NO. 20-1098

IN THE

SUPREME COURT OF THE UNITED STATES

TOD KEVIN HOUTHOOFD, in pro se

Petitioner,

vs.

LES PARISH, Warden,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO MICHIGAN SUPREME COURT - DENYING REVIEW

PETITION FOR WRIT OF CERTIORARI

Tod Kevin Houthoofd #596112
Oaks Correctional Facility
1500 Caberfae Hwy.
Manistee, MI 49660
231-723-8272

QUESTION PRESENTED

Does Petitioner's convictions violate the U.S. Constitution and prior decisions of the U.S. Supreme Court? (See page 2)

Petitioner says: Yes.

Respondent says: No.

PREFACE TO THE QUESTION PRESENTED

Petitioner was convicted in the Saginaw 10th Circuit Court on three separate charges, all occurring at different dates and times, and counties.

Two of the charges, Intimidating a Witness and Solicitation to Murder, allegedly occurred in other counties; and were investigated by those counties and the evidence was found insufficient and no charges were brought by these county prosecutors. The Michigan Attorney General's office also found the evidence insufficient to charge Petitioner.

Some years later, the Solicitation and Intimidation cases were forum-shopped by police officers into Saginaw County and this prosecutor's office charged Petitioner with these two crimes, which were included in a retrial of false pretenses after the first trial ended in a hung jury - 6-6 split.

In Michigan, the venue of the crime must be proven by the prosecution before the trial court attains jurisdiction and failure by the prosecutor to prove venue leaves the trial court want of jurisdiction.

Petitioner was denied due process of law as established by Michigan Constitution, Court Rule, and Statute(s), and this has violated the United States Constitution 4th, 5th, 6th, 13th, and 14th Amendments.

The Michigan Court of Appeals in Case No. 269505 on February 3, 2009, vacated the conviction for solicitation at p. 6 stating:

> "Under the United States Constitution, criminal trials must take place in the state and district where the crime was committed. *U.S. Const. Art, 3, § 2, cl. 3; U.S. Const. Amend. 6.*"

This court did not make a decision on the trial court's lack of jurisdiction.

The Michigan Supreme Court then ruled in *People v Houthoofd*, 487 Mich 568 (2010) at p. 571, found venue was not proper in Saginaw County, but the error was harmless because it was not a constitutional error.

This panel found that their own case law requiring the prosecution to prove venue beyond a reasonable doubt, has been abrogated by statute at p. 592, which is simply not true.

A new panel of Supreme Court judges in the case decision of *People v McBurrows,* 504 Mich 308 (2019), at p. 324, ruled that the defendant had a constitutional right to trial by a jury in the county where the crime was committed.

This Petitioner has included a list of the number of times he has challenged the trial courts jurisdiction here at p. iv.

The other issue is the inadequacy of the three Complaints located in the Appendix at F, G and H; under well established U.S. Supreme Court case law decision, Complaints such as these have been ruled as unconstitutional, and convictions have been reversed.

RULE 14.1 (B)(III). COMPREHENSIVE LIST OF ALL PROCEEDINGS IN OTHER COURTS DIRECTLY RELATED TO THE CASE IN THIS COURT:

1. 06/06/05-Motion before trial on the trial court's lack of jurisdiction.
2. 07/18/05-Motion before trial on the trial court's lack of jurisdiction.
3. 08/12/05-Motion before trial on the trial court's lack of jurisdiction.
4. 12/29/05-Interrogatory appeal to the Court of Appeals, Case No. 267348.
5. 02/09/06-Motion for Directed Verdict.
6. 08/07/07-P. v Houthoofd, Case No. 269505, Conviction vacated 2-3-09.
7. 11/19/07-P. v Houthoofd, Case No. 138959, Conviction reinstated 7-31-10.
8. 08/28/12-Motion before re-sentencing at pp 1-16, Saginaw 10th Circuit.
9. 09/27/12-Resent. @ allocution, pp 79 L 5; 81 L 23; 82 L 1-11; 84 L 5.
10. 02/29/13-Brief in Court of Appeals, Case No. 312977, at pp 1-2.
11. 04/10/14-Brief in Michigan Supreme Court, Case No. 149070, at pp 17-19.
12. 06/16/14-Motion to Disqualify Judge for Lack of Jurisdiction at p 20.
13. 01/05/15-Brief in Court of Appeals, Case No. 322592, pp 16-20.
14. 07/15/15-Brief in Michigan Supreme Court, Case No. 151970, pp 8-11.
15. 08/20/15-Habeas Corpus, Case No. 2:15-CV-12764 (E.D.S.D. Mich.).
16. 03/02/16-Habeas Corpus, Case No. 2:16-CV-10621(E.D.S.D. Mich.).
17. 03/13/17-Disqualification Hrg w/Chief Judge, 10th Circuit, pp 36-38.
18. 07/31/17-6500 Motion in COA 339459 raised warrants & jurisdiction.
19. 03/02/18-Brief in Court of Appeals, Case No. 332323 at pp 1-6.
20. 05/09/18-Brief in Michigan Supreme Court, Case No. 157740 at pp 45-49.
21. 05/10/18-Standard 4 Brief, Case No. 157740 at pp 1-5.
22. 05/18/18-6500 Motion to the Supreme Court, Case No. 157773.
23. 04/23/19-Complaint for Preliminary Injunction, Case No. 2:19-CV-11305.
24. 02/06/20-Standard 4 Brief, Case No. 349886. pp 1-9.
25. 02/24/20-State Habeas Corpus, Case No. 160965, pp 1-9.

TABLE OF CONTENTS

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly-held company owing 10% or more of the corporation's stock.

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF JURISDICTION

This action is being brought pursuant to 28 USC Sec. 1254. This Honorable Court has jurisdiction pursuant to 28 USC Sec. 1257(a); Rules of the Supreme Court gives the court discretion to consider a state case that "has so far departed from the acceptable and usual course of judicial proceedings, as to call for an exercise of the court's supervisory power."

The U.S. Supreme Court has ruled in *Younger v Harris*, 401 US 37 (1971) that "extraordinary circumstances do allow the federal courts to enjoin a pending criminal procedure when intervention is necessary for the protection of constitutional rights and without federal intervention, 'the danger of irreparable loss is both great and immediate.'" at p. 45 quoting *Fenner v Boykin*, 271 US 240, 243-44 (1926).

Finally, this court has jurisdiction that when a prisoner is held under a sentence by any court of the United States in regard to a matter wholly beyond or without jurisdiction of that court, it is not only within the authority of this court, but it is the duty to inquire into the cause of the commitment and if found to be as charged, to immediately release the prisoner from confinement.

The date of the judgment sought to be reviewed was entered on October 27, 2020, by the Michigan Supreme Court, Case No. 160965(23), Appendix C-1.

OPINIONS BELOW IN PETITIONER'S STATE HABEAS FILINGS

Appendix A	Manistee Co. Circuit Court, Case No. 19-16841-AH. Order to Show Cause Why a Writ of Habeas Corpus Should Not Enter, dated 10-21-2019.
Appendix A-1	Manistee Co. Circuit Court, Case No. 19-16841-AH. Order Denying Motion for Reconsideration, dated 11-7-2019.
Appendix B	MI COA, Case No. 351654. Denial of Habeas Corpus, dated 1-17-2020.
Appendix C	MI Supreme Court, Case No. 160965. Denial of Application for Leave to Appeal, dated 7-28-2020.
Appendix C-1	MI Supreme Court, Case No. 160965. Order Denying Motion for Rehearing, dated 10-27-2020.

EXHIBITS ATTACHED

Appendix D	Affidavit for Default Judgment.
Appendix E	Complaint for Preliminary Injunction dated 4-23-2019. 48 pages
Appendix F	Complaint - false pretenses - insufficient.
Appendix G	Complaint - witness intimidation - insufficient.
Appendix H	Complaint - solicitation of murder - insufficient.
Appendix I	MCL 762.4 jurisdiction established in the county.
Appendix J	Article in Criminal Defense Newsletter - 12-5-2012.
Appendix K	Affidavit of George Mullison.
Appendix L	The constant re-sentencing.
Appendix M	Testimony of Dena Vrable.
Appendix N	Letter to Assistant Attorney General Robyn Frankel.
Appendix O	Dissenting Opinions of Marilyn Kelly and Michael Cavanaugh.
Appendix P	Partial Motion transcript.
Appendix Q	MCLS 761.1(i)(i)

CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Petitioner's right not to be imprisoned, having been denied due process of law under both state and federal constitutions, *Mich Const. 1963, art 1, § 2, 17; U.S. Const. Am. 4, 5, 6 13, 14.*

B. Petitioner's right not to be imprisoned, having been denied state court decisional law statutes and constitution that were relied upon.

C. Petitioner's right not to be imprisoned, by a trial court that lacked personal and subject matter jurisdiction.

D. Petitioner's right not to be imprisoned, when the prosecutor did not prove venue of the crime.

E. Petitioner's right not to be imprisoned, on police perjury.

STATEMENT OF THE CASE

Petitioner is in custody in violation of the Constitution of the United States. 28 USC 2241(c)(3).

Proof of venue of the crime in Michigan is both a constitutional right of the accused and a fact essential to the jurisdiction of the trial court where venue of the crime must be proven by the prosecution. *Mich Const. 1963, art. 3, sec 7; MCL 767.45(c)(1).*

A defendant in Michigan has a right to trial in the county where the crime occurred and by a jury of that county. *Mich Const. 1963, art. 3, sec. 7*

The charge(s) of intimidation of a witness and solicitation to murder were forum-shopped to this improper county by a police officer after the prosecutors in Arenac, Bay, and Ogemaw counties declined to charge after their investigations. The Michigan Attorney General's Office also declined prosecution of Petitioner.

Every charge was manufactured by the police and prosecution where it can be clearly determined in Federal Case 05-CV-10003-BC by deposed officers who testified they did not have "probable cause to arrest." Federal depositions 3-21-2006, p. 110; 7-13-2006 p. 42.

An officer did perjure the venue of the crime(s) as Saginaw in his Complaint for an arrest warrant. Appendix G and H.

The Michigan Supreme Court found this to be harmless error in *People v Houthoofd,* 487 Mich 568 (2010), and denied review on 10-27-2020, in state habeas corpus.

Petitioner has been denied his federal due processes of law pursuant to the *U.S. Constitution Amendments 4th, 5th, 6th, 8th, 13th, 14th.* He has been imprisoned by a court lacking personal and subject matter jurisdiction because of perjury as to venue of the crime(s) and violations of substantive due process.

This ruling by Michigan Supreme Court on the issues raised herein have split other state Circuit Courts, Federal Courts, and the United States Supreme Court and needs immediate resolution to stem the harm of false incarceration.

PETITIONER'S CONVICTIONS DO VIOLATE THE UNITED STATES CONSTITUTION AND PRIOR DECISIONS OF THE U.S. SUPREME COURT.

This Honorable Court has historically granted certiorari or summary reversal for its citizens on issues that have been previously decided when their incarcerations are in direct violation of the United States Constitution.

If a legal issue has not been considered by the state court, this court will review de novo. *Wiggins v Smith,* 539 US 510, 531 (2003), under the authority of 28 USC 1257(a).

This Honorable Court has spoken:

> "Courts shall regard the Constitution and all laws made in pursuance thereof as the Supreme law of the land. They must not give effect to state laws that conflict with federal law. Supremacy Clause Art. 6, cl. 2." *Gibbons v Ogden,* 22 US 1, 9 Wheat. 1, 210 (1824).

The Michigan Supreme Court has in the past recognized this command in *Boyd v Wade Shows*, 443 Mich 515, 523 (1993), but has ignored this Petitioner's Motions on the trial court's lack of jurisdiction because of procedural due process, police perjury on venue of the crime, and insufficient complaints for warrants that were without probable cause. See this Certiorari p. iv for the times raised.

This Honorable Court has spoken:

> "It is not required that a case be directly on point, but only that existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v al-Kidd,* 563 US 731, 741 (2011).

Petitioner has included for review his Felony Complaints in the Appendix at pp F, G, H.

The *U.S. Constitution, 4th Amendment* states:

"that no Warrant shall issue, but upon probable cause, supported by oath . . ."

Petitioner will focus on the Complaint for solicitation located at Appendix H.

This Complaint as upheld by the Michigan Supreme Court has split the federal courts and needs immediate United States Supreme Court resolution, in this extreme circumstance where there has been an ongoing obvious subterfuge to evade consideration of a federal issue over 16 years by constant resentencing from a court lacking jurisdiction. *Mullaney v Wilbur*, 421 US 684, 690-691 n. 11 (1975).

In *Giordenello v U.S.*, 357 US 480, 486 (1958) it was held that a Complaint unaccompanied by an affidavit which only stated on a specific date the defendant violated an enumerated statute and where the affiant did not speak with any personal knowledge and did not indicate any source for the affiant's belief was unconstitutionally deficient. This court went on to say that the Federal Rules of Civil Procedure, Rules 3, 4, and 18 U.S.C.A. were not met.

In other decided cases where the Complaint lacked probable cause, <u>all</u> held fast to the *Giordenello* decision. *U.S. v Interbartolo,* 192 F Supp 587, 593 (Ed. Mass. 1961); *Jaben v US,* 381 US 214, 218 (1965) it stated the hypothetical question:

> "What makes you think that the defendant committed the offense charged? If the answer could not be answered by asking the hypothetical question, the complaint lacked probable cause to issue a warrant."

In *Whiteley v Warden of Wyoming*, 401 US 560, 564 (1971), the Complaint was violating the Petitioner's *U.S. Constitution 4th and 14th Amendment* rights.

In *U.S. v Beasley*, 485 F.2d. 60, 62-63 (10th Cir. Ok. 1973) noted that the Complaint lacked "corroborating evidence either within the four corners of the complaint or orally. Therefore, neither rules 3 or 4 of the Federal Rules of Civil Procedure nor the 4th Amendment were satisfied."

Finally, in the case of *Overton v Ohio*, 534 US 982, 986 (2001) citing to *Giordenello* and *Whiteley* as controlling, the Complaint's requirement to meet the standards of F.R.C.P. Rule 4 and the U.S. Constitution 4th Amendment, it made clear

that complaints lacking probable cause were insufficient and summary reversal was granted. This court even provided a pictorial of *Overton's* Complaint showing what insufficiency looks like, possibly because of the irritation of having to make the same decisions over and over, in favor of the wrongfully convicted. There is no difference in Petitioner's Complaints when compared to *Overton's* Complaint, **EXCEPT** in Petitioner's Complaints at Appendix G, H, where fraud was committed.

Petitioner's *U.S. Constitution Amendment 13 §1* rights have been violated because he was not "duly convicted."

In *Ker v California*, 374 US 23, 30 (1963), the court held that the same probable cause standards were applicable to federal and state warrants under the *14th Amendment.*

The *U.S. Constitution 4th Amendment* provides that:

> ". . . no warrants shall issue, but upon probable cause, supported by oath or affirmation . . ."

The *U.S. Constitution 5th Amendment* provides that:

> "No person shall be held to answer for a capital crime . . . nor be deprived of life, liberty or property, without due process of law. . . ."

In Michigan, the primary function of the Complaint is to move the magistrate to determine whether a warrant shall issue. It is the first step in the procedure to establish the jurisdiction of the court. *People v Clement*, 72 Mich 116, 118 (1888).

MCL 772.2 states that the Complaint Exam, also known as the Swear to Hearing for Probable Cause, is necessary to start the court's jurisdiction and without the exam there exists a radical jurisdictional defect.

MCL 773.5 provides that an oath shall be administered to each witness by the magistrate.

MCL 773.6 provides that all witnesses that are examined shall be recorded by a stenographer or district court recorder.

The *Michigan Constitution 1963, art. 1, sec. 11*, states that:

"No warrant will issue without the support of an oath."

In the case of *People v Haas,* 79 Mich 449, 454 (1890), this court held more than 100 years ago that no warrant can issue without the showing of probable cause supported by oath or affirmation.

The law provides pursuant to *MCR 1.109(A)(b)(ii)* that the records of a trial court may not be disposed of, except as authorized by the records retention and disposal schedule upon order of the chief judge of that court. Before disposing of records subject to the order, the court shall first transfer them to the Archives of Michigan. The law provides pursuant to *MCR 8.108(C)* that all records as defined by *MCR 8.119(D)(1)(d)(4)* and regardless of format that are created and kept by the court must remain in the physical possession of the court.

The court stenographer's notes could only be destroyed by Order of the court's chief judge of the Saginaw Circuit Court. Opinion Attorney General, June 17, 1952, no. 1555.

MCL 761.1(g), MCL 766.4, and *MCL 775.16* make it clear that the Swear to Hearing for Probable Cause is not to be confused with the Preliminary Examination and must be held before a neutral and detached magistrate in offenses carrying a possible sentence of more than one year in prison.

Nothing like this happened in Petitioner's convictions; it was arbitrarily skipped. There is no evidence in the clerk's records, therefore the State's issuance of an arrest warrant was not based on probable cause. See Appendix K.

Skipping the Probable Cause Hearing has split many decisions rendered by the United States Supreme Court. *Smith v US*, 360 US 1, 9 (1959), statutes must be construed in favor of the defendant where his substantial rights were concerned.

Miller v Florida, 482 US 423, 430 (1987), legislatively-enacted statutes permit individuals to rely on their meanings until changed.

TVA v Hill, 437 US 153, 184 n. 29 (1978), when confronted with a statute which is plain and unambiguous on its face, it is not necessary to look beyond the words of the text.

Wong Sun v US, 371 US 471, 481-482 (1963), a probable cause hearing must be made to assess the officer's credibility.

Aguilar v Texas, 378 US 471, 481-482 (1963), a reviewing court may only consider those facts that were presented to the magistrate.

The reason there is nothing to review is because it never happened and due process is intended to secure the individual from arbitrary exercise of the powers of the government. *Hurtado v California*, 110 US 516, 527 (1964).

The trial court never gained jurisdiction and Petitioner's conviction(s) were pronounced in direct conflict with the U.S. Supreme Court because jurisdiction was absent at the beginning or because it was lost in the course of the proceedings. This was structural error for which harmless error analysis cannot attach.

In *Ker v California*, supra, the court held that the same probable cause standards were applicable to federal and state warrants under the 14th Amendment.

Furthermore, the Michigan Supreme Court's decision of applying harmless error does not follow what this Honorable Court has established stating:

> "There can be no question about the right of a person charged with a crime to be tried in the venue in which the crime is alleged to have been committed." citing to: *Art 3, sec. 2, Constitution of the United States. 6th Amendment to the United States Constitution* · requiring proof of venue. Rule 18 of the Federal Rules of Civil Procedure.
>
> "Courts have not hesitated to reverse a conviction where the government has failed to prove venue."

See *Cain v U.S.*, 12 F.2d 580, 582 (8th Cir. 1926); *U.S. v Jones*, 174 F.2d, 746, 748 (7th. Cir. 1949); *U.S. v Branon*, 457 F.2d 1062, 1065 (6th Cir. 1972); *Jones v Russell*, 299 F.

Supp. 970, 975 (Ed, Tenn. 1969); *State v Hampton*, No. 2011-1473 (Ohio, 12-2-12) stating:

> "If the state fails to produce evidence of proper venue, then the evidence is insufficient to sustain a conviction." Justice Judith Ann Lanzinger, See Appendix J.

Clearly the Michigan Supreme Court's decision to apply harmless error has split this issue as decided by federal courts and other state Supreme Courts and needs immediate U.S. Supreme Court resolution.

Still another split created by the Michigan Supreme Court has been to let stand Petitioner's conviction(s) on police perjury knowingly used by the prosecutor and the suppression of a favorable witness, which directly contradicts rulings in the following cases. *Mooney v Holohan*, 294 US 103, 113 (1935); *Pyle v Kansas*, 317 US 213, 216 (1942); *Alcarta v Texas*, 355 US 28, 31 (1957); *Napue v Illinois,* 360 US 264, 269 (1959); *Miller v Pate*, 386 US 1, 7 (1967), stating that:

> "The 14th Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence and the suppression of favorable evidence to the accused."

In yet another split the Michigan Supreme Court has failed to answer is, this Petitioner's right to due process and equal protection in accordance with the laws of this state as stated: *Hicks v Oklahoma*, 447 US 343, 346 (1980); *Vitek v Jones*, 445 US 480, 488 (1980); *Erie Railroad v Thompkins*, 304 US 64, 78 (1938).

All stating that state statutes create a liberty interest that entitle a defendant to the procedural protection of the due process clause of the *5th and 14th Amendments.* In *Hicks*, the harmless error rule was applied erroneously by Oklahoma.

In *Erie Railroad*, it said that state court decisional law, the state statutes, and Constitution must be followed.

The Michigan Supreme Court has ruled in *People v Olson*, 293 Mich 514, 516 (1940):

"It cannot be seriously claimed that a prosecution can be had in a county where the crime was not actually perpetrated."

In *Turrill v Walker*, 4 Mich 177, 180 (1856), the Michigan Supreme Court ruled:

"The jurisdiction of Circuit Courts in this state is limited to the boundaries of the county."

In *Abelman v Booth*, 62 US 506, 524 (1858), this court ruled:

"There is no lawful authority outside the limits of the jurisdiction of the court or judge by whom it is issued."

The Michigan Supreme Court decision in *Houthoofd* is in direct violation of the U.S. 14th Amendment.

MCL 762.3 states that the prosecutor must prove venue of the crime. *People v Webbs*, 263 Mich App 531, 533 (2004).

MCL 600.8312(1) states that a defendant has a right to be tried where the offense was committed.

MCL 762.4 states that the court lacks jurisdiction to prosecute if the offense was committed more than 100 rods from the county border.

And **Mich. Const. 1963, art. 3, sec. 7**, recognizes the common law guarantee enumerated within the Bill of Rights which includes both substantive and procedural due process. *Daniels v Williams*, 474 US 327, 337 (1986).

The Michigan Supreme Court upheld the Michigan Court of Appeals decision made in the case of *People v McBurrows*, 504 Mich 308 (2019):

"A criminal trial should be by a jury of a county where the offense was committed. at page 313.

"The general venue rule is derived from the common law." at p. 314."

"Venue is proper in a criminal trial where the offense was committed is a mandatory aspect of criminal venue in Michigan." at p. 315.

"The proper venue at common law is in the county where the crime occurred." at page 320.

The Michigan Supreme Court was adamant that *McBurrows supra.*, the defendant could only be charged in the proper county and his case could not be forum-shopped into Monroe County where the crime did not occur.

In 2010 this was harmless error in *People v Houthoofd*, supra. In 2019 this was a constitutional right in *People v McBurrows*, supra., citing to *U.S. Constitution, Art. 3, sec. 2, cl. 3* at p. 316.

Structural error did affect the framework in which the Houthoofd trial proceeded.

In 2020 the same issue is ignored in this Petitioner's State Habeas Corpus Case No. 160965. Appendix C. This Petitioner brought this issue pursuant to *People v Price*, 23 Mich App 663, 670 (1970). "A radical jurisdictional defect."

This Honorable Court has ruled in *Ridgeway v Ridgeway*, 454 US 46, 55 (1981) that:

> "The Supremacy Clause Art. 6, cl. 2 prevails over and displaces inconsistent state law."

At issue is the inconsistency of the law applied both before and after the *Houthoofd* decision in 2010, in violation of the *U.S. Constitution 14th Amendment.*

At issue is the constitutional requirement of equal protection of the law which has been violated. Two defendants identically situated have been treated differently for no rational reason.

Mr. McBurrows had his case dismissed. Petitioner, on the other hand is serving a sentence of 30-50 years and has been constantly re-sentenced for more than 10 years by a court that never legally attained jurisdiction because the prosecutor never proved venue of the crime as occurring within his jurisdiction, as described by statue *MCL 600.511.*

The Michigan One Court of Justice decisions upholding Petitioner's conviction runs afoul and splits the U.S. Supreme Court's decision where this Honorable Court has spoken in *F.S. Royster Guano Co. v Virginia*, 253 US 412, 415 (1920) stating that:

> "the equal protection guarantee requires that persons in similar circumstances be treated alike."

The Michigan Supreme Court also recognizes the equal protection guarantee for similarly situated defendants in *El Souri v Dept. of Social Services*, 429 Mich 203, 207 (1987).

There is no real distinction between the cases of McBurrows and Petitioner Houthoofd where both defendants filed a Motion to Dismiss based on improper venue prior to trial.

Not only is the U.S. 14th Amendment violated, but the *U.S. 6th Amendment* provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. . . ." See here p. ii.

Previously ascertained by law simply means that the four county Circuit Courts are all described by statute. Saginaw County is *MCL 600.511*; Bay County is *MCL 600.519*; Arenac County is *MCL 600.524* and Ogemaw County is *MCL 600.535*.

In Michigan, *MCL 761.1(i)(i)* defines the district as the county. This is in accord with the *U.S. 6th Amendment*. See Appendix Q.

Three counties found insufficient evidence that the crime(s) occurred and refused to issue arrest warrants after their investigations had been completed.

In *People v Houthoofd*, supra at pp 593, 606, and 607, the Michigan Supreme Court stated clearly that "venue was improper," but the "error was harmless" citing to the venue statue for civil trials, **MCL 600.1645**, instead of the venue statute for

criminal trials of MCL 767.45(c)(1), for which the court rule does not allow this intermingling of civil and criminal statutes. MCR 6.001(D)(3). See Editor's notes.

Therefore, the trials were not held in the district which had been previously ascertained by law and thus violated the U.S. Constitution 6th Amendment meaning that the sentencings of the 10th Circuit under which this Petitioner is held a prisoner was pronounced without authority and he should therefore be discharged. *Ex Parte Lange*, 85 US 163, 178 (1873).

The antics employed by Michigan run afoul and splits the decisions that States must play by their own rules in which this Honorable Court has addressed in *Vitek v Jones*, supra., *Hicks v Oklahoma*, supra, *Erie Railroad*, supra and *Carmel v Texas*, 529 US 513, 533 (2000).

This was an egregious act of forum-shopping by the police more than three years after the case had been closed by the proper Arenac, Bay and Ogemaw prosecutor's offices and violates the *U.S. 14th Amendment* in a way that has violated quite possibly the right of the People to vote under the *U.S. Constitution 24th Amendment.*

Not only does forum-shopping undermine the integrity of the judicial system; it also undermines the **Nation's representative democracy.**

The right of the People to vote **SHALL NOT BE DENIED OR ABRIDGED.**

Prosecutors are elected by the citizens as the chief law enforcement officer of their counties to decide whether to prosecute or what charges to file. *People v Jackson*, 192 Mich App 10, 15 (1991). He is responsible for his actions to the voters/citizens of his county. **Mich. Const. 1963, art. 7, sec 4.** Nothing in Michigan law gives this authority to the police.

The rights of the voters in Arenac, Bay and Ogemaw counties were stripped when their voices were not heard through their elected county officials when their officials told the police that "we are not charging," this Petitioner with a crime.

In *Ashcroft v al-Kidd, supra*, this Honorable Court has stated:

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which we must live. Other rights are illusory if the right to vote is undermined." *Reynolds v Sims*, 377 US 533, 560 (1964).
>
> "The fundamental principal of our representative democracy is that the people should choose whom they please to govern them." *Powell v McCormick*, 395 US 486, 547 (1969) citing Elliot's Debates 257.

The State of Michigan has abandoned its compelling interest in preserving the integrity of the election process held by the people in Arenac, Bay and Ogemaw counties and has not only violated this Petitioner's rights, the rights of the county prosecutors, but also the rights of many thousands of voters.

The State of Michigan has denied everyone the equal protection of the law secured by the *U.S. 14th Amendment* and has abridged these citizens' right to vote and abrogated it to the police, knowing that the venue of the two crimes were perjured and knowingly used by the Saginaw prosecutor, in direct violation of the *U.S. Constitution, 15th Amendment.*

This action splits and runs afoul of the U.S. Supreme Court and needs immediate correction to save a meaningful right to vote in a free society. *U.S. Constitution, 15th Amendment, sec. 2.*

This Petitioner filed for default judgment with the Michigan Supreme Court because of the non-response from the warden and this has been ignored. See Appendix D.

This Petitioner has included the Complaint for Preliminary Injunction he filed and its Order of Denial from one of the times he has raised the jurisdictional defect. See Appendix E. 48 pages.

The United States Supreme Court has ruled that the government must play by their own rules. *Carmel v Texas, supra*, and Michigan has not, even knowing that

statutes permit individuals to rely on their meanings until changed and the statutes have not changed. *Miller v Florida*, supra.

REASON FOR GRANTING THE CERTIORARI

Reason 1 - This was a false arrest without probable cause, prosecutors from the proper counties would not charge; this is a structural error.

Reason 2 - There is nothing new to consider. Insufficient warrants and lack of jurisdiction for being tried in the wrong county and conviction on perjury has been settled and resettled for a 100 years.

Reason 3 - Is to preserve voters' rights from being denied or abridged.

CONCLUSION

Since neither the Michigan Supreme Court nor the Respondent answered, with an explanation, they must be in agreement with this Petitioner, this Honorable Court can assume that Petitioner's allegations are true. *Williams v Kaiser*, 323 US 471, 473-74 (1945) and under F.R.C.P. Rule 29, without proof of venue there can be no conviction, and this constitutes a radical jurisdictional defect..

RELIEF

Grant the Writ for Certiorari or summary reversal or default judgment under F.R.C.P. 55(a), (b). See Appendix D. Order expungement of Petitioner's criminal convictions because he has not been duly convicted pursuant to the *U.S. Constitution 13th Amendment* and is currently in involuntary servitude and this is cruel and unusual punishment under the *U.S. Constitution 8th Amendment.* This court has this authority pursuant to 28 USC 2106, whereas remanding the case to a lower court will only result in another appeal and further delay.

Date: JAN 22, 2021

Respectfully submitted,

Tod Houthoofd

Tod Houthoofd #596112
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