

No. 19-8280

ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Jesus Jaime Jimenez

— PETITIONER

(Your Name)

vs.

Lorie Davis

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Fifth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Jesus Jaime Jimenez TDCJ No. 01363409

(Your Name)

Darrington Unit
59 Darrington Rd.

(Address)

Rosharon, Texas 77583

(City, State, Zip Code)

(Phone Number)

IV. QUESTION(S) PRESENTED

Mr. Jimenez (Petitioner herein) has alleged, that his trial judge has acted outside of the statutory window, which was in place by Legislature under the Code of Criminal Procedure 42.12 8(a), during his conviction -- to which, the trial judge lost jurisdiction/authority, to act on such case.

The Fifth Circuit and the U.S. District Court for the Western District of Tex. San Antonio Division, have alleged that Petitioner may not collaterally challenge his burglary conviction, quoting Lackawanna Cty. Dist. Attorney v. Cross 532 U.S. 394, 401-04 (2001), as its bases for denying his C.O.A...

The case thus presents the following question(s):

1. Did the Fifth Circuit err in not allowing Petitioner his rights to bring his complaint of 'Lack of Jurisdiction', under a §2254 Writ of Habeas Corpus, to which affects Petitioner's substantial rights to be heard, Violating his 5th, 8th, and 14th Amendments to the U.S. Constitution
2. Whether acting [outside] the statutory window of the C.C.P. 42.12 8(a), grants the trial court, power to hear Petitioner's case. or whether the 'Lack of Jurisdiction' makes his sentence/conviction. Void -- under the statutory rule, the 14th Amendment to the U.S. Constitution. and Laws of these United States.

Petitioner believes, that the Fifth Circuit and the U.S. District Court, have misapplied this Courts ruling in Lackawanna, along with other rulings from other Courts, and Laws of these United States, to which he believes that there are grounds which exist, warranting review by this Honorable Court (United States Supreme Court)...

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

RELATED CASES

In The United States District Court For The Western District Of Texas. San Antonio Division...

Jesus Jaime Jimenez v. Lorie Davis -- Cause No. 5:19-cv-00294-XR-HJB

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- Ex. 7 Copy of V.A.C.C.P. article 42.12 § 8(a) which was in effect in 1991..
- Ex. 8 Copy of Petitioner's 'Judgement of Conviction in Cause No B06-146, to which it states, that it is ran consecutively with his B91-53 case..
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- Ex. 10 Petitioner's 'Request For Certificate Of Appealability With Brief In Support, that I filed in the Fifth Circuit, on or about May 23, 2019..
- Ex. 11 Petitioner's §2254 Writ filed in the U.S District Court, on March 18, 2019

Further, Affiant Says Not.

on this 8th day of April , 2020.

/s/



Jesus Jaime Jimenez, Petitioner
TDD-7-TD No. 01363409

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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.

IX. OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 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 2 to the petition and is

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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. JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 29, 2020.

☐ 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: March 2, 2020, and a copy of the order denying rehearing appears at Appendix 3.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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).

XI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitutions:

U.S. Const. Fifth Amendment ... in part; No person shall be deprived of life, liberty, or property, without due process of law.

U.S. Const. Eighth Amendment.... in part; .. nor cruel and unusual punishment inflicted.

U.S. Const. Fourteenth Amendment ... in part; All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws..

State Constitutions:

Texas Constitution art. I §113 ... in part; nor cruel or unusual punishment inflicted. All ... shall be.....

Texas Constitution art. I § 19 ... in part No citizen of this State shall be deprived of life, liberty, property, privilege, or immunity or any manner disfranchised except by due course of law..

Texas Constitution art. IV-§ 11A in part; 'Allows trial courts to suspend the 'execution of sentence and to place the defendant on probation and to reimpose such sentence, under such conditions as the Legislature may prescribe'...

STATUTES, CODES, ETC... ETC...

V.A.C.C.P art. 42.12 8(a) See: Exhibit 8

Texas Code of Criminal Procedure Ann. 12.02 ... See: Exhibit 12

Texas Code of Criminal Procedure art. 12.02 When the pleading, on its face shows that the offense charged is barred by limitations ... the applicant is challenging the trial courts power to proceed'...

STATUTES, CODES, ETC... ETC... (Con't)

Texas Gov't Code § 311.016 ... 'May', 'Shall', 'Must', etc... etc..

The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by State.

- (1) 'May' creates discretionary authority or grants permission or a power.
- (2) 'Shall' imposes a duty.
- (3) 'Must' creates or recognizes a condition precedent.
- (4) 'Is entitled to' creates or recognizes a right.
- (5) 'May not' imposes a prohibition and is synonymous with 'Shall not'.
- (6) 'Is not entitled to' negates a right.
- (7) 'Is not required to' negates a duty or condition precedent.

Texas Gov't Code § 311.021(1)(2) Intention in Enactment of Statutes..

In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this State and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest..

Acts 1985, 69th Leg., ch. 479, § 1, eff. Sept. 1, 1985...

~~XIII~~ STATEMENT OF THE CASE

Mr Jimenez was charged with 2 counts of Burglary of Habitation in Cause No. B91-54 and B91-53, which allegedly occurred on Feb. 1991. Due to his attorneys' 'ineffectiveness', Mr Jimenez entered a plea bargain on April 16, 1991 - on both Counts. The plea bargain stated: 'Bootcamp followed by 5 yrs probation (TDC Shock Probation) FN 1 -- in Cause No. B91-54 & 10 yrs deferred adjudication in B91-53 with B91-9, B91-51, B91-52 (motor vehicle charges) taken into account in B91-53 as unadjudicated.. (See: Ex 4)

On 8/9/91 (around 5 a.m.--- Jimenez was delivered to the TDC Diagnostic Unit by Kerr County Transporter 'Lee Berhens' to begin his sentence.. On 11/06/91, Jimenez's 90 days were up, but noone came for him.

Jimenez turned out for work the following day 11/07/91, and a TDC Officer went and got him, because his county had gone to pick him up. Around 1:30 p.m., Jimenez was brought before the trial court, and was released on Shock Probation, marking his 91st day.. (See: Ex. 5 and Ex. 6)

Jimenez finished his B91-54 case around 1998, however, still binding as part of the plea bargain, was his B91-53 case.-- to which he is currently incarcerated for -- as his trial judge ran his probation case (B91-53 - of 10 yrs) consecutively with his Organized Crime Case (B06-146 - of 50 yrs) See Ex. 8 which states that i'm doing a 60 yr sentence... Also EX. 9

Both, the U.S District Court for the Western District of Texas, San Antonio Division and the Fifth Circuit Court of Appeals. dismissed my case, stating that my sentence of B91-54, was over, and that Jimenez may not collaterally challenge his burglary conviction.. Mis applying several Federal Laws, and its decisions were in conflict with this Courts previous decision, and/or has departed from the accepted and usual course of judicial proceeding or sanctioned, as to call for an exercise of this Courts supervisory power..

Furthermore, the Fifth Circuit and U.S District Court, Have decided on an important question of Federal Law and/or has decided on an important Federal Question, in a way that conflicts with relevant decisions of this Court.

FN 1. In order for the trial court to GRANT Shock Probation, the judge of court that imposed the sentence, may suspend further execution of the sentence imposed and place the defendant on probation. however, there is a 75 to 90 days statutory window time-frame to act. See: Ex 7)

XIII. REASONS FOR GRANTING THE PETITION

I. The Fifth Circuits decision contains a glaring factual error that clearly is in contrary to this Courts previous rulings, as well as, other Courts decision, and Laws of these United States. Its misapplication of Laws have affected other Courts judgement, and the Fifth Circuits denial of Applicants Due Process Rights, is also based upon legal error, as it's analysis of the decision shows that the Fifth Circuit misapplied 'Lackawanna Cty. Dist. Attorney v. Coss, 532 U.S. 394, 401-04 (2001)' standard, and has prejudiced the defendant's rights, which warrants this Courts attention..

A. The Fifth Circuit's decision was misapplied in this case, as to Lackawanna..

As authority for relying on Lackawanna's decision -- the Fifth Circuit concluded that Jimenez may not collaterally challenge his burglary conviction -- based on the general rule applied in Lackawanna, this Court held that:

Habeas Petitioner cannot challenge an enhanced sentence on the ground that a prior conviction used to enhance the sentence was unconstitutionally obtained, if prior conviction used to enhance the sentence was unconstitutionally obtained, if prior conviction is no longer open to direct or collateral attack in its own right'

However, the Fifth Circuit failed to apply the exception to the general rule, to which it states:

'HOWEVER, there is an exception which exist where there is a failure to appoint counsel, which is a unique constitutional defect, rising to the level of a 'Jurisdictional Defect'..

When an otherwise qualified Federal Habeas Petitioner can demonstrate that his current State sentence was enhanced on the bases of a prior State conviction that was obtained in violation of the United States Constitution Amendment -- where there was a failure to appoint counsel (or in this case) 'Jurisdictional Defect' -- the current sentence [cannot] stand, and Habeas relief is appropriate. (28 U.S.C.A. §2254 -- U.S. Const. Amend.)

Under Title I of the AEDPA of 1996, it significantly amended Chapter 153 of the Title 28 of the United States Code, which 'authorizes the Federal Courts to Grant the Writ of Habeas Corpus. Section 2254 lays out the remedies available for offenders in State Custody. For determining the validity of a Federal Writ, there are 2 standards which Federal Courts will consider (one of which I intend to list here):

§2254(d) An application for a Writ of Habeas Corpus on behalf of a person in custody pursuant to the judgement of a state court [shall not] be granted with respects to any claim that was adjudicated on the

merits in state court proceedings [UNLESS] THE adjudication of the claim --

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the U.S. Supreme Court

§2254 -- State Custody; remedies in Federal Courts, states:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court [shall] entertain an application for a Writ of Habeas in behalf of a person in custody pursuant to the judgement of a State Court [only] on the ground that he is in custody in violation of the Constitution or Laws or Treaties of the United States.

In U.S.A v. Ronald Peppers, 899 F.3d 211 (3rd Cir. 2018) the Courts held that:

'Under the AEDPA, a defendant may file a motion collaterally attacking his sentence based on certain specifically listed grounds namely, 1) that the sentence was imposed in violation of the Constitution or Federal Law, 2) that the Court was without jurisdiction to impose the sentence, 3) that the sentence exceeded the maximum authorized by law, or 4) that the sentence is otherwise subject to collateral attack,

This Court has previously noted in Lonchar v. Thomas, 116 S.Ct. 1293 (1996) that:

'dismissal' of a first Federal Habeas Petition is a particularly serious matter, for that, dismissal denies the Petitioner the protection of the Great Writ entirely, risking injury to an important interest in human liberty...'

This Court and Habeas Statutes have long held, allowing collateral attacks on final judgements of conviction, only where the rendering court lacked 'jurisdiction' Moore v. Dempsey, 261 U.S. 86, 43 S.Ct. 265 (1923).. The judgement of conviction pronounced by a Court without jurisdiction is void, and one imprisoned thereunder, may obtain release by Habeas Corpus. Johnson v. Zerbst, 58 S.Ct at 1024-1025 ..

In Jimenez's Request for Certificate of Appealability with Brief in Support, his main argument was, that the trial court had 'Lacked Jurisdiction to act on his Case after the statute of limitation had expired' -- Yet, the Fifth Circuit failed to take that argument into consideration (See: EX 10) nor did the United States District Court for the Western District of Texas, San Antonio Division (See: Ex. 11)

Jimenez contends, that, his true argument was 'Lack of Jurisdiction', and not the challenging of a collateral attack on his burglary conviction...-- even though that Jimenez did state that he suffered collateral consequences..(a showing required in Ex Parte Harrington, 310 S.W.3d 452 (Tex. Crim. App. 2010)..

Being that 'Lack of Jurisdiction', cannot be waived or forfeiture (Ex parte Sledge, 391 S.W.3d 104 (Tex. Crim. App. 2013) it can be attacked at any time (Nix v. State, 65 S.W.3d 664, 667 (Tex. Crim. App. 2001) .. This Court has previously stated, that, 'Without Jurisdiction, the Court cannot proceed at all in any cause (Ex Parte McCradle, 74 U.S. 506, 514 (1868) Habeas Corpus relief is available for jurisdictional defects and violations of certain fundamental or constitutional rights. (Ex Parte McCain, 67 S.W.3d 204, 206 (Tex. Crim. App. 2002)

Judicial Action without jurisdiction is void; where the Court is without jurisdiction, it has no authority to render judgement other than one of dismissal. 15 Tex. Jur. 2d §50 pp: 475-77. Any Order entered by a Court having 'No Jurisdiction' is void Ex Parte Armstrong, 8 S.W.2d 674-76 (1928)..

Because Jimenez currently suffers 'collateral consequences' arising from his conviction (891-54), he is 'confined' for the purpose of seeking Habeas Relief.. Ex Parte Harrington, 310 S.W.3d 452 (Tex. Crim. App. 2010) Habeas relief will issue to a person in custody under a sentence which is void, because punishment is unauthorized. Citing Ex Parte Harris, 495 S.W.2d 231, 232 (Tex. Crim. App. 1973). In Ex Parte Harrington, it was held, that, post-conviction habeas corpus relief is available if an applicant has discharged his sentence, but continues to suffer collateral consequences arising from the conviction. Carafas v LaValle, 391 U.S. 234 (1968) -- (expiration of sentence does not moot case.)

In Ex Parte Ormsby, 676 S.W.2d 130, 131 (Tex Crim. App. 1984) it stated, that, (mootness cannot prohibit a collateral [by habeas] if prior discharged convictions may have a collateral consequence to a criminal defendant).. In Matum v. State, 846 S.W.2d 324 (Tex. Crim App. 1993) it stated that, a misdemeanor judgement could be void and collaterally attacked, whether or not a term of probation was successfully served but.

In Ex Parte Smith, 178 S.W.3d 797, 802 (Tex. Crim. App. 2005), the Court of Criminal Appeals, stated, that, 'when the face of the pleading shows that the offense charge is barred by limitations, that pleading [is so fundamentally defective, that the trial court does not have jurisdiction, and habeas relief should be granted], quoting Ex Parte Dickerson, 549 S.W.2d 202 (1977) See also Ex Parte Weise, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001) (when the pleading, on its face shows that the offense charged is barred by limitations .. the applicant is challenging the trial court's power to proceed). See: Tex. Code of Crim. Proc. Ann.

art. 12.02 (West Supp.)(See: Pg. 3) Under the 5th and 14th Amendment to the United States Constitution, a defendant is denied 'Due Process of Law' and 'Due Course of the Law', when the District Court acts without jurisdiction. Ex Parte Birdwell, 7 S.W.3d 160, 162 (Tex. Crim. App. 1999).. Lowery v. Estelle, 696 F.2d 333 (5th Cir. 1983) (Jurisdiction means the Court has power to hear your case. If a Court holds a trial without jurisdiction, it violates the Due Process Clause of the 5th and 14th Amendment)..

The Texas Supreme Court decision in Dubia Petroleum Co. v. Kazi, 12 S.W.3d 71 (Tex. 2000) held that, 'Subject-Matter Jurisdiction is a power that exists by operation of law only, and [cannot] be conferred upon any Court by consent or waiver, and thus, a judgement will never be considered final if the Court lacked subject-matter jurisdiction..

Because the trial court acted outside of the statutory time-line, enacted by Legislature, under C.C.P. 42.12 8(a) of 75 to 90 days -- it no longer had jurisdiction to hear Jimenez's case, and therefore could not have possibly place him on shock probation, making his sentence/conviction -- Void... As the Texas Supreme Court held in Dubia Petroleum Co. v. Kazi -- without subject-matter jurisdiction, a judgement will never be considered final.. And therefore, the proper place for Jimenez to seek relief from his conviction, is through a Writ of Habeas Corpus.. (See: §2254 (d) and (d)(1))...

As previously mentioned -- the Fifth Circuit's ruling appears to be at odds with this Courts' teaching as well as other Courts, and is in conflict with applying the correct standards found in Lackawanna -- therefore, this Court should grant certiorari, to provide that guidance, and to ensure that other Courts also apply the correct standards in evaluating claims of 'Lack of Jurisdiction'..

That, as in Johnson v. Zerberst, in U.S.A. v. Peppers, the AEDPA of 1996, §2254 (a) & (d)(1), the Texas Supreme Court's decision in Dubia Petroleum Co. v. Kazi, and other Courts' decision -- that the same results should be applied in this instant case..

Had the Fifth Circuit considered the entire ruling found in Lackawanna, and the laws of these United States, then it would have not violated Jimenez's U.S. Constitutional Amendments/Rights, to Due Process...

II. There is an important question of Federal and State Law, that has not been, but should be, settled by this Court when dealing with, when a trial court has authority to act upon the defendant's case, after the Court lacked subject-matter and/or personal jurisdiction, without violating the defendant 14th Amendment, to Due Process...

The Texas Constitution allows trial courts to suspend the 'execution of sentence and to place the defendant on probation and to [reimpose] such sentence under such conditions as the Legislature may prescribe. Tex. Const. art IV § 11A.

In 1991, when Legislature enacted the Tex. Code of Crim. Proc. Ann. art. 42.12 § 8(a), it provided a 75 to 90 day statutory window, to require the sentencing court to act solely within that window. Anything outside that window. deprives the trial court, authority/jurisdiction in said cause..

When Texas Legislature enacts a statute, it is presumed to comply with both the Texas Constitution and the U.S. Constitution. (See: Tex. Gov't Code Ann. § 311.021(1) Vernon 2005.) Furthermore, without jurisdiction. the Court [cannot] proceed at all in any cause. Ex Parte McCradle, 74 U.S. 506, 514 (1868)..

In accordance to the Tex. Gov't Code §311.016 (See: Pg. 4), the Legislature constructed a set of phrases provided by statute, to which gives authority to the to the trial court, on which it [must] comply by. (See: 'Pg 4')

When Legislature enacted art. 42.12 8(a) of the C.C.P -- it stated that:

Sec. 8(a) For the purpose of this section, the jurisdiction of a Court in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction of a felony [shall] continue for 90 days from the date the execution of the sentence actually begins, the judge of the Court that imposed the sentence may suspend further execution of the sentence imposed and place the defendant on probation' (See: Ex. 2)

Therefore, when the trial court waited til the 91st day, to suspend further execution, and place Jimenez on probation -- it had already lost jurisdiction/authority to act on such case.. to which, without authority/jurisdiction, the judgement [should] become void and may be argued at any time -- which this type of claim [cannot] be waived or forfeit. Under the 14th Amendment to the U.S. Constitution, a defendant is denied 'Due Process of Law' and 'Due Course of the Law', when the District Court acts without jurisdiction. EX Parte Birdwell, 7 S.W.3d 160, 162 (Tex. Crim. App. 1999).. In State ex. rel. Bryan v. McDonald, 642 S.W.2d 492 (Tex. Crim. App. 1982) the Court held, 'When a trial court orders shock probation [after] it loses jurisdiction, the order is void'.

Under the rulings of Metropolitan Transit Authority v. Jackson, 212 S.W.3d 787, at 800 (Tex-App-Houston [1st Dist.] 2006) citing Dubia Petroleum Co. v. Kazi, 12 S.W.3d 71, 76 (Tex. 2000) (a Texas Supreme Court Ruling) -- this case is not final (as the Fifth Circuit and the U.S. District Court for the Western District, San Antonio Division) have insinuated, because the trial court lacked subject-matter jurisdiction, which shows that Jimenez has been held 'illegally' and 'unconstitutionally, to which, deprives him of his liberty, without Due Process...

Under the 5th Amendment to the U.S. Constitution, as well as, Texas Constitution art. I § 19 .. it clearly states. that:

' ... No citizen/person of the United States/State, shall be deprived of life, [liberty], or property, without Due Process of Law..'

Furthermore, under the 14th Amendment of the United States, it states, that:

'.... all persons born or naturalized in the United States, and subject to the jurisdiction thereof. are citizens of the United States where-in they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without Due Process of Law; nor deny to any person within its jurisdiction the equal protection of the Laws..'

The 8th Amendment to the U.S. Constitution, as well as, Texas Constitution art. I § 13, similarly state, that:

' ... nor cruel and unusual punishment inflicted'..

Yes, under the Texas Constitution art. IV § 11A ... ' it allows trial courts to suspend the 'execution of sentence and to place the defendant on probation, and to [reimpose] such sentence, under such conditions as the Legislature may prescribe.. However, those conditions are set forth under the C.C.P 42.12 8(a) which sets a statutory window of 75 to 90 days, and if the trial court does not act within that time frame, then it loses jurisdiction/authority, to further act..

Being that defendants U.S. Constitutional rights are being violated here, it is of utmost great importance, that this Court exercise its supervisory power, to rule on the matter(s) at hand..

Alternatively, this Court should grant certiorari, vacate the judgement of the Fifth Circuit, and if it so decides, that 'Lack of Jurisdiction' constitutes a void sentence -- then grant the petitioner relief that is long due to him... and have his sentence/conviction expunged or remanded back to the trial court..

XIV. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jesus Lim

Date: April 8, 2020