No. 20-7270

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN - 5 2021
OFFICE OF THE CLERK

KEITH D. Barmore - PETITIONER

vs.

Sonja Nicklaus, Warden - PESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Keith D. Barmore, R-00683,

Dixon Correctional Center

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Dixon, IL 61021

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## QUESTION(S) PRESENTED

ARGUMENT I.

Whether Petitioner was deprived of his due-process of law, and a fair trial, where the trial court never orally read the jury instructions to the jury.

(1) Trial court never instructed the jury concerning first degree murder, and lesser-including involuntary manslaughter.

(2) Where defense counsel never gave a standing objection, which was plain error, and ineffective assistance of counsel.

ARGUMENT II.

Whether Petitioner Barmore, was denied due process of law, and a fair trial, where in his final argument the prosecutor misstated the law, with a improper argument.

(1) Where the trial court gave permission for petitioner to have a lesser-included offense of involuntary manslaughter.

(2) Where the substantial prejudice caused by the prosecutor, that it would "Dispicable" and allow the defendant to "escape responsibility".

(3) Petitioner's attorney never objected held to have denied petitioner effective assistance of counsel.

ARGUMENT III.

Where Petitioner Barmore, was denied due process of law, by the ineffective assistance of trial defense counsel, who failed to call a critical forensic pathologist expert witness, who had cancer to testify for him.

(1) Where his defense counsel to Petitioner the forensic pathologist was ready for after two years continuances.

## QUESTION(S) PRESENTED

(2) When Petitioner was brought out for trial the defense counsel to petition the Forensic Pathologist expert was not coming.

(3) Petitioner told the defense he was not going to trial without the forensic pathologist, defense said he would have trial without him present.

ARGUMET IV.

Whether Petitioner Barmore was denied due process of law, and violated under the statutory requirements of 18 USC § 241 and 18 USC § 242. Due to the conspiratorial deprivation of Federal and State constitutional and statutory rights and liberties by State Officials, acting under color of State law, and Federal law.

(1) Which includes Petitioner's trial judge, who now is a US District Court Judge, who was very bias and prejudice in this case as a whole.

(2) And now works with a senior judge in the US District Court who's son is a third degree relationship. Where his son was my wife's State Attorney who had her sign a no-contact clause, before she was let out of jail on a bail bond, and was my judge on my writ of Habeas Corpus, who fabricated my case of 12 issues by bias and prejudice, where I did not receive fair and adquate hearing.

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OTHER



for he is both and adminstrator of justice and an aadvocate.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at Seventh Circuit Court of Appeals; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[X] reported at Northern Western Division of Illinois; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

## JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 20, 2020.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 15, 2020., and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.Const.Am.V.

The Fifth Amendment provides that no person shall be compelled in criminal case to be a witness against himself.U.S.Const. Amend.V.....

U.S.Const.Am.VI.

The Sixth Amendment to the United States Constution provides in pertinent part as follows:

In all ciminal prosecutions,the accused shall enjoy the right to speedy and public trial,...and to have the assistance of counsel for his defense.

U.S.ConstAm XIV.

The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

...nor shall any State deprive any person of life,liberty or propeerty, without due process of law.

## STATEMENT OF THE CASE

On May 11,2015,petitioner filed a 28 U.S.C. s2254 petition in the United States District Court for the Northern District of Illinois Western Division Case No.15-CV-50108,that was denied July 12,2017, and filed a timely 59 E reconsideration mation that was denied September 5,2017,. Petitioner then filed a timely Notice of Appeal and it was denied Semptember 20,2017,.Petitioner then filed a timely Application for Certificate of Appealability,Motion for Production of Record on Appeal,Motion for Leave to Appeal in Forma Pauperis, Motion for Apointment of Counsel,Motion Jurisdiction Statement, Motion for Docketing Statement,in the Seventh Circuit Court of Ap -peals in Case No.17-2922,timely filed and denied August 20,2020. Petitioner then filed a timely Rehearing and En Banc petition on September 15,2020,and it was granted September 18,2020,and the mandate is recalled.On consideration of the petition for rehearing a for rehearing En Banc file on September 18,2020,no judge in active service has requested a vote on the petition for rehearing En Ban Judge Kane has voted to deny panel rehearing.Judge Scudder,who has been substituted for judge Barrett,likewise has voted to deny panel rehearing,denied on October 15,2020.

Petitioner filed the Rehearing and En Banc pursuant to Rules of Appellate Procedure,under Rule 35 (2) the proceeding involves a question of exceptional importanceand subsection (1).En Bamc consideration is necessary to secure or maintain uniformity of Court decision.Subsection (f) Call for a vote.A vote need not be taken to determine whether the case will be heard or reheard en banc un-

less a judge call for a vote.

Petitioner's request that his reconsideration be done en banc that every judicially trained mend sitting on that Court be brought to clear focus on the issues and arguments which languished approximately three years before that tribunal, three years delay without a word beyond "denied" is not representative of the values of an innocent man's life. This is not a case of obtuse or arcane subverted by conflict of interest and conspiracy.

## REASONS FOR GRANTING THE PETITION

### ARGUMENT I.

Petitioner Barmore,was deprived of his due process of law constitutional rights.Where the trial court never orally read the jury instructions to the jury by Illinois Statute 725 ILCS 5/115-4 (i),concerning First Degree Murder,and the lesser included offense allowed by the trial court of involunatary Manslaughter,and reasonabl doubt.Whether the constutional deprivation is charaterized as a denial of due process of law. Where defense counsel never gave a standing objection,which was plain error,and ineffective assistance of counsel(discussed B,infra),.

Quoting:Cole v.Young,trial court in a criminal case,in order to afford defendant a fair trial,bears burden of seeing that jury is instructed on elements of crime charged,on presumption of innocence.and on question of burden of proof,and failure by court to properly instruct on any of these key elements cast doubt or whether defendant receive fair trial.

Complete failure to give any jury instruction on essential element of offense charged,under circumstances indicating that jury was not otherwise informed of necessity of proof of elements,is violation of due process.U.S.C.A.Const.Amend.14.Cole v.Young,817 F.2d 412 (7th Cir.1987).

**A.PETITIONER'S JURY TRIAL WAS IN VIOLATION OF DUE PROCESS OF LAW,DUE TO THE TRIAL JUDGE NEVER READ THE JURY INSTRUCTIONS TO THE JURY,ORALLY AS TO THE LAW.725 ILCS 5/115-4 (i).**

Factually this case is straight forward.Petitioner Barmore,was charged with a crime of First Degree Murder,and the court allowed him a lesser included offense,of involuntary Manslaughter. Where the judge,after closing arguments never orally read the jury instruc-

tions to the jury,and only sent jury instructions for jury to read.

And the jury sent several questions in writing on issues with the jury instructions they did not understand,regarding First Degree Murder,and the second proposition the words that "when the defendant did so,"it is circled and the question is,"Does that mean the defendant has to know "instantly and not at some later point?

The court answers Please follow the plain meaning of the language of the instructions.

Petitioner's defense counsel provided ineffective assistance of counsel rihts here,and never objected to the judge not given the jury instructions orally. Where the Illinois statute 725 ILCS 5/115-4 (i)(after arguments of counsel the court shall instruct the jury as to the law). When the judge did not verbally instruct the jury concerning the elements of First Degree Murder,and Involuntary Manslaughter,and Reasonable Doubt.

Quoting:United States v. Murphy,In most jurisdictions,prior to closing argument,the trial court will decide what instructions will be read to the jury.United States v.Murphy,768 F.2d 1518 (7th Cir 1985).

Quoting:James v.Kentucky, Instructions set forth the legal rules governing the outcome of a case.They state what the jury must believe from the evidence in order to return a verdict in favor of the party who bears the burden of proof.The judge reads the instructions to the jury at the end of the trial,and provides it a written copy.James v.Kentucky,466 U.S.341,104 S.Ct.1830,80 L.Ed.2d 346 (1984).

Quoting:Keeble v.United States,A defendant is entitled to an instruction on lesser included offese if the evidenec would permit jury rationall to find him guilty of the lesser offese and aquit him of the greater.

Effect of failure or refusal of court,in robbery presecution, to instruct on assault and battery.The court reversed the judgment of the court of appeals and remanded the case for further proceedings.see Keeble v.United Statas,412 U.S.205,93 S.Ct.1993,36 L.Ed. 2d 844 (9173).

B. PETITIONER'S DEFENSE COUNSEL NEVER GAVE A STANDING OBJECTION WHICH WAS PLAIN ERROR,AND INEFFECTIVE ASISTANCE OF COUNSEL.A DUE PROCESS OF LAW THAT EFFECTED PETITIONER'S SUBSTANTIAL RIGHTS,WHERE THE JUDGE NEVER READ THE JURY INSTRUCTIONS.

Petitioner argues Strickland v.Washington,the Supreme court established the standard for evaluating claims of ineffective assistance of counsel.The defendant must show the :(1).that counsel's assistance was unreasonable considering all the circumstances of ths case,and (2).that "there is a reasonable probability that,absent the errors,the factfinder would have had a reasonable doubt respecting guilt.see Strickland v.Washington,466 U.S.668,687,104 S.Ct 2052,80 L.Ed.2d 674 (1984).

Petitioner further argues where the Illinois Statute 725 ILCS 5/115-4(i) states:(after arguments of counsel the court shall instruct the jury concerning the law).Had defense counsel gave a standing objection the court could have followed the Statute and read the jury instructions an instructed the jury concerning the law.Solving the problem the jury had with its misunderstanding of the two questions,one in two parts which was circled:"Does that mean the defendant has to know "instantly and not at some later point? "The Court answers Please follow the plain meaning of the language of the instructions,this is what the defense counsel and

states prosecuting attorney agreed upon.Contrary to constitutional law a substantial deprivation of petitioner's Barmore's due process rights.

Quoting:Johnson v.United states,under Fed.R.Crim.P. 52 (b),before an appellate court can correct an error not raised at trial, there must be (1)."error," (2).that is plain,"and (3).that "affect substantial rights.If all three conditions are met,and appellate court may then exercise its discretion to notice a forfeited error but only if (4).the error seriusly affects the fairness,integrity or public reputation of judicial proceedings.Johnson v.United States, 520 U.S.461,117 S.Ct.1544,137 L.Ed.2d 718 (1997).

Strickland ask whether it is reasonably likely"the resualt would have been different. Id.,at 696,104 S.Ct.2052,80 L.Ed.2d.674 (1984). This does not require a showing that counsel's actions " more likely that altered the outcome,"but the difference between Strickland prejudice standard and more proble-than-not standard is slight and matters "only in the rarest case. "Id.,at 693,697,104 S.Ct.2052, 80 L.Ed.2d 674.The likelihood of a different result must be substantial,not just conceivable.Id.,at 693,104 S.Ct.2052,80 L.Ed.2d. 674.

Quoting:U.S. v.Jones,Establishing error requires showing that the error affected a substantial right,and moreover,impacts the fairness,integrity,or public repuration of judicial.The court of appeals will overturn a jury verdict for insufficiency of evidence only if the record is devoid of evidence from which a reasonable jury could find guilt beyound a reasonable doubt.U.S.vJohnson,713 F.3d. 336 (7th Cir.2013).

Quoting:United States v.Verkuilen,relieving the government of its burden of proving every fact necessary to constitute the offense charged beyond a reasonable doubt.In Re Winship,397 U.S.364 ,25 L.Ed.2d 368,90 S.Ct.1068 (1970).

Quoting:Duncan v.Louisiana, without an instruction that performed this minmal task,the defendant's right to a jury determination of guilt or innocence a right protected by the fourteenth amendment's due process clause.Duncan v.Louisiana,391 U.S.145,88 S.Ct.1444,2 L.Ed 491 (1968).

**ARGUMENT II.**

Petitioner Barmore,was denied due process of law,and a fair trial,in his final argument to the jury,prosecutor Glenn Weber, misstated the law and ridiculed petitioner's right to present a defense. Where petitioner asked for,and received,permission from the trial court to instruct the jury on the lesser-included offense of involuntary manslaughter.The substantial prejudice caused by the prosecutor's argument to the jury that an involuntery manslaughter verdict would be "Despicable" and allow the defendant to "Escape responsility". Petitioner was provided with ineffective assistance ocounsel failed to object,to preserve the error should be held to have denied petitioner effective assistance of counsel (discussed B,infra),.

Quoting:Keeble v.United States,Adefendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater.Keeble v.United States,412 U.S.205,93 S. Ct.1993,36 L.Ed.2d.844 (1973).

A.PETITIONER SUFFERED A SUBSTANTIAL RIGHT OF DUE PROCESS OF PREJUDICE CAUSED BY THE PROSECUTOR'S IMPOPER ARGUMENT THAT MISSTATED LAW.

Petitioner Barmore,acting within his lawful right,(see,e.g., Keeble v.United States,412 U.S.205 (1973)(defendant entitled to instruction on lesser-included offense)),the petitioner asked for and received,permission from the trial court to instruct the jury on the lesser-included offense of involuntary manslaughter.(C.1808-1823). Not satisfield with the court's ruling on this point,in his final argument,the prosecutor called the petitioner's conduct "Beyond comphensiion...(and)despicable ,"and remarked:"But what is even more despicable about this abuse is this abuser's attemp to play with the system here and go and get an involuntary manslaughter conviction,Escape responsibility for delivering that abuse."(1873).

These comments went beyond the bounds of propiety,the prosecutor's improper argument affected the outcome of the case.see(Rule 23 Order,filed July 3,2002),(Justice Bowman dissenting):Here,however the only evidence of defendant's anger was O.D.'s testimoney that he observed defendant shaking Kevon and asking him why he going back to his old habits. There was no evidence of prior verbal or physical abuse and no evidence of defendant's hatred or desire to seriously injure Kevon.Consequently,I do not believe the evidence showed defendant was "driven by his bad temper" to injure or kill the victim.see(Rule 23 Order,filed July 3,2002,at page 27),. I would reverse defendant's conviction and remand for a new trial.see (Rule 23 Order,filled July 3,2002,at page 28,see at Appendix D1-D5.

Quoting:Unite States v.Young,THe prosecutor's conduct and utterances,however,are always reviewable on appeal,for he is both an

adminstrater of justice and an advocate.ABA statndards for criminal justice 3-1.1 (b)(2d ed.1980).United States v.Young,470 U.S. 105 S.Ct.1038,84 L.E.2d 1 (1985).

**B.PETITIONER WAS PROVIDED WITH INEFFECTIVE OF COUNSEL WHO FAILED TO OBJECT,TO PRESEEVE THE ERROR SHOULD BE HELD TO HAVE DENIED PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL,DUE PROCESS OF LAW, To PROSECUTORS IMPROPER ARGUMENT.**

Petitioner's defense counsel was ineffective assistance of counsel,because,after the prosecutor argued the improper argument he should objected immediately,because the law plain and explicit in that petitioner was acting within his lawful right;see,e.g.,Keeble v.United States,412 U.S.205 (1973)(defendant entitled to instruction on lesser-included offense)),the petitioner asked for ,and received,permission from the trial court to instruct the jury on the lesser included offense of involuntary manslaughter.(C.1808-1823)

Defense counsel knew finding the petitioner guilty of involuntary manslaughter,rather than first degree murder,would allow him to "escape responsibility" constituted a misstatement of law. As Keeble and its progeny make abundantly clear,a person charged with a criminal offense has an absolute right to request an instruction on a lesser-included offense,and that right cannot properly be termed an attemp to "play with the system". Moreover,the consquences of a conviction are far from an "escape (of) responsibility." Involuntary manslaughter is a class 3 felony,720 ILCS 5/9-3 (d)(1)(1998) and as such is punishable by a range of sentence,including an extended term of as much as 10 years imprisonment.730 ILCS 5/5-8-1 (a)(5) (1998).

The Federal rules of criminal procedure expressively so proved,see Rule 31 (c),and defendant's right to such an instruction has

been recognized in numererous decisions of this court.see Sonsome v.United States,380 U.S.343,349,13 L.Ed.2d 882,85 S.Ct.1004 (1965) Berra v.United states,351 U.S.131,134,100 L.Ed.1003,76 S.Ct.685 (1956);Stevenson v United States,162 U.S.313,40 L.Ed.980,16 S.Ct. 839 (1896).

Petitioner has shown that (1).his counsel's performance was deficient,meaning it fell below the objective standard of reasonableness (the "performance prong"),and (2).that he was prejudiced by the deficient performance (the "prejudice pong").Woolley v.Rednour. 702 F.3d. 411,420-21 (7th Cir.2012).see Strickland v.Washington, 466 U.S. 668,687,688,694,104 S.Ct.2052,80 L.Ed.2d 674 (9184).

## ARGUMENT III.

Petitioner Barmore,was denied due process of law,by the ineffective assistance of trial defense counsel,who failed to call a critical Forensic Pathologist expert witness,who had cancer to testify for him.Where his defense counsel told petitioner the Forensic Pathologist was ready for trial after two years of continuances,but when petitioner was brought out for trial the defense counsel told petitioner the Forensic Pathologist expert witness was not coming.

Quoting:Thomas v.Clements,the court of appeals,Williams,Circuit judge,held that:(1).de novo reiew,rather than deferential review under the Antiterrorism and Effective Death Penalty Act (AEDPA), applied to ineffective asstsance of counsel claim,and (2).defense counsel's failure to consult with pathologist or other medical expert as to whether victim's death could have resulted from accident deprived defendant of effective assistance of counsel.Thomas v. Clements,789 F.3d.760 (7th Cir.2015).

**A.PETITIONER WAS PREJUDICED BY INEFFECTIVE ASSISTANCE OF COUNSEL,DENIED DUE PROCESS OF LAW AN OBLIGATION TO ENSURE THAT INDIGENT DEFENDANT HAS A FAIR OPPORTUNITY TO PRESENT A DEFENSE**

Petitioner was told he could not have a fair trial without the assistance of an expert witness a Pathologist.Counsel's representation fell below an objective standard of reasonableness and prejudiced the defense,for failing to call an expert to testify the cause of death was accidental.Where the Forensic Pathologist expert had been retained by prior attorney's for two years.THe Pathologist had cancer,that why so many continuances,was suppose to testify for my trial.Where defense counsel came and told me the petitioner about that the Pathologist was ready for trial I was happy.But when I got brought to the trial from the jail,the defense counsel told me

the Pathologist expert witness was not coming.Petitioner told the defense counsel he would not go to trial without the Forensic Pathologist expert witness.Defense counselor told petitioner he would have trial without him present.So petitioner was forced to go to trial without his retained Forensic Pathologist expert witness.Defense counsel had the opportunity to find another Forensic Pathologist but he would not listen to me period.Instead defense counsel acted like he was the expert witness,but not in my favor.

Here,Petitioner argues that he was denied the effective assistance of trial counsel. In Strickland v.Washington,466 U.S. 668,686, 80 L.ED.2d 674,104 S.Ct.2052 (984),the United States Supreme Court stated that the benchmark for judging a claim of ineffective assistance of counsel is whether "counsel's conduct so underminded the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result". A claim of ineffective assistance of counsel requires a showing that (1).counsel's representation fell below an objective standard of reasonabeness and (2).the deficient performance prejudiced the defendant. Strickland,466 U.S.at 687-88;Washington v.Smith,219 F.3d.620,627 (7th Cir.2000)."strickland,466 U.S.at 695.Where evidence presented at trial was closely balanced,it is more likely that an attorney's deficient performance was prejudicial.

Quoting:Woolly v.Rednour,to limit secondguessing,a court anlyzing an ineffective assistance of counsel claim must judge the reasonabeness of defense counsel's challenged conduct on facts of the particular case,view as of the time of counsel's conduct.U.S.C.A. Amend.6.(1).his counsel's performance was deficient,meaning it fell below the objective standard of reasonableness (the "performance

prong"),and (2).that he was prejudiced by the deficient performance (the prejudice prong").Woolley v.Rednour,702 F.3d.411,420-421 (7th Cir.2012).

In answerering this question,this court must consider whether the decision is "at least minimally consistent with the facts and circumstances of the case" or "if it is one of serveral equally plausible outcomes."Boss,263 F.3d. at 742,quoting Hennon v.Cooper,109 F.3d.330,335 (7th Cir.1997),and Hall v.Washington,106 F.3d.742,742 (7th Cir.1997). "Careful review of the evidence and the reasons supporting the decision is required in detremining the reasonablenes of a state court decision."Boss,263 F.3d.at 742.

Quoting: Williams v.Taylor,Reasonableness is judged objective ly,not subjectively:see Williams v.Taylor,529 U.S.362,407-08,146 L. Ed.2d.389,120 S.Ct.1495 (2000).The rule set forth in Strickland,is "clearly established Federal law,as determined by the Supreme Court of the united States".Williams,529 U.S.at 391;Washington,219 F.3d. at 627.

Still Quoting:Thomas v.Clements,In analyzing the deficient performance prong of an ineffective assistance of counsel claim,defense counsel should be strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment;to overcome the presumption,a defendant must show that counsel failed to act raesonably considering all the circumstances.U.S.C.A.Const.Amend.6.Thomas v.Clements,789 F.3d.760 (7th Cir.2015).

B.PETTITIONER'S SPEEDY TRIAL RIGHTS'S WERE VIOLATED?DUE PROCESS OF LAW?DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner Barmore,was held against his speedy trial rights after demanding to go to trial,for two years,with all the continuances to introduce a Forensic Pathologist,for such diverse purposes to establish a medical intervening cause of death as a defense to a murder charge.Forced to take these continuances where Forensic Pathologist who had cancer.And after two years of waiting to go to trial,forced to go to trial without the Forensic Pathologist my expert witness,Prejudiced petitioner's speedy trial rights to a fair trial.

Although the Sixth Amendment right to speedy trial,the due process Clause of the Fifth and Fourteenth Amendments,which guarantee a fair trail,can playya role in protecting from oppressive prejudice delay.To obtaine a dismissal for excessive delay at this preliminary stage it must be shown that the delay was not justified,and that actual prejudice "resulted from the delay.

Quoting:United States v.Marion,counsel never sought another expert witness or Forensic Pathologist,instead defendant's counsel presnted himself as an expert.Marion,404 U.S.307,92 S.Ct.455,30 L. Ed.2d 468 (9171).

The U.S. Const.Amend,VI.three interests are protected by the Sixth Amendment right to speedy trial.The first is the interest in avoiding prolonged confinement of the accused prior to trial.The second is the interest in avoiding prolonged psychological pressure and public suspicioion of the defendant while the charges are pending against him.The third is the interest in diposing of defendant case before the witness and other evidence are lost,that is,before the defense is lost.

Quoting Dickey v.Florida,we have indicated that "there are some constitutional rights such as assistance of counsel during trial so basic to fair trial that their infraction can never be treated as harmless error,see Dickey v.Flordida,398 U.S.30,90 S.Ct.1564, 26 L.Ed.2d 26 (1970);Chapman v.California,386 U.S.18,87 S.Ct 824, 17 L.Ed.2d 705 (1967).

Quoting Smith v.Hooey,the Sixth Amendment guaranty of a speed trial is an important safeguard to prevent undue and oppressive incarceration prior to trial,to minimize anxiety and concern accompaying public accusation,and to limit the possibility that long delay will impair the ability of an accused to defend himself.Smith v. Hooey,393 U.S 374,89 S.Ct 575,21 L.Ed.2d 607 (1969);United States v.Marion,404 U.S.307,92 S.Ct.455,30 L.Ed.2d 468 (1971).

Quoting:United States v.Lavasco,(mere passage of time does not constitute actual prejudice).If prolanged delay adversely affects defendant's ability to prepare,preserve,and present evidence in his defense,his due process right to a fair trial mey be violated. Proof of actual prejudice makes a due process claim concrete and ripe for adjudication,not automatically valid.Proof of prejudice is generally a necessary but not sufficient element of a due process claim,and the due process inquiry must consider the reasons for the delay as well as the prejudice to the accused.United States Lavasco,431 U.S.783,789,97 S.Ct.2044,52 L.E.2d 752 (1977).

Quoting:Strickland v.Washington,Reguarding the Strickland standard,a petitioner does not need to show that the result of the trial "would have been different "but rather that there was remarkerable probability that the results of the trial would have been different.

Failure to conduct an adequate investigation and present available evidence favorable to the defense constitutes ineffective assistance of counsel.Strickland v.Washington,466 U.S.668,104 S.Ct. 2062,80 L.Ed.2d 674 (1984).

In closing petitioner further argues quoting:Thomas v.Clement, defense counsel has a duty to make reasonable investigations or to make a raesonable decision that makes particular invetsigations unnecessary.U.S.C.A. Const.Amend.6. Thomas v.Clements, 789 F.3d 760 (7th Cir.2015).

## ARGUMENT IV.

Petitioner Barmore's denied due process clause of the Fourteenth Amendment protected by the Constitution of laws of the United States, violated under the statutory requirements of 18 USCA § 241 and 18 USCA § 242. Due to the conspiratorial deprivation of Federal and State constitutional and statutory rights and liberties, by state and County officials, acting under the color of state and federal law.

Petitioner's trial judge is now a United States District Judge and United States District Court judge Philip G. Reinhard who denied my writ of Heabeas Corpus - who's son is States Attorney Dave Reinhard, who was my wife's States Attorney in this same case. Both judges being colleague's were on conflict of interest in my case as a whole. Where such bias and conspiracy is allowed petitioner did not receive a fair and adquate hearing pursuant to 28 § 455 Disqualification of justice, judge or magistrate judge (a)(b)(1)(2), (5)(5)(iii) Quoting: " Liteky v. United States, for purpose of determing whether to disqualify a Federal judge under 28 USCS 455, the judge's impartiality cannot reasonably be questioned under 455 (a) simply on the basis that one of the parties is in the fourth degree of relationship to the judge, because (1) 455(a)(5), which address the matter of relationship spicifically, ends the disability at the third degree of relationship, and (2) that should govern for the purpose of 455 (a) as well; thus, under 455 (a) as under (b)(5), the fourth degree of kinship will not do. Liteky v. United States, 510 U.S. 540, 114 S. CT. 1147, 127 L.Ed.2d 474 (1994).

A. PETITIONER'S DISTRICT COURT SENIOR JUDGE WAS RELATED WITH IN THE THIRD DEGREE, HIS SON WHO WAS MY WIFE'S STATE'S ATTORNEY IN THE SAME CASE. AND PETITIONER'S TRIAL JUDGE IS NOW ALSO A DISTRICT COURT JUDGE IN THE SAME U.S. DISTRICT COURT NORTHWESTERN DISTRICT WHO HAS DEPRIVED PETITIONER OF HIS DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT PROTECTED BY THE CONSTITUTION OR LAWS OF THE UNITED STATES.

Petitioner was denied due process clause of the 14th. Amendment protected by the Constitution or laws of the United States. Where pursuant to 28 § 455 Disqualification of justice, judge, or magistrate judge, (a) Any justice, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Petitioner's trial judge Frederick J. Kapala, who is involved in most all petitioner's 12 exhaustive issues, from the circuit court of Winnebago 17th Judicial, was very bias toward petitioner's case as a whole. Who now is a U.S. District Court Northwestern District of Illinois who work with his comrade Senior Judge Philip G. Reinhard.

(b). He shall also disqualify himself in the following circumstances: (1). Where he has a personal bias or prejudice concerning a party, persoanl knowledge of dispute evidentiary facts concerning the proceeding; petitioner filed a writ of Heabeas Corpus on the front of the proof/service certificate. Petitioner put conflict of interest: For his prior trial judge Frederick J. Kapala, and Affidavit. But petitioner did not know that his wife , now ex-wife's State's Attorney in the same case.see Rockford Police report,Appendix F-1. On a different charge was States Attorney Dave Reinhard, was the son of senior Judge Philip G. Reinhard, of the U.S. District Court Northwestern District of Illinois who became my judge on my writ of Heabeas Corpus, who after 2 years denied my 12 issues, and fabricated a very essential parts of my case that I abused my children, which is testimony from the same defense counsel

that sabotaged my case as a whole. Where petitioner filed numerous motions of conflict of interest against this attorney to Judge Frederick J. Kapala, would not grant a motion until he wrecked my trial no expert doctor nothing. Then after trial Judge Fredrick J. Kapala granted a motion for conflict of interest on this attorney that lied on me testifying against me. see Order **Statement - opinion** filed by Judge Philip G. Reinhard who made it impossible for me to file a application for a certificate of appealability. And did not entertain my reconsideration **59 E** until the 7th. Circuit, said he had overlooked my petition an with the notice appeal that was the second motion on the Proof/Service certificate. Allowed me to withdraw the notice of appeal, and order Judge Philip G. Reinhard, to review my reconsider 59 E motion which was denied immediately. (b)(2). Where in private practice he served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it - both judges named above. see at Appendix **E1-E3.**

(b)(5). He or his spouse, or a person within the third degree of relationship to either or them, or the spouse of such a person: senior Judge Philip G. Reinhard, the father of the States Attorney dave Reinhard, who worked at the Winnebago County Circuit Court, of the 17th Judicial Circuit, who was my wife, now ex-wife's States Attorney who had her sign a no-contact before he allowed her to be bailed out of jail on the same case.

(b)(5)(iii). Is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding, all the above named judges and States Attorney, also every where I went to fight this case Judge Frederick J. Kapala, was there the appeallible court Post-Conviction, plus the numerous complaint's I filed against in the Judicial Inquiry Board, for which he was

the Chairman of the Board. Petitioner also filed numerous motions for substitution of Judge, which my lawyer fought against me.

The prejudice judge Frederick J. Kapala, caused petitioner in his case no. 98-cf-1228.

Quoting: United States v. Ginnell Corp. (a) The doctrine applies to § 455 (a). It was developed under § 144, which requires disqualification for person bias or prejudice. "That phase is repeated as a recusal ground in § 455 (b)(1), and § 455 (a), addressing disqualification for appearance of partiality, also covers "bias and prejudice." The absence of the word "personal" in § 455(a) does not preclude the doctrine's application, since the textual basis for the doctrine is the pejorative connotation of the words "bias or prejudice," which indicate a judicial predisposition that is wrongful or inappropriate. Similary, because the term "partially" refers only to such favoritism as is for some reason.

Wrongful or inappropriate, § 455 (a)'s requirement of recusal whenever there exist a genuine question concerning a judge's impartiality does not preclude the doctrine's application. A contrary finding would cause the statute, in a significant sense to contradict itself. Since § 455 (b)(1) embodies the doctrine, and § 455(a) dupicates § 455(b)'s protection with regard to "bias and prejudice". pg. 543-553. United States v. Grinnell Corp., 384 U.S. 563, 568, 16 L.Ed. 2d 778, 86 S. Ct. 1698 (1966).

B. PETITIONER'S DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, PROTECTED BY THE CONSTITUTIONS OR LAWS OF THE UNITED STATES, VIOLATED UNDER BOTH 18 USC 241 AND 18 USC 242, DUE TO THE CONSPIRATORIAL DEPRIVATION OF FEDERAL AND STATE CONSTITUTIONAL AND STATUTORY RIGHTS AND LIBERTIES BY STATE AND COUNTY OFFICIALS ACTING UNDER THE COLOR OF STATE LAW AND FEDERAL LAW

Petitioner argues that his trial judge Frederick J. Kapala, who most of his claims in his writ of Habeas Corpus, who was his trial judge in the Winnebago County, Circuit Court of the 17th Judicial Circuit violated alot of my Constitutional rights. An now is a US. District Court Northwestern District Judge. Who is associated with the senior judge Philip G. Reinhard, who is also a judge in the same US. District Court Northwestern District. Both are named in the 28 § 455 Disqualification of justice, judge, or magistrate judge. sections (a)(b)(1)(2),(5)(5)(iii), and judge Philip G. Reinhard and his son States Attorney Dave Reinhard. Who works in the Winnebago County Courthouse as a prosecutor, was my wife now ex-wife's States Attorney. Who put a no-contact order that my wife had to sign to get out of jail on bond or recogizance, who is the third degree relationship to judge Philip G. Reinhard and Judge Frederick J. Kapala a judge to have an interest that could be substantially affected by the outcome. Where all three have been a conflict of interest in my case as a whole.

Petitioner has deprived of his due process clause of the Fourteenth Amendment, protected by the Constitution or laws of the United States violated under both 18 USC 241, and 18 USC 242. Due to the conspiratorial deprivation of Federal and State Constitutional and statutory rights and liberties, by state and county officials, acting under the color of state law and Federal law. Petitioner through due diligence through many years found all this information as a matter of fact. Pursuant 28 § 455. Disqualification of Justice, judge

or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Quoting United States v. Price, The phrase "under color of any statute, ordinance, regulation, or custom" should be accorded the same construction in both 18 USC 242, which provides from criminal punishment of, and 42 USC 1983, which give a right of action against a person who, under color of state law subjects another to the deprivation of any rights, privileges, or immunities secured by the Federal Constitution.

The Federal Civil Rights statute (18 USC 241) which makes a conspiracy to interfere with a citizen's right or enjoyment of any right or privilege secured to him by the Constitution of laws of the United States a criminal offense, must be accorded a sweep as broad as its language; this language includes rights under the due process clause of the Fourteenth Amendment. United States v. Price, 383 U.S. 787, 86 S. Ct. 1152, 16 L.Ed. 2d 267 (1966).

Quoting United States v. Price, both 18 USC 241 which makes a conspiracy to interfere with a citizen's free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States a Federal offense, and 18 USC 242, which makes it a Federal offense willfully to deprive any person under color of law of the same rights, including presumably all of the Constitution and laws of the United States. United States v. Price, 383 U.S. 787, 86 S. Ct. 1152, 16 L. Ed. 2d 267 (1966)

Both 18 USC 241, which makes a conspiracy to interfere with a citizen's free exercise of enjoyment of any right or privilege secured to him by the Constitution or laws of the United States a Federal offense. And 18 USC 242, which makes it a Federal offense willfully to deprive any person under color of law of the same rights, include presumably all of the Constitution and laws of the

United States. United States v. Price, 383 U.S. 787, 86 S.Ct. 1152, 16 L. Ed. 2d 267 (1966).

Petitioner was not in light of such bias allowed a finding made on the bais of a fair an adquate hearing.see Brokaw v.Weaver,305 F.3d 660 (7th Cir.2002);Baily v.Andrews,811 F.2d 366,369-70 (7th Cir.1987).

To allow the order of the Seventh Circuit Court af Appeals to remain would in effect inslate the bias and prejudice of judicial injustice,and trial counsel from review for his inadequate representation,and unfair an inadquate hearings.In addition,it would be contradictory not only to decisions made by the Seventh Circuit,but to the trend of this Court to ensure adequate assistance of counsel as well as right to a fair and adequate hearing. For the foregoing reasons,it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Ruth D. Ramore

Date: January 5,2021.