

IN THE SUPREME COURT OF THE UNITED STATES
WESTERN DISTRICT OF MICHIGAN

20-6245

ORIGINAL

Javon C. Davis,
Petitioners,

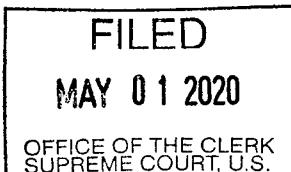
v.

Lower Court No. 13-303-FC
Court of Appeals No. 370773
Michigan Supreme Court No. 153924
Habeas Corpus No. 2:18-cv-10391
U.S. C.O.A. No. 19-1540

Connie Horton,
Respondent.

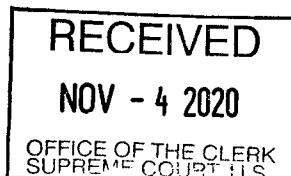
PETITIONER FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI



In Care Of:

Javon C. Davis# 591753
Pro Se
Chippewa Correctional Facility
4269 West M-80
Kincheloe, Michigan 49784-1634



QUESTIONS PRESENTED

1. WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S. CONSTITUTION AS WELL AS MICHIGAN CONSTITUTION OF 1963, ART.I,§20 DENIED, WHERE THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HEAR PETITIONER'S MOTION FOR SUBSTITUTION OF APPELLATE COUNSEL?
2. WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION DENIED, WHERE THE TRIAL COURT REFUSED TO ADJOURN HIS CASE ONCE NEW COUNSEL WAS RETAINED?
3. WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER U.S. CONSTITUTION, TO A FAIR TRIAL AND DUE PROCESS DENIED, WHERE THE TRIAL COURT ABUSED ITS DISCRETION, WHEN ENDORSING A LATE WITNESS AND DENYING PETITIONER AN ADJOURNMENT TO PREPARE AN EFFECTIVE CROSS EXAMINATION?
4. WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS, AND MICHIGAN CONSTITUTION OF 1963,ART.I,§17, DENIED, WHERE THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION FOR DISQUALIFICATION/RECUSAL?
5. WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO INVESTIGATE SEVERAL ASPECTS OF THE CASE, AND INSTEAD, RELIED ON GOVERNMENT'S GOOD FAITH EFFORTS, WHICH IS CONTRARY TO STRICKLAND V WASHINGTON, AND ITS PROGENY?
6. WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF COUNSEL DENIED, WHERE COUNSEL DENIED PETITIONER A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE?
- 6.(A) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE TO TRIAL COUNSEL DENIED, WHERE COUNSEL REFUSED TO CONDUCT A MEANINGFUL CONSULTATION WITH PETITIONER?
- 6.(B) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE TO TRIAL COUNSEL DENIED, WHERE COUNSEL REFUSED TO CONDUCT A MEANINGFUL INVESTIGATION, TO WIT, WITNESSES CRIMINAL HISTORY, WHICH WAS MATERIAL TO THE CASE?

6.(C) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO INVESTIGATE KNOWN AND POTENTIAL KEY WITNESS (JAIL HOUSE WITNESS)?

6.(D) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL WAS INFIRM IN CROSS EXAMINING PROSECUTION WITNESSES?

6.(E) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO OBJECT TO JONES TESTIMONY?

6.(F) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO HIRE AN INVESTIGATOR OR EXPERT WITNESS FOR HIS DEFENSE?

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PARTIES TO THE PROCEEDINGS

Jovon C. Davis# 591753
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4269 West M-80
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Pro Se Representation for Petitioner

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VI.(C). THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONST. TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT VIOLATED, WHERE COUNSEL FAILED TO INVESTIGATE KNOWN AND POTENTIAL KEY WITNESS. 32.

VI.(D) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION, TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT VIOLATED, WHERE COUNSEL WAS INFIRM IN CROSS-EXAMINATING PROSECUTION WITNESSES. 33.

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CITATIONS OF OPINIONS AND ORDERS IN CASE

The original judgement of the conviction of the Petitioner in the Michigan Court of Appeals was reported and is attached hereto as Appendix"1".

The original judgement of conviction of Petitioner in the Michigan Supreme Court was affirmed and is attached hereto as Appendix"2".

The original judgement of conviction of the Petitioner in the Western District Of Michigan was reported and is attached hereto as Appendix"3".

The original judgement of conviction of Petitioner in the United States Court of Appeals, for the Sixth Circuit was reported and is attached hereto as to Appendix"4".

JURISDICTIONAL STATEMENT

The judgement of the United States Court of Appeals for the 6th Circuit was entered on December 4,2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1204(1).

CONSTITUTIONAL PROVISION AND STATUE INVOLVED

1. THE FOURTH AMENDMENT OF THE UNITED STATES PROVIDES:
"The right of the people to be secure in their person, houses, papers, and efforts, against unreasonable searches and seizures, shall not be violated."

2. THE FIFTH AMENDMENT OF THE UNITED STATES PROVIDES:
"No person shall be.... deprived of life, liberty, or property, without due process of law."

3. THE SIXTH AMENDMENT OF THE UNITED STATES PROVIDES:
"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed... be informed of the nature and cause of the accusation; to be comforted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for defense."

4. THE FOURTEENTH AMENDMENT OF THE UNITED STATES:
"All persons born or naturalized in United States... No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny person within its jurisdiction, the equal protection of laws."

5. THE STATUTE UNDER WHICH PETITIONER SOUGHT HABEAS CORPUS RELIEF WAS 28 U.S.C. § 2254 WHICH STATES IN PERTINENT PART: § 2254 STATE CUSTODY: Remedies in Federal Courts.

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim; resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

STATEMENT OF THE CASE

On 1-18-13, Petitioner was arrested, along with co-defendant (sister), who was later exonerated, due to false statement from prosecution key witness.

On 1-31-13, Petitioners preliminary examination was held, and adjourned.

On 4-25-13. Petitioner was scheduled preliminary examination, but the court adjourned the hearing.

On 5-23-13, Petitioners preliminary examination resumed, but adjourned once again.

On 5-28-13, Petitioner was bonded over on Second Degree Murder, Attempted Murder; Possession of Firearm, Felony Possession; Felony Firearm, and Domestic 3rd.

On 8-6-13, Petitioner charges was Amended, and the courts bonded petitioner back over on the charges of; Open-Murder, Attempted Murder; Possession of Firearm; Felony Possession, Felony Firearm, and Domestic 3rd.

On 8-14-13, an hearing was held, due to Petitioners charges being amended, and counsel was not prepared for trial, and counsel had surgery scheduled, trial was adjourned.

On 11-18-13, Petitioner's counsel Richard Sammis, was excused.

On 11-25-13, Petitioner was assigned new counsel, Ernest White.

On 12-13-13, an hearing was held.

On 12-23-13, a Motion to Suppress hearing was held, on petitioners behalf, and denied.

On 1-8-14, Petitioner's Status Conference was held.

On 1-14-14, Petitioner's Trial began.

On 1-17-14, Petitioner was found guilty by jury, on the charges of Second Degree Murder; Attempted Murder; Possession of Firearm; Felony Firearm; Felony Possession, Domestic 3rd, and Supplement 4th.

On 2-24-14, Petitioner was sentenced to 600 to 1200 months.

On 11-21-14, Petitioner's Motion to Disqualify/Recuse judge, was denied.

On 6-11-15, Petitioner's Motion for New Trial/Requesting hearing under People v Ginther, was held.

On 6-25-15, Petitioner's Motion for New Trial/Requesting hearing under People v Ginther.

On 6-19-15, Petitioner filed standard - 4 Pro Pre Brief, with Michigan Court of Appeals.

On 12-17-15, Petitioner Amended/Consolidated Standard - 4 Pro Pre Brief, in the Michigan Court of Appeals.

On 3-22-16, Petitioner's conviction was affirmed, in the Michigan Court of Appeals.

On 1-31-2017, Petitioner's Application for Leave to Appeal was denied, in the Michigan Supreme Court.

On 4-30-19, Petitioner's Habeas Corpus was denied, in the United States District Court.

On 12-4-19, Petitioner's Certificate of Appealability was denied, in the United States Court of Appeals, for the Sixth Circuit.

On 1-15-20, Petitioner's Petition for Rehearing En Banc, was granted extension of time.

On 5-6-20, Petitioner's Petition for rehearing En Banc was denied, in the United States Court of Appeals, for the Sixth Circuit.

EXISTENCE OF JURISDICTION BELOW

Petitioner was convicted by way of a verdict of guilty, in the County of Berrien, St. Joseph, Michigan 49085, 2nd Judicial Circuit Court, for charges of, 2nd Degree Murder, MCL 750.317; Assault with Intent to Commit Murder, MCL 750.83; Felon in Possession of a Firearm, MCL 750.224f; Carrying a Concealed Weapon, MCL 750.227; Possession of Firearm, MCL 750.227b; Domestic Assault 3rd, MCL 750.61(4); and Fourth - Offense Habitual, MCL 769.12.A section 2254 Petition was filed in the United States District Court for the Eastern District of Michigan and subsequently denied. A timely appeal to the United States Court of Appeals, for Sixth Circuit was filed and subsequently denied as well.

REASONS FOR GRANTING WRIT

1. The 6th Circuit panel opinion erred affirming the District Court denial of Petitioner's Sixth & Fourteenth Amendment rights guaranteed under the U.S. Const., as well as Mich. Const. Art. 1 § 20, where trial court abused its discretion, by failing to hear Petitioners Motion for Substitution of Appellate Counsel claim. Petitioner and his appellant counsel relationship collapsed, and by the refusal to hear, or substitute New Counsel, by Trial Court's, violates Petitioner's U.S. Const. Amend. VI Right to Effective Assistance of Counsel. The factors the U.S. Court of Appeals consider's are the same as those the court applies to determine if the District Court erred in denying a Motion to Substitute Counsel, (Brown v Craven, 424 F.2d 1166, 170) therefore, this court should exercise its supervisor powers over the lower courts.

2. The 6th Circuit panel's opinion erred affirming the District Court's denied of Petitioner's Sixth Amendment right guaranteed under the U.S. Const., where trial court refused to adjourn his case once new counsel was obtained. Petitioner's attack the trial court's denied of that motion, claiming it was abuse of discretion and violation

of standards set down in People v Charles O. Williams, 386 Mich 565,577-578. The Michigan Supreme Court in Williams found:

"Thus, the desire of the trial courts to expedite court dockets is not a sufficient reason to deny an otherwise proper request for a continuance."

1. Petitioner asserted his constitutional right.
2. Petitioner had legitimate reason for asserting his right.

Also, the right to counsel of one's choice is personal to the accused and is protected independent of the courts concerns regarding the fairness of the proceeding (Flanagan v United States, 465 U.S. 259, 268).

Therefore, this Court should exercise its supervisor powers over the lower courts.

3. The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Sixth and Fourteenth Amendment rights guaranteed under the U.S. Const. to a fair trial and due process, where the trial court abused its discretion when endorsing a late witness and denying Petitioner and adjournment to prepare an effective cross-examination. On the first day of trial, the prosecutor moved to endorse (Hearsay) witness, Arthur Jones (Jail House Witness), defense counsel objected, requesting adjournment, thus preserving the issue for review. People v McGuffey, 251 Mich App. 155, 165-166(2002). Here, although the prosecutor knew of Mr. Jones prior to trial, he failed to inform the defense counsel of him as a witness until the first day of trial. Arthur Jones testified on the fourth day of trial, Petitioner notes late additions to the list are permissible upon leave of the court and for good cause shown. People v Wilson, 397 Mich 76(1976). However, in the case good cause was not shown, and Petitioner was extremely prejudiced. The prosecution must advise the defense of all known witnesses and who among them the prosecution will not call and prepare a defense. People v Burwick, 450 Mich 281(1995).

4. The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Fourth and Fourteenth rights guaranteed under the U.S. Const., where trial

court abused its discretion when denying Petitioner's Motion for Disqualification/Recusal, (People v Lowenstein, 118 Mich App. 475, 482), because its decision is in direct conflict with Ungar v Sarafite, 376 U.S. 575, 588, " the test is not whether or not actual bias exists, but also whether there was such a likelihood of bias or an appearance of bias that the judge personally believes himself to be unable to hold the balance between vindicating the interests of the court and the interests of the accused, "Further, even though a judge personally believes himself to be unprejudiced, unbiased, and impartial; he should nevertheless certify his disqualification where there are circumstances of such a nature to cause doubt as to his partiality, bias or prejudice." 118 Mich App. at 482.

SUPREME COURT NOTED SUCH SITUATION INCLUDE:

1. Where the judge has a pecuniary interest in the outcome;
2. Where the judge has been the subject of personal abuse or criticism from the party before him; (3) Where the judge is enmeshed in other matters involving the complaining party; or (4) Where the judge might have prejudged the case because of having previously acted as an accuser, fact-finder, or initial decision maker, (Crampton v Dept. of State, 395 Mich. at 351). Therefore, this Court should exercise its supervisor powers over the lower courts.
- 5) The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Sixth Amendment right guaranteed under the U.S. Const., to effective assistance of trial counsel, where counsel failed to investigate several aspects of Petitioner's case, and instead, relied on Government's good faith EFFORTS, which is contrary to Stickland v Washington, and its progeny, claim.

The courts relies on a two prong test, to determine whether a counsel's omissions and errors have deprived a criminal defendant of his/her right to counsel under U.S. Const. Amend. VI,(1). A defendant must demonstrate that counsel's performance was so deficient, that counsel was not functioning as the counsel guaranteed by the Sixth

Amendment, (2) requires the defendant to show that counsel's errors were so serious as to deprive the defendant of a trial.

The above basic pretrial investigations was denied by Petitioners trial counsel, which in fact affected and prejudiced Petitioner before and during trial and Petitioner was denied the effective assistance of counsel, our constitution provides for the accuse to have an fair trial. Petitioner meets both prongs thats set forth in Stickland v Washington. Therefore, this Court should exercise its supervisor power over the lower courts.

6. The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Sixth and Fourteenth rights guaranteed under the U.S. Constitution to Effective Assistance of Counsel, where Petitioner's trial counsel denied Petitioner a Meaningful Opportunity to Present a Complete Defense. Petitioner trial counsel did not properly argue an complete defense for Petitioner, nor present evidence, and witnesses that was known to him prior to trial to support the defense. The defense attorney is duty bound to protect the legal rights of a client to the best of his ability. Foremost to the Defense Attorney is the responsibility to communicate with the client and let the client be the ultimate decision maker even though the defense attorney will be far more experienced on matters of the law and strategy.

Petitioner's counsel intentionally misrepresented Petitioner. Defense counsel did not present an complete defense due to his friendship with his work associate that Petitioner wrote complaints on and excused from this case at hand, an month and half before trial. Also Petitioners trial counsel has personal relationship/friendship after3 or more decades of practicing law in the same venue. Petitioner filed complaint on defense counsel a month before trial as well.

Petitioner did not have fair opportunity to present a defense due to trial counsel not consulting with Petitioner about any possible defense theory he was bringing forth when decided to go forth with a defense he did not have any evidence to support the

theory and ignoring all possible leads Petitioner requested including calling the only self-defense witness that can contradict prosecutions witness, (Crystal McKenzie). Therefore, this court should exercise its supervisor power over the lower courts.

6.(A) The 6th Circuit panel's opinion erred affirming the District Courts denial of Petitioner's Sixth amend. Rights guaranteed under the U.S. Constitution to Effective Assistance of Trial Counsel, where counsel refused to conduct a meaningful consultation wit Petitioner. Petitioner's trial counsel in fact did not consult with Petitioner and totally avoided coming into reasonable grounds with Petitioner. As the record reflects Petitioner's complained in many letters and the matters was addressed on the record about Trial counsel's behavior and not visiting Petitioner. Trial counselor was totally ineffective to Petitioner if he did not visit Petitioner when ordered by trial court judge how did the Petitioner and counsel consult/agree/discuss, trial strategy or any proper defense?" Petitioner has demonstrated the deficiency that has resulted in prejudiced to Petitioner and that in the absence of error the result of the proceedings would have been different, Strickland, 466 U.S. at 694, and fundamentally unfair and unreliable. Lockhart, 113 S.Ct. at 842-83. Therefore, this Court should exercise its supervisor power over the lower courts.

6(B) The 6th Circuit panel's opinion erred reaffirming the District Courts denial of Petitioner's Sixth Amendment right guaranteed under the U.S. Constitution to Effective Assistance of Counsel, where counsel refused to conduct a meaningful investigation to-wit witnesses criminal history which was material to the case. It is the responsibility of the trial lawyer to obtain every document that would fall under the jurisdiction's discovery provision's. Counsel should examine the relevant discovery statutes and determine the discoverability of written/recorded statements, dispositions of witnesses, all prior testimony of witnesses, all police memorandum notes and forms prepared by the police and all evidence and reports relating to the case trial counsel did not review nor comprehend all materials to the case. Counsel fail to use/ignored

disclosure tools available which asserts a valid claim of ineffective assistance of counsel. Therefore, this Court should exercise its supervisor powers over the lower courts.

6(C) The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioners Sixth Amendment right guaranteed under the U.S. Constitution to Effective Assistance of trial counsel, where counsel failed to investigate known and potential key witness (Jail-House Witness). Petitioner's trial counsel fell short of what a reasonably competent attorney would have by failing to review investigative file of prosecuting attorney or investigate seriousness of mental problems from which the witnesses suffered (Crystal McKenzie & Braxton Britt), which makes them incompetant. Petitioner's trial counsel did not interview victim to asses her version of facts, nor Crystal McKenzie (key-witness for prosecution), nor interview first responding police officer's that made contact with Petitioner and took his first statement nor make contact with Petitioner's only self-defense witness (Ashley Davis), where Petitioner and his mother gave the attorney her name and contact. (Thomas v Lockhart, 736 F.2d at 308). The representation afforded to Petitioner by his trial counsel was inadequate. Therefore, this Court should exercise its supervisor powers over the lower courts.

6(D) The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Sixth Amendment right guaranteed under the U.S. Constitution to Effective Assistance of Trial Counsel, where counsel was inform in cross examining prosecution witnesses. A Petitioner's right to cross examine with the opportunity to impeach an adverse witness a prosecution witness as well as a hostile defense witness (United States v Stephenson, 887 F.2d 57,60), "is the main and essential purpose" of the confrontation clause (Delaware v Van Arsdall). Therefore, this Court should exercise its supervisor powers over the lower courts.

6(E) The 6th Circuit panel's opinion erred affirming the District Court denial of Petitioners Sixth Amendment right6 guaranteed under the U.S. Constitution to Effective

Assistance of trial Counsel, where counsel failed to object to Jones (Jail-House Witness) testimony⁶. The prosecution did not meet second prong governed by Ohio v Roberts, 448 U.S. 56, when endorsing late witness the day of trial, therefore counsel should have objected and properly impeached witness and/or take proper measurements to satisfy the confrontation clause. Therefore, this Court should exercise its supervisor powers over the lower courts.

6(F) The 6th Circuit panel's opinion erred affirming the District Courts denial of Petitioners Sixth Amendment right guaranteed under the U.S. Constitution to Effective Assistance of trial counsel, where counsel failed to hire an Investigator or Expert witness for his defense. The United States Supreme Court has held: (1) "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v Washington, 466 U.S. 668,691; and (2) "criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial at trial or both." Harrington v Richter, 562 U.S. 66, 106; Petitioners trial counsel disregarded standard 3(A) counsel shall conduct an independent investigation of the charges and offense as promptly as practicable; June 11,2015 (Ginther Hearing), pg.24 lines 8-10, Petitioner trial counsel admitted he took the prosecution word, event off police reports, and off the previous counsels notes. Petitioners trial counsel disregarded standard 3(B) "when appropriate counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be founded as required by law. Petitioners trial counsel failed to comply with this standard as well. Therefore, this Court should exercise its supervisor powers over the lower courts.

6(G) The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Sixth Amendment right guaranteed under the U.S. Constitution to Effective Assistance of trial Counsel, where counsel failed to object to the prosecutors

admittance of evidence not of record. Petitioner's trial counsel's failure to object to remarks the prosecution made in closing argument, "that a knife was planted in victim/deceased pocket, (G.H. pg.66, line 17, pg.67, lines 5), rendered Petitioner's trial fundamentally unfair, Jones v Estelle, 622 F.2d at 127. Therefore, the Court should exercise its supervisor powers over the lower courts.

7. The 6th Circuit panel's opinion erred affirming the District Court's denial of Petitioner's Sixth Amendment right guaranteed under the U.S. Constitution to Effective Assistance of trial Counsel, where counsel of record failed to present a defense and properly investigate and interview potential witnesses for his defense. The United States Supreme Court has specifically recognized that there are few rights more fundamental than that of an accused to present witnesses in his own defense, Chambers v Mississippi, 410 U.S. 284(1973). Counsel admits he did not review material nor interview witnesses, for either party and attorney can not present a defense if he did not conduct the proper investigation that's guaranteed by our constitution. To be prepared for trial counsel should have put efforts in to consult with Petitioner about the strategy/defense interview witnesses criminal history (impeachment-purposes) investigate mental health records (witness) visit crime scene hire expert witness hire private investigator check the prosecution's file for immunity (witnesses) prepare Petitioner for testimony interview first responding officers subpoena Petitioner's only self-defense witness contradict officer's statements impeach witnesses for prior inconsistent statement's and visit Petitioner when ordered by the courts. Whether trial counsel's actions were sufficient to meet the standard of effective assistance is a mixed determination of law and facts that requires the application of legal principles to historical facts of this case. Cuyler v Sullivan, 446 U.S. at 342; of Brewer v Williams, 430 U.S. 387, 397; Neil v Biggers, 409 U.S. 188,193 n3. The failure to interview prosecution's witnesses is a Violation of Counsel's Constitutional Duty to render effective assistance. Morrow v Parratt, 574 F.2d 411; Thomas v Wyrick, 535 F.2d

407,413; McQueen v Swenson, 498 F.2d 207,216. Therefore, this Court shall exercise its supervisor powers over the lower courts.

8. The 6th Circuit panel's opinion erred affirming the District Courts denial of Petitioners Fifth, Sixth, and Fourteenth Amendment rights guaranteed under the U.S. Constitution, where he was denied a fair cross-section of jury selection at trial, thereby denying him due process and equal protection of the law. The 6th Circuit panel's decision was not contrary to Batson v Kentucky, 476 U.S. 79. In Duncan v Louisiana, 391 U.S. at 147-158, the court emphasized that a Petitioner's right to be tried by a jury of his peers is designed "to prevent oppression by the Government." Id., at 155,156-157. For a jury to perform its intended function as a check on official power, it must be a body drawn from the community Id at 156; Glasser v United States, 315 U.S. 60,86-88, by compromising the representative quality of the jury discriminatory selection procedures make "juries ready weapons for officials to oppress those individuals who by chance are numbered among unpopular or inarticulate minorities. "Akins v Texas, supra, at 408 (Murphy J. dissenting). Racial discrimination in selection of jurors harms not only the accused whose life or liberty they are summoned to try grievant told trial counsel that he was not satisfied with jury selection because they was not jurors of his peers nor of color and counsel told Petitioner that its the best its going to get due to the late starting of Petitioners trial, where Petitioner refused to get dress. Therefore, this Court should exercise its supervisor powers over the lower courts.

9. The 6th Circuit panel's opinioned erred affirming the District Courts denial of Petitioners Sixth and Fourteenth Amendment rights guaranteed under the U.S. Constitution to effective assistance of counsel on appeal as of right judicial review under Mich Const. Art. 1, § 20 requires that an indigent shall have the right to have an appeal as a matter of right; and in the courts of record when a trial court so orders, to have such reasonable assistance as many be necessary to perfect and

prosecute an appeal an indigent's right to a free transcript on appeal is considered to be more basic than his right to counsel on appeal. Griffin v Illinois, 351 U.S. 12, reh. den. 351 U.S. 958, which established the right of an indigent to be furnished with a transcript at public expense on appeal was decided seven years before Gideon v Wainwright, 372 U.S. 335. Petitioner was sent trial and sentencing transcripts from trial court judge due to the constant denial from appellant counsel and Petitioner filing grievance/complaint through attorney grievance commission and trial courts which was not enough material to establish errors and misconducts at Petitioners pre-trial hearings and motions. Petitioner appeared in court over 10 times with two different attorney's which Petitioner's appellate counsel neglected to familiarize himself with this case at hand and failed to order the pre-trial transcripts and motions where possible rights and misconducts where violated and could have been raised on Petitioners direct appeal. After many motions in trial court Petitioner was GRANTED production of records/transcripts April 20,2016, 16 months after Petitioners direct appeal brief was filed by appellant counsel in Michigan Court of Appeals. Therefore, this Court should exercise its powers over the lower courts.

ARGUMENT AMPLIFYING REASON FOR WRIT

I. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH FOURTEENTH AMENDMENT RIGHT GUARANTEED UNDER U.S. CONSTITUTION, AS WELL AS MICH. CONST. OF ART.1 § 20, WHERE NOT VIOLATED WHERE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HEAR PETITIONERS MOTION FOR SUBSTITUTION OF APPELLANT COUNSEL.

Trial Court failed to assure that Petitioner afforded his guaranteed right to appeal where Petitioner asserted that his 6th Amend. Right to Counsel was being violated where a conflict with appointed appellant counsel Daniel J. Rust, was so great as to render equivalent to "no representation at all." (Plumlee v Mastro, 512 F.3d at 1205-1207); see (Wallace v Kern, 392 F.Supp 834).

On September 8,2014, Petitioner sent a letter to appellant counsel Daniel J. Rust,

expressing his dissatisfaction with his performance and requesting him to recuse himself after recent visit.

On September 22,2014, Petitioner filed complaint through attorney grievance commission. (see. Appendix-5)

On October 28,2014, attorney grievance commission replied back. (see. Appendix-6)

On November 13,2014, Petitioner forwarded the grievance and the attorney grievance response attached with a copy of letters to and from attorney Daniel J. Rust, to Berrien County trial court judge Bruce and chief judge Nelson, also Petitioner was requesting substitution.

On November 26,2014, Petitioner and retained counsel Shawn P. Smith P-51431, was schedule for Motion to Disqualification judge Bruce from all further proceedings and Motion for New trial requesting hearing under People v Ginther. Attorney Shawn P. Smith, explained how he agree/arranged to retrieve transcripts through appellant counsel but he stop communicating with attorney Shawn P. Smith, and Petitioner as well. (Transcript hearing) November 26,2014, pg.11 line 4-13 and pg.13 lines 13-18)

There was more talks about the letters and complaints which in not on record and trial judge stated he did not receive the mail yet. Petitioners Motion to disqualify was denied and Petitioners Motion for New Trial was adjourned.

Appellant Counsel Daniel J.Rust, filed Petitioners District Appeal Brief with the Michigan Court of Appeals not waiting for the conclusion of the Ginther hearing on December 8,2014, and sent Petitioner a copy of the brief attached with letter stating that Petitioner had an 84 day deadline to file an pro pre standard 4 brief to raise issues Petitioner thought was a violations.

Petitioner was scheduled for an telephone conference on January 22,2015, with the trial court judge Bruce, who states he called this hearing an "MY MOTION", during this hearing the judge never once mentioned anything concerning substitution more so transcripts Petitioner mentioned to the courts that to the best of his knowledge he

thought appellant counsel should have wait until after conclusion of Petitioners Motion for New Trial requesting hearing under People v Ginther to file a Direct Appeal Brief but the judge did not correct attorney's mistake.

On September 21, 2015, Petitioner filed another Motion with the courts and they did not acknowledge/entertain the Motion at all.

Thus, this Court should review/address this issue not only for the trial courts lack of inquiry into Petitioner's complaint's of his appellant attorney Daniel J. Rust, in order for the trial court to have assured whether the trial court abused its discretion in denying Petitioner's Constitutional Rights to Counsel of choice. Trial court judge Bruce knew Petitioner RETAINED attorney Shawn P. Smith, 4 days/eve of trial but the courts denied adjournment for Petitioners counsel properly prepare.

Appellant counsel Daniel J. Rust, knew through via. text from attorney Shawn P. Smith, and communication with Petitioner and family member's that Petitioner was schedule for Evidentiary Hearing that would be conducted by attorney Shawn P. Smith, as Petitioner's legal counsel who also planned to represent Petitioner on appeal after the conclusion of the hearing so Petitioner could perfect his appeal with complete records.

The United States Supreme Court in Strickland v Washington, 466 U.S. 668 (1984), and both the United States and Michigan constitution guaranteed criminal defendant's the right to the effective assistance of counsel. U.S. Const., Amend. VI; Mich. Const. 1963, Art. I, §20.

A defendant is entitled to have his assigned lawyer replaced upon a showing of adequate cause provided that the substitution of counsel will not unreasonably disrupt the judicial process. People v Meyers, on remand, 124 Mich App. 148,165 and People v Anglin, 111 Mich App. 268,275.

In the instant case the trial court failed to address Petitioner's request/motion for substitution of counsel and where a lower court fails to exercise its discretion when called to do so in turn is an abuse of discretion. People v Stafford, 434 Mich 125,134

n4; Lewtts 298 Mich App. 21,24; and Rieth v Keeler, 230 Mich App.346,348.

The United States Court of Appeals for the 6th Circuit recently addressed this issue in favor of the Petitioner in United States v Powell, 847 F.3d 760(6th Cir. Febrary 6,2017.

In the case at issue there was a complete break down in communications with appellant counsel Mr.Rust, as he vigorously attempted to convince Petitioner there were no appealable issues. On February 22,2016, Petitioner filed another grievance on appellate attorney Daniel J. Rust, for filing Petitioners Reconsideration Motion in an untimely manner.

Petitioner claims that the trial court abused its discretion by denying not only the review/address Petitioner's request/motion for substitute counsel but ultimately denying Petitioner his right to choice of counsel. [The need for fairness for prosecution nor demands of the courts calendar would have been disturbed]. In fact the need of fairness was deprived of Petitioner.

The United States Court of Appeals denial of Petitioners Certificate of Appealability and In Forma Pauperis was not contrary to clearly established Federal law. The decision was based on an unreasonable determination of facts in light of the evidence presented. Thus, this court should GRANT the appropriate relief in accordance with 28 U.S.C § 2254(d)(1) and (2).

II. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER U.S. CONST, WHERE NOT VIOLATED WHEN TRIAL COURT REFUSED TO ADJOURN HIS CASE ONCE NEW COUNSEL WAS OBTAINED.

Petitioner had a Sixth Amendment right to counsel. The United States Supreme Court held in United States v Gonzalez, 548 U.S. 140,144; that the 6th Amendment right to counsel guarantee's a defendant who will represent him. The Supreme Court goes to say the erroneous deprivation of a criminal defendant's counsel of choice is a structural error which entitles the defendant a New Trial.

The 6th Amendment right to counsel of choice commands not that a trial be fair but rather that a particular guarantee of fairness be provided and that the accused be defended by the counsel he believes to be the best fit. Petitioner's right to counsel was violated when he was not allowed to have an adjournment by the trial court so he may have his Newly Retained Counsel Shawn P. Smith(P.51431) defend his case.

Furthermore, no showing of effectiveness of substitute counsel or prejudice is required to make the violation complete. The ruling by the trial court resulted in a "Structural Defect". Such a defect can never be viewed as harmless error as it affects the entire proceedings. These errors requires a New Trial because it is the only way to correct such errors. There are certain rights so essential to concept of Due Process that no lawyer can waive them for a defendant such as the right to jury trial and right to counsel where counsel Shawn P. Smith(P.51431), was Petitioner's counsel of choice. *People v Degraffen Reid*, 173 NW2d 317(1969).

The second factor for good cause for adjournment is that the Petitioner had a legitimate reason for asserting the right where counsel needed time for preparation.

The United States Supreme Court held. *Avery v Alabama*, 308 U.S. 444,446(1940), that the guarantee of counsel cannot be satisfied by mere formal appointment. This is exactly what the trial court did when on November 19.2013, it told the Petitioner to remove counsel Sammis, that he had 24 hours to get a new lawyer for the Petitioner what makes the matter more sever is the fact that instead of the trial court appointing new counsel for the Petitioner. The Petitioner has also overcome any presumption of negligence as this would fall under the 3rd factor.

This case was adjourned once by Petitioner on the date of November 19,2013. The court excused court appointed counsel Richard Sammis, and new counsel Ernest White, was appointed on November 25,2013.

The court and prosecution was caused for many of the adjournments and continuance that prejudiced Petitioner:

1. January 31, 2013, Adjourned Court
2. April 25, 2013, Adjourned Court
3. May 23, 2013, Adjourned Court
4. August 6, 2013, Bindover Amended Charges Court
5. August 14, 2013, Adjourned Court
6. November 25, 2013, Adjourned Petitioner Substitution of counsel.

The court must weigh who deserves an adjournment and how much time spent on adjournments and what is just on the part of a Petitioner seeking justice.

In Flanagan v United States, 465 U.S. 259(1984), Justice O'Conner explained that:

"The asserted right to counsel of ones choice is like for example the 6th Amendment right to represent ones self. Retaining reversal for violation of such a right does not require a showing of prejudice to the defense since the defendant's free choice independent of concerns for the objective fairness of the proceeding. Similarly post conviction review concededly effective to that extent that the Petitioners asserted right is like the 6th Amendment rights violated when trial court denies counsel request to be made to obtain reversal in these circumstance because prejudice to the defense is presumed."

Wherefore, Petitioner respectfully request this Court GRANT New Trial and/or any other relief deemed appropriate for this issue. The United States Court of Appeals affirming the District Court decision in this case in denying Petitioner's Appeal of Right is not contrary to clearly established Federal law as determined by the Supreme Court of the United States and resulted in a decision that was base on an unreasonable determination of the facts in light of the evidence presented. Thus, this court should GRANT the appropriate relief in accordance wit 28 U.S.C. §(d)(1) and (2).

III. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO A FAIR TRIAL AND DUE PROCESS WHERE NOT VIOLATED WHERE TRIAL COURT ABUSED ITS DISCRETION WHEN ENDORSING A LATE WITNESS AND DENYING PETITIONER AN ADJOURNMENT TO PREPARE AN EFFECTIVE CROSS

EAXMINATION.

February 6,2015, Assistance Prosecuting Attorney Auron J. Mead (P.49413), filed and response brief to appellant's direct appeal brief. The prosecution has attempted to use unfair tactics against Petitioner at pp.7-8. First where the prosecution starts out in there response using a "RED HEARING" attempt at diverting where the removal was based on pre-examining conflicts between the two. In which Petitioner's removed counsel (A BIASED PARTY) choose to elect replacement counsel from the very firm that he himself works for. In which I gives the appearance of impropriety. (Ginther Hearing June 11,2015, pg.150 line 19 and pg.51 line 7).

Even though the trial court knew inaction would violate Petitioner's 6th Amendment right to conflict free counsel they still refused to act. Robinson v Stegall, 343 F.Supp.2d 626,634(E.D. Mich,2004).

Prejudice can also be presumed where a Petitioner can demonstrate that a conflict of interest exists and actual or constructive denial of counsel can never be found as harmless error. Arizona v Fullmate, 499 U.S. 279,310-11(1991). The court from the actual issue when interjecting in their response at pg.7 defendant has failed to show that the trial court abused its discretion in allowing the prosecution to present the testimony of Arthur Jones,..... when in fact the issue is of surprise and lack of preparation in which violated Petitioner's right to effective cross-examination where the trial court denied a continuance.

Secondly where the prosecution cites People v Lawton, 196 Mich App. 341(1992), in support of the denial to adjourn; where the prosecution agrees Petitioner meets prongs 1 and 3 but relies on prongs 2 and 4 in persuading the courts that an adjournment was properly denied. The second prong is a legitimate reason for asserting the right; and the fourth prong deals with requests of pervious adjournments in which Petitioner must show prejudice from the denial.

The prosecution is correct in that two(2) adjournments were granted prior to trial

one being the courts Amending Petitioner's charges and bonded Petitioner back to original charges of "OPEN MURDER" on the date of August 6,2013, due to change of charge trial court judge Bruce gave Petitioner's counsel the option to adjourn because counsel was prepared for argument for 2nd Degree Murder charge and also defense counsel had an schedule surgery and the second one was the courts appointed new counsel.

Petitioner's granted adjournment's cannot nor have been in association to the denial of adjournment at issue herein or has there been any implication that Petitioner abused a request for adjournment nor has any prejudice to the prosecution been claimed or ruled.

The Petitioner's position is that the defense was prepared to cross-examine all other witnesses known along with maintaining the complexity of all other aspects of this Murder case. Ultimately the trial court and prosecution expected trial counsel to continue defending a Murder trial and simultaneously interview and investigate on surprise witnesses where counsel conducting cross-examinations on other witnesses as well as preparing for states witnesses testimony for the following day. The purpose for such a requested adjournment was so that counsel could focus on the new witnesses/evidence in order to articulate an effective examination of Jones statement and contemplate an adjournment to an already prepared complex defense.

This argument must fall where the mere fact that the trial court made the witnesses available or the court Apprised Counsel of the substance of testimony, has no bearing on counsel's ability to formulate an effective plan of defense for his client. As such for the latter reasoning the trial court abused its discretion in denying adjournment. In which prejudiced Petitioner and counsel's work load stop him from even having time for an interview.

In People v Wilson, 397 Mich 76(1976), the Michigan Supreme Court held that the trial court erred because it granted late endorsement. If as the prosecution represented to the trial court in their motion to endorse the witnesses as a surprise to the

prosecution then the Petitioner would have been equally surprised.

The case at issue herein is analogous as on the day of trial the prosecution requested the endorsement of the States witness Arthur Jones. The prosecution represented to the court that Jones was not known to the state until the detective in charge notified the state that four days prior to trial. Mr. Jones was a potential witness she further states/presented to the judiciary that she did not receive a "Formal Report" from the detective until that following Monday the day prior to trial and did not notify either the trial courts or defense counsel of the witness until (1) one hour prior to trial.

Not only did the prosecution know of Jones statement the day prior to the endorsement the day of trial but the police knew of this witness (4) four days prior to informing the prosecution which establishes that witness was known by the state (6) days prior to Petitioner's trial leaving no doubt that the States argument is fruitless and without merit.

The States misconduct is unexcusable the activity of the governmental agents of the Berrien County Police as well as the prosecution office in order to reach conviction violated "The fundamental fairness shocking to the universal sense of justice", mandated by the Due Process Clause of the Fifth and Fourteenth Amendment. United States v Russell, 411 U.S. 423,431-32(1973).

It is well settled that the propriety of granting trial day endorsement of witnesses rest in the sound discretion of the trial court. MCL 767.40; MSA 28,980; People v Davis, 343 Mich 348,351(1955); Blue supra.Id 25 Mich at 678. A motion for a continue also addresses itself to trial court discretion, Davis supra, Blue, supra....

The United States Court of Appeals also affirms Petitioner's conviction on this claim as well. The Petitioner believes he is entitled to a New Trial because his fundamental Due Process Rights were violated when he was refused a continuance in order to prepare cross-examination of the states last minute witness. see People v Powell, 119 Mich App.

47(1982).

Wherefore, due to trial court's endorsement of late witness while denying a continuance was prejudicial to Petitioner's constitutional rights to a fair trial. Petitioner believes he is entitled to relief and prays this Honorable Court GRANT such requested relief.

VI. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S FOURTH AND FOURTEENTH AMENDMENT RIGHTS AND MICHIGAN CONSTITUTION OF 1963, ART I § 17, WHERE NOT VIOLATED WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING PETITIONER'S MOTION FOR DISQUALIFICATION/RECUSAL.

Petitioner has been denied after many requests for a copy of all pretrial hearings especially the dates of May 23, 2013; December 13, 2013; and April 1, 2015, in order to articulate an effective argument by being accurate in referring to the records.

On March 22, 2016, the Michigan Court of Appeals ruled:

"Although defendant provides law regarding disqualification the issue is abandoned. In his argument defendant does not articulate any grounds for why the trial court was disqualified from presiding over further proceedings. He has left it to this court to discover the factual basis and rationalize the basis for the claim. see People v Kelly, 231 Mich App.627,640-41; 588 NW2d 480(1998)(An appellant may not merely announce his position and leave it to this court to discover and rationalize the basis for his claims...)."

Which is baffling where this same court ruled within this same opinion as follow:

"Once a transcript has been provided to appellate counsel the defendant is not entitled to additional copies of the transcripts."

This issue can be viewed in one of three ways either the lower court bear responsibility by leading Petitioner into an ambush; or appellant counsel was at fault for refusing to afford Petitioner transcripts; or both share equal responsibility for wasting valuable judicial resources through their inactions. In any event Petitioner clearly affords this court evidence that he was diligent and the impediment was not of his accord.

Petitioner asserts he was prejudiced by the trial court and thereby denied his State and Federal Constitutional Rights to Due Process and a Fair Trial.

The lower courts have made sure that records from May 7, 2013; May 23, 2013; December 13, 2013 and April 1, 2015, has been erased from the record which are most important to this claim. Petitioner's Public Access Case Event Report shows on the date of April 9, 2013, the State/Court filed Motion for Certificate Pursuant to Uniform Act to Secure Attendance of Witness from without state signed by prosecutor Patricia Ceresa, and filed with the Berrien County Court order requiring witness to appear order directing issuance of summons and waiver of hearing placed in court file per pros. office certificate of judge signed by judge Bruce and filed with the court. (see. Appendix-7)

On May 20, 2013, an Petition to hold material witness to bail order to hold material witness to bail after hearing. Attachment to bring material witness before court was ordered. (see. Appendix-H)

On May 23, 2013, Petitioner's preliminary examination was resumed and states witness Charles Lee Marcus Davis Jr. took the stand and Petitioner's examination was adjourned again. The court has purposely failed to fulfill the production of this record.

The lower court has mislead the Michigan Court of Appeals, Michigan Supreme Court, United States District Court and also United States Court of Appeals by hiding records from Petitioner and the courts.

During the preliminary examination on May 23, 2013, the court came to the terms that the material witness was not credible due to his Miranda Rights being violated and the judge became very impartial and bias presumes. Judge Bruce, also was Petitioner's co-defendant's judge as well pertaining to this case at hand.

Judge Bruce, involvement in this case at hand has altered and prejudiced Petitioner's case by his allowance of prosecutions (Key/Eyewitness) inconsistence, incompetent, and inadmissible statement's under oath knowing (Key/Eyewitness) Crystal McKenzie, was

under the influence when she admitted lying to detective's about the event that transpired due to her being high. (Prelim. Exam. January 31,2013, Trans,pg.79 lines 13-14). Petitioner was denied his Due Process and Equal Protected Rights.

Petitioner has shown (3) three different reasons to disqualify his trial judge, who has personal knowledge of disputed evidentiary facts concerning the proceeding due to him being the controlling official of the court proceedings.

Judicial bias is a structural error that can never be found harmless. Wallace v Bell, 387 F.Supp.2d 728,738(E.D. Mich. 2005)(citing Chapman v California, 386 U.S. 18,23,n8(1967)).

In general terms the question of disqualification of judge is one which concerns both the fact and the appearance of justice. Every effort should be made to insure that both parties maintain their fundamental to impartial judge. see U.S. Const., Amendment's V & XIV; Mich. Const. 1963, Art. 1 § 17.

In Crampton v Department of State, 395 Mich 347,351(1973) held:

"The judge may be prejudice or biased with the case or a party because of prior involvement as fact finder or decision maker. Morrissey v Brewer, 408 U.S. 471(1972); Goldberg v Kelly, 397 U.S. 254,271(1970).

In Clemmons v Wolfe, 377 F.3d 322(3rd Cir.2004), that court states:

"Alleged facts sufficient if given support to the challenge of a bent mind that may prevent or impede the impartiality of judgment. "see Berger v U.S., 255 U.S. 22,33-34(1921); see also People v Cogborn, 2011 Mich App. Lexis 1730 * 2-4."(People v Cheeks, 216 Mich App.470,480(1996)).

If this court concurs with United States Court of Appeals and lower courts and feel any issue not referencing the record cannot be appropriately reviewed the Petitioner respectfully request the Honorable Court GRANT relief in the form of a REMAND to the lower court with an order to provide Petitioner with the record/transcripts and further issue a continuance in order Petitioner may perfect a factual/legal basis to

appropriately rationalize the basis for his claims. If not the following argument pursues.

Wherefore, Petitioner requests this Court GRANT appropriate relief it deems necessary.

V. THE COURT APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE UNITED STATES CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WHERE NOT VIOLATED, WHERE COUNSEL FAILED TO INVESTIGATE SEVERAL ASPECTS OF THIS CASE AND INSTEAD RELIED ON THE GOVERNMENT'S GOOD FAITH EFFORTS WHICH IS CONTRARY TO STRICKLAND V WASHINGTON, AND ITS PROGENY.

To be effective defense counsel must investigate prepare and timely assert all substantial defenses. Kimmelman v Morrison, 447 U.S. 365(1986); Beasley v U.S., 491F.2d 687(6th Cir.1974).

Petitioner has made this claim on June 6,2015, at his motion for New Trial requesting hearing under People v Ginther, that his trial counsel failed in these aspects outlined as follows where Petitioners counsel:

A. neglected to investigate nor argue self-defense as deceased was a Professional Mixed Martial Arts (MMA) fighter; (pg.40 line 16 and pg.23 lines 2)

B. Neglected to request a Psychiatric evaluation of petitioner; (pg.76 lines 12 and pg.79 lines 22)

C. Failed to make crucial objections; (pg.38 lines 1 and pg.39 lines 23)

D. Relayed to the jury in opening statements that Petitioner has a conviction for Delivery of Cocaine; (pg.33 lines 3 and pg.35 lines 3)

E. Showed disinterest in the case; (pg.227 lines 2-3)

F. Failed to investigate and communicate with Petitioner.

G. Expressed contempt for Petitioner that he acted as a second prosecutor as shown in his statement that he thinks the defendants questions are stupid and that he wants the jury to see the case how he wants them to see it and if he did not like it he could represent himself. (pg.240 lines 12-17)

H. Trial counsel told Petitioner he was guilty. (pg.137 lines 17-21)

I. trial counsel informed Petitioner he was not allowed character witnesses. (pg.137 lines 3-16)

J. Refused to call witnesses whom would/could corroborate Petitioner's self-defense strategy. (pg.176 lines 17-21)

K. Lied to Petitioner informing him that his sister (eyewitness) would not testify. (pg.238 lines 23-25)

L. States under oath, "THAT NO ONE IN THE WORLD WOULD EVER PLEASE MR.DAVIS (PETITIONER) ABOUT ANYTHING. (pg.134 lines 20-23)

M. Neglected to hire expert witness and private investigator. (pg.23 lines 3-4)

N. Relied on police report and note's from previous attorney's. (pg.24 lines 8-10)

O. Neglected interviewing witnesses for defense nor prosecution. (pg.22 lines 22, and pg.23 lines 2)

P. Failed to impeach state's witnesses. (pg.50 lines 12-24).

Weighed under the Strickland standard any of the above if not individually then cumulatively weights on the trial counsel's poor performance amounting to ineffective assistance of counsel believed to establish counsel was constitutionally deficient prejudicing Petitioner.

The United States Supreme Court has disapproved of the very conduct that a defense attorney's apparent willingness to accept the State's version of facts calls into question the adequacy of his representation. Strickland, supra, at 688; and Kimmelman v Morrison, 477 U.S. 365,385(1986).

In Strickland, supra, the court explicitly found that trial counsel has a "DUTY TO INVESTIGATE", and that to discharge that "counsel has a duty to make reasonable investigations or to make a reasonable investigation or to make a reasonable decision that makes particular investigations unnecessary, "I.d., at 691; see also Wiggins v

Smith, 528 U.S. 510,512(2002). Defense Counsel's failure to investigate his options and make a reasonable choice between them foreclose any "strategic decision" that might exist. Jackson v Herring, 42 F.3d 1350(11th Cir.1995).

Here Petitioner satisfied the first prong of the Strickland analysis i.e., counsel's decision not to investigate the states case "Fell below an objective standard of reasonableness," and his actions and omissions were not the result of "reasonable professional judgment," I.d., at 687-88, as to Strickland's prejudice prong, clearly conducted even a minimum investigation counsel would have ultimately led to meritorious grounds for counsel's ineffectiveness thus, it is reasonable probability of a different outcome, I.d., at 691-92.

The likelihood of a different result only need be reasonable Petitioner "need not prove prejudice by a preponderance of the evidence" Jemison v Foltz, 672 F.Supp. 1002,1007(E.D. Mich 1997). Here Petitioner must show that there is a reasonable probability that but for trial counsel's unprofessional errors he would have been found not guilty at trial.

Defense counsel must engage in a reasonable amount of pretrial investigation and at a minimum interview potential witnesses... make an independent investigation of the facts and circumstances of the case. Nealy v Cubana, 764 F.2d 1173,1177(CA 5th, 1985), which counsel has failed. "Failure to investigate can certainly constitute ineffective assistance." Washington v Smith, 219 F.3d 620,630(CA. 7th 2000).

Counsel must act as an advocate for the client and subject the prosecution's case to the crucible of meaningful adversarial testing. United States v Cronis, 466 U.S. 648,656-57(1984); People v Fisher, 119 Mich App. 445(1982).

A criminal defendant has a constitutional right to expect that his attorney will at all times support him never desert him and will perform with reasonable competence and diligence. Wiley v Sowder, 647 F.2d 642,651(CA. 6th 1981) cert.den 454 U.S. 1091(1981).

A lawyer should act with commitment and dedication to the interest of the client and

with zeal in advocacy upon the clients behalf. Michigan Rules of Professional Conduct

1.3.

The lawyers own interest should not be permitted to have adverse effect on representation of a client. I.d Rule 1.7 commentary.

The general remedy for a violation for the 6th Amendment right to effective assistance of counsel at trial is a New Trial. United States v Morrison, 449 U.S. 361, 364-65(1981).

Wherefore, Petitioner requests this court GRANT appropriate relief it deem necessary.

VI. THE COURT OF APPEALS ERRED AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE NOT VIOLATED WHERE COUNSEL DENIED PETITIONER A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE.

The United States Court in United States v Cronic, 466 U.S. 648(1984), said that the right to be heard would be in most cases of little avail if it did not comprehend the right to be heard by counsel. Even intelligent and educated laymen have minimal or sometimes no skills in the science of law. If charged with a crime he is incapable generally of determining for himself that legal strategies if any to formulate where he is unfamiliar with the rules of evidence and left without the aid of counsel he may be put on trial and convicted upon incompetent evidence or inadmissible evidence.

Petitioner lacks the skills and knowledge to adequately prepare his own defense even though he may have a perfect one. He requires the guiding hand of competent counsel within every step in the proceedings against him. Without it thought he may not be guilty he faces the danger of conviction because he does not know how to establish his innocence.

However the 6th Amendment right guarantee's more than the appointment of competent counsel by its term one has the right to assistance of counsel for his defense. Assistance begins with appointment of counsel but does not end there in some cases the performance of counsel may be so inadequate that in effect no assistance of counsel was

provided. Clearly in such cases as in this case the Petitioner's 6th Amendment right to counsel was denied as articulated in Issue's VI. A, though VI. G., Infra. see United States v Decoster, 199 U.S. 99 (1977); Wainwright v Sykes, 433 U.S. 72,99(1977); Parker v North Carolina, 397 U.S. 790,798-99.

Thus, the Const. guarantee's a criminal defendant a meaningful opportunity to present a complete defense. Crane v Kentucky, 476 U.S. 683,690(1986); California v Trombetta, 467 U.S. 479(1984).

Wherefore, Petitioner requests this court GRANTS appropriate relief it deems necessary.

VI. (A) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHERE NOT VIOLATED WHERE COUNSEL REFUSED TO CONDUCT A MEANING CONSULTATION WITH PETITIONER.

The 6th Amendment institutes the right to consult with counsel during critical pretrial stages. The pretrial period of the proceedings for purposes of the 6th Amendment encompasses counsel's duty to investigate the case prior to trial. Mitchell v Manson, (on remand) 325 F.3d 732(6th Cir.2003); see also Rothgery v Gillespie County Texas, 554 U.S. 191(2008).

During this pretrial period Petitioners trial attorney only came to see him twice once on December 5,2013, for no more than 10 minutes (G.H. June 11,2015, pg.119 lines 25, pg.120 lines 2) and then on December 18,2013, for no more than 15 minutes. (G.H. June 11,2015, pg.123 lines 12-20).

Petitioners trial counsel refusal to consult with him prior to trial no more than (2)two occasions was so outlandish that 6 days before trial (January 8,2014, Status Conference), the trial judge ORDERED trial counsel to consult with Petitioner before trial. (G.H. June 11,2015, pg.80 lines 10-21, pg.123 lines 12-20). After the order from judge Bruce, Petitioners trial counsel still neglected to visit and consult with Petitioner concerning his case during these ORDERED visits.

On January 14, 2014, Petitioners trial day, Petitioner refused to get dress for trial because his trial counsel Ernest White fail to comply with judge Bruce's ORDER to visit Petitioner. (Trial Trans. pg.3 line 17, pg.4 lines 9).

Furthermore, the trial court judge Bruce admits that Petitioners trial counsel Ernest White, did not spend enough time preparing with Petitioner. (G.H. June 11,2015, pg.57 lines 17-22, pg.67 lines 5-9), this willingness to spend time with Petitioner denied him ample time to present a meaningful defense that rises to the level of deficiency. Judge Bruce's ruling in and of itself supports Petitioners claim.

The court in Holmes v South Carolina, 547 U.S. 319(2006), stated that a defendant has a right to have a meaningful opportunity to present a complete defense. Quoting Crane v Kentucky, 476 U.S. 683,690(1986).

Therefore, Petitioners claim is contrary to clear established State and Federal law. Thus, this court should GRANT the appropriate relief in accordance with 28 U.S.C. § 2254(d)(1) and (2).

VI. (B) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE TO TRIAL COUNSEL WHERE NOT VIOLATED WHERE COUNSEL REFUSED TO CONDUCT A MEANINGFUL INVESTIGATION TO WIT WITNESSES CRIMINAL HISTORY WHICH WAS MATERIAL TO THE CASE.

Petitioners counsel at trial refused to do any background investigation into criminal records of the prosecution witnesses for impeachment purpose. (G.H. June 11,2015, pg.48, lines 1-17, pg.75, lines 14-20, pg.139, lines 5-16, pg.23, lines 10-15).

The duty to investigate derives from counsels basic function which is to make one adversarial testing process work in the particular case. Bryant v Scott, 28 F.3d 1411,1419(1994). The pretrial constitutes a critical period of the proceedings for purposes of the 6th Amendment., which encompasses counsels constitutional duty to investigate the case prior to trial. Mitchell v Mason, 325 F.3d 732(6th Cir.2003)(on remand).

Also Petitioners counsel during trial refused to interview witnesses in the case (G.H. June 11,2015, pg.22 lines22-26, pg.23 lines 19-20, pg.25 lines 20-27, pg.137 lines 3-16, pg.202 lines 16-22, pg.226 lines 10-11, pg.227 lines 3 and pg.8 lines 2-5) after trial court judge Bruce, denied adjournment and ordered counsel to interview witness before witness take the stand, (see Trial trans. January 14.2014, pg.10 lines 25, pg.11 lines 19). In which counsels duty includes but not limited to the obligation to interview witnesses who may have information concerning his client's guilt or innocence. *Kimmellman v Morrison*, 477 U.S. 365,386(1986).

Petitioner trial counsel went so far as to refuse to call witness Ashley Davis, whom witness the events that Petitioner stands accused of whom been VINDICATED in this case as well due to prosecution's (only) Key/Eyewitness false statements which was critical to defense. Counsel failures to investigate an IMPORTANT witness was objectively unreasonable and constitutes negligence not trial strategy. *Stewart v Wolfenbarger*, 466 F.3d 338(6th Cir.2006).

Even more egregious was the fact trial counsel lied to Petitioner stating Ashley Davis, refused to testify (G.H. June 11,2015, pg.176 lines 19-21). This was contested by Ashley Davis, own testimony (G.H. June 11,2015, pg.238 lines 23-25).

Trial counsel further neglected to investigate/interview promising witnesses (Travis Hagood, Timothy Lewis, and Jerry Blackwell), that could have contradicted prosecution witness Jones (Jail House Witness) testimony. (G.H. June 11,2015, pg.34, pg.135 lines 16-25).

When defense fails to investigate promising witnesses counsels actions or inactions constitutes negligence not trial strategy. *Workman v Tate*, 957 F.2d 1339,1345(6th Cir.1992).

The 6th Circuit in *Beasley v U.S.* 491 F.2d 687(1974), held that the failure to produce and present witnesses favorable to the defense is not the exercise of reasonable trial strategy. It is a breach of an attorney's basic duty to prepare

investigate and present all substantial defense and not rely on the state's good faith efforts in preparing his case.

Therefore, Petitioners claim in contrary to clear established State and Federal law. Thus this court should GRANT the appropriate relief in accordance with 28 U.S.C. § 2254(d)(1) and (2).

VI(C).THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WAS NOT VIOLATED WHERE COUNSEL FAILED TO INVESTIGATE KNOWN AND POTENTIAL KEY WITNESSES.

Trial counsel refused to interview prosecution witness Jones (Jail House Witness), the state produce the day of Petitioners trial. (G.H. June 11,2015, pg.39 lines 9-14, pg.50 line 12-16, pg.105 lines 20-25).

The 6th Circuit ruled in Towns v Smith, 395 F.3d 251(2005), that the failure to make contact with or investigate potentially important witnesses made known to counsel prior to trial deemed ineffective. see English v Romanowiski, 602 F.3d 714(6th Cir.2010). Where failure to investigate witness prior to trial despite making claim in opening statements that witness would testify at trial deem counsel ineffective. Counsel deemed ineffective for failing to investigate known and potentially important witnesses. Avery v Prelusnik, 548 F.3d 424(6th Cir.2008); Ramonez v Berghuis, 490 F.3d 482(6th Cir.2007); and Stewart v Wolfengager, 468 F.3d 338(6th Cir.2006).

If trial counsel would have interviewed key witnesses he would have found that Jones trial testimony was perjurious (G.H. June 11,2015, pg.135 lines 5, pg.5 lines 16-23). Also trial counsel would have discovered that prosecution witness Arthur Jones (Jail House Witness) received favorable treatment concerning his pending charges in exchange for his testimony which Arthur Jones, prejudiced himself when stating he received Unarmed Robbery for his testimony but received Larceny from the Person, and further counsel would have discovered/uncovered the fact that the prosecution used another jail house witness on Petitioners sister/co-defendant Ashley Davis, (G.H. June 11,2015,

pg.247 lines 8-15), in which would have been fruitful in the overall preparation for cross examination that's more likely than not lead the trial court deem Jones testimony inadmissible where it is evident the State planted witnesses in order to elicit incriminating statement from Petitioner once Petitioner was formally charged with the offense violating Petitioners 5th, 6th, and 14th Amendment rights as Petitioner has a right not to self incriminate and the right to communicate with the state through counsel affording Due Process. see *Massiah v United States*, 377 U.S. 201(1964), where the U.S. Supreme Court held that the government had impaired Petitioners 6th Amendment right where informant had engaged in conversation with Petitioner and concluded that if by association by general conversation or both the informant had developed a relationship of trust and confidence with Petitioner such that Petitioner revealed incriminating information this constituted interference with the right to assistance of counsel under 6th Amendment.

The present case involves incriminating statements allegedly made by accused to an undercover government informant while in custody after indictment. This subject matter applies under the 6th Amendment, as it pertains to post indictment communication between the accused and agents of the government. *Massiah*, *supra*.....

Wherefore, establishing Jones was planted for the purpose of seeking privileged information his entire testimony shall be stricken from the record as it is inadmissible for the reasoning outlined above. For this reason it is Petitioners belief he is entitled to a New Trial.

Thus, this Court should GRANT the appropriate relief in accordance with 28 U.S.C. § 2254(d)(1) and (2).

VI.(D) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WAS NOT DENIED WHERE COUNSEL WAS INFORM IN CROSS EXAMINING PROSECUTION WITNESSES.

Defense counsel at trial did not effectively cross examine the prosecution witnesses

as established through testimonial evidence. (G.H. June 11,2015, pg.139 lines 21, pg.140 lines 8).

The court held in Smith v Illinois, 390 U.S. 129,131(1968); and Brookhart v Janis, 384 U.S. 1,3(1966), that to the accused to demonstrate a Constitutional Violation. There are however circumstance that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified. The most obvious of course is the complete denial of counsel at critical stage of his trial. No specific showing of prejudice was required Davis v Alaska, 415 U.S. 304(1974). Because Petitioner had been denied that right to effective cross examination which would be a constitutional error of no amount of showing of prejudice would cure it. I.d. at 415 U.S. 318.

Attorney Shawn P. Smith, represented Petitioner during the Ginther hearing of June 11,2015, pointed out the following facts to the court in support stating as follows:

"That he barely cross examined the witness and when I say barely you read the record you where here your Honor I mean the prosecution would go on for 20 to 30 pages of direct and he would ask a couple questions and say that's it. Some he didn't ask a question."

The court held in Higgins v Renico, 362 F.Supp.2d 904(E.D. Mich.2005), that trial counsel was constitutionally ineffective for failing to cross examine prosecutions Key Witness because he was unprepared. Failure to subject the states case to meaningful adversarial testing on the ground of lack of preparation was not a reasonable strategical decision.

As Petitioner brief through ISSUES VI. B. and VI. C., that trial counsel did not prepare for the prosecutions Key Witnesses.

Petitioner respectfully requests that this Honorable Court GRANT appropriate relief deems fit and just.

VI.(E) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONERS CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL

WAS NOT VIOLATED WHERE COUNSEL FAILED TO OBJECT TO JONES TESTIMONY.

The trial counsel failed to object to Arthur Jones (Jail House Witness) testimony in violation of Petitioners 6th Amendment right to effective assistance of counsel.

The court held in *Massiah v United States*, 377 U.S. 201, at 206(1964), that once a defendants 6th Amendment right to counsel has attached he is denied that right when Federal agents deliberately elicit incriminating statements from him in absence of his lawyer *Kuhlman v Wilson*, 477 U.S. 436,457(1984). The concern in *Massiah* and a subsequent line of cases "is secret interrogation by investigatory techniques that are the equivalent of direct police interrogation." I.d. at 459.

A Petitioner does not make out a violation of that right by showing that an informant either through prior arrangement or voluntarily reported his incriminating statements to the police and their informant took some action beyond merely listening that was deliberate to elicit incriminating remarks. I.d.

Where the police had Petitioner moved from several locations in weeks times within the county jail being from dorm 1N to 1C then from 1C to 1K, then from 1K to 1M then back to 1N within a weeks time which now the jail house informant Arthur Jones appears in 1N.

In addition as proof the record reveals that on or about April 6,2013, the police paired a Ms.Brook Vickery, a jail house snitch to record Petitioners sister Ashley Davis, while she was in the same cell (County Jail) facing the same charges as Petitioner in which was prior to the police planting Jones and Petitioner together in cell/dorm 1N. January 8,2014, 6 days before Petitioners trial showing a pattern that the police and the informant (Jones) had a meeting of minds (police corruption) with intent to elicit incriminating statements from Petitioner (G.H. June 11,2015, pg.247 lines 8-15). Also noting that Ms.Vickery's husband Jason Vickery, is and has been known informant in the Berrien County area in several unrelated cases for the police.

Further Jones received favorable treatment in his case in exchange for his testimony.

(Appendix-9) Petitioner also had witnesses that would have corroborated the fact that Jones was personally seeking out information showing signs that he was acting as an agent of the state (see Appendix-10). Where on occasions Jones was witnessed entering inmate's cell/rooms without permission or knowledge in order to seek out information relating to Petitioner's case. (G.H. June 11,2015, pg.135 lines 5 and pg.136 lines 16-23).

Finally any argument that the prosecution was unaware of this late endorsed witness does not excuse prejudice nor the states misconduct. Any government entity that is directly related to the charge and conviction of Petitioner is considered as the arm of prosecution. see Kyles v Whitley, 514 U.S. 419,427(1995)(noting that the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government behalf in the case including the police"). see also People v Lester, 232 Mich App. 626(1998).

Thus, this Court should GRANT the appropriate relief in accordance with 28 U.S.C. § 2254(d)(1) and (2).

VI.(F) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHERE COUNSEL FAILED TO HIRE AN INVESTIGATOR OR EXPERT WITNESS FOR HIS DEFENSE.

Petitioner's trial counsel performance fell below the norm constituting ineffective assistance where counsel refused to hire an private investigator or expert witness in a Murder trial to contradict the state's investigator's or expert witness (G.H. June 11,2015, pg.227 lines 7-15, pg.24 lines 8). Petitioner's trial counsel relied on the state's "Good Faith" efforts.

IN RE: REGULATIONS GOVERNING A SYS. FOR APPOINTMENT OF COUNSEL, 2016 Mich.Lexis 1072 STATES:

STANDARD 3 "INVESTIGATION AND EXPERTS"

The United States Supreme Court has held: (1) "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. "Strickland v Washington, 466 U.S. 668,691(1984); and (2)" Criminal case will arise where the only reasonable and available defense strategy requires consultation with expert or introduction of expert evidence whether pretrial at trial or both. Harrington v Richter, 562 U.S. 86,106(2011). The MADC Act Authorizes" minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel... MCL 780.985(3).

Petitioners 6th Amendment right to effective assistance of counsel through Due Process was violated where it requires the appointment of an investigator or expense for an investigator or expert for indigent defendant, Mason v Arizona, 504 F.2d 1345,1352-53(9th Cir.1994).

Wherefore, Petitioner request this Court GRANT relief in the form of a New Trial with stipulation that an investigator be appointed and expert witness.

VI.(G) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WAS NOT VIOLATED WHERE COUNSEL FAILED TO OBJECT TO THE PROSECUTION ADMITTANCE OF EVIDENCE NOT OF RECORD.

The prosecution argued in closing argument that a knife had been planted on the deceased when there was no evidence in support or to suggest such event occurred. (G.H. June 11,2015, pg.15 lines 14-17).

It is a fundamental principle of the the American Criminal Justice System that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with (The) rudimentary demands of justice. Giglio v United States, 405 U.S. 150,153(1972). When the government obtains a criminal conviction and deprives an individual of his life or liberty on the basis of evidence that it knows to be false it subverts its fundamental obligation embodied in the Due Process Clauses of the Fifth

and Fourteenth Amendments to provide every criminal defendant with a fair and impartial trial.

Similarly it has held that the government is obligated to current any evidence introduced at trial that it knows to be false, regardless of whether or not the evidence was solicited by it. see Napue v Illinois, 360 U.S. 264,269(1959); Alcorta v Texas, 355 U.S. 28(1957); Pyle v Kansas, 317 U.S. 213(1942). These duties provide fundamental protections that are vital to the successful operation of an adversarial system of criminal justice; they embody the state's obligation not to obtain the accused conviction at all costs but rather to do justice by furthering the truth finding function of the court and jury.

In the instant case, trial counsel failed to object to the prosecutions argument constituting ineffective assistance of counsel. The court held in Washington v Hofbauer, 220 F.3d 689(6th Cir.2000), that failure to object to prosecutorial misconduct during closing arguments constituted ineffective assistance of counsel and further went on to say that "Counsel's Silence was base on INCOMPETENCE and IGNORANCE of the LAW, rather then reasonable TRIAL STRATEGY. see also Wade v White, 368 F.Supp.2d 695(E.D. Mich.2005). Petitioner believes as held in Washington, *supra*, that it should also hold here that there was a STRONG likelihood that the IMPROPER STATEMENTS PREJUDICED him.

Wherefore, Petitioner requests this Court GRANT appropriate relief it deem necessary.

VI. THE COURT OF APPEALS ERRED AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WAS NOT DENIED WHERE COUNSEL OF RECORD FAILED TO PRESENT A DEFENSE AND PROPERLY INVESTIGATE AND INTERVIEW ANY POTENTIAL WITNESSES FOR HIS DEFENSE.

In every criminal prosecution the accused shall have the right to have the assistance of counsel for his/her defense. Mich. Const.1963, Art.1 § 17 as well as being a guarantee under the federal constitutions Sixth Amendment U.S. Const. Amend. VI.

This guarantee includes the opportunity to present facts and mitigation of the offense the Petitioner is charge with People v Theodorow, 10 Mich App. 209(1968). It has long been recognized that this right also includes the right to the effective assistance of counsel. Cuyler v Sullivan, 446 U.S. 344(1980).

It is the position of the Petitioner that within his appeal of right as well as his standard - 4 briefs, he has shown not only counsel's deficient performance but the prejudice that was result. The Michigan Court of Appeals on the other hand made a decision based upon an incomplete record; and a misapprehension of the facts and applicable law. This contention is made due to the court's unpublished opinion and the reliance of only one of the three prongs for determining the presumption of prejudice analysis enunciated in United States v Cronic, 466 U.S. 648(1984).

There are three types of cases that warrant Cronic's presumption of prejudice analysis, these being: First a complete denial of counsel in which the accused is denied the presence of counsel at a critical stage. see Bell, *supra*, 122 S.Ct. at 1851; second is when counsel" entirely fails to subject the prosecutions case to meaningful adverserial testimony." see Cronic, *supra*, 466 U.S. at 659; and thirdly is when counsel is placed in circumstances in which competent counsel very likely could not render assistance. Cronic, *supra*, at 459.

The Michigan Court of Appeals considered the third prong of the analysis of Cronic, without giving credence to the position of the Petitioner that the reviewing court could not properly give a factual basis for their opinion as they were not in possession of the the complete record at the time of review. This point is argued in ISSUE IV *supra*, as Petitioner was denied assistance by appellate counsel as well as trial counsel obtaining the necessary documentation for review.

Without the benefit of counsel willing to properly investigate Petitioner's account of what transpired on the night of alleged offense Petitioner could not have possibly presented the defense necessary to obtain a verdict that did not result in a

miscarriage of justice. If counsel would have requested a subpoena for video recordings of the Berrien County Jail it would have shown the jail-house witness never had any contact with Petitioner.

Trial counsel was not effective when failing to secure security surveillance tape from two different locations when requested by Petitioner, which would prove that Petitioner did not have any animosity towards each other as they were all casual friends from the same neighborhood.

Counsel's failure to objectively prepare and obtain the assistance of video evidence is unreasonable and brings forth negligence which can not be misconstrued as sound trial strategy. Stewart v. Wolfenbarger, 468 F.3d 338 (6th Cir. 2006).

RELIEF REQUESTED:

WHEREFORE, due to counsel's ineffective assistance, Petitioner respectfully requests that this Honorable Court GRANT this request for Relief as he feels that he is entitled and REMAND this case to the Trial Court for an Evidentiary Hearing pursuant to Ginther, supra, for 1st counsel of record being Richard Sammis. Also, GRANT such other further and different Relief as this Court may deem just and proper under the circumstances.

VERIFICATION/CERTIFICATION:

I, Javon Charles Davis, under the penalty of perjury states that the foregoing is true and correct to the best of my information, knowledge, and belief.

Respectfully Submitted,

Javon Charles Davis #591753

Javon Charles Davis #591753
Pro Se Representation
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI. 49784-1634

Dated: 10 / 28 / 2020.