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Supreme Court, U.S.
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Case No. 20-607

IN THE
SUPREME COURT OF THE UNITED STATES

DELMART E.J.M. VREELAND, II,

Petitioner,

V.

DAVID ZUPAN; and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Delmart E.J.M. Vreeland, II
PETITIONER, **PRO SE**
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QUESTIONS PRESENTED

I. **PREFACE:** Denial of certiorari means Petitioner will die in a Colorado prison for a crime a jury found him not guilty of - Petitioner was forced to trial without counsel. Judge and prosecutor engage in misconduct. Jury finds Petitioner NOT GUILTY of sex assault by force/violence, judge enters conviction and life sentence anyway, SIXTEEN YEARS has been served thus far. Judge hides jury verdict forms from 2006 to 2018 when he retires, but until after direct appeal, state post-conviction and federal habeas corpus had been denied. During federal habeas, court orders Respondent produce "complete state record", Respondents refuse, thereby hiding jury verdict forms and proof of exhaustion of claims. Habeas court ignores discovery violation, dismissed habeas action with prejudice without ever reviewing the complete record as 28 U.S.C. §§ 2241 and/or 2254 and due process require. **QUESTION:** **(a)** Should the judgment on habeas corpus be void for failure to adhere to due process requirements before entering judgment; and/or **(b)** Should a Federal Rules of Civil Procedure Rule 60 Motion for Relief from Judgement to re-open the habeas application be allowed seeing no other state or federal relief is available to Petitioner as detailed herein?

II. **PREFACE:** Habeas court orders Respondents produce all state court records and physical evidence relevant to claims presented in habeas application, Respondents refuse, and admit in writing after the petition is denied that they never produced even one sheet of paper. The failure to produce the discovery prevented Petitioner from fully and fairly presenting his case and proving **(i)** Petitioner was found not guilty but sentenced to life in prison anyway, and **(ii)** all 31 claims in the habeas action were fully and legally exhausted. **QUESTION:** Does the admitted intentional refusal to produce discovery such as jury verdict forms revealing Petitioner was found not guilty but given a life sentence anyway, and proof of exhaustion of all claims, represent fraud on Court by Respondents requiring relief under Federal Rules of Civil Procedure Rule 60(b)(3)?

III. PREFACE: Petitioner pays private lawyer to represent him on federal habeas corpus. That counsel lied to Petitioner, his family and the court, and asserted he had accessed the state record and found no exhausted claims or jury verdict forms, lying as he did in order to steal over $150,000.00 from Petitioner's 80 and 85 year old parents. Counsel's lies, hidden and combined by/with Respondents discovery violations and fraud on court, caused 26 fully exhausted claims to be dismissed as unexhauted, and prevented Petitioner from providing the federal habeas court the jury verdict forms revealing Petitioner was found not guilty but issued a life sentence anyway. **QUESTION:** Does gross negligence and deception of counsel require some form of relief under Federal Rules of Civil Procedure Rule 60(b)(3) when no other relief is available?

IV. QUESTION: Based on the circumstances asserted in this petition, does the "interests of justice" and/or "miscarriage of justice" exception to defaults or successive habeas application, require the federal courts to grant some form of relief for Petitioner whom was found not guilty but issued a life sentence anyway, subjected to quadruple jeopardy, denied counsel at trial, and denied access to the trial court records and jury verdict forms from 2006 until 2018, until after direct appeal, state post conviction, and federal habeas corpus had been filed and denied, thereby creating a bar to any other form of relief?

V. QUESTION: Did the lower courts error in labeling Petitioner's Motion for Relief from Judgment and Orders Pursuant to Federal Rules of Civil Procedure Rule 60 (b) and (d), a successive habeas corpus application, and denying relief?

VI. QUESTION: Given circumstances asserted, should original habeas judgement be voided and/or Petitioner be granted permission to submit Original Action to this Court and/or a second/successive same claim habeas application to have original claims, impeded by Respondent refusal to produce discovery, addressed and resolved on the merits now that the record/evidence has been obtained?

PARTIES

The only parties to the proceeding are those named in the caption.

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CASES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Delmart E.J.M. Vreeland, II, Pro Se, respectfully petitions for a writ of certiorari in this case to review the Order of the United States Court of Appeals for the Tenth Circuit in Vreland v. Zupan, 10th Circuit Court of Appeal number 19-1244, D.C. No. 1:14-CV-02175-PAB, D. Colorado, Denying Certificate of Appealability on Motion for Relief from Judgment and Orders Pursuant to Federal Rules of Civil Procedure Rule 60 (b) and (d) in habeas corpus application.

OPINIONS RULINGS AND PLEADINGS BELOW

Not being sure of what is and is not published Petitioner attaches everything relevant. United States Court of Appeals Tenth Circuit denial of Petition for Rehearing, APP. A; Petition for Rehearing, APP. B; Denial of Certificate of Appealability on Appeal of Denial of Motion for Relief from Judgment and Orders Pursuant to Federal Rules of Civil Procedure Rule 60 (b) and (d) in United State Court of Appeals Tenth Circuit appeal number 19-1244, APP. C; Opening Brief on Appeal of Denial of Motion for Relief from Judgment and Orders Pursuant to Federal Rules of Civil Procedure Rule 60 (b) and (d) by U.S. District Court, Denver, Colorado in 28 U.S.C. § 2254 habeas corpus application Vreeland v. Zupan, 14-CV-02175-PAB, APP. E; Motion for Relief from Judgment and Orders Pursuant to Federal Rules of Civil Procedure Rule 60 (b) and (d), APP. F; Original ruling on habeas corpus application in habeas case 14-CV-02175-PAB, APP. G; U.S. District Court, Denver, Colorado ORDER Number 46 in habeas application number 14-CV-02175-PAB, APP. H; State of Colorado Pre-Answer Response to habeas application 14-CV-02175-PAB, APP. I; Original Habeas Corpus application 14-CV-02175-PAB, and Relevant State of Colorado state court documents, APP. J.

JURISDICTION

The Tenth Circuit Court of Appeals issued its original opinion on January 24, 2020. App. C. The timely motion for enlargement of time to submit petition for

rehearing was filed on February 3, 2020, and granted. Petition for En Banc Rehearing was filed on April 7, 2020. APP. B. The Tenth Circuit denied petition for rehearing on May 11, 2020. APP. A. On March 19, 2020 this Court issued an ORDER that the deadline to file petitions for writ of certiorari due on or after the date of the order was extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. This petition is due on or before October 8th, 2020.

The United States District Court for the District of Colorado had jurisdiction pursuant to 28 U.S.C. § 2254(d) and Fed.R.Civ.P. Rule 60; the Tenth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 2253(a); and this Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Note: The prison law library has informed that appending statutes and constitutional provisions somehow violates prison policy and copyright laws and is banned at this prison, so Vreeland may only cite to them.

1. The right of access to courts. Despite its importance, the courts are not too clear about where this right comes from; they have cited the Privileges and Immunities Clause of Article IV of the Constitution; the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses. See, e.g., Christopher v. Harbury, 536 U.S. 403, 415, n.12, 122 S. Ct . 2179 (2002);

2. The Sixth Amendment to the Constitution provides in part that in all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of cousnel for his defense. U.S. Const. Amend. VI;

3. The Due Process Clause prohibits governments from depriving citizens of life, liberty or property without due process of law. U.S. Const. Amends. V, XIV;

4. 28 U.S.C. §§ 2241 and 2254;

5. Rules governing section 2254 cases in the United States District Courts, Riles 1 through 12;

6. Federal Rules of Civil Procedure Rule 60(b) and (d).

INTRODUCTION

This petition calls on the Court to clarify what path a criminal defendant is to take when he is barred from all state and federal relief but discovers jury verdict forms revealing he was found NOT GUILTY of the crime charged, but issued a life sentence anyway and the court hides the jury verdict forms for over 13 years.

According to the state courts, U.S. District Court, Colorado, and U.S. Court of Appeals for the 10th Circuit, there is no relief available for Vreeland under his circumstances unless it comes from or at the direction of this Court.

Petitioner, whom was forced to jury trial without a lawyer, is currently serving life without parole, the actual sentence is three-hundred and thirty-six years to life, possible parole release date, October 2144, so life without.

The sentence is based on enhancing sentence statutes due to a sex assault overcome victims will by application of force and/or violence charge.

The record now obtained after serving sixteen years in prison reveals the jury found Petitioner NOT GUILTY of the enhancer, NOT GUILTY of sex assault by force or violence, but because Petitioner was being tried without a lawyer against his will, the judge and prosecutor whom Petitioner sued in federal court prior to trial, manipulated the system, entered judgment of conviction on sex assault force/violence, entered 4 convictions for same one charge, issued a 336 year to life sentence, hid the jury verdict forms and state records from 2006 until 2018 when he retired, even denying full records for appeals.

Petitioner learns this in 2018, but paid lawyers figured it out and said nothing in effort to steal over $150,000.00 from Petitioner and his parents.

The problem here is that prior to finding the complete record almost thirteen

years after it was hidden, Petitioner had already exhausted his direct appeal, state post conviction and federal habeas corpus opportunities and is now barred by 28 U.S.C. § 2254 from filing a second/successive habeas application, and the state court can offer no relief under any rule.

Petitioner, being served the complete record years after the fact, not wanting to file a Rule 60 motion and mess it up, requested counsel be appointed to do it right so it would not be considered a second/successive habeas application, Petitioner was denied counsel and told to do it pro se.

Petitioner attempted a pro se Fed.R.Civ.P. Rule 60 motion for relief from judgment in the habeas court as soon as the judge would accept a pro se pleading. The court ruled the Rule 60 motion, due to the relief requested, was a second/successive habeas application, was not timely, and he denied it.

Petitioner appealed to the USCOA 10th Circuit. The USCOA denied certificate of appealability and appeal and asserted the Rule 60 motion was in fact a second/successive habeas application as presented, refused to address the issues at all. The three appeal judges implied an application for permission to file a second/successive habeas application was required.

Petitioner filed the application for permission to file a second/successive habeas application to USCOA 10th Circuit, three different judges deny it.

Due to games, gross negligence and deception by private counsel and state actors, Petitioner, whom was found NOT GUILTY but given a life sentence anyway, has ZERO state or federal court process available to him, he now has only two forms of relief available to him, (1) Petition for Writ of Certiorari to this Court; and/or (2) Petition for Original Action / Habeas Corpus to this Court.

Without relief from this Court Petitioner will die in prison for crime he was found not guilty of, due to procedural bars and habeas rules Petitioner doesn't know how to navigate, and for which appointment of counsel was denied.

An easy legal remedy to this injustice would be for this Court to declare the original habeas corpus judgment VOID on due process grounds for Respondents' refusal to produce the state records, and the court's failure to take specific actions due process requires prior to entering judgment, i.e., obtaining and reviewing the state record and evidence in support of claims asserted, before judgment.

Alternatively, allowing a same claim second/successive habeas application would also do the job. Its no longer about Petitioner being entitled to relief, rather, its simply about finding an avenue to obtain relief.

STATEMENT OF THE CASE

State Court Proceedings

The state court history is extremely relevant to questions presented so it will have some detail to it: Petitioner, "Vreeland", is in Colorado on vacation with roommate, Osmond, two teen-age gang members posing as adult non-gang-members attended a vacation-rental-home-party. Accuser NM, unknown to Vreeland a teenage gang member, whom was on felony probation, had warrants for his arrest, was facing 48 years in prison if convicted for robbery of the vacation rental, had a long violent criminal record, was even arrested for attempted murder of his own mother. (See APP. D, Opening Brief to 10th Cir. USCOA, at Appendix A-7 for criminal history).

NM and JR rob the vacation rental when Vreeland was not there and stole 76 fifty dollar bills and tens of thousands of dollars of other items. (See APP. D,p.10,¶3). When Vreeland cofronted NM and JR about the theft, NM and JR ran to police and reported a sex assault, gay porno for cash, and asserted all this took place between 11:30 pm 10/3/2004, and 2:45 am on 10/4/2004.

Police obtain a search warrant to "search the vacation rental for evidence of any form of criminal activity", a general sarch warrant.

(State refuses to grant access to warrant for this petition). The search takes place 10/15/2004, Vreeland and his roommate are arrests, police assert no evidence of criminal activity was found in home, but seize all vacation cameras, film, and computers. Police notes say the computers were shutoff and seized at exactly 1633 HRS on 10/15/2004. See APP. F, ECF 102-1,p.58, relevance show below.

Vreeland is charged with various sexually related acts, See App. J-2A,p.1 of 1, the most serious being COUNT 9, sex assault overcome victim "NM's" will by force/violence.

Vreeland is held without bail and while in jail police illegally record and listen to all attorney client telephone calls, revealed at APP. F, ECF 102-1,p.12 for 7 CDs, and p. 13 for 23 CDs, 9,850 recordings in all.

Eleven-days before jury trial Vreeland's lawyer, a long time friend of the judge, informed Vreeland he had yet to talk to even one witness and required a speedy trial waiver, Vreeland objected and said he had a year to call witnesses and as speedy trial was already violated Vreeland would not waive. The lawyer said he was asking the court to delay trial anyway, and he hung up. One day later the trial judge denied the request to delay trial as Vreeland would not waive speedy trial. Vreeland's lawyer, on law enforcement recorded telephone call, again, asserted he was now going to try the case and call no witnesses on Vreeland's behalf, Vreeland objected and stated he would not allow it. The lawyer then said to Vreeland on a recorded telephone line, "Fuck you, I quit.", and he hung up. The next day the lawyer filed a motion to withdraw and motion to delay trial so Vreeland could retain new counsel. The lawyer and prosecutor told the judge Vreeland fired the lawyer to delay trial. Vreeland responded and said he had a copy of the recorded telephone call where the lawyer said "Fuck you, I quit", and other things, and asked the court to play it for the record, the judge refused to listen to the tape, the lawyer admitted he had spoken to no witnesses at all, and

the judge allowed the lawyer to quit that date, 8 days from trial, and stated the court would consider any request to delay trial from a new lawyer.

8 days later, the morning of trial, attorney Jurdem enters appearance and the court accepts it. The lawyer asks for 60 days delay in trial to prepare, the court says no, the lawyer can have two days, Saturday and Sunday, but must pick jury that day and make opening statements that day. The lawyer says he cannot, it will be malpractice, he and the judge argue, the judge allows the lawyer to withdraw, and forces Vreeland to try the case pro se.

The court, prepared with an written order, asserted Vreeland had fired lawyers and created conflicts with them to delay trial, so Vreeland had waived his right to consel by "implied waiver". Vreeland asserted he never fired anyone, the judges friend lied to the Court, the recorded calls proved it. Again, Vreeland asked to play the recorded calls, the court refused.

11/28/2006 Vreeland, mentally incompetent at the time, was ordered to try the case pro se, and the jail mental health department was ordered to stop all medication until trial was over and to force Vreeland to withdraw during trial. See APP. J-2B,p.108 at 8.

After being forced to trial pro se, Relevant to this petition, after receiving a Bill of Particulars asserting crimes took place 10/3-4/2004, and after Vreeland serves his alibi defense revealing he had not even met the two accusers as of the date the BOP asserted, and thereby locking in that specific date and prohibiting any evidence the crime could have taken place on any other date pursuant to state statute; see C.R.S. Crim.P. 16 Part II(d), which says that once the BOP and alibi are entered the state and defendant cannot introduce any evidence as to any other date of crime and can only instruct on the date specified in the BOP, the following took place;

Prosecutor tells jury they found 477 nude child photos on Vreeland's home

computer. Vreeland cries set up, police planted photos, all of them revealed they were created AFTER the computer was seized on 10/15/2004.

(NOTE: a sheriff officer was later arrested and convicted by plea of guilty to felony sex charges against children and admitted the photos used against Vreeland were in fact his, he planted them, this was 7 years after trial and sentence of Vreeland. See APP. J-5, reports of arrest and charges, and APP. J-6, reports of judges sealing the arrest information to prevent reversals of convictions the sheriff agent planted evidence in.) Noteworthy here, the same officer is also caught at trial planting cocaine evidence, turns out the officer was the evidence technician on the case;

NEXT, as there was identification confusion, NM and JR are asked in front of jury to identify Vreeland and his tattoos as they say they were alone in a room with Vreeland completely nude. NM and JR testify that Vreeland has tattoos on his left leg (NM), right leg (JR). During recess Vreeland whispers to a lawyer loud enough for snooping closely prosecutor to hear, that he has tattoos next to his penis NM and JR failed to identify. 35 minutes later state star witness Adkins takes the stand and tells jury he saw photos of JR performing oral sex on Vreeland, knew it was Vreeland as he saw the tattoos next to Vreeland's penis in the photo, and knew Vreeland had tattoos next to his penis as he too had sex with Vreeland that same one night and saw the tattoos. Vreeland objects and calls for recess again. Vreeland reveals he has no tattoos on legs or next to penis, nothing below the belt at all. Judge has sheriffs strip Vreeland in holding room to verify. Adkins tells judge outside jury presence, and on video, the police entered room where he was sequestered and told him to lie to jury and say Vreeland had tattoos next to his penis and that Adkins saw them in the photo of Vreeland and JR, and personally during sex with Vreeland that night (exactly what Vreeland intentionally whispered during recess of trial to prove he was being set up) See

partial admission at APP. F, ECF 102-2,p.50 at IV;

Next, the prosecutor keeps telling the court Vreeland is in Colorado posing as a doctor and is a skilled con man, see APP. J-7, and produces a photo of someone they say is Vreeland posing as a doctor, see APP. F, ECF 102-2,p.70 which reads EXHIBIT ZZ. This, however, is not this Petitioner, its not Vreeland, see APP. F-2 and F-3, Vreeland's passport, and arrest photo. The judge refuses to tell jury the state witness was instructed to lie by the police and prosecutor, refuses to show jury photo of man accusers initially report had assaulted them and was allegedly Vreeland, (man was doctor living next to Vreeland's vacation rental) and allows the false identification to stand;

Next, (other relevant issues) - Vreeland's forced to wear tazer belt on legs in front of jury to make him look dangerous; judge makes comments to jury about 911 terror attacks and terrorists, pointing to Vreeland telling jury they had a job to do to rid world of criminals, etc...; In front of jury prosecutor attacks Vreeland's decision not to testify and tells jury "Vreeland can testify later if he wants to". All of this is just a short list of trial issues relevant to petition, but by no means everything that took place.

Next, Vreeland gets state star witness Adkins back on the stand and Adkins admits the date on the bill of particulars is false, that he admitted to police the sex assault allegations by him, NM and JR, was all a lie and set up, police were aware of it and covered it up, Adkins even admits that as of the date asserted on the BOP he had not introduced NM and JR to Vreeland yet. See APP. D, at Appendix A-1, transcripts, at TR 12/5/04,p.27,l.1; p.45,l.18-19, as to when State star witness adkins met Vreeland on 9/29/2004, introduced Vreeland to NM a week later on 10/7/2004, to JR two days later on 10/9/2004, Id., at p.26,l.12-24, admission of robbery of home and theft of 76 fifty dollar bills, Id., at p.53,l.7-p.55,l.12, and admitted it was all a set up to Tim, his friend as he did not want

Tim in home when police raided it, Id., at p.46,l.1-20, that police knew this, had evidence of it, and hid it from discovery and jury. Id., at p.46,l.20-p.47,l.18.

The state star witness destroyed the state's bill of particulars, alleged date of crime, and entire theory of prosecution's case. The testimony revealed Vreeland had met the two accuser, not on 10/3-4/2004, but rather on 10/7/04 (NM) and 10/9/04 (JR), had never been alone with them, that they went to police three days after the home robbery, on 10/12/2004, and Vreeland had only known them a total of 5 days before they went to police, had only met NM 2 times and JR one time, and had an alibi for any day the state attempted to assert a crime took place on. The state's witness destroyed the state's case. In addition, two defense witness arrived for trial and the prosecution tell them trial was cancelled, the prosecution then filed a request for protective order telling the court they were in fear for their life. The court ordered Vreeland and his lawyers not to contact them again. See APP. F, ECF 102-2,p.60 for protective order, and pages 62,63,64 for witness statements revealing prosecution lied. There is a little more information necessary in regards to being found not guilty of sex assault by force/violence, but being issued a life sentence anyway.

During trial the prosecutor says to jury "As to Count 9..." "So he starts with NM and it goes on again. The camera starts flashing... pictures are being taken ... I'm going to put my hand on my penis and then you're going to put your mouth on my hand and we'll make it look like your giving me oral sex in the picture, but you won't really be. NM says, ok. He does that. He puts his mouth on the defendant's hand at which point the defendant pulls his hand away, grabs his head and <u>forces</u> him on his penis, and he <u>forces</u> NM to give him oral sex. That's the count of sex assault as to NM, that you'll see." See, APP. D, at Appendix A-1, TR 11/28/06,p.271,l.9-p.272,l.7.

NM, however, tells the jury a completely different story than the prosecutor,

NM says; there was no camera or pictures being taken, EVER!: "Q. (from prosecutor to NM) "And were there pictures being taken while any of this was happening?" NM answers and says: "A. NO! There was, like, no camera that I could see." See APP. D, at Appendix A-1 TR 11/29/06,p.70,l.6-8.

THERE WAS ALSO NO FORCED ORAL SEX: Questioning continues by prosecutor; Q. "At some point did he talk about the video and what you all would do in the video?" NM answers; A. " Yeah. He said I had to suck him off to get the money ...." Q. "What do you mean by that?" A. NM says, "I mean like put my mouth on his dick and suck him off." Q. "Tell us what happened next." A. NM says, "I don't know, I put my mouth over his dick, tried not to touch it.... I figured if all I had to do was suck that fucking cock to get that money -- I'm sorry. ... If all I had to do was do that to get out of there, it wasn't that bad." See, APP. D at p.12 numbered at top of page, or APP. D, Appendix A-1, TR 11/29/06,p.67,1/10-25. NM testified that he had sex with Vreeland for money, and when Vreeland asked NM if he was comfortable during sex NM stated that he in fact was. Id. at TR p.66,l.3-6.

After closing argument ended, and Vreeland proved clearly there was no crime, no sex assault, no pornography at all by the accusers own testimony, and that Vreeland didn't even know the accuser on the date specified in the bill of particulars, and after NM and JR admitted they did rob the house, lied to police about it until 3 days from trial, and that they were the cocaine dealers, the judge and prosecutor violated Crim.P. 16 Part II (d), refused to instruct the jury on the date on the BOP, refused all mandatory instruction in regards to consent, stipped Vreeland of his alibi defense, and entered evidence of different dates of crimes, telling the jury, the crime could have taken place before Vreeland arrived in Colorado from Canada, all the way up to ten days after the crime was reported.

The jury found Vreeland not guilty of sex assault by force/violence, the

judge and prosecutor, as Vreeland was pro se, manipulated the process and issued a life sentence anyway, then altered the trial court record and hid jury verdict forms from 2006 until 2018 when the state trial judge retired.

Between arrest and conviction/sentence, Vreeland filed six different state court appeals and exhausted approximately 29 claims.

STATE APPELLATE COURT PROCEEDINGS

After sentencing, appeal counsel is denied the complete trial court record and argues with the prosecution and trial judge about it for SEVERAL YEARS which delayed direct appeal. E.g., trial ended in 2006, sentence was delayed until 2008, opening brief on direct appeal was not allowed until 2011. Appeal counsel tries for years to get the complete record with transcripts and access to the illegally recorded attorney client conversation CD(s), and actual jury verdict forms. The judge issues written rulings denying access. APP. F, ECF 102-1,p.5

Appeal counsel attempted to argue to Colorado Court of Appeal that he was being denied access to the complete record and evidence (recorded calls) which were required to prove the 6th amendment violation and counsel(s) telling Vreeland he quit and to fuck off, and to prove Vreeland never fired any lawyer. Appeal counsel asserts, Vreeland refuses to waive speedy trial, the judge's workout partner at the gym, Vreeland's lawyer, moves to delay trial, the court denied the request as Vreeland refused to waive speedy trial, the lawyer then says fuck you I quit, to Vreeland. Counsel moves to withdraw as he stated he would, the prosecutor and lawyer then tell the judge Vreeland fired the lawyer to delay trial, the judge then forced Vreeland to trial without a lawyer asserting Vreeland is trying to delay trial - none of that washes. The CCOA, seeing the magnitude of the issue if the recordings are released to appeal consel, DENIES appeal counsel access to them an keeps them under seal. See APP. D, Appendix A-2, CCOA bates stamp numbers 2842 but see 2843 ¶1, the denial, preventing proof of claims.

Without access to the complete state record appeal counsel is ORDERED to file the opening brief with what he has and with no further extension to secure the complete record, counsel files a brief citing MAJOR misconduct of the trial judge, prosecutor, police and appeal court, flaws in the case, and an opening brief with 39,010 words, and the required motion under C.A.R. 28(g)(3) to exceed word limits as state law required. 26 total claims detailing how Vreeland was in fact SET UP, abused by a bias court and prosecutor, subjected to double and quadruple jeopardy and illegal sentence, the list of claim is seen at APP. J-2B,p.3-6.

The CCOA refused to allow appeal counsel to litigate the claims, passed on them for procedural reasons, and ordered counsel to cut 21 claims regarding set up, misconduct, double/quadruple jeopardy, illegal sentence, etc... Counsel complies and submits the edited brief as ordered, APP. J-3, the CCOA denies the appeal and issue an order which was a copy and paste of the state's answer brief, even quoting typographical errors as factual content.

Finally, in addition to the state courts denying appeal counsel access to the record, the state court via the state prison system also denied Vreeland access to the record and ruled Vreeland was only allowed to possess "one copy of the 39,010 word 26 claim opening brief, and nothing more". This was litigated and admitted in Vreeland v. Schwartz, et al., 13-CV-03515-PAB-MJT, US. Dist., Ct., Colorado, currently on appeal in 10th Cir. appeal 19-1316.

After direct appeal and cert was denied by state supreme court, Vreeland, armed only with that one copy of a brief, converted that brief into a state post conviction motion to exhaust all claims. The same trial judge refused to allow it to be filed, and took issue with Vreeland raising the issue of the police officer's arrest, conviction and admission of planted evidence. The trial court refused to allow it to be filed in effort to conver up the officer's conviction as is revealed in the articles at APP. J-5 and J-6.

Federal Court Habeas Corpus Proceedings Part One

(Note, all lower court documents are not attached as they contain no relevant materials, they are detailed to give this Court a feel for the case history).

Just to refresh - Vreeland is arrested in 2004, held without bail until trial in 2006, forced to trial without a lawyer, jury finds him not guilty of sex assault by force.violence, judge and prosecutor hide jury verdict forms, mqanipulate system and then issue a sentenced of 336 years to life in 2008. (Hiding jury verdict forms from 2006 until 2019)

State appeal court refuses to address direct appeal until 2014, rejectes the first opening brief properly presented pursuant to state law C.A.R. 28(g)(3), order appeal counsel to cut the brief from 26 claims 39,010 words down to 5 claims 13,500 word, appeal counsel complies, the CCOA then denies appeal in total. State Supreme Court deny certiorari without response by state. Vreeland tries to litigate a state post-conviction petition in 2014, and the trial judge refuses to allow it to be filed and entered on the docket sheet, TWICE! (Note: Prison officials agreed to testify they mail the petition to the state court two times).

In August 2014 before the one year time bar took hold in federal court, Vreeland, armed only with a copy of the original 39,010 word appeal brief, converts that brief into a federal habeas application raising all claims in the brief and adding ineffective counsel claims. Case title, U.S. Dist. Ct., Colorado, Vreeland v. Zupan, et al., 14-CV-02175-PAB, ECF 1. The court claims the petition is 411 pages, but in reality it was 177 with attachments of lower court materials used in support of motion for waiver of exhaustion rules. (Court ignored this fact).

Vreeland, as stated, files motion to exceed page limits, ECF 3, and motion to waive exhaustion rules due to exceptional circumstances, ECF 4. The court denies motion to exceed word/page limits, denies request to waive exhaustion, rejects the

application saying it was too long and wordy, orders Vreeland to amend approximate 177 page application to 30 pages, ECF 5, and says the court will reconsider page limits later, thereby placing Vreeland in a risky positon of filing a new petition over 30 pages and have the case dismissed for failing to comply with previous ruling, the standard scheme applied to pro se parties in the U.S. Dist. Ct., Colorado. (Note: The application was word for word what was prepared by one of the State of Colorado's best and most successful attorneys.) Vreeland immediately complied and filed ECF 8 and did what he could to assert his claims. See APP. J-1.

Important here, the court rules the new application, ECF 8, "supersedes the pleading it modifies.", ECF 9 at 1, so by this Circuit's own rules it was as if it never existed and cannot be used for reliance upon at any later date by party or court. (The respondent cited Hooten v. Ikard Servi Gas No. 12-2179, 2013 WL 1846840 at *4 (10th Cir. 5/3/2013). The court then orders the state to submit an pre-answer response addressing timeliness and exhaustion of state court remedies. Id., at ECF 9. (ECF 17 is herein APP. I)

The state responds with ECF 17, and argue the application is a mixed petition, argue Vreeland can still go back to state court on Crim.P. 35(C) post-conviction petition and have his claims resolved as they are not barred in state court. See ECF 17 at APP. I. (The state even argues Vreeland's ineffective counsel claims are valid and require a hearing in state court. See cite below). The state also flip-flops and says Vreeland could have raised all his claims on direct appeal, allegedly did not, so he is procedurally barred. (Trying to have it both ways, ignoring the 39,010 word 26 claim brief properly filed but struck by CCOA).

Vreeland responds to ECF 17 pro se, addresses the issue of exhaustion and argues he has tried twice to litigate state post conviction proceedings, is not required to try a 3rd or 4th time, attached copies of proof of filing with the

state courts, and asserted the trial judge refused to allow the petitions to be docketed and filed or entered but gave no reasons why. Vreeland argued, again, for waiver of exhaustion due to state impediments.

The court then issues an order to show cause, ignoring Vreeland's reply to pre-answer response, and orders Vreeland to show cause why the applicatio should not be dismissed as mixed petition.

Vreeland, knowing he was being ignored and not believed about attempts to exhaust, and knowing better then to try and litigate a federal habeas application pro se, moves for time to retain counsel, the court grants the request. Mulligan and Reisch enter in March 2015 and request 90-days time to obtain the state record and physical evidence required to respond to the show cause order. The Court grants only 60 instead of 90 days to address the show cause order as to dismissing application as mixed petition.

Mulligan Reisch then flat out lie to Vreeland and his parents and falsely claim they had requested access to the state record, federal judge denied it, and now they will attempt to obtain it from the state court, this was March 2015. Mulligan Reisch say they will need additional funds, and take an excess of $150,000.00 from an IRA of Vreeland's 80 and 85 year old parents.

May 1st, 2015, Mulligan Resich serve response to show cause order and claim they obtained the state records from the state court, reviewed them all, but found no proof of exhausted claims and no jury verdict forms, or alleged recorded attorney client telephone conversation CD(s). The lawyers tell Vreeland and his family they are fighting to get access to the records and recorded attorney client calls but the court's are refusing to hand them over just as they did to appeal counsel Mike Heher during state appeal litigation. (All lies designed to steal over 100 grand from senior citizens)

Mulligan and Reisch tell the court in the response to show cause, Vreeland

has tried to exhaust, the state impeded the attempt by refusing to docket the state postconviction petition, as well as the CCOA's rejection of the original opening brief of 26 claims and 39,010 words which state statute C.A.R. 26(g)(3) actually allowed appeal counsel to file. The lawyers seek waiver of exhaustion, and tell the court if exhaustion is not waived they will proceed on what the court deems is exhausted. (Vreeland was not made aware of any of this until 2019).

The state responderd and said, seeing Vreeland paid counsel to litigate the habeas action, he must pay counsel to hand deliver a third state postconviction petition to the trial court and pay the lawyer to litigate it. The state even admit all ineffective counsel claims were not only valid, they required a hearing in state court. See APP. I,p.27,¶2, and also argue that Vreeland's ability to articulate the claims based on his possession of the 39,010 word brief made it clear he was able to assert his claims so waiver of exhaustion should be denied.

The habeas court issues ECF 46, APP. I, Order Dismiss in Part, Answer. The court acknowledges Vreeland's attempts to exhaust in state court with a Crim.P. 35(c) petition and the proofs provided revealing the pleadings were filed to the state court. ECF 46,p.4, last ¶. But then goes on to rule at ECF 46,p.6,¶3, Vreeland could have paid counsel to deliver the motion again, and the court says, Vreeland failed to assert whey he did not resend the application again after 5/13/2014. Id. (In essence the habeas court was saying Vreeland was required to file a third or even fourt postconviction motion when the trial judge refused to docket the first 2 or 3 attempts out of bias.)

Next, at ECF 46,p.7,¶1, the court steps through the looking glass and says, denial of access to state court records, transcripts, and evidence relevant to claims does not demonstrate that state postconviction litigation has been rendered ineffective. "Applicant's concern about being forclosed in future postconviction motions, without having access to the state court record, is only speculative."

Here, the same judge was presiding over Schwartz, supra, wherein the state admitted the were denying access to the state record, intentionally, and prevented Vreeland from filing any claims other then what was seen in the 39,010 word brief, there was nothing speculative here.

Finally, ECF 46,p.7,¶2, states request to waive exhaution is denied with respect to claims 27(b)-(e) and 28. States Vreeland requested to proceed on any claim the court ruled was exhausted and to dismiss the rest (Vreeland did not do this), the court dismisses claims 27(b)-(e) and 28 as unexhausted and proceeds to address the remaining claim listed at ECF 46,p.7-10.

The court denied Claim 4, federal speedy trial claim under extradition rules as not cognizable in federal habeas action. Dismissed Claim 31, a due process claim regarding denial of access to state records for appeal and postconvicion, as not cognizable. Denies Claim 32, actual innocence claim asserting this is not cognizable as a stand alone claim, Vreeland argues it is not stand alone, it is asserted in conjunction with all other federal claims. Court dismisses it anyway.

AT ECF 46,p.14 the court dismisses claims 6 through 9, 11 through 26, 27(a), 29, and 30 as procedurally defaulted, ruling that appeal counsel's 39,010 word brief was not filed pursuant to state appeal rules, and when counsel filed the ordered amended brief he failed to raise all 26 claims in that brief. The court concluded at ECF 9,p.19, claims 6 through 9, 11 through 26, 27(a), 29 and 30 were dismissed as procedurally barred; claims 4, 31 and 32 were dismisses as not congnizable; claims 27(b)-(e) and 28 are dismissed as unexhausted.

AT ECF 46,p.20, the court rules, and this is CRUCIAL TO THIS PETITION; (i) ECF 46,p.20,¶1, claims 1, 2, 3, 5 and 10 are allowed to proceed; (ii) ¶3, within 30 days from 12/21/2015, "...Respondent <u>shall</u> file with the Clerk of the Court, in electronic format if available, a copy of the <u>complete</u> record of Applicant's state court proceedings in Douglas County District Court case 04CR706, including <u>all</u>

documents in the state court file and transcripts of all proceedings conducted in the state court including physical evidence that is relevant to the asserted claims."

Vreeland notes here: the court ordered respondents to produce the state record, jury verdict forms, recorded attorney client telephone calls - respondents intentionally refused to do so, suppressed it all, and do not admit they served nothing and ignored that order until almost five years after the habeas action was dismissed and appeal to the USCOA and cert petition to this Court were all denied. Said admission, by letter in 2019, in conjunction with a state court ruling issued later (detailed below) revealed the lies, gross negligence and deception of Vreeland's counsel and respondents, as well as violation of due process in the habeas corpus application process.

The state refuses to provide the entire state record and physical evidence as ordered, a state clerk later serves what she could find, Vreeland's counsel hid this fact to get away with the theft of the money. The Court then, without ever receiving the state record, denies the habeas application, with prejudice.

UNITED STATES COURT OF APPEALS TENTH CIRCUIT PART ONE

After the habeas application is denied with prejudice and 26 claims are dismissed as not exhausted, Mulligand and Reisch, blaming it all on the judge, stop taking calls and/or answering emails from Vreeland and his parents, then, one day out of the blue he contacts Vreeland's 80 year old mother and says "Hay, I know this judge really screwed Vreeland, but my friend is a great federal appeal attorney and she is willing to take his case if you want to retain her." The lady, L.C. Hartfiled, contacts Plaintiff's mother, says the case will cost about thirty-thousand dollars, mother agrees to retain her. Hartfiled meets with Vreeland and agrees to address all claims dismissed as unexhausted, obtain the state records, and get the matter back to the lower court for a hearing.

Hartfield asks what happen to the state postconviction petition Mulligan Reisch filed. Vreeland advised they never filed it, advising Vreeland it would be a successive petition, would be denied. Hartfiled said this was 100% false, and had her secretary walk the petition to the trial court. The same judge rejected it a third time, the secretary said she was not leaving until it was marked as being filed, the application was marked as filed the very last day of the three year time bar.

Hartfiled then files an appeal brief to the 10th Circuit COA in case 16-1503, 45 days later she admits she didn't obtain state records, didn't address exhausted claims being denied as unexhausted, so an argument ensued. Three weeks later Hartfiled issued a bill for about $80,000.00 more than the agreement and asserted she would quit if Vreeland's mother failed to pay it, so his mother paid it.

The opening brief basically ignored all error as well as gross negligence and deception of counsel, and did so, she claimed, to protect Mulligan Reisch from legal liability.

INTERM STATE COURT PROCEEDINGS

While this federal appeal was going on, it was seen on TV that the sheriff's office agent whom set Vreeland up was arrested, but the state courts sealed the cases so nobody could use it to overturn their convictions for evidence the agent planted. See APP. J-6.

The same trial judge in Vreeland's case denied the state postconviction petition asserting all claims were barred as they could have been raised on direct appeal but were not. (Ignoring the 39,010 word 26 claim brief).

Vreeland appeals to state appeal court and moves for appointment of counsel asserting the issue that he and his lawyers had never been granted access to the complete state record, physical evidence and jury verdict forms, EVER.

The CCOA reviewed the issue, denied counsel, ordered Vreeland file appeal pro se, but, recognizing Vreeland and his lawyers had in fact been denied access to the records after trial in 2006 all the way to 2018, the CCOA ordered the appeal clerk to serve the state record to Vreeland, but also refused access to the recorded attorney client calls.

The state clerk served Vreeland "One CD" in Colorado State Court Appeal number 17CA1648 on February 14th, 2018 twelve years after trial for the first time. See, APP. F, ECF 102-1,p.2. The documents are confusing; they first reflect the record was volume 1-9 of trial court records and 63 transcripts, and volume 10-11, 2 boxes of exhibits. (Id.) Vreeland reviewed the record provided and discovered the following; (i) the record he was served was not the same record served to direct appeal counsel, not one page cited in the direct appeal opening brief matched any record the clerk served Vreeland; (ii) the pages had old numbers on them that were marked out with marker; (iii) APP. F, ECF 102-1,p.1, revealed the U.S. Dist. Ct., was served "One CD of Records", but a different set of records then those served to CCOA in direct appeal, and different from what Vreeland received in postconviction appeal. All three sets of records were different and had pages missing from one disk that were in one other, but did have pages in each different copy that was not in the other two; (iv) then at APP. F, ECF 102-1,p.3, its revealed there are 12 volumes, 3 boxes and 8 envelopes, and none of it was served to the habeas court as it was all lost and hidden in a room at the Colorado Court of Appeals when the habeas court ordered it produced. See, APP. F, ECF 102-1,p.3, where the clerk hand writes "returned 2/14/14, contents of"??? Except 1 Box - 1 Box just found listing volumes 2,3,4,5, with 3 sealed items and attorney client telephone recordings in them, (CDs), and the general search warrant. The problem here was two fold, (1) materials reflected in that document were not returned from the CCOA to the trial court until 11/7/2017, after habeas had been

denied, and the material never made it to the habeas court. See signature and date thereon. You also see date received at the trial court from the CCOA has a date stamp of 11/7/2017; but there is yet one more twist; (2) again at APP. F, ECF 102-1,p.4, we see that in reality, the real trial court record was in fact 21 or 22 total volumes, not 9, not 12, but 21 or 22 and it was all sent to the CCOA in 2010 for direct appeal, and lost at that point until discovered by a clerk and returned from CCOA to the trial court clerk on 11/7/2017, after habeas was denied.

The record also revealed direct appeal counsel seeking access to the record and the trial judge saying "DENIED", See APP. F, ECF 102-1,p.5.

The next revelation of the record causes, in part, this petition. At APP. F, ECF 102-1,p.7-8, we see the motion for access to the state record habeas counsel Mulligan Reisch filed, and at p.2 of the motion we see it was filed April 22, 2015, BUT WAS NOT GRANTED UNTIL MAY 1ST, 2015. See APP. F, ECF 102-1,p.10. This revealed that when Mulligan Reisch served the response to the show cause order regarding mixed petition, WHICH THEY FILED ON 5/1/2015, and advised the court they received/reviewed that record, saw no exhausted claim, jury verdict forms, recorded attorney client calls CD(s), etc..., THEY LIED! The response to show cause order was served before Mulligan Reisch received access to the record. Even worse, the clerk says, once granted acces, Mulligan Reisch never picked it up.

The record also reveals proof of illegally recorded attorney client calls, 30 CD(s) total, See APP. F, ECF 102-1,p.12 for 7 CDs, p.13 for 23 CDs. Over 9,500 recordings.

Vreeland then sees, for the first time since trial twelve years prior, the charging document detailing the charges, and the Jury verdict Forms.

APP. F, ECF 102-1,p.70 reveals count 9 sex assault causing submission by force/violence, and the jury finding Vreeland not guilty of sex assault by force, violence at APP. F, ECF 102-2,p.2, wherein the jury says, as to "force/violence",

"We, the Jury, do not so find."

Although there were two verdict forms, what is clearly a fact is that you can not have 1 form saying guilty of Count 9 sex assault by "force/violence", and then a second that finds there was no "force/violence" to the alleged sex assault by "force/violence". Its simple, take away the "force/violence" element of sex assault by "force/violence", and there is no sex assault by "force/violence". But the trial judge and prosecutor, seeing Vreeland was pro se, manipulated the system and Vreeland was sentenced to three hundred and thirty six years to life for sex assault overcome victims will by "FORCE/VIOLENCE" and has served sixteen years of this unconstitutional non-conviction thus far.

Vreeland also finds the motion by lawyers to dismiss for fabricated evidence the state and trial judge said was never filed, APP. F, ECF 102-1,p.45, which reveals it was filed but no hearing ever took place, it was simply denied with one word, "denied" written on it.

The revelation from the state record was shocking to say the least! The record causes more federal court litigation.

As a result of these revelations Vreeland wrote directly to the Colorado Attorney General and asked a variety of questions to see if he could get an admission out of the state that they ignored the habeas courts orders. The A.G.'s Office lawyer on the case responded to Vreeland's July 18, 2019 letter, with an August 02, 2019 letter stating in relevant part as follows; "My answer is that my office did not tell the Douglas County District Court clerk what to provide, but the things that the Douglas court provided are all that is ordinarily provided --scanned copies of the district court's file (pleadings and orders) and the transcripts. Physical evidence is not provided unless specifically requested by a party or the court."

This was an admission that the Respondents failed to comply with ECF

46,p.20,¶3 when they were specifically ordered to produced the entire state courts record, jury verdict forms, and physical evidence relevant to claims. See APP. H, ECF 46,p.20,¶3.

The A.G.'s office then refuses to assist in obtaining the illegally recorded attorney client telephone calls, and tells Vreeland to get them from the trial court. See A.G. letter at APP. D, appendix to opening brief on appeal at Attachment A-6.

After twelve years of fighting to get a copy of the state record and actually receiving it, Vreeland went back to the U.S. district court of Colorado.

FEDEREAL HABEAS COURT PART TWO

After received the state records Vreeland alerts the federal habeas judge to what took place and requested appointment of counsel for purposes of litigating a Fed.R.Civ.P. Rule 60 (b) and (d) motion to the court, asserting it was a tricky situation and Vreeland did not want the court to label the motion as a second/successive habeas application. The court struck the pleading asserting counsel was still on the case and pro se pleadings were not allowed.

Vreeland realized Hartfiled was still counsel on appeal, and she immediately moved to withdraw as the appeal had ended. After Hartfiled withdrew Vreeland requested appointment of counsel again, the court denied it and told Vreeland to do it himself.

On 6/14/2019 Vreeland file a Motion for Relief From Judgment and Orders Pursuant to Federal Rules of Civil Procedure Rule 60 (b) and (d). APP. F, ECF 102 of the district court.

Vreeland detailed what has been stated thus far, and argued relief under Rule 60 should be granted due to gross negligence and deception of counsel, APP. F, ECF 102,p.15, explaining lawyers stole money, lied to the court, never accessed the state record, once state record was accessed it revealed 26 habeas claim were in

fat exhausted not once, but six times in state court, APP. F, ECF 102,p.15 at (i); physical evidence existed in the record which overcame state court deference. Id., at p.16 at (ii); (B) Respondent failed to comply with order to produce complete state courts record of all state courts proceedings, including jury verdict forms and physical evidence. Id. at p.18; Vreeland was prevented from fully and fairly presenting his habeas corpus application / case. Id. at p.19; (C) Judgment was VOID pursuant to this Court's holding in Klapprott, i.e., where due process requires certain actions before judgment may be entered (such as respondent producing the state records and evidence as ordered, and the habeas court then reviewing the record BEFORE entering judgment) the failure to follow these due process requirements may results in the judgment being set aside as void; Id. at p.22; (D) Changed circumstances due to clarification of process of law and how the Sixth Amendment right to counsel was to be afforded in criminal cases. (Said clarification coming from Colorado Supreme Court after Vreeland's petition was denied.) Id. at p.23; (E) Failure to review evidence before entering judgment denied due process. This claim set out the fact the the state record was ordered to be produced, the state admittedly did not produce it, the court therefore did not see what it truly contained and that the record contained materials that overcame state court deference requiring a hearing on the habes application, and granting of the writ.

Most important, this section points out Vreeland is found not guilty but issued a life sentence anyway. Id. at p.27; [section F was cut] (G) Withholding of records and physical evidence impacted right of appeal to 10th Circuit and this Court on certiorari. Id. at p.30.

Section (V) Conclusion asserted the integrity of the habeas corpus application process was corrupted, due process requirements were not afforded, Vreeland's lawyers and respondent lawyers engaged in gross negligence, deception,

fraud and misconduct. The judgment should be VOID, the court entered judgment prior to reviewing and/or even obtaining the complete state record and evidence, this was proven by the state admission they served nothing. Vreeland should be granted a hearing on the Rule 60 motion and appointment of counsel. Counsel should be allowed time to refine the Rule 60 motion and to obtain by court order all state records and evidence relevant to the claims asserted.

The end of the conclusion requesting relief Vreeland specifically asked the court to grant whatever relief the court deems just. Id. pp.32-33.

Along with the Rule 60 motion Vreeland filed a motion regarding bias of the court against Vreeland, attaching a letter from lawyer Hartfiled wherein she stated Judge Brimmer was bias and "hostile" towards Vreeland. Vreeland asked the court to consider counsel's dishonesty and the motion and to resolve it as the court saw fit.

The court issued ECF 103, APP. E, on 7/02/2019, its a 7 page order and very simple.

The court says the Rule 60 motion is untimely, then denied it for one reason only, asserting it was an unauthorized second/successive habeas application based on the relief requested. APP. E, ECF 103,p.6, at ¶2 through end.

UNITED STATES COURT OF APPEALS TENTH CIRCUIT PART TWO

Vreeland immediately appeals to the 10th Circuit, APP. D, and asserts, relevant here, three arguments; Argument II, Whether the Rule 60 motion was an successive habeas application, whether the Rule 60 motion asserted valid claims entitling Appellant to relief from judgment and orders; Argument III, Whether the miscarriage of justice actual innocence exception to any procedural default or bar should have been or should be applied to Appellant's habeas corpus application or Rule 60 motion; and Argument IV, Should Appellant be allowed to reopen his habeas corpus application to have the district court address and resolve all exhausted

claims. APP. D, (using top numbering system) p.10.

The USCOA issued APP. C, order of January 24, 2020, denying certificate of appealability, then refusing to address any issue on appeal or in the Rule 60 motion. The court specifically erfused to address the issue of voidness under this Court's holding in Klapprott, infra. The courts assert it is the relief requested that makes it a successive habeas petition, Vreeland, however, argues below, he left the relief requested open to teh court to chose a valid remedy under teh circumstances. The court ruled the Rule 60 motion was in fact an unauthorized second/successive habeas application, and makes two footnote comments relevant here. (1) App. C,p.5, n.1, the court compared Vreeland's fraud claim to a case where some prisoner stated a prison guard failed to serve all grievance papers to the court. (2) p.8, n.2, the court stated the motion was successive based on new evidence.

Vreeland attempted to reasons with the USCOA in a motion for rehearing en banc explaining how they got it wrong and simply ignored the facts asserted. APP. B. The USCOA ignored it.

As the case sits, Vreeland was forced to trial without counsel, issued a life sentence for a crime he was found not guilty of, the state court and attorney general refused to produced the state record and suppressed it from 2006 until 2018 after habeas was denied, habeas appeal denied. Vreeland discovered the deception of the state and his counsel in 2018 and raised the issue immediately, the district court and USCOA claim the issue was not timely filed as Vreeland's lawyer knew the truth, but even though he hid it, that is too bad for Vreeland. The lower courts take the position that, it is okay to allow an innocent man to spend his life in and to die in prison for a crime he was found not guilty of because, AEDPA does not allow relief under the circumstances.

REASONS FOR GRANTING THE PETITION

PREFACE:

AFTER FIRST CONSIDERING THE FOLLOWING FACTS; Petitioner Was Forced To Trial Without Counsel Based On A Later Admitted Lie By The Prosecutor, Found Not Guilty But Given A Three-Hundred And Thirty-Six (336) Years To Life Prison Sentence Anyway, By A State Judge Whom Hid The Complete Record And Jury Verdict Forms In His Chambers For Over Thirteen (13) Years Until He Retired, And Until After Direct Appeal, State Postconviction And Federal Habeas Corpus Had All Been Litigated And Denied - Then On Habeas Corpus The Respondent Refused To Supply That Record To The Habeas Court After Being Ordered To Do So, Petitioner's Habeas Counsel Engaged In Gross Negligence, Deception, And Fraud On The Court And His Client Herein Petitioner, The Habeas Court Then Fails To Take Specific Actions Due Process Requires In Habeas Corpus Litigation And Dismisses The Application With Prejudice Without Ever Obtaining And/Or Reviewing The Complete State Court Record Which Due Process Required Review Of Before The Court Could Make Merit Based Findings On The Claim Presented, Finally, When A Later Filed Fed.R.Civ.P. Rule 60 (b)&(d) Motion For Relief From That Judgment Was Filed, It Was Improperly Labeled By The Two Lower Courts As A Second Or Successive Habeas Corpus Application Based Solely On The Relief Requested, And That Denial Left Petitioner No Other State Or Federal Court Relief Available To Him To Remedy Petitioner's Unconstitutional Incarceration, And Without Review By this Court Petitioner Will Die In Prison For A Crime He Was Found Not Guilty Of And Other Error. BECAUSE OF THESE FACTS -

THIS COURT SHOULD GRANT REVIEW;

(A) To Clearly Define In No Uncertain Terms Exactly What The Specific Mandatory Due Process Requirements Are In Habeas Corpus Proceedings Which Must Be Complied With By The Federal Habeas Court Prior To Entering Judgment;

(B) To Clearly Define That Any Failure To Comply With The Due Process Requirements To Be Defined By (A) Above Or Any Others Before Entering Judgment Will Result In And Be Reason To Set Aside The Judgment As Void;

(C) To Address Whether Or Not The Ends Of Justice And/Or Miscarriage Of Justice Exceptions To Procedural Bar Or Default May Be Raised In And Should Be Considered In A Federal Rule Of Civil Procedure Rule 60 Motion For Relief From Judgment;

(D) To Address Whether Or Not Gross Negligence, Deception And Fraud By Petitioner's Counsel, Combined With Respondent's Intentional Admitted Refusal To Comply With Court Orders To Produce The Complete State Records, Jury Verdict Forms, And Physical Evidence Relevant To Claims, Is Reason To Grant Relief Under Federal Rules of Civil Procedure Rule 60; And

(E) To Address Whether Or Not Petitioner Should Be Granted Leave to File A Second And/Or Successive Same Claim Habeas Corpus Application Now That The Complete State Court Records And Jury verdict Forms Have Been Obtained, Or Should Petitioner File A Same Claim Habeas Corpus/Original Action In This Court.

The following FIVE positions being presented to the Court are intentionally super short and sweet. There is no real need for long drawn out legal arguments under the circumstances. Vreeland simply and respectfully requests this Court to address the issues positioned here as they have substance and merit and some, like (A) below, have never been addressed by The Court at all. No time like the present.

As To: (A) To "Clearly Define In No Uncertain Terms Exactly What The Specific Mandatory Due Process Requirements Are In Habeas Corpus Proceedings Which Must Be Complied With By The Federal Habeas Court Prior to Entering Judgment.

Generally describing the history, purpose, and operation of habeas corpus in this country is a task that has occupied U.S. Supreme Court Justices, Circuit Courts of Appeals Judges, District Court Judges, and scholars for years.

After hundreds of years of pain staking reviews and, at times, hand written decisions of federal court judges, district court of appeal judges, and United States Supreme Court Justices in regards to applications for Writ of Habeas Corpus and the rules which define the 'Writ of Habeas Corpus', on April 24th, 1996, after the, 'What Is Now The Norm', back and forth bickering by the political parties, i.e., Republicans and Democrats, and after spending millions of tax dollars on debate, then President of the United States William Jefferson Clinton signed into law The Antiterrorism And Effective Death Penalty Act Of 1996, which inspired a whole new generation of writing in the wake of Congress's adoption in 1996 of what is commonly referred to now as "The AEDPA", Pub. L. 104-132, 110 Stat. 1214 (1996).

A reading of the thousands of decisions by this Court and others below make one thing all too clear, AEDPA caused more problems then it fixed.

Prior to being incarcerated, this Petitioner had a chance to see a "Law Library" in a Detroit, Michigan public library when he was about 16 years old, and

began to read it all over many years. Petitioner was able to look at a group of books which covered every published decision this Court had made to that date. Vreeland opened Book 1 and saw a case older than dirt where this Court was ruling on a civil action regarding Oxen and farm animals. Over time, as Vreeland read on, he read the books like a "Harry Potter" series, spanning the pages of time and being fully captured by the World War Two Nuremburg Trial pages, and ending up at decisions regarding terrorists held in Cuba at a U.S. military base as prisoners searching for justice via writ of habeas corpus from this very Court. The books, when read in their entirety, tell a tale of what was once an awesome American system, but revealing it is not there for everyone.

After being incarcerated Vreeland re-discovered his fear that the decisions in those books, that awesome American syatem, really didn't mean much, just words on paper designed to let readers know that in America, "justice" is only given to politicians, the super rich, and the very few lucky.

After all the money and time spent on habeas corpus litigation and congressional actions, Vreeland could not find even **one book or paper** which defined in any uncertain terms exactly what the specific mandatory due process requirements are in habeas corpus proceedings which must be complied with by the federal habeas court prior to entering judgment. Not one book, not one page.

The current system offers AEDPA as written, backed up by 28 U.S.C. §§ 2241 through say 2266, baseline vague Rules Governing Section 2254 Cases In The United States District Courts effective 2/1/1997, as amended in 1979, 1982, 2004, and 2009, Rules 1 through 12, and Rule 12 specifically asserting that "The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules." That appears to be all we get for all the time and resource.

Nowhere in any set of books, or in any published opinion of this Court, or

any other, is there a clear set of rules that must be complied with by a federal court before entering judgment in a habeas corpus action.

As it sits a court has no clear duty to read a pleading, or obtain the state or federal court records, much less a mandatory requirement to actually review them.

Nor is a court **required** to look to the evidence a petitioner asserts exists in support of a claim. Instead of having clear rules that the federal courts must comply with, all we have are basic simple rules asserting that the governmental entity, state or federal, as the respondent, is to supply 'what they feel is relevant', and basic court documents. That is all we have.

Absent "Clearly Defined In No Uncertain Terms", a clear set of rules specifying what due process in habeas corpus really means, and which sets forth a clearly defined and in no uncertain terms process a federal court must follow when presiding over federal habeas corpus application, habeas applicants are left at the mercy, and sometimes ignorance and/or dishonesty of possibly her/his own lawyer, or respondents, and/or even federal judges whom just simply do not care for the process.

In this case Vreeland presented extreamly valid claims and even asserted the respondents were impeding Vreeland's ability to prove his claims by intentionally withholding state records and evidence, but even after making the assertion, the court's only action taken to give an appearance of fair play and due process was to order respondent to produce the state record, jury verdict forms and physical evidence relevant to the claims presented, and nothing more. Once the respondent said, "No, we aint doin it!", the court said "okay", and dismissed the entire petition without ever obtaining or reviewing the state court records because no law stated he had to, no road map for him to follow.

A clever lawyer may argue the federal judge says he obtained from respondents

and reviewed the record, so this case has zero merit. Vreeland would respond (1) pointing to the letter from the State Attorney General Office wherein they admit the never served the records or evidence as ordered, the letter clearly reveals respondent never even read the order, so, as it was never served, the judge never reviewed it regardless of what the judge may claim; (2) which of the four different records, as detailed herein at pp. 21-22 herein, was the judge supposed to review and/or is he claiming he did review? A lawyer may next argue, "Well, although that may be true, and we are not agreeing with Vreeland's position, but there are at this time no actual clearly defined rules in any uncertain terms which mandate the court must obtain and review the records, jury verdict forms or evidence, even if it was never provided." Vreeland would say, "I agree, hence the need for this petition to establish those clear rules."

Vreeland would agree and argue that that is the reason for the need for this Court to set out a clear road map for all federal judges to comply with which details in no uncertain terms exactly what the specific mandatory due process requirements are in habeas corpus proceedings which must be complied with by the federal habeas court prior to entering judgment. What is the step by step instruction?

There are clear rules in regards to arrests, questioning of subjects, bail, right to counsel, right to jury trial and how that trial is to proceed, all falling under mandatory due process schemes. There are clear roadmaps for direct appeals after conviction as well. Yet to date there is no clear road map that federal judges must follow when presiding over habeas corpus application.

Due to that lack of, if you will, **'a road map'**, in this matter Vreeland was forced to trial without counsel based on a later admitted lie, found not guilty but issued a life without parole sentence anyway by a state judge whom manipulated the system and hid verdict forms for about 13 years until his retirement, and

until after direct appeal, state postconviction, federal habeas corpus and appeal thereof was all litigated and denied. Which finally allowed the State to intentionally, once called out at the habeas corpus stage, to cover it all up by flat out refusing to produce the state court records, jury verdict forms and physical evidence relevant to claims, even after being ordered by a federal judge to produce them.

As there was no clearly defined mandatory set of rules, and/or as stated, a "road map" for the judge to follow, Vreeland is currently incarcerated on a charge he was found not guilty of because there was no set of rules demanding a judge obtain and review the entire record, consistant with and in order to provide due process of law and fundamental fairness in the habeas corpus litigation process.

For these simple reasons, Vreeland respectfully requests this Court grant review so we can carve out and set forth that clearly defined set of mandatory rules, and or **'a road map'** for the federal courts to comply with.

As To: (B) "To Clearly Define That Any Failure To Comply With The Due Process Requirements To Be Defined By (A) Above Or Any Others Before Entering Judgment Will Result In And Be Reason To Set Aside The Judgment As Void."

This Court has held for decades - Where due process requires certain actions before judgment may be entered, the failure to follow those requirements may result in the judgment being set aside as void. See, **Klapprott v. U.S. 335 U.S. 601, 609-10, 336 U.S. 942, 69 S. Ct. 384, 93 L. Ed. 266, 93 L. Ed 1099 (1949), and its progeny.**

In this matter, whether we use some current standard, and/or a new set of clearly defined mandatory rules carved out by this Court as a result of (A) above, what is clear is that in this matter, the court clearly did not review the state court records prior to entering judgment, we know this because (1) the respondents admitted in letter that they served nothing, not one sheet of paper; and (2) the

letter reveals respondent never read the order, the letter says they only produce physical evidence when ordered, but failing to acknowledge they were orderd at APP. H, ECF 46,p.20,¶3, but never produced the record/evidence as the letter clearly reveals. APP. D, appendix to Opening Brief on Appeal at Attachment A-6.

Because we know the complete state record was not served to the court by respondent admission, that the records reflect the state was messing with the records and issued four completely different versions of the 22 volumes that do exist, and the habeas court only if anything ever received "One Disk" ECF 56, with only 9 of the 21 or 22 volumes that actually do exist, that the record the court received did not contain the court ordered complete state record, jury verdict forms and physical evidence relevant to the claims presented as ordered at ECF 46,p.20,¶3, we know the court DID NOT obtain and/or review the complete state record and evidence relevant to claims before entering judgment.

As due process' basic fundamental fairness provision would appear to require at minimum, a habeas court to both obtain and review the complete record, jury verdict forms, and physical evidence ordered to be produced, before entering judgment, and in this matter the court did not do so, it appears to reason that this Court can determine due process was not afforded to Vreeland in this matter.

Additionally, in carving out a clear set of rules or road map for the courts to comply with to afford due process, Vreeland proposes that the new rules, once set, would have been violated by the inaction of the lower court and its failure to obtain and review the state records as a clear set of rules would require.

For these reasons Vreeland respectfully requests this Court would grant review to define that any failure to comply with due process requirements to be defined as a result of (A) above or any others before entering judgment will result in and be reason to set aside the judgment as void; and to strike the current judgment in Vreeland's habeas application as void for the failure to comply with due process prior to entering judgment.

As To: (C) "To Address Whether Or Not The Ends Of Justice And/Or Miscarriage Of Justice Exceptions To Procedural Bar Or Default May Be Raised In And Should Be Considered In A Federal Rule Of Civil Procedure Rule 60 Motion For Relief From Judgment."

Vreeland filed a first habeas corpus application which was denied by the district court and on appeal. Vreeland then (in 2019 after receiving a copy of 1 of 4 state records being passed around by the state, this time with jury verdict forms and other evidence) presented a Fed.R.Civ.P. Rule 60 Motion for Relief from Judgment. APP. F, ECF 102. In that motion Vreeland set forth everything that has been set out herein thus far, but with greater details and exhibits. E.g., at APP. F, ECF 102,p.28 Vreeland points to EXHIBIT O detailing he was charged with Count 9 sex assault overcome victim will by actual application of force/violence, and EXHIBIT P a 2 page verdict form, 1 says guilty of sex assault by force/violence, exactly what the charge was. APP. F, ECF 102-1,p.70 at Count 9; but the next 1 says "We, the Jury, do not so find." as to sex assault by force/violence.

As you cannot have sex assault by force/violence if a jury specifically finds there was no force/violence, there can be no guilty verdict to sex assault by force/violence, and Vreeland is therefore actually innocent of sex assault by force/violence but has been convicted and issued a life sentence anyway.

Vreeland argued in the Rule 60 motion and on appeal, inter alia, a "more than colorable claim of actual innocence" as a result of a not guilty verdict. Vreeland argued the judgment was void for failing to comply with due process, he argued gross negligence and deception of counsel, failure of respondent to produce the records as ordered, exactly what has been set out above, and much more.

The district court however, could have, but did not consider the "ends of justice exceptions and/or miscarriage of justice exceptions" to procedural defaults in habeas actions or as they apply and/or should apply to Rule 60 motions

in habeas actions. Instead, the district court simply ruled the Rule 60 motion was an unauthorized successive habeas application, ignored the facts set out in the motion, and dismissed it. APP E, ECF 103, refusing to address anything on the merits.

On Appeal Vreeland argued at APP. D, opening brief on appeal 19-1244, at page 48 of the brief, "Miscarriage of Justice Exception Should Have Been and Should Be Applied To Any Possible Procedural Default Or Bar and Habeas Exhaustion Rules."

Vreeland argued that "A prisoner who has committed a procedural defualt may be excused from the default and obtain federal review of his constitutional claims only by showing "cause" and "prejudice" or by "demonstrat[ing] ... that failure to consider the claims will result in a fundamental miscarriage of justice." Citing this Court in **Coleman v. Thompson, 501 U.S. 722, 750 (1991).**

Vreeland's position is, "What more demonstration of failure to consider the claims will result in a fundamental miscarriage of justice did the court require?" Vreeland was in fact found Not Guilty but sentenced anyway to life in prison.

Vreeland argued even further that this Court had already ruled "the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a fundamentally unjust incarceration.'" **Murray v. Carrier, 477 U.S. 478 at 496 (1986)**(quoting **Engle v. Isaac, 456 U.S. at 135**). Accord **House v. Bell, 547 U.S. 536 (2006).** Just as the Court has declined thus far to "establish conclusively the contours of the ["cause" and "prejudice"] standards, **Amadeo v. Zant, 486 U.S. 214, 221 (1988),** so too the Court has refrained from providing a definitive intrepretation of the term "miscarriage of justice." (Or if miscarriage or ends of justice can be applied to Rule 60 motions in habeas proceedings) Thise Court has made it clear, however, that the "miscarriage of justice" exception extends, at the least, to cases of actual innocence. This Court ruled in **Herrere v. Collins, 506 U.S. 390, 404 (1993)**

that ("In a series of cases culminating with **Sawyer v. Whitley, 505 U.S. 333 (1992)...** we have held that a petitioner otherwise subjected to defenses of abusive or successive use of the writ may have his federal constitutional claims considered on the merits if he makes a proper showing of actual innocence.") Which the Court has defined, in part, as situations in which the constitutional violation "has probably resulted in the conviction of one who is actually innocent [of the offense of which he has been convicted]." **Murray v. Carrier, 477 U.S. at 496,** accord **Schlup v. Delo, 513 U.S. at 325, 327-28** (constitutional violation "probably resulted in the conviction of one who is actually innocent." (quoting **Murray v. Carrier, 477 U.S. at 494, 496)).** "Probable innocence" is established in this context if the petitioner presents "new facts [that] raise[]sufficient doubt about [the petitioner's] guilt to undermine confidence in the result of the trial ...", **Schlup, 513 U.S. at 317.** To establish the requisite probability, the petitioner must show that it is more likely than not that no reasonable jurror **would have convicted him** in the light of the new evidence." **Schlup, 513 U.S. at 327.**

On appeal to the 10th Circuit Vreeland asserted, inter alia, that the ends of justice and/or miscarriage of justice exceptions to procedural defaults or bars should be applied to the Rule 60 motion and Vreeland's habeas corpus application because, the jury verdict forms clearly state, as to sex assault by force/violence, "We, the Jury, do not so find.", and these forms are new evidence in the fact that the jury verdict forms had been suppressed and/or hidden by the trial judge until his retirement 13 years after trial and sentence, and the verdict forms make the case, **'[N]ot** that it is more likely than not that no reasonable juror **would have convicted Vreeland'**, but rather, **the jurrors in fact DID find Vreeland Not Guilty of sex assault by force/violence but the state court entered judgment and a life sentence anyway,** and hid the jury verdict forms for

almost 13 years.

In most civil cases, Civil Rule 60 permits "Motions for Relief from Judgment or Orders". Rule 12 of the rules governing 2254 habeas corpus proceedings specifically provides that federal rules of civil procedure apply in habeas cases, but the rules are silent as to whether or not a court can apply the ends of and/or miscarriage of justice exception to a Rule 60 motion in a habeas corpus action. So Vreeland presenting the motion was not the issue, the issue was how the lower courts treated the motion, and/or how they should have treated the motion and the standard of review to apply, i.e.,"Ends of/or Miscarriage of Justice" exception standards.

Prior to this Court decision in **Gonzalez v. Crosby, 545 U.S. 524 (2005)**, a number of lower courts took the position that a Rule 60 (b) motion filed in federal habeas corpus cases should always be viewed as a "successive petition", and subjected to the highly restrictive procedures and standards that govern such petitions. For Vreeland, the Colorado District Court and 10th Circuit took that approach as is it's standard as seen as, as e.g., **Lopez v. Douglas, 141 F.3d 974, 975-76 (10th Cir. 1998).**

What Vreeland proposes here is that, understanding that the "ends of justice" and/or "miscarriage of justice" may be applied in successive habeas applications under 2254, so too should that same "actual innocence/colorable claim of innocence" "ends of justice/miscarriage of justice" standard of review or application of the exception also be applied in rulings on Rule 60 motions.

It should not matter where or when a jury verdict form appears, what should matter here is this, never before seen jury verdict forms did appear, and 13 years after trial and sentence, and they reveal the jury found Vreeland not guilty of sex assault by "force/violence", but Vreeland was issue a life sentence anyway, and the ends of justice and/or miscarriage of justice exception to procedural bar

or default to successive habeas corpus application should have been applied in the Rule 60 context, but was not. (Note here, taking away the force/violence aspect of the charge, even if sex had taken place, in Colorado it would have been a misdemeanor under a different Colorado statute, not a felony).

The district court ruled, however, as is the standard in the 10th Circuit system, **Lopez, supra,** the Rule 60 motion was an unauthorized successive habeas application and did not apply the ends of or miscarriage of justice standards, and dismissed it. The USCOA did the exact same thing. Both courts **flat out ignored** the clear fact that Vreeland was found not guilty of the felony sex assaault by "force/violence" but sentenced for the felony to prison for Three Hundrerd And Thirty Six Years To Life instead of the misdemeanor, and the state suppressed and hid these fact for over 13 years.

Vreeland proposes "Ends of Justice"/"Miscarriage of Justice Exceptions" to procedural bar/default should be applied to Rule 60 motions; and "Ends of Justice/"Miscarriage of Justice Exception" to successive habeas applications should have been/should be applied to Vreeland's case.

For these reasons Vreeland respectfully requests this Court grant review to address whether or not the "Ends Of" and/or "Miscarriage Of Justice Exceptions" to procedural bar/default (i) May be raised in; (ii) Should be considered in a Fed.R.Civ.P. Rule 60 Motion for Relief from Judgment or Orders in Habeas Corpus Proceedings; and (iii) If it should have been or should be now applied to Vreeland's case and this petition for writ of certiorari.

As to (D) "To Address Whether Or Not Gross Negligence, Deception And Fraud By Petitioner Counsel Combined With Respondent Intentional Admitted Refusal To Comply With Court Orders To Produce The Complete State Records, Jury Verdict Forms, And Physical Evidence Relevant To Claims, Is Reason To Grant Relief Under Federal Rules Of Civil Procedure Rule 60"; (Combined With)

As To: (E) "To Address Whether Or Not Petitioner Should Be Granted Leave To File A Second And/Or Successive Habeas Corpus Application Now That The Complete State Court Records And Jury Verdict Forms Have Been Obtained, Or Should Petitioner File A Same Claim Habeas Corpus/Original Action In This Court."

The last two sections of this petition are combined for space. The issues here combined are whether relief should be granted under Rule 60 due to combined "Petitioner's counsel's" gross negligence, deception/fraud; and Respondent's intentional (i) Failure to produce the state record and evidence when ordered; and (ii) Respondent arguing in federal court the issues were not exhausted, must return to state court where relief is available, and once to state court the same lawyer argued the claims were barred thereby resulting in the valid claims never being addressed by any court on the merits.

If the Court would briefly review APP. J-2B original opening brief on direct appeal to state court, this Court would see, inter alia, a brief setting out denial of counsel at trial based on lies, i.e., state court judge says Vreeland fired attorney to delay trial, Vreeland says prosecutor recorded the attorney client calls and, after listening to the lawyer tell Vreeland "Fuck you, I Quit", the prosecutor and judge suppressed the recordings. To date, almost 15 years after trial, no court has even reviewed the recordings. The brief sets out prosection and judge then taking unfair advantage of Vreeland's forced pro se statut at trial, and then lists the bulk of errors which took place seen in the record he had.

The state COA rejected the brief, APP. J-2A, forced it cut from 26 to 5 claims, J-3, preventing exhaustion. State Supreme Court denied cert petition, APP. J-4. Upon filing of state postconviction petition the same judge refused to allow petition to be filed (twice) preventing exhaustion. Vreeland files claims in

federal court habeas action, state lawyer argues claims must go back to state court, remedy is available, judge sends them back to state court, when the same claims are filed in state court, same state lawyer argues they are barred. Appeal therefrom in state appal court in 2017 through 2019 reveal facts set forth herein as to suppression of records and jury verdict forms and error.

Habeas counsel took over $150,000.00 and lied about obtaining the records leaving Vreeland no knowledge he had an issue and a way to cure it; respondent was ordered to produce the record and never did. The lies of counsel, the gross negligence in the basic duty to obtain and read the record, the respondent refusal to produce the record when ordered, the game played as to going back and forth to state vs federal court and arguing in one court claims have available relief in state court then arguing in state court they are barred, hiding jury verdict forms revealing Vreeland was found not guilty, hiding the attorney client telephone call recordings where the lawyer clearly says "Fuck you, I quit", and was not fired, this gross negligence, deception for lying about it, and respondent games, prevented Vreeland from fully and fairly presenting his case to any court.

A clear example of valid claim here would be this: Court 9 is sex assault by force/violence under C.R.S. 18-3-402(1)(a)(4)(a), See APP. F, ECF 102-1,p.70 at count 9. Once the jury found no force/violence, the charge changed from life sentence felony, to a 2 year misdemeanor under C.R.S. 18-3-404. As that would be a colorable claim of actual innocence of sex assault force/violence, the miscarriage of justice exception is asserted to any claim of failing to exhaust and all claims would be addressed on merits. The gross negligence, deception, fraud by Petitioner's counsel, Respondent failing to obtain the records and present them, intentionally lying about it and claiming they did it all at the time, and the judge failing to obtain the records and review them befor judgment, prevented the valid claims from being resolved on the merits.

Additionally, as to other charges on the same page, exploitation induce/sell/publish and contributing; the record shows the accusers testify there was no camera, no photos, ever, (p. 11 herein); they used fake ID at the bar claiming they were 22 and 24 years old, the records reflect the court refused consent instruction and affirmative defense regarding ages. The problem was that none of this could have been shown to the habeas court as Vreeland's counsel and respondent counsel lied about and suppressed the record for their own personal gains, and the court is holding Vreeland responsible for it.

To end, the final questions here are (i) Should gross negligence, deception and fraud be allowed in a Rule 60 motion in this matter; (ii) Should relief be granted; (iii) Should Vreeland, considering entirety of petition, be granted certiorari so a lawyer can fully brief the case to this Court; and (iv) Should Vreeland be granted leave to file an second/successive and/or same claim habeas application to have previously presented valid claims addressed on the merits due to his counsel's and respondents conduct during first petition?

Anyone reading APP. J-2 and this petition must agree exceptional circumstances exists here. "But For Constitutional Error", games, gross negligence, deception, fraud, a court refusing to obtain/read state record prior to judgment, Vreeland would have been released years ago. As it sits Vreeland has no other means of relief available to him.

Absent relief from this Court, Vreeland, whom has spent 16 plus years in prison thus far, will be forced to spend his entire life in and then die in a state prison for a crime he was found not guilty of as he received a 336 year to life illegal sentence and no other state or federal relief is available.

Vreeland respectfully requests this Court grant review in this matter and at the conclusion, at minimum, enter an order setting aside the original habeas corpus judgment as VOID so Vreeland can resubmit his valid claims with the

complete state record in support which he now possesses.

The very last thing here is this - Vreeland was denied his Sixth Amendment right to counsel by a court that claimed Vreeland fired his lawyer at the last minute and entered an order asserting Vreeland had entered an "implied waiver" for firing the lawyer. Vreeland objected, said he did not fire the lawyer he quit, and the prosecution recorded the attorney client conversation and the court should listen to it, but the prosecution lied about it, suppressed it and hid the calls from the record for 14 years with verdict forms. To date every court had sided with the state court saying Vreeland did not overcome state court deference; Vreeland argues, however, how can he (???) he has tried to overcome state court deference but no court will read the pleadings or listen to the illegally recorded call to hear the truth.

CONCLUSION

WHEREFORE, for all the reasons set forth above, **Petitioner Delmart E.J.M. Vreeland, II, Pro Se,** found not guilty but given a life without parole sentence anyway, respectfully requests this Court GRANT his **Petition For Writ Of Certiorari.**

DATED **this 8th day of October, 2020.**

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