No. 19-6815

IN THE

SUPREME COURT OF THE UNITED STATES

Blake Wingate — PETITIONER
(Your Name)

vs.

State of New York — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Blake Wingate
(Your Name)

P.O. Box 618, 135 State Street
(Address)

Auburn, New York, 13021
(City, State, Zip Code)

(Phone Number)

II

QUESTION(S) PRESENTED

WHERE THE RIGHT TO PROCEED PRO SE IS CONSTITUTIONAL? EVEN ON APPEAL OR A POST CONVICTION APPLICATION , IS IT A VIOLATION OF DUE PROCESS AND OR THE EQUAL PROTECTIONS OF THE UNITED STATES constitution as well as the new york state constitution TO REFUSE TO CONSOLIDATE C.P.L. 440.10, Habeas Corpus, WRIT OF ERROR, DENIED : ALL FILED POST CONVICTION AND BEFORE THE FIRST INSTANCE DIRECT APPEAL WERE FILED.. WHERE EACH OF THE POST CONVICT -ION APPLICATIONS WERE DENIED BECAUSE THEY COULD HAVE BEEN DECLARED ON THE DIRECT APPEAL. WHICH WAS NOT FILED UNTIL 2 years later?

BASED UPON THE AFOREMENBTIONED IS THE CLAIMANT AT LAW STILL SUFFERING FROM INEFFECTIVE ASSISTANCE OF COUNSEL , AND PREJUDICE FOR ACTING PRO SE WHICH IS HIS CONSTITUTIONAL RIGHT ?

BASED UPON THE CIRCUMSTANCES HEREIN ,AND THE FAILURE TO CONSOLIDATE THE DIRECT APPEAL WITH THE POST CONVICTION DENIALS , THE APPEAL IS NOT PROPER AND UNACCEPTABLE TO BE ACCEPTED BY A TRAINED ATTORNEY AT LAW.

In the appellate division 2nd department, the deponent has been having a serious problem with the CLERK OF THE COURT She Ms.Aprilanne Agostine has been accepting motions and returning the exhibits without cover letter. She has also returned motions 2 days late due to acts of the facility w/o allowing the residential judge know of their lateness.

In the 1st department, the clerk of the court never forwarded the claimant at law a copy of the june 23 2019 decision until he wrote to O.C.A. Special Inspector General Sherrill Spatz and complained on how they were all reacting to the issue of the article 78 with Lynn W.L. Fahey. The abuse of process is not unrecognizable and can't shock the conscience when racism and prejudice have been a part of the system to cause the KLU KLUX KLAN ACT to be established 42 USCA 1985..

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. QUEENS DISTRICT ATTORNEY ASSISTANT Dianna Megias(phonetic.
2. QUEENS SUPREME COURT JUSTICE KENNETH C. HOLDER
3. APPELLATE DIVISION SECOND DEPARTMENT
4. NEW YOTK STATE COURT OF APPEALS
5. QUEENS DISTRICT ATTORNEY ASSISTANT JOHN F. MC GOLDRICK(PHONETIC)
6. QUEENS SUPREME COURT JUSTICE WEINSTEIN (CIVIL TERM)

APPOINTED COUNSELORS

A. STEVEN THOMAS (ARRAIGNMENT, GRAND JURY,INDICTMENT ARRAIGNMENT)

B. ANTHONY WORGAN (INDICTMENT ARRAIGNMENT)

C. PAUL NUNCIO FRANZESE (INDICTMENT ARRAIGNMENT, PRETRIAL TRIAL) NOTE ACTED AS COUNSEL ASSISTANT AND AS TRIAL ATTORNEY

D. BLAKE WINGATE PRO SE (FELONY ARRAIGNMENT, GRAND JURY,INDICTMENT ARRAIGNMENT, PRE-TRIAL, POST CONVICTION MOTIONS , AND TRIAL MOTIONS) FILED NOTICE OF APPEAL..

APPEAL COUNSELORS APPOINTED

A. APPELLATE ADVOCATES OFFICE Lynn W.L. Fahey/WARREN S. LANDAU

B. LEGAL AID SOCIETY , SEYMOUR JAMES

C. GUTTMAN AND KELLNER

D. FELDMAN AND FELDMAN by STEVE FELDMAN

E. BLAKE WINGATE PRO SE

APPOINTED PRIVATE INVESTIGATOR

A. Thomas Lo Frese

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix ONE to the petition and is Oct. 29, 2019

[X] reported at unregistered in WWESTLAW NEXT.; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Appellate Division 2nd Department court appears at Appendix ONE to the petition and is

[x] reported at 2019wl 4049220; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

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

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

The date on which the highest state court decided my case was Oct / 29 / 2019
A copy of that decision appears at Appendix ONE.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution	1st, 4th, 5th, 6th, 7th, 8th, 9th 10th 13th 14th amendment 15th amendment. Art. VI sec.1, 2, Art.IIIsec. 1 - sec. 3.. Art.IV sec 1..
New York State Constitution	Art. 1 sec 1,2,3,4,5,6,8,11,12, Art.VI ;Art.X Art.XIII : Art. XVII sec. 1 - 7
CRIMINAL Procedure Law	1.20(1),(2),(3),(3-a),(6)(8)(9),(11),(12),(13) (14) (15),(16),(17)(18) Art. 30 .10, 20 and 30. Art. 40.20 40.30..Art. 60.. Art. 70 Art. 100 ; Art. 140, Art 180: Art. 185, Art 190 Art 195 Art. 200 : Art 210 Art 215 Art.240** Art. 250 Art 255 Art.320 Art 330 : Art 340,Art 350; Art 360 : Art 370 Art 380 , Art 390 Art 440 Art 430 , Art 450 , Art 460: Art 470Art 500 Art. 510,Art 550, Art 560 Art 610, Art 630 Art650. Art 670 : Art 700
PENAL LAW	Art. 1.05 sec. 1-6.. Art. 5 : Art. 10 sec.15,17 10, 09, 07, 06, 05, 03, 01.. Art. 15, Art.20.. Art 25..Art.55, Art. 60 Art. 70. Art. 80 XXXXXX Art. 105, Art.120 , Art 125, Art.135 Art.145 , Art. 160 , Art 175, Art 190 ., Art. 195, Art. 200 Art. 210 Art. 250.. Art. 275 , Art. 460. Art 485 Art. 496.
Title 18 USCA	SEC. 241 - 249 Ch.13/ SEC. 371 Ch. 19/ SEC.402 CH. 21 / SEC. 401 Ch 21..SEC. 1038 Ch 47/ SEC 1111 CH.51 /Ch. 55 sec 1201,1202, 1203/ sec. 1341 ,1346 CH 63 / sec. 1361 Ch. 65/ Ch 73 SEC. 1510, 1511, 1514 , 1513 ,1506.../Ch77 SEC. 1581 -1597/ sec1621 - 1623 CH. 79 / SEC 1601 - 1728 Ch. 83 CH 95 sec 1951 - 1960/ Ch. 203 sec 3041 -3064.
Title 42 USCA	1981, 1982 , 1983 ,1985 , 1986, 1987, 1988, 1989 1990, 1991, 1992, 1994, 1995, 1996**, 2000aa, 2000aa-6, 2000aa-12 , !((& , 2000-bb, 2000cc,2000 -dd.2000-ee , 3003...
COURT OF APPEALS RULES of practice	500.20, 500.9 C.P.L.R. 5602 , 5601 75 ALB.L.REV. XXXXXXXXXXXX 899,(2011-2012)
LAWS BIBLICAL	The Assyrian Code, The Hittite Code, The Covenant cODE,2 Forms Deuteronomic Code,The Holiness Code The Priestly Code, The ideal Code in the Book of Ezekiel, The Levitical Laws, The Code of Manu,The Shariah...

STATEMENT OF THE CASE

This matter before this UNITED STATES SUPREME COURT are addressed to prevent a manifest injustice . The basic application herein is deemed to show this Court the (CONFLICTS OF INTEREST) The claimant at law has faced due to his acting pro se now , and in the past.

The main issue herein are that the claimant at law is being prevented from having his full trial, pretrial, post conviction issues addressed in the Appellate Division second depaertment.

At the present the claimant at law asks this Court to s t a y his direct appeal until this decision is rendered.

The reason for this request are as follows:

1. The deponent was arrested in 2014 and never made bail.
2. the grand jury did not issue a true bill (ignoramus).
3. there are not any superior court informations or waivers involved.
4. the Queens DISTRICT ATTORNEY OFFICE issued an indictment non-true bill and a superior court information under the same numbers 00186-2014 after the grand jury appearance and no waivers are issued .
5. the trial issued in 2015 , after all motions and hearings were set & done. However the private investigator assigned to Blake Wingate pro se refused to appear in court and refused to forward the certified written report to Blake Wingate.
6. The judge answered motions of dismissal without alllowing the A.D.A. to respond to the motions.
7. Although the deponent was falsely arraigned on indictment(non-grand jury) three times times : THE COURT ISSUED ONLY 45 days charged to the people in a SPEEDYU TRIAL Constitutional and statutory application. It to -ok 5 months to get the 3 arraignments on false instrument

8 While in detention the claimant filed habeas corpus in Bronx which was transferred to Queens in 2014.It was never answered ..

9. During the time period the deponent was alotted pro se status, there was not any statements of readiness for over 8 months. There were 4 speedy trial motions filed , one was a reargument, and the last was not ever heard prior to trial and addressed 2 years after trial.

10. Due to this issue and the fact there were no legal jurisdiction to prosecute as there were no valid instruments, it was imperitive that the appeals counsel address these issues, which he refused to do.

11. THese issues and more were placed in the C.P.L. 440.10, 330.30, Habeas Corpus, Writ of errors and the like. But were not briefed by assigned counsel. Feldman and Feldman.

12. The first appellate counsel refused to adopt anything for a 2 year period. The deponent sought reassignment several times and lastly had to file an article 78 to relieve counsel. Appellate Advocates. Themn Legal Aid took over the case and immediately the deponent notified the Court off -icially of a conflict of interest. The legal aid returned and declared there were 2 conflicts of interest and were relieved. Then Guttman and Kel-Lner were appointed, and the deponent reviewed Kellners record and saw he never won any case for a defendant , not only that he only woin a case for himself .. They relieved themselves. However He had failed to serve the District Attoirney, and thus the deponent sought the relief again and was granted the conflict of interest. Then Feldman and Feldman Steve was given the task , and in less then 3 months he had issued an appeal other then what was deemed acceptable. Feldman only addressed the trial, and failed to address the rule for absenteeism and or the rights to be afforded whgen a party is in the custory of the court, but not appearing in the trial.None of the post conviction motions were discussed at all.

13., THis is the reason the deponent seeks this Courtsa address, as the fundamental right to appeal is deemed only a one shot deal at first instan -ce , and the NEW YORK STATE COURT OF APPEALS AND THE 2nd Department have refused to allow the appellate division revioew the dismissal of all of the POST CONVICTION APPLICATIONS. This is violating the claimants at law right to direct appeal with consolidation of his post conviction motions.

14. In closing , the claimant at law is being denied the right to effect-ive assistance of counsel. To such a degree, that counsel and the appellate court refused to deliver any transcripts, or records,and the claimant at law was to make his appellate supplemental brief without ever receiving a copy of the district attornies response to defense appellate counsels verified brief of record..While this was gooing on the facility of detention was refusing to deliver the deponents legal briefs, and it took 4 said months to have the briefs finally delivered after suit against the facility and they released the supplemental, although declaring they delivered it all along.

15. W H E R E F O R E , the claimant at law is seeking the relief of having all of his post conviction motions and writs heard as they are alrea-dy completed, answered, and denied, and it would be a manifest injustice to have to file for relief that could have been applied by law and fact in the appellate division on the first instance. Not only will it save on the judi-cial economy , but it would be fruitless to file again where the decisions had therein all stated ..<u>THESE ISSUES COULD HAVE BEEN MADE ON DIRECT APPEAL</u>. <u>HABEAS CORPUS IS NOT A SUBSTITUTE FOR THE DIRECT APPEAL</u>. It is a fact that justice delayed is justice deniued. The suspension of the WRIT OF HABEAS CORPUS in the States for Blake Wingate are astonishing. The lower court and the Appellate court(s) all deny habeas Corpus is the same as suspending the State and Federal COnstitution on Handled properly habeas corpus .. Other, then this, the deponents legal mail was also twarted while in City Detention and he had to file claim for the relief thereof which is still pending. The filing of false instruments were so great in Queens County, That Rikers Island staff added a MURDER to the same instruments of S.C.I. and Indictment 00186-2014 see exhibiut..

I Blake Wingate pray that this Court sees that this is an ongoing issue and accepts this matter to be properly briefed, and for such other and further relief as may be deemed to be just and proper..

Always Faithful,

Blake Wingate

Cayuga ,County
November , 2019

UNDER PENALTY Of PERJURY BY GOD AND MY COUNTRY
28 USCA 1746, Deutoronomy 5:20 Exodus 20:16
18 USCA 1621 - 2623 ,Penal Law 210...

Blake Wingate
15A3206
Auburn Correction Facility
P.O. Box 618
135 State Street
Auburn,New York 13024

REASONS FOR GRANTING THE PETITION

Based upon the STATEMENT OF THE CASE, the reasons to grant the petition will be much shorter.,Plus the deponent is awaiting surgery and had to re-schedule in order to complete this missive as he has been denied access to the law library, assaul;ted by being pushed sown stairs while handcuff -ed and shackled, and had his writing arm closed mechanically in the cell door and door jamb, and has went bling legally in his right eye for fail-ure to issue medical eye treatment for 2 years straight. His crohns disease is so active that he has rashes all over his body.

F U N D A M E N T A L R I G H T T O A P P E A L

The fundamental right to appeal first instance with effective counsel is a right that is being denied this claimant at law. see: People v Harrison 85 N.Y.2d 794, citing Evitts v Lucey 469 U.S. 387: Griffin v Illinois 351 U.S. 12: Hardy v United States 375 U.S. 277 et.al. State cases thereof.

In 2017 The New York State Court of APpeals decided People v Novak 30 NY3d 222 which overturned their first court decision of 170 years ago. THis due process issue was twofold.)One(a Judge thast situs on a case in the lower court shall not sit on its appeal.) Two(the only reason why the trial judge answers a C.P.L. 440 motion are because the claimant at law has the right to appellate review. Citing In re Murchison 349 U.S. 133,136,Judiciary Law 14 , and to deny the appellate review of the 440 decision would be deemed a compromise of the appellate process, and violate due process. Citing The People v Perez 23 N.Y.3d 89,99(2014)

However the catch-all are that the Pierce v Delamater 3 How.Pr. 162,and 1 N.Y. 17 case mater was overturned on this premise. Where only one judge has denied all motions filed, the Appellate Division MUST afford the said CONSTITUTIONAL RIGHT TO A FAIR APPELLATE PROCEDURE. It shall be noted ,in 1847 the New Constitution ofN.York State issued the opening of the New York COURT OF APPEALS in 1847 The same year as Pierce v Delamater.

Thus , the deponents direct appeal of right is being denied by the appella -te Court and The Court of Appeals as if this right is not afforded to him alone.

Where the record speaks for itself,and issues of non existing jurisdiction are on the record, there's no excuse for the refusal to brief and accept

his post conviction motions, writs as well as pre-trial motions and writs for the appellate review he is entitled to receive.

Being accepted as pro se is a fundamental hardship in New York City Courts , it causes friction when a non lawyer participants in his case with enthu -siasm and vigor and being right at his implimentation. see Farretta v Cal -ifornia 422 U.S. 806, People v Crampe and Wingate 17 N.Y.3d 869,2011 N.Y. SLIP OP 07148. People v Hardy Renaud 73 N.Y.2d 985,145 A.D.2d 367.Especia -lly where the Court had no legal instrument to proceed upon Bain 121 U.S. 1 , People v Villegas 994 NYS2d 534 , and the instrument was deemed inval-id as a matter of law. C.P.L. 200.50 subd. (8) and (9).. You cannot have a S.C.I. and Indictment with the same numbers . Where no S.C.I. can issue after an indictmneent issues, and any S.C.I. that issues must have a waive -r- as a matter of constitutional law see NEW YORK STATE CONSTITUTION article 1 section 6 and C.P.L. 195.10, 20, 30 and 40..respectively. Blake Wingate filed over 10 post conviction motions and writs, and over 6 pre trial motions and writs that have not been addressed in his direct appeal by his assigned appellate counselor. We are all aware of the dispar -ity in representation of indigent and the minorities..see Hurrell-Harring v State of New York series..15 N.Y.3d 8, 75 A.D.3d 667, 66 A.D.3d84, 119 A.D.3d 1052,81 A.D.3d 69, 14 N.Y.3d 833,112 AD3d 1213 and the fact that even Thurgood Marshall declared that the Constitution was not written for People of Color .

Where the claimant at law was denied the right to have his CPL 440.10 and other POST CONVICTION MOTIONS heard with his direct appeal he has been denied due process , procedural due process, substantial due process and equal protections of the law. and is suffering collateral estoppel by judgment without review of the merits.56 Harv. L. Rev. 1 Montanna v U.S. 440 U.S. 47 @ 153.. An act of the Court shall prejudice no man Davidson v Ream 175 AD 1760.. 101 Harv. L. Rev. 1 :22 NYCRR 799.1, 671, 671.9..

Without a valkid instrument the Appellate division must reverse, however They will not appraise the deponents brief in the same light as appointed counsel. C.P.L. 1.20 (16)(17) People v Kase 76 AD2d 532. 536, 53 NY2d 989 a defective instrument , reissued without legal authority is deemed unlaw-fully commenced ..

THus the failure to consolidate the 440, and post conviction as well as pr etrial applications are inexcusable for Feldman and Feldman as trained yeb ified counsels other than prejudicial due to the amount of changes of coun -sel and the fact one of the counsels are married to the ASSOCIATE JUDGE in the NEW YORK STATE COURT OF APPEALS.

Where the deponent was kicked out of court constantly, sitting in a court where he was threatened and buklied by the judge as well as not allowed to have his motions answered by the opposinbg district attorney assistant in the lower court, he never had a chance in the kangaroo court held by the Judge Kenneth C. Holder. see People v Kerley 161 AD3d 1458 ,.ESPECIALLY WHEN THE JUDGE HOLDS A VENDETTA FROM THE PRIOR CASE OF WINGATE V STATE OF NEW YORK (supra) Crampe.., Holding a Vendetta because the judge on that case was relieved for his actions. and they were pointed out on appeal. Is not the fault of the claimant at law.. A good judge should not play with the law , and act as a tyrant for nobody see Matter of Shiff 83 N.Y.2d 68 THis case was suppossed to be consolidated with the post conviction motion (s) on file to prevent a mixed claim and manbifest injustice see.. People V Freeman 93 AD3d 805 , People v Maxwell 89 AD3d 1108, People v Cotton 38 Misc.3d 1235 , People v Evans 16 N.Y.#D 571 and People v Washington 108 AD 3d 781.

Wherefore the deponent prays for the relief sougfht herein and for such other and further relief as may be deemed as just and proper. Motions and Writs are speech, wheether by phone, fax or by letter and they have a right to be heard as a part of the record by the appellate court.
I pray for the relief sought herein and findf for such other and further relief as may be deemed to be just and proper. In the furtherance of justice.. And Substantial Justice.

Alwaya Faithful

Blake Wingate

under penalty of perjury
I declare and affirm
28 USCA 1746

L E G A L I T Y PREVAILS OVER CHRONOLOGY

As per the UNited States Constitution 5th amendment and the New York State Constitution ART. 1 sec. 6 both declare as fact in law:

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITOL OR INFAMOUS CRIME, UNLESS ON A presentment OR indictment of a GRAND JURY .. EXCEPT THAT A PERSON HELD FOR THE ACTION OF A GRAND JURY UPON A CHARGE FOR SUCH AN OFFENSE , OTHER THEN ONE PUNISHABLE BY DEATH OR LIFE IMPRISONMENT, WITH CONSENT OF THE DISTRICT ATTORNEY, MAY WAIVE INDICTMENT BY A GRAND JURY AN CONSENT TO BE PROSECUTED ON AN INFORMATION FILED BY THE DISTRICT ATTORNEY. SUCH WAIVER SHALL BE EVIDENCED BY WRITTEN INSTRUMENT,SIGNED IN OPEN COURT IN THE PRESENCE OF HIS OR HER ATTORNEY.

THus an illegal indictment cannot stand as a matter of law and fact. see People v Jacoby 304 NY 33 * 42 and *43.. and a clear abuse of power and discretion cannot be used to enforce anything in the courts without jurisdiction see WATTS V INDIANA 338 U.S. 49, 54.. People ex rel Battista v Christian 249 N.Y. 314 @ 318, People v Bell 138 AD2d 298..and the fraud on the judicial tribunal by cause of a case to exist that was deemed igno -ramus is deemed a fraud upon the judicial tribunal and worthy of removal .. Code of Hammurabi section 5 and 6.. Such active concealment are deemed caveat emptor till discovery of the fraud begins the statute of limitations Rosenthal v Walker 111 U.S. 185and such wicked concealment which affects several oaths of officers shall be deemed a conspiracy against the rights of citizens and the rights of the Court.see People v Tapia (dissent)quote Aaron Burr 2019wl1440800 ,U.S. V Burr 25 F.Cas 187,193 thus a fundamental principal of jurisprudence are that an illegal indictment cannot stand,no sewn sentence can issue upon a fundamentally defective prosecutorial inst- rument defect, as deemed a mode of proceedings and a presumption of regul -arity defect which is not waived even if a plead was issued. People v Van Dyne 12AD3d 120. ,Nielsen v Preap 139 S.CT. 954, Nioeves v Bartlett 139S.CT. 1715..

THus , a fundamental jurisdictional defect in prosecution eliminates jurisdiction to situs, try and sentence as such and or reach any determination,no o jurisdiction attaches to an IGNORAMUS . People v Naughton 38 How.Rr. 430 , Giacco v State of Pa. 382 U.S. 399 , Carroll v U.S. 16 F.2d 951. People v Craig 295 NY 116, 120: People v James 111 ad 609. : People v Evans 16 NY3d 571. Judicial rule mandates that this issue be addressed as it IS RIPE as a matter of fact and klu klux klan and african american law. No one is above the law to the degree that they can forward false prosecutions as a valid instrument and not be held accountable based upon their status as a public employee see P E O N A G E CASES 123 f 671 subd.(8) on the other hand , where a magistrate judge or other judicial officer corruptly exercises his or her functions , in order that a citizen may be convicted unlawfully & sentenced such magistrate or judge cannot escape criminal responsibility to the united states for the conspiracy , and its natural and designed effective result , in holding of a citizen in a condition of peonage or involuntary servitude , because the judicial officer has taken the precaution to veil his wrong in the form of an official act..we declare as a color of law or a color of office..

Such acts are violative of 11 of the laws of the land, biblical or State and or federalism.Congress declared the rights of the people to petition and did not declare that this right only belonged to lawyers. De Jonge v State of Oregon 57 S.CT. 255 and are not accidental or coincidental Thomas v Collins 65 S.CT. 315 , JOhnson v San Jacinto Jr. College 498 F.S. 555.: and thus it is mandated that the deponent be dismissed from prison his case reversal and his papers expunged..

ALways Faifhful

Blake Mizelle

R I G H T T O E X P E R T A S S I S T A N C E

The right to expert assistance has always been Constitutional and Statutory on the Said State and Federal Levels. THat Ake v Oklahoma 470 U.S. 68(1985) Tyson v Keane ,96 Civg.8044(SAS)(AJP)(SDNY1997) Magistrates report and mem. of Recommendation adopted by 991 F.Supp 314(SDNY) citing Britt v North Caro -lina 404 U.S. 226,227. County Law art. 18-B sec. 722-C..Services other then counsel..

The deponent did receive a private investigator Thomas J. Lo frese. However in order to receive a private investigator or a P.I. , you m u s t release the whole defense to the opposition , which I did. However the P.I. failed t to investigate and instead gave his opinion in a fax to the lawyer*AFTER THE DEPONENT WAS RELIEVED OF COUNSEL PROSE, AND HE ALSO REFUSED TO APPEAR TO COURT WHEN THE DEPONENT HAD HEARINGS AND TRIAL IN January of 2015) He was the personal P.I. for Paul Franzese, whom was the assistance of counsel, then the counsel of the case. At no time die Franzese seek another P.I. or that the same do an investigation see Hinton v Alabama 134S.CT.1081(2014) , People v Dearstyne 305 AD2d 850 3rd Dept 2003..see also Standards for crimin -al Justice, Providing Defense Services Standard 5-1.4 and commentary at 22 (2d 1992) of the AMERICAN BAR ASSOCIATION, and thus the refusal to appear and the refusal to investigate were deemed an abuse of discretion People v Cronin 60 NYd 430(1983) AND DEEMED MORE THEN HARMLESS ERROR People v Mooney 76 NY2d 827 (1990) citing Tyson v Keane once again for proof of the travesty of justice 159 F3d 738 ..(991 F.S. 314) 2nd cir.. People v Smith 114 Misc. 2d 258. Lawyers are required to be in the Courts from 9 to 5 and then some..The sole purpose of receiving a P.I. were to assist in the defense of the deponent. Upon this factoid ,it has been held that to be effective ,de -fense counsel is obligated to investigate and "collect the type of informa- tion that a lawyer would need in order to determine the best course of action

for his or her client" Where the deponent was pro se , he knew exactly what occured, what to look for and what to prove. People v Oliveras 21 NY3d 339, people v Bennett 29 NY2d 462. However he was kicked out of his position after the court refused to dismiss based upon a lack of jurisdiction as there are no valid instruments of prosecution on record..

THus the failure to receive proper P.I. services, an Attorney at the last minute that did not inmvestigate, and was acting in conflict of his own P.I , of record caused the manifest injustice to esculate. For compliance and an ouitright violation of due process see the following :

N.Y.S. BAR Assoc. Revised Standards for Providing Mandated Representation (2015), NYS DEFENDERS ASSOCIATION STANDARDS FOR PROVIDING CONSTITUTIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK STATE (2004)) American Bar Association(ABA),TEN PRINCIPALS OF A PUBLIC DEFENSE DELIVERY SYSTEM(2002); ABA ,Standards for criminal Justice: Providing Defense Services .3rd ed.,(1990,1992) Standards 5-1.4 Supporting services The legal representation plan should provide for investigatory, expert and other services necessary to qualify as quality legal representation..National Study Commission od defense services , guidelines for legal defense systems in the U.S (1976).

THat such application must be deemed effective as the deponent was deemed to be without assistance where he had no one to investigate although he had a P.I. and counsel assistant. At the trial defense counsel had no knowledge of the facts of the case , only that the parties that stated the deponent was the party oinvolved , and he was not allowed the wherewithall to determineth THat the parties stated they were unable to see their assailants. Thus the constitutional provision of waiver of counsel, waiver of private investigator waiver of indictment, waiver of jury trial all MUST be supported by an actual waiver.. People v Carroll 3 NY2d 686 Art.1 sec. 2 NYS Const.People v Alvarez 33 ny3d 286 art. 1 sec. 6 NYS CONST.

Thus the legislature cannot authorize a court to amend an indictment to include an accusation of criminal acts independent of any accusation presented by grand jury in the indictment, and especially where the grand jury does not issue an indictment . NYS Const ART. 1 sec. 6 People ex rel Wachoxicz v Martin 1944 , 293 N.Y. 361 quoting People v Miles 289 N.Y. 360 see 5th , 6th 14th amendment.. Thus where an indictment does not exist,no authorized legitimate NY court can make one exist without following due PROCESS OF LAW, AND HAVING PERMISSION AS THE LAW MANDATES.

That when an attorney fails to acknowledge fundamental issues, and the said client requests that said counsel be removed, the court by constitution does not have the power to force a lawyer upon a defendant solely because he is indigent. U.S. V Kelly 774 F.3d 434, quoting Adams v U.S. ex rel Mc Cann 317 U.S. 269 ,279., 63 S.CT. 236 stripping the defendant of his constitutional right to counselannd making the counsel a M A S T E R see Faretta v Calif -ornia 422 U.S. @ 820, Mc Coy v Louisiana 138 S.CT. 1500: U.S. V Warner 428 F.2d 730 ,91 S.CT. 194 6th amendment right to assistance of counsel includes the constitutional right to waive counsel including on appeal see 18 USCA F.R.C.P. rule 44 , 28 USCA sec. 1654, Montgomery v Louisiana 136 S.CT. 718.

POST CONVICTION REMEDIES DO THEY INCLUDE THE DIRECT APPEAL FIRST INSTANCE

The trial court refused to allow reversal on 5 CPL 440 applications. That Court declared the arguments should have been made on appeal. When the appeal was still pending. The appellatre court refused ERROR CORUM NOVIS, NOBIS de -claring that the direct appeal has not issued. The same occured for post co -nviction HABEAS CORPUS,. declared not usuable due to a pending appeal. The lower courts have a duty to gtrant relief that federal law requires, and the State

State mandated as direct appeal. Yates v Aiken 108 S.CT. 534, 484 US 211 All of the appeals of a conviction are (POST CONVICTION) otherwise they would not be an appeal, a remedy or otherwise. What confuses the deponent are that the Courts are playing word semantics with the terms , direct appeal, first instance appeal, post conviction motions ,when they are all after con -viction. State collaterasl review proceedings permit by the 1st amendment anyone to challenge the lawfulness of their confinement. However in New York State the HABEAS CORPUS IS SUSPENDED AND ONLY USED AS AN AEDPA mandate , non constitutional entity of which both the state and federal constitution birthed. Yates484 u.s.@ 218, 108 S.CT. 534..

THus the State is keeping a conviction of which the Constitution deprives the State of power to impose. yet the Courts all declared :

1. . the issue should be made on appeal.

2. . the habeas corpus is not a substitute for appeal

MEANWHILE , these are determinations that are made on CPL 440.10 after the appeal issuerd anbd the matter was placed in record.

WITH OVER 10 post conviction motions, and none adopted or appealed by appellate counsel , it clearly shows that the appellate counsel is incompetent, prejudice , and one sided. A clear manifest injustice. Mackey v UNited States 91 S.CT 1160 401 U.S. 667.

The deponent also continues to be blocked of access to the court by the agent of the State AUBURN CORRECTION FACILITY. They are constantly not deliv -ering his legal mail on time. see exhibits. 401 U.S. @ 693...THis facility Auburn Correction Facility P.O. Box 618 , is in Court for obstructing our cases on a daily basis, and no one will sanction them for such blatant due process violations. see Dublino v Schenk 2019 WL 2053829 , Gayne v Fix 2017 wl 4552558 , 2015wl 4648056 , 2014wl 1950130, Albanese v Annucci Index No. 4686-18 Supreme Court Albany Feb.09,2019, Wingate v Schenk State of New York 132606, 133355,1330252, 133352 ..

W H E R E F O R E , the deponent has been under HOBSONS CHOICE, AND MORTONS FORK too long. This case should not have made it this far but it has only due to extreme prejudice and obstruction of justice.

The conflicts of interest on all stages by counsel.

The conflicts of interest on trial stage of private investigator.

The conflicts of interest of the City corrections department delaying and refusing to deliver legal court mail.

The conflicts of interest of NYSDOCCS on appeal level refusing and delaying the deponents legal court mail.

The appellate clerk of the court refusing to allow pro se notice of appeal of cpl 440.10 dismissal while pending conflict of interest with appellatye advocates as a clear abuse of discretion.

The refusal of the trial court justice to grant hearing on 440 or to dismiss outright as there was no legal jurisdiction.

The clear abuse of discretion of the Appellate Division and the New York State Court of APpeals tyo mandate the review of the CPL 440.10 ,Habeas corpus, Writ of Errors all filed post conviction as an abuse of discretion.

THIS CASE IS R I P E and not M O O T as it is a reoccuring issue of Fact and law that must be deemed substantial by this Court. The app -eal of any case where a post conviction motion was already decided are to both be issued as a matter of law on appeal to eliminate a man -ifest injustice from continuing in the NEW YORK COURTS . see National Park Hpspitality Ass'n v Department of Interior 538 U.S. 803 see also U.S. V Santana 761 F.S.2d 131 as a justiciability doctrine , and Ripe- ness is Jurisdictional see VENDOR ,INC v [redacted] Militello 301 F.3d 37 , and Missere v Gross 826 F.Supp 2d542.. and it isn't subject to mootness as it is repetitive. People v Ijnace 667 NYS2d 229 .

EXPANSION OF THE RECORD

The delay in receiving appellate counsel caused the deponent to approach the courts with post conviction motions. The law says post conviction motions ons can be filed before or after appeal, as long as they are after conviction. THis would include the 330.10 as well.

The trial courts frown upon post conviction motions filed pro se. However the 1st amendment mandates the right to appeal, griever and petition. The C.P.L. 440.10 or Habeas Corpus at the State level all enhance and expand t the record . see People v Morsby 5 Misc. 3d 64. THusd to refuse to hear the expansions after they have been documented are a manifest injustice and it warrants this Courts intervention. see also C. V R. 65 Misc.3d 1205(A),63 Misc.3d 137(A) People v Carter and this Court has the inherent power to monitor the expansion of records and their denial when they affect the judicial economy and create a manifest injustice. Vasquez v Hillery 474 U.S. 254 , , Trevino v Thaler 569 U.S. 413... Griffin v Illinois76S.CT.585 (note 1 second part)

THus the deponent filed his post conviction motions pre appeal.

The Court (appellate Division) and (LOWER COURTT) both refussed to answer the issues declaring that the CPL 440.10 should have been filed as an appeal issue.

The Court of appeals affirmed by rubber stamp see: People v CLifford Jones 24 NY3d 623 which OVERTURNED People v Crimmins 38 N.Y.2d 407 which was misused for the last 42 years by the Courts. 38 NY2d 407...THus the failure of the Court of Appeals to hear such matter is deemed inexcusable as they can hear cases by law or fact if they so choose. THus the Appellate court and the Court of appeals as well as the Nisi Prius court have abused discretion and the constitutions of the State of New York and the UNited States.see The Statndards of Appellate REVIEW .COleman v JOhnson 566 U.S. 650 , Cawazos v Smith 565 U.S. 1 , Henderson v U.S. 568 U.S. 266 FRCRP 52..Rosales-Mireless v U.S. 138 S.CT.1897 , Hall v Hall 138 S.CT. 1118 28 USCA sec. 1291.

COLLATERAL ORDER DOCTRINE

That the actions of the Appellate Division and the Court of Appeals violate COLLATERAL ORDER DOCTRINE, and Constitution due process,equal protections, mode of procedings, presumption of regularity State and Federal where they refuse to impose their own laws, the laws of Congress, and the State and Fed -eral legislative authorities because they are prejudiced against Blake R. Wingate. They have created an estoppel on POST CONVICTION APPLICATIONS FOR ME AND AT LEAST another. STATE EMPLOYEES BARGAINING Agent Coalition v Rowla -nd 2nd Cir. 494F.3d71, N.A.A.C.P. V Merrill 939 F3d 470, Will v Hallock,546 U.S.345.Mitchell v Forsyth 472 U.S. 511,Ashcroft v Iqbal 556 U.S.662..

The delay in delivery were above and beyond my control as a prisoner to receive copies of the exhibits thus a new affidavit of service issues.Matter of Renato Albanese vs Anthony Annucci Index No. 4686-18 Supreme CourtAlbany County: February 01, 2019. Dublino v Schenk D.S.P. Auburn C.F. 2019wl2723595 ,Gayne v Fix 2015wl 4648056 .

Thus this is not moot as the same occured to Manani Oliveras 19B0832 at the Auburn Facility also, whom is seeking to eliminate a prior unconstitutional conviction that was predicated into his present conviction.The 2nd & 4th department refused also to hear his CPL 440 appeal. violating the new law issued in People v Brian Novak 30NY3d222 ,State v LaCaze 239 So.3d 807,People vs Towns 102 NYS3d 154(151) SEE ALSO HCCNY sec. 72.Judicial Disqualification The,=cases affected with Manani Oliveras 19B0832,2nd.. Dkt: 2013RI008583,Ind. 00317-2013, and 4th department 18-373...Failure to answer or issue is the same as estopple, setting illegal Bars, and ignoring the Court Record. *Credle 17NY 3d 556.

However the OBSTACLES OF incarceration are exceptionally devestating in the , Auburn Correction Facility, as exhibited in the Appendices A-F. ,Murray vs Fis cher 94AD3d 1300.simpson v annucci 175AD3d 1694. The appellate divisions in toto as nysdoccs both violate Arizona v U.S. 567 U.S.387 U.S. CONST. Art 6.cl 2, @ 399 -400 where it comes to CPL 440 appeals on all levels of the STATE.

Thus evading review is deemed unehthical, immoral and unconstitutional , when it is a mandate to follow to answer. U.S. V Sanchez-Gomez 138 S.CT. 1532 (2018 wl 2186177) ESPECIALLY WHERE THE ISSUES WILL REPEAT THEMSELVES ARE AN EXPLICIT EXCEPTION TO MOOTNESS Murphy v Hunt 455 U.S 478 , and Chafin v Chafin 133 S.CT. 1017... ~~xx~~ Exception to Mootness Doctrine for important, recurring issues capable of evading review , permit this Court to consider claims, and Appellate Courts cannot evade their duty of review which would violate the SATURATED STATE AND FEDERAL CONSTITUTIONS in the Judiciary art. III and 553 W. 144th LLC VS Veras 65 Misc3d 142(A) and the court must properly and liberally construa pro se complaint without prejudice Endley v UNITED STATES DEPARTMENT OF DEFENSE 268 F.S.3d 166 and have subject matter jurisdiction,Pordy v Scot Serv. Co 15 AD2d 911(1962).. NYS CONSTITUTION ART. VI 1 - 37 in toto..

WHEREFORE, IT WAS IMPROPER FOR THE APPELLATE DIVISION SECOND DEPARTMENT AND THE NEW YORK STATE COURT OF APPEALS TO REFUSE TO HEAR THE DEPONENTS CPL 440 and direct appeal as a consolidated matter, where the post conviction motions were all denied based upon the issues could be used on t the direct appeal, and the assigned appellate counsel failed to raise them and undermined the defense of the CLAIMANT AT LAW Penal consequences and civil liabilities NYS CONST. ART. 1 sec. 6 Farretta v California People v Perez 123 AD3d 592.,People v Bradley 88 NY2d 901.. THus the claimant at law prays that this Court fixate the rules of engagement in NEW YORK STATE as they are to be respected and for such other and or further relief as may be deemed to be just and proper.

Always Faithful,

Blake ~~m~~ gate

BY PENALTY OF PERJURY
28 USCA 1746

To be harrassed bny people in low positions do not affect or effect ones life as a whole,as they can remove themselves from the oppresser.However when the person abusing you are intricate in the machinery of the Courts system this harrassment offends the ":Public Trust Act 2014" as an amendment to the penalties for crimes in public office. As deemed in ecclesistics 5:8 theres nop marvel to an oppressor, wham has a higher up to base their conduct and to report to.

Where the oppression are in all stages of the Court, and in the places of detention,THE JUSTICE TASK FORCE,THE COMMISSION ON PROSECUTORIAL MISCONDUCT are going to have a lot to address. Statutorially as well as well as COnstitutionally State and Federal. THat such PUblic Service Law ,Public Officer Law, Generral Municipality Law, and coercion are deemed a part of HUMAN TRAFFICKING 34 USCA 20711, Peonage 18 USCA 1581 - 1597, 42 USCA 1994 , 13th Amendment , Penal Law 135.60, 135.65((TVPRA),No matter by whom initiates the false process of prosecution its still a criminal act. The 13th amendment clause 2 forbids in toto..see also Executive Law 214-d,108 , and 840 respectively.

That filing a false instrrument violates the 5th and 4th and 6th amendment as well as art. 1 sec. 6 NYS Const.and due process of law.
THis matter came from an illegal hand off arrest see Askins v City of New York S.D.N.Y. 2012WL12884363*(7)...the issue afforded claim under 14cv4063 53(RRM)(LB) and Wingate v NEW YORK CITY. The Queens District Attorney Office is known for their continued illegal acts of prosecution see BELLAMY V N.Y.C. 914 F3d 727. THis is the original cause of the m,atter before you..

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Blake Wingate

Date: November 06, 2019