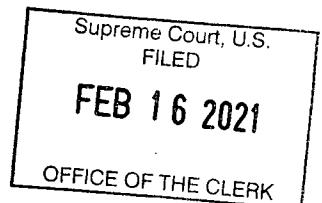


20-7161

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



TYRELL E. ARTIS

Petitioner,

vs.

STATE OF OHIO

Respondent,

-PETITION FOR WRIT OF CERTIORARI-

ON PETITION FOR A WRIT OF CERTIORARI TO
THE THIRD DISTRICT COURT OF APPEALS OF OHIO

No.

TYRELL E. ARTIS, Pro-Se
Inmate: A746-808

North Central Correctional Complex,
P.O BOX: 1812
Marion, Ohio 43301-1812.

PETITIONER, PROSE

STATE OF OHIO
Ohio Attorney General's Office,

Dave Yost, Attorney General
150 East Gay Street, 16th Floor,
Columbus, Ohio 43215.

RESPONDENT.

-QUESTION'S BEING PRESENTED-

QUESTION ONE: CAN A PLEA DEAL CONSISTING OF TWO (2) MISDEMEANOR DOMESTIC VIOLENCE CHARGES BE WITHDREW POST SENTENCE, WHEN; (1) NO DIRECT APPEAL WAS TAKEN; (2) SAID PLEA DEAL(s) WERE UNCONSOLED RESULTING IN ACTUAL INCARCERATION, IN VIOLATION OF THE SIXTH AMENDMENT THROUGH THE FOURTEENTH AMENDMENT AND SUPREME COURT PRECEDENT; (3) IT IS UNDISPUTED NO VALID WAIVER OF COUNSEL WAS GIVEN, IN VIOLATION OF THE SIXTH AMENDMENT THROUGH THE FOURTEENTH AMENDMENT; AND/OR (4) SAID PLEA DEAL(s) IS/ARE NOW BEING USED TO ENHANCE, A SEPERATE AND LATER CHARGED, MISDEMEANOR DOMESTIC VIOLENCE INTO A FELONY OFFENSE.

&

QUESTION TWO: WHETHER RES JUDICATA BARS PETITIONER'S SIXTH AND FOURTEENTH CONSTITUTIONAL AMENDMENT CLAIMS WITHIN A POST SENTENCE MOTION TO WITHDRAW PLEA WHEN IT IS SHOWN SAID PLEA WAS UNCONSOLED, RESULTED IN DEPRIVATION OF LIBERTY, NO WAIVER OF COUNSEL GIVEN, AND NOW BEING USED TO ENHANCE A SEPERATE OFFENSE, FROM A MISDEMEANOR TO A FELONY.

-PARTIES HEREIN-

PETITIONER:

Tyrell E. Artis, Pro-Se
Inmate: A746-808

North Central Correctional Complex,
P.O BOX: 1812
Marion, Ohio 43301-1812.

* * *

RESPONDENT:

STATE OF OHIO,
Ohio Attorney General's Office,

Dave Yost, Attorney General
150 East Gay Street, 16th Floor,
Columbus, Ohio 43215.

* * *

-RELATED CASES-

- 1: State v. Artis, Logan County Ohio Common Pleas Court, Case No. CR-18-05-0140.
- 2: State v. Artis, 3rd Dist. Logan. No. 8-18-40, 137 N.E.3d 587, 2019-Ohio-2070.

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IN THE SUPREME COURT OF THE UNITED STATES

TYRELL E. ARTIS, :
Petitioner, : Case No:
-VS- : PETITION FOR WRIT OF CERTIORARI TO THE
STATE OF OHIO, : THIRD DISTRICT COURT OF APPEALS OF OHIO
Respondent, : PETITION

PETITION FOR A WRIT OF CERTIORARI

Now comes the Petitioner, Tyrell E. Artis, Pro-Se, who hereby respectfully prays that this Honorable Court will issue a Writ of Certiorari to review the judgment below. The foregoing is further supported within this Petition.

I. OPINIONS BELOW

A. OPINIONS OF THE OHIO STATE COURTS

1: The Opinion of the Highest State Court to review the Merit (Discretionary) appears at Appendix C to the Petition and is Reported at; 2020-Ohio-5169, 160 Ohio St.3d 1448, 156 N.E.3d 918 (Ohio, Nov. 10, 2020).

2: The Opinion of the Third District Court of Appeals of Ohio appears at Appendix A to the Petition and is Reported at; 2020-Ohio-4018, 2020 Ohio App.LEXIS 2913.

3: The Opinion and Judgment of the Bellefontaine Municipal Court (Trial Court), is unpublished, and appears at Appendix B to the Petition.

II. JURISDICTION

The Jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1257(a); Supreme Court Rule 10(c); and Supreme Court Rule 13.

-Decision and Judgment to be Reviewed by this Court: Third District Court of Appeals of Ohio, Judgment and Opinion entered on: August 10th, 2020;

-The Ohio Supreme Court denied Discretionary Review on: November 10th, 2020.

-The Bellefontaine Municipal Court, Entered Judgment and Opinion on: November 5th, 2019.

-No Petition for rehearing was thereafter in any cause listed herein filed.

Pursuant to Rule 13(1) of the Rules of the Supreme Court of the United States; "A petition for a Writ of Certiorari seeking review of a judgment of a lower State Court that is subject to discretionary review by the State Court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.". Therefore, this Petition is hereby timely commenced and filed.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS

-SIXTH AMENDMENT U.S. CONSTITUTION;

"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, which district shall have been previously ascertained by Law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

-FOURTEENTH AMENDMENT U.S. CONSTITUTION;

"Section One: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the Laws."

-RES JUDICATA DOCTRINE.

IV. STATEMENT OF FACT AND CASE

November 2nd, 2011, Petitioner herein, Tyrell E. Artis (Hereinafter referred to as "Artis"), was arrested within Bellefontaine, Ohio (Logan County) for a charge of Domestic violence, a violation of Ohio Revised Code §2919.25(A), a Misdemeanor of the first degree.

November 3rd, 2011 Arraignment was held in which Artis entered a not guilty plea, was granted an OR bond (Release on his Own Recognizance), and Trial was scheduled for December 5th, 2011. As to Trial Court Case No. 11CRB1721.

November 21st, 2011, Artis was charged with another Domestic Violence offense, a violation of Ohio Revised Code §2919.25(A), a misdemeanor of the first degree. Trial Court Case No. 11CRB1850.

November 29th, 2011, the Bellefontaine Municipal Court Prosecutor's Office filed a Motion to Revoke Artis's bond for alleged violation of the conditions of his OR bond.

December 5th, 2011, Artis withdrew his plea of not guilty, in Case No. 11CRB1721 and 11CRB1850, and entered a plea of guilty to the offense(s) charged, without counsel. The Municipal Court accepted the plea of guilty, with no determination and/or a waiver of counsel, and found him guilty. The same day (12/05/2011), the Municipal Court, without counsel, imposed a sentence of; As to Case No. 11CRB1721, three (3) days in the Logan County Jail and a \$150.00 fine; As to Case No. 11CRB1850, fourteen (14) days in the Logan County Jail and a \$150.00 fine. The Court ordered the terms to be served consecutively for an aggregate term of seventeen (17) days in the Logan County Jail. Artis served the entire term, and did not file a Direct Appeal as of Right.

May 18th, 2018, the Logan County Grand Jury indicted Artis on one count of Domestic Violence, a violation of Ohio Revised Code §2919.25(A), (D)(4), a felony of the third degree. Said offense was elevated to a felony of the

third degree based on Artis's prior convictions in Bellefontaine Municipal Court Case No(s). 11CRB1721 & 11CRB1850 (Prior to enhancement, said offense was a Misdemeanor of the First Degree).

August 21st, 2018 Artis was found guilty by a jury and was then sentenced to a term of thirty-six (36) months within prison as to the Felony Domestic Violence charge. Thereafter, Artis's counsel timely appealed the conviction and sentence to the Third District Court of Appeals of Ohio (See, State v. Artis, 2019-Ohio-2070), in which Artis's Court appointed counsel provided the following Assignment's of Error to be reviewed;

1: THE TRIAL COURT ERRED IN DECLARING MEGAN KEACK TO BE AN UNAVAILABLE WITNESS AND IN FAILING TO ENFORCE HER SUBPOENA, THEREBY DEPRIVING APPELLANT OF HIS RIGHTS UNDER THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, ARTICLE I, SEC.10 OF THE OHIO CONSTITUTION, CONSTITUTIONAL DUE PROCESS, AND HIS RIGHT TO A FAIR TRIAL;

2: APPELLANT WAS DENIED HIS CONSTITUTIONALLY PROTECTED RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL;

3: THE TRIAL COURT ERRED IN FAILING TO MERGE THE DOMESTIC VIOLENCE AND ABDUCTION COUNTS CONTAINED IN THE INDICTMENT;

4: THE TRIAL COURT ERRED IN FAILING TO PROVIDE A COMPLETE JURY INSTRUCTION;

5: THE CUMULATIVE EFFECT OF THE FOREGOING ERRORS DENIED APPELLANT OF A FAIR TRIAL.

May 28th, 2019, the Court of Appeals affirmed Artis's conviction and sentence. *id.* Artis timely filed an application to reopen his direct appeal based on ineffective assistance of appellate counsel (Ohio App.R.26(B)), mainly arguing that Appellate Counsel failed to raise the issue that his charge of Domestic Violence was illegally enhanced based on his prior uncooled plea deal(s) in Case No(s). 11CRB1721 and 11CRB1850, when no waiver of counsel was given or determined.

October 4th, 2019 The Court of Appeals denied Artis's Application to reopen finding Appellate Counsel was not ineffective for not raising said issues.

October 29th, 2019, Artis filed a Motion in the Bellefontaine Municipal Court in, Case No(s) 11CRB1721 & 11CRB1850, to withdraw his plea(s) of guilty, arguing that his plea(s) were unconsoled - resulted in actual incarceration - and no waiver and or hearing to determine waiver of counsel was given/held, and now illegally being used to enhance a new charge of domestic violence.

November 4th, 2019 the State filed a Memorandum in Opposition to Artis's Motion to Withdraw his plea's of guilty, in which the following day the Trial Court denied Artis's Motions.

December 2nd, 2019, Artis timely appealed the denial of his Motion's to Withdraw his Plea(s), which Case No(s) 11CRB1721 & 11CRB1850 were consolidated for purposes of appeal, to the Third District Court of Appeals of Ohio (See, *State v. Artis*, 2020-Ohio-4018).

Artis, Pro-Se, presented the following Assignment of Error to be reviewed;

1: THE APPELLANT'S UNITED STATES FOURTEENTH AMENDMENT RIGHT WAS VIOLATED WHEN THE COURT DENIED HIS MOTION TO WITHDRAW HIS PLEA, AS HE ESTABLISHED THAT THE PRIOR PLEA WAS AN UNCONSOLED PLEA.

August 10th, 2020, the Third District Court of Appeals affirmed Artis's Conviction and Plea Deal, and determined that Artis was barred due to Resjudicata, hence he never filed a Direct Appeal. *id.* ¶.13 *Artis II*.

September 15th, 2020, Artis timely appealed the Court of Appeals Judgment and Opinion to the Ohio Supreme Court, as a Discretionary Appeal, raising one Proposition of Law, in which is as follows;

PROPOSITION OF LAW ONE: APPELLANT'S PLEA OF GUILTY IS VOID AND OR VOIDABLE UNDER THE U.S. AND OHIO CONSTITUTION, AS IT WAS CLEARLY AN UNCONSOLED PLEA, IN WHICH RESULTED IN ACTUAL INCARCERATION AND USED TO ENHANCE ANOTHER CRIMINAL CHARGE.

November 10th, 2020, the Ohio Supreme Court declined to accept Jurisdiction, with a dissenting judgment (Not unanimous).

V. LAW AND ARGUMENT IN SUPPORT

A. INTRODUCTION

Petitioner, Tyrell E. Artis, brings forth this cause of action in hopes this Honorable Court will grant review of the lower courts decision's in order to correct an injustice. This cause of action stems from a Municipal Court conviction and plea-deal within Bellefontaine, Ohio (Logan County), in which said Municipal Conviction is years later being used to enhance a new Misdemeanor offense to a felony offense, and has been used, as the Logan County Common Pleas Court convicted and sentenced Petitioner to three (3) years in prison for the new enhanced offense.

The argument presented herein is in regard to both questions presented. Petitioner in 2011 accepted pro-se a plea deal to resolve both his Municipal Cases, both for one (1) count of Misdemeanor one Domestic Violence, in which the Trial Court accepted Petitioner's pleas of guilty, sentenced him to a term of 17-days within the Logan County Jail (Term served), and a total of \$300.00 in fines. However, the issue is that the Trial Court offered and accepted the plea without ever giving Petitioner counsel, or even offering him counsel, the Court did not hold a hearing to determine waiver of counsel, essentially the word "Counsel" was never brought up. The Prosecution offered Petitioner the opportunity to merely plea guilty to all counts as charged, thus to avoid trial and him having to pay for an attorney, the Trial Court accepted the open plea of guilty, never questioned it or went over any rights pertaining to appointment of counsel with the Petitioner, and then sentenced him, immediately, to jail. Petitioner never appealed the conviction or sentence because again he had no attorney, he could never be aware that the Trial Court was without the authority to impose a jail term upon him, why would someone ever think a judge could not sentence them to jail, it is not possible for him to have known these things as he is not an attorney, keep in mind, the Trial Court absolutely never held a hearing

or any conversation or waiver into if Petitioner wanted counsel at all, he was absolutely clueless as to the law and believed the Trial Court was doing him a favor.

Almost eight (8) years later, Petitioner herein is charged with a count of Domestic Violence within Logan County, Ohio, in which said charge is a Misdemeanor of the First Degree. However, the Logan County Prosecutor's Office enhanced the charge to a Felony of the Third Degree based on Petitioner's prior convictions of Domestic Violence in his Bellefontaine Municipal Court Case(s), based upon his plea of guilty, as such the Logan County Grand Jury indicted Petitioner of a Felony Three Domestic Violence offense, in which now carries up to three (3) years within prison. Petitioner's Trial Counsel (Appointed) within his new case never brings up contesting the previous plea deals and goes to trial, gets found guilty, and sentenced to (3) three years in prison for the Domestic Violence offense. Petitioner's Trial Counsel appeals his conviction, never raises that his prior plea(s) were Unconsoled and couldn't be used against him, so the Court of Appeals affirms his conviction. Petitioner eventually meets a Law Clerk within the prison who tells him that a court cannot impose a jail term or fine if the conviction rests based on an unconsoled guilty, and any plea deal resulting in jail time when unconsoled when no waiver of counsel was administered is void and can't be used to enhance a new offense from a misdemeanor to a felony now. Petitioner urges this Honorable Court to keep in mind, how can the State expect him to have appealed the Municipal Conviction in 2011 if he had no attorney, the court never asked or gave him one, and he had no idea the actions taken by the Court was not legal, when all these years he believed it was 100% within the Trial Courts authority to impose a jail term and fine, not give him counsel, and enhance a new charge based on it. It is now coming to his attention the Court could not do so, and now raises the alarm to it. His new offense should have never been a felony, he should not be in prison on this illegally enhanced offense,

thus to correct this injustice he must now attack the plea deal from the Municipal Court. Had at that time Petitioner known the Trial Court was not in the authority to impose a jail term upon Petitioner, he would have raised that issue at sentencing and not paid the fine, its clear Petitioner had no idea of this injustice.

B. ABSENT A KNOWING AND INTELLIGENT WAIVER, NO PERSON MAY BE IMPRISONED FOR ANY OFFENSE

This Honorable Court has determined and held that;

"We must conclude therefore, that the problems associated with Misdemeanor and petty offenses often require the presence of counsel to insure the accused a fair trial. **MR.JUSTICE POWELL** suggest that these problem are raised even in situations where there is no prospect of imprisonment. Post, at 48. We need not consider the requirements of the sixth Amendment as regards the right to counsel where loss of liberty is not involved, however, for here Petitioner was in fact sentenced to jail. And, as we said in *Baldwin v. New York*, 399 U.S. at 73, 'the prospect of imprisonment for however short will seldom be viewed by the accused a trivial or petty matter and may well result in quite serious repercussions affecting his career and his reputation.'

We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006.

While herein this matter, it is undisputed that; (1) He was sentenced to a term of seventeen (17) days in jail; (2) He was sentenced to a total of \$300.00 in fines; (3) He was pro-se during the entire municipal proceedings; (4) The Trial Court never offered Petitioner counsel, and or, never determined waiver of counsel, and/or, advised him of his right to counsel (*id.*Appendix B), and; (5) Petitioner's conviction was for two (2) counts of Misdemeanor (First Degree) Domestic Violence.

Within the Municipal Court, Petitioner was approached by the prosecution to plea guilty, never offered counsel or a waiver of counsel, or he was to go to trial, Petitioner accepted the plea of guilty, the Court then never asked Petitioner if he understood his rights, or if he wanted counsel, or if he was waiving his right to counsel, or that he could not be sentenced to jail if counsel was not present, so he pled guilty believing in doing so

that he was being given a "deal" essentially, not that the Court and Prosecution secretly were doing the complete opposite. Petitioner not once from the beginning of the proceedings to the end was ever given counsel, asked if he wanted counsel, if he understood he had a right to counsel, it was made to be believed that Petitioner either had to purchase his own counsel or proceed Pro Se, hence the charges were not felony's.

Eight (8) years later (2019), Petitioner moved the Bellefontaine Municipal Court to withdraw his pleas of guilty in both case numbers, asserting; "Due to the violation of the Defendants rights under the Sixth and Fourteenth Amendment of the United States Constitution." (id. Motion to Withdraw Plea 10/29/2019). Petitioner argued that his pleas of guilty were Unconsoled, resulted in deprivation of liberty and fines, in which the Trial Court never offered him Counsel or waived his right to counsel. Further, that the Logan County Common Pleas Court has enhanced a Misdemeanor Domestic Violence offense to a felony based on the Unconsoled Misdemeanor plea(s).

The Bellefontaine Municipal Court on November 5th, 2019, denied Petitioner's Motion to Withdraw plea, stating: "The Defendant neither requested court appointed counsel, nor did private counsel enter an appearance on his behalf. He pled guilty to the charge in each case, was convicted and sentenced.". Therefore, it is very clear the Trial Court does not dispute that they never offered him counsel, never advised him of his rights to counsel, never held a hearing to waive his rights to counsel, and sentenced him to jail. The Trial Court goes on within its judgment entry to justify its actions by stating: "The sentences were imposed in the same hearing and were slight considering the offenses. It should be noted that the Defendant received no further punishment for violating the terms of his OR bond." id. However, while the Trial Court clearly feels a Defendant's Constitutional rights do not outweigh the courts

justification because the Judge felt he got off easy. This "justification" is in no way a legal sound reason to not appoint someone counsel, or to hold a hearing to inform a Defendant of their Constitutional right to counsel and to waive such. The Court merely sentenced Petitioner to Jail, fined him, and felt the Court was doing the right thing because he could have gotten more time. The Court fails to address the Constitutional violation, and fails to address the argument provided within the Motion to Withdraw that the Court had no authority to; (1) Accept the plea at all without appointing counsel or holding a hearing to determine waiver of counsel; and (2) Impose a jail term or fine, again, unless the Court appoints Petitioner Counsel. Every action took by the Bellefontaine Municipal Court in 2011 was wholly against this Country's Constitution and all rights in which people have fought to have in this Country. When did we go back to a time where courts could wholly overlook Constitutional rights, sentence people to jail without an attorney, because the Judge "Felt" said individual deserved it or was getting off easy. Petitioner wasn't getting off easy, he was placed into jail, he pled guilty without counsel to every charge against him, when the Court had no authority to do so, and now said Unconstitutional act is being used to put him in prison for three (3) years, eight years later.

This Honorable Court for years now has continuously held that whether, Misdemeanor, Petty, Felony, etc, Courts MUST appoint Counsel during the plea process and or in the alternative hold a separate hearing advising the Defendant of his Constitutional right to counsel and to waive his right to counsel, however this Court continuously has held that unless the Court appoints Counsel, the Trial Court cannot impose a Jail Term or fine nor impose a term of probation with a suspended jail term, to do such is a clear violation of the Defendant's Sixth Amendment right to Counsel and Fourteenth Amendment right to Due Process within the State Courts. *Alabama v. Shelton*, 535 U.S. 654.

Petitioner points to *Alabama v. Shelton*, 535 U.S. 654, decided May 20th, 2002 by this Honorable Court. *Shelton* concerned the Sixth Amendment right of an indigent defendant charged with a misdemeanor punishable by imprisonment, fine, or both, to the assistance of court-appointed counsel. *id.* 657, Now while *Shelton* merely added to this Court determination in *Argersinger v. Hamlin* and *Scott v. Illinois*, by additionally determining that; "A suspended sentence that may 'end up in the actual deprivation of a person's liberty' may not be imposed unless the defendant was accorded 'the guiding hand of counsel' in the prosecution for the crime charged." *id.* Syllabus. In which this Court held that; "The controlling rule is that 'absent a knowing and intelligent waiver, no person may be imprisoned for any offense...Unless he was represented by Counsel at his trial.' *id.* Syllabus. Within *Shelton*, the Alabama Court argued that during his Trial the Judge repeatedly warned *Shelton* about the problems self-representation entailed, but at no time offered him assistance of counsel at State's expense. *id.* Syllabus. Petitioner emphasizes on Alabama's argument in response, as herein Bellefontaine Municipal Court argues that because Petitioner never asked for counsel, they were not required to do so themselves, thus Petitioner argues the Trial Courts reason for not appointing counsel or waiving counsel is not an argument in which this Honorable Court has accepted or allowed.

Prior to *Hamlin* or *Shelton*, this Honorable Court in *Johnson v. Zerbst*, 304 U.S. 48, held that;

"The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of trial court, in which the accused whose life or liberty is at stake - is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is a intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear on the record." *id.*, at 465

While the State of Ohio has adopted procedural rule within their Criminal Rules in which prohibits imposition of a jail term unless the Court

appoints counsel, Petitioner herein was clearly not afforded the Due Process and or the equal protections of the Ohio Law and/or Federal Law.

Ohio Criminal Rule 44(B) hereby states;

"(B) Counsel in petty offenses: Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent the Defendant. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon the defendant, unless after being fully advised by the court, the defendant knowingly, intelligently, and voluntarily waives assignment of counsel."

The Ohio Supreme Court has set forth the requirement for a sufficient pretrial inquiry by the Trial Court into a waiver of counsel, in which the Bellefontaine Municipal Court ignored, within *State v. Gibson*, 45 Ohio St.2d 366, 377, 345 N.E.2d 399 (1976), stating;

"To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses including within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of the circumstances under which such a plea is tendered." *id.*, at 377.

This is not an issue of whether the State of Ohio has set forth a Rule and or precedent in which complies with precedent set by this Honorable Court, the issue is despite this Courts precedent, the Constitution, and Ohio Laws, the Bellefontaine Municipal Court and the Court of Appeals of Ohio have failed to uphold and abide by said requirements and provide Petitioner his Due Process by applying and invoking the Constitutional safeguards, the precedent set herein, and Ohio Law itself as well. The Courts in Ohio have deprived Petitioner of liberty, his rights, ignored his arguments of Constitutional violations, and ignored the rulings set forth by this Honorable Court. This issue not only affects Petitioner but sets precedent in the State of Ohio now and a path for other Courts in Ohio to do the same conduct, to ignore the Constitution and this Courts rulings. By allowing this to continue it jeopardizes others

who go before the Courts, it allows the Courts to fully disregard the rights in which this Country is known for, the rights afforded to all citizens of this country, whether they are charged with a crime or not, it is something that sets us apart from other countrys. Otherwise, our Constitution means no more than the paper its printed on, if Courts can just overlook it because they want to, or for any reason, violating a Constitutional right is something that should be taken seriously, whether if noticed eight years later or not. Petitioner trusted the Municipal Court and the Prosecution, they "fooled" him more or less, and now the State of Ohio is using it against him to put him in prison, if we cant trust our courts, who can we trust?

Therefore, Petitioner believes strongly his Sixth Amendment right to Counsel, through the Fourteenth Amendment to the States, was clearly violated. Furthermore, since his pleas were Unconsoled and resulted in deprivation of liberty, said plea deals should be void and or voidable, and or be opened to collateral attack (Withdraw), based on such a serious violation and disregard of holdings by this Honorable Court in *Argersinger v. Hamlin* and *Alabama v. Shelton*.

C. RES JUDICATA DOES NOT OUTWEIGH A DEFENDANTS U.S. CONSTITUTIONAL RIGHTS AND SAFEGUARDS, THUS DOES NOT BARR A CONSTITUTIONAL VIOLATION CLAIM.

Petitioner thus far strongly believes it should have been shown herein that the actions took by the Bellefontaine Municipal Court in 2011, by not offering Petitioner Counsel nor determining waive of counsel, and incarcerating Petitioner based on his Unconsoled pleas was a clear violation of Petitioner's Sixth and/or Fourteenth Amendment rights under the United States Constitution and contradicting to the precedent set by this Honorable Court.

As its been shown, Petitioner in 2011 did not appeal the conviction and sentence, he did not contest his Unconsoled pleas, however Petitioner urges this Court to consider how could he, how could he ever have known what the

Court did was illegal or that he had a right to counsel, as the Trial Court openly admits, they never offered him counsel, so how could he know? He went about his life after the jail term as if the Court did him a favor by not giving him six months. It was not till he received a new charge years later for a Domestic Violence offense which was enhanced from a Misdemeanor to a Felony three based solely upon his Unconsoled plea in 2011, despite it resulted in actual incarceration. Again though, Petitioner urges this Court to consider that he never brought that issue up, his prior pleas being Unconsoled and resulting in Jail time, because again he had no idea that action was illegal, he believed the enhancement was legal, that the State Court was within their authority to do so otherwise they wouldnt do it. Petitioner's Court appointed Counsel never asked about the pleas, never brought up that they could be contested, and never brought it up to the Court. Court appointed counsel appealed his conviction to the Court of Appeals, again counsel not once mentions anything about prior pleas at all, and the Court of Appeals affirms the conviction. Despite Petitioner now knowing the pleas could be contested, it is to late, Court Appointed Counsel never mentioned it once within his appeal, despite it was very clear his pleas were Unconsoled and resulted in jail time, in which this Court has determined cannot be used to enhance a Misdemeanor to a felony. See, *Nichols v. United States*, 511 U.S. 738. By the time Petitioner was aware of this, he had no remedy's available to him to attack his current conviction. Thus, he was left with attacking his prior Unconsoled pleas themselves since they are in violation of his rights, in hopes to get them vacated and or voided in order to collatorally attack his current conviction. This action while it relates to his current felony conviction and the enhancement, it is solely in regards to his Bellefontaine Municipal Convictions.

Once the Bellefontaine Municipal Court denied Petitioner's Motion to Withdraw his pleas, based on a violation of his Sixth and Fourteenth Amendment rights, he timely appealed that Judgment and Decision to the Third District Court of Appeals, in which as well Affirmed the Decision (See, *State v. Artis*, 2020-Ohio-4018, Appendix A hereto).

Petitioner within his Merit Brief argued that his Fourteenth Amendment right was violated when the Court denied his Motion to Withdraw plea as his pleas were Unconsoled, resulted in deprivation of Liberty, in which no waiver of counsel was given. More specifically, Petitioner argued his guilty pleas were not made knowingly, intelligently, and voluntarily because he entered the pleas without the assistance of counsel, with no waiver of counsel, resulting in actual jail time, in violation of the Sixth Amendment to the U.S. Constitution. Further, Petitioner informed the Court of Appeals said plea deals were now being used to enhance a subsequent offense to a felony.

While Petitioner raised a Federal Constitutional violation, the Court of Appeals did not address it. However, the Court did not address the Federal Constitutional violation due to a Rule or Law within the State of Ohio in which would be an adequate, independant, and controlling Rule/Law of the issue in question, as the Court merely concluded that Petitioner cannot raise his Constitutional claim based upon the Doctrine of res judicata. See, *Foster v. Chatman*, 136 S.Ct.1737, 1746 ("When application of a State Law bar 'depends on a federal constitutional ruling, the State-Law prong of the Court's holding is not independent of Federal Law, and our jurisdiction is not precluded.'").

More specifically, the Court of Appeals determined and held that;

"Because Artis [Petitioner] could have raised his arguments in a direct appeal, Artis's arguments are barred by the doctrine of res judicata and he cannot now raise them in a post-sentence motion to withdraw his guilty plea." *id.*, ¶.13 Appendix A.

While it is understood this Honorable Court until recently rarely granted review of State-Court decisions in collateral review proceedings, preferring to allow the claims adjudicated in such proceedings to be decided first in Federal Habeas proceedings. See, **Lawrence v. Florida**, 549 U.S. 327, 335. However, it should be noted (1) Petitioner is no longer incarcerated on this matter, thus cannot seek Habeas Review, and; (2) The argument of why this is being dealt with through a postconviction matter, years later, is premised upon the fact that essentially how could Petitioner ever have raised this Constitutional violation within a State Direct Appeal in 2011, when the Court deprived him of his right to counsel, incarcerated him, and he is not an attorney how could he have known his rights were being violated or could be used against him eight (8) years later. Further, recently this Court has granted review of State-Court decisions denying postconviction relief. See, e.g., **Foster v. Chatman**, 136 S.Ct.1737; **Wearry v. Cain**, 577 U.S., 136 S.Ct. 1002, 194 L.Ed.2d 78 (2016).

Petitioner's Merit Brief and Assignment of Error raised within his Direct Appeal of his post conviction matter, argued that his Fourteenth Amendment right to Due Process was violated when the Trial Court denied his post sentence Motion to Withdraw plea, asserting that his Due process right was violated when Ohio Law already allows post sentence Motion to Withdraw pleas if based upon a manifest injustice. Ohio Crim.R.32.1. It should be clear a manifest injustice occurred during the plea proceedings when it is undisputed that the Bellefontaine Municipal Court failed to offer, appoint, and or waive Petitioner's Constitutional right to counsel and went forward with incarcerating him anyways, in violation of the Sixth U.S. Amendment and failure to apply well settled U.S. and Ohio Law, thus when the Trial Court deprived Petitioner of his right to withdraw a plea post sentence when a manifest injustice occurred, his right to due process was violated.

Within the State of Ohio, there are procedural mechanisms in place to collaterally withdraw a plea, before sentencing and post sentence. Crim.R.32.1; "A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct a manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." id.

Further, Case Law within Ohio as to post sentence withdraw, states: "The party moving to withdraw the plea of guilty bears the burden of establishing a manifest injustice." *State v. Streeter*, 2009-Ohio-189, ¶.13, citing *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph two of Syllabus. The Ohio Supreme Court defines a manifest injustice as, "a clear or openly unjust act and relates to a fundamental flaw in the plea proceedings resulting in a miscarriage of justice." *State v. Straley*, 2019-Ohio-5206, ¶.14.

However, while Ohio clearly allows post sentence motion's to withdraw pleas based upon manifest injustice, the State of Ohio also states, "And generally, res judicata bars a defendant from raising claims in a Crim.R.32.1 post-sentencing motion to withdraw a guilty plea that he raised or could have raised on direct appeal." *Straley.*, at ¶.15.

According to OHio's res judicata doctrine, "A final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which results in that judgment of conviction, or an appeal from that judgment." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of Syllabus. The Ohio Supreme Court went on later to explain the res judicata doctrine, in which stated: "the doctrine serves to preclude a defendant who has had his day in court from seeking

a second on that same issue", and it "Promotes the principals of finality and judicial economy by preventing endless relitigation of an issue on which a defendant has already received a full and fair opportunity to be heard."

State v. Saxon, 109 Ohio St.3d 176, 2006-Ohio-145, 846 N.E.2d 824, ¶.18.

Petitioner argues that the Court of Appeals denied him Due Process by barring his Constitutional claims, involving deprivation of liberty, based upon res judicata. As established, in order for res judicata to bar a Petitioner from raising a post sentence motion to withdraw a plea, based upon Ohio Supreme Court precedent, the following would have to be determined first:

1: Petitioner was represented by Counsel within the Municipal Court proceedings; and

2: Petitioner, while represented by counsel, had a full and fair opportunity to be heard; and

3: The issue is something that should have been or could have been raised within a direct appeal; and/or

4: If the issue was already litigated and adjudged.

It is highly important to note and emphasize the point herein that Petitioner was in-fact not represented by counsel, at al, during the Municipal Court proceedings. The first line of res judicata states, "A final judgment of conviction bars a convicted defendant who was represented by counsel..." Petitioner however, as it is admitted to by the Trial Court, did not legally waive his right to counsel, and the Court never offered him counsel nor appointed counsel. Petitioner was not afforded any Due Process and was never afforded a full and fair opportunity "to be heard". Further, if the Trial Court did not appoint counsel, the entire proceedings within are in question, the importance of effective counsel during the entire proceedings, including the plea process and preliminary hearings, is to protect "Against an erroneous or improper prosecution." Quoting - **Coleman v. Alabama** (1970), 399 U.S. 1, 9, 26 L.Ed.2d 387, 90 S.Ct. 1999. The Court of Appeals, hence it was clearly

argued within the Merit Brief, should have observed the clear issue that Petitioner was not represented by counsel, did not waive counsel, and as such he did not receive a full and fair opportunity to be heard or raise any issues with the conviction nor file an appeal, therefore *res judicata* could not apply. More specifically, the issue of not being afforded counsel, and being incarcerated, raises more than just a State issue, this act has been completely prohibited by this Honorable Court, and continuously upheld as well, the Ohio Court of Appeals clearly, without writing it, either egregiously misapplied settled Law by this Court, or did not feel when up against settled Constitutional principals, *res judicata* still outweighed such. Petitioner should not be "punished" because after he was convicted and sentenced to jail in 2011 he did not directly appeal, thus waiving any issues, when again he had no counsel, and did not know any better, plus how could he have known back then that if he ever received a new domestic violence offense those prior pleas would result in an enhancement of the new offense, when again he had no counsel, in which had the Court appointed him Counsel it is reasonable to expect Counsel would have went over this with him, would of advised him his rights, the penalty's and effects of pleading guilty. The point of appointing a Defendant counsel is to protect the Defendant's Due Process during the proceedings, to advise the defendant, and to dispute conflicts. The conviction rests on an Unconsoled plea, how is there any guarantee the Petitioner was even guilty at all, or if any facts were in dispute, any law in dispute, etc.

This Honorable Court within *Powell v. Alabama*, 53 S.Ct.55, as it relates to Courts not affording Defendants Counsel, once honorably stated:

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law.

If charged with crime, he is incapable, generally, to determine for him-self whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceeding against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

The words spoken by this Court within Powell fits the issue here point on, as res judicata cannot and should not bar a claim when the claim premises upon the fact Petitioner was deprived counsel, which led him to be deprived of his liberty, a defense and an appeal, in which is all shown to be in violation of Petitioner's Sixth and Fourteenth Amendment rights, and a clear misapplication and/or disregard for this Courts holdings. *Argersinger v. Hamlin*, 92 S.Ct. 2006 ("[E]very judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel." *id.*, at 40

The Country has come far from the English Common Law Rule in which Courts would deny Defendants Counsel for Felony offenses. Powell, at 60 ("Originally, in England, a person charged with treason or felony was denied the aid of counsel."). The act of not giving, offering, and/or waiving Petitioner's right to counsel, and sentencing him to jail and fine, then using the Unconsoled conviction against him to put him in prison is not a step forward in our system, but a step back. The English courts would do things like this, decide who it would help, who it would not, this should not be allowed. It took another 112 years after the ratification of the Sixth Amendment, and 35 years after the ratification of the Fourteenth Amendment before England provided Court-appointed counsel for all felonies. See, *Poor Prisoner's Defence Act*, 1903, 3 Edw. 7, ch. 38, §1. There is no dispute that Petitioner's Motion to withdraw post sentence is eight (8) years after the fact, however Ohio

Law does not limit the time to file, only requires a Manifest Injustice. But as argued and stated throughout this Petition, it should not be disputed that the Municipal Court did-in-fact violate Petitioner's 6th and 14th Amendment rights and deprived him of liberty, but because of the deprivations of counsel Petitioner could not and did not directly appeal or raise any issues, it was not till the State of Ohio years later uses the void conviction against him, gives him three (3) years in prison, counsel never once contested it, and not till Petitioner is in prison and talking to a Legal Clerk does he come to know and discover this whole time what the Municipal Court did was illegal and now void, plus the State Court had no legal authority to enhance a misdemeanor to a felony based upon the void conviction. Because of this, eight (8) years later, Petitioner moves to withdraw his pleas, in which once granted he will move for appointment of counsel and contest the charges against him. His prior conviction is in no way the result of an intelligent, knowingly, and voluntarily made plea deal, as such a conviction obtained in a proceeding in which the Sixth Amendment right to counsel has been denied, is void. *Gideon v. Wainwright*, 83 S.Ct.792; *Argersinger v. Hamlin*, 92 S.Ct.2006, as such this Court has held that a conviction obtained in violation of the Sixth Amendment, resulting in a deprivation of liberty, could not be used to enhance a subsequent offense. See *Williams v. Nichols*.

Therefore, Petitioner strongly believes that the Ohio Court of Appeals determination of res judicata is fundamentally improper and erroneous as it has been clearly established that Petitioner was; (1) Not represented by counsel; (2) Never offered counsel, nor waived counsel; (3) Deprived his Sixth and Fourteenth Amendment Constitutional rights by the Trial Court, in which is a clear manifest injustice resulting in the plea proceedings to be fundamentally unfair; and; (4) Not aware of said manifest injustice and deprivation of rights till the State of Ohio enhanced a subsequent offense

and imprisoned him upon it. Thus, the Court of Appeals denied Petitioner his Due Process in violation of the Fourteenth Amendment to the United States Constitution.

VI. CONCLUSION

Based upon the foregoing Argument, Facts, Law and Appendix herein, Petitioner respectfully ask this Honorable Court to review the Decision and Judgment of the Third District Court of Appeals of Ohio, based upon the Bellefontaine Municipal Court Judgment and Decision, and to determine the questions being presented; In which Petitioner strongly believes he can withdraw his plea, post-sentence, when said plea-deal was Unconsoled in violation of the Sixth and Fourteenth Amendment, resulting in deprivation of liberty, in contradiction with this Courts prohibition against such conduct, in which res judicata would not barr Petitioner now from raising said Constitutional violations and egregious disregard of Supreme Court precedent, as he was not represented by Counsel during the Trial Court proceedings and said void conviction is now being used to enhance a subsequent offense and imprisoned him. Petitioner respectfully urges this Honorable Court to grant review.

RESPECTFULLY SUBMITTED,



Tyrrell E. Artis Pro-Se,
Petitioner-Movant,

Inmate: A746-808
P.O BOX: 1812
Marion, Ohio 43301-1812.