

No.

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IN THE  
SUPREME COURT *of* THE UNITED STATES

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MARCUS SIMPSON- PETITIONER

VS.

THE HAMILTON COUNTY COMMON PLEAS COURT,  
THE HONORABLE JUDGE ROBERT H. GORMAN -

RESPONDENT.

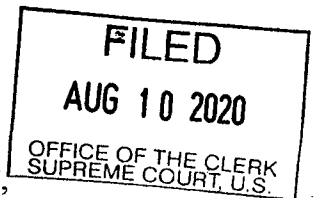
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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF OHIO

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**ORIGINAL**



***Preface:*** An alleged victim commits perjury initiating aggravated robbery criminal proceeding's in the states courts against a innocent person. That causes the innocent person to be arrested for then indicted on the aggravated robbery charge, put thru hearings, then trial by the court found guilty of the charged offense and ordered incarcerated pursuant to the trial courts judgment.

Thereafter, the now convicted (but innocent ), person attacks the judgment collaterally attempting to vacate it, setting forth the illegally withheld and omitted evidence that proves there actual innocence, and proves the illegal use of perjury by-way of the alleged victim own recantation conceding in open court the aggravated robbery was not committed or even attempted. But the State's Courts refuses to adjudicate the merits.

### **QUESTION'S PRESENTED**

Whether perjury has amounted to and causes *one or both*. The judicial usurpation of power or abuse of discretion by the trial court, therefore mandamus (Lie's).

## LIST OF PARITES

[X] 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:

Marcus Simpson  
781 Villas Circle  
Cincinnati, Ohio 45215

Petitioner, *pro se*,.

.....

The Hamilton County Court of Common Pleas .  
*The office of:* The Honorable (Judge), Robert H. Gorman ( Retired).  
1000 Court and Main Streets  
Cincinnati, Ohio 45202

*Respondent,*

Mr. Joseph T. Deters (0012084P)  
Hamilton County Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

*Counsel for Respondent*

## RELATED CASES

NONE

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## OTHER

**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**

[X] For cases from State of Ohio:

*The opinion of:* The Ohio Supreme Court appears at Appendix 'A' to the petition is [X] not reported: *State ex rel Simpson v. The Hamilton County Common Pleas et al.* 2020-Ohio-2815 judgment entered May 13<sup>th</sup> 2020

*The Judgment of:* The Hamilton County Common Pleas Court. *The office of:* The Honorable Judge Robert H. Gorman (retired) *The matter of:* The State of Ohio v Marcus Simpson Case No# B8301629 judgment entered May 24<sup>th</sup> 1984 appears at Appendix 'B' to the petition and is [X] unpublished.

## **JURISDICTION**

☒ For cases from State of Ohio

The date on which the Ohio Supreme Court decided the case was May 13<sup>th</sup> 2020. A timely motion for rehearing was thereafter denied by the Ohio Supreme Court on July 21<sup>st</sup> 2020. a copy of the order denying rehearing appears at Appendix 'C.' and is ☒ unpublished 2020-Ohio-3712

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



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitution Article VI.**

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

### **Constitutional 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 assemble, and to petition the Government for a redress of grievances.

### **Constitutional Amendment II.**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### **Constitutional 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 person or things to be seized.

### **Constitutional 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.

### **Constitutional Amendment VIII.**

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

### **Constitutional Amendment IX**

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

### **Constitutional Amendment X.**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

### **Constitutional Amendment XIII.**

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

### **Constitutional Amendment XIV.**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction there of, 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 under law.

### **Ohio Constitution Article 1 Bill of Rights, Section 1.16 and 1.20**

#### **Section 1.16: Redress in Courts; Due Course of Law**

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

#### **Section 1.20: Powers Reserved to the people.**

This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not therein delegated, remain with the people.

## **Ohio Statutory Law**

### **Ohio Revised Code Title [29] XXIX Crimes -Procedure Chapter 2921: Offenses Against Justice and Public Administration.**

#### **Perjury 2921.11**

[A] No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

[B] A falsification is material regardless of its admissibility in evidence, if it can effect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial.

[C] It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.

[D] Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

[E] No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.

[F] Whoever violates this section is guilty of perjury, a felony of the third degree

## **STATEMENT OF THE CASE**

1). On April 14<sup>th</sup>, 1983 in the Hamilton County Municipal Court, case number 83CRA8013 being first duly cautioned and sworn, Mr. Brunkel filed a 'complaint' that instituted the charged of aggravated robbery pursuant to R.C. Sec. 2911.01 against petitioner with the filing of a complaint, basing this on and specifically alleging petitioner "While attempting" a theft offense had on or about his person a deadly weapon to wit a knife and [his] Mr. Brunkel's "recovery of property". This caused petitioner's arrest. Appendix # (1).

2) Mr. Brunkel did not allege use or the attempted use of a weapon nor the infliction or attempted infliction of serious physical harm, nor any physical contact with or without a weapon, nor the threatened use or attempted threatened use of a weapon or fleeing thereafter.

3). On April 21<sup>st</sup>, 1983, in the Hamilton County Municipal Court case number 83CRA8013 at petitioner's Preliminary Hearing, being first duly cautioned and sworn, Mr. Brunkel was asked if petitioner had taken anything from him. Mr. Brunkel replied, "No." Appendix # (2) lines 10-11.

4). On May 19<sup>th</sup>, 1983, the Hamilton County Grand Jury returned a indictment case number B8301629 charging petitioner with the offense of aggravated robbery in violation of R.C. Sec. 2911.01. The Grand Jury specifically charged petitioner with " THEFT OF UNITED STATES CURRENCY FROM JOEY BRUNKEL had ON OR ABOUT HIS PERSON A DEADLY WEAPON, *to-wit*: A KNIFE. in violation of Section 2911.01 of the Ohio Revised Code, and against the peace and dignity of the State of Ohio" Appendix #( 3 ).

5). The Grand Jury did not find or charge Petitioner with attempted aggravated robbery. The Grand Jury did not find or charge petitioner with use or the attempted use of a weapon, nor the infliction or attempted infliction of serious physical harm. The Grand Jury did not find or charge petitioner with any physical contact with or without a weapon nor the threatened use of or attempted

threatened use of a weapon or with fleeing thereafter.

6). On April 23<sup>rd</sup> 1984 in The Hamilton County Court of Common Pleas, case number B8301629, at petitioner's bench trial before The Honorable (Judge), Robert H. Gorman. Mr. Brunkel being first duly cautioned and sworn, was asked if petitioner had "attempted to take his money.". Mr. Brunkel replied "**No**". Appendix #(4).

7). The Complaint and Preliminary Hearing Transcript's were illegally withheld and omitted from the records by the County Prosecuting Attorney.

8). On that same day April 23<sup>rd</sup> 1984, at the end of the States case, petitioner's motioned for a judgment of acquittal. The Court overrule the same. Appendix #(5)

9). On that same day April 23<sup>rd</sup> 1984, at the end of the trial, the court found the case to be "strictly one of credibility" and found "There is no question in my mind that the Brunkel's are telling the truth and that what happened on the evening in question are exactly the facts as they occurred. Therefore, I am convinced beyond a reasonable doubt that the defendant is guilty as charged".Appendix #(6).

10). On the 25<sup>th</sup> day of May 1984, petitioner was sentenced by the Honorable Judge Robert H. Gorman, to the Ohio State Max Penitentiary (Columbus Ohio) for a term of five (5) to twenty-five (25) years [Appx. 'B' Judgment Entry ]. \*

11). The Court of Appeals for the First Appellant District, affirmed the conviction. State v. Simpson, 1<sup>st</sup> Dist. Hamilton No. C-840420, 1985 WL 6728 (Apr. 3, 1985).

12). Petitioner requested review of his conviction in the Oho Supreme Court, which was denied 1985.

13). Petitioner while in some form of custody, filed habeas corpus in the States Courts and Federal District Court which was denied and the Sixth Circuit Court of Appeals affirmed.

14). In 1986 petitioner using the only available avenues for relief and introducing the ‘ Illegally Withheld and Omitted,’ Clear Exculpatory Evidence that Proves his Actual Innocence and the Constitutional and Statutory Violation and acts that caused his illegal conviction just as set forth here, filed in the states trial court the first of what will be over the years five petitions for post-conviction thereafter five mandamus attacks under state statute seeking to vacate the judgment at issue. Appendix. K, M.& P. Clearly demonstrates just some of the Courts arbitrary and capricious decision making denying justice over the decades. The States Trial, Intermediate Appellant and Supreme Courts Outright Refuses to adjudicate the Merit as set out or give petitioner a hearing on the Merits. Let the States Courts Own Judgments and Entry’s be testament to the blatant Refusal to administer justice in this case for over 34 years Appendix. B thru Q.

15). On the 14<sup>th</sup> day of February 2020 petitioner filed another Mandamus action in the Ohio Supreme Court setting forth and amplifying the same facts and violation as here. On March 5<sup>th</sup> 2020 Respondent filed to dismiss on adequate avenues grounds *But also* ‘ conceding ’ [petitioner] used all adequate avenues for relief but was unsuccessful. On May 13<sup>th</sup> 2020 the court still granted the same, Appx. B. On May 19<sup>th</sup> 2020 petitioner filed reconsideration amplifying the issues not considered by the court. The Court denied the same on July 21<sup>st</sup> 2020. Appendix C. Petitioner requested certiorari and mandamus in this Court over the years Appendix R, S and T.

This petition follows.

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\* Appendix B, The judgment under attack

## REASONS FOR GRANTING THE PETITION

### Exceptional Circumstances

16). The issue's here goes beyond the clear Actual Innocence and Miscarriage of Justice. It's the judicial system (the states courts), Outright Illegal Use and Abuse of Power and Discretion It's about perjury striking at the 'core' of are judicial system and the people's safeguards against governmental intrusion.

It's about the states courts sanctioning such illegal abuse of power. It's the states court's blatant and outright refusal to do it's lawful duty and adjudicate the merits and administer justice without denial or delay, were as here, law warrants. But most importantly; It's about this Court founding that 'Abuse of Discretion or Judicial Usurpation of Power by the trial court constitutes exceptional circumstance for which mandamus (Lie's).' Will v. United States, 389 U.S. 90, 95 (1967) Kerr v. U.S. Dist. Court for Northern Dist of California, 96 S.Ct. 2119 (1967) . Schlagenhauf v. Holder, 379 U.S. 104, 111. Will vs. Calvert Fire Insurance Co. 437 U.S. 655, 662. 98 S. Ct. 2552 (1978) Both circumstances and acts are clear and indisputable in this case.\*\*

### 17) . Relief Cannot Be Obtained In Any Other Forum or From Any Other Court.

Particularly Why; Because the States Court's has abused it power by closing the doors of justice arbitrarily in the face of clear injustice, which is contrary to the law, and what this court in Mitchum v. Foster, 407 U.S. 225, 240 (1972), proclaimed , "throw open the doors of the United States courts to those whose rights under the Constitution are denied or impaired.. Attempting to end decades of abuse of power by the State's lower courts, petitioner filed a motion pursuant to the State's high court rules, to declare Respondent and or his counsel, a frivolous litigator. In defense of said motion, the State's high court conceded Petitioner's true claim adding 'Emphasis deleted.' and further the Court

finding what amount's to 'It's Not the Courts/Judge's 'Role' to address the merits of petitioner's claims.' Appx. P. paragraph #9. At all times the states courts has deliberately disregarding the injury done to petitioner's and his rights under law.

When the doors of the United States Courts are as here, been willfully, maliciously, and improperly closed to non-influential, self represented persons like your Black petitioner, and denied any person justice is an abuse of decision . Anderson v. City of Bessemer City, N.C. 472 U.S. 564, 557 (1985). The State's Courts refusal to perform its true adjudicator role & duty under law to address and correct this should not be allowed to stand. The avenues of habeas corpus under State or Federal Statute's are not open to petitioner.

Mandamus appropriate where petitioner " Lack adequate alternative means to obtain the relief they seek, " Mallard v. U.S Dist. Court for S. Dist. Of Iowa, 490 U.S. 296, 309 (1989).

**18). The Writ Will Be In Aid of the Court's Appellate Jurisdiction**

As set forth in paragraph 14 & 17. Having exhausted all avenues seeking relief before the States courts, and the courts has gone rogue/abusing it's discretion and powers. *The All Writs Act*, is an established remedy to oblige inferior courts to do that justice which the constitution duty and office bound it to do. One of its [the writs] peculiar and more common uses is to restrain inferior courts and to keep them within their lawful bounds. Here the "supervisory control of the [Lower] Courts by [this court] is necessary to and for the proper use of power in the State Courts judicial system. Because the states trial court has so far departed from the accepted and usual 'course of judicial proceedings ' and the states appellant and supreme courts has sanctioned such a departure by the lower court, as to call for an exercise of this Court's power.



19).

**Clear Legal Right To Relief**

As set forth in the proceeding body of this petition, petitioner's rights has been violated that fact is and has been clear and indisputable. It is also clear and indisputable the states courts has failed in it's duty owed to address the merits and administer justice for which the petitioner seeks. The facts also prove petitioner's 'Actual Innocence' and his State and Federal constitutional rights as set out here 'his clear legal right to the relief he seeks'.

20).

**The Question's Presented Are Unsettled.**

The question's presented has not been but needs answering. That all citizens-now more then ever will rest assured such acts will neither be tolerated nor allowed to fester in the system.

21)

**Tyrannical Act's by the States Courts Must Not Be Allowed To Stand**

It is and has been clear and indisputable a wrong has been committed. But the states courts are banking on will never have it's day in court, that amounts to a form of tyranny.


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\*\* This Court stated; "Mandamus is available where there is a clear and indisputable abuse of discretion or usurpation of judicial power by the trial court. ' The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations...only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy.' *Will, Kerr and Will Schlagenhauf* supra.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted

  
\_\_\_\_\_  
Date: 10<sup>th</sup> Aug, 2020