

IN THE SUPREME COURT OF THE UNITED
STATES

William Snowden, Jr.,

Petitioner

v.

Charmaine Bracy,

Respondent

Stephanie L. Watson,

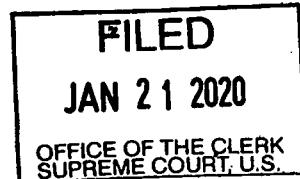
Ass, Ohio Attorney General

Counsel for Respondent

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Columbus, Ohio 43215

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT



PETITION FOR A WRIT OF CERTIORARI

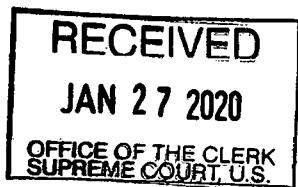
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Questions for Review

1. When a habeas corpus Petitioner is innocent of an aggravated felony, has proof of innocence beyond all reasonable doubt and the conviction occurred because of ineffective assistance of counsel, should the petition be dismissed as procedurally defaulted without an evidentiary hearing?
2. When overzealous prosecutors can take an unconstitutionally vague law and convict first time offenders with aggravated felonies, should this Court reverse it's ruling in *Almendarez Torres v. United States*, to prevent innocent defendants from being unlawfully convicted and sent to prison?

3. When a trial court Judge ignores statutory protections that would have stopped a conviction, and convicts an innocent defendant of an aggravated felony, is that judgment void according to this Court's centuries old precedence?

Table of Contents

Questions Presented.....	i,ii
Table of Contents.....	iii,iv
Table of Authorities.....	v,vi,vii,viii,ix,x
Petition for Writ of Certiorari.....	1
Opinions Below.....	1
Jurisdiction.....	1
Constitutional Provisions Involved.....	2
• Amendment V	
• Amendment VI	
• Amendment XIV	
Statement of the Case.....	4
The Sixth Circuits decision is in conflict with this Courts precedence.....	9

Why this Court should revisit and reverse the ruling in <i>Almendarez Torres v. United States</i>	15
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Why Mr. Snowden's judgment is void.....	19
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Reason for granting the writ.....	21
-----------------------------------	----

Appendix A

• Judge Carr's order "Northern District Ohio".....	27
---	----

Appendix B

• Petitioner's motion for certificate of appealability.....	40
--	----

Appendix C

• Sixth Circuit denial of certificate of appealability.....	63
--	----

Table of Authorities

<i>Almendarez Torres v. United States</i> , 523 U.S. 224 (1998).....	15,16,18,19,48,49
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000).....	15
<i>Coleman v. Thompson</i> , 501 U.S. 722, 750-51 (1991).....	70
<i>Dretke v. Haley</i> , 541 U.S. 386 (2004).....	10,11,12,13,54,55
<i>Edwards v. Carpenter</i> , 529 U.S. 466, 453 (2000)...	70
<i>Freeman on Judgments</i> (120c).....	20
<i>Gray v. Netherland</i> , 518 U.S. 152, 161-62.....	69
<i>Hanna v. Ishee</i> , 694 (6 th Cir. 2012).....	69
<i>Harrera v. Collins</i> , 506 U.S. 309, 113 S. C.T. 853, 122, L.E.D. 2d 203 (1993).....	53

<i>Hodges v. Colson</i> , 727 F.3d 517, 530, (6 th Cir. 2013).....	70
<i>Jackson v. Virginia</i> , 433 U.S. 307 (1979).....	13
<i>Jordan v. Gilligan</i> , 500 F.2d 701, 710, 6 th Cir. (1974).....	20
<i>Kenny v. Tamayo Reyes</i> , 504 U.S. 1 (1996).....	14,23,46
<i>Lonchar v. Thomas</i> , 517 U.S. 314, 324 (1996).....	14,23,46
<i>Lubben v. Selective Service System Local Bd. No. 27</i> , 453 F.2d 645 (1 st Cir. (2011).....	72
<i>McQuiggin v. Perkins</i> , 569, U.S. 383.....	50
<i>Muniz v. Smith</i> , 647 F. U.S. 3d 619, 625, 6 th Cir. (2011).....	72

<i>Murray v. Carrier</i> , 477 U.S. 478, 496.....	10,14,46
<i>Ohio v. McCain</i> , 2 nd Dist. Montgomery, No. 27195 (2017 OHIO), 7518, (2017) W.L. 3971656.....	35
<i>Ohio v. Rangel</i> , 11 th Dist. Lake, No. 2018-L-102, 2019-Ohio-1845, 2019 WL 2085824.....	35
<i>Ohio v. Snowden</i> , 11 th Dist. Trumbull No. 2014-T- Ohio 2611, 2015 WL 3964670.....	33
<i>O'Sullivan v.. Boerckel</i> , 526 U.S. 838, 845 (1999).....	68
<i>Pudelski v. Wilson</i> , 576 F 3d 595, 605 (6 th Cir. 2009).....	68
<i>Sawyer v. Whitley</i> , 505 U.S. 333.....	10
<i>Schrirro v. Landrigan</i> , 550 U.S. 465, 474 (2007).....	72

<i>Slack v. McDaniel</i> , 529 u.s. 465, 484 (2000).....	55,67
<i>Snowden, Supra</i> , 2015 WL 3964670 60 N.E. 3d	
1252.....	64,65
<i>Snowden v. Bracy</i> , 67 N.E. 3d 822-Ohio(2017).....	65
<i>Snowden v. Bracy</i> , 6 TH Cir. 019-PR-03739.....	1
<i>Snowden v. Bracy</i> , Ohio U.S. Northern District	
Court 4:17 cv 208.....	1
<i>Strickland v. Washington</i> , 466 U.S. (1984).....	24,54
<i>Thompson v. Loisvill</i> , 362 U.S. 199 (1960).....	13
<i>Wainwright v. Skyes</i> , 433 U.S. 72, 91 (1977).....	13
<i>Walden v. Huss</i> , 2019 W.L. 2996187 (Mich.).....	35
<i>Wills v. Egeler</i> , 532 F. 2d 1059 (6 th Cir. 1976).....	34
Statutes and Codes	
28 U.S.C. 1254.....	2

28 U.S.C. 2254.....	63,65,68
28 U.S.C. 2253.....	67
Ohio Revised Code	
4511.19(G)(1)(d).....	5,8,,41,42,43,51
Ohio Revised Code	
2941.1413.....	5,17,41,43,51
Ohio Revised Code	
2929.13(G)(1).....	8,16,19,41,42,51
Ohio Revised Code 2929.14.....	41
Constitutional Provisions	
United States Constitution,	
Amendment V.....	2,24,30
United States Constitution,	
Amendment VI.....	3,24,32

PETITION FOR WRIT OF CERTIORARI

Mr. Snowden an unlawfully convicted defendant, respectfully petitions this court for a writ of certiorari to review the judgement of the Sixth Circuit Court of Appeals

OPINIONS BELOW

The decision by the Sixth Circuit Court of Appeals is reported as *Snowden v. Bracy 0:19-PR-03739*. The decision by the District Court is reported as *Snowden v. Bracy 4:17-cv-208 Ohio Northern District Court*.

JURISDICTION

Mr. Snowden's application for certificate of appealability to the Sixth Circuit Court of Appeals was denied on October 28, 2019. Mr. Snowden

invokes this Court jurisdiction under *28 U.S.C. 1254(1)*, having filed this petition for writ of certiorari within ninety days of the Sixth Circuit Court of Appeals judgement.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in land or naval forces, or in the Military, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived be deprived of life, liberty, or property without due

process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, ADMENDMENT

V1

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by the impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of a of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION,

AMENDMENT XIV

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

STATEMENT OF THE CASE

Mr. Snowden was charged and convicted of a aggravated 4th degree felony O.V.I. and sentence to serve two , one year mandatory prison term ran consecutive. Mr. Snowden was a first time 4th degree felony O.V.I. offender and was always innocent of

the aggravated felony. The State has conceded to the merits of the grounds for relief and instead inserted a procedural default defense.

The Sixth Circuit has denied Mr. Snowden a hearing where evidence would have been presented that would have proven innocence of the aggravated felony beyond all reasonable doubt and instead dismissed Mr. Snowden's petition as procedurally defaulted. In the State of Ohio if a offender has five prior misdemeanor traffic offenses for O.V.I. over a twenty-year period the offender can be charged with fourth degree felony O.V.I., O.R.C. 4511.19 G(1)(d). If an offender has previously twice been convicted of a fourth-degree felony O.V.I. he is charged with an aggravated felony O.V.I. O.R.C. 4511.19 (G)(1)(d) and 2941.1413. When an offender is charged and

convicted of the aggravated felony, the offender is given two separate prison terms that must be run consecutive. The separate prison sentences are continued within a single count in the indictment enhancing the fourth-degree felony to six to thirty months and then adding a one-two-three-four-or-five year mandatory prison term for a total of seven $\frac{1}{2}$ years in prison. The fact that the statue was written so unconstitutionally vague prosecutors are charging first time offenders with aggravated felony's by inserting the prior misdemeanor convictions on the indictment a second time. When the Prosecutor brings the aggravated charges there are no additional elements, facts or circumstances presented to the jury or found by the Judge at sentencing to take the basic 4th degree felony to the aggravated felony. The Prosecutor withheld

exculpatory evidence from the grand jury to obtain the indictment against Mr. Snowden. Mr. Snowden counsel failed to inform the court that it was Mr. Snowden's first 4th degree felony and he was innocent of the aggravated count. Mr. Snowden counsel waved his presentence investigation that would have shown his innocence and stopped the conviction. The sentencing Judge failed to follow mandatory sentencing guidelines that would have proven his innocence and stopped the conviction. It took constitutional violations committed by the prosecutor, the attorney and the Judge for Mr. Snowden to be convicted of an aggravated felony he did not committed.

If any of the three court officers would have properly performed their duties, the conviction

would not have occurred. In Mr. Snowden's case a report was prepared for the prosecutor before he proceeded to the grand jury. The report obtained by the prosecutor shows that Mr. Snowden is innocent of the aggravated felony. If Mr. Snowden would have been granted a hearing that report would have proven Mr. Snowden's innocence beyond all reasonable doubt. Had Mr. Snowden been properly charged and convicted O.R.C. 4511.19 G (1) (d) the maximum penalties he faced were sixty or one hundred-twenty days of local incarceration, mandatory treatment and probation O.R.C. 2929.13 (G) (1). At no time was Mr. Snowden eligible to serve any time in prison.

A complete miscarriage of justice took place in Mr. Snowden's case. Mr. Snowden was

unconstitutionally convicted and unlawfully
imprisoned.

THE SIXTH CIRCUITS DECISION IS IN
CONFLICT WITH THIS COURTS PRESIDENCE

This Court has always held that when a
miscarriage of justice takes place procedural default
should never stand in the way to correct the
injustice.

A Federal Court faced with allegations of actual
innocence, whether of the sentence or the crime
charged, must first address all nondefaulted claims
for comparable relief and other grounds for cause to
excuse the procedural default. Normally a Federal
Court will not entertain a procedurally defaulted
constitutional claim in a habeas petition absent a
showing of cause and prejudice to excuse the default.

However, this Court recognizes a narrow exception to the general rule when the applicant demonstrates actual innocence of the substantive offence, *Murray v. Carrier*, 477 U.S. 478, 496, or, in capital sentencing context, of the aggravated circumstances rendering the inmate eligible for the death penalty, *Sawyer v. Whitley*, 505 U.S. 333.

In Mr. Snowden's case the District Judge ruled that Mr. Snowden's ineffective assistance of counsel claim was not properly before him based on procedural grounds. This Court disagrees based on its decision in *Dretke v. Haley*, 541 U.S. 386(2004).

In the *Haley* case this Court held that the innocence claim did not need addressed due to the fact that *Haley* had ineffective assistance of counsel. Mr. Snowden's case mirrors the *Haley* case with some

major differences. In *Haley* the petitioner actually had two prior felonies that would allow an enhancement, but a three-day time error would not allow the enhancement. In Mr. Snowden's case the prior felonies do not exist. Mr. Snowden should not have been charged with the aggravated felony. The State was at all times aware of the fact the Mr. Snowden was innocence of the crime. Additionally, in the *Haley* case the basic felony and the enhancement are bifurcated. The jury finds the defendant guilty of the felony and then finds the defendant guilty of the enhancement. In Mr. Snowden's case the State does not bifurcate, not only is the fourth degree felony enhanced to twelve months beyond the maximum sentence for a fourth degree felony in the State of Ohio an additional one, two, three, four, or five year mandatory prison term

is added all contained within a single count. The aggravated count is a crime in and of itself. Mr. Snowden is innocent of the crime.

The vagueness of Ohio's aggravated felony O.V.I. statue is allowing the Prosecutor in Mr. Snowden's case to receive jury guilty verdicts by using the same prior misdemeanor convictions required for a basic fourth degree felony O.V.I. The Prosecutor used the threat of a lengthy mandatory prison sentence to coerce Mr. Snowden's no contest plea. As in the *Haley* case Mr. Snowden made attempts to have the State court correct the unlawful conviction and sentence. Mr. Snowden motioned the Trial Court to vacate the judgement due to the fact the Court lacked statutory authority to enter it. The Trial Court denied the motion without a hearing.

Mr. Snowden also filed a petition for Habeas Corpus at the Ohio Supreme Court, and it was dismissed without comment.

Footnote: *Dretke v. Haley* Justice Stevens, with Justice Kennedy and Justice Souter join dissenting. Because as all parties agree, there is no factual basis for respondent's conviction as a habitual offender, it follows inexorably the respondent has been denied due process of law. *Thompson v. Louisville*, 362 U.S. 199 (1960); *Jackson v. Virginia*, 443 U.S. 307 (1979), and because that constitutional error clearly and concededly resulted in the imposition of an unauthorized sentence, it also follows that respondent is a "victim of miscarriage of justice", *Wainwright v. Skyes*, 433 U.S. 72, 91 (1977), entitled to immediate and unconditional release.¹

The Sixth Circuit District Judge and Appeals Court errored in allowing a procedural defense and

not granting a certificate of appealability. *Lonchar v. Thomas* 517 U.S. 314, 324, (1996). Dismissal of a first Federal habeas corpus is a particularly serious matter, for that dismissal denies the petitioner of the great writ entirely, risking injury to an important interest in human liberty. In *carrier* 477 U.S. at (Steven J. Concurring), stressing the appellate procedural default should not foreclose habeas corpus review of a meritorious constitutional claim that may establish the prisoner's innocence. In *Keeny v. Tamayo Reyes* 504 U.S. 1 (1992) this Court held that failure to develop a claim in State Court proceedings will be excused and an evidentiary hearing mandated if a petitioner can show that fundamental miscarriage of justice would result from failure to hold a Federal evidentiary hearing.

WHY THIS COURT SHOULD REVISIT AND
REVERSE THE RULING IN *ALMENDAREZ*

TORRES v. UNITED STATES

In *Almendarez Torres v. United States* 523 U.S. 224 (1998) this Court held that other than the fact of prior convictions any fact that increases an offender sentence above the minimum or maximum the fact must be inserted in the indictment and proven to the jury beyond a reasonable doubt.

In *Apprendi v. New Jersey* this Court was once again called upon to address the elements, facts or circumstances required to be presented to a jury in order to increase an offender's penalties. Although the *Apprendi* case did not present the fact of a prior conviction this Court expressed concerns over the

constitutional issues that could arise with the *Torres* ruling

These issues have surfaced in this case. Mr. Snowden had his misdemeanor O.V.I. count enhanced to a fourth-degree felony based on the fact of five misdemeanor convictions over twenty-year period. The prior misdemeanor convictions had to be stated in the indictment and proved to a jury beyond a reasonable doubt. The maximum penalty Mr. Snowden faced without any additional aggravating factors was 60 to 120 days of local incarceration, mandatory treatment and probation O.R.C. 2929.13 (G)(1). In the State of Ohio before a Judge can impose a prison sentence on a non-violent fourth or fifth degree felony, the Judge must make a finding required in O.R.C. 2929.13 B(1)(a) or B(1)(b)

without a finding the Judge must sentence the first time felony offender to probation. This was the case when it came to Mr. Snowden. The Prosecutor in Mr. Snowden's case was aware of this when he presented the case to the grand jury. When bringing the aggravated felony O.V.I. charge the Prosecutor inserts O.R.C. 2941-1413 into the O.V.I. count in the indictment. The requirement to bring the 29411-1413 enhancement is the fact of five prior O.V.I. convictions in a twenty-year period.

What the statute fails to state is that in order for the offender to receive the enhanced penalties the offender must have previously twice been convicted of fourth degree felony O.V.I. The States rational for not inserting the prior felonies in the indictment is that O.R.C. 2941.1413 is a sentencing enhancement

not a crime. The fact that *Almendarez Torres* allows the sentencing Judge to make the findings of prior felonies by a preponderance of the evidence at sentencing, first time offenders are being found guilty of being habitual felony offenders by the jury.

When the Prosecutor has the jury guilty verdict in hand the offender stands before the sentencing Judge and is given most if not all of a seven $\frac{1}{2}$ year prison term for no reason. The first-time offender is unlawfully harshly punished for taking his case to trial. The offender is receiving first degree felony penalties.

All other fourth degree felony offenders that are similarly situated are given probation as required by law. The same protections contained in the statute for O.V.I. defendants are being ignored by the

sentencing Court in violation of the offenders fifth and fourteenth amendment constitutional rights. A defendant has the right to have all facts required to imprison him to be found by the jury. The sixth amendment to the constitution affords the defendant this protection

This Courts reversal of *Almendarez Torres* would stop the unlawful convictions of first-time offenders such as Mr. Snowden.

WHY MR. SNOWDENS JUDGEMENT IS VOID

Laws are legislative as are the penalties imposed. A Court has no authority to disregard written law and make up its own sentences. In Mr. Snowden's case the written law was clear. For a first-time fourth degree felony O.V.I. Mr. Snowden must be sentenced under O.R.C. 2929.13 (G)(1). The

Court had no statutory authority to convict and sentence Mr. Snowden as a habitual felony O.V.I. offender. Mr. Snowden was protected by legislative statute from being convicted and sent to prison. This Courts centuries old precedence has held that when Courts act without authority and in contradiction to written law its judgement is void. If a Court grants relief, which under the circumstances it hasn't any authority to grant, its judgement is to that extent void. (*Freeman on Judgement 120c*) "A void judgment is no judgment at all and is without legal effect" *Jordan v. Gilligan*, 500 F. 2d 701, 710 (6th Cir. 1974) "a Court must vacate any judgment entered in excess of its jurisdiction" *Lubben v. Selective Service System Local Bd. No. 27*, 453 F. 2d 645 (1st Cir. 1972).

REASON FOR GRANTING THE WRIT

As a first time fourth degree felony O.V.I. offender Mr. Snowden was arbitrarily charged and convicted as a habitual felony offender.

Mr. Snowden was charged and convicted by an overzealous Prosecutor that was at all times aware of Mr. Snowden's innocence. Mr. Snowden's attorney was ineffective for not bringing the fact of innocence before the Court and waving Mr. Snowden's presentence investigation that would have proven innocence.

The sentencing Judge did not follow mandatory sentencing guidelines that would have stopped the conviction and unlawful imprisonment. The Sixth Circuit District Court and Appeals Court rulings directly contradict this Courts precedence. Mr.

Snowden can prove beyond all reasonable doubt that he was innocent of the aggravated felony, that there was Prosecutor misconduct, that he had incompetent Counsel and that the Judge did not have the statutory authority to convict him. Mr. Snowden had his fifth, sixth and fourteenth Amendment Constitution rights violated multiple times. Mr. Snowden was sent to serve a two-year mandatory prison term that he was not eligible to receive.

When all of these violations occurred against Mr. Snowden and it was brought to the attention of the State, they completely ignored him.

The State could have done the right thing and had Mr. Snowden released from prison but instead added insult to injury by ignoring him and telling the Federal Courts to do the same.

Mr. Snowden made multiple requests at both the State and Federal level for a hearing. If Mr. Snowden would have been granted a hearing the miscarriage of justice would have been corrected.

In Mr. Snowden's case the State has no defense. The State is aware that Mr. Snowden was unconstitutionally convicted and served and illegal prison term. The States rational for allowing the injustice is the Prosecutor got away with it and because Mr. Snowden had incompetent Counsel the conviction should stand.

This Court has always ruled that if a petitioner is innocent of the charged crime a hearing is mandatory and relief must be granted. *Kenny v. Tamayo Reyes* 504 U.S. (1992), *Lonchar v. Thomas*

517 U.S. 314, 324 (1996), Strickland v. Washington

466 U.S. (1984).

Mr. Snowden's sixth amendment rights were violated when the Prosecutor failed to state in the indictment the elements required to convict Mr. Snowden of an aggravated felony O.V.I.

Mr. Snowden's sixth amendment rights were violated by being represented by incompetent Counsel, where Counsel actions aided the Prosecutor in securing the unlawful conviction.

Mr. Snowden's fifth and four-tenth amendment rights were violated when the Prosecutor withheld the proof of innocence from the grand jury and the Court to secure a conviction.

Mr. Snowden's fifth and four-tenth amendment rights were violated when the trial Judge ignored statutory mandates at sentencing that would have stopped the conviction.

The biggest mystery in Mr. Snowden's case is the fact the State can stand silent after committing these violations. At minimum a reviewing Court should have the State appear to answer to the Court how so many violations could occur in a single case to send an innocent man to prison. The State should explain why nothing was done at the State level to correct this.

CONCLUSION

The Sixth Circuit Court should have at minimum held a hearing to address the ineffective assistance of Counsel claim where there is proof of actual

innocence. This Court should grant Certiorari to correct the injustice and restore Mr. Snowden's Constitutional rights.

If the actions of this Trumbull County Prosecutor continue, it will open the door for all Ohio Prosecutor's to arbitrary charge and convict first time offenders of aggravated felonies they did not commit. These arbitrary prosecutions could be based on things such as race, religion, gender, or economic standing. These unlawful convictions must end.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William Snowden Jr." The signature is fluid and cursive, with "William" and "Snowden" being more distinct and "Jr." being a smaller addition at the end.

William Snowden Jr.