20-5934
NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

THOMAS HOLDEN - PETITIONER

vs.

SHERRY BURT - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(NAME OF THE COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Holden #457885
In Properis Persona
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Mich 49442

STATEMENT OF QUESTIONS PRESENTED

II.

WHETHER A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, WHERE THE TRIAL COURT MISCORED OV-6 AT FIFTY POINTS, WHERE THE RECORD FAILS TO DISCLOSE ANY PREMEDITATED INTENT TO KILL?

III.

WHETHER THE SIXTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT WHERE, THE TRIAL COURT FAILURE TO ADDRESS THE QUESTION OF WHETHER THERE WAS A DENIAL OF RIGHT TO CHOICE OF COUNSEL AND THAT COUNSEL WAS INEFFECTIVE FOR FAILURE TO RECUSE HIMSELF AFTER KNOWLEDGE THAT COUNSEL HAD BEEN RETAINED FOR TRIAL. U.S. CONST. AMS VI, XIV?

IV.

WHETHER THE SIXTH CIRCUIT DECISION IS OBJECTIVELY UNREASONABLE, CONFLICTS WITH STRICKLAND CAUSE AND PREJUDICE TWO-PART INQUIRY, WHERE APPELLATE COUNSEL FAILURE TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL'S NONDISCLOSURE OF FAVORABLE PLEA OFFER WITHOUT THE DEFENDANT'S CONSENT CONTRARY TO THE HOLDINGS IN LAFLER v. COOPER, 132 S.CT 1376 (2012) AND MISSOURI v. FRY, 132 S.CT 1399?

LIST OF PARTIES

[X] 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 case whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1.
JURISDICTION	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	4.
REASONS FOR GRANTING THE WRIT	11.
CONCLUSION	28.

INDEX OF APPENDICES

APPENDIX A - Sixth Circuit Court of Appeals June 2, 2020 decision

APPENDIX B - United States District Court's November 4, 2019 decision

APPENDIX C - Michigan Supreme Court's July 30, 2013 decision

APPENDIX D - Michigan Court of Appeals March 21, 2013 decision

APPENDIX E - Michigan Supreme Court January 31, 2017 Postconviction decision

APPENDIX F - Michigan Court of Appeals July 6, 2016 Postconviction decision

APPENDIX G - Trial Court's March 25, 2015 Postconviction decision

CASES INDEX OF AUTHORITIES PAGE

Abela v. Martin, 380 F.3d 915, 922-24 (6th Cir. 2004) 26

Alleyne v. United States, 133 S.Ct 2151 (2015) 12

Anderson v. Treat, 172 U.S. 24; 19 S.Ct 67; 43 L.Ed. 351 (1898) 16

Apprendi v. New Jersey, 530 U.S. 466, 477 (2000) 12, 14

Beasley v. United States, 491 F.2d 687 (CA 6, 1974) 21

Brown v. Foltz, 763 F.2d 191, 195 (6th Cir. 1985) 21

Caver v. Straub, 349 F.3d 340, 348 (6th Cir. 2003) 17, 18

Cockrell v. Miller-El, 537 U.S. at 327 (2000) 13, 18, 26

Cunningham v. California, 543 U.S. 220, 233-35 (2005) 14

Evitts v. Lucey, 469 U.S. 387, 396-97 (1985) 21

Guilmette v. Howes, 624 F.3d 286, 291 (6th Cir. 2010)(en banc). 25

Guilmette v. Howes, No. 2256, October 21, 2010
(Recommended For Full Text Publication) 26

Holden v. Winn, 2016 U.S. Dist. LEXIS 9998 (E.D. Mich, Jan. 28, 2016) 11

Howard v. White, 76 F.App'x 52, 53 (6th Cir. 2003) 19

Jones v. Barnes, 463 U.S. 745, 751-52 (1983) 17

Lafler v. Cooper, 132 S.Ct 1376 (2012) 7, 2

Matthews v. Abramajyts, 92 F.Supp.2d 615, 631 (E.D. Mich. 2000) 24

Missouri v. Fry, 132 S.Ct 1399 (2012) 7, 20

Murray v. Carrier, 477 U.S. 478, 488; 106 S.Ct 2639
91 L.Ed.2d 397 (1986) 21, 24

People v. Allen, No. 249788, 2005 WL 1106498,
at *1 Mich. Ct. App. May 10, 2005) 25

People v. Francisco, 474 Mich at 89-92 10

People v. Holden, Docket No. 308164, March 21, 2013 6

People v. Holden, 889 N.W.2d 265 (Mich. 2017)(mem) 21

People v. Reed, 449 Mich 375 (1995) 21

People v. Walker, 2020 Mich. LEXIS 886, May 8, 2020

(On Reconsd), 328 Mich App 429; 938 NW2d 31 (2019) 22
Powell v. Alabama, 278 U.S. 45; 53 S.Ct 55 (1932) 16, 17
Ratlif v. United States, 999 F.2d 1023, 1026 (6th Cir. 1993) 24
Shanaberger v. Jones, 615 F.3d 448, 452 (6th Cir. 2010) 26
Smith v. Murray, 477 U.S. 527, 536 (1986) 17
Smith v. Robbins, 528 U.S. 259, 288 (2000) 8
Stewart v. Erwin, 503 F.3d 488, 495 (6th Cir. 2007) 11
Strickland v. Washington, 466 U.S. 668 (1984) passim
Towsand v. Burke, 334 U.S. 736; 68 S.Ct 1252; 92 L.Ed.2d 1690 (1948) 9, 10, 11
United States v. Cronic, 466 U.S. 648; 104 S.Ct 2039; 80 L.Ed.2d 657 (1984) 23
United States v. Gonzales-Lopez, 548 U.S. 140 (2006) 19
United States v. Tucker, 404 U.S. 443, 447 (1972) 10
Van v. Jones, 475 F.3d 292, 305 (6th Cir. 2007) 23
Wheat v. United States, 486 U.S. 159; 108 S.Ct 1692; 100 L.Ed.2d 140 (1988) 16
Wilson v. Corcoran, 562 U.S. 1, 5 (2010) 19

STATUTES

18 U.S.C. 1951(a) 12
MCL 750.83 4
MCL 750.224f 4
MCL 750.227b 4
MCL 769.34(a) 14
MCL 777.36(1)(a) 9, 12, 13
MCL 777.36(2)(a) 9, 12
MCL 777.62 10
MCR 6.508(D) 21, 24, 25

CONSTITUTIONS

Mich. Const. 1963, Art 1 § 20	21
United States Sixth Amendment	3, 7, 12, 14, 15, 16, 21, 24
United States Fourteenth Amendment	3, 7, 12, 14, 15

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 **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,
[X] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X[is unpublished.

[ ] For cases from **state courts:**

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Michigan Court of Appeals appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from **Federal courts:**

The date on which the United States Court of Appeals decided my case was June 2, 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: ___, ___, and a copy of the order denying rehearing appears at Appendix ___.

[ ] An extension of time to file the petition for 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 ___.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES SIXTH AMENDMENT

The Sixth Amendment of the U.S. Constitution includes such rights as the right to speedy and public trial by an impartial jury, to be informed of the nature of the accusation, the right to confront witnesses, the right to assistance of counsel and compulsory process.

UNITED STATES FOURTEENTH AMENDMENT

The Fourteenth Amendment of the Constitution of the United States, ratified in 1868, creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of citizens of the United States; and secures all "persons" against any state action which results in either deprivation of life, liberty, or property without due process of law, or, in denial of the equal protection of the laws.

STATEMENT OF THE CASE

Overview

Trial took place on December 9, 2011, Mr. Holden was found guilty by a jury of assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b., before the Honorable James A. Callahan, 3rd Judicial Circuit Court Wayne County.

December 22, 2011, the trial court sentenced the petitioner to 20 to 30 years in prison for assault with intent to murder, to be served consecutively with a prison term of 10 to 20 years for felony-in-possession and consecutively to a five-year term for second-offense felony firearm. (ST 14-15).

On September 1, 2011 at the AOI defense counsel waived the formal reading of the charges in the case and stood mute. (AOI pp 2-3). The Court thereafter entered a plea of not guilty on behalf of the defendant (AOI *3). Attorney Cook notified the Court that ... my understanding is they haven't made any offers. And [obviously] my client is not interested in a plea on this, certainly not the main charge.

The Court noted: "[W]ell. I don't know why you say obviously. I mean, he is on probation to this Court for two matters."

Holden contends that the Court corrected counsel that there was no obvious intent of declining by defendant. (3). See AOI Transcript.

On November 21, 2011, during Final Conference the Court asked if any offers were made by the People. (FC *10). The following disclosure occurred:

MS. GRAHAM: Yes. Your Honor. The offer as it stands is the defendant can pled guilty to Count 1, assault with intent to murder, and Count 4 felony firearm, and the People will dismiss Count 2, Count 3, and the Habitual 4th Offender Notice.

THE COURT. Okay.

MR. COOK: Count 2 and 3 are the same, are the underlying charges for the assault with intent to murder, Your Honor.

THE COURT: Okay, well --

MR. COOK: Basically it's to get rid of the Habitual.

THE COURT: Well, that's -

MR. COOK: I will go and see if they have a better offer.

THE COURT: Sure.

MR. COOK: We've gotten past this point.

THE COURT: All right, then if not, if there's not a resolution, we'll see everybody back here at the date and time set for trial, which is December 8th. Thank you.

(FC at 10-11).

The record supports counsel declined a plea without consent of the defendant and counsel did not attend to this matter before trial. Matter of fact, counsel did not secure any numbers to which the defendant could make a rational decision to accept or decline a plea. This Court can take notice that defendant's PTV's were extremely high, which was the basis for calculating any plea determination. The PRV's on the AWIM were assessed at 77 points and PRV Level F. Succinctly, the OV's total was 90 OV Level V. Defendant's ending Guideline Scoring was 225 to 750 months under the Habitual 4th.

The case involves the shooting of the petitioner's step-father, Dwight McCree, on April 13, 2011. (JT-104). Dwight, who had a rocky relationship with the petitioner accused him of shooting him in the shoulder from the front porch. (JT-I 82, 103). The petitioner, on the other hand, denied this accusation. He noticed that he had suffered an injury to his right shoulder before the incident, which inhibited the use of his hand and hindered him from lifting heavy objects like a gun. (JT-I 74). Additionally, the defense argued

that there was no evidence that the shooter possessed a specific intent to kill. (JT-I 141).

On direct appeal, appellate counsel raised two claims of error. Only one is of concern here, which are as follows:

II.

THE TRIAL COURT MISCORED OV-6 AT FIFTY POINTS, WHERE THE RECORD FAILS TO DISCLOSE ANY PREMEDITATED INTENT TO KILL.

The facts leading to Holden's conviction and sentence were partially summarized by state appellate attorney in Holden's brief. The Court of Appeals upheld his conviction and sentences on March 21, 2013. People v. Holden, unpublished opinion per curiam. (Docket No. 308164). (Appendix D).

The Michigan Supreme Court in a decision dated July 30, 2013, No. 494 Mich 885, denied Holden's application for leave to appeal, stating they were not persuaded that the questions presented should be reviewed by the Court. (Appendix C).

Holden then filed a petition for habeas corpus in the United States District Court. Shortly thereafter the petition was filed, Holden, also asked the District Court to hold the petition in abeyance in order to permit him to return to the state courts and initiate post-conviction proceedings there, in order to exhaust additional ineffective assistance of counsel claims that were not raised in his direct appeal. The District Court granted Holden's motion to hold the case in abeyance. (Dkt. # 12, Pg. ID 515).

During postconviction remedies, Holden raised several claims in his Post Conviction Motion for Relief from Judgment. Only two claims are relevant for this Court's Certiorari review:

III.

THE TRIAL COURT FAILURE TO ADDRESS THE QUESTION OF WHETHER THERE WAS A DENIAL OF RIGHT TO CHOICE OF COUNSEL AND THAT COUNSEL WAS INEFFECTIVE FOR FAILURE TO RECUSE HIMSELF AFTER KNOWLEDGE THAT COUNSEL HAD BEEN RETAINED FOR TRIAL. U.S. CONST. AMS VI, XIV.

IV.

APPELLATE COUNSEL FAILURE TO RAISE SIGNIFICANT AND OBVIOUS TRIAL COUNSEL'S DEFICIENT PERFORMANCE IN CONTEXT OF NONDISCLOSURE OF FAVORABLE PLEA OFFER WITHOUT THE DEFENDANT'S CONSENT CONTRARY TO THE HOLDINGS IN LAFLER v. COOPER, 132 S.CT 1376 (2012) AND MISSOURI v. FRY, 132 S.CT 1399 (2012).

The trial court denied Relief from Judgment on March 25, 2015. (Appendix G).

The Michigan Court of Appeals denied leave to appeal on July 6, 2016. (Appendix F).

On January 31, 2017, the Michigan Supreme Court denied leave to appeal Post Conviction Relief from Judgment in a standard order. (Appendix G).

On February 8, 2017, Holden filed an amended habeas petition and a motion to re-open the case. The court granted Holden's motion to re-open this case and order the Clerk of the Court to serve the amended petition on the state. In the same order, the Court directed the state to file a responsive pleading.

The United States District Court denied habeas corpus on November 4, 2019 in (Docket No. 14-13701). (Appendix B).

The United States Court of Appeals for the Sixth Circuit denied habeas relief and certificate of appealability on June 2, 2020 in (Docket No. 19-2360). (Appendix A).

As indicated herein, our analysis is guided primarily on two recent Supreme Court rulings, and presented claims of "cause" for "ineffective assistance of appellate counsel's failure to raise trial counsel's failure to

disclose a favorable plea under both Strickland v. Washington and Lafler v. Cooper. The Sixth Circuit Court of Appeals unreasonably denied habeas relief claiming "Holden's claim that appellate counsel was ineffective for failing to present his ineffective assistance of trial counsel claims on appeal lacks merit because, as discussed above, those underlying claims are meritless. Appellate counsel is not ineffective for failing to raise meritless issues." (Appendix A at 10).

In Strickland, the state courts determined that defense counsel's performance was not deficient in a constitutional sense was not reasonable. Each case presented its own unique set of facts and each resulted in a different outcome. But both rulings involved application of the same substantive law and focused scrutiny on the reasonableness of the state court's adjudication of the ineffective assistance claim.

Therefore, since claims seven are interrelated as cause to claim 3 and 4, here they are consolidated to give the Court a better understanding of the arguments resented. Holden has demonstrated "prejudice" by showing that his sentence is 16 to 20 years more severe than it would have been absent the undisclosed plea bargain appellate counsel failure to raise claim.

Based on the above stated overview, the Sixth Circuit unreasonally denied Holden's habeas relief on June 2, 2020, therefore, the petition for certiorari is warranted to correct the Sixth Circuit Court of Appeals split from Supreme Court precedent.

II.

A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, WHERE THE TRIAL COURT MISCORED OV-6 AT FIFTY POINTS, WHERE THE RECORD FAILS TO DISCLOSE ANY PREMEDITATED INTENT TO KILL.

Summary of Argument

Holden properly raised this claim on direct appeal based on sentencing (Offense Variable 6 at 50 points), and stands on the pleadings and on that part of the record which does exist. Further state that any short fall of the record is perfect reasoning for expansion of the record. The district court clearly erred in their decision making process.

As Holden stated in his original direct appeal, under the Michigan and United States Constitutions, Holden have a due process right to be sentenced on the basis of accurate information and in accordance with the law. Townsend v. Burke, 334 US 736; 68 S.Ct 1252; 92 L.Ed.2d 1690 (1948).

Hence, OV-6 must be scored "consistent with a jury verdict unless the judge has information that was not presented to the jury." MCL 777.36(2)(a). A sentencing court may score fifty points for this offense variable if the offender premeditated a killing. Mich. Comp. Laws § 777.36(1)(a).

In the case at bar, the jury found Holden guilty of assault with intent to murder ("AWIM"). That offense requires proof of a specific intent to kill, whether or not premeditated. The trial court chose to impose the 50-point score on its belief that Holden said something like, "I'm coming back to get you, only to return a short time with a gun." (ST 8). This belief is not supported by the record.

The district court found the state trial court scored fifty points for offense variable six ["because it thought that Holden premeditated his crimes based on the trial court's conclusion that, prior to the shooting, Holden told

Dwight, ["I'm coming back to get you."] (ECF No. 11-7, PageID.372.)

The district court found Holden's claim has no merit because a trial court's error "in applying the state sentencing guidelines raises an issue of state law only." (Appendix B at 14).

Further claiming a sentence violates due process of law if the trial court relied on extensively and materially false information that the defendant had no opportunity to correct through counsel. Townsend v. Burke, 334 U.S. 736, 741 (1948). To obtain relief, Holden must show that his sentence was "founded at least in part upon misinformation of constitutional magnitude." United States v. Tucker, 404 U.S. 443, 447 (1972). (Appendix B at 14-15).

The constitutional erroneous scoring of OV-6 increased Holden's total score from 65 points to 90 points. (PSR 11). This error had the effect of inflating the guidelines range from 171-570 months to 225-750 months or life. MCL 777.62. Because the error in scoring the guidelines violated Holden's state and federal due process rights to be sentenced accurately and consistently with the law, he is entitled to be resentenced with the correct range. Francisco, 474 Mich at 89-92; All

The district court had to admit although there was no testimony at trial that Holden threatened to return to Dwight's home and "get him," Dwight testified at the preliminary examination that, when he looked out his front door and saw Holden, Holden informed him that he was coming back to "get" Dwight. (ECF No. 11-2, PageID.151.) Dwight also testified at the preliminary examination that on the day of the shooting, he and Holden did not begin fighting until after Holden said that he was going to "get" him. (Id. at 151-52.) (Appendix B at 15).

The Sixth Circuit Court of Appeals found the district court concluded that Holden's claim was not cognizable in a federal habeas corpus proceeding because

it involved a state-law issue and that the trial court's finding of premeditation was not based on any "materially false information or misinformation of constitutional magnitude." The district court pointed to the victims testimony at the preliminary examination that Holden stated that he would be back to "get" the victim and trial testimony that, after Holden shot at the victim's house, he fired two more times, hitting the victim, after the victim "moved in front of a window." (Appendix A at 5).

The Sixth Circuit Court of Appeals then claim, a sentence violates due process if it is based on "extensively and materially false" information that the defendant "had no opportunity to correct." Townsend v. Burke, 334 U.S. 736, 741 (1948); see Stewart v. Erwin, 503 F.3d 488, 495 (6th Cir. 2007). Holden did not identify any materially false information on which the trial court relied. Instead, he merely disagreed with the factual findings and inferences made by the trial court from the evidence presented at the preliminary examination and trial. Holden's disagreement with the trial court's view of the evidence does not establish that the trial court based its sentencing decision on materially false information. Townsend, 334 U.S. at 741. Moreover, Holden did not show that he lacked an opportunity to challenge any incorrect information at sentencing. In fact, Holden objected to the trial court's ruling on OV six at sentencing. (Appendix A at 6).

REASONS FOR GRANTING THE WRIT

On January 28, 2016 the United States District Court granted Holden a Stay pending Post Conviction Relief from Judgement remedies. Holden v. Winn, 2016 U.S. Dist. LEXIS 9998 (E.D. Mich, Jan. 28, 2016). This Court should review Holden's constitutional challenge to the Guidelines' application in this case because the trial court engaged in judicial fact-finding that increased the

floor of the range of permissible sentence in violation of the rule of Alleyne v. United States, 133 S.Ct 2151 (2015), where in all actuality, Holden contends that his sentencing violates the Sixth and Fourteenth Amendments to the United States Constitution because the trial court engaged in judicial fact-finding that increased the floor of the range of permissible sentence in violation of the rule of Alleyne v. United States, 133 S.Ct 2151 (2015); U.S. Const. Amend VI & XIV. Here, the trial court scored 50 points for Offense Variable 6 "is the offender's intent to kill or injure another individual." Mich. Comp. Laws § 777.36(1). A sentencing court may score fifty points for this offense variable if the offender premeditated a killing. Mich. Comp. Laws § 777.36(1)(a). The trial court scored fifty points for offense variable six because it thought that Holden had premeditated his crimes based on the trial court's conclusion that, prior to the shooting, Holden told Dwight, "I'm coming back to get you." (ECF No. 11-7, PageID.372.) is judicial fact-finding.

In Alleyne, the defendant was convicted by a jury of offenses including robbery affecting interstate commerce. 18 USC 1951(a). The jury indicated on the verdict form that the defendant "[u]sed or carried a firearm during and in relation to a crime of violence," but made no indication the defendant had "brandished" the firearm. The penalty for the offense was 5 years of imprisonment, but was elevated to 7 years where a defendant had brandished a firearm. Because there was no jury finding on this point, the judge made the finding and sentenced the defendant with the elevated minimum. Id. at 2155-2156. The Alleyne Court noted Apprendi only concerned statutory maximums, and that Harris had declined to extend Apprendi to statutory minimums. The Alleyne Court agreed "Harris was wrongly decided and that it cannot be reconciled with our reasoning in Apprendi." Id at 2158. The Court concluded "Just as the maximum of marks the outer boundary of the range, so seven years marks its

floor. And because the legally prescribed range is the penalty affixed to the crime, infro, this page, it follows that a fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offense." Id at 2160 (emphasis in original, internal citation omitted). Alleyne establishes the rule that judges may not find facts which increase the floor of permissible sentences.

In the case at bar, the Sixth Circuit Court of Appeals unreasonably claim "Reasonable jurists could not disagree with the district court's determination that Holden's second ground for relief did not warrant habeas relief. See Miller-El, 537 U.S. at 327. First, federal habeas corpus is unavailable for Holden's sentencing claim to the extent that it was based on an alleged violation or perceived error of state law. (Appendix A at 6).

Basically, what the Sixth Circuit Court of Appeals are claiming is, it's okay for Judges to to have discretion to find facts which influence judicial discretion within the range of permissible sentences unauthorized by the jury verdict or admission of a defendant. However, the Sixth and Fourteenth Amendment constrain judges from finding facts which increase either the floor or the ceiling of the range of permissible sentences. Here, the trial court's scoring of 50 points for this offense variable if the offender premeditated a killing. Mich. Comp. Laws § 777.36(1)(a). The trial court scored fifty points for offense variable six because "it thought that Holden had premeditated his crimes based on the trial court's conclusion that, prior to the shooting, Holden told Dwight, "I'm coming back to get you." (ECF No. 11-7, PageID.372). These findings and their influence on the sentencing guideline range increased the floor of the permissible sentence and thus invaded the province of the jury as protected by the Sixth and Fourteenth Amendments. For this reason, Mr. Holden is entitled to resentencing.

The Sixth Amendment to the United States Constitution provides, in part, that criminal trials shall be "by an impartial jury." The Fourteenth Amendment to the United States Constitution, in part, "...nor shall any State deprive any person of life, liberty, or property, without due process of law...." The United States Supreme Court has held that, taken together, "these rights indisputably entitle a criminal defendant to a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." Apprendi v. New Jersey, 530 U.S. 466, 477 (2000)(internal quotation omitted). Regarding sentencing, the power reserved by the jury to determine every element of the crime means that judge's role "is constrained at its outer limits by the facts alleged in the indictment and found by the jury." Id. at 482 n. 10.

Hence, in Cunningham v. California, 543 U.S. 220, 233-35 (2005), the Supreme Court similarly concluded that a state law departure provision did not convert an otherwise presumptive sentence into a discretionary sentence to which the Apprendi rile did not apply.

Holden has identified materially false "premeditation information" on which the trial court relied on of constitutional magnitude of the Sixth and Fourteenth Amendment of the United States Constitution.

In short, Michigan's departure value under MCL 769.34(3) does not preclude an Alleyne challenge. And Michigan sentencing guidelines range constitute the "floor" for Alleyne purpose.

III.

THE SIXTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT WHERE, THE TRIAL COURT FAILURE TO ADDRESS THE QUESTION OF WHETHER THERE WAS A DENIAL OF RIGHT TO CHOICE OF COUNSEL AND THAT COUNSEL WAS INEFFECTIVE FOR FAILURE TO RECUSE HIMSELF AFTER KNOWLEDGE THAT COUNSEL HAD BEEN RETAINED FOR TRIAL. US CONST. AMS VI, XIV.

Summary of Argument

In the case at bar, the record reflects that Mr. Holden had been represented by court-appointed attorney: Donald Cook (P30555), of 3200 E. 12 Mile Road, Ste. 108, Warren, Mich 48902. Attorney Cook acknowledged at Holden's sentencing that he had been appointed not retained. (ST at *3). Holden's contends and asserts in his putative affidavit they had been trying to retain counsel and that Judge Berry denied Holden's request. This denial happened while the case was assigned to Judge Berry's courtroom under her trial scheduling docket. The request for counsel of choice is buried in the numerous adjournments in Judge Berry's court. See Docket Entries as Exhibit A and Register of Actions as Exhibit B. Holden's case had been reset numerous times in October 2011, and a scheduling error on December 6, 2011. On December 7, 2011, Holden's case was re-assigned to Judge James A, Callahan.

Attorney Cook did not address this issue of Holden's constitutional right to choice of counsel and effective assistance of counsel; nor did Cook move for an adjournment for Holden to properly pursue his right to counsel with his counsel of choice claim.

The trial court's opinion of denial is merely a recital of case law which does not explain why relief should not be granted under MCR 6.508(D). Therefore in the interest of justice, Holden moves this Court to conduct a de novo review of his Sixth and Fourteenth Amendment constitutional claims.

The Sixth Circuit Court of Appeals found the district court ruled Holden's third claim through sixth grounds for relief asserted ineffective assistance of trial counsel. The district court concluded that these grounds for relief were procedurally defaulted.

Petitioner states the Sixth Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The right to select counsel of one's choice, by contrast, has never been derived from the Sixth Amendment's purpose of ensuring a fair trial. It has been regarded as the root meaning of the constitutional guarantee. See Wheat, 486 U.S., at 159; 108 S.Ct 1692; 100 L.Ed.2d 140; Andersen v. Treat, 172 U.S. 24; 19 S.Ct 67; 43 L.Ed. 351 (1898). See generally W. Beaney, The Right to Counsel in American Courts 18-24, 27-33 (1955). Powell, supra, at 53 S.Ct 55; 77 L.Ed. 158. Where the right to be assisted by counsel of one's choice is wrongly denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation.

Holden's Sixth and Fourteenth Amendment rights were violated over the course of his trial and appeal of right. This Court should remand this action to the Sixth Circuit Court of Appeals with instructions to grant Mr. Holden's Writ of Habeas Corpus where: "Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice--which is the right to a particular lawyer regardless of comparative effectiveness--with the right to effective counsel--which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed." (Emphasis added).

The United States Court of Appeals for the Sixth Circuit decision is in conflict with controlling authority of the United States Supreme Court over a routine denial of counsel of Holden's choice was allowed to stand, even where appellate counsel's deficiency performance to raise Holden's claim that counsel rendered ineffective assistance of counsel during his appeal of right was demonstrated."

The trial court failure to address the question of whether there was a denial of right to choice of counsel and that counsel was ineffective for failure to recuse himself after acknowledge that counsel had been retained for trial.

This right encompassed Holden's right to effective assistance of counsel. Strickland v. Washington, 466 US 668, 686 (1984), and the right to choice of counsel. Powell v. Alabama, 287 US 45, 53 (1932), which is at issue in this case.

The Sixth Circuit Court of Appeals properly found as cause to excuse the procedural default of his third through sixth grounds for relief, Holden asserted, in his seventh ground for relief, that appellate counsel was ineffective for failing to present the ineffective assistance of trial counsel claims asserted in his third through sixth grounds on direct appeal. Then concluded "an attorney is not required to raise every non-frivolous issue on appeal." Caver v. Straub, 349 F.3d 340, 348 (6th Cir. 2003). Indeed, "'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." Smith v. Murray, 477 U.S. 527, 536 (1986)(quoting Jones v. Barnes, 463 U.S. 745, 751-52 (1983)). Where, as here, appellate counsel "presents one argument on appeal rather than another ... the petitioner must demonstrate that the issue not presented 'was clearly stronger

than issues that counsel did present'" to establish ineffective assistance of counsel. Caver, 349 F.3d at 348 (quoting Smith v. Robbins, 528 U.S. 259, 288 (2000)). (Appendix A at 7-8).

Hence, without doubt the issues that were presented in Holden's Motion for Relief from Judgment were not only stronger, but they were also of constitutional magnitude, where appellate counsel only raise two state law claims (1) "404b inadmissible evidence; and (2) Holden's OV score was wrongfully calculated" which the district court claimed were not cognizable in habeas corpus. The district court rejected Holden's second ground for relief. The district court concluded that Holden's claim was not cognizable in a federal habeas corpus proceeding because it involved a state-law issue and that the trial court's finding of premeditation was not based on any "materially false information or misinformation of constitutional magnitude." The district court pointed to the victim's testimony at the preliminary examination that Holden stated that he would be back to "get" the victim and trial testimony that, after Holden shot at the victim's house, he fired two more times, hitting the victim, after the victim "moved in front of a window." (Appendix A at 5).

Surely, if appellate counsel presented two state law claims, neighter of which were cognizance of habeas corpus, it is obvious that the claims presented were not stronger than Holden's federalized claims in his habeas petition at claims 3, 4 and 7 where Holden demonstrated "appellate counsel's deficient performance on appeal of right for "good cause" for not presenting his claims on direct appeal.

The Sixth Circuit unreasonably claim "Reasonable jurists could not disagree with the district court's determination that Holden's second ground for relief did not warrant habeas corpus relief. See Miller-El, 537 U.S. at 327. Federal habeas corpus relief is unavailable for Holden's sentencing claim to the extent

that it was based on an alleged violation or perceived error of state law." See Wilson v. Corcoran, 562 U.S. 1, 5 (2010)(per curiam); Howard v. White, 76 F.App'x 52, 53 (6th Cir. 2003). (Appendix A at 6).

The United States Supreme Court expounded upon a defendant's right to counsel of choice in United States v. Gonzales-Lopez, 548 U.S. 140 (2006). The Court stated: "[the Sixth Amendment] commands ... that the accused be defended by the counsel he believes to be best." Id. at 146. The Court continued "Deprivation of the right is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants ..." Id. at 148 (emphasis added). It is not necessary that a defendant show prejudice; it is enough that a defendant merely shows that a deprivation occurred. Id. at 150.

Hence, Holden was denied the counsel of his choice; (Attorney Patricia Slomski), petitioner further contends that Attorney Cook was also aware of the request to retain new counsel, and the Judge denied the motion due to Ms. Slomski, had a trial date already scheduled in a different court room. The trial court fail to adjudicate this claim in Holden's Motion for Relief from Judgment. (See MRJ at 2-3).

Holden was denied the counsel of his choice: Attorney Patricia Slomski. Holden further contends that attorney Cook was also privy to this request to obtain a retained counsel and the Judge's denial, since attorney Slomski had a trial scheduled on the same date scheduled as Holden's trial. Judge Berry denied the request since she ruled that she would not change the trial schedule date. Per the record not only was the trial date changed, but also the presiding judge. See Note p. 1 Register of Actions - Exhibit B.

A United States court of appeals has entered a decision that sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

IV.

THE SIXTH CIRCUIT DECISION IS OBJECTIVELY UNREASONABLE, CONFLICTS WITH STRICKLAND CAUSE AND PREJUDICE TWO-PART INQUIRY, WHERE APPELLATE COUNSEL FAILURE TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL'S NONDISCLOSURE OF FAVORABLE PLEA OFFER WITHOUT THE DEFENDANT'S CONSENT, CONTRARY TO THE HOLDINGS IN LAFLER v. COOPER, 132 S.CT 1376 (2012) AND MISSOURI v. FRY, 132 S.CT 1399 (2012).

Summary of Argument

In the case at bar, Mr. Holden received an additional 16 to 20 years based on undisclosed plea bargain involves one or more questions of exceptional importance, for example (trial counsel was ineffective in failing to communicate favorable plea offer, resulting in Holden's failure to accept the plea offer articulated by the trial court and the prosecution at the start of trial presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of Supreme Court of the United States controlling precedent that have addressed the issue) e.g., 104 S.Ct 2064.

The Michigan Court of Appeals decision was unreasonable where Mr. Holden demonstrated "good cause" and "actual prejudice" in claim seventh based on ineffective assistance of appellate counsel, for failure to raise the fourth claim, if not, is perfect reasoning for expansion of the record establishing usual criteria to this Court's certiorari consideration.

The United States Court of Appeals for the Sixth Circuit correctly determined "Holden's third through sixth grounds for relief asserted ineffective assistance of counsel." The district court concluded that these grounds for relief were procedurally defaulted. Further finding Holden presented these claims to the post-conviction trial court in his motion for relief from judgment. The state trial court rejected these claims because Holden did not raise them on direct appeal and failed to show good cause for

failing to do so and actual prejudice. The Michigan Court of Appeals denied leave to appeal, and the Michigan Supreme Court denied leave to appeal for failure "to meet the burden of establishing entitlement to relief under [Michigan Court Rule] 6.508(D)." People v. Holden, 889 N.W.2d 265 (Mich. 2017)(mem.). (Appendix A at 6).

The Sixth Amendment guarantees a defendant the right to effective assistance of appellate counsel on first appeal by right. U.S. Const, Am VI; Const 1963 art 1, § 20; Evitts v. Lucey, 469 U.S. 387, 396-97 (1985); Beasley v. United States, 491 F.2d 687 (CA 6 1974). Constitutionally ineffective assistance of counsel is "cause" for a state procedural default, Murray v. Carrier, 477 U.S. 478, 488 (1986), including in the 6.500 motion context. People v. Reed, 449 Mich 375, 378 (1995).

Strickland v. Washington, 466 U.S. 668, 687-88; 694 S.Ct 2052, 2064-74; 80 L.Ed.2d 674 (1984) established the standard for ineffective assistance of trial counsel, it can be used as a basis for establishing a standard for effective assistance of appellate counsel. Accord Brown v. Foltz, 763 F.2d 191, 195 (6th Cir. 1985)(Coutie, J., dissenting). Under Strickland, ineffective assistance of counsel will be found when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 104 S.Ct at 2064. The Strickland standard envisions a two-prong analysis. First, counsel's performance must have been deficient, and second, the deficiency must have prejudiced the defense. Id. Had appellate counsel failed to raise a clearly stronger issue, the failure could be viewed as deficient performance. If an issue which was not raised may have resulted in a reversal of the conviction, or an order for a new trial, the failure was prejudice.

While petitioner's case was pending in the Sixth Circuit Court of Appeals

People v. Walker, 2020 Mich. LEXIS 886 was decided on May 8, 2020. "Walker held that Lafler v. Cooper did not create a new rule [of constitutional law] and that it therefore applies retroactively to this case." People v. Walker (On Remand), 328 Mich App 429, 449; 938 NW2d 31 (2019).

Thus, clearly any federalized claims are stronger than the two state law claims: (1) "improper use of 404B evidence," and (2) "sentencing issue on OV6;" where the Sixth Circuit identified several non-exclusive factors to be considered in determining whether a defendant was denied effective assistance of appellate counsel. The decision to omit the Lafler issue was an unreasonable one that only an incompetent attorney would adopt.

Holden has demonstrated that trial counsel's nondisclosure of a favorable plea offer from the prosecution, in order to establish that he was prejudiced by counsel's deficiency, and but for the constitutional error, there is a reasonable probability the plea offer would have been presented to the court, i.e., that Holden would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances. Mr. Holden has also shown that the court would have accepted its terms, and the conviction or sentence, or both, would have been reduced from 20 to 30 years, to 4 to 10 years is clearly less severe under Assault with With Intent to do Great Bodily Harm less than murder judgement and sentence than was imposed. Lafler v. Cooper, 132 S.Ct at 1385.

Holden has demonstrated the case meets the usual criteria for certiorari review consideration, during the final conference the prosecutor Ms. Graham (prosecutor) offered to drop counts 2 & 3 (underlying charge for assault with intent to murder), if Holden plead to counts 1 & 4 (assault with intent less than murder, and felony firearm). No deal was accepted at that time.

The court was adjourned so that the two sides could come to an agreement

on a better deal. The record supports that counsel failed to disclose to Holden the other plea offer, and counsel rejected it without consent of Holden. See letter from appellate counsel admitting that the prosecutor offered Assault With Intent to do Great Bodily Harm Less than Murder, plus Felony firearm, 2nd Offense, if Holden pleaded guilty. Trial counsel never came back with a better deal to Holden of any Less than Great Bodily Harm Less than Murder plea bargain as counsel admits. (Exhibit A).

In 1984, the Supreme Court decided United States v. Cronic, 466 U.S. 648; 104 S.Ct 2039; 80 L.Ed.2d 657 (1984), a case of special interest for our inquiry. The opinion in this case included a strong statement that no prejudice need be shown where counsel was absent at a critical stage of a criminal proceeding. Two prefatory comments are useful here because we make our extended examination of the decision. First, this case was about a critical stage, and did involve an absent lawyer. Second, Cronic was handed down the same day as Strickland v. Washington, 466 U.S. 668; 104 S.Ct 2052; 80 L.Ed.2d 674 (1984). From time to time, this has caused confusion. Strickland set forth the Court's two-part inquiry into ineffective assistance of counsel, requiring that a petitioner show both inefffectiveness and prejudice. Cronic specified circumstances of alleged ineffective assistance of counsel understood by the Court to require no showing of prejudice. Chief among these was the absence of counsel at a critical stage. Van v. Jones, 475 F.3d 292, 305 (6th Cir. 2007). Id.

Holden has demonstrated the prejudice necessary under both Strickland and Cronic by alleging that counsel's deficient performance prejudiced his defense, absence the undisclosed plea offer, the results of the sentencing proceedings would have been different by at least 16 to 20 years shorter, on the lesser included offense. This Court's review is warranted, based upon a serious Sixth

Amendment Constitutional error that Split with the United States Supreme Court and Sixth Circuit Court of Appeals own decisions on MCR 6.508(D) procedural default warranting issuance of the writ of certiorari.

Sixth Circuit are Split regarding Scope of Good Cause Requirement

The Sixth Circuit Court of Appeals June 2, 2020 decision conflicts due to a split of authority among the federal circuit own published decisions on MCR 6.508(D) procedural default.

In Matthews v. Abramajyts, 92 F.Supp.2d 615, at 631 (E.D.Mich. 2000), "petitioner contends that any procedural default should be excused by the ineffective assistance of appellate counsel. Ineffective assistance of counsel may constitute cause for procedural default. Murray v. Currier, 477 U.S. 478, 488; 106 S.Ct 2639; 91 L.Ed.2d 397 (1986); Ratlif v. United States, 999 F.2d 1023, 1026 (6th Cir. 1993)(ineffective assistance of counsel constitutes cause under cause and prejudice standard for reviewing claims first presented in post-conviction proceedings). As discussed more fully below, Petitioner has shown that appellate counsel was ineffective for failing to present his habeas claims, particularly those concerning the ineffective assistance of trial counsel, on direct appeal. Petitioner has thus established cause to excuse the failure to raise his habeas claims on direct appeal." See also Criminal Law Key 641.13(7). Defendant may establish ineffective assistance of appellate counsel by showing that counsel ignored significant and obvious issue while pursuing weaker claims. U.S.C.A. Const. Amend. 6.

The Sixth Circuit Court of Appeals found: "To determine whether a brief, unexplained order citing MCR 6.508(D) is based on a procedural default or is instead a merits ruling, this Court reviews the last reasoned state court opinion to determine the basis for the state court's rejection of" a particular

claim. Guilmette v. Howes, 624 F.3d 286, 291 (6th Cir. 2010(en banc). Under this procedure, this court presumes that "[w]here there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground." Thus, this court presumes that the state appellate courts--citing only Rule 6.508(D)--invoked the procedural bar as well. See Guilmette, 624 F.3d at 291-92. This court has recognized that enforcement of Rule 6.508(D)(3) constitutes "an independent and adequate state ground sufficient for procedural default." Amos, 638 F.3d at 733. (Appendix A at 6-7).

Because the order from the lower court in this case citing Rule 6.508(D) are ambiguous as to whether they refer to procedural default or denial of relief on the merits, the orders are unexplained. Michigan practice confirms that brief orders citing Rule 6.508(D) in some case refer to a petitioner's failure to meet his burden on the merits. The procedural-default rule stated by Rule 6.508(D)(3) applies only to claims that could have been brought on direct appeal, and thus--by necessity--it does not apply to claims of ineffective assistance of appellate counsel. In People v. Allen, a Michigan petitioner seeking post-conviction relief argued that the judge in his criminal trial had erroneously excluded evidence and that he had been denied the effective assistance of appellate counsel. No. 249788, 2005 WL 1106498, at *1 (Mich. Ct. App. May 10, 2005)(unpublished table decision). Because the petitioner in Allen could not have raised his claim of ineffective assistance of appellate counsel in an earlier proceeding, the Michigan Supreme Court's form order necessarily rejected that claim on the merits. Further, the present case involved the same situation. Holden's petition for post-conviction review in state court included both trial and appellate ineffective-assistance claims. The form orders used by the state intermediate and supreme courts thus

necessarily rejected claims 3 to 6 of Holden's claims on the merits. This fact refutes the Sixth Circuit Court of Appeals unreasonable argument that such form orders can only, or do only, refer to procedural default. See e.g., Guilmette v. Howes, No. 2256, October 21, 2010 (Recommended For Full Text Publication).

The circuits own published decisions split concerning the proper scope of appellate counsel as cause for failure to raise an adequate and obvious undisclosed plea offer articulated by the trial court and the prosecution at the start of trial, presents a question of exceptional importance, if it involves an issue on which the panel decisions conflict with the authoritative decisions of other United States Court of Appeals which have addressed the issue. For example, the Sixth Circuit correctly agreed with the test of Strickland prejudice in the context of a rejected plea bargain in Lafler. The Sixth Circuit unreasonably state the claim of ineffective assistance of appellate counsel is procedural barred. See Abela v. Martin, 380 F.3d 915, 922-24 (6th Cir. 2004), for the proposition that some orders citing Rule 6.508(D) do not invoke a procedural bar.

In the case at bar, the Sixth Circuit Court of Appeals held "reasonable jurists would not debate the district court's rejection of Holden's ineffective assistance of appellate counsel claim." See Miller-El, 537 U.S. at 327. Holden's claim that appellate counsel was ineffective for failing to present his ineffective assistance of trial counsel claims on appeal lacks merit because, as discussed above, those underlying claims are meritless. Appellate counsel is not ineffective for failing to raise meritless issues. Shaneberger v. Jones, 615 F.3d 448, 452 (6th Cir. 2010). (Appendix A at 10).

Criminal Law Key 641.13(7) Although right to counsel does not require appellate attorney to raise every non-frivolous issue on appeal, attorney who has presented strong but unsuccessful claims on appeal may nonetheless deliver

deficient performance and prejudice defendant by omitting issue obvious from trial record which would have resulted in reversal on appeal. U.S.C.A. Const. Amend. 6.

MR. COOK: I will go and see if they have a better offer.

THE COURT: Sure.

MR. COOK: We've gotten past this point.

THE COURT: All right, then if not, if there's not a resolution, we'll see everybody back here at the date and time set for trial, which is December 8th. Thank you.

(FC at 10-11).

The Sixth Circuit Court of Appeals decision to reject this claim is objectively unreasonable in claiming "the record did not support Holden's claim that his trial attorney rejected a plea offer without consulting him. Holden's evidence of the plea offer--a letter from Holden's trial counsel to his appellate counsel--states that Holden rejected the offer, contrary to his attorney's and his family's advice." (Appendix A at 8)(Emphasis added).

The record supports trial counsel declined a plea offer without Holden's consent, and counsel did not attend to this matter before trial. Matter of fact, counsel did not secure any numbers to which the defendant could make a rational decision to accept or decline a plea. This Court can take notice that defendant's PTV's were extremely high, which was the bases for calculating any plea determination. The PRV's on the AWIM were assessed at 77 points and PRV Level F. Succinctly, the OV's total was 90 at OV Level V. Defendant's ending Guideline Scoring was 225 to 750 months under the Habitual 4th.

Thus, Holden has established prejudice is made out by the simple fact that Holden received a more severe sentence as a result of the jury's verdict than he would have received had he pled guilty.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

Thomas Holden

Date: 9-8-20