No. 19-948

In The

Supreme Court of the United States

GENE RECHTZIGEL,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition For A Writ Of Certiorari To The Minnesota Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

GENE RECHTZIGEL
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QUESTIONS PRESENTED

I. Did the Government deprive Petitioner the First Amendment Right "to petition the Government for a redress of grievances?"

II. Did the Government deprive Petitioner the Fourth Amendment Right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures?"

III. Did the Government deprive Petitioner the Fifth Amendment Right that "No person shall . . . be subject to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ?"

IV. Did the Government deprive Petitioner the Sixth Amendment that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district . . . to be informed of the nature and cause of the 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."

V. Did the Government deprive Petitioner the Eighth Amendment Right to not impose "cruel and unusual punishments inflicted?"

VI. Did the Government deprive Petitioner "of Life, Liberty, or property, without due process of law . . . equal protection of the laws?"

PARTIES TO THE PROCEEDING

Petitioner Gene Rechtzigel was the Defendant in the District Court proceedings and Appellant in the Court of Appeals proceedings. Respondent State of Minnesota, City of Apple Valley was the prosecuting authority in the District Court proceedings, and also in the Court of Appeals Proceedings.

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JURISDICTION

The judgment/order of the Minnesota Supreme Court was entered on October 29, 2019, (the entry date) (App. 53) from which a timely 90 days for petitioning a Review on Certiorari is by January 27, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, *and to petition the Government for a redress of grievances.*

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and *seizures, shall not be violated*, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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 the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.*

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district . . . to be informed of the nature and cause of the 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.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Minnesota Constitution, Article I, Bill of Rights, Sec. 4 Trial by Jury says that, "The *right of trial by jury shall remain inviolate*, and *shall extend to all cases at law* without regard to the amount in controversy." Also in Sec. 2 Rights and Privileges, "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof,

unless by the law of the land or the *judgment of his* peers . . .

Minnesota Constitution, Article I, Sec, 8 Redress of Injuries or Wrongs says that, "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property, or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

Minnesota Constitution, Article I, Sec. 7, says that, "No person shall . . . be deprived of life, liberty, or property without due process of law."

Minnesota Statute 645.17 Presumptions In Ascertaining Legislative Intent says that, "(3) the legislature does not intend to violate the Constitution of the United States or of this state."

STATEMENT OF THE CASE

This case shows the extreme extent government oppression grows into, when left undisturbed, unchecked, in its usurping of the peoples rights to life, liberty, property, and equal protection of the laws.

This case is proof that when government is allowed to condemn, seizure of property without public need of all being "taken," and not being required to give "just compensation" through trial by jury for the property "taken" (18-1373), that government will then grow into a dreadful monster, of criminalizing the freedoms

and rights to life, liberty, property, and the pursuit of happiness; which is the case of this instant appeal to the United States Supreme Court, to seek relief and justice from governmental usurpations taking the place of man's God given rights and violating the United States Bill of Rights, including the First Amendment of the United States Constitution, which in this instant case government has criminalized Liberty, Due Process, and Equal Protection.

This case shows how Petitioner was falsely accused, maliciously prosecuted, unjustly sentenced, and how cruel and unusual punishment was inflicted.

This case shows that the Dakota County Court rubber-stamped whatever the prosecutor of the City of Apple Valley, Minnesota wanted with no respect shown for Petitioner's Rights, Due Process, and Equal Protection under the United States Constitution, Minnesota Constitution, Minnesota Statutes, and Minnesota Rules.

This case shows no evidence of a Minnesota Statute or Minnesota Rule being violated by Petitioner. When Petitioner asked the court for the Statute or Rule that was violated, the trial court asked the prosecutor who had no response, and said they did not know. The prosecutor and the Dakota County Court later created false evidence with a Rule having no foundation that can be legally and constitutionally applied.

Petitioner has a family farm that has been farmed in the family for over 70 years, and is zoned agricultural.

Petitioner had plowed the ground that spring, always having farm machinery, corn stored in the bin, hay stored in the barn, which land and building is the headquarters of all farm operations and farm land management.

Petitioner that previous winter shared with the city the plan and bought new farm fencing to keep trespassers out, keep animals in, to serve also as a privacy fence and noise barrier fence, but the main purpose was be the final safety and security measure for the farm animals, farm operation, and the general public!

Petitioner planned and bought all the fencing materials and had all of it delivered into the newest and largest barn to be installed no later than the end of spring, so the grounds can be disked and planted with corn.

Respondent, City of Apple Valley, had no objection to the fence until 1/3 of the fence was installed, which Respondent objected for pure harassment purposes only, a farm fence that looked very beautiful in appearance (for it had a solid beautiful wood grain) and provided for the public welfare, safety, and security where upon the City of Apple Valley should be well pleased by Petitioner and praising Petitioner.

Petitioner's farm fence is exempt from all Minnesota Statutes and all Minnesota Rules because it is

connected to and is an extension of the farm buildings, farm operation, for farm animal safety, security, and public welfare, which pleases the Statutes and Rules of the State of Minnesota entirely, fully, and is exempt from all Statutes and Rules for being built on private farm land for farming purposes.

Respondent, intentionally for harassment, Unconstitutionally and maliciously prosecuted Petitioner endlessly for years with no real evidence, but with false charges, bias hate, untruthful witnesses, framed Petitioner repeatedly, unlawfully, until causing Petitioner's lawyer to run to Africa and hide from the malicious harassment the prosecutor was steam-rolling my lawyer and Petitioner with; abusive (North Korea government) types of abuse, behavioral types of injustice and abuse having the ingredients of reckless lawlessness forming frame-ups that denies Petitioner's Life, Liberty, Property, the pursuit of happiness, denying U.S. Constitutional Rights and God given Rights, which this instant case will show and prove out with careful examination.

Petitioner in light of the equal protection clause of the 14th amendment of the United States Constitution, is every other farmer in the state of Minnesota being held to the same legal standard alleged by Respondent under the Minnesota Building Code? Petitioner is a farmer, who keeps pigs, grain, hay, feed, and farm machinery always on the property in question since the 1950s. Respondent has not met its burden of proof beyond a shadow of a doubt of what ordinance, building code rule, or statutory law Petitioner has

allegedly violated? Petitioner still does not know of any building code rule that has been violated by Petitioner. Even Petitioner's own engineer repeatedly stated to Petitioner and Petitioner's employees that he cannot furnish any statute, building code rule, or ordinance that Petitioner violated, because he doesn't know of one, and stated repeatedly "it is all politics".

On September 7, 2016, the City put fraud upon the court by denying that Petitioner "fully complied within 10 days of the April 6, 2016 court order" by "paying a total of $580 in fees, apply for a permit, deliver a certified land survey with a drawing, and allow city to inspect"

Petitioner was framed by Prosecuting Agency of the City of Apple Valley, as Petitioner's Attorney and Petitioner was never served with Summons (Doc. 31, from Register of Actions (App. 54-67, Also App. 31), Case No. 19AV-CR-15-10738) and was denied the opportunity to appear on October 6, 2016 by Prosecuting Agency's refusal to serve Summons and notice on Petitioner's Attorney of the October 6, 2016 hearing, of which there is *no affidavit of service in this case file, proving that Petitioner was falsely and maliciously accused of not appearing October 6, 2016*, of which, there never was a hearing on that clay, according to court reporter saying so, that there is no record of a transcript on that day of a hearing, for there was no hearing held.

Petitioner states that Criminal Procedure Rule 3.01 states "the *Court MUST* issue a ***summons***" which, according to the Court Record, was never issued

and no affidavit of service was submitted showing otherwise.

Petitioner says the District Court issued a fraudulent warrant (Doc. 34, from Register of Actions (App. 54-67, also App. 31, and App. 34), Case No, 19AV-CR-15-10738), the false charge of not attending the October 6, 2016 hearing that was never held, and Petitioner and Petitioner's Attorney was never served notice of hearing, this malicious framing took place by Prosecuting Agency, fraud was put upon the court, to defraud Petitioner of innocence of having faithfully satisfied the plea bargain agreement. Minn. Criminal Procedure Rule 3.01 states, "If a defendant fails to appear in response to a summons, a warrant must issue" but in this instant case defendant was never issued a summons which gives the prosecuting agency no foundation, no legal authority to issue a warrant, because prosecuting agency failed its legal duty to issue a summons which is required by Criminal Procedure Rule 3.01.

Petitioner states he was discharged from probation on April 23, 2017 "Discharge from Probation" (Doc. 60, from Register of Actions (App. 54-67, App. 27, App. 31), Case No. 19AV-CR-15-10738) The prosecuting agency of Apple Valley and the trial court abused it's discretion by not dismissing the charges, by not terminating the hearings and case, for lack of jurisdiction.

Petitioner deserves to have the $300.00 bail (App. 54, Doc. 40) returned back to Petitioner for lack of

jurisdiction, which the trial court and Court of Appeals erred in not granting.

Petitioner believes that the Minnesota Court of Appeals misstated that Petitioner made an Ex Parte motion in September of 2017, "to dismiss the charges to which he pleaded guilty" on page 4 of their opinion (A18-1449, A18-1615) filed on August 12, 2019 (App. 1-16) which is interpreted wrong because Petitioner clearly asked that the warrant be dismissed as notice of hearing and summons was never served on Defendant or Defendant's Attorney.

Petitioner states the Dakota County Attorney and the State of Minnesota Attorney General failed their Minnesota Statutes 590.01-590.11 Duties as required under Chapter 590 to give the Postconviction Relief Statute standing to an Amended and Timely Petition served on October 31, 2018, for Post-conviction Relief, for open court hearings on the Petition as required by Minn. 590.04 of the County Attorney and Minnesota State Attorneys Office.

Respondent and the district court entrapped Petitioner into an extension of probation by not showing in the record (index 60, See App. 64) that *probating had been terminated before the prosecutor and trial court extended it* after the December 2017 hearing. Which caused Petitioner to be denied the opportunity to object which violated Petitioner's procedural due process rights. Probation was truly terminated beforehand, while Petitioner was led to believe the trial court had

jurisdiction to extend probation but in reality the trial court had no jurisdiction to extend probation.

Respondent and the trial court committed Double Jeopardy against Petitioner, because the court had no Jurisdiction, not from the legislature nor from the plea Agreement, nor from the conditions of the April 4, 2016 (App. 46-50) sentencing Order on a stay of imposition pursuant to M.S. 609.135, *to require Petitioner to "obtain a stamped drawing from a licensed engineer within 30 days of the date of this order" and this abuse of discretion by the trial court violated the original plea agreement that was agreed to on April 4th, 2016.*

Petitioner claims the record shows that the court had no jurisdiction to require disposition/resentencing hearing on March 9th, 2018. (See *Doc. 66 from Register of Actions" Case No. 19AV-CR-15-10738, App. 54-67)*

Respondent and the court had no jurisdiction to extend Petitioner's probation to July 26th, 2018 (App. 27), *because Petitioner was discharged from probation on April 23rd, 2017* (Index #60, App. 64)

Respondent (Prosecutor) violated the Minnesota Constitution Art. 1, Sec. 1, 2, and 8 as Petitioner has indeed been denied his right to be free from bias, personal interest, conflict of interest and unlawfulness prosecution under Minnesota Constitution Article I, Sec. 1, 2, and 8, for Petitioner filed many motions to dismiss throughout the record, and recited the transcripts of oral argument throughout Petitioner's Brief many times which is in the record.

Petitioner's motions to dismiss are contained in the record (See App. 37-45, Document Index #10, Amended Motions of Petitioner stating in detail the Proof of the Family Farm being exempt from the building code in support of a Motion to Dismiss for lack of jurisdiction over the subject matter, Motion to Dismiss for lack of Jurisdiction over the person because land is owned by Trust also; Motion to Dismiss for lack of probable cause as land in question is zoned agricultural in Exhibit A of Doc.#10; Family Farm growing farm crops in Exhibit B1, B2, C of Doc. Index #10; Stop Work Order was illegally Written in Exhibit D of Doc. Index #10; City has no probable cause in Exhibit E, Exhibit F, Exhibit G, Exhibit H of Doc Index #10) (See ADD 6 of Reply Brief). See also Motions to Dismiss filed September 28, 2017 (Doc. Index #41), filed October 18, 2017 (Doc. Index #54) filed October 19, 2017 (Doc. Index #57), filed January 25, 2018 (Doc. Index #64) filed June 7, 2018 (Doc. Index #74)

Petitioner claims the trial court under Judge Knutson is Bias, with personal interest because on February 6, 2012 Judge David Knutson approved a fraudulent stipulation that was not signed by Gene Rechtzigel, nor did Gene Rechtzigel have knowledge of it being signed fraudulently by a fired Attorney Erick Kaardal who committed a crime of fraud in signing it without Petitioner's approval and knowledge (See App. 68-77)

Respondent has offered no real facts to prove out his case, as the state has the burden of proof to prove that a crime was committed by Petitioner. The State

has only made conclusionary statements which shows Respondent's case has no merit.

Petitioner is being denied rights under Minnesota Constitution Art. 1, Sec. 7. that grant Petitioner the right to not "*be held to answer for a criminal offense without due process of law, and no person shall be put twice in jeopardy of punishment for the same offense . . . nor be deprived of life, liberty, or property without due process of law.*"

Petitioner is being denied rights Under Minnesota Constitution art. 1, section 4. For Petitioner was not given a final judgment by the Trial Court until August 2nd, 2018, (App. 17) and September 10, 2018, (App. 26-36) which is required by Rule 26.01, subdivision 3 or 4, for Petitioner to be able to file an Appeal with the Minnesota Appellate court. (*State v. Jordan*, 426 N.W.2d 495, 496 (Minn. App. 1988) said, "*a criminal defendant has a right to appeal any conviction, and to raise pretrial issues (See appendix 51-52, original order) in that appeal; therefore, pretrial appellate review is rarely granted to a criminal defendant*") and (See Appendix 51-52 Order A16-0253, March 8, 2016). Petitioner has a right to appeal all orders because the final Judgment was not given until August 2nd, 2018 (App. 17) and September 10, 2018 (App. 26-36). Petitioner has a Constitutional right and a March 8th, 2016 (App. 51-52) Minnesota Appellant court order A16-0253 right to appeal the entirety of this instant case.

Petitioner was compelled by the Trial Courts order of March 9th, 2018 by Judge Knutson ordering

Petitioner to be a witness against himself in Violation of the Minnesota Constitution art. 1 section 7. Respondent (City of Apple Valley) had the trial court force Petitioner with a trial court order to hire a licensed engineer whom the City tampered with and prejudiced Petitioner. *Respondent and trial court forced Petitioner to be a witness against himself, and the engineer was not impartial but was made partial to the City by communications between the two which indeed did violate Petitioner's Constitutional right to not be forced to be a witness against himself.* Respondent does not have a violation of wind load in the Minnesota Building Code to charge Petitioner with so Respondent and the Court created partiality by *tampering with the engineer to produce a report that would cause Petitioner to be a witness against himself which is in violation of Minnesota Constitution Article 1 and 7, which states "No person shall be held to answer for a criminal offense without due process of law, and no person shall be put twice in jeopardy of punishment for the same offense, nor be cam el led in an criminal case to be a witness against himself or be deprived of life, liberty, or property without due process of law." "The Double Jeopardy Clause of the United States Constitution provides that no person shall be subject for the same offence to be twice put in jeopardy of life or limb."* U.S. Const. amend. V. The Clause offers criminal defendants protection from . . . 'a second prosecution for the same offense after conviction'; and (3) 'Multiple punishments for the same offense.' *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)." "*The Double*

Jeopardy Clause applies to the states through the Due Process Clause of the Fourteenth Amendment."

Petitioner under the U.S. Equal Protection Clause and Due Process Clauses of the Minnesota Constitution was not treated with Equal Protection as other farmers axe in the state of Minnesota pertaining to having an 8 foot farm fence.

Petitioner was threatened with an Unlawful Taking of the farm fence to be sentenced for 20 days in jail (App. 30), unless fence is cut down and destroyed from original condition. Petitioner had no choice but to cut 1 to 2 feet off his farm fence when faced with the reality that he either could cut it down, or go to jail; with no other alternative.

The trial court erred *in allowing the City to dictate a second punishment* to the trial court what Petitioner's punishment should be; *after the fact that Petitioner was already punished with a fine, and complied with every requirement agreed upon at the original plea agreement.* Petitioner was forced at great cost to have approximately 1 foot of the farm fence removed, when the proper remedy is dismissal of this case.

The Court and Respondent are treating Petitioner's farm fence, which is an extension of our farm's barn, and farm buildings, *as if they have done "a taking" according to the Courts own confession and wording, "I'm looking at ordering the city to take the fence down, so we're done arguing the Constitutionality, the interpretation of the statute whatever else."* As stated by trial

court judge Knutson on Lines 9-18, page 4, March 9th, 2018 hearing trial court transcript.

Petitioner was subject to and threatened with Cruel and Unusual Punishment, The Minnesota Constitution Articles 1 and 7 and the U.S. Equal Protection Clause protects Petitioner from the injustice of being punished with 20 days jail time while other people of the same violation receive only a fine plus surcharges of $238.00 total according to the Minnesota Rules.

Petitioner should have been allowed to withdraw his plea and have a Trial by Jury after the state violated the plea agreement and entrapped Petitioner by purposely not sending a summons to Petitioner's attorney, for Petitioner was denied by the State the opportunity to show up at the October hearing, Case law says, "But we exhibit a "watchful jealousy" of any "impairment of the right of a free and inviolate jury trial." *Flour City Fuel & Transfer Co. v. Young*, 150 Minn. 452, 458, 185, N.W. 934, 937 (1921) "*A law is unconstitutional if it renders the jury-trial right 'so burdened with conditions that it is not a jury trial, such as the Constitution guarantees.'* Id. at 454, 185, N.V. at 935." "*The jury trial right exists for* any *'type of action' for which* a *jury trial was provided when the Minnesota Constitution was adopted in 1857. Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 149 (Minn. 2001)."

REASONS FOR GRANTING THE PETITION

I. **Did the Government deprive Petitioner the First Amendment Right "to petition the Government for a redress of grievances?"** Yes, probation is Unconstitutional when the prosecutor does not follow through with the original probation agreement and robs Petitioner of the United States Due Process Trial by Jury. Petitioner's brief appropriately raises issues from a number of prior hearings dating back farther than his alleged conviction which he pled not guilty through a coerced Afford plea which he indeed was told would be no admission of guilty by doing this type of a plea bargain; of which the prosecuting authority reneged on, did not honor the plea bargain, but broke it maliciously.

Petitioner is entitled to a formal complaint on the new wind load charge that was never charged out in a court of law with a charging document and given an arraignment hearing to enter a plea, but as the record shows Petitioner was denied Due Process, and struck with Double Jeopardy by extending probation to include and cover new charges without being given the right of knowing what law was violated through the use of a formal complaint.

Petitioner's Alford Plea on April 4, 2016 (App. 46-50) was induced by promises and threats, which deprive it of its character as a voluntary act.

Petitioner fully complied with the Plea Bargain Agreement within 10 days of the April 4, 2016 Order (App. 46-50).

Respondent instead of vacating the April 4, 2016 (App. 46-50) sentence as promised, did the opposite by fraudulently "Vacated the Stay and Issued a Summons alleging that the Defendant failed to submit the land survey/drawing to the city within sixty days of April 4, 2016 (App. 46-50) as required by the terms of his probation" (quote taken from second paragraph on page 3 of the Court Order dated December 8, 2017 (App. 37-45) of Judge David L. Knutson, Judge of District Court of Dakota County) which is an act of putting fraud upon the court by Respondent, because Petitioner did submit a certified land survey and a drawing of the fence to George Dorn along with the cash payment paid-in-full for the permit on April 13, 2016 as per the written receipt #B 61948.

Respondent and trial court putting a farmer in Jail for 20 days because a farm fence is one foot taller than what the City of Apple Valley likes is not only Unconstitutional but is maliciously applying a building code that a farm operation is exempt from, by a Minnesota Statutory exemption, by a Minnesota Rule exemption, and exempt because building code does not even apply.

The charges and prosecution, of 19AV-CR-15-10738, is without merit and frivolous because the Respondent (City of Apple Valley) is unable to show cause how Defendant is in violation of the code or any other laws or ordinances of this jurisdiction. Respondent has the burden of proof to prove up the specific law or ordinance that the current fence of Petitioner is in violation of and needs a permit to correct this alleged violation that Respondent keeps alleging but is in failure of providing proof

of any violation according to the code, law, or an ordinance. (Note: At a hearing, the Court asked the Prosecutor by what code the fence was in violation of and the Prosecutor could not give the court a code violation and show how Defendant is not complying with the code, but instead changed the topic.) *Whether an 8 foot farm fence that is providing greater security, safety, privacy to both farm animals and to the public is affecting public health or general safety for being 8 feet tall instead of 7 feet tall is unproven by Respondent and sets the alleged violation as frivolous and meritless.*

Respondent's Code is for building safety, is called "Department of Building Safety" (the intent and purpose of the code doesn't cover a farm fence for farm animals) and the wind loads that the city is using under 1303.2200 – "SIMPLIFIED WIND LOADS" Subpart 1., only applies an enclosed building ("B. In order to utilize wind loads from this part, the building shall meet the following requirements) as under B., (3) "enclosed building" as does Subpart 2. "Simplified design wind pressures" of Horizontal and Vertical Pressure Exp B 25 psf. The wind loads in the code is not applicable for a farm security, privacy, sound reduction fence as defendant's fence is for the farm and the animals of the farm. Even the strict "Capitol area zoning and design" area does not use wind loads requirements on it's visual screens fences over 6 feet as stated under 2400.2630, A., A., (4). Hence, the charges and prosecution of Respondent (City of Apple Valley) should be dismissed by the court.

Petitioner did not plead guilty, but as part of a plea bargain pled an Alford plea (Alford plea

"1972, A guilty plea that a defendant enters as part of a plea bargain without admitting guilt, *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)).

The extension should not have been 6 months, but only 90 days as "An extension may not make the probationary period longer that the maximum statutory sentence, (*State v. Fritsche*, 402 N.W.2d 197 (Minn. Ct. App. 1987)."

Minn. R. Crim. P. 19:18 says, "If the prosecution fails to honor a commitment or duty that is part of a plea agreement, the defendant should be allowed either to withdraw his plea or to obtain specific performance, depending upon the circumstances. (*Santobello v. New* York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) (it makes no difference that the judge claims the error did not influence the sentencing decision; prosecutor failed to make a promised recommendation).

Ambiguity: Thus the threshold issue in the analysis is whether the statute's language is ambiguous. (*State v. Peck*, 773 N.W.2d 768, 772 [Minn. 2009]). If not, then "construction is neither necessary nor permitted." A statute or word or phrase is "ambiguous" if it is subject to "more than one reasonable interpretation." The same principle applies to construction of rules of criminal procedure. (*State v. Underdahl*, 767 N.W.2d 677, 682 [Minn. 2009])

Minn. Stat. Ann. 645.16 provides that the "object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." When the language is not clear, legislative

intent may be found by considering, among other things:

(1) The occasion and necessity for the law;

(2) The circumstances under which it was enacted;

(3) The mischief to be remedied;

(4) The object to be attained;

(5) The former law, if any, including other laws upon the same or similar subjects;

(6) The consequences of a particular interpretation;

(7) The contemporaneous legislative history; and Legislative and administrative interpretation of the statute.

In addition, certain presumptions are prescribed for determining the intention of the legislature. Minn. Stat. Ann. 645.17 creates presumptions that:

(1) The legislature does not intend a result that is absurd, impossible of execution, or unreasonable;

(2) The legislature intends the entire statute to be effective and certain;

(3) The legislature does not intend to violate the constitution of the United States or of this state;

(4) When a court of last resort has construed the language of a law, the legislature in subsequent

laws on the same subject matter intends the same construction to be placed upon such language; and

(5) The legislature intends to favor the public interest as against any private interest. "Municipal ordinances are to be construed according to the same rules as statutes. (*State v. Otterstad*, 734 N.W.2d 642, 647 [Minn. 2007]).

It is important that the principle of statutory construction in criminal cases, derived ultimately from the doctrine of due process, is popularly known as the "rule of lenity [leniency]," to resolve ambiguity in favor of being lenient to defendant. It was well-formulated in an early case which provided that no statute may create a crime "unless the intention of the legislature to effect that result is apparent." And if it remains doubtful whether a statute was intended to embrace certain actions "such acts or conduct must be regarded as not within the statute." (*State v. Walsh*, 43 Minn. 444, 445, 45 N.W. 721 (1890).

The rule requires that wherever there is ambiguity about the scope of a criminal statute the court must "resolve all reasonable doubts about the legislative intent in favor of the defendant,' and apply "the rule of strict construction" to all penal statutes. [*State v. Haas*, 280 Minn. 197, 200, 159 N.W.2d 118, 120 (1968).

8) The rule applies to all criminal laws, not only those creating offenses. [*State v. Zeimet*, 696 N.W.2d 791, 794 (Minn. 2005); *Barber v. Thomas*, 130 S. Ct. 2499, 177 L. Ed. 2d 1 (2010).

The rule applies to sentencing statutes. (*Miller v. State*, above; *State v. Underdahl*, 767 N.W.2d 677 Minn. 2009).

Respondent violated the First Amendment of the U.S. Constitution Right "to petition the government for a redress of grievances" by denying Petitioner the Right of having a Trial by Jury, concerning the lack of subject matter jurisdiction of Respondent and the protective right of having all criminal matters given a full and fair trial by jury.

II. Did the Government deprive Petitioner the Fourth Amendment Right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures?" Yes, Respondent violated Petitioner's U.S. Fourth Amendment Right that "no warrants shall issue, but upon probable cause" (Respondent did not serve the summons and did not notify Petitioner's Attorney Lucas Spaeth of the 10/06/2016 hearing and Respondent did not have a hearing that day, no transcript, no record of probable cause).

III. Did the Government deprive Petitioner the Fifth Amendment Right that "No person shall . . . be subject to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

Yes, Respondent violated Petitioner's U.S. Fifth Amendment Right that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. . . . " of which Petitioner was denied. Petitioner was denied an indictment of a grand jury concerning an infamous crime that Respondent is allegedly charging Petitioner without the protection of a grand jury making the charging of a crime that Respondent claims deserves 20 days of jail confinement, with no probable cause shown what criminal statute was violated; no record the trial court had a hearing on 10/06/2018 and no record of having a summons served on Petitioner's Attorney, and no record of a statutory crime being committed by Petitioner.

Respondent put Petitioner in jeopardy twice by alleging the same offense twice and Unconstitutionally compelled Petitioner to be a witness against himself in this criminal case by forcing Petitioner to attend about 10 court hearings, giving out about 10 court orders to require and force Petitioner to be a "witness against himself" in violation of the U.S. Fifth Amendment when *Respondent has the trial court force Petitioner to get a permit for a fence that has been established for years* and then forcing Petitioner to hire an engineer who is talking to Respondent on what the unreasonable (150 miles per hour) wind load requirements should be in the engineer report to force Petitioner to be a witness against himself on an entrapment engineer report with no legal foundation of applicable rules either from the Minnesota Building Code nor from the Minnesota Statutes. Respondent created second false charge,

double jeopardy charge, by forcing Petitioner to comply with an entrapment prosecution of a wind load violation out of thin air with no citations from criminal statutes nor from criminal Building Code Rules that do not even exist, from which Petitioner is sentenced for 20 days for being a political prisoner of the State of Minnesota, and Petitioner was not only denied "life, liberty, or property" but Petitioner is being denied due process of having an "indictment of a grand jury" for an alleged "infamous crime" with a sentence 20 days of jail time, for doing nothing wrong under the Minnesota Building Code and Minnesota Statutes as having a family farm with farm animals & crops, and farm buildings & farm fence that is not under the Minnesota Building Code and Minnesota Statutes. It Appears Petitioner is being persecuted for being a Christian, Republican, and for being a Farmer, and is unlawfully being charged for a crime that does not exist which is a direct U.S. Constitutional violation of the 5th and 14th Amendments of the United States Constitution for Respondent is twice putting Petitioner into jeopardy, violating the U.S. Fifth Amendment.

Respondent is compelling Petitioner to be a witness against himself on false charges, violating the U.S. Fifth Amendment.

Respondent is depriving Petitioner of life liberty or property, violating the U.S. Fifth Amendment.

Respondent is depriving Petitioner Due Process of law under violating the U.S. Fifth Amendment.

Respondent is taking Petitioner's private property (agricultural farm fence) for public use, without just compensation.

IV. Did the Government deprive Petitioner the Sixth Amendment that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district ... to be informed of the nature and cause of the 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." Yes, Petitioner wanted a trial by impartial jury, but Attorney Spaeth and Ms. Cassellius demanded that Petitioner plead the Alford plea (admitting no guilt) and pay a fine only. "*And apparently they are looking for a plea and a fine and you basically go on your way.*" Lines 10-12, page 8, April 4, 2016 Hearing) (App. 46-50)

Petitioner was promised No Jail time, pay only *a fine and you basically go on your way. "With respect to the statement that – that the state is asking for the maximum, we're not asking for any jail time. We could ask for 90 days in jail. We're not asking for any jail time.*" (lines 15-18, page 7, April 4, 2016 Hearing) (App. 46-50)

Petitioner understood the Alford plea to be admitting no guilt, but maintaining innocent. "*Alford*" line 15, page 10, and "*The Alford plea.*" line 13, page 16, April 4, 2016 Hearing) (App. 46-50)

Ms. Cassellius. the State, did not know *what the applicable code is*? "THE COURT: *Do we know what the applicable code is*? . . . *MS.* Cassellius: *I don't know.*" (lines 9,10,13, page 17, April 4, 2016 Hearing)

Petitioner is being sentenced of a crime without Ms. Cassellius coming forth with any proof that there was a crime committed, without proof of a code violation, without proving criminal intent, and without knowing and meeting the states burden of proof. "THE COURT: *Do we know what the applicable code is? Do you know – do you have* an *expectation that the fence would comply with the code or not comply with the code?* MS. CASSELLIUS: *I don't know. His attorney represented that he's pretty certain it's going to comply with code. I don't know. I know it looks solid. I don't know.* MR. SPAETH: *The fence was built to code. He had it professionally built with four-foot footings and eight foot high, so it does meet the wind resistance test and there's – there wouldn't be a problem with passing inspection. So . . .* " (lines 9-21, page 17, April 4, 2016 Hearing) (App. 46-50)

Petitioner's use of the Alford Plea would conditional stand 'THE DEFENDANT: "*As long as – and, of course, as long as the specs are not arbitrarily made very burdensome, I'll use that word.* THE COURT: *Okay.*" (lines 3-6, page 18, April 4, 2016 Hearing) (App. 46-50)

V. **Did the Government deprive Petitioner the Eighth Amendment Right to not impose "cruel and unusual punishments inflicted?"** **Yes,** The City of Apple Valley and the trial court imposed cruel and unusual punishments of inflicting 20 days jail time for removing an "*unsafe condition*" and the Minnesota State Commercial Building Code does not reach (Minnesota Statutes 326B.121, Subdivision 1. (c) The State Building Code does not apply to agricultural buildings, an agricultural fence, because it is under agricultural buildings.

a. The City of Apple Valley forcing Petitioner to cut down the beautiful expensive $40,000 thousand agricultural fence or go to jail for 20 days, which is cruel unusual punishment for removing an unsafe condition.

VI. **Did the Government deprive Petitioner "of Life, Liberty, or property, without due process of law . . . equal protection of the laws?"** **Yes,** The trial court erred in allowing the prosecutor to add additional terms to the plea agreement far beyond what was agreed upon during the plea proceedings. At the hearing in front of Judge Knutson, on January 25th, 2018, the court stated "*THE COURT: But you had ten days to do it. THE DEFENDANT: I Know. On the ninth day when we did this, I objected to that writing being on there immediately. So today I'm no different than on the day that this was written out. April 13th – THE COURT: Well, Mr. Rechtzigel, they're not going – they can't add any additional terms to my sentence in a receipt*" (lines 2-9, page 12, January 25, 2018),

and yet that is precisely what has occurred. The original order of Judge Knutson on April 4th, 2016, (App. 46-50) was very clear in stating each and every term that was discussed and agreed upon by both Petitioner and Respondent. "*1. Conditions, other, Defendant must apply to the city of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation. 04/04/ 2016" (index 28).* The original sentence on April 4, 2016 (App. 46-50) does not state that Petitioner must endure the unnecessary burden of hiring a professional licensed engineer at his cost, or to make the fence withstand an arbitrary 90 or 150 mile per hour wind speed. Also the wording of the original sentence does NOT say comply with all applicable State Building Codes but "applicable city codes." Petitioner should have been allowed to withdraw his plea, and been given a Trial by Jury.

a. A prime example of how the prosecutor and the Court have erred in allowing an evolution of the original sentencing order of April 4th 2016 (App. 46-50) is stated, *THE COURT: What exactly is required by the State Building Code? What requirement are you talking about? MS. CASSELLIUS: The stamped drawing from a licensed engineer. THE COURT: Any time a fence is being built? BY MS. CASSELLIUS: Q. Mr. Dorn, is a stamped*

drawing from a licensed engineer required any time a fence is built in the City of Apple Valley? A. No. Q. When is it required? A. There's a *section in the building code – and we have it in. (indicating) one of our letters there – that allows the building official to gather additional documentation from architects and engineers when the building official cannot determine whether or not the fence, per se, would meet the 90 mile an-hour load. It's required to be proven to me that it will sustain that type of a wind load and stay erect rather than blowing over."* (lines 19-25, page 15, lines 1-12, page 16, January 25, 2018) There is no 90 miles per hour wind load for a farm buildings fence structure with no roof in the Minnesota Building Code, chapter and verse please? Oh, there is for buildings with roofs, is that what Mr. Dorn is doing, creating misstatement without foundation? Is Mr. Dorn taking things out of context by creating a pre-text of falsehoods of fraud upon the court? *Mr. Dorn is then violating the Minnesota State Building Code which Minnesota Statutes 326B.118 Subd. 2. (c) "A municipality must not by ordinance, or through development agreement, require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code."* Where Mr. Dorn in the Minnesota State Building Code is the requirement that a farm fence with no roof is required to withstand a 90-mile per hour wind load? When no other farmer in the State with a farm fence is required to do so, that Mr. Dorn is a violation of the Equal

Protection clause in the 14th Amendment of the United States Constitution.

b The Court erred in accepting the testimony of George Dorn, witness for the prosecutor, in that Dorn specifically misrepresents the normal procedure of the City of Apple Valley when it comes to fences, "*Q. Do you typically require a stamped drawing from a licensed engineer for fences in the City of Apple Valley that are over 6 feet high? A. Yes, we would. If it's a chain link fence, no. But if its something of a solid material that will take* on *a wind load, then yes.*" (lines 11-16, page 17, January 25th, 2018). In the very same hearing, still testifying, George Dorn states the complete opposite is actually true, "*BY THE DEFENDANT: Q. Mr. Dorn, has the City of Apple Valley in the last four years required anyone else to hire an engineer specifically to inspect and work on a fence? A. I've only been there three years, so I couldn't testify to four years. However, there's no other fences that I can recall that were installed that were 8 feet high, so I couldn't testify to that.*" (lines 6-13, page 52, January 25th, 2018) Mr. Dorn directly contradicts himself by first stating that Apple Valley's normal procedure is to require an engineer, and then states that Apple Valley actually has never required anyone other than Petitioner to be subject to the unreasonable requirement of hiring a professional engineer to install a fence. Mr. Dorn's testimony was therefore unreliable and inaccurate, and should not have been considered.

c. The Trial court erred in allowing the prosecutor to continue requiring a professional engineer despite the testimony of Zachary Stadem proving that the engineers in the actual field stated themselves they could not even work on a fence as there is no State Building Code Guidelines to use to even make a report, "*BY THE DEFENDANT: Q. Okay, Mr. Stadem, did you call some – were they certified engineers? A. Yes. Q. Did you ask them to do a private inspection of the fence? A. Yes. Q. And when you asked them that and they said "yes" what was their did you inform them – did they ask you what all it would be about? A. Well, that depends on which person I talked to, but yes, generally most of them started right off the bat saying normally – MS. CASSELLIUS: Objection, Hearsay. THE COURT: Overruled. You can answer. A. Normally the engineers aren't hired very often for fences. BY THE DEFENDANT: Q. did they give you any specific – any specific answers to your – to your inquiry to do this inspection? A. Yes. The reason that they don't generally do fences is because there is – I was told that there is no specific part in the State Building Code, which requires – for them to be able to go off of to design a fence. There's a statute pertaining to walls, but nothing to do with fences. Q. So did they mention walls to you? A. Yes, they specifically said that there's a 90-mile-per-hour wind load for walls, like retaining walls or outside walls of the house or things like that, but their opinion was that it does not apply – it cannot be applied to a fence because a fence is not a wall. Q. So did they*

say "no" to you then? A, Yes, every one of them, said "no" to me. There was only one that would even consider it, but he told me that it would cost in excess of $3,000 just to do the basics. But then like I had said, after he looked through the code, he told – he came back and told me that he could not because there is nothing for an engineer to go off of in the code, no specifications for a fence. He would have to – the only statute for 90-mile-an-hour wind resistance has to do with walls. (lines 24-25, page 57, lines 1-25, page 58, lines 1-11, page 59, January 25th 2018).

d. The Trial Court erred in ignoring key witness testimony of Zachary Stadem in relation to Petitioner completing all requirements assigned to Petitioner; "*BY THE DEFENDANT: Q. Okay, Mr. Stadem, what all did we do to comply with the order? A. We included a land survey. I also included a drawing. And I – and we had paid the permit fee. I believe that was the only requirements, off the top of my head.*" (lines 6-11, page 60, January 25th 2018).

e. The Trial Court erred in ultimately allowing Petitioner's Constitutional Rights under the 8th amendment be violated, which states "*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted*", by the prosecutor, by allowing Respondent to amplify the final punishment and sentence; "*Therefore, the State requests that Mr. Rechtzigel be found in violation of probation. The State is requesting that he be required to submit a stamped drawing or*

letter from a licensed engineer within 21 days of today's date. In the event Mr. Rechtzigel fails to do so, the State requests that he report to serve two days in jail ten days from the compliance deadline." (lines 2-8, page 64, January 25th 2018). Respondent first asks for 2 days of jail time, but ultimately, at the hearing on September 10th, 2018, (App. 26-36) Respondent tells the Court that they want Petitioner to serve 20 days in jail, ten times what Respondent originally asked for on January 25th; *"The Court had previously indicated that its not going to extend probation anymore. The maximum penalty is a 90-day sentence, $1,000 fine. While that is an attractive request for me to make, I'm not going to make that, your Honor, I'd like to request that he serve 20 days in jail."* (lines 17-21, page 4, September 10th, 2018) (App. 26-36). By framing the 20 days as a less severe punishment than 90 days in jail, the prosecutor can appear to be "going easy" on Petitioner, when in fact Respondent is multiplying the original sentence recommendation by a factor of 10, which is far more cruel and unusual. Ultimately, the Court in fact does sentence Petitioner to 20 days in jail, the exact recommendation of Respondent, inflicting an Unconstitutional, and severe burden on Petitioner.

f. The Trial Court erred in allowing the Respondent to add the requirement of a professional engineer, despite stating *"and I'm just telling the City that a fence is a fence. A fence in my mind is not a structural wall to protect people sleeping behind. A fence is a fence."*

(lines 1-3, page 71, January 25th, 2018). The Trial Court is correct in that there is nothing in the Minnesota Building Code that states a fence has to withstand a 90-mile-per-hour wind, a fence is not a wall.

g. The Trial Court erred in showing prejudice or bias towards Petitioner by getting angry and interrupting Petitioner when Petitioner was only trying to understand what the Court was telling him; "*THE COURT: You don't have 180 days. You did under the permit if you would have gotten a permit to begin with before you constructed the fence. You didn't do that. You went and constructed the fence. You violated the ordinance. I found that you were in violation you violated the ordinance, you were found guilty of that, and now The found that you are in violation of your probationary sentence. So we don't have 180 days. I'm willing to consider a few days. MR. RECHTZIGEL: Your Honor – THE COURT: Don't 'Your Honor' me, okay?*". Petitioner was simply trying to ask the court a question and was immediately cut off angrily by the Court, and told false information about allegedly violating an ordinance despite the fact that Petitioner has never admitted any wrongdoing by entering an Alford Plea, as if the Court had already decided what Petitioner was guilty of before even hearing what Petitioner had to say.

h. Minnesota Statutes 326B.121 Subdivision 1. (c) "The State Building Code does not apply to agricultural buildings. . . ."

i. Minnesota State Building Code 1300.0120 PERMITS does not apply to agricultural buildings and the farm fences that go with the agricultural buildings. The Subpart 3, A. under 1300.0120 pertains only for and to a commercial building and (2) commercial fences.

ii. Agricultural Buildings and their Agricultural fences are exempt from the Minnesota State Building Code as stated in Minnesota State Building Code 1300.0030 Subpart 2. A. "The State Building Code does not apply to agricultural buildings. . . ."

iii. Petitioner has an Agricultural fence that goes with the Agricultural buildings that house farm machinery and farm animals and grain.

iv. The Apple Valley prosecutor and Mr. Dorn put fraud upon the trial court in this case and matter.

v. A Stop Work Order, 1300.0170, there is an exception to the Stop Work Order, to remove an "**unsafe condition**." The putting up of Petitioner's farm agricultural fence removed an unsafe condition of not securing the farm animals. Petitioner should be praised and thanked by the City of Apple Valley for providing privacy, security, safety to the public welfare of Apple Valley.

CONCLUSION

1. A prayer of relief the sentencing orders be reversed.
2. A prayer of relief that Petitioner be granted $40,000.00 compensation for the Agricultural Fence.
3. A prayer of relief that a trial by jury be granted to Petitioner.
4. A prayer of relief that Minnesota State Building Code does not reach Petitioner's Agricultural Fence.
5. A prayer of relief that Petitioner be allowed to build a wooden 8 foot Agricultural Fence for security and safety of the farm operation and public without a permit as stated in Minnesota Statutes 326B.121, Subdivision 1. (c).

Petitioner's prayer is:

United States Supreme Court Reversed and Remanded the Court of Appeals of Minnesota and trial court and grant the above relief of the conclusion and,

Accordingly, the United States Supreme Court should review the decision of the Minnesota Court of Appeals.

Respectfully submitted,

Dated: January 27, 2020

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