

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING
CASE #19-7391

LARRY DAVID DAVIS - PETITIONER

VS.

LARRY JEAGLEY - ET AL RESPONDENT

PETITION FOR REHEARING

RECEIVED
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Certificate Signature
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SUPREME COURT, U.S.

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STATUTES AND RULES

OTHER

<u>4th, 5th, 6th, and 14th Amendments</u>
<u>of the United State Constitution</u>

Petition For Rehearing and Suggestions in Support

comes now Petitioner, Larry David Davis
pro se, prays this court to Grant a Rehearing
pursuant to Rule 44, and thereafter,
Grant him a writ of certiorari to review
the judgement of the Eighth circuit
court of Appeals, in support of the
Petition For Rehearing Davis states the
Following

STATEMENT of Facts

I, Larry David Davis, are petitioning for a rehearing of case number 19-7391 because of the malicious prosecutial misconduct that happen at my trial where I did not take the stand and the prosecutor told the jury that I was in prison and about prior offenses that happened 22 years ago and 17years ago and 11 years ago and there was no evidence to convict me presented at my my trial. There was 2 sets of evidence presented at my trial fingerprint analysis and the fingerprint analyst said on the stand that the fingerprint belonged to me and 12 more individuals. Then the 2nd evidence the prosecutor presented was 3 witnesses who all said that they could not identify me as being the black man on a video going into the office of a store, but I was still found guilty and given 45 years for commercial burglary and breaking or entering of a store that was open for business and I did not commit the commercial burglary and breaking or entering. But all throughout my trial the prosecutor continued to tell the jury that I did for a fact commit this crime and I had not been found guilty and the 3 witness that the prosecutor put on the stand was not there when the crime happen but they testified that they could not identify me. The jury did not have an option to find me guilty on there own. The prosecutor gave the 12 jurors verdict forms that just had not guilty written on the verdict forms. The verdict forms did not have guilty written on them. The jury did not have a option to find me no guilty. In the sentencing stage, the prosecutor lied to the jury in the sentencing and told the jury that I would be out of prison in 2 years on 30 years. So he told the jury to give me the maximum amount of time on Breaking or Entering and commercial burglary and the jury gave me 45 years in prison and on 30 years I will do at least 8 to 10 years in prison. The prosecutor coerced the jury into giving me 45 years. My court appointed attorney told the jury in the closing arguments that they they did not have to follow the prosecutors instructions on the sheet of paper that the prosecutor gave to each one of the juror instructing them that they had to find me guilty. My question is whether my 45 year conviction is so empty of evidentiary support as to render my conviction unconstitutional under the due process of the 14th Amendment of the United States constitution, Thompson v.

Louisville 362 U.S. 199, 80 S.ct. 624, 80 ALR2d 1355, 4 LEd2d 654. My court appointed attorney did not object to the enhancement of my sentencing to the career criminal which constitute deficient performance for counsels failure to object to defendants designation as career offender prejudiced defendant United States of America v. John Brown Carthorne 878 F3d 458. My attorney refused to make motions for 4th and 14th Amendment violations of no affidavit with warrant made by the police and no judge signature. The informations is fatally defective and insufficient to charge a crime because it do not state knowingly intended to deprive the owner of property and feloniously and unlawfully is not equivalent to knowingly which make the information insufficient to charge a crime Illinois v. Somerville 410 U.S. 458, 93 Sct 1066, 35 LEd2d 425. The information was made by the police or somebody other than the prosecutor because there is no signature of a prosecutor on the information, there is no true bill or true bill written on the information the information is a bare bones information on both cases #CR018-2636 and CR--18-2635 do not even state a owner name an important element to the charge burglary, the allegations was brought by the police not the store owners the informations is in violation 4th, 5th and 14th amendments. Both cases was also in violation of the due process clause of the 5th and 14th amendment pertaining to the 6th amendment no speedy trial warrants was issued 5-22-17 on case#CR-18-2635 that I went to trial on the information was filed 7-20-18, 13 months and 28 days after the warrants was issued and the Jacksonville police knew exactly where I was at. The Police state in they case notes that I was in Clark County Jail in Arkansas when they placed the warrant and holds on me while I was in Clark County Jail. Then the prosecutor took me to trial 2-13-19 (7 months after the information was filed, and I had filed motions to dismiss and bar prosecution in both cases on February 5th, 2019 and February 11th, 2019 before I went to trial on a charge that the prosecutor had no evidence to take to trial and was convicted on no evidence for a crime that I did not commit and when I went back for trial on the 2nd case #CR-18-2636 on June 5th, 2019 the judge had 4 months to rule on the motions to dismiss and bar prosecution for no 6th amendment speedy trial that I had been denied due process of the 5th and 14th amendment of the United States constitution. The plea proceeding was 2 years and 6 months and 17 days after these accusations happen. I was arrested at my home in Memphis, Tennessee without a warrant and with no probable cause and brought over 2hundred miles across the Tennessee state line by Clark County Sheriff department and held in Clark County jail for 7 months and denied all my court proceedings and convicted for a crime that

Clark County Detective knew did not happen. I was convicted on a defective information that do not state a victim or a place and no signature of a prosecutor is on the information and I never was indicted by a grand jury and Clark County gave me 30 years in prison and now Pulaski County gave me 45 years the same way and the prison had ran the 45 years that Pulaski County Arkansas had gave me concurrent with Clark County 30 years because the accusations of the crimes was totally non violent and judge Barry A. Sims of Pulaski County courtroom sent an amended sentencing order to the prison ordering the prison where I am to run the 45 years consecutive to Clark County 30 years making my discharge date set at the year 2090 where I will have to spend the rest of my life in this prison. The judge Barry A. Sims sent the amended sentencing order in retaliation to this 1983 Civil rights complaint that I made and had filed with the federal district court of the Eastern District of Arkansas April 15th 2019, the amended sentencing order was filed May 3rd 2019, one month before I went back to his courtroom for trial on case #case CR-18-2635 that I took the plea on and that was what my court appointed attorney and the court Bailiffs used to coerce me to get me not to go to trial My court appointed attorney was telling me that I would be found guilty even though there's no evidence and that judge Barry A. Sims was going to run the 75 years that he gone give me at trial concurrent to the 75 years that I am already doing. I did not feel that I should have had to take the chance of going to trial and suffering through the prosecutial misconduct when the case #CR-18-2635 should have been dismissed because I filed the motions for no sixth amendment speedy trial and the judge erred in not dismissing case #CR-18-2635. The accusations was made November 18th, 2016 by the police 2 years and 6 months before the plea proceedings February 5th, 2019 warrants was filed and issued for my arrest 5-11-17 and the police knew exactly where I was and intentionally delayed the warrants and a information was filed 7-20-18 14 months and 8 days after the warrants was issued on case #CR-18-2635. Then 10 months and 15 days later the prosecutor was taking me to trial on no evidence again in violation of the due process clause of the 5th and 14th amendment for no 6th amendment speedy trial and I had made the motions even though my lawyer refused to make the motions for me. These cases should be reversed for no speedy trial violation of the 5th, 6th, and 14th amendment of the United States Constitution and ineffective assistance of counsel Jerry Eugene Gravitt v. United States 523 F2d 1211, United States v. Louzon 392 F. Supp 1220. Not only is this a violation of the United States Constitution Bill of Rights of the 5th, 6th and 14th amendment but this is also a violation of Arkansas Rules of

Criminal Procedures 30.2 of speedy trial. Arkansas Rules 30.2 state failure of a defendant to move for a dismissal of the charges prior to a guilty plea or trial constitute a waiver of his rights under these rules and I made the motions and I was prejudice by me not being from the State of Arkansas and I am a black man in a all white racial courtroom with charges brought by racist white polices and detectives. Arkansas rules is ineffective assistance of counsel for not making the no 6th amendment speedy trial motions that I mailed her the exact same day I mailed the motions to the court clerk on 2-5-19 Billy Joe walker v. State of Arkansas 288 Ark. 52, 701 SW2d 37, Carrier v. State 278 Ark. 542, 647 SW2d 499. I should be able to litigate these constitutional violations in my 1983 civil suit claiming that I was deprived of my 5th and 14th amendment of the United States Constitutional right to no indictment by a grand jury and being convicted unfairly without evidence on a defective information Richard E. Gerstein v. Robert Pugh et al 420 U.S. 103, 95 Sct. 854, 43 LEd2d 54, 19 Fed R. Serv.2d 1499 Allen v. McCurry 449 U.S. 90, 101 S.ct, 66 Led2d 308; and warrants brought by the police without the consent of a judge in violation of the 4th and 14th Amendment Gilbert A. Haring v. John Franklin Prosise 462 U.S. 306, 103 Sct. 2368, 76 LE2d 595. I did not commit these offenses and there was no evidence presented at my trial that was conclusive and I made no factual specific words out of my mouth that I committed case #CR-18-2635 I just said yes and no to get through the court plea proceedings because my sugar level was low at the time of the plea proceeding held on 6-5-19 on case CR-18-2635 and I had let my court appointed attorney know that I did not commit this theft. I was prejudice by the delay of the warrants to keep me from getting a good defense lawyer that would file the motions to protect my 4th, 5th, 6th and 14th amendment constitutional rights and fight for my constitutional rights. Prejudice #2. They enhanced the charge by splitting the charge into three separate units. Prejudice #3 To enhance the anxiety and worry about the consequences that the charges would bring before I could get out to my grandchildren. Prejudice #4 To correct the date of the offense. Prejudice #5 To skip my court procedures in municipal court where I was suppose to have my preliminary hearing where the prosecutor present the evidence. Prejudice #6 I was prejudice by not being indicted by a grand jury and the filing of defective informations. Prejudice #7 Taking me to trial with no evidence. The judge compelled me to have my fingerprints taken by the vindictive police that brought the charges in the courtroom 8 days before my trial 12-5-19 and my trial was 2-13-19. The filing the information end the investigation.

Reasons Meriting Rehearing

The Eighth circuit decision is in clear conflict with Edam Williams v. Edwin Schario, Police Officer: Tess Noeltner, Police Officer Mike Naccarato, Supervisor of the Public Defenders: ET AL 93 F3d 527 Because Larry Davis went to trial on case CR-18-2636 on 2-13-19, and went back to court for trial on case CR-18-2635 and his court appointed Attorney tricked him into a plea in retaliation for this 1983 civil rights complaint against the state and there was constitutional violations supporting his 1983 claims that a guilty plea does not foreclose on both cases CR-18-2636 and CR-18-2635 which is the defective information, on case # CR-18-2635 that he took the plea on, the Filed information do not state a owner name and the accusations was brought by a Detective who no longer worked for law enforcement, the information was not supported by oath of a prosecutor, there is no signature on the information, there was no true bill written on the information, Larry Davis should have not been brought into the courtroom, the whole process of how Larry Davis came into court was unconstitutional, his plea was in violation of the 5th, and 14th, Amendment

Due process clause pertaining to the 6th Amendment
of the UNITED STATES constitution Gravitt
v. UNITED STATES 523 F2d 1211.

UNITED STATES v. Lourzon 392 F Supp 120

The warrants was issued over 2 years before he took
the plea the charges should have been dismissed
but instead of dismissing the charges the prosecutor
only Dismissed 2 of the charges and his court appointed
Lawyer. Did not motion For Dismissal For no 6th
Amendment Speedy trial in violation of his 5th, and
14th, Amendment Due process. Which makes his Attorney
performance in violation of his sixth amendment right to
Effective assistance of counsel Strickland v.
Washington 466 U.S. 668 687-88 (1984) test.

The question For this court to answer is whether
Larry Davis was prejudiced by his court Appointed
attorney ineffectiveness, Davis claim actual
innocence, and there is no evidence that a theft
happen, This court have also held that a plea should
not stand on no evidence, Davis plea proceeding took
place in Pulaski County Arkansas, in the addendum For
Ace liquor store there is a commercial property card
that state the owner name and also state that this
property is in Cabot, Arkansas which Cabot is in Lonoke

County, Arkansas. The owner name on the property card is Zumwalt Family LLC. The owner Zumwalt name is not on the Filed information case CR-18-2635. the Filed information do not state that Larry Davis intended to permanently deprive the owner of his property Illinois v. Somerville 410 US 458 93 Sct 1066 35 LEd2d 425 that this court held that the indictment was fatally deficient because it did not allege that Somerville intended to permanently deprive the owner of his property and such intent intent is a necessary element of the crime of theft and failure to allege intent renders the indictment insufficient to charge a crime that was stated on page 3 in Somerville case 410 US 458 93 Sct 1066 35 LEd2d 425. case # CR-18-2636 that I went to trial on the warrant affidavit on the first warrant issued may 24th, 2017 the allegations was made by a detective Justin Hicks that use to work for the Jacksonville police Department. the Allegations was not made by the store owner. and the Allegations was not made under oath of a Judge in violation of the 4th Amendment of the United States Constitution. these warrants is in Hans Arendtum the second warrant sent to this prison

Did not have a AFFidavit along with the warrant and the warrant was signed by the clerk. a warrant issued by the clerk, and a warrant issued against a defendant that is not based upon a AFFidavit is without Force and effect is a violation of Davis rights under the 4th, and 14th, Amendment of the United States constitution, the state has Failed to prove beyond a reasonable doubt to any extent to implicate Davis in this case, this whole process by which he was brought into court was illigal and void Henry V. Mississippi 379 U.S. 443 85 Sct 564 13 LEd2d 408.

this court has a Ethical duty by the constitution of the united states to establish the law of the land and to assure the citizens of the united states of America that the lower courts apply that law, when they do not, it is this courts obligation to hold that court accountable and see to it that Justice is administered Fairly. this court must hear this case and hold the Eighth circuit court of Appeals accountable For Failing to apply the law

OF this Court and giving relief where relief is due.

Suggestions in support of Rehearing

The Eighth circuit's court of appeals judgement to affirm the District court of Arkansas order of Dismissal Because Davis have a amount of dollars in his inmate account. So Davis would not be able to pay a lump sum of money as a initial payment on the Filing Fee. Based on the documents provided Davis Request to proceed in forma pauperis is Granted. The District court Denied Davis 1983 civil right complaint Because it started out as a civil actions complaint and Davis had a dollars to pay. Because he is in prison and his constitutional rights is being violated was Erroneous. The Eighth circuit ignored The Factual Documentation that Davis had provided proving that he was illegally arrested in memphis, Tn at his home without a warrant and no probable cause then Brought to Arkansas illegally then Sent to prison in violation of his 5th Amendment of the united states constitution

which provide that no person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, Davis have never been able to litigate his 5th Amendment right that he was deprived of it's a important right because the grand jury is suppose to protect citizens against unfounded prosecutions U.S V cotton 535 U.S 625 634. the grand jury determines if there is probable cause to believe that a crime has been committed. 5th Amendment grand jury serve a vital function -- as a check on prosecutorial power Davis 1983 complaint started as a civil class action. but now it is just Davis nobody else appealed to the 8th circuit. Davis is praying to get a rehearing. to get Davis convicted and into prison. they skipped all Davis court proceedings beside the arraignment. Davis have not received a preliminary hearing or any hearing where the prosecutor present evidence. Davis did not receive a indictment by a grand jury. Case CR-18-2636 that Davis went to trial on 24 months after warrants was issued the prosecutor Filed informations that do not have a prosecutor signature written on the information, the information fail to state intent. there is no

Bill written on the information the prosecutor still proceeded to trial with no Evidence on a defective information, there was no victim that brought these Allegations. Davis trial prove that there was no victim who made these Allegations, Han's the part owner of the store stated at trial upon oath that he did not know Davis and that he could not identify Davis. how could he make allegations against somebody that he do not know, Han's also stated at trial that 2 days had passed before the crime was discovered. the 2 days that had passed before he realize a crime had happen his store was open for business, and people was going in and out of his store for 2 days. I live over a hundred miles away in another state away from the vicinity of this store, and I have never stayed one day of my life in the state of Arkansas, but because I had charges passing through Arkansas over 10 years prior to these allegations, they illegally had me arrested at my home in memphis, Tennessee and brought illegally to Arkansas then they skipped the court proceedings where the prosecutor present evidence and skipped the indictment by a grand jury in US v. Provenzano 688

F2d 194, 202 grandjury has the constitutional role of serving as a shield against unfounded charges. John Doe No G.J. 2005-2, 478 F3d 581, 584 grandjuries act as a referee between Government and the people. It is the right of Davis to the 5th Amendment Guarantee, and the 14th Amendment not to be imprisoned on no Evidence by defective information U.S. V. SUAREZ 263 F3d 468, 481 state that the defendants main protection against the bringing of unfounded criminal charges is through the institution of the grandjury. U.S. V. Hyder 732 F2d 841, 842 state grandjuries are a protective bulwark standing solidly between the ordinary citizen and the over zealous prosecutor. Davis' omnibus hearing on case#CR-18-2636 the omnibus hearing is where the prosecutor presents his evidence to proceed to trial that he have. 1-22-19 at Davis' omnibus Hearing the Judge told Davis when Davis asked was the prosecutor going to present his evidence that he had and Davis was told by the Judge that he was in Arkansas now and Arkansas Don't present evidence until trial. Then Davis asked the Judge why

that he had not been indicted by a grand jury. the Judge Falsified the information to Davis By telling Davis you in Arkansas now and Arkansas Don't Do indictments by a grand jury. and court proceedings is not suppose to be a sham, then 13 days later Davis was compelled by the Judge to be Fingerprinted in the Judge court room by the police that was bringing the allegations, then another 8 days later Davis was taken to trial where the prosecutor told the jury that Davis had in fact committed the crime because the Fingerprints was conclusive after the Finger print Analyst Stated on the stand upon oath that the Fingerprints belong to 13 DIFFerent individuals. which Fingerprints belonging to 13 DIFFerent individuals is not conclusive. he was given 45 years at the conclusion of a trial where there was no evidence implicating Davis of committing this crime of theft Burglary. Davis has suffered a lot since he was Brought From his home 4-21-17 to the state of Arkansas illegally against the extradition laws which is governed by the united states constitution, his 5th Amendment has been violated. Davis has been deprived due process of law that is

Guaranteed by the 5th and 14th Amendment that no state shall deprive any person of life, liberty, or property, without due process of law. Davis was forced to leave his comfort of his home at 686 Ayers street in Memphis, Tennessee 38107. Davis have been forced to live in jail and prison for the past 3 years and leave his grandchildren and family he have had a close relative who died. Davis Mother is 81 years of age on dialysis. Davis have been denied his 4th Amendment right which guarantee no illegal seizure of Davis, Davis has been denied his 6th Amendment right to effective counsel and deprived of his 5th and 14th Amendment right to due process pertaining to 6th Amendment speedy trial, Davis have been deprived of his right to a fair trial which is also guaranteed to him by the 6th Amendment. The prosecutor told the jurors about 10 and 22 year old convictions that Davis had passing through Arkansas 10 and 22 years ago from the date of his trial 2-13-99 and Davis did not take the stand. The prosecutor gave each juror Verdict Forms to find Larry Davis guilty that did not have guilty and not guilty written on the Verdict Forms just guilty.

without the violations of Davis 4th, 5th, 6th, and 14th Amendment rights there is a reasonable probability of a different outcome at the conclusion of Davis trial. Davis have a right to litigate his constitutional violation in his 1983 Civil Rights complaint Allen v. McCurry 449 US 90, 101 Sct 411 66 LEd2d 308 (8th Cir) Haring v. Prose 462 US 306 103 Sct 2368 76 LEd2d 595.

Conclusion

For the reasons stated, this court must grant a rehearing of its judgement entered on March 30th, 2020 and issue a writ of certiorari to hold the Eighth circuit accountable for failing to properly apply the law of this court and grant Mr Davis relief

Respectfully submitted

pro se

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Larry Davis

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Petitioner

**Additional material
from this filing is
available in the
Clerk's Office.**