20-7539

ORIGINAL

IN THE
UNITED STATES SUPREME COURT
No. _____

SCHENVISKY JAMES,
Petitioner

-versus-

SHERMAN CAMPBELL,
(Previously)
CONNIE HORTON,
(Previously),
KURT JONES
Respondents

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

Schenvisky James
Petitioner
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QUESTIONS PRESENTED

I. IS IT PERMISSIBLE FOR A STATE PRISONER TO RAISE THE OCCURRENCE OF A JURISDICTIONAL DEFECT IN THE STATE COURT PROCEEDINGS DURING HABEAS CORPUS REVIEW IF THE PETITIONER (STATE PRISONER) ALLEGES THE STATE COURTS' LACK OF JURISDICTION SUBJECTED THE PETITIONER TO A VIOLATION OF HIS UNITED STATES CONSTITUTION VI, VIII, XIII, XIV AMENDMENT RIGHTS OR HAS THE ANTI-EFFECTIVE DEATH PENALTY TERRORIST ACT (AEDPA) 28 USC § 2254(d)(1) EVISCERATED THE US CONSTITUTION ARTICLE I § 9(2) HABEAS CORPUS RIGHT TO THE DEGREE THAT PRE-AEDPA 28 USC § 2254(d)(4) AND STONE v POWELL, 428 US 465; 96 S Ct 3037 (1976) HAVE BEEN RENDERED MEANINGLESS WHEN THEY BOTH ALLOWED A STATE PRISONER SUBJECT TO STATE JUDGMENT TO CHALLENGE THE JURISDICTION OF THE STATE COURT PROCEEDING?

The US District Court & Magistrate said "NO."

The US 6th Circuit COA answered "NO."

This US Supreme Court should answer this important question.

II. IS A FEDERAL MAGISTRATE, US DISTRICT COURT JUDGE AND 6TH CIRCUIT OF APPEALS ALLOWED TO BLATANTLY AND DELIBERATELY MISREPRESENT THE UNANIMOUS TESTIMONY OF THE ONLY THREE EYEWITNESSES TO THE DEATH OF THE DECEASED WHEN THEY EACH TESTIFIED WITH THEIR FINGERS POINTED TOWARD THE COURT ROOM CEILING WHEN DEMONSTRATING HOW PETITIONER JAMES HELD THE GUN WHEN THE SHOT WAS FIRED, WHEN THEY EACH TESTIFIED PETITIONER JAMES NEVER AIMED OR POINTED THE GUN AT THE DECEASED, AND THAT THE DECEASED DEATH WAS AN ACCIDENT BY THE MAGISTRATE, US DISTRICT COURT AND 6TH CIRCUIT COA ALL FALSELY MISSTATING AND MISREPRESENTING THE RECORD TESTIMONIES BY UNJUSTIFIABLY FINDING THE EYEWITNESSES TESTIFIED PETITIONER JAMES AIMED AND POINTED THE GUN DIRECTLY AT THE HEAD OF THE DECEASED THEN FIRED THE SHOT AT THE DECEASED HEAD?

The Magistrate and District Court answered "YES."

The US 6th Circuit COA answered "YES."

This US Supreme Court should answer this important question.

III. IS IT POSSIBLE FOR ANY MURDER (1st or 2nd DEGREE) CONVICTION TO BE UPHELD WHEN THERE IS NO EVIDENCE OF ANY INTENT TO KILL OR INJURE THE DECEASED AND DOES ANY MURDER REQUIRE AN INTENT TO KILL OR INJURE AS THIS US SUPREME COURT'S PRECEDENTS HAVE INCESSANTLY HELD?

This Magistrate and US District Court answered "YES."

The US 6th Circuit COA answered "YES."

This US Supreme Court should answer this important question.

IV. IS IT THE OBLIGATION AND DUTY OF THE STATE LEGISLATURE TO CREATE A MICHIGAN SECOND DEGREE MURDER STATUTE THAT DEFINES THE ELEMENTS OF SECOND DEGREE MURDER OR CAN THE MICHIGAN LEGISLATURE ABDICATE THAT DUTY TO THE MICHIGAN JUDICIARY TO DEFINE THE ELEMENTS OF SECOND DEGREE MURDER WITHOUT THAT STATE STATUTE (MCL 750.317) BEING VOID FOR VAGUENESS AND A VIOLATION OF THE SEPARATION OF POWERS PRINCIPLE AS IT OCCURS IN MICHIGAN?

The Magistrate and US District Court ignored the question.

The US 6th Circuit COA ignored the question.

This US Supreme Court should answer the important question.

V. IN SPITE OF FARETTA v CALIFORNIA, 422 US 806; 95 S Ct 2525 (1975); MCDOWELL v US, 484 US 980; 108 S Ct 478 (1988) AND EVERY SINGLE US CIRCUIT COURT OF APPEALS ALL MANDATING THAT IN ORDER FOR A WAIVER OF THE RIGHT TO ANY COUNSEL TO BE VALID THERE MUST BE EVIDENCE OF AN IN COURT COLLOQUY BETWEEN THE COURT AND DEFENDANT OR APPELLANT AT THE TIME OF THE WAIVER SHOWING THAT THE COURT WARNED THE DEFENDANT OR APPELLATE ABOUT THE DANGERS AND DISADVANTAGES OF SELF REPRESENTATION, IS IT PERMISSIBLE FOR THE MAGISTRATE, US DISTRICT COURT AND US 6TH CIRCUIT COA TO HOLD NO SUCH IN OPEN COURT COLLOQUY HAS TO OCCUR BETWEEN THE COURT AND THE DEFENDANT OR APPELLANT AT THE TIME OF THE WAIVER WHEREAT THE COURT IS WARNING THE DEFENDANT OR APPELLANT ABOUT THE DANGERS AND DISADVANTAGES OF SELF REPRESENTATION AND THAT NO SUCH WARNING IS NECESSARY FOR THE WAVIER TO BE VALID?

The Magistratye and US District Court answered "YES."

The US 6th Circuit COA answered "YES."

This US Supreme Court should answer the important question.

VI. IS A MAGISTRATE AND US DISTRICT COURT REQUIRED TO GIVE THE 28 USC § 2254(e)(1) PRESUMPTION OF CORRECINESS TO A STATE COURT JUDGE'S FINDING OF FACT WHEN THAT STATE COURT JUDGE FOUND HE UNDERSTOOD PETITIONER JAMES WAS ONLY REPRESENTING HIMSELF IN PRO PER FOR THE LIMITED PURPOSE OF A STATE COURT EVIDENTIARY HEARINGA/HABEAS CORPUS PROCEEDING AND THAT AFTER THAT HEARING PETITIONER JAMES MAY WANT TO HAVE AN ATTORNEY REPRESENT HIM DURING DURING THE APPEALS PROCESS IN THE COURT OF APPEALS?

The Magistrate and US District Court ignored this issue.

The US 6th Circuit COA did not address the issue.

This US Supreme Court should answer the important question.

VII. WHEN THE MICHIGAN SUPREME COURT MADE AN ADJUDICATION ON THE MERITS OF PETITIONER JAMES' MOTION FOR APPOINTMENT OF APPELLATE COUNSEL BY DENYING THE APPOINTMENT OF APPELLATE COUNSEL IS THE FEDERAL HABEAS CORPUS COURT AND MAGISTRATE PERMITTED TO CONDUCT AN ALLEGED DE NOVO REVIEW AND FIND PETITIONER JAMES WAS NOT DENIED APPELLATE COUNSEL AND THERE WAS NO CONSTITUTIONAL VIOLATION INSTEAD OF SIMPLY DETERMINING WHEITHER OR NOT THAT MICHIGAN SUPREME COURT ADJUDICATION ON THE MERITS WAS EITHER CONTRARY TO OR AN UNREASONABLE APPLICATION OF DOUGLAS v CALIFORNIA, AS MANDATED BY THE PLAIN LANGUAGE OF 28 USC § 2254(d)(1)?

The Magistrate and US District Court answered "YES."

The US 6th Circuit COA answered "YES."

This US Supreme Court should answer this important question.

VIII. IS IT UNCONSTITUTIONAL FOR ANY STATE TO CONCLUSIVELY PRESUME AN ESSENTIAL ELEMENT OF ANY CRIME MERELY BECAUSE AN DANGEROUS WEAPON (GUN OR KNIFE) WAS INVOLVED, CAN MURDER BE INFERRED FROM THE USE OF A DANGEROUS WEAPON?

The Magistrate and US District Court answered "YES."

The US 6th Circuit COA answered "YES."

This US Supreme Court should answer the important question.

LIST OF PARTIES

Schenvisky James, the Petitioner, is an unconstitutionally convicted and sentenced parolee, who was sent to prison by a Michigan trial court acting without jurisdiction, denied an appeal by the Michigan Court of Appeals acting without jurisdiction, and denied the reappointment of an appellate counsel by the state trial court, Michigan Court of Appeals and Michigan Supreme Court, then subsequently subjected to a suspension of the writ of habeas corpus under the pretense of judicial authority and denied habeas corpus relief based on fraudulent misrepresentation of three eyewitnesses' testimonies by the US magistrate, US District Court and 6th Circuit Court of Appeals. Schenvisky James is presently on parole, temporarily residing at 4813 Devonshire Rd., Detroit, Michigan 48224.

Sherman Campbell, is the warden, (last custodian of Petitioner James prior to parole) at the Michigan Department of Corrections Facility alluded to as the Adrian Correctional Facility, 2727 E. Beecher St., Adrian, Michigan 49221

Connie Horton is the warden of the Chippewa (URF) Correctional Facility, 4269 M-80, Kincheloe, Michigan 49784, she was the custodian of Petitioner James, prior to warden Sherman Campbell.

Kurt Jones was the warden at the Carson City Correctional Facility, at 10274 Boyer Rd., Carson City, Michigan 48811 at the time Petitioner James filed his original habeas corpus in 2001 in the US District Court of Western Michigan, and was the custodian of Petitioner James then.

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IN THE
SUPREME COURT OF THE UNITED STATES
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SCHENVISKY JAMES,

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-against-

SHERMAN CAMPBELL
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**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

DECISIONS BELOW

The decision of the US Sixth Circuit Court of Appeal, for the Rehearing and Suggestion For Rehearing En Banc was entered on November 13, 2020 and it is accompanying the Petition as A.1 in the Appendix A. The order denying Petitioner James a Certificate of Appealability on September 17, 2020 is accompanying the Petition as A.2 in the Appendix A. The March 18, 2020 order of the United States District Court for the Western District of Michigan denying habeas corpus relief and merely adopting the magistrate Report and Recommendation (R&R) is accompanying this Petition and appears in the Appendix A as A.3. The Magistrate July 9, 2019 R & R is accompanying the Petition and appears in the Appendix A as A.4.

JURISDICTION

The judgment or order of the United States Court of Appeals for the Sixth Circuit was entered on November 13, 2020, which was an ORDER denying Petitioner James' Petition for Rehearing with Suggestion For Rehearing En Banc, conferred jurisdiction on this United States Supreme Court pursuant to 28 USC § 2101; S Ct. R. 10

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article I § 9(2), the VI, VIII, XIII and XIV Amendments to the United States Constitution which provides in seriatim and pertinent part:

ARTICLE I § 9(2)

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

VI AMENDMENT

"In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the State...wherein the crime shall have been committed..."

VIII AMENDMENT

"Excessive bail shall not be required...nor cruel and unusual punishments inflicted."

XIII AMENDMENT

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

XIV AMENDMENT

"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...deprive any 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."

In addition this case involves the language of pre-AEDPA Habeas Corpus Statute 28 USC § 2254(d)(4)(5), which stated in pertinent part:

"In any proceeding instituted in a Federal court by an application for a writ of HABEAS CORPUS by a person in custody pursuant to the judgment of a State[1] court...made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State...were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear...

(4) that the state court lacked jurisdiction of the subject matter or

[1] The State court Judgment is A.5 and it appears in Appendix B.

over the person of the applicant in the State court proceedings

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceedings..."

This case involves the language of the AEDPA Habeas Corpus statute 28 USC §§ 2254(b)(1)(B)(i)(ii)(c), which states in pertinent part:

"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 unless it appears that--

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(c)An applicant shall not be deemed to have exhausted the remedies available in the courts of the State...if he has the right under the law of the State to raise, by any available procedure, the question presented."

This case also involves the language of the Unconstitutional Michigan Second Degree Murder Statute MCL 750.317; MSA 28.548, which states in pertinent part:

"SECOND DEGREE MURDER--All other kinds of murder shall be murder of the second degree, and shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same."

STATEMENT OF THE CASE

Petitioner Schenvisky James was bound over for trial by a Michigan 36th District Court to a Michigan Circuit Court on January 25, 1996 without a probable cause determination made, without a properly filed or proper return.[2] Petitioner Schenvisky James was put on trial without the felony information being filed. Consequently, in the Recorders Court of Detroit (Now the 3rd Judicial Circuit Court of Wayne County) Petitioner James was put on trial, prosecuted, convicted and sentenced by a trial court

[2] The RETURN A.6, the Felony Information (A.7) and the Notice Of Enhancement (A.8) appear in Appendix B and they are not properly filed as that term is meant by this US Supreme Court in US v Lombardo, 241 US 73, 76; 36 S Ct 508 (1916) or Artuz v Bennett, 531 US 4; 121 S Ct 361, 364 (2001); Michigan's Supreme Court in Sweet v Gibson, 123 Mich 699 (1900); MCR 8.119(C)(D) and MCL 600.571(g). The jurisdiction of any Michigan Circuit Court is a properly filed RETURN and Felony Information. People v Curtis, 389 Mich 698 (1973); Ireland v Tunis, 893 F. Supp 724, 727 (E.D. Mich. 1995).

acting without jurisdiction in the matter People v Schenvisky James, 96-000912-FC.

During the trial proceedings the prosecution endorsed and called the three eyewitnesses to the January 1, 1996 accidental death of the deceased. Namely Deborah Sanders, Corrine Cooks and George Sullivan. Each of those eyewitnesses testified under oath that at no time did Petitioner James ever point or aim the gun at the deceased (Albert David Kendricks), but instead fired one shot at the ceiling of Petitioner James' house instead of at the deceased and what they witnessed was an accident that caused the decease's death. NOTE: Those testimonies are accompanying the certiorari and appear in the Appendix B as A.9, A.10, A.11. Each eyewitness testified with their finger pointed toward the court room ceiling when demonstrating how Petitioner James held the gun when the one shot was fired. See: A.12 in Appendix B. Petitioner James testified to never pointing the gun at the deceased but only firing one shot at the ceiling. See, A.13 contained in Appendix B. A jury convicted Petitioner James of 2nd Degree murder despite admitting they believed the three eyewitnesses' testimonies and didn't believe Petitioner James intended the deceased be killed or harmed by firing a shot in the ceiling, but were convicting Petitioner James for undisclosed reasons. See A.14, A.15 in Appendix B

Petitioner James appealed and was appointed an appellate attorney. Petitioner James and the appointed appellate attorney had a breakdown in the attorney/client relationship. The appellate attorney withdrew on April 30, 1997. See A.16 in Appendix B. Petitioner James wrote a couple of letters to the chief judge expressing his dissatisfaction with the appellate counsel and requested to proceed in pro per on April 4, 1997. On June 20, 1997, without any Faretta v California, 422 US 806; 95 S Ct 2525 (1975); People v Anderson, 398 Mich 361 (1976); MCR 6.005(D)(E) compliance, each mandating an in court warning about the dangers of self representation record be developed in and by the 3rd Circuit Court of Wayne County before allowing any waiver of counsel at anytime, an ORDER was entered for Petitioner James to proceed in propria

persona. See, A.17 in Appendix B. Despite appellate counsel's withdrawal on April 30, 1997 Petitioner James was left without an appellate counsel from April 30, 1997 throughout the entire appellate process until March 12, 1999 in spite of United States v Ross, 703 F3d 856 (6th Cir. 2012) specifically holding the appellate counsel must remain until an in court warning waiver record has been created in the trial court. At no time prior to March 12, 1999 was Petitioner James remanded to the trial court to determine if Petitioner James was waiving the right to appellate counsel knowingly, intelligently and voluntarily or to determine if Petitioner James was even competent on the date of June 20, 1997.

Petitioner James then proceeded to file an interlocutory motion for records correction due to altered transcripts and a missing 5/22/96 transcript. The motion for records correction and the rehearing motion were denied by a 2 to 1 margin in the Michigan Court of Appeals case People v Schenvisky James, 96-000912. A.18, A.19 Appendix B. Petitioner James simultaneously during interlocutory appeals appealed the Michigan Court of Appeals denials of the records correction motion in the Michigan Supreme Court. That Motion was denied by a 4 to 2 margin. See, A.20. Appendix B. The motion for records correction was based on the forged court reporter signatures (compare A.21 vs A.22; A.23 vs. A.24 Appendix C) and other inconsistency or documentary contradictions. See, A.25 vs A.26, A.27 and A.28 vs A.29 along with 2 separate versions of Sentencing Transcript page 14. See, A.30 vs A.31.

Petitioner James simultaneously filed a MCR 2.612 motion for relief from judgment in the trial court based on a void judgment, insufficient evidence, ineffective assistance of counsel, prosecutorial misconduct and newly discovered evidence. That MCR 2.612 motion for relief from judgment was interpreted as a MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT and subsequently denied on 12/28/98. A.32 in Appendix C.

Petitioner James then filed in the Michigan Court of Appeals claims challenging the trial court's jurisdiction, a conviction based on the trial court supplemental

instruction constituting a direct verdict of guilt from the bench in substantive effect (See, A.33 Appendix C), insufficient evidence, ineffective assistance of counsel, prosecutorial misconduct based on injection of false bad man character, other uncharged crimes speculated about by the prosecutions, who elicited by innuendo from eyewitnesses Petitioner James was involved in other crimes for which he was not charged. Based on Petitioner James' documented proofs of newly discovered evidence, in February of 1999 the Michigan Court of Appeals remanded Petitioner James' case back to the trial court based on that newly discovered evidence claim and ineffective assistance of counsel. See, A.34 in Appendix C.

Petitioner James was remanded to the 3rd Circuit Court of Wayne County circa March 12, 1999. From April 23, 1999 - July 22, 1999 Petitioner James was in the 3rd Circuit Court of Wayne County. Whereat Petitioner James raised a challenge to the trial court's lack of jurisdiction and the void July 9, 1996 judgment entered by a trial court without jurisdiction, while continuing to challenge the insufficiency of the evidence to sustain a 2d Degree Murder conviction due to the absence of any proof of malice, while protesting the Michigan Court of Appeal's refusal to rule on the void judgment issue and insufficient evidence issue.

At the evidentiary hearing/State habeas proceedings from March 12, 1999 - July 22, 1999 Petitioner James in pro per challenged the trial court's lack of jurisdiction and the void judgment. During these evidentiary hearing and state habeas proceedings (which was <u>two years after</u> the 6/20/97 ORDER to proceed on appeal in propria persona [A.17] was entered) is the only time the trial court precisely and correctly followed the Faretta v California, 422 US 806; 95 S Ct 2525 (1975); People v Anderson, 398 Mich 361 (1976); MCR 6.005(D)(E) procedure of developing an in court record warning Petitioner James about the dangers and disadvantages of self representation during appeal and complied with the Pate v Robinson, 383 US 375; 84 S Ct 836 (1964) procedures of conducting a psychiatric evaluation to determine whether Petitioner James was competent

enough to waive the right to appellate counsel.

However, though the trial court followed the correct procedures and developed the record by giving Petitioner James the mandated Faretta warnings the trial court also stated that it was understood that Petitioner James was only waiving the right to an appellate counsel for the limited purposes of those State court evidentiary hearings/habeas corpus proceedings, but might would be seeking another appellate counsel after those proceedings to conduct and handle the appeals process in the Michigan Court of Appeals. See the colloquy between Petitioner James and the trial court marked here as A.35 in Appendix C.

At the conclusion of those March 12, 1999 - July 22, 1999 State court habeas corpus/Evidentiary Hearings, Petitioner James then proceeded to seek an appellate counsel by first requesting the appointment of an appellate counsel twice in the the 3rd Circuit Court of Wayne County [to which there was no answer] and then in the Michigan Court of Appeal by filing a motion there for appointment of an appellate counsel and in the Michigan Supreme Court for an appellate counsel. The Michigan Court of Appeals clerk refused to place the motion for appointment of appellate counsel before the Michigan Court of Appeals Chief Judge and/or panels, then took it upon herself to direct Petitioner James back to the trial court after Petitioner James had already sought an appellate counsel in the trial court on August 19, 20, 1999 but was not answered. See, A.36 - A.41, in Appendix D. In addition Petitioner James was unreasonably ORDERED to file a brief regardless to Petitioner James not having an appellate counsel and transcripts from the State evidentiary hearing/habeas corpus proceedings that were needed for the appeal had not been transcribed or prepared yet. Petitioner James' appeal was then dismissed based on his failure to file a brief. A rehearing was denied. A.42, A.43 in Appendix D. Petitioner James then appealed to the Michigan Supreme Court and filed a motion there for appointment of appellate counsel. On June 26, 2000 the Michigan Supreme Court denied the motion for appointment of

appellate counsel during direct appeal. A.44 in Appendix D.

On June 28, 2001 Petitioner James timely filed a 28 USC § 2254 habeas corpus petition that contained a brief statement of each habeas issue, three affidavits (each probative of two habeas corpus issues, further sepporting it with a 35 page STATEMENT OF FACT, in a 100 page brief, along with 115 habeas corpus Rule 4, 28 USC § 2247; FR Civ P. 10(c) habeas corpus issues supporting Exhibits in the US District Court of Western Michigan case Schenvisky James v Kurt Jones, 4:01-cv-098.

On July 16, 2001 the Magistrate entered an ORDER and unreasonably returned the petition by alleging Petitioner James' pleadings were insufficient because they lacked a statement of fact. The magistrate illogically relied on the 8th Circuit Court of Appeals' holding in Adams v Armontrout, 897 F2d 332 (8th Cir. 1990)[3] as the basis for the ORDER. Petitioner James complied by merely re-labelling the habeas corpus petition as an Amended Habeas Corpus petition and resubmitted the petition. However, the 115 HC R. 4; 28 USC § 2247; FR Civ P. 10(c) probative exhibits were removed from the file and a hand written notation was made on the docket entry sheet of the US District Court Western District of Michigan that those exhibits "WERE MISSING" from the file. See, A.45, in Appendix E.

Finally, after a three (3) and half (1/2) year delay[4] the Magistrate on 7/28/2004 entered a Stay and Obey Report & Recommendation (R&R) in spite of Petitioner James presenting A.32, Appendix D to the Magistrate. Petitioner James objected, in light of 28 USC § 2254(b)(1)(B)(i)(ii)(c) language, the futility doctrine of the US Supreme Court's Duckworth v Serrano, 454 US 1; 102 S Ct 18 (1981) and the State of Michigan's

[3] fn Adams v Armontrout, 897 F2d 332 (8th Cir. 1990) is not only an 8th Circuit Court of Appeals decisions, it involved a habeas petitioner who made no statement of facts, supplied no independent habeas corpus brief or HC R. 4, 28 USC § 2247; FR Civ P. 10(c) issues corroborative Exhibits as Petitioner James did, which rendered its application illogical and inappropriate.

[4] fn Significantly the word stay and delay are synonymous with the word suspend as that term in used the US Constitution Article I § 9(2) and brings into issue the meaning of 28 USC § 2243.

resolute and strict adherence to MCR 6.502(G)(1)(2) barring a second or successive MCR 6.500 Motion For Relief From Judgment under Petitioner James' circumstance of having already filed one such motion. See, A.46, in Appendix E. Petitioner James filed multiple objections to the R&R stay and obey R&R ORDER. But the US District Court entered an ORDER upholding the R & R and insisting Petitioner James comply with the stay and obey R&R ORDER and submit a 2nd MCR 6.500 Motion for Relief from Judgment without any newly discovered evidence. See, A.47, Appendix E. The motion for rehearing or to amend the order was denied by the US District Court 11/10/04. A.48, Appendix E. Notably in regards to A.48 an INJUNCTION AND ORDER regarding all future pleadings of Petitioner James and that injunction and order was not modified until March 14, 2017. Petitioner James' motion for discovery and inspection of records with sundry other motions were denied by the magistrate in a perfunctory manner and US District court judge.

Petitioner James appealed the US District Court order upholding the magistrate R&R to the US Sixth Circuit Court of Appeals, in Schenvisky James v Kurt Jones, 04-2221. All subsequent appeals to the US Sixth Circuit Court of Appeals were denied including a Petition For Rehearing with Suggestion For Rehearing En Banc. See, A.49 and A.50 in Appendix E. Petitioner James filed a certiorari in the US Supreme Court case Schenvisky James v Kurt Jones, 05-6954 on 11/2/2005. That certiorari was denied by the US Supreme Court on 1/26/06. Consequently Petitioner James was left in a state of limbo, where he had to find newly discovered evidence in order to comply with the stay and obey order. This put Petitioner James on a 10 year hiatus and exhaustive mission of trying to find newly discovered evidence, but to no avail. Petitioner James now at his point of acme with the entire situation tried to file the successive or second MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT that he contended he could not file because of the futility doctrine.

The State court successor to the successor Judge entered an order denying

Petitioner James' MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT and stated Petitioner James could not file a successive MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT and was barred from doing so. A.51 in Appendix E. Petitioner James filed a FR Civ P. 60(b)(d) MOTION FOR RELIEF FROM JUDGMENT on the basis of fraud on the court and the Petitioner by the Respondent in two regards. The first fraud appeared when the Respondent attempted to fob off A.52, in Appendix E as a xerox copy exact duplicate of A.53, in Appendix E[5]. The second fraudulent misrepresentation of the Respondent occurred when the Respondent asserted Petitioner James had the ability to raise issues in the MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT when Respondent knew Petitioner James could not file a successive MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT. Consequently, the US District Court entered an order on March 10, 2017 an ORDER reopening the case US District Court case Schenvisky James v Kurt Jones, 4:01-cv-098 therein ORDERING the Respondent to respond to Petitioner James habeas corpus petition, brief et al filed way back in 2001 within 30 days due the prejudice and injustice Petitioner James suffered via Respondent's fraud, an unwarranted US District Court order and unjustified magistrate Report and Recommendation (R&R) of Stay and Obey. See, A.55 in Appendix E.

Though the Respondent was ordered to respondent by April 10, 2017, an order was egregiously ignored by the Respondent and the magistrate, who then used a pleading filed by Petitioner James on April 14, 2017 (i.e. four days past the April 10, 2017 deadline) as the basis to pretend Petitioner James was asking to Amend the Habeas Corpus pleading again for no reason, when the Petitioner was merely asking the US District Court to give him instruction about which way to proceed since Respondent was

[5] 4 days beyond the 30 days, and that only if the US District Court found Petitioner fn A.53 is unsigned and undated, thereby rendering the Michigan Court of Appeals without jurisdiction to even enter A.42 and A.43 based on the Tiedman v Tiedman, 400 Mich 571, 577 (1977) rule, acknowledged in the 6th Circuit Court of Appeals Atlanta Richfield v Monarch Leasing Company, 84 F3d 204 (6th Cir. 1995). The Respondent realizing the significance of the unsigned and undated order fraudulently manufactured a document (order) that is signed and dated but that document fails to comply with 28 USC § 2249 CLERK CERTIFIED TRUE COPY on the front of it in spite of purporting to be an exact duplicate of A.53, the unsigned and undated order of the trial court, which contains the 28 USC § 2249 CLERK'S CERTIFIED TRUE COPY on its face. Originally the magistrate found the inconsistency to be significant and important, then order the Respondent to answer. The Respondent objected and refused to answer. See, A.54, p. 3 in Appendix E.

James' issues were somehow inappropriate then Petitioner James would be willing to Amend the issues to bring them into conformity with the US District Court's expectations.

The magistrate then, in complete disregard of the March 10, 2017 dated order allowed the Respondent an addition amount of time without the Respondent showing any good cause reason to do so, and in complete and callous disregard that the habeas corpus was originally filed in 2001 and only the Respondent's dual fraudulent misrepresenations caused the extended delay. Nor did the magistrate consider the fact the Respondent had had over 18 years to prepare any responses. Without ever notifying the Petitioner the magistrate was granting the Respondent extra time to file an answer the Respondent was allowed to file a frivolous and verbose pleading saturated with deception, misrepresentations et al on November 18, 2018 that failed to deny that the Petitioner's allegations were true.

Finally, the magistrate on July 9, 2019 made a R&R to deny Petitioner James' habeas corpus by merely misrepresenting what the only three eyewitnesses testified to, ignoring Petitioner James' HC R. 4 annexed Exhibits supporting the constitutional violation issues raised by Petitioner James, as well ignoring Petitioner James' habeas corpus contentions and arguments. As an example, in spite of all three eyewitnesses testifying for the state that Petitioner James never once aimed or pointed the gun at the deceased but only fired one shot in the ceiling and to them the death was an accident, the magistrate found that two of the eyewitnesses (Corrine Cooks and Deborah Sanders) testified Petitioner James pointed or aimed the gun directly at the deceased's head then fired a shot at the deceased head, R&R, p. 26, (A.4 in Appendix A); then further ruled that in spite of Petitioner James alleging the State court's lack of jurisdiction violated his VI, VIII, XIII And XIV Amendment rights, the magistrate found Petitioner James could not raise the State court's lack of jurisdiction because it involved state law. That R&R went on to find that Petitioner James did not need a

Faretta hearing on June 20, 1997 when an order was entered for him to proceed in propria persona because Petitioner James was educated and wrote a letter; the magistrate refused to address Petitioner James' contention that there was no valid waiver of an appellate counsel because there was no in court colloquy where the trial court, before entering that order (A.17), warning Petitioner James of the dangers and disadvantages of self representation during direct appeal.

The magistrate further refused to address whether the MI. Supreme Court's denial of Petitioner James' motion for appointment of appellate counsel during direct appeal (A.44) was either contrary to or an unreasonable application of Douglas v California, 372 US 353; 83 S Ct 814 (1963) as required by 28 USC § 2254(d)(1), but instead purported to make a de novo review of her own that Petitioner James was not denied appointment of appellate counsel because he was educated. The magistrate refused to address Petitioner James' assertion that the State trial court judge successor's determination that he understood that after the 1999 State Evidentiary Hearing/habeas corpus proceedings Petitioner James might want to seek an appellate counsel during direct appeal and the Exhibits (A.36 - A.41) proving Petitioner James sought an appellate counsel in all the state courts after the 1999 Evidentiary Hearing/Habeas corpus proceedings was entitled to the 28 USC § 2254(e)(1) PRESUMPTION OF CORRECTNESS. The magistrate went on to ignore Petitioner James' habeas corpus Exhibits annexed to the Petition proving that he was denied transcript preparation of the 5 volumes of transcripts needed for the appeal, that the transcripts had been altered and one complete volume of transcripts (5/22/96 volume) was missing in spite of Petitioner James presenting A.18 - A.30 to the court, documents which clearly allowed an inference that something was awry with the transcripts where court reporter signatures had been forged, signatures erased etc, etc.

Without even addressing Petitioner James' issues the US District Court merely adopted the magistrate's R&R, equally claiming that the three eyewitnesses testified

Petitioner James pointed the gun at the deceased head then fired a shot when there is no such testimony from those three eyewitnesses (See, A.9 - A.13), while both the magistrate and US District Court refused to comment on the fact that the jury admitted they believed the three eyewitnesses' testimonies that Petitioner James didn't point the gun at the deceased but fired a warning shot at the ceiling instead of at the deceased. (See, A.14 - A.15) and each continued to find that malice could be inferred merely because a gun was involved and that there was no need for Petitioner James to have actually tried to kill or harm the deceased but a presumption of an essential element could be inferred because a gun was involved. And though Petitioner James contended that Michigan's 2d Degree murder statute was unconstitutional on the grounds of vagueness because it did not in any place define any element of the conduct prohibited, neither the Magistrate or US District Court made any ruling on that issue. Finally, in spite of Dorn v Lafler, 601 F3d 439 (6th Cir. 2010) and the US 1st, 3rd, 7th, 9th Courts of Appeals, who all held that even were a person to waive their right to counsel at any stage that waiver is not binding, that person can withdraw the waiver and reassert the right to counsel, the US Sixth Circuit Court of Appeals absolutely refused to even acknowledge its own prior Dorn v Lafler binding decision, refusing to even acknowledge or even comment upon that binding precedent.

BASIS FOR GRANTING CERTIORARI

The present case before this US Supreme Court epitomizes federal court decisions that have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of United States Supreme Court's Supervisory power.

In addition it has been held that certiorari would be granted when any of the following circumstances exist:

i. There is a conflict among federal circuit courts of appeals; ii. There is a conflict among different panels of a single court of appeals; iii. There is conflict between a decision of the United States Supreme Court and a subsequent decision of a federal court of appeals; iv. There is an important and recurring constitutional question involved in the case.

The present case before this United States Supreme Court falls into the category of each of those reasons for granting certiorari.

A. CONFLICT AMONG FEDERAL CIRCUIT COURTS OF APPEALS AND WHETHER A WAIVER OF COUNSEL IS BINDING TO THE DEGREE THAT THE DEFENDANT OR APPELLANT CAN NOT REASSESS THEIR EARLIER DECISION AND THEN REASSERT THE CONSTITUTIONAL RIGHT

In the present case before this US Supreme Court the conflict between what this Single US Sixth Circuit COA of Appeals Judge (viz: Karen Nelson Moore), the Rehearing Panel (Boggs, Stranch and Bush); the US District Court (Judge Paul Maloney) and the ex-Magistrate (Ellen S. Carmody) all held about a waiver[6] of the constitutional right to counsel can not be re-evaluated and the XIV Amendment right to appellate counsel reasserted is in conflict with what the US 1st Circuit Court of Appeals in US v Proctor, 166 F3d 396, 401 (1st Cir. 1999); the US 2nd Circuit Court of Appeal in US v Kerr, 752 F3d 206, 221 (2d Cir. 2014); the US 3rd Circuit Court of Appeals in US v Leveto, 540 F3d 200, 207 (3rd Cir. 2008); the US 4th Circuit Court of Appeals in US v Holmen, 586 F2d 322, 324 (4th Cir. 1978); the US 5th Circuit Court of Appeals in US v Pollani, 146 F3d 269, 270, 273 (5th Cir. 1998); the US 7th Circuit Court of Appeals in US v Fazzini, 871 F2d 635, 643 (7th Cir. 1989); the US 9th Circuit Court of Appeals in Robinson v Ignacio, 360 F3d 1044 (9th Cir. 2004) and the US 11th Circuit Court of Appeals in Horton v Dugger, 895 F2d 174 (11th Cir.1990) all hold. Each of those US Circuit Court of Appeals hold a waiver of any constitutional right to counsel is not binding. A person can reassess their earlier decision then reassert the Constitutional right to counsel waived earlier.

B. CONFLICT AMONG DIFFERENT PANELS OF THE SAME 6TH CIRCUIT COURT OF APPEALS ABOUT WHETHER A WAIVER OF COUNSEL IS BINDING OR NOT ON THE DEFENDANT OR APPELLANT

According the 6th Circuit Court of Appeals Karen Nelson Moore and the Panel of

[6] fn This US Supreme Court is reminded and should take note that there is no transcript record fact showing Petitioner James waived the US Constitutional XIV Amendment right to an appellate counsel when A.17 was arbitrarily entered on June 20, 1997, but there is a transcript record fact establishing that Petitioner James only waived that US Constitution XIV Amendment right to an appellate counsel for the limited purposes of the March 12, 1997 - July 22, 1999 State Court Evidentiary Hearing/Habeas Corpus proceeding and the State court Judge understand Petitioner James waived the right for the limited purposes of those proceedings, but might want an appellate counsel during appeal after those proceedings. See, A.35.

Boggs, Bush and stranch once an appellant waives the right to appellate counsel that waiver is binding and he or she can not reassess that decision then reassert the constitutional right to counsel. Yet the 6th Circuit Court of Appeals in Dorn v Lafler, 601 F3d 439 (6th Cir. 2010) specifically held:

> "...a prisoner has the right to appellate counsel in an appeal granted as of right. See Douglas v California, 372 US 353, at 355-56; 83 S Ct 814...The fact that Dorn may have initially waived his right to appellate counsel does not matter. Dorn may have re-valuated this decision, in which case he may have been entitled to appointment of counsel pursuant to Douglas...we are granting Dorn's habeas petition...Michigan will have to either reinstate his appeal as of right or release him."

C. CONFLICT AMONG THE US CIRCUIT COURTS OF APPEALS ABOUT WHAT CONSTITUTES A VALID WAIVER OF THE RIGHT TO AN APPELLATE COUNSEL

In the present case there exists a conflict between what the single US 6th Circuit Court of Appeals Judge (Karen Moore), the US 6th Circuit Court of Appeals rehearing panel (Boggs, Stranch and Bush); the US District Court and US magistrate (See, A.1 - A.4) all held about what constitutes a valid waiver of the right to an appellate counsel. They all held a valid waiver of the right to counsel does not require a court to conduct an in court colloquy between the court and the appellant, defendant or Petitioner warning about the dangers of self representation. But the US 1st Circuit Court of Appeals in US v Kneeland, 148 F3d 6 (1st Cir. 1998); the US 3rd Circuit Court of Appeals in US v Jones, 452 F3d 223, 232-34 (3rd Cir. 2006); the US 5th Circuit Court of Appeals in US v Kizzie, 150 F3d 497 (5th Cir. 1998); the US 8th Circuit Court of Appeals in Gilbert v Lockhart, 930 F2d 1356, 1359-60 (8th Cir. 1991); the US 9th Circuit Court of Appeals, in Snook v Wood, 89 F3d 605 (1996); Hendricks v Zennon, 993 F2d 664, 669-70 (1993); US v Balough, 820 F2d 1485 (9th Cir. 1987); the US 11th Circuit Court of Appeals in Hall v Moore, 253 F3d 624 (11th Cir. 2001) all held otherwise. They all held there **must be** a Faretta v California, 422 US 806; 95 S Ct 2525 (1975) type record made in the trial court in which the waiver is occurring and in the colloquy record the court **must** have advised the appellant, defendant or petitioner about the

dangers and disadvantages of self representation or else that waiver is not valid.

D. CONFLICT AMONG DIFFERENT PANELS OF THE 6TH CIRCUIT COURT OF APPEALS OVER WHAT CONSTITUTES A VALID WAIVER OF THE RIGHT TO ANY COUNSEL

Every single US 6th Circuit Court of Appeals panel, Hall v Ayers, 900 F3d 829 (6th Cir. 2018); US v Gooch, 850 F3d 286, 289 (6th Cir. 2017); Akins v Easterling, 648 F3d 380 (6th Cir. 2011); James v Brigano, 470 F3d 636 (6th Cir. 2006); Fowler v Collins, 253 F3d 344 (6th Cir. 2001); US v McDowell, 814 F2d 245 (6th Cir. 1987), held that in any court, before a waiver is considered valid there must be shown the defendant, appellant or petitioner was given an in court warning about the dangers and disadvantages of self representation at the specific time the waiver is occurring. The 6th Circuit Court of Appeals Judge Karen N. Moore and the panel of Boggs, Stranch and Bush refused to follow those earlier 6th Circuit Court of Appeals' panels decisions when they held no such in court colloquy record showing the court gave the warnings about the dangers and disadvantages of self representation had to be established to make the waiver valid.

E. CONFLICT WITH THE UNITED STATES SUPREME COURT ABOUT WHAT CONSTITUTES A VALID WAIVER OF THE RIGHT TO COUNSEL

Like every other US Court of Appeals panels, excluding the 6th Circuit Court of Appeals Karen N. Moore, Boggs, Stranch and Bush, the United States Supreme Court mandated there must be evidence that at the time of the waiver there was transcript record showing that defendant, appellant or petitioner was advised in open court about the dangers and disadvanges of self representation or else there is not a valid waiver. That was the holding in Von Moltke v Gillies, 332 US 708; 68 S Ct 316 (1948); Faretta v California, 422 US 806, 95 S Ct 2525 (1975); Patterson v Illinois, 487 US 285; 108 S Ct 2389 (1988); Mc Dowell v US, 484 US 980; 108 S Ct 478 (1988); Iowa v Trovar, 541 US 77, 92; 124 S Ct 1379 (2004).

F. CONFLICT BETWEEN THE 6TH CIRCUIT COURT OF APPEALS AND THE UNITED STATES SUPREME COURT ABOUT WHETHER A HABEAS CORPUS PETITIONER CAN RAISE A STATE COURT'S LACK OF JURISDICTION DURING HABEAS CORPUS PROCEEDINGS

According to A.1 - A.4 the US 6th Circuit Court of Appeals is upholding a US District Court decision that has so far departed from the accepted and usual course of judicial proceedings that it requires this United States Supreme Court to exercise its supervisory powers, when the US District Court and US magistrate unjustifiably determined (in contradiction to the United States Supreme Court's decisions and what 28 USC § 2254(d)(4) once so clearly declared) that Petitioner James can't not raise a jurisdictional defect or void judgment of a State court during federal habeas corpus proceedings in spite of Petitioner James alleging the State court's lack of jurisdiction caused the Petitioner to suffer a violation of his US Constitution VI, VIII, XIII, XIV Amendment rights.

Petitioner James argued his VI, VIII, XIII and XIV Amendment rights were being violated because the State court did not have competent jurisdiction of the case People v Schenvisky James, 96-000912 and the Michigan Court of appeals lacked jurisdiction after the 1999 State court evidentiary hearing/habeas corpus proceedings due to the trial court's failure to sign and date the order. The US District Court and Magistrate, with the 6th Circuit Court of Appeals' Karen Nelson Moore, Danny Bogg, Stranch and Bush tacitly authorizing it, all held the jurisdiction of a State court can not be challenged during habeas corpus because it involved state law only.

These findings stand in total conflict with the previous 28 USC § 2254(d)(4) and what the United States Supreme Court said in Stone v Powell, 428 US 465; 96 S Ct 3037 (1976) where the US Supreme Court held that every since 1867 a state prisoner like Petitioner James could raise a state court lack of jurisdiction in a habeas corpus proceeding if it was based on a violation of a United States Constitutional right or Federal law. Former 28 USC § 2254(d)(4) is cited in such US Supreme Court decisions (laws) as Jefferson v Upton, 560 US 284, 291; 130 S Ct 2217 (2010); Thompson v Keohane, 516 US 99; 116 S Ct 457 (1995); Sumner v Mata II, 455 US 591; 102 S Ct 1303 (1982). Further the fact that a Jurisdictional defect can be raised at anytime and is never

subject to waiver can never be denied when the US Supreme Court has repeatedly made that point of law absolutely clear. Arbaugh v Y & H Corp, 546 US 500; 126 S Ct 1235 (2006); US v Cotton, 535 US 625; 122 S Ct 1781 (2002); Freytag v Comm'ner IRS, 501 US 868; 111 S Ct 2631, 2634 (1991). The US Supreme Court made it clear that any judgment entered by any court without jurisdiction is void and nothing except an ultra vires ruling. Ruhrgas AG v Marathon Oil Co., 526 US 574; 119 S Ct 1563 (1999); Citizen For Better Environment v Steel Co., 523 US 81, 86; 118 S Ct 1003 (1998). The US Supreme Court leaves no room to doubt this point of law. Scott v McNeal, 154 US 34, 46; 14 S Ct 1108 (1894); Zerbst v Johnson, 304 US 458; 58 S Ct 1019 (1938)

G. CONFLICT BETWEEN THE 6TH CIRCUIT COURT OF APPEALS AND THE UNITED STATES SUPREME COURT IN ITS INTERPRETATION OF 28 USC § 2254(d)(1) MEANING.

According to the US Supreme Court the interpretation of 28 USC § 2254(d)(1) is whenever a State court makes an adjudication on a constitutional issue the Habeas Corpus court is required to determine whether or not that State court decision was either "contrary to" or an "unreasonable application" of a United States Supreme Court case law decision. The term clearly established federal law in 28 USC § 2254(d)(1) is a reference to decisions or holdings of the US Supreme Court that were in existence at the time of the State Court decision, and it includes the legal principles, rights and standards set forth in the US Supreme Court's decisions. Panetti v Quarterman, 551 US 930; 127 S Ct 2892 (2007); Lockyer v Andrade, 538 US 63, 71; 123 S Ct 1167 (2003); Williams v Taylor, 529 US 362, 412; 120 S Ct 1495 (2000); Bell v Cone I, 535 US 685, 694; 122 S Ct 1843 (2002).

In the present case the Michigan Supreme Court made an adjudication on Petitioner James' Motion For Appointment of Appellate Counsel during direct appeal by denying that motion after considering it. A.44, Appendix D. Petitioner James argued in the Federal Habeas Corpus proceeding that not only was this a XIV Amendment violation but also that denial of appellate counsel during direct appeal was contrary to Douglas v California, 372 US 353; 83 S Ct 814 (1963); Penson v Ohio, 488 US 75; 109 S Ct 346 (1988), Smith v

Robbins, 528 US 259; 120 S Ct 746 (2000); Evitts v Lucey, 469 US 385; 105 S Ct 830 (1985), and constituted a denial of due process of law and a denial of equal protection of the law, as expressed by the US Supreme Court in Halbert v Michigan, 545 US 605, 616-17; 125 S Ct 2582 (2005); Evitts v Lucey, 469 US 387; 105 S Ct 830, 834 (1985).

The US magistrate ignored the language of 28 USC § 2254(d)(1), then alleged to have conducted her own de novo review and found that Petitioner James was not denied appointment of appellate counsel, and absolutely refused to make a determination about whether A.44 was contrary to or an unreasonable application of Douglas v California, 372 US 353; 83 S Ct 814. The US District Court adopted the magistrate R&R and the US 6th Circuit Court of Appeals Karen Moore, Boggs, Stranch, Bush all upheld those US District Court decisions, but refused to comment upon whether or not A.44 in Appendix D was contrary to or an unreasonable application of those US Supreme Court decisions controlling the matter.

H. CONFLICT WITH UNITED STATES CIRCUIT COURT OF APPEALS PRIOR PANELS IN THEIR INTERPRETATION OF THE MEANING TO 28 USC § 2254(d)(1)

The 6th Circuit Court of Appeals Karen Moore and the panel Boggs, Stranch and Bush up holding the US District Court's adoption of the magistrate R&R's de novo review instead of following the plain language of 28 USC § 2254(d)(1) and deciding whether or not the Michigan Supreme Court's denial of appointment of appellate counsel during direct appeal was in conflict with 6th Circuit Court of Appeals prior panels and other US Court of Appeals panels, which each interpreted 28 USC § 2254(d)(1) contrary to and unreasonable application clauses to mean the habeas corpus court had an obligation to make a determination about whether a State court adjudication on the merits was contrary to or an unreasonable application of a US Supreme Court decision.

The US 1st Circuit Court of Appeals in Brown v Ruane, 630 F3d 62, 71 (1st Cir. 2011); the US 2nd Circuit Court of Appeals in Rosario v Ercole, 601 F3d 118, 126 (2d Cir. 2010); the US 3rd Circuit Court of Appeals in Rountree v Balicki, 640 F3d 530, 543-44 (3rd Cir. 2011); the US 5th Circuit Court of Appeals in Clark v Thaler, 675 F3d

410, 421 (5th Cir. 2010); the 6th Circuit Court of Appeals in Davis v Lafler, 658 F3d 525, 535-36 (6th Cir. 2011); the US 7th Circuit Court of Appeals in Brown v Finnan, 598 F3d 416, 426 (7th Cir. 2013); the US 8th Circuit Court of Appeals in Storey v Roper, 603 F3d 507, 516 (8th Cir. 2010); the US 9th Circuit Court of Appeals in Miller v Blackletter, 525 F3d 890, 895 (9th Cir. 2008); the US 10th Circuit Court of Appeals in Byrd v Workman, 645 F3d 1159, 1171 (10th Cir. 2011); the US 11th Circuit Court of Appeals in Ferguson v Sec'y Fla Dept. of Corr, 716 F3d 1315 (11th Cir. 2013) all interpreted 28 USC § 2254(d)(1) to mean the reviewing habeas court was obligated to determine if a State adjudication was "contrary to" US Supreme Court decisions.

I. CONFLICT BETWEEN UNITED STATES CIRCUIT COURTS OF APPEALS OVER WHETHER A HABEAS CORPUS COURT CAN MAKE ITS OWN CREDIBILITY DETERMINATIONS OF WITNESSES TESTIMONIES WHEN IT EVALUATES AN INSUFFICIENCY OF THE EVIDENCE HABEAS CORPUS CLAIM

According to the R&R, p. 26 (A.4) and the US District Court, p. 3 (A.3) the magistrate can ignore the eyewitnesses testimonies and make her own credibility determination about the those three eyewitnesses' testimonies. The magistrate illogically, unjustifiably and in complete defiance of the transcript record facts (A.9 - A.11) found the eyewitnesses testified Petitioner James aimed the gun at the deceased then shot him in the head, then discounted the eyewitnesses' testimonies that the death of the deceased was an accident. The US 6th Circuit Court of Appeals upheld the decisions in spite of A.9 - A.11 all proving the eyewitnesses did not testify to what the US magistrate and US District Court alleged they testified to. The US 6th Circuit Court of Appeals in US v Russell, 109 F3d 552, 558 (6th Cir. 1999); the US Ninth Circuit Court of Appeals in US v Talley, 164 F3d 989, 999 (9th Cir. 1999) and US First Circuit Court of Appeals in US v Cadales-Luna, 632 F3d 731 (1st Cir. 2011) all held that a court doesn't and can not make its own independent credibility determination when it evaluates sufficient of evidence, and it must simply give credit to what the eyewitnesses testified to.

J. CONFLICT WITH THE UNITED STATES SUPREME COURT ABOUT WHETHER A HABEAS CORPUS REVIEWING COURT IS ABLE TO MAKE ITS OWN CREDIBILITY DETERMINATION TO CONTRADICT THE EYEWITNESSES TESTIMONIES.

The United States Supreme Court in both Jackson v Virginia, 443 US 307; 99 S Ct 2781, 2789 (1979) and Herrera v Collins, 506 US 383, 401; 113 S Ct 853, 861 (1993) held that any reviewing court is not allowed to makes its own subjective opinion or determination about guilt or innocence or witness credibility in the manner that the US magistrate, US District Court and 6th Circuit Court of Appeals did when they discounted all three eyewitnesses' testimonies that Petitioner James never pointed or aimed the gun at the deceased when the warning shot was fired at the ceiling and that the death was an accident. Further, the fact the jury said they believed those eyewitnesses' testimonies that the death was an accident(A.14, A.15) should have decided the matter nicely.

K. CONFLICT BETWEEN THE 6TH CIRCUIT COURT OF APPEALS AND THE UNITED STATES SUPREME COURT ABOUT WHETHER MALICE CAN BE INFERRED OR CONCLUSIVELY PRESUMED FROM THE USE OF A DANGEROUS WEAPON

The US magistrate and US District Court, while relying on a non published state court opinion, People v Jordan, and pretermitting parts of that decision held that malice could be simply inferred from the use of a dangerous weapon. The US 6th Circuit Court of Appeals upheld those decisions, thereby tacitly concurring. The United States Supreme Court, however, held that malice can not be presumed from the use of a dangerous weapon. Yates v Aiken, 484 US 211; 108 S Ct 534 (1988). The US 6th Circuit Court of Appeals in both Tanner v Yukins, 887 F3d 661 (6th Cir. 2017) and Duncan v US, 552 F3d 442 (6th Cir. 2009) equally held that malice can not be presumed because a dangerous weapon was involved.

L. CONFLICT BETWEEN THE US 6TH CIRCUIT COURT OF APPEALS AND UNITED STATES SUPREME COURT ABOUT WHAT CONSTITUTES SECOND DEGREE MURDER AND WHETHER A STATE CAN CREATE A CONCLUSIVE PRESUMPTION OF AN ESSENTIAL ELEMENT MALICE BASED ON CONDUCT THAT DOES NOT CONSTITUTE MALICE

In the present case, the US magistrate, US District Court Judge, 6th Circuit Court of Appeals jurists Karen Nelson Moore, Boggs, Stranch, Bush are all, either directly or indirectly via tacit authorization, making judicial decisions so far removed from the

normal course of judicial procedures as to call for intervention by the US Supreme Court, when they each believe a magistrate can deliberately misrepresent the unanimous testimonies of the only three eyewitnesses, when they each testified with their fingers pointed toward the courtroom ceiling while demonstrating how Petitioner James held the gun when he fired the one shot and that the decease's death was an accident. How can the magistrate conduct a de novo review and just basically call the eyewitnesses a lie, then make her own determination that those eyewitnesses testified Petitioner James pointed the gun at the decedent's head and fired the shot and they may have said the death was an accident? Each of those jurists continued to hold that a second degree murder can be established by a conclusive presumption of malice because a gun was involved. They each either directly or indirectly hold that a second degree murder can be established without any proof that Petitioner James either intended to kill or injure the decedent.

The collective decisions of each of those unreasonable jurists from the US District Court and Karen Nelson Moore/w the Boggs, Stranch and Bbsh panel is in conflict with the decision of the United States Supreme Court in its clear language about what conduct was required to commit a second degree murder because the US Supreme Court, as does every single State in the United States, all hold that in order to establish a second degree murder there must be evidence of malice, which is the intent to kill or harm the deceased. The following US Supreme Court cases firmly state there must be evidence of every single element of an offense in order to sustain a conviction. In re Winship, 397 US 358, 363-64; 88 S Ct 1078 (1968); Vachon v New Hampshire, 414 US 478, 480; 94 S Ct 664-65 (1974); Bunkley v Florida, 538 US 838; 123 S Ct 2020 (2003); Fiore v White, 532 US 225; 121 S Ct 712 (2001); Jackson v Virginia, 443 US 307; 99 S Ct 2781 (1979).

While such US Supreme Court decisions as Hopkins v Reeves, 524 US 88; 118 S Ct 1895 (1998); Lowenfield v Phelps, 484 US 231; 108 S Ct 546 (1988); Estelle v McGuire, 502 US

62; 112 S Ct 475 (1991); US v Frady, 456 US 152; 102 S Ct 1584 (1982); Sandstrome v Montana, 442 US 510; 99 S Ct 2450 (1979); Morgan v Henderson, 426 US 637; 96 S Ct 2253 (1976) all hold that in order for any murder to be proven there must be evidence there was an intent to kill the person who died or else there could not have been a murder. US Supreme Court decisions like Sandstrom v Montana, 442 US 510; 99 S Ct 2450 (1979) absolutely foreclose any creating a conclusive presumption of an essential element of crime based on something that does not establish the element of that crime.

Further, any of those jurists from the US District Court and US 6th Circuit Court of Appeals has yet to address Michigan's Involuntary Manslaughter with a gun statute, MCL 750.329 and the case laws surrounding it like People v Smith, 478 Mich 64 (2009); People v Heflin, 434 Mich 482, 497 (1990); People v Doss, 406 Mich 90 (1980); People v Wade, 283 Mich App 462 (2009); People v Duggan, 115 Mich App 269 (1982), which each require when interpreting MCL 750.329 that the weapon or gun must be pointed or aimed at the deceased when he or she is killed by the shot but without malice when the gun was aimed or pointed at the deceased in order to sustain an involuntary manslaughter with a firearm conviction in Michigan. Each of those jurists have yet to explain how every eyewitness can testify under oath Petitioner James never pointed or aimed the gun at the deceased, and the jury believed their testimonies (A.14, A.15) yet Petitioner James was convicted of Second Degree murder when the State couldn't even prove Petitioner James committed even the lesser involuntary manslaughter with a firearm per MCL 750.329.

M. CONFLICT BETWEEN WHAT THIS 6TH CIRCUIT COURT OF APPEALS JUDGES DETERMINED AND WHAT OTHER US 6TH CIRCUIT COURT OF APPEALS PANELS AND THE US SUPREME COURT DECISIONS ALL HOLD ABOUT A STATE EXPERT WITNESS ONLY BEING ABLE TO GIVE OPINION IN THE FIELD HE OR SHE HAS THE PARTICULAR SKILL, KNOWLEDGE AND TRAINING IN

In the present case Petitioner James brings to the Court's attention that the United States Supreme Court in Carmichael v Kumho Tire Co., 526 US 137; 119 S Ct 1167 (1999); Daubert v Merrill Dow Pharmeuticals, 509 US 579; 113 S Ct 2786 (1993); General Electric Co. v Joiner, 522 US 136, 142; 118 S Ct 512 (1997) as well as the US 6th Circuit Court

of Appeals in Lee v Smith & Wesson Corp, 760 F3d 523, 527 (6th Cir. 2014); Greenwell v Boatwright, 184 F3d 492, 497 (6th Cir. 1997) all held when interpreting either FRE or MRE 702 an expert witness can only give an opinion in the area in which that expert qualified as an expert based on a knowledge, training and education. Here a medical examiner who was only qualified as a forensic pathologist and nothing else (A.56 and TT I, Pp. 135-136) is testifying in the field of ballistics, firearms, munitions and Evidence Technology. In fact, his testimony (not an opinion) is altered after trial to counteract what Petitioner James was trying to argue on appeal about insufficient evidence, so that the expert's testimony would contradict the three eyewitnesses' testimonies in spite of the fact this medical examiner does not have any knowledge, skill or training in the areas of ballistics or evidence technology. A.56/w TT I, Pp 135-136.

The US magistrate R&R and US District Court opinion, though somewhat acknowledging the medical examiner's deficiencies had the audacity to state that in spite of there being no evidence of close range firing due to the absence of any gun powder residue around or in the wound, P.E.T., p. 6; TT I, Pp. 137, 138, 141, 144, which would be the only way Davidson could give an opinion that a gun was held directly in front of the decease's face when the shot was fired, TT I, p. 147 the medical examiner could give that opinion about the gun being held in front of the decease's face when the shot was fired, TT I, p. 147, because eyewitnesses Deborah Sanders and Corrine Cooks testified the Petitioner aimed and pointed the gun at the decease's head when he fired the shot. R&R, p. 33. But there is no such testimony from Sanders or Cooks!! Admittedly the medical examiner didn't know what position the Petitioner was in nor the deceased when the shot was fired TT I, p. 142. And the US magistrate, US District Court and 6th Circuit Court judges Moore, Boggs, Stranch and Bush all refuse to acknowledge or even comment on Petitioner James supplying the testimony of Dr. David A. McMaken from State v Bechley about the inability of the medical examiner to give an opinion about the

position of the gun, the person with the gun or the person who got shot.

But what is the most troubling is the fact each of those hereto mentioned judges refuse to acknowledge this same medical expert was discharged from the Wayne County Medical Examiner's office for his unethical conduct and presenting false evidence and testimony for the State where over 50 of his cases had to be reversed and investigated. A.57. Those judges refuse to acknowledge that this medical examiner is the one who created a fictitious medical examiner autopsy report page 4 (A.58) to contradict the eyewitnesses' testimonies and to contradict the original medical examiner page 4, (A.59) due to the fact A.59 is consistent with the eyewitnesses' testimonies and the Petitioner's ricochet theory of case phenomenon due to the bizarre shaped bullet entrance wound in A.59 vs the black mark bullet entrance would hold of A.58.

Each of those federal judge refused to acknowledge that this same medical examiner absolutely refused to admit the fact the bullet removed from the decease's head was deformed in spite of that fact being read into the record at the preliminary examination P.E.T., p. 7. His medical examiner report shows the bullet was deformed (A.60, A.61, A.62) but when called upon to testify to what his medical examiner report states he refused to use the word deformed in description of the bullet. (A.63 TT I, Pp. 139, 142). With the bizarre shaped bullet entrance wound the point is the bullet was deformed before it entered the decease's skull because it struck some other object or objects before striking the deceased, which in turn corroborated the eyewitnesses' testimonies and Petitioner James' testimony. The bizarre shaped bullet entrance wound was highly significant in the case. See: A.64.

N. CONFLICT BETWEEN THE LOWER FEDERAL COURTS AND US SUPREME COURT OVER WHETHER A STATE LEGISLATURE HAS AN OBLIGATION TO DEFINE EVERY ELEMENT OF A CRIME AND IT IS NEVER THE JUDICIARY'S DUTY TO DEFINE THE ELEMENTS OF ANY CRIMINAL OFFENSE

Petitioner James' challenge to the constitutionality of the Michigan 2nd Degree Murder statute, on the grounds of void due to vagueness and a violation of the separation of powers doctrine and due process of law went unanswered and minimized by

the federal lower judiciary. They each continued to claim that Michigan's 2nd Degree Murder statute does not have to contain the element of the crime so that the public will know what conduct is specifically forbidden like most other statutes, and that it's alright if the Legislature has not defined the elements of MCL 750.317 but instead the Michigan judiciary who is defining the elements of second degree murder, and doing it in a manner never intended by the Legislature where that Michigan judiciary claims that 2nd degree murder can be committed without ever having any intent to harm or kill being the only thing necessary. Their claim is 2nd degree murder can be accomplished if a person accidently commits a death or acts in a way that was just reckless but without any intent to kill or harm. But the US Supreme Court repeatedly held it is only the Legislatures duty to define by statute the elements of any crime. See, McMillian v Pennsylvania, 477 US 79; 106 S Ct 2411, 2415 (1986) holding: "...the state legislature's definition of the elements of the offense are dipositive..." The Legislature of Michigan has "the primary authority for defining...the criminal law." US v Lopez, 514 US 549, 562; 115 S Ct 1624, 1631 (1995); Brecht v Abrahamson, 507 US 619, 635; 113 S Ct 1710, 1720 (1993). "...legislateure, NOT COURTS, define criminal liability." Crandon v US, 494 US 152, 158; 110 S Ct 997, 1001-02 (1990); Liparata v US, 472 US 419, 427; 105 S Ct 2084, 2089 (1985).

Furthermore, according to the United States Supreme Court a "conviction fails to comport with due process if the statute under which it is obtained...is so standardless that it authorizes...discriminatory enforcement." US v Williams, 553 US 285; 128 S Ct 1830 (2008). "...to satisfy due process," according to the US Supreme Court, "a penal statute MUST define the criminal offense..." Skilling v US, 561 US 238; 130 S Ct 2896 (2010). Michigan's MCL 750.317 has no real standard and does not define one element of the crime 2nd degree murder where it merely states: "All other kinds of murder shall be murder of the second degree..." This does not "explicitly convey what it outlaws," US v Bennett, 329 F3d 769 (10th Cir. 2003) and must be struck down as void due to vagueness

and an inherent denial of due process where it fails to "define the criminal offense" 2nd degree murder "with sufficient definiteness..." Skilling v US, 561 US 358? 130 S Ct 2896 (2010).

N. A VERY IMPORTANT CONSTITUTIONAL QUESTION ABOUT MICHIGAN'S RELIANCE ON STANDARDLESS STATUTE MCL 750.317 AS HE BASIS FOR OBTAINING 2ND DEGREE MURDER CONVICTIONS WHEN THAT STATUTE DOES NOT DESCRIBE OR DEFINE ONE SINGLE ELEMENT OF 2ND DEGREE MURDER

If the reasonable doubt standard of James Jackson v Virginia has always been dependent on how a State Legislature defined the offense in question, which is well settled by the US Supreme Court, Patterson v New York, 432 US 197; 97 S Ct 2319 (1977); Clark v Arizona, 548 US 735, 748; 126 S Ct 2709, 2748 (2006); Harris v US, 536 US 545, 557; 122 S Ct 2406, 2414 (2002); Almendarez-Torrez v US, 523 US 224, 239; 118 S Ct 1219, 1229 (1998); Montana v Egelhoff, 518 US 37, 43; 116 S Ct 2013, 2017 (1996), how can Michigan's Legislature fail to enact MCL 750.317, the 2nd Degree murder statute without defining not a single element of that offense and that Legislative deficiency not be an inherent violation of due process or law and constitute a statute that is void due to vagueness?

If the US Supreme Court made it absolutely clear that it is incumbent upon the Michigan Legislature to enact a statute that defines the elements of 2nd degree murder, McMillian v Pennsylvania, 477 US 79, 85 S Ct 106 S Ct 2411, 2415 (1986) and specifically states it's not the Judiciary's function to define criminal liability, Crandon v US, 494 US 152, 158; 110 S Ct 997, 1001-02 (1990); Liparata v US, 472 US 419, 427; 105 S Ct 2084, 2089 (1985), how can Michigan be allowed to do what the US Supreme says it can not do, which is allow the Judiciary to define the elements of 2nd degree murder and do so in a manner never intended by the Michigan Legislature? If every single State, according to the US Supreme Court, defines any murder as necessarily requiring an intent to kill or an intent to harm, what gives the Michigan Judiciary the right to hold that 2nd Degree murder does not require just the intent to kill or injure death resulting? According to the US Supreme Court it repeatedly held that in order for

there to have been a valid 2nd Degree murder conviction there must evidence that there an intent to kill or harm according to the Legislative enactment. Hopkins v Reeves, 524 US 88; 118 S Ct 1895 (1998); Estelle v McGuire, 502 US 62; 112 S Ct 475 (1992); Lowenfield v Phelps, 484 US 231; 108 S Ct 546 (1988); US v Frady, 456 US 152; 102 S Ct 1584 (1982); Sandstrome v Montona, 442 US 510; 99 S Ct 2450 (1979); Morgan v Henderson, 426 US 637; 96 S Ct 2253 (1976). Michigan's aberration of law needs to be addressed by this United States Supreme Court once and for all.

CONCLUSION

Essentially this case before the United States Supreme Court epitomizes the systematic and utter disregard for the life of a man from the race misnomered as black. And that the United States Constitutional rights supposedly enjoyed by people of that race erroneously referred to as black are but a gossamer web or broken dreams and fictitious. This case exemplifies the brokenness of a system that first allows a conviction of second degree murder to be obtained without any probable cause determination ever being made at the preliminary examination to allow a bind over to the State circuit Court, where the black man is put on trial by a trial court acting without any jurisdiction to do so because there was never any return filed, no felony information filed, no notice of enhancement filed. But then Michigan not content with that farce of a trial occurring because it left the result of the only three eyewitnesses coming to trial to testify that Petitioner James never (not once) pointed or aimed the gun at the deceased but instead fired a warning shot into the ceiling and what they witnessed was an accidental death. To worsen the matter, the very jury that was duped into convicting Petitioner James of 2nd degree murder indicated they believed the testimonies of those three eyewitnesses and don't believe Petitioner James aimed or pointed the gun at the deceased. And with all that Petitioner James is convicted of 2nd degree murder without any proof of malice, the requisite element of the crime 2nd degree murder.

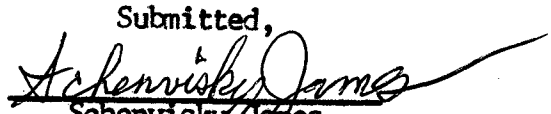
But the State was not content with that injustice and due process violations, the State went on to refuse to appoint Petitioner James an appellant counsel after the first appellate counsel withdrew. Then there is no evidence of any valid waiver of the right to an appellate counsel at any time from June 20, 1997 to March 12, 1999, where, afterwards Petitioner James waives the right to an appellate counsel for the limited purposes of some State evidentiary hearing and habeas corpus proceedings, with the trial judge actually stating on record he understood Petitioner James was only waiving the right to an appellate counsel for those limited purposes of an evidentiary hearing, and every subsequent attempt by Petitioner James to obtain counsel after those State evidentiary hearing and habeas corpus proceedings is to no avail until finally the Michigan Supreme Court literally denies Petitioner James the appointment of an appellate counsel.

Then when Petitioner James comes to the federal court with the issues, that federal court engages in what a panel of reasonable jurists from the 10th Circuit Court of Appeals called a"sham" Rogers v Johnson, 917 F2d 1283 (10th Cir. 1993) for habeas corpus, where the US District Court employes all type of devices to cause a 20 year delay (suspend) the writ of habeas corpus to prevent from ruling on the issues the State refused to make an adjudication on save the one, appointment of appellate counsel.

The federal habeas court then goes on to completely and totally misrepresent the testimonies of eyewitnesses, claims that Petitioner James can't raise a jurisdictional defect in the federal habeas corpus proceedings, refuses to afford the presumption of correctness to a state court judge's 1999 findings that he understood Petitioner James was waiving the right an appellate counsel only for the limited purposes of those hearings/habeas corpus but may want to seek another appellate attorney on appeal. That federal judiciary in Michigan then went on to either refuse to address the issues raised by Petitioner James and done so in a perfunctory manner without any regards for

Petitioner James' issues supporting affidavits, arguments and habeas corpus rule 4; 28 USC § 2247; FR Civ P. 10(c) probative exhibits.

Submitted,



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