NO. 19-8064

IN THE
SUPREME COURT OF THE UNITED STATES

RUBIN RURIE WEEKS, PETITIONER

V.

STAN PAYNE, WARDEN OF EASTERN RECEPTION DIAGNOSTIC AND CORRECTIONAL CENTER

AND MISSOURI GOVERNOR MICHAEL PARSON AND MISSISSIPPI ATTORNEY GENERAL

LYNN FITCH AND MISSISSIPPI GOVERNOR TATE REEVES
RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI
FROM THE MISSOURI SUPREME COURT

PRO SE PETITIONER
Rubin Rurie Weeks DOC No. 184303
E.R.D.C.C. 6D-101
2727 Hwy. K
Bonne Terre, MO. 63628
Wrongful Convicted Man @ gmail.com

QUESTION PRESENTED

(1) In this case the defendant factual guilt of Forcible Rape and Kidnapping has never been established in any fashion permitted by the Due Process Clause of the 14th Amendment: because under a void judgment a guilty plea cannot be sustained, and because it cannot be harmless error, wholly to deny a defendant a jury trial and allow a guilty plea to be entered solely on the consent of the Trial Judge, Prosecutor and the defendant's attorney, when the defendant did not expressly admit in open court that he intended to rape the 22 year old woman without her consent and by force and that he removed her without consent, and because a guilty plea cannot be sustained that the government obtained by arbitrary acts of torture. Thereof, does Mr. Weeks have a Federal Due Process Clause Right to be provided a corrective Judicial Process for the relief before the State Court or before this Court since the State Court has deprived petitioner of his liberty without due process of law.

QUESTION PRESENTED

(2) Since the Court in Weeks v. State, 140 S.W.3d 39, 42-50 (MO. banc 2004) found that Mr. Weeks did not personally describe the events that found the basis of the charge Id at 42-43, found the Prosecutor received the SEMO Lab reports that eliminated Mr. Weeks as the rapist Id at 42-43, at 47, and found the prosecutor used C.R. Longwell who was not trained or certified in DNA testing to analyze the DNA samples and mislead the Courts about the rapist did not ejaculate Id at 50; and direct Mr. Weeks to file a State Habeas Corpus Motion to challenge the alleged Brady v. Maryland, violations. (A) was it plain error for the state court to not issue the writ of habeas corpus, hold the evidentiary hearing; explore the Brady violation, and explore chain of custody of evidence samples to be tested and remove the Prosecutor from

being in control of the New DNA procedure, and allowed petitioner his own DNA Analyst free of the State's influences to perform a DNA analysis of the DNA evidence in question? (B) Was Mr. Weeks Due Process Rights violated under such arbitrary Government actions?

QUESTION PRESENTED

(3) If the United States Constitution must govern the case against the American Citizen to imprison him or her and the State falsely imprisons the person under a void Judgment for lack of subject matter Jurisdiction and (Acts) in a manner inconsistent with the Due Process Clause of the 5th, 6th and 14th Amendment. Is (A) Respondent's Commitment Order null and void? And is (C) Does this Court have original Jurisdiction in a case not authorized by the Constitution, to restore freedom to Petitioner? Pursuant to Henderson v. Morgan, 426 U.S. 645 at 2253-2257 (1976), and Daniels v. Williams 474 U.S. 327, 331 (1986) and Fay v Noia, 372 U.S. 391, 423 (1963).

QUESTION PRESENTED

(4) Can the State of Missouri imprison petitioner without a valid indictment or valid felony information presentation, deny him the fundamental due process of law rights and torture him for 30 years under a void judgment, (A) Can the state claim a legal interest in such a fundamentally unlawful act to imprison the petitioner and is such an act merely erroneous or void? (B) Does petitioner have a due process right under the 14th Amendment to challenge the Police and Prosecutor misconduct in a Court of Law? And (C) Can the State use a DNA test to support guilt without first allowing petitioner to challenge it in a Court of Law under the protection of the Confrontation Clause? And (D) When the State has denied petitioner a Court hearing on the chain of custody on the evidence analyzed by the Laboratory, can there be a DNA test from a legal standpoint?

QUESTION PRESENTED

(5) Can the State of Mississippi arrest petitioner under a void Parole Warrant after the sentence for non violent crime expired, unconditionally release petitioner to Missouri, wait 25 years to revoke the Parole and issue a warrant for his return to custody under a sentence served in full and expired by mandatory operations of Law?

QUESTION PRESENTED

(6) The fundamental rights being created only by the Constitution as this Court declared in Regents of Unly of Mich v. Ewing, 474 U.S. 214, 229 (1985) (A) Can the State obtain discretionary power to restrain petitioner from his liberty and punish him under a void Judgment, (B) And is the power by the State held over petitioner created from Respondent's mere will and constitute no legal authority but purely arbitrary, and acknowledges neither guidance or restraint?

QUESTION PRESENTED

(7) Since substantive Due Process protects such rights against certain government actions regardless of the fairness of the procedure used to implement them as this Court declared in Daniels v. Williams, 474 U.S. 377, 331 (1986) (A) Can the Prosecuting Attorney willfully withhold exculpatory and material evidence; for years lie about it, then when faced with it, use a tainted DNA test to support guilt, to bar petitioner from challenging it in court? Be a lawful conviction under substantive due process protection? IS (B) Did petitioner have a fundamental right to notice, an opportunity to be heard at a meaningful time and in a meaningful manner under due process of Law protection, and (C) Does petitioner have a due process of Law right to challenge such an arbitrary action, by the State of Mississippi and Missouri providing him a corrective Judicial process even after the time

to challenge the conviction has passed? Pursuant to Morrisey v. Brewer, 408 U.S. 471, 480-496 (1973). Henderson v. Morgan, 426 U.S. 637, 647 (1976) Authority.

QUESTION PRESENTED

(8) Petitioner being imprisoned without due process of Law and the time to file a direct appeal or post-conviction remedy has passed. Does the 14th Amendment require the State to provide Mr. Weeks a corrective Judicial process since the State caused the prejudicial substantial disadvantage that estopped petitioner from timely challenging his Federal Constitutional Violation claims? Pursuant to this Court's ruling in Mooney v. Holodain, 294 U.S. 103 (1935), and Henderson v. Morgan, 4226 U.S. 637, 647-48 (1976), and Pennsylvania v. Finley, 481 U.S. 551, 558 (1987) and California v. Trombetta, 467 U.S. 479, 485-86 (1984).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page and each parties' information is as follows:

Petitioner: Rubin Rurie Weeks, NO.184303
E.R.D.C.C. 6D-101
2727 Highway K
Bonne Terrre, MO. 63628
And P.O.Box 3695
Gulfport, MS. 39505
Wrongful convicted man (@)gmail.com
Requested appointed counse: Kevin L. Schriener
Law & Guhriener LLC
141 N. Meramac Ave. Ste. 314
Clayton, MO. 63106
Phone No. (314) 721-7095

Respondent's Attorneys:
Michael Parson and Stan Payne, represented by:
Missouri Attorney General
Eric Schmitt
P.O. Box 899
Jefferson City, MO. 65102

Tate Reeves and Lynn Fitch are represented by;
Mississippi Attorney General
Lynn Fitch
P.O. Box 220
Jackson, MS. 39205

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner Rubin Rurie Weeks prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

FOR CASES FROM STATE COURTS:

The judgment of the Missouri Supreme Court Summary denial of the Petition for Writ of Habeas Corpus Pursuant to Rule 91. And appears at Appendix A-3 and cited as State ex rel. Rubin Rurie Weeks v. Stan Payne et al., Missouri Supreme Court NO. SC98214 Judgment and Mandate issued December 24 2019. The Rehearing Petition refused by the Missouri Supreme Court Clerk on January 8, 2020 Appendix

BASIS OF JURISDICTION

Petitioner Rubin Rurie Weeks seeking United States Supreme Court review of the State of Missouri denial of a corrective Judicial Process for relief of petitioner convicted and imprisoned for crime without due process of law and restrained of his liberty under a void judgment and void Parole detainer hold. Case denied was by the Missouri Supreme Court on December 24, 2019 Appendix (A).

The Missouri Supreme Court refused to allow a Rehearing procedure on January 8, 2020. Appendix (C)

Jurisdiction is conferred on this court by the constitution to protect life and liberty and by U.S. Sup. Ct. Rules 19(C) and 13(1) and 20, and the state courts denial conflicts with the Due Process Clause of the 14th Amendment and as read in **Herbert v. Louisiana**, 481 U.S. 551, 558, **Brady v. United States**, 397 U.S. 742, 748, **Brady v. Maryland**, 373 U.S. 83, 87, **Bullcoming v. New Mexico**, 131 S.Ct. 2705 and **Bradshaw v. Stumpf**, 294 U.S. 103, 112-115 and **Henderson v. Holohan**, 294 U.S. 103, 112-114.

CONSTITUTIONAL PROVISIONS AND STATUTES

STATEMENT OF THE CASE

Rubin Rurie Weeks, is a innocent man, restrained of his liberty under a void Judgment, and imprisoned without due process of law, confined under conditions that amount to cruel and unusual punishment. Overwhelming evidence supports these conclusions. Yet due to a failing of our system of justice almost 30 years ago, Mr. Weeks has suffered three decades worth of the graves form of injustice. Robbed of his youth, his health, and the better part of his life, Mr. Weeks now pleads that this Court allow him to once again enjoy his constitutional right to freedom he has always deserved.

On November 2, 1991, after a former convicted rapist Frank Randall, (antaganostic former co-worker for the same trucking company. Mr. Weeks was under contract with,) said, the police sketch of the rapist looked like Rubin Weeks, See **Weeks v. State**, 140 S,W,3d at 42-43 (Mo. banc 2004). Thereof, without any other proof at that point that the assailant may have been Rubin, he was arrested on November 2, 1991. Under a Mississippi Department of Corrections void Parole violation Warrant and placed into custody at the Mississippi DOC Rankin County Facility at Brandon, Mississippi. See Petitioner's (Exhibit 35) Rankin County Jail document Rubin R. Weeks in custody November 3, 1991. See petitioner's (Exhibit 36). Mississippi Attorney General's Brief at page 1-4, States: Mr. Weeks arrested in Mississippi and later released to Missouri. Brief filed in **Weeks v State**, 139 So.3d 727 (Miss. App. 2013) Court found the same, and that Mississippi DOC did not file a Parole detainer until March 22, 1994, with the Missouri DOC after unconditionally transferring Mr. Weeks into Missouri custody on November 5, 1991, before Mr. Weeks was charged with a crime in Missouri. In which Mr. Weeks was charged in December 9, 1991. See **Weeks v. State**, 140 S.W.3d 39, 42-43 (Mo. banc 2004), "affirms it."

On November 2, 1991, during the arrest in Mississippi, prior to the arrest, Mr. Weeks had Suffered injuries in a off-shore oil rig platform explosion and later fall, which caused Mr. Weeks to have suffered traumatic spine injury which required several surgeries and injury to his right ankle and leg requiring several surgeries. The arresting Law Officers, beat petitioner for failing to follow orders to get down on his hands and knees, which Mr. Weeks could not medically perform. Mr. Weeks received brain and more spine injuries due to the unlawful beating. See Petitioner's (Exhibit 42) Affidavit of Andy Johnson eye witness to the beating. Petitioner's medical history documents these physical injuries. See Petitioner's (Exhibit 17) medical records, dating from 1983 through February 10, 2020. See Petitioner's (Exhibit 15) the Corizon Health Medical Expert Doctor Paul Adler, medical opinion date of June 13, 2019 and Dr. Adler under oath deposition conducted on July 12, 2019 in the Federal Court Civil Rights 1983 proceeding in Rubin Rurie Weeks v. Kimberly Birch, et al., Case NO. 1:17-CV-22-AGF (E.D. Mo. U.S. Dist. Ct. January 17, 2017.) See Coc. NO. 88 Attorney filed complaint, pending Jury Trial July 20, 2020). Therefrom, Dr. Adler states at page 2 of his opinion that: Mr. Weeks had injured himself in 1992 and had several surgeries to try and correct his significant injuries. In addition he had ankle and lower leg surgeries, and then suffered additional injuries to his spine prior to his incarceration. Dr. Adler states to the same facts under oath in his deposition at page (41). Accordingly, the County Prosecuting Attorney and the Missouri Attorney General for 27 years, from February 13, 1992 through July 8, 2019 had argued that petitioner did not (sustain) any police beating or suffered injuries which would have effected petitioner's well to enter a knowingly, and voluntarily and intelligently waiver of his rights at the plea colloquy on February 13, 1992, and, to timely challenge

Petitioner's conviction and sentence constitution violations in a state 24.035 motion for post-conviction relief. Therefore, on June 27, 2019, the Missouri Attorney General faced with Dr. Adler's opinion, admits those significant injuries existed in the Civil Rights 1983 proceeding Weeks v. Branch, supra, DOC No. 180. See petitioner's (Exhibit 16), Missouri Attorney General response to Mr. Weeks' supplemental complaint at page 1-2.

Initially, on November 5, 1991, Mr. Weeks was involuntarily and without the due process requirement of an Extradition Court proceeding in Mississippi and without being charged in Missouri with a felony crime, was forced into Cape Girardeau County Missouri Sheriff's Department custody. There, Mr. Weeks was held under conditions that amounted to torture of cruel and unusual punishment transpired daily upon him; until petitioner was coerced into a guilty plea. In which the court impermissably participated in the plea negotiation to cover-up the Police beating, and remove petitioner from the Cape Girardeau County Jail into the Missouri Department of Corrections due to the sustained brain and spine injuries. See Petitioner's (Exhibit 12)

Plea counsel Gary L. Robbins affidavit under oath statement to the Judge's participation in the plea due to Mr. Weeks' health, and the Sheriff wants petitioner out of the Jail fast. See Petitioner's (Exhibit 37). Prosecuting Attorney Morley Swingle's December 9, 1991 letter to defense counsel Robbins that states: "My understanding is that your client has been indicating to people that he wants to plead guilty, so if we can get this case moved quickly I would like to do so." In counsel Robbins' affidavit, he states; that person is the Sheriff.

On February 10, 1992, Mr. Weeks refused to plea guilty before Judge Limbaugh. Thereafter, for three days, Mr. Weeks is tortured in the County Jail by Sheriff officers. See petitioner's (Exhibit 41) affidavit of Carl

Files, eye witness to the County Jail abuse.

On February 13, 1992, Mr. Weeks is forced into the Cape Girardeau County Circuit Court before Judge LImbaugh, and enters a plea agreement under the prosecution promise that no exculpatory evidence existed, the life for rape and 30 years for kidnapping would run concurrent, with paroled by the time petitioner turned 45 years old, and the Missouri sentence would run concurrent with any parole time left in Mississippi. See Petitioner's (Exhibit 38) States Plea Agreement and see Petitioner's (Exhibit 1) Cape Girardeau County Circuit Court Plea transcript at 3, did Mr. Robbins read the petition to you? yes. Id at Tr. page 21 I's going to hand back to you your petitions to enter pleas of guilty, if and only if everything contained in the petitions is true and correct and only if you are signing those petitions freely and voluntarily. Mr. Weeks, if there is anything in the petitions that are not true, do not sign them. Is that agreed? The defendant, yes. Id at Tr. page 28, Mr. Weeks would be eligible to be released until he is 48 years old. Id at Tr. page. I sentence you to life on the Bollinger County case and 30 years for the Cape Girardeau County kidnapping charge code. Those sentences will run concurrently and I will run those concurrently with any parole time left that you have in the State of Mississippi. And, Id at Tr. page ;7. Did you serve more than 120 days in prison, in the Mississippi State Penitentiary? No, Sir I never did go to the penitentiary. Id at Tr. page 6-7. Mr. Robbins: Judge what I think he is trying to explain to you, I think it is kind of like today; he pled, if I understand what he has explained to me and what he is telling me, he pled to several charges from several different counties and received one combined sentence from there. And, Id at Tr. page 32-33. Mr. Swingle: Your Honor, I just want to be sure that Exhibits 100, 101, and 102 are incorporated by reference and accepted as Exhibits in both the

Bollinger County and Cape Girardeau County cases pertaining to prior convictions.

The Court: Well, they weren't offered. The Court: I don't see any need to do that, Mr. Weeks admitted to the contents of that. Thereof, the court asked Mr. Weeks to tell the court in his own word what happened in the Bollinger County rape charge and Cape Girardeau County Kidnapping charge that made ;him think he was guilty of those crimes Id at Tr. page 5-6. Mr. Weeks never did state to such under oath.

Here the Cape Girardeau County Circuit Court lacked subject matter jurisdiction over the Bollinger County rape charge and found Mr. Weeks to be prior and persistent offender based on hearsay documents that were not before the court. Id at Tr. page 31-33.

In almost 30 years of being restrained of his liberty under a void judgment and wrongful convicted, due to arbitrary process, no court has ever allowed the merits of Mr. Weeks claims to be adjudicated. During the void plea proceeding on February 13, 1992 (Exhibit (1) plea transcript), the Judge knew that Mr. Weeks was quite ill, the Judge had contacted the Cape Girardeau County Commissioner in charge of the Jail to inquire about the medical treatment available for Mr. Weeks. (Exhibit 12 affidavit of defense counsel Robbins). But, the Judge never once informed Mr. Weeks about the 90 days limitation to file the Rule 24.035 motion. ON February 14, 1992, Mr. Weeks was delivered to the Missouri Department of Corrections. He was immediately placed into the prison infirmary due to out of control diabetes and the brain and spine injuries. There, the time to file for post-conviction relief passed while Mr. Weeks suffered torture from the effects of the Police beating which rendered him unable to conduct the legal challenge thereof.

As the state's medical expert, Mr. Adler put it on June 13, 2019, "Mr.

Weeks had several surgeries to try and correct his significant injuries in 1992," (Exhibit 15). On December 17, 2018, the State Attorney General had Mr. Weeks deposition in the Federal Court proceeding of Weeks v Birch, supra (See Exhibit 19) deposition of Rubin Weeks.) Here Mr. Weeks states under oath that: "He was arrested in Mississippi for the Missouri alleged crime November 2, 1991. The state without a warrant or charges filed in Missouri. Id at deposition page 9-12. The officers ordered me to get down on my hands and knees, which I could not perform, they hit me in the head, busted my skull and stomped me. 90 days later, I was put i prison because I couldn't defend myself. Id at deposition page 23-24. Mr. Weeks what year were you released from the prison infirmary. I got to prison on February 14th and I was released sometime in September of that year, of 1992. The 90 day time to file a post-conviction remedy had passed. And, Id at deposition page 20-21, "Judge Limbaugh knew that I had been messed up, and he pushed the plea thing so I could be placed in prison to get better medical treatment. Thereof, I never had a chance to defend myself whatsoever, with the Prosecutor withholding a mountain of evidence that ruled me out."

ARGUMENT FOR CERTIORARI REVIEW BECAUSE CONVICTION AND SENTENCE OBTAINED UNDER A VOID JUDGMENT CAN NEVER STAND TO WAIVE THE SAFEGUARDS WITHIN THE PROHIBITIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES THAT THERE SHALL BE NO ARBITRARY DEPRIVATION OF LIFE AND LIBERTY AND ALL STATES SHALL PROVIDE EQUAL PROTECTION OF LAW PROTECTION OF EQUAL LAWS EX PARTE KEARNEY, 20 U.S. 38, 5 L. Ed 391 (1822) YICK WO V. HOPKINS, 118 U.S. 356, 367-374 (1881) AND HENDERSON V. MORGAN, 426 U.S. 645 (1976) AND ELLIOT V. LESSEE OF PERIOL, 26, U.S. 328, 340-341, (1826)

This court set fourth the principle long ago, that established, if a court entered a criminal judgment without jurisdiction to do so, such a proceeding always should be found to be void whether determined on direct appeal or in a habeas corpus proceeding." quoting from State ex rel. Laughlin v. Bowersox, 318 S.W. 695, 702-703 (Mo. banc 2010) citing Ex parte Kearney,

20 U.S. 38 5 L.Ed 391 (1822). See Ellis v. Bowersox, 2012 U.S. Dist Lexis 114981 at 3 case NO. 4:10-CV-2227-ERW-TCM (E.D. Mo. August 15, 2015) Specifically, State habeas corpus Pursuant to Rule 91 may be available when petitioner demonstrates that: (1) a claim of actual innocence or (2) a Jurisdictional defect or (3) (a) that the procedural defect was caused by something external to the defense - that is, a cause for which the defense is not responsible - and (b) prejudice resulted from the ;underlying error that worked to petitioner's actual and substantial disadvantage." quoting State ex rel. Laughlin v. Bowersox, 318 S.W.3d at 701. Accordingly, in Cooper v. State, 356 S.W.3d 148, 154 n.4 (Mo. banc 2012) the Missouri Supreme Court held: "A defendant who claims his decision to enter a guilty plea was not knowing, voluntary or intelligent may raise this argument through a Federal or state Habeas Corpus remedy. To receive State Habeas Corpus relief on a claim not raised in a post-conviction Rule 24.035 motion after a guilty plea, a defendant must assert something external to the defense - that is, a cause for which the defense is not responsible for - and (b) prejudice resulted from the underlying error that worked to petitioner's actual and substantial disadvantage or the defendant must assert either (1) a claim of actual innocence or (2) a Jurisdictional defect claim."

STANDARD OF CACUSE FOR CERTIORARI REVIEW RELIEF BY THE PROTECTION OF FOURTEENTH AMENDMENT CALIFORNIA V. TROMBETTA, 467 U.S. 479, 485-86 (1984)

It is a fundamental axion that no jury can reach a fair decision when the truth has been kept from them. See Tumey v. Ohio, 273 U.S. 510, 535 (1927). Also it is a fundamental axion that the constitutional rights of the 5th, 6th, 8th and 14th Amendment shields the criminal defendant from arbitrary government actions that deprived him or her the notice which must be accorded the defendant under the due process clause or if the prosecuting attorney's acts or omissions have the effect's of preventing a defendant

from presenting such exculpatory and material evidence in the prosecution possession, in defense of the accusation against the defendant's such acts or omission operates to deceive the court and prevents the defendant from presenting a defense would result in a denial of due process of law. See Mooney v. Holohan, 294 U.S. 103, 112-114 (1935) and Henderson v. Morgan, 426 U.S. 645 at 2257-2258 (1976), "A plea of guilty could not be voluntary in the sense that it constituted an intelligent admission that he or she committed the offense unless the defendant received real notice of the true nature of the charge against - him - the first and most universally recognized requirement of due process of law." See Brady v. United States, 397 U.S. 742, 755-757 and Bousley v. United States, 523 &.S. 614, 619 (1998). "In order to set a plea of guilty aside as involuntary. First, the defendant must show egregiously impermissible conduct such as threats, blatant misrepresentation, or untoward blandishment by government agents antedated the entry of the plea; and second, when the misapprehension results from some particularly pernicious form of impermissible conduct that due process concerns are implicated."

Here in the present case, the prior Case Law governing this case by the Federal case in Weeks v. Bowersox, 119 F.3d 1342 (8th Cir. 1997), cert. denied 522 U.S. 1093 (1998) and Weeks v. Bowersox, 134 S. Ct. 1769 (U.S. MO. 2014). The Eighth Circuit ruled that: "Facts which would invalidate a guilty plea are typically outside the record and must be developed in a post-conviction proceeding, and some circumstances that would invalidate a guilty plea are consistent with actual innocence, a torture-induced plea being the most obvious example," Id at 1355-56. Also the Eighth Circuit ruled that. "Even if the panel's standard were modified to permit the state to present its trial evidence at the actual innocence hearing, the inquiry would still be

skewed by the passage of time that inevitably compromises the governments ability to prove its case." Id at 1356. therefore, the Eighth Circuit Ruled that: "Review of the facts sustaining Mr. Weeks' conviction is barred unless Weeks actually makes the requisite showing to excuse his failure to develop exculpatory evidence in State Court." Id at **Weeks v. Bowersox**, 119 F.3d at 1354-1355.

Therefore, because of "Prosecutorial Fraud" defect in the integrity of the Federal Habeas proceeding, the Eighth Circuit en banc vacated **Weeks v. Bowersox**, 106 F.3d 248, 251 (*th CIr, 1997) which the panel opinion appropriately remanded this case for an evidentiary hearing. See **Weeks v. Bowersox**, 119 F.3d 1342, 1356-1358 (8th Cir. 1997) en banc.

The entirety of the State's Attorney General argument to bar habeas relief, was, in order for Mr. Weeks to support his claims for Habeas relief, "that petitioner must submit reliable evidence and it must be properly produced" See Petitioner's (Exhibit 50), the State's petition for rehearing en banc in Weeks v. Bowersox, 119 F.3d 1342 (8th Cir. 1997) at page 8-10 of # petition.

Due to petitioner's diligence, years down the road, Mr. Weeks unearthed the exculpatory and material evidence, that Mr. Week's trial Attorney Gary Robbins filed in the January 7, 1992 motion to Produce before the Cape Girardeau County Circuit Court. See Petitioner's (Exhibit 14) Circuit Court Docket Sheet. Where defense Robbins requested the prosecutor's and the Sheriff Law Actors to produce the evidence of any exculpatory and material nature under Missouri Supreme Court discovery Rule 25 and the **Brady v. Maryland**, 3737 U.S. 83, 87 (1963) Rule. In which in Missouri, the Brady Rule principles are applicable to the entry of a plea of guilty to the extent that the none disclosed evidence is both exculpatory and material. See **Wallar v. State**,

403 S.W.3d 698, 707-708 (Mo. App. W.D. 2013) and **Weeks v. State**, 140 S.W.3d 39, 41-43 n.2 (MO. banc 2004).

THE EXCULPATORY AND MATERIAL EVIDENCE

In this case at bar, the (exculpatory and material evidence) unearthed years later after the torture induced plea on February 13, 1992, shows by clear and convincing evidence; that 1992 trial court appointed Attorney Gary L. Robbins, would have changed his recommendation as to the desirability of having Mr. Weeks accepting the particular plea bargain in question. On December 12, 2003, under oath, signed before Notary Public and cited in **Weeks v. State**, 140 S.W.3d at 48-49 Affidavit of defense counsel Gary L. Robbins who states that: "On January 14, 1992, Judge Limbaugh asked me if there was "a deal" meaning a plea bargain. I explained to him that the plea offer was for two consecutive life sentences and that was not reasonable. I told him that the defendant did not need an Attorney to get that and I would not be telling my client to plead guilty. The Judge agreed that it was no deal and told me that he was going to call Huckstep. I knew that to be Coeye Huckstep who was a County Commissioner and the Administrator of the Jail. On January 21, 1992, I received a letter from the Cape Girardeau County Prosecutor dated January 15, 1992 telling me that he received a call from Judge Limbaugh regarding Rubin Weeks' case.

According to the prosecutor, Judge Limbaugh told him that because of the health conditions of Mr. Weeks, the judge would be willing to allow us to plea bargain... in order to move Mr. Weeks out of the County Jail in the near future. I read that letter to Rubin Weeks on January 22, 1992. Later that afternoon, I got a call from Sgt. Scott at the Jail.

He said Rubin was threatening suicide and was going to be taken to Fulton. (Fulton Mental Hospital).

On January 30, 1992 Lt. Hurst and the Cape Girardeau County Prosecutor came to my office and delivered a report from Fulton Stating Rubin Weeks had contagious hepatitis. They said that they "wanted to work out the case quickly if it can be done."

On February 5, 1992, the prosecutor called and made a plea offer. He said there was no deal if it was not taken by the end of the day on February 11, 1992. On February 10, 1992, I went to court with Rubin and appeared before Judge Muller. When she asked him questions, he said nothing orally and only nodded his head. I told him that he would have to answer "out loud" for Judge Limbaugh.

When Judge Limbaugh asked him if he wanted to plead guilty, he told the Judge that he would plea only to the death of execution. The Judge told Rubin that was not possible under the statute, Rubin pled "not guilty."

I do not believe any additional discovery was provided by the Prosecutor at the time of the plea. My records do not show that I received any Lab reports showing that: (1) Rubin could not have been the contributor of the semen stain found on the victim's slacks or, (2) that his fingerprints and hair were not found in (Room 11) of the Days Inn where the victim worked or, (3) that he could not have been the person who smoked the cigarettes found in (Room 11) or (4) that the victim's hair, blood and fingerprints were not found in Rubin's car or on his clothes, or (5) that Rubins fingerprints were not found in the victim's car.

This evidence, which I now know is contained in a SEMO Lab Report dated February 12, 1992, the day before Rubin pled guilty. Would have been considered exculpatory by me. Had that report been given to me by the prosecution. I would have read it and explained it to Rubin before he made a final decision about whether to plead guilty.

I knew there was a rape kit that was being tested by the Crime Lab and the initial report was that the semen stain showed (Type O blood) and (Type A blood). I knew from the report that the victim had (Type O blood). Had I seen the February 12, 1992, report showing that Rubin Weeks could not possibly have contributed the (Type A antigens) found in that semen stain. I would have considered it's possible exculpatory effects.

In my opinion that evidence born on the issue of reasonable doubt about Rubin Weeks guilt in a trial. It is information that Mr. Weeks should have been exposed to if it had been available: See (Exhibit 12) affidavit of defense Attorney Gary L. Robbins. Subscribed and Sworn to before the Notary Public December 12, 2003.

In this instance, Mr. Weeks had determined to the courts below, by providing his affidavits marked as (Exhibit 41). That the governments' failure to produce the exculpatory evidence contained in the SEMO Lab Report dated January 17, 1992 (Exhibit 7 SEMO Lab Report) and February 12, 1992 SEMO Lab Report (Exhibit 8 SEMO Lab Report) and the Fulton Mental Hospital Medical records (Exhibit 17) Fulton Mental Hospital Medical record dated November 26, 1991 and the Police unlawful act of beating petitioner, "would have been material to Mr. Weeks decision to plead guilty." Where as here the facts shows that the reasonable probability is clear as day; "that Mr. Weeks would have proceeded to trial if the government had not tortured him, withheld the exculpatory evidence, and the trial Judge had not by coercive acts, participated in the negotiation of the guilty plea, and for defense Attorney's failure to provide effective assistance of counsel." See Ferrars v. United States, 456 F.3d 278, 294-298 (First Circuit (August 10, 2006) Held: Because of the governments deliberate acts of withholding exculpatory and material evidence which effected the petitioner's decision to plea guilty that

constitutionally infirm under the rule announced in Brady v United States, 397 U.S. at 355. Accordingly, the evidence is clear that the government's interference with defense counsel Gary L. Robbins representing Mr. Weeks effectively under the 5th, 6th and 14th Amendments; violated petitioner's rights under Strickland v. Washington, 466 U.S. 665, 104 S. Ct. 2052 at 2067, 80 L. Ed2d 674 (1984).

GUILTY PLEA NOT SUSTAINED UNDER A VOID JUDGMENT BY FEDERAL AND STATE LAW POLLOCK V,. WILLIAMS, 322 U.S. 4,7, 64 S. Ct. 792, 88 L.Ed 1095 (1944)

When rule providing for relief from a void judgment applicable relief is not discretionary, but is mandatory relief; it having been well established by this Court in Elliott v. Lessee of Perisol, 26 U.S. 328, 340-41 (1826), Held: "If the court acts without authority, it's judgments and orders are regarded as nullifies. They are not voidable, but simply void, and form no bar to recovery sought, even to a reversal, in opposition to them. They constitute no jurisdiction, and all person concerned in executing such judgments or sentences, are considered in Law, as trespassers. See Brown v. Mississippi, 297 U.S. 278, 56 S. Ct. 461, 80 L.Ed. 682 (1936), Fayv Noia, 372 U.S. 391, 423 (1963) and Exparte Wilson, 114 U.S. 417, 422, 429 (1885), Held: "that a prisoner convicted and sentenced to imprisonment by a trial, silent to a valid indictment by grand jury or valid information presentation, was illegal restrained of his liberty, this court granted the prisoner release from confinement, although the question raised by the petitioner had not been argued at trial." citing from Strevens v. McClaughry, 207 F. 18, 24-25 (8th Cir. 1913). See Hurtado v. Cal., 110 U.S. 516, 538 (1884), Held: "states are not required to institute prosecution by grand jury indictment, but by the 5th Amendments states are required to make a presentment."

Where, as here the state of Missouri criminal procedures as set out within the Missouri Supreme Court Rules and state Statutes Rule 22.09 and Rule

23.01-09 and Article 1, Section 17 of the Missouri Constitution, the filing of a complaint to initiate criminal proceedings does not commence prosecution in the manner required by the Constitution. Quoting State v. Mixon, 391 S.W.3d 881, 882-885 (Mo. banc 2012) Citing State ex rel. Morton v. Anderson, 804 S.W.2d 25, 26-27 (Mo. banc 1991) Held: "Prosecuting Attorney has (NO) authority to file felony information without first the defendant having been occurred an "Preliminary Hearing" in the County where the alleged crime transpired and before the court of that County having jurisdiction of the crime and only after the Court finds probable cause may the Prosecuting Attorney file the felony information in the Circuit Court having jurisdiction thereof. The mere filing complaint does not confer jurisdiction upon the Circuit Court to adjudicate the offense." See Turnage v. State, 782 S.W.2d 755, 760-61 (Mo. App. S.D. 1989) without an valid indictment or valid information there is (no) jurisdiction to try the case and impose the sentence." See State v. Back, 108 MO. 622, 18 S.W 1113 (MO. 1891) "A criminal case cannot be removed from one County Venue to another Venue by mere stipulation of the parties." As such, under Missouri Law 541.033 RSMo. 1991 and Rule 32.01-09 only the defendant can request a change of venue See State ex rel. Devlin v. Sutherland, 196 S.W3d 593, 595 (Mo. App. E.D. 2006) Held: If the defendant does not request a change of venue, simply, none can be granted. If the Circuit Court (Sua Sponte) transfers the case to another County Venue, the court acts outside it's jurisdiction. Id at 595

Here Mr. Weeks, never waived a preliminary hearing in Bollinger County Circuit Court on the Forcible Rape charge. The court never found probable cause to bound petitioner over to the Circuit Court. In addition, Mr. Weeks never requested a change of venue transferring the Forcible Rape cause from Bollinger County Circuit Court to Cape Girardeau County Circuit Court.

Therefore, no valid indictment or valid information was ever filed in the Circuit Court of Cape Girardeau County. As such, the court acted outside it's authority and deprived Mr. Weeks of due process of law because petitioner had a constitutional right to appear and defend, in person and by competent counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel discovery from the County Prosecutor and attendance of witnesses in his behalf, and a Speedy Public Trial by a jury of the County where the state alleged the crime occurred.

As such, the Circuit Court of Cape Girardeau County lacked the power to enter the Bollinger County Rape Charge conviction and impose the life sentence thereof. The evident fact supports, that the state could not constitutionally prosecute Mr. Weeks in Cape Girardeau County upon the Bollinger County Forcible Rape comp laint. See Peiffer v. State, 88 S.W.3d 439, 441 (Mo. banc 2002) citing this court case law authority held: "If the sentencing court had no power to enter the conviction or impose the sentence, A guilty plea does not waive a subsequent claim of double jeopardy violation."

VOID JUDGMENT ENTERED UPON THE ENHANCED PUNISHMENT
AS PRIOR AND PERSISTENT OFFENDER

This court has ruled no state criminal defendant shall suffer enhance punishment upon the state's false prior criminal recards. The state of Missouri Supreme Court holds in State ex rel. Zinna v. Stelle, 301 S.W.ed 510, 515 (Mo. banc 2010) may challenge the trial court lack of authority to sentence the defendant beyond that required by state law. Here Mr. Weeks could not have been convicted and sentenced as prior and persistent offender under 558.019 RSMo. 1991, because petitioner had never been incarcerated at separate terms of imprisonment in a penal institution on two or three prior convictions. In fact, Mr. Weeks served the only prior conviction from

August 22, 1988, on probation status. In which Mississippi Law Jackson v. Anderson, 112 F.3d 823, 826-831 (5h Cir. (Miss.) 1997) and under Missouri Law Ridinger v. Mo. Bd. of Probation and Parole, 189 S.W.3d 658, 664 (Mo. App. W.D. 2006) cannot be counted as a prior commitment to the DOC for enhancement ppunishment.

MISSISSIPPI DEPARTMENT OF CORRECTIONS
VOID DETAINER FOR PAROLE VIOLATION.

On November 2, 1991, the Miss. DOC arrested Mr. Weeks under a void Scott County, Mississippi Parole Warrant issued upon a Scott County Circuit Court Judgment entered on August 22, 1988. Mississippi DOC officials later released Mr. Weeks to Missouri, without allowing a meaningful and timely hearing under Morrisey v. Brewer, 408 U.S. 471, 80-496 (1973) and in a meaningful manner as required by Godsey v. Houston, 584 So.2d 393-9 (Miss. 1991) citing authority of 47-7-27 Miss. Code Ann. which requires a probation or Parole revocation hearing within 30 days after arrest. Mississippi DOC Parole Board officials waited until June 8, 2015 before the Board officially revoked the alleged 1988 sentence parole. By arbitrary Acts the State has argued procedural barred to estoppe petitioner from the court to challenge the void Parole Detainer issued on June 22, 2015. See Weeks v. State, 139 So3d 727, 729 (Miss. Ct. App. 2013) (parole not revoked, dismissed for lack of jurisdiction) See Weeks v. Mississippi, 689 F. Appx. 297 (5th Cir. 2017) Parole now revoked and court directs Mr. Weeks to file his 2241 petition in the Missouri Federal District Court. In which would be denied as barred by 28 U.S.C 2244. Weeks V. Jason Lewis and Jim Hood, case NO. 1:17-CV-225-15 2018) dismissed for lack of jurisdiction and this court denied certiorari thereof. As cited to as Rubun R. Weeks v. Jason Lewis, et al. Case No. 19-5519

CONCLUSION

This court ruled in Burks v U.S., 37 U.S. 1, 15, 98 S. Ct. 2141, 57 L. Ed.2d 1 (1978), If it is determined that a defendant has been convicted through a Judicial process which is defective in some fundamental respect, e.g., incorrect receipt or rejection of evidence, incorrect instruction, or by prosecutorial misconduct, when this occurs, the accused has a strong

interest in obtaining a fair readjudication of his guilt free from error: Mr. Weeks has been denied such a fair due process by the states arbitrary acts.

Here Mr. Weeks is restrained of his liberty under a void judgment suffering conditions of cruel and unusual punishment, dying from a lack of proper medical care.

Therefore, Mr. Weeks is being imprisoned without due process of law and being denied a due process fundamental Judicial Corrective Process as required by the 14th Amendment. This is why this court should grant certiorari review and allow petitioner an appointed counsel which should be Kevin L. Schriener and allow both sides an opportunity to be heard before this court. Thereof, order petitioner discharged from respondent's void and unlawful custody. Wherefore, for all the reasons above, Certiorari Review should be granted.

Respectfully submitted,
Rubin Ruric Weeks
Rubin R. Weeks 184303
E.R.D.C.C. 6d-101
2727 Hwy. K
Bonne Terre, MO. 63628

CERTIFICATE OF SERVICE

I hereby, certify that a true and correct copy of the certiorari writ petition served upon the following, via U.S. Mail postage prepaid, this day of March 10, 2020 to: MO. Attorney General, Eric S. Schmitt, P.O. Box 899 Jefferson City, MO. 65102 and Miss. Attorney General Lynn Fitch, P.O. Box 220, Jackson Miss. 39205

Rubin Ruric Weeks
Rubin R. Weeks 18303
E.R.D.C.C. 6D-101
2727 Hwy. K
Bonne Terre, MO. 63628

CC:
Kevin L. Shriener, Law & Schriener LLC
141 North Meramec Ave., Suite 314
Clayton, MO. 63105
E-Mail Lawschriener.com