaching only two witnesses tying defendant to murder with their known false testimony."; **Hinton v Alabama, 571 U.S. 263; 134 S.Ct. 1081 (2014)**, Held: 1) defense counsel's failure to request additional funds to replace an inadequate expert amounted to deficient performance, and 2) state appellate court erred in determining that defendant could not have been prejudiced by counsel's performance." Vacated and Remanded this case for a new trial.

Also see, **People v Armstrong, 490 Mich 281 (2011)**, holding that defendant suffered prejudice from counsel's failure to pursue cell phone records for introduction in the trial court, and concluded that the Court of Appeals erred in its opinion finding that defendant was not prejudiced, reversed the court of appeals decision, and ordered a new trial for the defendant. **Id. at___291, 294.**

In **People v. Walker, 503 Mich 908; 919 N.W.2d 401 (Decided on November 21, 2018),**

remanded the case back to the court of appeals for consideration of whether **Lafler v Cooper** should be applied retroactively to that case, in which the defendant's convictions became final in 2005. The Michigan Court of Appeals had found that the trial court erred in its conclusion that there is a reasonable probability that the defendant would have accepted the plea offer.

The Michigan Supreme Court, on the other hand, did not believe the trial court had erred in its decision, especially where the trial had used the standards announced in the **Lafler, supra.** Now see **People v Walker, 2019 Mich App LEXIS 2531 (Decided May 23, 2019),** ruling that **[Lafler, supra]** "...did not create a new rule and it applied retroactively to the case. The law being applied, **Strickland, supra**, was clearly established federal law and was not new within the meaning of **Teague v. Lane." (Emphasis added. Bold Mine).**

In the second **Walker decision**, the court of appeals concluded that the defendant was entitled to post conviction relief for ineffective assistance of counsel, who failed to inform defendant of pre-trial plea offer. In the case at bar, trial counsel failed to properly, and thoroughly encourage Petitioner Jarvas to accept the plea offer, especially if counsel felt there was no way Petitioner Jarvas could prevail with a jury trial. Also see **People v Hobson, 500 Mich 1005, 1006 (2017).** There are direct similarities in the above cited state and federal court case holdings, and in the case at bar. Petitioner Jarvas is entitled to the very same "due process" and "equal protection" of the laws.

II.

THE COURT SHOULD USE THIS CASE TO RESOLVE THE CONFLICT IN SPLITS OF AUTHORITY AND TO CLARIFY STRICKLAND, LAFLER V COOPER, MCLS SECTION 780.972, MICHIGAN'S COURT RULE 2.517(A)(1).

The Michigan State Appellate Courts' Decisions Diverges Sharply from Other Courts

Both state appellate courts decisions make very clear that no amount of self-defense evidence could ever establish a state or federal constitutional violation because of the state prosecutor's **"theory of the circumstances,"** rather than Petitioner Jarvas's **appearances** of the Circumstances. Therefore, their decisions split sharply from other state and federal courts. In fact, the theoretical splits are as sharp as they can be, and therefore, this Honorable Court should address Petitioner Jarvas's constitutional claims.

Federal Circuit Courts across the country would strongly disagree with the conclusions reached by the Michigan State Appellate Courts, as to "duty to retreat, when the delay could be a risk of imminent death or great bodily harm."

While requirements of "clearly established law" are to be determined solely by the holdings of the Supreme Court, the decisions of lower federal courts are useful in assessing the reasonableness of the state court's resolution of an issue, "the objective reasonableness of a state Court's application of Supreme Court precedent may be established by showing other circuits having similarly applied the precedent." See **Williams v Bowersox, 340 F.3rd 667, 671 (8th Cir. 2003); Dickens v Jones, 203 F.Supp.2d 354, 359 (E.D. Mich. 2002).**

The Court in **Alexander v Poole, U.S. Dist. Ct. (E.D. New York, 2005)**, Held:

"A state court decision is "contrary to" clearly established federal law "if the state court applies a rule that contradicts the governing law set forth" in Supreme Court precedent, or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives" at a different conclusion. Williams v Taylor, 529 U.S. 362, 405-06 (2000)." Further holding: "A state court decision involves an "unreasonable application" of clearly established law if it unreasonably applies Supreme Court precedent to the particular facts of a case." **Id. at___409.**

Petitioner Jarvas strongly asserts that the applied case law used by the state appellate court i.e., **Goecke, Dykhouse, Morrin, Abraham (In re Abraham), Heflin** to deny Petitioner Jarvas's constitutional claims, are misapplied, and a direct "misapplication of the law and facts," which diverge sharply from other state and federal courts' applications. Petitioner Jarvas's Constitutional Rights under the **Fifth, Sixth,** and **Fourteenth Amendment,** as well as the State's Constitution of 1963, **Article I, Section 20**, are being violated.

CONCLUSION

WHEREFORE, for all of the foregoing reasons presented in Petitioner Jarvas Javon Brinkley's Petition For Writ Of Certiorari, humbly prays and requests that this Honorable Court will **GRANT** the herein petition.

Respectfully Submitted,

Jarvas Javon Brinkley, #324670
Carson City Correctional Facility
10274 Boyer Road
Carson City, Michigan 48811-9746
In/Propria/Persona

STATE OF MICHIGAN

IN THE COUNTY OF MONTCALM

JARVAS JAVON BRINKLEY,
Petitioner
VS-

RANDEE REWERTS, (WARDEN),
Respondent
_____/

SC NO.: 158565
COA NO.: 337437
WAYNE CC NO.;16-006408-FC

STATE OF MICHIGAN)
)SS;
COUNTY OF MONTCALM)

AFFIDAVIT OF:
JARVAS JAVON BRINKLEY

NOW COMES Jarvas Javon Brinkley, **In/Propria/Persona,** being first duly sworn, deposes and says In support of his "Motion For Leave To Proceed In Forma Pauperis," the following statements to wit:

1) That he is the Movant in this cause and action, who desires to pursue this action within this Honorable court without pre-payment of the costs and fees for filing this action;
2) That he does not have a prison job, and the only monies he has is this gift his mother monthly witch averages out to fifty dollars (50.00);
3) That he needs this money for his personal hygiene, postage stamps, writing and typing paper for motion, petitions, and letters to the courts, photo copying, and mailing costs of his legal papers and documents within the courts, and
4) That he is "unable" to pay the costs and fees associated with filing this motion and legal papers.

FURTHER, AFFIANT SAYETH NOT.

Respectfully Submitted,

Jarvas Javon Brinkley #324670
Carson City Correctional Facility
10274 Boyer Road
Carson City, Michigan 48811-9746
In/Propria/Persona