

IN THE
SUPREME COURT OF THE UNITED STATES
_____ 2020 TERM

No. 19-8285

Supreme Court, U.S.
FILED

APR 08 2020

OFFICE OF THE CLERK

IN re DAVID L. WILLIAMS
Petitioner

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary
Respondent

ON PETITION FOR WRIT OF HABEAS CORPUS From THE
UNITED STATES FIFTH CIRCUIT COURT OF APPEAL

PETITION FOR WRIT OF HABEAS CORPUS

ad subiciendum the Great Writ

28 U.S.C.A. §§ 2241, 2254 (a); 1257

David L. Williams #98840, Pro Se

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QUESTIONS PRESENTED

1.

Was dismissal of Petitioner Appeal error by the Fifth Circuit?

2.

Does Appeal lie with Appeal court, when Petitioner claim he is in custody in violation of the Constitution, Laws or Treaties of the United States?

3.

Can state court render judgment, order, conviction, and sentence when it lacked jurisdiction, authority, and power?

4.

Can state initiate prosecution of offense that impose life sentence by Bill of Information when law require indictment?

5.

Does petitioner have right to Due process of law?

6.

Does petitioner have right to Equal protection of the law?

7.

Does petitioner have right to effective assistance counsel of trial counsels?

8.

Does petitioner have a right to effective assistance of counsel in his one and only Appeal of right?

9.

Can void order of commitment be cause to detain petitioner in State Prison?

10.

Can Constitutional and Jurisdictional claims be barred?

11.

Can ineffective assistance counsel claim be barred?

12.

Can person be placed in the penitentiary without order of commitment?

Questions Presented Continues

13

Can lower Federal Courts overlook Substantive Ineffective Assistance of Counsel Claims to deny Appeal?

14

Can lower Federal Courts overlook Substantial Claims of the Federal Constitutional violation to deny Appeal?

15

Can trial court not consider substantive claims of ineffective assistance of counsel in any legal proceeding in the court?

16

Can trial court overlook Federal Law and Constitution violation to contrive a conviction?

17

Can trial court overlook State laws and State Constitution in violation of Due Process of Law and Equal Protection of law to contrive a conviction?

18

What is more contrary to clearly established law or is an unreasonable application of clearly established law determined by the United States Supreme Court, than a trial court usurpation of authority where it had no jurisdiction to render judgment of guilty or to issue a sentence?

LIST OF PARTIES

Petitioner, David L. Williams #98840, hereby certify that the following have an interest in this outcome of this case:

Petitioner David L. Williams #98840

United States Court of Appeal, Fifth Circuit Court of Louisiana

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James M. LeBlanc, Secretary
Dept. of Public Safety and Correction

Darrel Vannoy, Warden

Interim ^{or} Warden Seth Smith
Louisiana State Penitentiary

These representations are being made so that the justices of this Honorable Court may evaluate possible conflicts of interest, disqualification or the need for recusal. There are no other parties to this action with scope of Supreme Court Rule 29.1.

Respectfully submitted by.

David L. Williams

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TABLE OF CONTENT

Petition For Writ Of Habeas Corpus	-----	-----
Questions Presented For Review	-----	i, ii
List Of Parties Rule 12.6 Statement	-----	iii
Table Of Contents	-----	iv
Appendices	-----	v, vi
Table Of Authorities	-----	vii, viii, ix, x, xi, xii, xiii, xiv
Jurisdiction	-----	xv, 2A
Constitutional And Statutory Provisions Involved	-----	xvi, xvii
Statement Of The Case	-----	28 U.S.C.A § 2244
Erroneous Interpretation Or Application Of Constitution Or Law Of The United States And Louisiana	-----	11
Trial Court Lacked Subject Matter Jurisdiction	-----	12
Bill of Information Contrary to Constitution And Law is void	-----	16
Grand Jury Requirement, Due Process Of Law and Equal Protection	-----	17
Fraud On The Court	-----	20
Due Process Of Law	-----	20
Constitutional Violation Of The 13 th , 14 th Amendment And LSA-Const. Art. 1, §§ 2, 3	-----	22
Sentence And Commitment Order is Void	-----	24
Custody Without Court Order	-----	25
Burden Of Proof	-----	25
Louisiana Supreme Court Violated Rights To Review Of Appeal	-----	26
Ineffective Assistance Of Trial Counsel	-----	27
Ineffective Assistance Of Appellate Counsel	-----	31
Habeas Corpus	-----	31
Conclusion	-----	33
PRAYER	-----	36
Certificate Of Compliance	-----	36
Proof Of Service	-----	37
Memorandum Of Law	-----	37
Court Assert Frivolous, Redetitious, Abuse Of Writ	-----	6
Abuse Of Writ Or Filing	-----	8
Fifth Circuit Ruling Conflict With Another Federal Appeal Court Ruling And The Supreme Court Of The United State Case law	-----	9
	-----	10

INDEX TO APPENDICES

APPENDIX (A)

- A 1 MIDDLE DISTRICT COURT RULING, No. 19-350-BAJ-EWD
- A 2 Fifth Circuit Ruling. No. 19-30817
- A 10 Proof of Scanning, Motion To Proceed In Forma Pauperis, Notice Of Appeal, Application For Certificate Of Appealability and Appointment Of Counsel, Motion For Appointment Of Counsel, Habeas Corpus Petition:

APPENDIX B

- B 1 ORDER OF COMMITMENT; B 2-3 Bill of Information; B 4 Statement by The Clerk; B 5 Extract Of Minutes; B 6 Per Curiam, Affirmed 82-KA-1947 Mar 2, 1982; B 7 Citing Without Formal Opinion, 427 So.2d 873; B 8 Alphabetical Index; B 9 Chronological Index; B 10 Motion To Quash, by attorney; B 11 Motion For Pretrial Discovery; B 12 Motion For Bill Of Particulars; B 13 Motion For A Preliminary Examination; B 14 Extract Of Minutes, Jan. 28, 1982, Feb. 25, 1982; Mar. 15, 16, 1982, May 17, 1982; B 15 Request for Records from The Louisiana Supreme Court; B 16 Response From The Court; B 17 Memorandum To Trial Counsel, LSC; B 18 Notice and Order Of Appeal, Trial Counsel; B 19 Motion For Appeal, trial counsels; B 20 Directive From Louisiana Supreme Court, to trial counsels, No Brief filed and No assignment of error; B 21 Motion For Extension Of Time Within Which To File Brief, Appeal Counsel; B 22-23 Assignment Of Errors and Designation Of Records For Appeal, Appeal Counsels; B 24-29 Brief, by appeal counsels; B 30-31 Aggravated Rape Statute, Act 707, House Bill No. 521, July 23, 1981;

APPENDIX C

- C 1 20th JDC, Notice Of Intent To Appeal #15 (29-32); Motion And Order, Petition For Writ Of Habeas Corpus, C 11, (5-6) No: 2012-KH-2716; Second Habeas Corpus petition into 20th JDC six years apart and issued the same docket number by the court, No 12-WCR-494; C 11 Judgment, 12-WCR-494; C 11, 7 Letter From the 22nd JDC, Parish Of St. Tammany giving notice that habeas corpus petition shall be instituted in the parish of Custody; C 11, 8 Letter forwarding habeas corpus petition to 20th JDC; HDN. William G Carmichael, Judge Fore the 20th JDC; C 11, 9 Supreme Court Doc. No. 2018-KH-1540; C 11, 10 Louisiana Supreme

Court denied Supervisor and /or Remedial Writ; C11, (11-12) Judge Carmichael of the 20th JDC dismissed habeas as PCRA; C11, 13 Petition For Writ OF HABEAS CORPUS;

APPENDIX D

D1 Supreme Court of Louisiana answer to Mandamus; D2 Letter to clerk of Court (LSC); D3 Court's response; D4 (1-6) LSC 4-3 split denial of relief sought in postconviction relief application; D5 Application To Reconsider, Not Considered; D6 Act No. 251, H/B No 385; D7 (1-7) Uniform Application For Post-conviction Relief; D8 (1-8) Application For Post Conviction Relief; proof of mailing and tracking number; D10-D14 All Four Motions; D15 (1-11) Transcripts of Postconviction Relief Evidentiary Hearing, April 28, 2016; D16 (1-3) State's Response to PCRA Hearing; D17 (1-2) Order by the Court after Evidentiary Hearing December 5, 2017; D18 (1-23) Application For Supervisory Writ of Review / Remedy / Certiorari; D19 (1-9) Application To Reconsider Motion;

APPENDIX E

E1 (1-3) Transfer Order, No. 07-9724, E D C L; E2 (1-2) Denial of Motion, not on the merit, F.C.C.A, No. 08-30217; E3 Letter to the Fifth Circuit; E4 United States Supreme Court decision in 'Schexnayder v. Vannoy, 589 U.S. ____ (2019); E5 Motion for An Order Authorizing, No. 01-31002 & No. 01-2048 G, denied not on the merits; E6 Letter to 22nd JDC, Jan. 27, 1999; E7 Response From the Court; E8 Order Dismissing Application For Post Conviction Relief; E9 (1-5) Motion To Correct An Illegal Sentence; E10 Motion For Status Conference, denied; E11 (1-5) Motion For Out-of-Time Appeal; E12 Denial Of Motion; E13 District Attorney file, July 8, 2002, Victim's police Statement, Supplementary reports, Cover Of Trial Transcript, Index To Testimony of Witnesses, Index To Transcript, Tr. T. page 1; Tr. T. 13-14, 42-43, 51 and 61, 49-64 victims, 100-110 Dr. Wickboldt, 174-185 jury instruction, 169 trial counsel never tested identification; 45-46 victim lied about meeting suspect in hallway of home, 126, Line 17-18 Jerry Miller, no DNA, Genetic, or Biological material of David Lee Williams to connect him to the rape, 128 Line 23-25 possibly someone else.

TABLE OF AUTHORITY

<u>UNITED STATES CONSTITUTION</u>	Page
U.S.C.A. 5	8, 16, 19, 20, 21
U.S.C.A. 14	8, 14, 16, 19, 20, 21, 22, 23, 24, 27, 31
U.S.C.A. 6	8, 27, 29, 31
U.S.C.A. 13	8, 22, 23, 24
U.S.C.A.-Const. Art. I, § 9, cl. 2	12, 43
U.S.C.A.-Const. Art. I, § 18; sec. 10, cl. 1	22

LSA- CONSTITUTIONAL ARTICLES

LSA-CONST. ART. I, § 1	23
LSA-CONST. ART. I, § 2	2, 8, 16, 17, 19, 20, 22, 23, 24, 27, 31, 34
LSA-CONST. ART. I, § 3	2, 8, 16, 17, 19, 20, 22, 23, 24, 27, 31, 34
LSA-CONST. ART. I, § 13	17, 31

FEDERAL RULES

Judicial Code U.S. § 238, 36 STAT. 1157	1, 8
Federal Rule Of Crim. Proc., Rule 12 (b)(1) 28 U.S.C.A.	14
FRAP Rule 22, 28 U.S.C.A., Rule 22 (b)(1), Rule 22 (b)(2)	8
Rule 11 (a) 28 U.S.C. § 2254	8
Section 2254 Cases, Rule 1 (b), 9 (b) 28 U.S.C.A.	10
28 U.S.C.A. § 2244 (a), Rule 9 (b)	10
Rule 19, 28 U.S.C.A.	21
FRCRP RULE 52 (b)	14

LSA CONSTITUTION ARTICLES CONTINUE

LSA-CONST. ART. I, § 14	8, 19, 34
LSA-CONST. ART. I, § 15	2, 8, 15, 16, 17, 19, 20, 22, 24, 34

FEDERAL STATUTE

28 U.S.C. § 2244	3, 11, 12
28 U.S.C. § 2244 (a)	10

TABLE OF AUTHORITY

28 U.S.C.A. § 2244 (b)(2)	9, 10
28 U.S.C.A. § 2244(b)(3)	12
28 U.S.C.A. § 2241 (a) (b), (c) (3)	2, 3, 34
28 U.S.C.A. § 2242	2, 33
28 U.S.C.A. § 2243	2, 33
28 U.S.C.A. § 1651 (a)	2
28 U.S.C.A. § 1254	2 A
28 U.S.C.A. § 1257	2 A
28 U.S.C.A. § 1254	6
28 U.S.C.A. § 2254 (d)	18
28 U.S.C.A. § 2254 (a), (d) (1)	3
28 U.S.C.A. § 2254 (a), (A), (B) (i) (ii), (d) (1), Act sept. 24, 1789, sec. 14, 1 Stat.	2, 9, 10, 12, 33, 34
81, 28 U.S.C.A.	

STATE STATUTES

LSA-R.S. 14:42	3, 11, 15, 22, 24, 28, 29, 34
LSA R.S. 14:64	11

LSA CODE CRIM. PROCEDURE

LSA-C.Cr.P. art. 511	27, 31
LSA-C.Cr.P. art. 911	31
LSA-C.Cr.P. art. 351	34
LSA-C.Cr.P. art. 352	34
LSA-C.Cr.P. art. 353	34
LSA-C.Cr.P. art. 354	34
LSA-C.Cr.P. art. 357	34
LSA-C.Cr.P. art. 361	25
LSA-C.Cr.P. art. 365	25
LSA-C.Cr.P. art. 382	2, 8, 15, 16, 17, 19, 20, 22, 24, 34
LSA-C.Cr.P. art. 383	17
LSA-C.Cr.P. art. 384	17
LSA-C.Cr.P. art. 362 (1) (2) (3) (4) (5)	25

TABLE OF AUTHORITY

LSA-C.Cr.P. art. 437	17
LSA-C.Cr.P. art. 442	17
LSA-C.Cr.P. art. 443	17
LSA-C.Cr.P. art. 444	18
LSA-C.Cr.P. art. 461	17
LSA-C.Cr.P. art. 844	26
LSA-C.Cr.P. art. 872	16
LSA-C.Cr.P. art. 914, 1 Subd. D	26
LSA-C.Cr.P. art. 916, (1)	26
LSA-C.Cr.P. art. 916 (5)	26
LSA-C.Cr.P. art. 920 (2)	16, 26
LSA-C.Cr.P. art. 930, 8	2, 3, 8, 16

UNITED STATES SUPREME COURT CASE LAW

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967)	31
Branzburg v. Hayes, 408 U.S. 264, 66 S.Ct. 1408, 16 L.Ed. 2d 686 (1972)	18
Brumfield v. Cain, 135 U.S. 2269, 2277, 192 L.Ed. 2d 389 (2000)	18
California v. LaRue, 409 U.S. 109, 93 S.Ct. 390 (1979)	13
Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed. 2d 297 (1973)	21
Clyatt v. U.S., 25 S.Ct. 429, 197 U.S. 707 (U.S. Fla. 1905)	24
Coleman v. Thompson, 357 U.S. 254, 501 U.S. 722 (U.S. Va. 1991)	33
Cuyler v. Sullivan, 100 S.Ct. 1780, 416 U.S. 335 (U.S. Pa. 1980)	30, 33
Darden v. Wainwright, 417 U.S. 168, 108, 106 S.Ct. 2464, 91 L.Ed. 2d 144 (1986)	21
Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed. 2d 347 (1974)	27
DeJonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278 (1936)	22
Douglas v. California, 372 U.S. 353, 355, 83 S.Ct. 814, 815, 9 L.Ed. 2d 811 (1963)	31
Evitts v. Lucey, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985)	21, 26, 32
Ex parte Bain, 7 S.Ct. 781, 121 U.S. 1 (1887)	8, 14

TABLE OF AUTHORITY

Frank v. Mangum, 237 U.S. 309, 341, 35 S.Ct. 582, 59 L.Ed. 969	33
Gomez v. United States, 490 U.S. 858, 109 S.Ct. 2234, 104 L.Ed. 2d 923 (1989)	
at 490 U.S. at 876, 109 S.Ct. at 2248	14
Hewitt v. Helm, U.S. , 103 S.Ct. 864 (1983)	19
Hutto v. Finney, 437 U.S. 678, 98 S.Ct. 2565 (1978)	19
Hurtado v People Of The State Of California, 4 S.Ct. 292, 110 U.S. 516 (U.S. Cal. 1884)	21, 34
In re Bonner, 14 S.Ct. 323, 151 U.S. 242 (1894)	8, 13, 14
James v. Kentucky, 466 U.S. 341 (1984)	11
Jenkins v. McKeithen, 395 U.S. 411, 430, 98 S.Ct. 1843, 1853, 23 L.Ed. 2d 404 (1969)	17
Johnson v. Williams, 133 S.Ct. 1088 (U.S. 2012)	11
Johnson v. Zerbst, 58 S.Ct. 1019, 304 U.S. 458 (U.S. Ga. 1938)	29
Kuhlman v. Wilson, 106 S.Ct. 2616, 477 U.S. 436 (U.S. N.Y. 1986)	13
Lockhart v. Fretwell, 113 S.Ct. 838, 506 U.S. 364 (U.S. Ark. 1993)	27
Lockyer v. Androde, 538 U.S. 68, 71-72, 123 S.Ct. 1166, 155 L.Ed. 2d 144 (2003)	18
Magwood v. Patterson, 2010 WL 2518374 (U.S. 2010)	10
Maples v. Thomas, 132 S.Ct. 912 (U.S. 2012)	33
Murray v Carrier, 477 U.S. 478, 496, 106 S.Ct. 2639, 2649, 91 L. Ed. 2d 397 (1986)	10, 16
Palmer v. Ashe, 342 U.S. 134, 72 S.Ct. 191, 96 L. Ed. 2d 154 (1951)	11, 17
Pennsylvania ex rel. Herman v. Claudy, 350 U.S. 116, 123, 76 S.Ct. 223, 227, 100 L. Ed. 126 (1956)	11, 17
Penson v. Ohio, 109 S.Ct. 346, 488 U.S. 75 (U.S. Ohio 1988)	30
Rice v. Sioux City Memorial Cemetery, 75 S.Ct. 614, 319 U.S. 70 (U.S. Iowa 1935)	21
Rivera v. Illinois, 129 S.Ct. 1446, 556 U.S. 148 (U.S. Ill. 2009)	27
Rochin v. California, 72 S.Ct. 205, 942 U.S. 165 (U.S. Cal. 1952)	22
Roe v. Flores-Ortega, 120 S.Ct. 1029, 528 U.S. 470 (U.S. Cal. 2000)	27
Sanders v. United States, 373 U.S. 1, 15, 83 S.Ct. 1068, 1077, 10 L. Ed. 2d 148 (1963), Id. at 16, 83 S.Ct. at 1077	10
Schexnayder v. Darrel Vannoy, 589 U.S. , No. 18-8341	20
Smith v. United States, 360 U.S. 1, 9, 79 S.Ct. 991, 993, 3 L. Ed. 2d. 1041 (1959)	17

TABLE OF AUTHORITY

<i>Stirone v. U.S.</i> , 80 S.Ct. 270, 361 U.S. 212 (1960) _____	17
<i>Strickland v. Washington</i> , 104 S.Ct. 2052, 466 U.S. 668 (U.S. Fla. 1984) _____	27, 30
<i>Townsent v. Sain</i> , 83 S.Ct. 745, 372 U.S. 293 (U.S. Ill. 1963) _____	21
<i>United States v. Calandra</i> , 414 U.S. 338, 343, 94 S.Ct. 613, 617, 38 L.Ed. 2d 516 (1974) _____	18
<i>United States v. Cronin</i> , 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984) _____	27
<i>U.S. v. Addonizio</i> , 99 S.Ct. 2235, 442 U.S. 178 (1979) _____	13
<i>U.S. v. Cotton</i> , 122 S.Ct. 1781, 535 U.S. 625 (U.S. 2000) _____	13, 14
<i>U.S. v. Miller</i> , 105 S.Ct. 1811, 471 U.S. 130 (U.S. Cal. 1985) _____	18
<i>U.S. v. Sells Engineering Inc.</i> , 103 S.Ct. 3133, 463 U.S. 418, 423 (U.S. Cal. 1983) _____	18
<i>U.S. v. Williams</i> , 71 S.Ct. 581, 341 U.S. 70 (U.S. Fla. 1951) _____	22
<i>U.S. v. Williams</i> , 504 U.S. 36, _____, 112 S.Ct. 1735, 1749, 118 L.Ed. 2d 352 (1992) _____	18
<i>Voorhees v. The Bank of the United States</i> , 35 U.S. 449, 474-75 (1836) _____	14
<i>Wainwright v. Sykes</i> , 433 U.S. 72, 90-91, 97 S.Ct. 2497, 2508, 53 L.Ed. 594 (1977) _____	16
<i>U.S. v. Price</i> , 86 S.Ct. 1152, 383 U.S. 787 (U.S. Miss. 1966) _____	22
<i>Wood v. Allen</i> , 558 U.S. 290, 301, 130 S.Ct. 841, 175 L.Ed. 2d 738 (2010) _____	18
<i>Williams v. Taylor</i> , 529 U.S. 362, 405-06, 120 S.Ct. 1495, 146 L.Ed. 2d 389 (2000) _____	18
<i>Williams v. U.S.</i> , 71 S.Ct. 576, 341 U.S. 97 (U.S. Fla. 1951) _____	22
<i>Zivotofsky ex rel. Zivotofsky v. Clinton</i> , 132 S.Ct. 1421, 566 U.S. 189 (U.S. Dist. Col. 2012) _____	12

FEDERAL CASE LAW

<i>Baylor v. Estelle</i> , 94 F.3d 1321 (9 Cir. 1996) _____	29
<i>Beaulieu v. U.S.</i> , 930 F.2d 805 _____	31
<i>Bouman v. U.S.</i> , 156 F.2d 534 (1946) _____	17
<i>Braggs v. Norris</i> , 118 F. Supp. 2d 587 (E.D. Ark. 2000) _____	30
<i>Bryant v. Scott</i> , 28 F.3d 1411 (1994) _____	29

TABLE OF AUTHORITY

Collins v. Board of Control of Louisiana State Penitentiary, 219 F.885 (C.C. A.5 (La.) 1915)	8, 12
Crivens v. Roth, 172 F.3d 991, 999 (7th Cir. 1999)	30
Alexander v McCotter, 775 F.2d 595 (C.A.5 (Tex.) 1985)	18
Ex parte Jacobin, 104 F. 681 (C.C. E.D. La. 1900)	8, 12
Gonzalez v. Abbott, 967 F.2d 1499 (C.A.11 (Ga.) 1992)	10, 16
Hairston v. Cox, 459 F.2d 1382 (1972) cert.denied 411 U.S. 986, 93 S.Ct. 2266, 36 L.Ed. 2d 963 (1973)	11, 17
Harris v. Day, 226 F.3d 361 (C.A.5 (La.) 2000)	32
Hannon v. Maschner, 981 F.2d 1142 (C.A.10 (Kan.) 1992)	33
Hawkins v. Bennett, 423 F.2d 948 (1970)	17
Higginbotham v. Louisiana, 817 F.3d 217 (C.A.5 (La.) 2016)	21
Hill v. Braxton, 277 F.3d 701 (C.A.4 (Va.) 2002)	11
Jones v. Cowley, 28 F.3d 1067 (C.A.10 (Okla.) 1994)	33
Lofton v. Whitley, 905 F.2d 885 (C.A.5 (La.) 1990)	32
Lombard v. Lynaugh, 868 F.2d 1475 (C.A.5 (Tex.) 1989)	32
McMaster v. U.S., 177 F.3d 936 (1999)	8, 14
O'Blasney v. Solem, 774 F.2d 925 (C.A.8 (S.D.) 1985)	9
Patton v. Fenton, 491 F. Supp. 156 (M.D. Pa. 1979)	10
Long v. Shorebank Development Corp., 182 F.3d 548 (1999)	13
Steinkuchler v. Meschner, 176 F.3d 441, 445 (8th Cir. 1999)	30
Tucker v. Prelesnik, 181 F.3d 747 (6th Cir. 1999)	30
Sutton v. Lash, 576 F.2d 738 (1978)	11, 17
Wilson v. Johnston, 417 F. Supp. 257 (N.D. Cal. 1942)	33
U.S. v. Allen, 341 F.3d 870 (C.A.9 (Mont.) 2007)	24
U.S. v. Cabrera-Teran, 108 F.3d 141 (C.A.5 (Tex.) 1999)	14
U.S. v. Galloway, 56 F.3d 1239 (C.A.10 (Utah) 1995)	31
U.S. v. Gatewood, 173 F.3d 983 (1999)	13
U.S. v. Dsiemi, 980 F.2d 344, 345 (1993)	9, 15
U.S. v. Peak, 992 F.2d 39 (C.A.4 (N.C.) 1993)	30
U.S. v. Siviglia, 686 F.2d 832 (1981)	14
U.S. v. Sposito, 106 F.3d 1042 (C.A.1 (Mass.) 1997)	13
U.S. v. Vreeken, 803 F.2d 1085 (1986)	13
U.S. v. Wydermyer, 51 F.3d 319 (C.A.2 (N.Y.) 1995)	18
United States v. Lalaca, 793 F.2d 636, 647 (5th Cir. 1986)	21

TABLE OF AUTHORITY

STATE CASE LAW

Bosworth v. Whitley, 627 So. 2d 629 (La. 1993)	21
Decuir v. Decuir, 105 La. 481, 485, 29 South 934 (1901)	13
Ex parte Rhodes, 20 So. 894, 48 La. Ann. 1336 (La. 1896)	18
Madison v. Ward, 825 So. 2d 1245, 2000-2842 (La. App. 1 Cir. 2002)	17
Ralph v. Police Court of El-Cerrito, 190 P. 2d 632, 634, 84 La. 2d 257 (1948)	8, 14
State v. Arita, 811 So. 2d 1146, 2001-1512 (La. App. 4 Cir. 2002)	17
State v. Alexander, 339 So. 2d 818 (1976)	29
State v. Benjamin, 573 So. 2d 528 (La. App. 4 Cir. 1990)	32
State v. Bernard, 326 So. 2d 332 (La. 1976)	19
State v. Bienvenu, 207 La. 859, 22 So. 2d 196 (1945)	9, 15
State v. Butler, 259 La. 560, 250 So. 2d 740 (1971)	19
State v. Burnette, 496 So. 2d 1236 (5th Cir. 1986)	29
State v. Croal, 5 So. 2d 16, 198 La. 820 (La. 1910)	10, 16
State v. Crosby, 338 So. 2d 584 (La. 1976)	10, 16
State v. Davis, 385 So. 2d 193 (La. 1980)	17, 19
State v. DeMolle, 621 So. 2d 1671 (La. App. 1 Cir. 1993)	17, 19
State v. Donahue, 335 So. 2d 247 (La. 1978)	17
State v. Duhon, 77 So. 791, 142 La. 919 (La. 1918)	16
State ex rel. Busby v. Butler, 538 So. 2d 164 (La. 1988)	30
State ex rel. Jackson v. Henderson, 283 So. 2d 210 (La. 1973)	16, 17
State ex rel. Lay v. Cain, 691 So. 2d 135, 96-1247 (La. App. 1 Cir. 1997)	25
State v. Felton, 522 So. 2d 626 (La. App. 4 Cir. 1988)	30
State v. Flores, 27, 736 p. 3, at 669 So. 2d at 644 (1996)	26
State v. Gary, 445 So. 2d 200 (1984)	19
State v. Goodley, 398 So. 2d 1068 (La. 1981)	26
State v. Green, 347 So. 2d 229 (1977)	17
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State v. Harvey, 106 So. 28, 159 La. 674 (La. 1925)	22
State v. Henry, 449 So. 2d 486 (La. 1984)	9
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State v. James, 305 So. 2d 514 (La. 1974)	10, 16, 19
State v. Jordy, 161 La. 104, 108 So. 229	10, 16

TABLE OF AUTHORITY

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State v. Lott, 434 So. 2d 1274 (La. App. 1 Cir. 1983)	17, 19
State v. Louis, 94 So. 446, 152 La. 924 (La. 1922)	9, 15
State v. Mayeux, 498 So. 2d 701 (La. 1986)	26
State v. McDonald, 152 So. 308, 178 La. 612 (La. 1934)	9, 15
State v. Melson, 161 La. 423, 108 So. 794	10, 16
State v. Mejia, 250 La. 518, 197 So. 2d 73 (1967)	9
State v. Nicolosi, 55 So. 475, 118 La. 836 (La. 1910)	13
State v. Oliveaux, 312 So. 2d 337 (La. 1975)	26
State v. Parish, 405 So. 2d 1080 (La. 1984)	29
State v. Peart, 621 So. 2d 780 (La. 1993)	30
State v. Pichler, 355 So. 2d 1302 (La. 1978)	9, 15
State v. Pridgen, 175 So. 63, 187 La. 569	9, 15
State v. Raby, 259 La. 909, 253 So. 2d 370 (1971)	19
State v. Rubin, 559 So. 2d 550 (La. App. 2 Cir. 1990)	28
State v. Ruple, 437 So. 2d 873 (La. App. 2 Cir. 1983)	19
State v. Seller, 902 So. 2d 418, 2004-1922 (La. App. 4 Cir. 2005)	10, 16
State v. Smith, 542 So. 2d 175 (La. App. 1 Cir. 1989)	19
State v. Stevenson, 334 So. 2d 195 (La. 1976)	19
State v. Telsee, 425 So. 2d 125 (La. 1982)	19
State v. Thomas, 461 So. 2d 332 (1984)	8, 9, 13, 14, 15, 19
State v. Trent, 517 So. 2d 1053 (La. App. 3 Cir. 1987)	29
State v. Monk, 315 So. 2d 727 (La. 1975) (FN 5) Cf.	19

OTHER CASE LAW

Garcia v. Dial, 596 S.W. 2d 524, 528 (Tex. Cr. App. 1980)	14
Harraan v. Gilchrist, 99 N.W. 909, 934, 121 Wiss. 127 (1904)	14

JURISDICTION

28 U.S.C.A. § 2241 (a), (c) (3).

28 U.S.C.A. § 2254 (a), (b) (1) (A), (B) (i) (ii), (d) (1)

28 U.S.C.A. § 2242

28 U.S.C.A. § 2243

28 U.S.C.A. § 1651 (a)

28 U.S.C.A. § 1257

UNITED STATES SUPREME COURT RULE 20.4

Federal Rule Of Appellate Procedure 22 (b) (1), (2)

Federal Rule of Criminal Procedure 52 (b)

Federal Rule Of Criminal Procedure 12 (a), (b) (1) (2) (3), (A) (v), (B) (iv), (C), (D).

Federal Rule Of Appellate Procedure Rule 24, 28 U.S.C.A. (a), (A), (B), (C), (3)

SUPREME COURT RULE 20 (1), (2), 4 (a)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fifth Amendment of the United States Constitution Provides in pertinent part:
"No person shall be deprived of liberty without due process law."

The Sixth Amendment of the United States Constitution Provides in pertinent part:
"In all criminal prosecution, the accused shall enjoy the right to compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense."

The Thirteenth Amendment of the United States Constitution Provides in pertinent part:
"There shall be neither slavery nor involuntary servitude, except as a punishment for crime (where the party shall have been duly convicted), shall exist within the United States." [Emphasis Supplied]

The Fourteenth Amendment of the United States Constitution Provides in pertinent part:
"No state shall make or enforce any law which shall abridge the the privileges or immunities of citizens of the United States' nor shall any state deprive any person of liberty, without due process of law, nor deny any person within its jurisdiction the equal protection of the law."

LOUISIANA CONSTITUTION

LSA-CONSTITUTION ARTICLE 1, § 1 in pertinent part:

"Is instituted to protect the rights of the individual and its only legitimate ends are to secure justice for all, protect the rights. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolated by the State."

LSA- CONSTITUTION ARTICLE 1, § 2 in pertinent part:

"NO person shall be deprived of liberty, except by due process of law."

LSA-CONSTITUTION ARTICLE 1, § 3 in pertinent part:

"NO person shall be denied the equal protection of the law. Slavery and involuntary servitude are prohibited, except as punishment for crime."

LSA-CONSTITUTION ARTICLE 1, § 13 in pertinent part:

"AT each stage of the proceeding, every person is entitled to assistance of counsel, charged with an offense punishable by imprisonment."

LSA-CONSTITUTION ARTICLE 1, § 15 in pertinent part:

"Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury."

LSA-CODE OF CRIMINAL PROCEDURE ARTICLE 382 in pertinent part:

"A prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury.

Amended by Act 1974, Ex. Sess. No. 19, § 1, eff. Jan. 1, 1975.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A1-6 to the petition and is

[] reported at No. 19-30902; 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 A1 to the petition and is

[] reported at No. 3:19-cv-350; 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 C9 to the petition and is

[] reported at No. 2018-KH-1640; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the State District court appears at Appendix C11 to the petition and is

[] reported at 12-WCR-494 2018; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Dec. 03, 2019.

☒ No petition for rehearing was timely filed in my case.

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Mar, 2 1982.
A copy of that decision appears at Appendix B 6.

☐ 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).

IN THE
SUPREME COURT OF THE UNITED STATES

CIVIL ACTION No.: _____

In re DAVID LEE WILLIAMS
Petitioner

VERSUS

DARREY VANNDY, Warden
Louisiana State Penitentiary
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

MAY IT PLEASE THE COURT:

NOW COMES, DAVID L. WILLIAMS, now Petitioner, requesting re-dress of writ of habeas corpus and denial of access to court, pursuant to 28 U.S.C. § 2254 (a), (A) (B) (i) (ii), (d) (1); 28 U.S.C. § 2241 (a) (b), (c) (3); 28 U.S.C. § 1651 (a); 28 U.S.C. A § 2242; 28 U.S.C. A § 2243

(1) Petitioner asserts he is in custody in violation of the Constitution or laws or treaties of the United States where lower Federal Court erroneously applied sec. 2244 bar and where he had been unable to develop in state court proceedings because state applied C.C.P. art. 930.8 bar, where petitioner's claims involves the construction or application of the Constitution of the United States, Judicial Code U.S. Sec. 238, 36 Stat. 1157 and the construction or application of the Constitution of the Louisiana.

(2) Petitioner is presently unconstitutionally detained in an illegal custody in the Louisiana Department of Correction and Public Safety, Louisiana State Penitentiary, Angola, La. by Darrel Vannoy, warden, by virtue of a void judgment, sentence and commitment warrant where trial court was without subject matter jurisdiction over the legal action, in violation U.S.C.A. Constitution Amendment 5th, 14th, due process of law and equal protection of the law, LSA Const. Art. 1, sec. 2, 3, 15; LSA C.C.P. art. 382

(3) Petitioner is entitled to immediate release because of fatal errors.

- (4) Prosecutorial Misconduct: Prosecutor withheld Brady Material from defense in the form of victim's/witness affidavit or statement and police reports which would have been used to impeach victim's testimony on the stand where she committed perjury when she identified petitioner as the one who attacked her.
- (5) Prosecutorial Misconduct: Prosecutor knowingly or should have known he was using perjured testimony to obtain an illegal conviction.
- (6) Prosecutorial Misconduct: Prosecutor knowingly bypassed prescribed method of prosecuting La. R.S. 14:42 aggravated rape.
- (7) Courtroom identification was improper and suggestive, where there was no other form of identification to corroborate witness in court Id.
- (8) Petitioner is imprisoned and being detained of his liberty pursuant to an void conviction and sentence because his guilty verdict is constitutionally defected for the following reasons:
 - (a) The trial court committed reversible error when it allowed prosecution of an aggravated rape charge by bill of information rather than Grand jury indictment.
 - (b) Trial court committed reversible error when it failed to provide corrective measures for defect in prosecution.
 - (c) Trial court committed reversible error when it failed to instruct the jury as to the essential element of aggravated rape, that is armed with a dangerous weapon.
- (9) Petitioner custody is illegal where trial judge did not sign commitment warrant to transfer him from the parish jail to State Penitentiary, making commitment papers void and nullity where it was issued without judges signature or facsimile, making custody slavery and involuntary servitude.
- (10) Trial counsel performance was unreasonably unprofessional in his representation of petitioner aggravated rape trial and ineffective where he was denied counsel constructively when counsel did not subject prosecution case to adversarial test, and where counsel did not file or argue an assignment of error on appeal.
- (11) Appeal counsel was unreasonably unprofessional in his representation of petitioner's one and only Appeal of right when petitioner was denied counsel constructively when counsel filed a meritless and frivolous six page Brief requesting only that the court perform a Error of Patent on the Face of the Record Search, with out any arguments or assignment of error.

(12) Louisiana Supreme Court violated petitioner's due process of law, equal protection of the law, and right to one and only appeal of right in 1983 when it did not conduct independently a inquiry pursuant to La. C. Cr. P. art. 920 (2) into Case No.: 82-KA-1947, cited 427 So.2d 873, No.: 82-CRC-37096

(13) Louisiana Supreme Court erred in denial of petitioner's Supervisory or Remedy Writ pursuant to La. C. Cr. P. art. 930.8 to House Bill No. 385, Act No. 251 when his PCRA and Other Motions were pending six (6) months before law went into effect.

(14) United States District Court for the Middle District Of Louisiana erred in it denial and dismissal of Petitioner's Federal Habeas Corpus, Motion Of Appealability from State Habeas Corpus proceedings pursuant to 28 U.S.C. § 2241 (a), (b), (c) (3), and 28 U.S.C. § 2254 (a), (d) (1) in the State District Court of 20th Judicial District, West Feliciana Parish which ruled habeas corpus a P.C.R.A.

(15) United States Court Of Appeal, FIFTH CIRCUIT COURT OF LOUISIANA erred in denial and dismissal of Appeal pursuant to § 2241 bar and sanction.

For the reasons stated above and those set forth in Memorandum in support of Petition for Habeas Corpus, Affidavit, Exhibits or Appendices attached hereto, and all of which are incorporated by reference herein a evidentiary hearing should be granted.

Wherefore, Custodian be required to appear before bar and answer the allegations of this petition. That after full consideration this Court relieve Petitioner of this unconstitutional custody and restrain of his liberty by issuance of Writ of Habeas Corpus. That this Court declare petitioner's guilty verdict, Conviction, and sentence void, nullity as being rendered by a court without Jurisdiction.

After further judicial consideration by this Court, that petitioner be relieved of unconstitutional custody and restrain of his liberty by Custodian of the La. State Prison, Darrel Vannoy upon a void commitment warrant, that he be required to appear in court and state his authority for holding petitioner in custody.

That this Court grant reasonable bond so petitioner does not have to remain confined under an illegal conviction and sentence.

That this Court if necessary, order and grant an evidentiary hearing to determine the legal issues and legal facts.

That this Court grant such other, further and different relief as it may deem just and proper. Petitioner has sought PCRA in trial court, habeas corpus in the parish court of confinement and the Louisiana Supreme Court for review. Petitioner has exhausted all available remedies in State court and now is before this Court, where adquate relief cannot be obtained in any other form or from any other court.

For the reasons stated above Habeas Corpus Petition and relief sought should be granted.

Respectfully submitted by,

David L. Williams

David L. Williams, Pro se
#98840 Camp D. Falcon-1 Hall
La. State Penitentiary
Angola, La. 70712

I David L. Williams, do swear, declare, verify and state or certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 6 day of April 2020

C. McQuirter #1162865

Notary RePublic
Ex Officio

David L. Williams
Signature

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

IN re David Lee Williams
Petitioner

VERSUS

Darrel Vannoy, Warden
Louisiana State Penitentiary
Respondent

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
FOR WRIT OF HABEAS CORPUS PURSUANT TO TITLE
28 U.S.C. SECTION 2254 AND REQUEST FOR
AN EVIDENTIARY HEARING

Original Application On Behalf Of David Lee Williams

Prepared and Submitted by:

David Lee Williams, pro se
#98840 Camp D, Falcon-1 Hall
Louisiana State Penitentiary
Angola, La. 70712

IN THE
SUPREME COURT OF THE UNITED STATES

NO. _____

David Lee Williams
Petitioner

VERSUS

Darrel Vannoy, Warden,
Respondent

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR WRIT OF HABEAS CORPUS

MAY IT PLEASE THE COURT:

NOW INTO COURT COMES, David L. Williams, herein referred to as Petitioner in the above mentioned case, seeking relief from THE FIFTH CIRCUIT COURT OF APPEAL, STATE OF LOUISIANA ruling in No. 19-30817 and No. 19-30902, where the court dismissed his appeal without probable cause. The court assert The appellant failed to timely comply with the certificate of appealability (COA) requirement, and failed to timely pay the fee or file a motion for permission to appeal in forma pauperis (IFP) directly with this Court. It was the Fifth Circuit that denied Motion for leave to proceed in forma pauperis in order No. 19-30902 page (2) Exhibit A5, the Court ordered that Petitioner must pay a monetary sanction of \$100 to this Court. Williams is BARRED from filing any pleading in the district court or this Court concerning his convictions or sentence until the sanction has been paid in full. . . . See Application For Certificate Of Appealability Exhibit A10.

Petitioner contends The Fifth Circuit rendered an erroneous interpretation or application of Constitution or Laws of the United States and the decision will cause material injustice or significantly affect the public interest and trust in the judicial process.

Petitioner assert pursuant to Federal Rule Of Appellate Procedure Rule 22, 28 U.S.C.A., Proceeding In Forma Pauperis, Rule 22 (b)(1) Certificate of Appealability, the Fifth Circuit Court of Appeal erred in its judgment and ruling. Pursuant to (b)(1) "If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11 (a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 (if any), along with the notice of appeal. Rule 22 (b)(2) in pertinent part: If no expressed request for a certificate is filed, the notice of appeal constitute a request addressed to the judges of the court of appeals. See Appendix A 10 Notice of Appeal. As the court can see Williams is unable to pay the sanction imposed by the Fifth Circuit. The fact is that the court never gave a timeline to pay or to file into its court.

Petitioner assert that his claims does not lie with the circuit court of appeal, but must be taken to the supreme court of the United States, where the case is one involving 'the construction or application of the Constitution of the United States,' when based on the ground that the applicant is detained in custody in violation of the constitution of the United States. c.f. Ex parte Jacob, 104 F. 681 (C.C.E.D. La. 1900)

Appeals and writs of error may be taken from the District Courts direct to the Supreme Court 'in any case that involves the construction or application of the Constitution of the United States.' Judicial Code U.S. Sec. 238. c.f. Collins v. Board of Control of Louisiana State Penitentiary, 219 F. 885 (C.C.A.5 (La.) 1915)

COURT ASSERT FRIVOLOUS, REPETITIVE, ABUSE OF WRIT

The Fifth Circuit assertion that petitioner's filing is frivolous and abuse of writ is an erroneous assessment of the facts and place an unnecessary burden on him to answer the allegation to avoid dismissal of his appeal and its reinstatement.

Williams a state prisoner filed petition for federal habeas corpus relief and request an evidentiary hearing on constitutional claims that he has been unable to develop in state courts proceedings. "Trial Judge and Trial court lacked subject matter jurisdiction, Brady violation, ineffective Assistance of counsels, trial and appeal counsels, U.S.C.A Const. Amend. 5, 6, 13, 14; LSA-Const. Articles 1, sec. 2, 3, 14, 15; LSA C.Cr.P. art. 382. Due process and Equal protection of the LAW, because State courts used LSA-C.Cr.P. art. 930.8 bar so claims would not be presented and rule on the merits of such claims. See appendices as a whole.

In habeas corpus proceedings, as in other civil actions, petition ought not be summarily dismissed unless it appears without doubt that petitioner can prove no set of facts which would entitle him to relief; if petition is not frivolous and alleges facts which, even though unlikely, would justify granting writ, then petitioner is entitled to have his allegations fairly tested. 28 U.S.C.A. § 2254. D'Blasney v. Solem, 774 F.2d 925 (C.A. 8 (S.D.) 1985).

Petitioner assert that on direct appeal, state habeas corpus proceedings as well all federal habeas corpus proceedings, the courts did not consider the substantive scope of the writ, that the merits of the actual dispute were not resolved.

The court held that "When constitutional rights are properly invoked, conflicting legislation must succumb to the constitution. State v. Mejia, 250 La.518, 197 So. 2d 73 (1967).

State statutes do not supercede federal Constitutional rights. State v. Bernard, 326 So. 2d 332 (La. 1976) Cf. State v. Henry, 449 So. 2d 486 (La. 1984)

ABUSE OF WRIT OR FILING

Where the government alleges an abuse of writ or filing, the burden of answering such allegation and proving that the writ has not been abused rests on petitioner.

Petitioner assert his filing is not abusive where his latest petition presents claims that have never been adjudicated by any court on the merits. See Appendices E1, No. D7-9725; E2 No. D8-30217; E3 No. D1-31002; E5 No. D1-31002 / D1-2D48 G.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), A claim presented in a second or successive habeas corpus application shall be dismissed "28 U.S.C.A. § 2244 (b)(2). Under the rule, to determine whether an application is "second or successive," a court must look to the substance of the claim the application raises and decide whether the petitioner had a full and fair opportunity to raise the claim in the prior application. First, if the petitioner had a full and fair opportunity to raise the claim in the prior application, a second-in-time

application that seeks to raise the same claim is barred as "second or successive" (second, application barred where petitioner had a "full opportunity to offer proof" of the same claim in his first habeas application.

If the petitioner had no fair opportunity to raise the claim in the prior application, a subsequent application raising that claim is not "second or successive," and § 2244 (b) (2)'s bar does not apply.

If the applicant in his second petition raises a claim that he raised in his first petition but the District Court left unaddressed at its own discretion, the second application would not be "second or successive." Reraising a previously unaddressed claim is not abusive by any definition. *c.f. Magwood v. Patterson*, 2010 WL 2518374 (U.S. 2010)

FIFTH CIRCUIT RULING CONFLICT WITH ANOTHER FEDERAL APPEAL COURT RULING AND THE SUPREME COURT OF THE UNITED STATES

The court held that an examination of the language of 28 U.S.C. § 2244 (a), Rule 9 (b) and the pertinent interpretative decisions indicates that there are two threshold questions that must be answered before a claim for habeas corpus relief may be dismissed as successive. First, it must be determined that "the same ground presented in the subsequent application was determined adversely to the applicant on the prior application." See Appendix E1, E2, E3, E5

If the same ground was raised in the prior habeas petition, it must then be determined that "the prior determination was on the merits." Doubts as to these matters are to be resolved in favor of the petitioner. Once the court has addressed the threshold requirements and has concluded that both have been met, it must determine whether the ends of justice would be served by considering the merits of the subsequent petition. *c.f. Patton v. Fenton*, 491 F. Supp. 156 (M.D. Pa. 1979).; *Sanders v. United States*, 373 U.S. 1, 15, 83 S.Ct. 1068, 1077, 10 L.Ed. 2d 148 (1963), *Id.* at 16, 83 S.Ct. at 1077; 28 U.S.C.A. § 2241, 2244(a), 2254(a), 2254; Rule Governing Section 2254 cases, Rules 1 (b), 9 (b) 28 U.S.C.A.

The United States Supreme Court held, "When the evidence leads very clearly to the conclusion that a federal claim was inadvertently overlooked in state court, sec. 2254 (d) entitles the prisoner to an unencumbered opportunity to make his case before a federal court. c.f. Johnson v. Williams, 133 S.Ct. 1088 (U.S. 2012).

The Court held in James v. Kentucky, 416 U.S. 341 (1984) "If the way in which a state rule is applied unduly burdens the defendant's exercise of his/her constitutional rights the federal court refuse to recognize a procedure default.

Petitioner assert because the (one) year statute limitation for seeking habeas corpus relief is not jurisdictional, a federal habeas corpus court is not duty bound to consider nor apply the timeliness of a habeas corpus § 2241, Hill v. Braxton, 277 F.3d 701 (CA,4 (Va.) 2002)

STATEMENT OF THE CASE

On January 3, 1982, in the early morning hours E. T. was sexual assaulted in her home. The attacker left after the assault, taking money he stole from victim. Sometime afterward, almost immediately police officers say the arrested David L. Williams, petitioner, for the offense.

On January 7, 1982 Petitioner was purportedly "charged" by Bill of Information with violation of the statutes La. R.S. 14:42 aggravated rape, Act 707, and Armed robbery R.S. 14:64. ^① On the day of trial March 15, 1982, Hon. William J. Knight, Asst. Dist. Atty. on motion had the Court to server the charges of count II and contineres and proceeded to trial with count I aggravated rape. ^③ On May 17, 1982 Petitioner was sentenced to serve life imprisonment at hard labor without benefit of parole, probation or suspension sentence. ^④

1 see Appendix B 2-3 Bill of Information

2 see Appendix B 30-31 Rape Statute Act 707

3 see Appendix B 14 Extract of Minutes March 15, 1982

4 see Appendix B 5 Extract of Minutes May 17, 1982

Petitioner was never tried for armed robbery or any other charge, nor found guilty of any crime other than aggravate rape.

ERRONEOUS INTERPRETATION OR APPLICATION OF CONSTITUTION OR LAWS OF THE UNITED STATES AND LOUISIANA:

Petitioner assert that The Fifth Circuit Court Of Appeal, State of Louisiana, has erroneously interpreted or applied the constitution or laws of the United States and Louisiana. The court is applying federal statute sec. 2244 to block Petitioner's 1st amend. right of access to federal court and dismissing Appeal where he is unable to pay sanction imposed by the court. Court's ruling and decision will cause material injustice or significantly affect the public interest and trust in the judicial process. The Court error involves a state court's dismissal of a true habeas corpus as a PCRA. Where trial court lacked subject matter jurisdiction, and bill of information did not charge a crime, and Commitment Warrant was not signed by the trial judge, and counsels in all stages of criminal proceeding were ineffective that is they left their Clients constructively without counsel. Where Petitioner assert he is being held in custody in violation of the Constitution, Laws and Treaties of the United States and Louisiana,⁵ does not lie to the circuit court of appeals, but must be taken to the supreme court, the case is one involving the construction or application of the constitution of the United States.⁶ Appeals and writs of error may be taken from the District Courts direct to the Supreme Court 'in any case that involves the construction or application of the Constitution of the United States'.⁷ The Court held "When an Act of Congress is alleged to conflict with the Constitution, it is emphatically the province and duty of the judicial department to say what the law is;... to determine the constitutionality of a statute."⁸

CLAIM 1

TRIAL COURT LACKED SUBJECT MATTER JURISDICTION OVER THE LEGAL ACTION:

5 28 U.S.C. § 2254 (a), § 2241 (b) (3)

6 Ex parte Jacobin, 104 F. 681 (C.C.E.D. La. 1900)

7 Collins v. Board of Control of Louisiana State Penitentiary
219 F. 885 (C.C.A. 5 (La.) 1915)

8 Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S.Ct. 1421,
566 U.S. 189 (U.S. Dist. Col. 2012)

Subject matter Jurisdiction is a court's statutory or constitutional power to adjudicate a legal action before it. Defect in or lack of subject matter jurisdiction can never be forfeited or waived, and require correction regardless of whether error was raised in district court.⁹ Although parties can consent to personal jurisdiction, it is well settled that they can not consent to subject-matter jurisdiction. The court must raise a lack of subject-matter jurisdiction even if the parties have not. Objection challenging the court's jurisdiction may be made at any time or may be invoked by anyone at any time, any where.¹⁰

Petitioner assert that jurisdiction over the subject matter the trial court's action was inherently unfair, irregular, invalid, null and void which affects the reputation of Louisiana's judicial proceedings and procedures. Under such action when it appears that trial court had no jurisdiction to render the judgment, to pass sentence which it gave, and under which the person is in custody, held in prison, it is within the power and it will be the duty of the Court to ORDER HIS DISCHARGE.¹¹ The Court held that in certain cases, no correction can be made of the judgment, where the court had, under the law, no jurisdiction of the case, that is, no right to take cognizance of the offense alleged, and "The Person Must Be INTIRELY DISCHARGED." C.f.¹²

A void judgment, which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, "can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court."¹³

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- 9 U.S. v. Cotton, 122 S.Ct. 1781, 535 U.S. 625 (U.S. 2002)
Kuhlman v. Wilson, 106 S.Ct. 2616, 477 U.S. 436 (U.S. N.Y. 1986)
U.S. v. Spósito, 106 F.3d 1042 (C.A.1 (Mass.) 1997)
 - 10 California v. La Rue, 409 U.S. 109, 93 S.Ct. 390 (1972)
U.S. v. Vreeken, 803 F.2d 1085 (1986)
U.S. v. Gatewood, 173 F.3d 983 (1999)
State v. Nicolosi, 55 So. 475, 118 La. 836 (La. 1910)
Decuir v. Decuir, 105 La. 481, 485, 29 South, 932, 934 (1901)
 - 11 U.S. v. Addonizio, 99 S.Ct. 2235, 442 U.S. 178 (1979)
 - 12 In re Bonner, 14 S.Ct. 323, 151 U.S. 242 (1894)
 - 13 Long v. Shorebank Development Corp. 182 F.3d 548 (1999), C.f.
State v. Thomas, 461 So.2d 175 (1984)

If it shall appear that the trial court had no jurisdiction to render the judgment which it gave, and under which the person is held a prisoner, it is within the power and it will be the duty of the court to "ORDER HIS DISCHARGE."⁽¹⁴⁾

A defendant may attack subject matter jurisdiction in (2) two different ways, facially and factually. Facial attacks on subject matter jurisdiction require the court merely to look and see if the petitioner has sufficiently alleged a basis of subject matter jurisdiction, and the allegation in his complaint are taken as true.⁽¹⁵⁾
F.R.C.R.P. Rule 52 (b)

In *Gomez v. United States*, this Court held and concluded that equally basic is a defendant's right to all critical stages of a criminal trial conducted by a person with jurisdiction to preside. Because jurisdiction of a court is derived law, Constitution, or statute and cannot be conferred by consent, consent cannot authorize a Judge to do what law has not given him the power to do.⁽¹⁶⁾

LSA-Constitution Article I, sec. 14: Right To Preliminary Examination;

"The right to a preliminary examination shall not be denied in felony cases except when the accused is indicted by a grand jury."

Petitioner assert that none of the judges in his case had jurisdiction to preside over the action before them, Judge James R. Strain, Jr., Judge Thomas W. Tanner, Judge Hillary J. Grain, where petition charged with aggravate rape and armed robbery and misjoinder of offenses by bill of information rendered the information void.⁽¹⁷⁾ No judge had jurisdiction over rape charge, however, judge erred in finding probable cause to hold petitioner for trial on armed robbery charge when victim testified that no weapon was involved.⁽¹⁸⁾ If the trial court's decision was void for lack of jurisdiction, it cannot be made valid by an appeal decision. Even though a void judgment is affirmed on appeal, it is not thereby rendered valid. Further more where jurisdiction is lacking, the court can do nothing except dismiss the cause, action. Any other proceeding is USURPATION. If excessive exercise of authority has reference to want of power over the subject matter, the result is void when challenged directly or collaterally.

- 14 *Ex parte Bain*, 7 S.Ct. 781, 121 U.S. 1 (1887), C.f. *U.S. v. Siviglia*, 686 F.2d 832 (1981), *In re Bonner*, 14 S.Ct. 323, 151 U.S. 212 (1894)
- 15 *McMaster v. U.S.*, 177 F.3d 936 (1999), Federal Rules Crim. Proc. Rule 12(b)(1) 28 U.S.C.A.
- 16 490 U.S. 858, 109 S.Ct. 2234, 104 L.Ed.2d 923 (1989), 490 U.S. at 876, 109 S.Ct. at 2248.
- 17 *State v. Thomas*, 461 So.2d 832 (1984) Extract of Minutes Jan. 28, 1982, Feb. 25, 1982, Mar. 15, 1982, see Appendix B 14
- 18 See Appendix E Transcripts 51 and 61.
- When State initiated prosecution by bill of information rather than grand jury indictment, it deprived trial court of subject matter jurisdiction. *U.S. v. Cabrera-Teran*, 108 F.3d 141 (C.A.5 (Tex.) 1999); *U.S. v. Cotton*, 122 S.Ct. 1781, 535 U.S. 625 (U.S. 2000) *Ralph v. Police Court of El-Cerrito*, 190 P.2d 632, 634, 84 La. App. 2d 257 (1948) *Garcia v. Dial*, 596 S.W.2d 524, 528 (Tex. Cr. App. 1980); *Harrigan v. Gilchrist*, 99 N.W. 909, 934, 121 Wis. 127 (1904); C.f. *Voorhees v. The Bank of the United States*, 35 U.S. 449, 474-75 (1836)

Petitioner is not seeking to have his conviction and sentence set aside but annulled as having been rendered by a court without jurisdiction, or decreed null. A habeas corpus case will be finally disposed of on the application for writ where there is no dispute over the facts and they show that that the sentence under which the prisoner is confined is null.⁽¹⁹⁾

BILL OF INFORMATION CONTRARY TO CONSTITUTION AND LAW IS VOID

Petitioner assert where objected prior to trial verdict by moving to Quash bill of information, he preserved his procedural right to challenge and to assign error to trial court ruling concerning sufficiency of bill of information to initiate prosecution of La. R.S. 14:42 agg. rape.⁽²⁰⁾

Claim that bill of information fails to state offense challenges Jurisdiction,⁽²¹⁾

In the case of *State v. Charles Edward Thomas*,⁽²²⁾ who was charged by Bill of Information with possession of heroin with intent to distribute was void, because it charged offense which could only be instituted by grand jury indictment. LSA-Const. Art. 1, § 15; LSA-Cr. P. art. 382. Jurisdictional defect

Art. 1, § 15 of the Louisiana Constitution of 1974 provided that the prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital or a crime punishable by life imprisonment except on indictment by a grand jury. Additionally, LSA-Cr. P. art. 382 provides that a prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury. The conviction and sentence based on an invalid bill of information charging an offense which can be instituted only by grand jury indictment must be set aside.

A verdict of guilty founded upon an information insufficient to charge any crime is ineffective and a sentence thereunder is unauthorized,⁽²³⁾ therefore the case was not triable by a jury of twelve.

¹⁹ *State v. Louis*, 94 So. 446, 152 La. 924 (La. 1922)

²⁰ *State v. Pichler*, 355 So. 2d 1302 (La. 1978); *State v. Bridgen*, 175 So. 63, 187 La. 569
see Appendix B 2-3 bill of information, B 10 Motion to Quash; Appendix E Pro se
Motion To Quash bill of information, Motion to Quash and Dismiss prosecution.

²¹ *U.S. v. Osicmis*, 980 F.2d 3414, 345 (1993)

²² 461 So. 2d 331 (La. App. 2 Cir 1984)

²³ *State v. Bienville*, 207 La. 859, 22 So. 2d 196 (1945); *State v. McDonald*,
152 So. 308, 178 La. 612 (La. 1934)

Petitioner assert a trial court's verdict of guilty of Aggravated Rape was not responsive to bill of information as agg. rape is not a crime chargeable by bill of information. "Where a conviction and sentence for a felony, with no charge against accused by bill of information or bill of indictment are absolute nullities, the person convicted should be discharged from custody." (24)

In a case where the bill of information is otherwise void on its face, it is the duty of the court to pay attention to such nullities or defect ex proprio moto. (25)

Petitioner contend, if legal founded, and established that his conviction for agg. rape was or is void and could not be legal cause of imprisonment, notwithstanding any procedural default, as a result, habeas corpus relief is not procedurally barred for failure to assert his claim at an earlier stage of lapses of time. (26) U.S.C.A Const. Amend. 5, 14; LSA-Const. Art. 1. §§ 2, 3, 15; LSA-C.Cr. P. art. 382

Petitioner assert, under the decisions cited and the jurisprudence upon which they relies, a fatal defect in the charging mechanism, indictment or information must be noticed by a court, "even after conviction and even where no objection to the sufficiency of the information had ever been raised. [In such circumstances, where a fatal defect is noticed even after conviction, the entire prosecution must be dismissed, since the foundation of the criminal prosecution is a valid indictment. LSA-C.Cr. P. art. 872, 920. (2) (27)

The Const. Amend. protects against certain types of patent error preventing conviction for the offenses: the lack of jurisdiction of the sentencing court; The state lacked constitutional or legal power to try the accuse for the offense charged LSA-C.Cr. P. art. 920 (2) (28)

24 State v. Duhan, 77 So. 791, 142 La. 919 (La. 1918)

25 State v. Croal, 5 So. 2d 16, 198 La. 820 (La. 1940); State v. Jordy, 161 La. 104, 108 So. 229; State v. Nelson, 161 La. 423, 108 So. 794

26 Gonzalez v. Abbott, 967 F. 2d 1499 (C.A. 11 (Ga.) 1992); Wainwright v. Sykes, 433 U.S. 72, 90-91, 97 S. Ct. 2497, 2508, 53 L. Ed. 2d 594 (1977); Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 2649, 91 L. Ed. 2d 397 (1986).

27 State v. James, 305 So. 2d 514 (La. 1974); State ex rel. Jackson v. Henderson, 283 So. 2d 210 (La. 1973)

28 State v. Crosby, 338 So. 2d 584 (La. 1976); State v. Sellers, 902 So. 2d 1118, 2004-1922 (La. App. 4th Cir. 2005) U.S.C.A Const. Amend. 14; LSA-Const. Art. 1. sec. 2

A verdict of guilty of agg. rape instituted by bill of information is not responsive to information. ⁽²⁹⁾ In Sutton v. Lash, the court held that, "Lapse of time alone will not warrant the denial of the issuance of a writ of habeas corpus." ⁽³⁰⁾

Petitioner assert person should not be accused of aggravated rape and convicted except by a group of fellow citizens acting independently of either prosecuting attorney and judge. ⁽³¹⁾

GRAND JURY REQUIREMENT, DUE PROCESS OF LAW and EQUAL PROTECTION

Petitioner assert he is being held as a convict in Louisiana State Penitentiary in violation of the Constitution, Laws, and Treaties of the United States and of the state of Louisiana where information is contrary to the Constitution and Laws.

Petitioner contends there is a great difference between indictment and information. indictment is founded upon the oath of a jury, but information is a declaration by state prosecutor. Erroneous information is cognizable in habeas corpus proceeding. The term "indictment" includes affidavit and information, unless it is the clear intent to restrict that word to the finding of a grand jury. LSA-C.Cr.P. art. 461. ⁽³²⁾ LSA-C.Cr.P. art. 382; LSA-Const. Art. 1, §§ 2, 3, 15

LSA-C.Cr.P. art. 383 in Pertinent part: "An indictment is a written accusation of crime made by a grand jury."

LSA-C.Cr.P. art. 384 in Pertinent part: "An information is a written declaration of crime made by the district attorney, or the city prosecutor and signed by him. It must be filed in open court, (in a court having jurisdiction to try the offense)."

LSA-C.Cr.P. art. 437 in Pertinent Part: "The grand jury shall inquire into all offense that impose the death penalty and life imprisonment."

LSA-C.Cr.P. art. 442 in Pertinent Part: "A grand jury shall hear all evidence by the district attorney."

LSA-C.Cr.P. art 443 in Pertinent Part: "The grand jury shall find an indictment charging the defendant with the commission of an offense, when in its judgment the evidence,

²⁹ State v. Arita, 811 So.2d 1146, 2001-1512 (La. App. 4 Cir 2002)

³⁰ Sutton v. Lash, 576 F.2d 738 (1978) (21 years); Hairston v. Cox, 459 F.2d 1382 (1972) cert. denied 411 U.S. 986, 93 S.Ct. 2266, 36 L.Ed. 2d 963 (1973) (26 years); Hawkins v. Bennett, 423 F.2d 948 (1970) (44 years); C.f. Palmer v. Ashe, 342 U.S. 134, 72 S.Ct. 191, 96 L.Ed.2d 154 (1951) C.f. Pennsylvania ex rel. Herman v. Claudy, 350 U.S. 116, 123, 76 S.Ct. 223, 227, 100 L.Ed. 126 (1956).

³¹ State v. Davis, 385 So.2d 193 (La. 1980); C.f. Stirone v. U.S., 80 S.Ct. 270, 361 U.S. 212 (1960) State v. DeMolle, 621 So.2d 1671 (La. App. 4 Cir. 1993)

³² State ex rel. Jackson v. Henderson, Supp. 1973, 283 So.2d 469, 283 So.2d 210; C.f. Bouman v. U.S., 156 F.2d 534 (1946); Madison v. Ward, 825 So.2d 1245, 2000-2842 (La. App. 1 Cir 2002) C.f. Smith v. United States, 360 U.S. 1, 9, 79 S.Ct. 991, 993, 3 L.Ed.2d 1041 (1959) Jenkins v. McKeithen, 395 U.S. 411, 430, 89 S.Ct. 1843, 1853, 23 L.Ed.2d 404 (1969)

considered by it, if unexplained or contradicted, warrants a conviction."

LSA-Cr.P.art. 444 in Pertinent Part: "It is the grand jury who presents charge against defendant."

The Grand Jury has the dual function of determining if there is probable cause to believe that a crime has been committed, (not judge or district attorney), and of protecting citizens against unfounded criminal prosecution⁽³³⁾

Petitioner assert that the sufficiency of a state's information is a valid claim for habeas petition, only when it is so defected that under no circumstances could a valid state conviction result from facts provided thereunder, and that can be determined, "only by looking to the law of the state where the information was issued."⁽³⁴⁾

The Court held in *Ex parte Rhodes*, that "Where the proceedings are entirely void, the accused may be discharged."⁽³⁵⁾

Petitioner assert that in instant case bill of information is contrary to clearly established federal law where the governing legal principle or principles set forth by the Supreme Court of the United States in its holding at the time the state rendered its decision. 28 U.S.C.A. § 2254 (d)⁽³⁶⁾ A state court's decision is contrary to clearly established federal law "if the state court applies a rule that contradicts the governing law set forth in the Supreme Court's cases" or "confronts a set of facts that are materially indistinguishable from a decision of the Court and nevertheless arrives at a result different from Supreme Court precedent."

Petitioner assert that the right to a grand jury indictment guards person(s) from wrongful prosecutions by overbearing state where they are either falsely accused of, or are being held to answer twice for the same crime.⁽³⁷⁾

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- 33 *Branzburg v. Hayes*, 92 S.Ct. 2646, 4108 U.S. 665, 686-87 (U.S. Ky. 1972)
U.S. v. Sells Engineering Inc., 103 S.Ct. 3133, 463 U.S. 418, 423 (U.S. Cal. 1983)
U.S. v. Williams, 504 U.S. 36, ---, 112 S.Ct. 1735, 1749, 118 L.Ed. 2d 352 (1992)
- 34 *Alexander v. McCotter*, 775 F.2d 595 (C.A.5 (Tex.) 1985)
- 35 20 So. 894, 48 La. Ann. 1336 (La. 1896)
- 36 See Appendices D 15 (1-11); *Lockyer v. Andrade*, 538 U.S. 68, 71-72, 123 S.Ct. 1166, 155 L.Ed. 2d 144 (2003); *Williams v. Taylor*, 529 U.S. 362, 405-06, 120 S.Ct. 1495, 146 L.Ed. 2d 389 (2000); *Brunfield v. Cain*, --- U.S. ---, 135 S.Ct. 2269, 2277, 192 L.Ed. 2d 356 (2015); *Wood v. Allen*, 558 U.S. 290, 301, 130 S.Ct. 841, 175 L.Ed. 2d 738 (2010)
- 37 *United States v. Calandra*, 414 U.S. 338, 343, 94 S.Ct. 613, 617, 38 L.Ed. 2d 516 (1974)
C.F. *U.S. v. Miller*, 105 S.Ct. 1811, 471 U.S. 130 (U.S. Cal. 1985)
U.S. v. Wydermyer, 51 F.3d 319 (C.A.2 (N.Y.) 1995)

Petitioner assert that this Court must apply a test when it is unclear whether a state court's opinion adjudicated a federal claim on the merit, so that federal habeas review will be differential: (1) What the state court have done in similar cases: C.f. State v. Stevenson, 334 So.2d 195 (La. 1976) (Heroin); State v. Green, 347 So.2d 229 (1977) (Heroin); State v. Donahue, 335 So.2d 247 (La. 1978) (second degree murder); State v. Davis, 385 So.2d 193 (1980) (second degree murder); State v. Lott, 434 So.2d 1274 (La. App. 1 Cir. 1983) (second degree murder); State v. Ruple, 437 So.2d 873 (La. App. 2 Cir. 1983) (aggravated rape); State v. Gary, 445 So.2d 200 (Aggravated rape); State v. Thomas, 461 So.2d 332 (La. App. 2 Cir. 1984) (Heroin); State v. Smith, 542 So.2d 175 (La. App. 1 Cir. 1989) (Aggravated kidnapping); State v. DeMolle, 621 So.2d 167 (La. App. 4 Cir. 1993) (Agg. rape); State v. Raby, 259 La. 909, 253 So.2d 370 (1971); State v. Butler, 259 La. 560, 250 So.2d 710 (1971); State v. James, 305 So.2d 514 (La. 1974); State v. Telsee, 425 So.2d 125 (La. 1982).

Petitioner assert that under the decision cited above and the jurisprudence upon which they rely, a fatal defect in a bill of information that charged no crime, must be noticed by the court, even after conviction and even where no objection to the sufficiency of the bill of information had ever been raised. In such circumstances, where a fatal defect is noticed even after conviction, the entire prosecution must be dismissed, since the foundation of a criminal prosecution is a valid information or indictment. (38) State v. Monk, 315 So.2d 727 (La. 1975)

(2) Where the history of the case suggest that the state court was aware of any grounds for not adjudicating the case on the merits. (39)

(3) The court must survey the legal landscape as it then existed and determine whether the state's court considering the defendant's claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule he seeks was required by the Constitution. (40)

(4) Whether the procedure at issue implicate the fundamental fairness at trial. See 38

38 State v. James, 305 So.2d 514 (La. 1974); Hutto v. Finney, 437 U.S. 678, 98 S. Ct. 2565 (1978); Hewitt v. Helms, --- U.S. ---, 103 S. Ct. 864 (1983). (FN 5).

39 See Appendix B 2-3 Bill of Information; B10 Motion To Quash; B13 Motion Motion For A Preliminary Examination.

40 See Appendix B 30-31 Agg. rape statute, Act No. 707, HB No. 521, July 23, 1981, LSA Const. Arts. I sec. 2, 3, 14, 15; LSA-Cr.P. art. 382; U.S.C.A. Const. Amend. 5, 14.

FRAUD ON THE COURT

Claim deserve To be Re-review by this Court, where claim of newly discovered evidence of bill of information in 1999 was presented to the Fifth Circuit Court of Appeal and was summarily dismissed without reaching the merits.

Pursuant to *Louie M. Schexnayder, Jr. v. Darrel Vannoy, Warden*, Cite as 589 U.S. ____ (2019), No. 18-8341. In 2007, a former employee of Louisiana's Fifth Circuit Court of Appeal shot himself in his courthouse office. The employee left a suicide note claiming that he had been tormented by his involvement in that Court of Appeal's secret 13-year policy of summarily denying pro se appeal is a Due process Denial of right. The note declared that no judge had reviewed a habeas application filed by a pro se inmate during that time; instead, courthouse staff prepared ruling that judge signed "without so much as a glance" at the underlying petitions or any review of the applications' merit.

Petitioner assert that his application was before the Court in 2001 when pro se litigants were being dismissed without consideration. ⁽¹¹⁾

Petitioner Contend that his appeal must be reinstated that his claim of newly discovered evidence may heard on the merit and the unjust denial might be rectified and the court's name and reputation cleared of any wrong doing.

DUE PROCESS OF LAW

Petitioner assert he was denied and deprived of his right to due process of law when state instituted prosecution of an offense by bill of information that imposed a life sentence of imprisonment rather than by Grand Jury indictment as mandated by Constitution and law. ⁽¹²⁾

⁴¹ see Appendix E1 Transfer Order, No. 07-9724; E2 Denial of Motion, No. 08-30217, E3 Letter to Fifth Circuit, E4 *Schexnayder v. Vannoy*, 589 U.S. ____ (2019).

E5 Motion for an order authorizing, No. 01-31002, Eastern District Court, 01-2048 G.

⁴² U.S.C.A-Const. Amend. 5, 14; LSA-Const. Art. I, sec. 2, 3, 15; LSA-Cr. P. art. 382.

The Protection of the Fourteenth Amendment can be invoked only if a State deprives any person or denies enforcement of a right guaranteed. ⁽⁴³⁾

Due Process applies when government action deprives person of liberty, claimant must have legitimate claim of entitlement to interest. ⁽⁴⁴⁾

The Court held in Evitts v. Lucey, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) "Due process Rights of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the state's accusation and the procedure used in deciding appeals must comport with the demands of Due Process and Equal Protection clause of the Constitution." ⁽⁴⁵⁾ Due Process has two major components: First, substantial due process may require court to avoid certain types of government action that infringe on individual rights and individual freedom of action: Second, procedural due process may require the government to assure that individual are afforded certain procedures before they are deprived of life, liberty or property. ⁽⁴⁶⁾

In making the procedural due process analysis, the uses a two-step inquiry: first, whether the state has deprived a person of a liberty interest; if there has been such a deprivation, the Second inquiry is whether the procedures relative to that deprivation were constitutionally sufficient.

Due Process Of Law, within the meaning of the national Constitution, does not import one thing with reference to the power of the states and another with reference to the power of the general government, if particular proceedings, conducted under the authority of the general government, and involving life (or liberty), are prohibited because not constituting that due process of law require by the Fifth Amendment of the Constitution of the United States, similar proceedings, conducted under the authority of a State, must be deemed illegal, as not being due process of law within the meaning of the Fourteenth Amendment. ⁽⁴⁷⁾

43 U.S.C.A. Const. Amend. 14, Rule 19, 28 U.S.C.A., Rice v. Sioux City Memorial Cemetery, 75 S.Ct. 641, 349 U.S. 70 (U.S. Iowa 1955)

44 U.S.C.A. Const. Amend. 14; Bosworth v. Whitley, 627 So.2d 629 (La. 1993)

45 U.S.C.A. Const. Amend. 14; Citing Higginbotham v. Louisiana, 817 F.3d 217 (C.A.5 (La.) 2016); C.f. Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L. Ed. 2d 297 (1973); C.f. Darden v. Wainwright, 477 U.S. 168, 108, 106 S.Ct. 2464, 91 L. Ed. 2d 144 (1986).

46 United States v. Lalac, 793 F.2d 636, 647 (5th Cir. 1986)

47 Hurtado v. People Of The State Of California, 4 S.Ct. 292, 110 U.S. 516 (U.S. Cal. 1884) U.S.C.A. Const. Amend. 5, 14; The are procedural errors so grave as to require appropriate federal court order directing habeas corpus applicant's release unless state grant new trial forthwith. Townsent v. Sain, 83 S.Ct. 745, 372 U.S. 293 (U.S. Ill. 1963)

Petitioner assert crimes in the United States are what the laws of the individual States make them, subject to the limitation of the Constitutional provision prohibiting bill of attainders and ex post facto laws, and of the Thirteenth and Fourteenth Amendments.⁽⁴⁸⁾

Due process of law is process according to the law of the land. This process in the states is regulated by the law of the states. "Due Process of law" in the state of Louisiana in all capital cases (and cases of life imprisonment is imposed) is by presentment or by indictment of a grand jury.⁽⁴⁹⁾

This Court has held "It is a violation of due process either to send an accused to prison following conviction of a charge on which he was never tried or to convict the defendant upon a charge that was never made."⁽⁵⁰⁾

The United States Supreme Court has held that such a trial, (as in instant Case No. 82-CRC-37096) is a kangarooed event where the defendant was (Rail Roaded). It is the right of the accused to be tried by a legally constituted court. It is his right and privilege to be tried by due process of law and if found guilty to be sentence and punished in accordance with laws of the State of Louisiana. The accused also have the rights and privileges not to be deprived of liberty without due process of law, the right and privilege not to be subject to punishment without due process of law.⁽⁵¹⁾

CONSTITUTIONAL VIOLATION OF THE 13th AMENDMENT, 14th and LSA-Const. Art. I, sec. 2, 3

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- 48 U.S.C.A. Const. Art. I, sec. 18; Section 10, cl. 1; Const. Amend. 13, 14; Rochin v. California, 72 S.Ct. 205, 942 U.S. 165 (U.S. Cal. 1952)
- 49 U.S.C. Const. Art. I, sec. 9, cl. 2; Const. Art. I, sec. 15, 1974; LSA-Cr.P. art. 382; C.f. State v. Harvey, 106 So. 28, 159 La. 674 (La. 1925).
- 50 De Jonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255, 18 L.Ed. 278 (1936)
- 51 U.S. v. Williams, 71 S.Ct. 581, 341 U.S. 70 (U.S. Fla. 1951); Williams v. U.S., 71 S.Ct. 576, 341 U.S. 97 (U.S. Fla. 1951); U.S. v. Price, 86 S.Ct. 1152, 383 U.S. 787 (U.S. Miss. 1966)
See Appendix B 2-3 Bill of Information; B 8 and 9, Alphabetical Index, Chronological Index; B 14 Extract of Minutes Jan. 28, 1982, Feb. 25, 1982, Mar. 15, 16, 1982, May 17, 1982; B 30-31 Aggravated Statute, Act No. 707, House Bill No. 521, July, 23, 1981)

13th Amendment Of The United States in Pertinent Part:

"Neither slavery nor involuntary servitude, except as a punishment for crime where of the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

14th Amendment Of The United States in Pertinent Part:

"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 law."

Constitution Of The State Of Louisiana Of 1974 in Pertinent Part:

LSA-Const. Art. 1, sec. 1. Origin and Purpose Of Government. to protect the rights and welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolated by the State.

Art. 1, sec. 2: Due Process Of Law:

No person shall be deprived of life, liberty, or property, except by due process of Law:

Art. 1, sec. 3 Right To Individual Dignity:

"No person shall be denied the equal protection of the Laws. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

The Thirteenth Amendment, by its own unaided force and effect, abolished slavery and involuntary servitude and established universal freedom. Pursuant to the Thirteenth Amendment which abolished "slavery and involuntary servitude except as punishment for crime whereof the party shall have been duly convicted."

Petitioner assert he has never been "duly convicted" of any crime initiated by indictment or information, rendering his conviction and sentence an act of slavery and involuntary servitude. The State is enforcing a statute, LSA-R.S. 14:42 that has abridged his privileges and immunities, when he was convicted of agg. rape instituted by bill of information, rendering statute unconstitutional. He being deprived of his liberty without due process of law and equal protection of the law.

The Supreme Court of the United States held, the province and scope of the 13th and 14th Amendments are different: the former simply abolished slavery; the latter prohibits the government from abridging the privileges or immunities of citizens of the United States; from depriving them of liberty without due process of the law. (52)

Sentence And Warrant Of Commitment Is Void

Petitioner assert he is being held in custody illegally in violation of the Constitution and Laws of the United States and Louisiana's Constitution and laws. The 13th and 14th Amend.; LSA-Const. Art. I, sec. 2, 3, 15; LSA-C.Cr.P. art 382; detain in the Louisiana State Penitentiary, Angola, by Custodian Darrel Vannoy, Warden or interim Warden Seth Smith on the issuing of a void court order pursuant to a fatally defected Commitment Warrant, issued by the 22nd JDC clerk Ms. Jo Ann Smith, Who typed judge's name on document.

52 *Clyatt v. U.S.*, 25 S.Ct. 429, 197 U.S. 707 (U.S. Fla. 1905); *U.S. v. Allen*, 341 F.3d 870 (C.A.9 (Mont.) 2003).

Petitioner challenge his transfer from parish jail to state prison as illegal for which only a valid Commitment warrant with judge's signature or facsimile on document could authorize such a transfer. (53)

The Warrant of Commitment in petitioner's case is invalid and void for many reasons:

- (1) Trial court lacked subject matter jurisdiction over the legal cause of action: Any judgment rendered, any conviction issued, any sentence pronounced are void and nullities and any detention or custody is not legal where person was not duly convicted of a crime.
- (2) Where Commitment warrant does not have trial Judge signature or his facsimile endorsed on document nor the court seal for authenticity, void.
- (3) Where Clerk of Court typed judge's name on document, (54) which rendered the document void, nullities.

CUSTODY WITHOUT COURT ORDER

If the person in custody is being held not by virtue of a court order, the court after the hearing, shall discharge or refuse to discharge the person from custody as justice may require. (55)

BURDEN OF PROOF

If the person in custody is being held not by virtue of a court order the Custodian shall have the burden of proving the legality of the custody 56 and showing good cause why the person in custody should not be released.

Petitioner contend he is entitled to immediate discharge pursuant to the Constitution and laws cited and document presented to the Court and Supreme Court Law Cases.

53 State ex rel. Lay v. Cain, 691 So.2d 135, 96-1247 (La. App. 1 Cir 1997)

54 Appendix B1 Commitment Warrant; B2-3 Bill of Information; B4 Statement By the CLERK.

55 LSA-C.Cr.P. art. 361

56 LSA-C.Cr.P. art 365

LSA-C.Cr.P. art. 362 (1) (2) (3) (4) (5)

LOUISIANA SUPREME COURT VIOLATE RIGHTS TO REVIEW OF APPEAL.

Petitioner assert the Louisiana Supreme Court March 2, 1983 affirmation of conviction and sentence is a violation of his Due Process of Law and Equal Protection of the Law rights. (57)

The Court refused to enforce any corrective measures pursuant to LSA C.Cr.P. art 920 (2), and the sum effect of these lower courts rules has been to deny petitioner's right to access to the court for review, on the merit. Such action constitute an improper deprivation of right and is at odds with the very policy underling the reasons for the Rules, to prove a means of safeguard individual liberty against unlawful state action. Louisiana Supreme Court violate petitioners right to review of his one and only appeal of right, when it did not make an independent review record in a criminal case, which may be reviewed for discoverable error even in the absence of overt exception and duly assigned errors, includes the caption, Statement of time, and place of court, indictment or information and endorsement thereon, assignment, pleading, empaneling of the jury, verdict, judgment bill of Particular, and in capital case, minute entry indicating that jury has been sequestered. (58) "An error that is discoverable be a mere inspection of the pleading and proceedings and without inspection of the evidence. Under this article courts may consider any error patent on the face of the record. (59)

If a State choose to dismiss appeal when in competent attorney have violated Local rules, it may do so, "if such actions does not intrude upon client's due process rights." (60)

57 U.S.C.A Const. Amendments 5, 14; LSA-Const. Art. 1, sec 2, 3.

58 LSA-C.Cr.P. art. 914. 1, subd. D; LSA-Const. Art. 5, sec. 1; State v. Oliveaux, 312 So.2d 337 (La. 1975), Article 920(2)

59 State v. Goodley, 398 So.2d 1068 (La. 1981); State v. Mageux, 498 So.2d 701 (La. 1986); See Appendix B 15, B 16, c.f. State v. Flores, 27, 736. p.3, at 669 So.2d at 644 (1996) 2. Cir

60 Evitts v. Lucey, 105 S.Ct. 830, 469 U.S. 387 (U.S.(Ky.) 1985)

Although defendant counsels did not designate assignment of error as statutorily required, Court of Appeal was bound to review error assigned and argued in his brief. LSA-C.Cr.P. arts. 844, 916 (1), 920 (2), 916 (5); Except for patent of error; the reviewing court may consider only errors so designated. C.f. State v. Kelly, 453 So.2d 641 (La. App. 5 Cir. 1984); State v. Guillot, 200 La. 935, 9 So.2d 235, 239 (1942)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

The Sixth Amendment guarantees defendant a right to counsel at all critical stages of trial.⁽⁶¹⁾

Petitioner assert if not for trial counsels Mr. Thomas Ford and Mr. Sam Collett in competence and unprofessional performance so upset the adversarial process at trial that counsels conduct undermined proper functioning of the process, that trial can not be relied on as having produced a fair and just result. Counsel's function in representing a criminal defendant as advocate, hence counsel owes client duty of loyalty. Right can be denied to a fair trial of Due Process simply by Counsel's failing to render adequate legal assistance. That a person who happens to be a lawyer, is present at trial alongside the accused, however, is not enough to satisfy the Constitutional command. In certain Sixth Amendment context, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in "prejudice."⁽⁶²⁾ So are various kinds of state interference with counsel's assistance.⁽⁶²⁾ Prejudice to a defendant may be presumed when counsel fails to subject the State's case to a meaningful adversarial test.⁽⁶³⁾

When counsel's Constitutional deficient performance deprived defendant of appeal that he otherwise would have taken, defendant has made out successful ineffective assistance of counsel claim entitling him to an appeal. The six Amendment does not allow counsel simply to walk away after a conviction.⁽⁶⁴⁾

61 United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984)
U.S.C.A.-Const. Amends. 6, 14; LSA-Const. Art. 1, sec. 2, 3, 13; LSA-Cr.P. art. 511

62 Strickland v. Washington, 104 S.Ct. 2052, 466 U.S. 668 (U.S. Fla. 1984)

63 Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)

Lockhart v. Fretwell, 113 S.Ct. 838, 506 U.S. 364 (U.S. Ark. 1993)

64 Roey. Flores-Ortega, 120 S.Ct. 1029, 528 U.S. 470 (U.S. Cal. 2000)

- (1). Petitioner assert that both trial and Appeal counsels were ineffective in their representation, because they failed to adequately review the information, if counsel had properly reviewed the record and the bill of information, they would have notice the lack of subject matter jurisdiction. Petitioner contends the outcome of his case would been different if Counsel had filed a motion to quash the bill of information or used Motion To Quash prior Counsel had filed, Mr. Reggie Simmons.
- (2) Counsel was ineffective for not using any documents that prior Counsel Reggie Simmons produced.⁽⁶⁵⁾ Counsel had duty to use any papers the State provided to defense.
- (3) Counsel was ineffective when he failed to object to bill of information being used to initiate prosecution of LSA-R.S. 14:42 agg. rape in open court, when he knew or should have known the Constitutional and Law, Counsel action deprived him of a fair trial.⁽⁶⁶⁾
- (4) Counsel rendered ineffective assistance when he fail to object to money being offered as evidence in a rape trial, in which the only probative value was to prejudice defendant as money was not needed to prove any element rape. nor did counsel file motion to suppress any evidence.⁽⁶⁶⁾
- (5) Counsel rendered ineffective assistance when he file no motion to suppress underwear as evidence, when they were seized illegally without a search and seizure warrant.⁽⁶⁶⁾
- (6) Counsel was ineffective because he did not make an opening statement,⁽⁶⁷⁾ and did not contest element of State's case.
- (7) Counsel was ineffective because he did not object to erroneous jury instruction when instruction did not cite essential element of offense armed with a dangerous weapon, That jury must acquite if state case was devoid essential elements of offense, where instruction were constructively amended to the law that defined the statute of agg. rape to that of forcible rape.

⁶⁵ See Appendix B 2-3, Bill of information, B 10 Motion To Quash Bill of information; B 11 Motion For Pre-Trial Discovery; B 12 Motion for Bill of Particular; B 13 Motion For A Preliminary Examination;

⁶⁶ See Appendix B 14 Extract of Minutes; Tr. T. 1, 13-14.

⁶⁷ State v. Rubini, 559 So.2d 550 (La App. 2 Cir. 1990)

Thereby, lowering the legal standard for a greater punishment that would have to prove each element of the crime beyond a reasonable doubt. (68)

- (8) Counsel was ineffective when failed to follow up on exculpatory report regarding petitioner's semen sample. (69)
- (9) Counsel was ineffective when he failed to obtain medical records independently of State to test biological and genetic material of victim and suspect clothing in opposition to state testings at state crime lab either to confirm or contradict results. This was an assault prosecution and needed defending against.
- (10) Counsel was ineffective when he failed to object to the victim's in court identification, which was impermissible, misleading, inconclusive and prejudicial, when there were no other identifications procedures conducted to collaborate in court I.D.. Mr. Ford admits he was ineffective not challenging the identification process in court. When he stated in closing arguments, "Ladies and Gentlemen, I don't think this man has ever been I.D.ed." Tr. T 169 Appendix E
- (11) Counsel was ineffective when he failed to comply with the contemporaneous objection rules.
- (12) Counsel was ineffective when he failed to investigate and develop his client's alibi. When victim stated in her statement to police the rape occurred about 2:35, that she had taken a bath and call police at 4:21 AM, (70) where witness for the defense testified she was the first to arrive home, it was 3:30 am when she got home, that she noticed the time on the wall clock. Ms. Vicki Anderson was only due petitioner's efforts. Ms. Emily McKay, Mr. Fred Crain, and Mr. Emmitt Brown were all necessary fact witnesses for the defense to prove Petitioner was in another place during the commission of the crime. The Sixth Amendment of the Constitution provides that: In all criminal prosecution, the accused shall enjoy the right to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense. (71)

68 State v. Parish, 405 So.2d 1080 (La. 1981); State v. Jackson, 437 So.2d 855 (1976); State v. Burnette, 496 So.2d 1236 (5th Cir. 1986); State v. Alexander, 339 So.2d 818 (1976)

c.f. State v. Trent, 517 So.2d 1053 (3rd Cir. 1987); c.f. State v. Langley, 958 So.2d 1160, 2006-1041 (La. 2007); Rivera v. Illinois, 129 S.Ct. 1446, 556 U.S. 148 (U.S. 2009) Agg. rape Statute Act 707, Appendix B 30-31, Tr. Ts 174-185

69 Boylor v. Estelle, 94 F.3d 1321 (9th Cir. 1996) Appendix E, Tr. T. 126 Lines 17-18, possible someone else committed crime Tr. T. 128 Lines 23-25

70 Appendix E 13 Victims police Statement and supplemental report. Appendix E Tr. T. 147-148, Tr. T. 132-3, 142. c.f. Bryant v. Scott, 28 F.3d 1411 (1994)

71 Johnson v. Zerbst, 58 S.Ct. 1019, 304 U.S. 458 (U.S. 1938) 6th Const. Amend.

- (13) Counsel was ineffective when he failed to object or contest the court allowing state to sever the armed robbery charge and continuance and proceeding to try aggravated rape charge instituted by bill of bill of information when trial court lacked subject matter jurisdiction. ⁽⁷²⁾
- (14) Counsel was ineffective when he failed to admit and introduce favorable evidence and request a continuance. ⁽⁷³⁾
- (15) Counsel was ineffective for failing to investigate and introduce favorable evidence to the jury in the form of the police reports, victims police statement, which was especially reliable because evidence came from police officers, and statement would have and could have been used to impeach victim's testimony that she clear saw her attacker face. ⁽⁷⁴⁾ Due Process violated because prosecutor withheld evidence that could have been used to impeach testimony of state's key witness and affected credibility.

- Due Process Clause of the Fourteenth Amendment forbids the knowing use by the State of perjured testimony. ⁽⁷⁵⁾
- (16) Trial counsel rendered ineffective assistance when he failed to file a brief with an assignment error for his client's one only appeal of right on direct review and did not follow "Anders procedure" to withdraw as counsel of record. ⁽⁷⁶⁾ The Court held, "When counsel's complained of performance resulted in actual or constructive denial of any assistance of trial counsel, defendant need not demonstrate prejudice, because prejudice is presumed."

Examples of ineffective assistance counsel, State ex rel. Busby v. Butler, 538 So.2d 164 (La. 1988) Attorney who did not make an opening statement) State v. Rubin, 559 So.2d 550 (La.App. 2 Cir. 1990) Attorney who did not object to erroneous jury instruction) State v. Hunter, 614 So.2d 332 (La. App. 4 Cir. 1993) Attorney who did not bring important evidence contained in police report to the attention of the jury) Citing State v. Peart, 621 So.2d 780 (La. 1993); Cuyler v. Sullivan, 100 S.Ct 1780, 446 U.S. 335 (U.S. Pa. 1980)

72 Appendix B 14 Extract of Minutes March 15, 1982

73 Tucker v. Prelesnik, 181 F.3d 747 (6th Cir. 1999); Steinkuchler v. Meschner, 176 F.3d 441, 445 (8th Cir. 1999); Strickland v. Washington, 466 U.S. 668 (1984)

74 State v. Felton, 522 So.2d 626 (La. App. 4 Cir. 1988); Crivens v. Roth, 172 F.3d 991, 999 (7th Cir. 1999)

75 Braggs v. Morris, 128 F. Supp. 2d 587 (E.D. Ark. 2000) Appendix E Tr. T 45-46

76 U.S. v. Peak, 992 F.2d 39 (C.A. 1 (N.C.) 1993) See Appendix B 17, Memorandum to Trial Counsels; B 18 Notice and Order of Appeal, B 19 Motion For Appeal, B 20 Directive from Louisiana Supreme Court, "No Assignment of Error. Tenson v. Ohio, 109 S.Ct. 346, 488 U.S. 75 (U.S. Ohio 1988)

INEFFECTIVE ASSISTANCE OF APPEAL COUNSELS

The Six Amendment guarantees defendant a right to counsel on his one and only appeal of right. The Six Amendment does not allow counsel simply to walk away after a conviction. When counsel's constitutional deficient performance deprived defendant of appeal that he otherwise would have taken, defendant has made out successful ineffective assistance claim. (77)

NEW INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

Ineffective assistance of counsel claim which is supported by new grounds is not procedurally barred in adverse federal habeas corpus petition given that procedural bar rule does not apply to ineffective assistance of counsel claim; (78)

Petitioner contend if it was not for the incompetence of Appeal Counsels involved in his case, it is more likely than not that conviction and sentence would have been rejected and remanded back to trial court for further proceedings.

Petitioner assert that his appeal counsels Mr. S. Austin McElrou and Mr. David J. Knight were ineffective in their representation in his one and only appeal of right, where counsels left client constructively without counsel when counsels filed frivolous three page nonmerit brief requesting reviewing Court to Review for "Patent of Error On The Face of the Record" without argument and an assignment of Error. (79) And did not follow Anders procedure to withdraw as counsel of record.

- 77 Douglas v. California, 372 U.S. 353, 355, 83 S.Ct. 814, 815, 9 L.Ed. 2d 811 (1963) U.S.C.A. Const. Amend. 6, 14; LSA-Const. Articles I, sec. 2, 3, 13; LSA-Cr.P. arts. 511, 911. Cf. Roe v. Flores-Ortega, 120 S.Ct. 1029, 528 U.S. 470 (U.S. Cal. 2000)
- 78 Overruling Beaulieu v. U.S., 930 F.2d 805; Cf. U.S. v. Galloway, 56 F.3d 1239 (C.A.10 (Utah) 1995) See Appendix B, 15 Request for records from the Louisiana Supreme Court, B 16 Response by the Court.
- 79 Appendices B 21 Motion For Extension Of Time With Which To File Brief; B 22-23 Assignment Of Error and Designation Of Record For Appeal; B 24-29 Brief By Appeal Counsels. Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967)

Petitioner assert that instant case is governed by the jurisprudence pronounced in *Lombard v. Lynaugh* and *Lofton v. Whitley* ⁸⁰

In *Lombard*, accused is constitutionally entitled to effective assistance of counsel on direct appeal of right. Therefore, appellate counsel's filing of conclusory "no merit" brief which pointed to nothing whatsoever in record constitute ineffective assistance of counsel. In *Lombard v. Lynaugh*, on appeal, Cahoon submitted a frivolous two page appellate brief.... The district court referred the case to a magistrate, who reviewed the state record and concluded that Cahoon's "frivolous appeal" brief constituted a total denial of counsel. When there has been actual or constructive complete denial of any assistance of appellate counsel, prejudice prong of Strickland test is not required to be shown in proving ineffective assistance of counsel.

In *Lofton*, defendant was denied effective assistance of counsel on appeal as of right where counsel filed a two page brief requesting only a review of the record for errors patent, but without asserting any grounds for appeal, and where counsel did not follow the Anders procedure for withdrawal, which deprived petitioner of his right to appeal.

Accused is constitutionally entitled to effective assistance of counsel on direct appeal as of right. If accused was actually or constructively denied counsel on appeal as of right, then prejudice is presumed.

The Fifth Circuit concluded that *Lofton* was constructively denied assistance of counsel on appeal because his counsel filed a brief which did not assert arguable error, and, under *Penon v. Ohio*, ⁸¹ prejudice to the appellant is presumed.

⁸⁰ *Lombard v. Lynaugh*, 868 F.2d 1475 (C.A.5 (Tex.) 1989); *Lofton v. Whitley*, 905 F.2d 885 (C.A.5 (La.) 1990)

⁸¹ 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988); cf. *State v. Benjamin*, 573 So.2d 528 (La. App. 4 Cir. 1990) and *Harris v. Day*, 226 F.3d 361 (C.A.5 (La.) 2000) *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (U.S. Ky. 1985)

Defendant cannot be blamed for counsel's mistakes. (82)

Where defendant defaults claim as result of denial of right to effective assistance of counsel, "State, which is responsible for denial as constitutional matter, must bear cost of any resulting default and harm to State interest that federal habeas review entails. (83)

Pursuant to Jones v. Cowley, the court held after determining that defendant lost opportunity to file direct appeal in state court due to ineffective assistance of counsel, "granting unconditional release is not abuse of discretion. (84)

HABEAS CORPUS

David Lee Williams, Petitioner, seek his immediate release or discharge from Louisiana State Penitentiary upon writ of habeas corpus, where his detention, custody is illegal because the judgment and commitment upon which he is held are void. No commitment was issued with trial Judge's signature indorsed on document. Clerk Of Court, Mrs. Jo Ann Smith typed judges name on document without Court seal. Further, The court nor trial judge assumed jurisdiction to adjudicate the legal action (85)

Habeas corpus will lie in a federal court in behalf of a person convicted of crime in a state court only where the judgment is absolutely void for want of jurisdiction. (86) A person confined under final judgment of a State court, may inquire into the truth of the cause of his detention

Federal court can go behind the record itself and ascertain the facts tending to show whether or not the trial court had jurisdiction, or whether the court had lost the jurisdiction which it had once possessed. (87) No individual or body of men has a discretionary or arbitrary power to commit any person to prison; no man can restrain of his liberty or be in any way imprisoned or confined, unless by virtue of

82 Maples v. Thomas, 132 S.Ct. 912 (U.S. 2012)

83 Coleman v. Thompson, 111 S.Ct. 2546, 501 U.S. 722 (U.S. Va. 1991)

Cuyler v. Sullivan, 446 U.S. 335, 344, 100 S.Ct. 1708, 1716, 64 L.Ed.2d 333 (1980)

84 Jones v. Cowley, 28 F.3d 1067 (C.A.10 (Okla.) 1994)

Hannon v. Maschner, 981 F.2d 1142 (C.A.10 (Kan.) 1992)

85 Wilson v. Johnston, 47 F. Supp. 257 (N.D. Cal. 1942)

See Claims Page 6, Page 9, Page 11, Page 18, Page 19; Appendices B

86 28 U.S.C.A. §§ 2242, 2243, 2254 (a)

87 Frank v. Mangum, 237 U.S. 309, 311, 35 S.Ct. 582, 59 L.Ed. 969. Appendix B 14 Extract of Minutes Jan. 28, 1982, Feb. 25, 1982, Mar. 15, 16, 1982, May 17, 1982 See Appendix B 14

of the expressed laws of the land.⁽⁸⁸⁾

Habeas corpus is a writ commanding a person who has another in his custody to produce him before the court and to state the authority.

Essence of "habeas corpus" is attack by person in custody upon legality of that custody, and traditional function of the writ is to secure release from illegal custody.⁽⁸⁹⁾

Habeas Corpus proceeding by or on behalf of a person in custody shall be instituted in the parish in which the person is in custody.

If the custody is by virtue of or under pretext of a court order, a copy of such order shall be annexed to the petition.

The court to which the application is presented shall immediately grant a writ of habeas corpus, unless it appears by the petition itself or by the documents annexed to it that the person in custody is not entitled to be set at liberty. The writ may issue at any time on any day, in term time or vacation, and shall fix the place and time for the answer, which shall be as early as practicable, and shall not exceed seventy-two hours from the time of the issuance of the writ.

The person upon whom the writ has been served, whether it is directed to him or not, shall file a written answer, signed and sworn to by him stating whether he has custody of the person named in the writ. If the person is in custody, he shall produce him and state in his answer his authority for holding the person in custody. If the custody is by virtue of a court order, the document in the possession of the custodian shall be annexed to the answer. The answer and the production of the person in custody shall be made at the place and time designated by the writ.

88 Hurtado v. People of the State of Cal., 4 S.Ct. 111, 110 U.S. 516 (U.S. Cal. 1884)
U.S.C.A.-Const. Amend. 5, 13, 14; LSA-Const. Arts. 1, §§§ 2, 3, 14, 15; LSA-C.Cr.P.
art. 382, LSA-A.S. 14:42; Appendix B 2-3 Bill of Information

89 Act Sept. 24, 1789, § 14, 1 Stat. 81; 28 U.S.C.A. §§ 2241, 2241 (c)(3), 2254 (a)
U.S.C.A. Const. art. 1, § 9, cl. 2; LSA-C.Cr.P. arts. 351, 352, 354, 353, 357.

Petitioner, David Lee Williams #98840, assert that sentence and order of commitment are void and null as a matter of law and Constitutional and Jurisdictional mandate. Where trial court was without subject matter jurisdiction or power and authority to adjudicate cause before it in instant case, because crime charged by bill of information impose life sentence rendering conviction and sentence void and null, making custody illegal in the Louisiana State Penitentiary. Furthermore, order of commitment is void, where trial judge signature or facsimile is not indorsed on document but clerk of court typed judges name on document which is a fatal defect. No one had authority to transfer Williams from the parish jail to state prison and no one had authority to accept him into the prison, making custody illegal. Fatal Defect in bill of information can be no cause for conviction, sentence or incarceration and without a valid commitment order Custodian is not person to detain Williams.

Petitioner, David Lee Williams #98840 is being held as a convict in the Louisiana State Penitentiary in violation of the Constitution, Laws, treaties of the United States by Warden Darrel Vannoy and at by interim Warden Seth Smith at Angola, La.

Petitioner assert that the said conviction, Order, judgment and sentence are void, therefore, prays this Hon. Supreme Court of the United States will issue writ of habeas corpus to said Warden Darrel Vannoy or to Interim Warden Seth Smith to appear before Judge William G. Carmichael, Division B, 20th Judicial District Court, Parish of West Feliciana, St. Francisville, La. 70475, at 9:00 Clock AM, on the day of the 17 of April and to produce the body of David L. Williams in person before the Court and state his authority for his custody if any. In the alternative to discharge petitioner from illegal custody.

CONCLUSION

Petitioner has raised substantive issues concerning whether he received a fair trial when trial counsel rendered ineffective assistance of counsel constructively.

Where appellate counsel rendered ineffective assistance of counsel constructively, in petitioner's appeal of right.

Where trial court and trial judge was without jurisdiction to adjudicate the legal action and without jurisdiction to preside over the case.

Where trial judge did not sign commitment order to transfer petitioner from parish jail to state prison.

This case provides proper vehicle for fashioning supervisory and remedial procedures for determining respective roles of lower courts.

PRAYER

Petitioner alleges that the said sentence and order of commitment which was not signed by trial judge are void; that the trial court was without power or jurisdiction under the law to render the judgment; and that he had applied to the United States judge of the Middle District of Louisiana for a writ of habeas corpus, The Fifth Circuit Court of Appeal and in a state habeas corpus petition and writ was denied to him. He therefore prays that this court will issue the writ of habeas corpus to the said warden to appear before this court, and show what authority, if any, he has for restraining the petitioner of his liberty, and that upon final hearing he may be discharged or any remedy the court feel is just and fair.

Respectfully submitted by

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