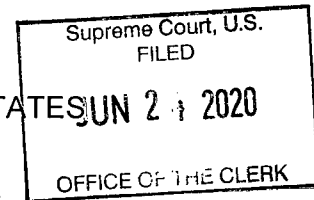


20-5393 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



TIMOTHY MCCULLOUGH — PETITIONER
(Your Name)

VS.

JEFFERY DENNIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS OF THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy McCullough
(Your Name)

6665 EAST ROUTE 146 SHAWNEE G.C.
(Address)

VIENNA, ILLINOIS 62995
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Does the Sentencing court have Jurisdiction to Sentence a defendant to a statute void of judgment, un-enforceable under the Constitution?
2. Does the Petitioner lose his/her right to appeal, upon discovery that the charging, sentencing instrument was void of judgment?
3. Can the Petitioner's right to relief from an unconstitutional sentence be time-barred by the State?
4. Does a Defendant lose, or forfeit his/her right to the due Process of the Constitution, based upon the enforcement of a Public Act enforced by the Lower Court?
5. Can a Petitioner be discriminantly sentenced to a sentencing statute in which other criminal defendants are removed from, as being unconstitutional, and void legislative; Judicial enforcement?
6. Does a Petitioner lose his/her right to challenge a criminal conviction, or sentence, upon later discovery of Exculpatory Evidence violations, committed by the State, in violation of the Constitutional right of the Defendant?
7. Does a Petitioner lose his/her right to challenge a criminal conviction, later discovered to be unconstitutional by the Supreme Court?
8. Does the Sentencing Court; or the Court of Appeals, have the authority; and or, the Jurisdiction to enforce a law, un-enforceable by the Supreme Court; and the United States Constitution?
9. Can the Constitutional right to due process for a criminal defendant be electively forfeited, or removed, when a Defendant had filed an In-Effective Assistance of Counsel Claim?

- *People v. Ford*, No. 14-CF-450 (2016), Circuit Court of the Sixth Judicial Circuit Court, Champaign, IL, Judgment April 16, 2016.
- *People v. Reedy*, No. 295 IL App. 3d 31, 11 App. Circuit Court of the Judicial Circuit Court, Waukegan, IL, Judgment (1998)
- *Thompkins v. Pfister*, 698 F.3d 976, 983 (7 Cir. 2012)
- *Faretta v. California*, 422 U.S. 806, 834 (1975)
- *United States v. Gonzalez-Lopez*, 548 U.S. 140 n. 4 (2006)
- *Ibid*, quoting *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986).
- *Brady v. U.S.*, 397 U.S. 742, 750 (1970).

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

People v. FORD (2016) No. 14-CF-450

People v. FORD (2019) Ill. App. (4th) 160715 - U. Law

People v. Reedy, Waukegan, IL, 295 IL App. 3d 34 (Ill. App. Ct. 1998)

McCullough v. Dennison 2:18-cv-02200-CSB (2018), 2:18-cv-02200- (2019) Habeas Appeal

People v. McCullough 482 N.E.2d 772 (table), 367 Ill. Dec. 622

People v. McCullough 2012 IL App. (4th) 110361-4

McCullough v. Dennison (2019) NO. 19-1881 (2019) UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

People v. McCullough NO. IL, Supreme Court. PLA 115344 (ILL. Supreme Ct. 2013)

People v. McCullough NO. 09-CF-2115 (2010) Sixth Judicial Circuit, Champaign, IL

People v. McCullough NO. 09-CF-2115 (2009) Sixth Judicial Circuit, Champaign, IL

People ex rel. La Placa v. Sielaff, 38 Ill. App. 3d 760, 348 N.E.2d 516, 1976 Ill. App. LEXIS
..... LEXIS 2458 (Ill. App. Ct. 5th District 1976),

Stickland v. Washington, 466 U.S. 668, (1984) U.S. Dis. Ct.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	9

INDEX TO APPENDICES

- APPENDIX A *United States Court of Appeals - Petition for Re-hearing and ORDER, DENIED.*
- APPENDIX B *United States Court of Appeals - Petition for Re-hearing ORDER, GRANTED*
- APPENDIX C *United States Court of Appeals - Entry of Appeal and ORDER, DENIED*
- APPENDIX D *United States Court of Appeals - Notice of Entry*
- APPENDIX E *United States District Court - ORDER, DENIED*
- APPENDIX F *SUPREME COURT OF ILLINOIS - Dismissal, Denial of PLA*

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix E to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix F to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

TABLE OF AUTHORITIES CITED

PAGE NUMBER

CASES

McCullough v. Dennison 2:18-cv- 02200 -038 (2016)	5
People v. Ford No. 14-CF-450 (2016)	5
People v. McCullough No. 09-CF-2115 (2009)	6
People v. McCullough Ill. App. (4th) 110361-U	6
People v. Reedy 295 IL. App. 3d 34 (Ill. App. Ct. 1948)	6
People v. Ford No. 14-CF-450 (2016)	7
People v. Willhoite, 156 Ill. Dec. 662 571 N.E. 2d 249, 212 Ill. App. 3d 307..7	
People v. Dolton, 346 Ill. Dec. 870, 941, N.E. 2d 428, 406 Ill. App. 3d 158.. 7	
People ex rel. La Placa v. Sielaff, 38 Ill. App. 3d, 760, 348 N.E. 2d	7
.516, 1976 Ill. App. LEXIS 2458, (Ill. App. Ct. 5th Dist. 1976) (CONT'D)	7
People v. Dennison 2:18-CV-02200 Fed. Habeas (2018)	7
People v. Ford No. 14-CF-450 (2016) Cir. Ct. (2016)	7,8
U.S. v. Gonzalez-Lopez 548 U.S. 140, n. 4 (2006)	8

STATUTES AND RULES

SUPREME COURT RULE 603	5
ILL. STATUTE - 720 ILCS 5/12-14.1(a)(1), (b)(1), (West 2008)	5
ILL. STATUTE - 107(3)	6
ILL. STATUTE - 720 ILCS 5/12-14.1(a)(1), (b)(1), (West 2008)	6
CONSTITUTIONAL LAW KEY 193	7
S.H.A. 730 ILCS 5/3-6-3(a)(2), (e)	7
Ill. App. 4 Dist. 1991	7
S.H.A. Const. Art. 1 § 16; U.S.C.A. Const. Art. 1 § 10 c 1.1.	7
Ill. App. 2 Dist. 2010	7
735 ILCS 5/10-102	7
Art. (735 ILCS 5/10-101 et. seq.	7
ILL. STATUTE 720 ILCS 5/12-14.1(a)(1), (b)(1), (West 2008)	8

OTHER

Public Act. 89-404, 90-592, Ill. Const. 1970 art. IV § (8)(d).	5
S.H.A. Const. Art. 4 § 8(d)	7
Criminal Law (key) 1162	7
Criminal Law (key) 1206	7
Article X of of Act (735 ILCS 5/10-101 et. seq.	7
Brady v. Maryland. U.S. 397 U.S. 742, 750 (1970)	8

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 13, 2020.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: APRIL 28, 2020, and a copy of the order denying rehearing appears at Appendix A.

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

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

☐ For cases from **state courts**:

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

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

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment IV. The right of the people to be secure in their person, 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 VI to the Constitution, the accused stood for trial, but was denied to the effective Assistance of Counsel, and a fair and impartial tribunal, and be afforded the due process of law afforded by the provisions under the Sixth amendment to the Constitution.

Amendment IX The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

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 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 any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

STATUTE under P.A. 101-30, except for portions of P.A. 101-27, of the 2019 Regular Session of the 101st General Assembly 735 ILCS 5/10-102 who may file. Every person imprisoned or otherwise restrained of his or her liberty, except herein otherwise provided, may apply for habeas corpus in the manner provided in Article X of this Act [735 ILCS 5/10 101 et seq.] to obtain relief from such imprisonment or restraint, if it prove to be unlawful.

A court has jurisdiction of a habeas corpus proceeding only where the original judgment of conviction was void or where something has happened since its rendition to entitle the prisoner to his release. *People ex rel. Wiseman v. Nierstheimer*, 401 Ill. 260, 81 N.E. 2d 900, 1948 Ill. LEXIS 414 (Ill. 1948).

STATEMENT OF THE CASE

In December 2009, Petitioner was charged with four counts of predatory criminal sexual assault of a child, a Class X felony, based on Petitioner placing his penis in the vaginas and mouths of A.F. and J.F., who were both under the age thirteen. Petitioner was also charged with two counts of child pornography, a non-probationable offense, is a Class 1 felony, based on Petitioner knowingly photographing the un-clothed buttocks of A.F. and J.F. On September 8, 2010, the State also charged Petitioner with one count of criminal sexual assault, a Class 1 non-probationable felony, based on Petitioner placing his penis in the vagina of A.F., a family member under the age of eighteen.

On September 8, 2010, as the parties appeared for a hearing. The Petitioner was brought to a hearing that day. Petitioner's trial attorney contacted the State, MOTIONED the Court, that her client would enter a plea of guilt, to a disposition discussed between Council of the State, and petitioner's attorney. The State expressed to the court that, Count 8 was the substitution of count 7, predatory criminal sexual assault of a child, J.F. So that Petitioner would not receive a life sentence. The Petitioner agreed with the information given by the court at the Plea agreement hearing.

The State informed the trial court that in exchange for Petitioner pleading guilty to one count of Predatory criminal sexual assault of J.F., A class X felony (720 ILCS 5/12-14.1(a)(1), (b)(1), West (2008), and one Count of Criminal sexual assault of A.F., a Class 1 felony (720 ILCS 5/12-14.1(a)(3), (b)(1), West 2008). The State sought consecutive sentences of twenty-three years and four years in prison, noting that each offense required Petitioner to serve 85% of sentence. The state agreed to dismiss the remaining counts.

The statements of facts entitled in Petitioner's appeal are supported by the record (2010). And as well the MOTION to Reconsider Plea of Guilt (2010), Habeas Corpus (2018), Appeal of Habeas (2019). And the MOTION for Petition for Rehearing (2020). Under the Supreme Court Rule 315(c)(4). See Rule 29.

REASONS FOR GRANTING THE PETITION

The Petitioner relies upon Supreme Court Rule 603, thus stating the Constitutional right to appeal of a sentence under Illinois Statute 720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2008), and the sentencing court, as well as the appellate court, and the U.S. District Court of the Fourth District, and as well as the U.S. Court of Appeals of the 7th Cir., lacked the jurisdiction to enforce, and or affirm, a conviction and or judgment, to an un-constitutional Public Act 89-404, 90-592, ILL. CONST. 1970 art. IV § 18(d). Being ruled un-constitutional, effective 6-19-98. And as well as ruled un-constitutional again in (2010), voided judgment by Illinois Legislature (2015).

The Petitioner being sentenced under the Illinois statute 720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2008). And in the case of *People v. C. Ford*, No. 14-CF-450 (2016). Where the Petitioner's trial judge held that the statute of 720 ILCS 5/12-14.1(a)(1), (b)(1), (West 2008), unconstitutional, as of (2015), Under Sup. Ct. Rule 603, the Statute being held un-constitutional upon both the Supreme Court level, as well as the circuit court level. And applied retroactively to cases pending prior to the date of the Petitioner's habeas (2018). Although not before the date of the Petitioner's trial and sentencing (2010).

The Reviewing courts of the Petitioner misconstrued, or misapprehended the facts within the Petitioner's habeas (2018), for relief of judgment from a un-constitutional sentencing statute, which was discoverable after the finalization of the Petitioner's trial and sentencing; and as well as his appeal (2013). Petitioner discovered new constitutional Law after his trial and sentencing, which made the Petitioner's class-X sentence, void of both constitutional enforcement, as well as being ruled as an un-constitutional Public Act by the Illinois Legislature. The Reviewing court misapprehended the facts within the Petitioner's habeas, and agreed that the Petitioner's habeas should be time barred; when the case Law, and as well as the removal of the statutory defect only became available in (2017); after further diligence, and discovery of *People v. C. Ford* No. 14-CF-450 (2016).

The Petitioner's constitutional right to challenge the constitutionality of his conviction, and as well as his sentencing was effectively forfeited by the Petitioner's sentencing court, by refusing to remove the Petitioner's judgment, and allow him to proceed to trial (2010). And the state had removed the Petitioner's right to appeal of a judgment, void of its Constitutional enforcement; and as well as the Petitioner's right to the 14th Amendment to the United States Constitution, See Judgment, Order of Habeas (2018).

The U.S. Court of Appeals decision to affirm the sentencing court's judgment (2010). Being erroneous, because of the lack of jurisdiction of both the sentencing statute, and as well as the trial court to impose a sentence to a term of imprisonment; without the knowledge that the class-X statute 720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2008), was voided previously in (1998) and again in (2008), as well as in (2015). See *People v. C. Ford* No. 14-CF-450 (2016). See also *McCullough v. Dennison* 2:18-cv-02200-CSB (2018).

The Petitioner is asking the Court to Grant a writ of Certiorari can present compelling reasons that exist for the exercise of the Court's discretionary jurisdiction over the Petitioner's case before the court. The Petitioner's case concerns conflicts which occurred in the decision of the lower court; to enforce a Public Act and as well as a Statutory sentence and guideline found to be void of both constitutional enforcement, and as well as void of judicial enforcement. And the lower courts abuse of discretion in whom it chooses to remove from this unlawful sentencing statute. See People v. McCullough NO. 09- CF-2115; See People v. McCullough (2012) Ill. App. (4th) 110361-U; People v. McCullough 481 N.E. 2d 772 (Table), 367 Ill. Dec. 622; McCullough v. Dennison 2:18-cv-01200-LSB; See People v. Ford (2016) NO. 14- CF-450. See People v. Reedy, Waukegan, IL. 295 IL App. 3d 34 (Ill. App. Ct. 1998).

Where, in both the sentencing court, where the Petitioner was sentenced to an un-constitutional statute, instrument, and that the trial court took judicial notice that the Petitioner had sought to be freed from the sentence, as well as its judgment in (2010). See People v. McCullough (2012) Ill. App. (4th) 110361-U. See People v. Reedy, Waukegan, IL. 295 IL App. 3d 34 (Ill. App. Ct. 1998), where in the case of Reedy, the court of appeal took judicial notice that, the defendant's sentence was void of judgment due to the constitutionality of the Petitioner's sentencing statute. And that the Public Act in which the defendant was arrested tried and convicted, lack jurisdiction, and could not be enforced, as to the sentencing and as well as the conviction of the defendant. In which the Illinois Court of Appeal, in its decision to reverse the defendant Reedy sentence, and order the defendant's judgment be set aside; and that the court would grant Reedy a new trial; or modify his sentence in accordance to the law which did so govern the defendant's case, removing the defendant from the Truth-N-Sentencing ACT of (98).

The Petitioner in the Court had sought relief of the Sentence, and or judgment under this un-constitutional sentencing indictment, and statute since his first appeal of his sentence. And the Petitioner was denied upon each level of the assistance of counsel; and as well as the Denial to remove the Petitioner from the Un-constitutional Sentencing statute, under the Statute 107(3), to which is the Public Act in the Case of People v. Reedy, and the IL statute 720 ILCS 5/12-14.1, (a)(1), (b)(1), (west 2008), which added the offense of Predatory Sexual Assault of a child to the list of offenses to which truth-n-sentencing law did not serve as a curative language, and or legislation so as to validate the defective legislation that contained the truth-n-sentencing provisions, which violated the single subject clause.

In the case before the Court. The Petitioner's claim was a due Process claim under the Sixth and the Fourteenth Amendment, brought forth under the Ineffective Assistance of Counsel claim, where Petitioner challenged his conviction, sentence through the appeals process, And was denied his fundamental right to a fair trial under the 14th Amendment, after being sentenced to an un-constitutional class-X sentencing. And the Court of Appeals would affirm the circuit courts sentencing judgment, under a constitutionally void statute 720 ILCS 5/12-14.1.(a)(1),(b)(1), (West 2008). See *People v. Ford* 14-CF-450. See also *People v. Reedy* 295 IL App. 3d 34 (Ill. App. Ct. 1998).

The Petitioner so states that, on the issue of fundamental fairness, and the court recognition of a criminal defendant's right to the Constitution. See *Strickland v. Washington*, 406 U.S. 668, (1984). District Court factual findings in course of deciding in effectiveness claim subject to clearly erroneous standard, but determinations of counsel's performance and prejudice to defendant mixed questions of Law and fact. And if an error is not raised, and or recognized until Habeas Corpus, through the doctrine of Ineffectiveness of the petitioner's trial counsel, for failing to object to the State's misapprehension of the facts within the case. See *United States v. Gonzalez-Lopez*, 548 U.S. 140 n. 4 (2006).

The Counselor's failure to object to the states application of an un-constitutional charging statute or instrument. Under *Strickland* doctrine the Petitioner did show "prejudice" was the result, moved for the courts to grant a new trial (2010). And as well as (2012), on appeal. See *McCullough v. Dennison* 2:18-cv-02200-CSB (2018). Appendix C, See *McCullough v. McCullough* (2012) IL App. (4th) 11036-U. Page 1, par. 1-4; also Page 4, par. 27. In the case at present, where the U.S. District Court does not address the Constitutionality of the Petitioner's Class-X statute. See *McCullough v. Dennison* 2:18-cv-02200. Court decision and Order (2019) P. 11, 12.

The Petitioner, upon discovering new constitutional Laws after his trial and appeals, where through due diligence, the petitioner in his habeas (2018), addressed the States violation of Evidence Rule 16(A)(1) - 16(F); on the Rules of the Evidence to be provided to the defense for trial; violating the due Process of the Petitioner to review, and to be aware of the existence of all the Evidence, and to be submitted, or given a Bill of particulars, of all material Evidence, both for and against, being material to the case (2010). The Evidence, and as well as the examinations of each parcel of material items where not submitted unto the courts for the Hearing of Evidence (2010), for the Pre-trial discovery. See Petitioner's habeas application (2018), under GROUNDS FOR Habeas. See *Brady v. U.S.* 397 U.S. 742, 750 (1970).

The Petitioner in seeking the authority of the Supreme Court, as well as its jurisdiction, to give clarity and guidance to the lower courts, concerning the constitutional rights of a criminal defendant, having the right to appeal, and or, the fundamental right to be free from an un-constitutional sentence, or a statute void of constitutional enforcement, and authority of the legislature. And the Petitioner seeks the Courts authority to remove a criminal defendant from an un-constitutional void statute, being descriminately applied, and enforced by the lower courts. Petitioner seeks the authority of the Supreme Court to intervene in this matter before the court. In affirming the constitutional rights to the Petitioner, as to the misapplication of Law. May the Court in its judgment, Reverse the lower courts judgment. With instruction to the Lower court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy McLaugh

Date: July 21st, 2020