No. 20-7570

IN THE

SUPREME COURT OF THE UNITED STATES

FOR THE SIXTH CIRCUIT

DAVID T. FRAZIER — PETITIONER
(Your Name)

vs.

HERBERT SLATERY ET.AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
INDIVIDUAL APPLICATION TO JUSTICE ELANA KAGAN

SIXTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID T. FRAZIER
(Your Name)

P.O. BOX 3000-MED
(Address)

FORREST CITY AR, 72336
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) When a Court enters a judgment that is later determined to be void ab-initio, and a petitioner appeals from that decision, does that start the limitations period over, despite the finding that the judgments were void ab-initio?

(2) AFTER A COURT DECLARES A SENTENCE ILLEGAL, DOES IT HAVE THE POWER TO LEAVE THAT VOID AB-INITIO SENTENCE INTACT?

(3) CAN A ILLEGAL SENTENCE BE USED TO ENHANCE A SUBSEQUENT FEDERAL SENTENCE?

(4) IF A ILLEGAL SENTENCE EFFECTS BOTH SENTENCE AND CONVICTION, DOES A DEFENDANT HAVE THE RIGHT TO WITHDRAW HIS NEGOTIATED PLEA AGREEMENT?

(5) DOES A COURT HAVE TO FOLLOW THE RULING OF A BIASED VINDICTIVE TRIAL JUDGE

(6) DOES THE COURT HAVE TO ANSWER EVERY CLAIM FOR RELIEF THAT'S INCLUDED IN A MEMORANDUM OF SUPPORT, BUT NOT IN THE APPLICATION DUE TO LACK OF SPACE TO PRESENT THEM, AND EVEN WHEN IT IS CLEAR A CLAIM IS BEING MADE?

LIST OF PARTIES

[xx] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

MAGWOOD V PATTERSON, 561 U.S. 320 (2010)
UNITED STUDENT AID FUNDS V. ESPINOSA, 559 U.S. 260 (2020)
JOHNSON V. U.S., 544 U.S. 295 (2005)
DEAL V. U.S., 508 U.S. 129 (1993)
HAINES V. KERNER, 404 U.S. 519 (1972)
FEDERATED DEPT STORES V. MOTIE, 452 U.S. 394
BORENKICHER V. HAYES, 434 U.S. 357 (1978)
NORTH CAROLINA V. PEARCE, 395 U.S. 711 (1969)
CRANGLE V. KELLY, 838 F. 3d 673
MCLANEY V. BELL, 59 S.W. 3d 90 (Tenn.2000)
BLACKLEDGE V. PERRY, 417 U.S. 21 (1974)
COLTEN V. KENTUCKY, 404 U.S. 104 (1972)
UNITED STATES V JACKSON, 390 U.S. 570 (1968)
NICHOLS V UNITED STATES, 106 F. 2d. 672 (8th cir. 1901)
UNITED STATES V TUCKER, 404 U.S. 443 (1972)
MABRY V. JOHNSON, 467 U.S. 504 (1972)
Enwell V. DOGGS, 108 U.S. 143 (1883)

RELATED CASES CON'T

U.S. V. BROCE, 488 U.S. 563 (1983)

BRANDON V. WRIGHT, 838 S.W.2d, 532 (Tenn. Ct. App. 1992)

CANTRELL V EASTERLING, 348 S.W. 3d. 445 (Tenn. 2011)

MCCONNELL V. STATE, 12 S.W. 3d 795,798 (Tenn.2000)

BROWN V BROWN, 281 S.W. 2d 492, 497 (Tenn. 1955)

SMITH V LEWIS, 202 S.W. 3d 124, 129 (Tenn. 2006)

SHEFFY V. MITCHELL, !$@ Tenn. 48, 215 S.W. 405

KALEB V. FEUERSTIEN, 308 U.S. 433(1940)

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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 (B) to the petition and is

[X] reported at 2020 U.S. App. Lexis 16594; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

] [X] reported at 2019 U.S. Dist. Lexis 192446; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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

[X] reported at E2016-00006-SC-R11-CD; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Tennessee Court of Appeals court appears at Appendix E to the petition and is

[X] reported at E2016-00006-SC-R11-CD; 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 May 22, 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: July 14, 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

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

The date on which the highest state court decided my case was Nov 16, 2017. A copy of that decision appears at Appendix D.

[ ] 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

COnstitutional Due Process rights under the 14th Amendment.

COnstitutional Rights under The Sixth Amendment Rights.

Tennessee Code Ann§40-20-111(b)

Tennessee Code Ann§40-35-210(c) (2000

STATEMENT OF THE CASE

In 2004 Frazier through a Negoiated Plea agreement pled guilty to twoFelony Evading Arrest charges to Be Ran Concurrent. In 2014 Tennessee Supreme Court Promugated Tenn R. CRim P. 36.1 which allowed a Petitioner to correct an illegal sentence. That same year Frazier filed the motion Because The Sentences agreed to were illegallyyran concurrent with eachother inviolation of Tenn Code. Ann §40-20-11(b) and Tenn.R. Crim. P. 32(C)3(C). The Trial Court initially denied the motion, and after remand from the Appeals court, Frazier was allowed to withdraw his plea agreement with the agreement to plea to a new sentence. The Court adopted the agreed order and entered it in July 21,2014. In April 2014, Frazier filed another motion under Tenn. R. Crim. P. 36.1 arguing that the state sentenced him illegally again. In August without Notice to Frazier, the trial court entered a order granting this motion, vacating the New entered judgments and agreed order as void ab-initio,and set the matter for a evidentiary hearing. In December the trial court conducting the hearing without appointing Counsel where Frazier acting Pro-se attempted to defend his case. In Jan 2016 the trial court entered a order denying the motion as moot due to the expired nature of the case. Frazier appealed arguing that the record was incomplete and the transcripts altered the appeals court affirmed the trial courts finding. The Tennessee SUpreme Court denied review In November of 2017. Frazier Then Filed a 2254 in Federal Disctict court in June 2018. The District Court denied the petition on Nov 11 of 2019. Frazier Timely filed a appeal, and the Sixth Circuit in the Order denying recognized that while the July 21, 2014 judgments would have reset the limitations period, they were vacated as void ab-initio. Frazier Filed a Motion for reconsideration which he clarified that he was appealing directly from that decision to vacate the orders as void ab-initio, and that his case was from a appeal as of right. Frazier also argued that the record was incomplete in the case and provided the court with the agreed order since the district court refused to mention anything about this argument, as well as the appeals court in it's initial order. On July14, 2020

the Appeals court denied Fraziers motion for reconsideration despite the record being incomplete. On Oct 14, 2020 Frazier attempted to file a Application for a In Chambers One Judge Hearing Pursuant to Rule 23 of Supreme COurt rules asking for a single judge to hear my case. The Supreme court Clerk returned this as not being able tofile. In September 8, 2020 Frazier attempted to refile this application which was again returned. This application is what follows...

REASONS FOR GRANTING THE PETITION

The Sixth Circuits Decision is in conflict with this courts Decision in Magwood V. Patterson, 561, U.S. 320(2010). It's also in conflict with the courts decision of Johnson V. United States, 544 U.S. 295 (2005) on what is considered as generated at the own petitioners behest. It is also in COnflict with The Pro-se Standard of Review courts are required to give petitioners in Fraziers position. That case is Haines V. Kerner, 404 U.S. 519(1972).

SEE MEMORANDUM IN SUPPORT

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 12-31-20

IN THE UNITED STATES SUPREME COURT

DAVID T. FRAZIER,
PRO-SE APPEALLANT *

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*
*
V. *
*
*
HERBERT SLATERY III,
DEWAYNE HENDRICKS, FCC FORREST CITY,
APPEALLEE.

ON APPEAL FROM THE SIXTH CIRCUIT COURT OF APPEALS
CASE NO. 1:18-CV-00277
APPEAL NO. 19-6483.

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Comes now, DAVID T. FRAZIER, pro-se (Frazier herein), and respectfully submits this motion of a in chambers one judge hearing. Specifically, Frazier request this court reverse the lower court(s) rulings based on the reasons that are set forth as follows:

*THE LOWER COURT STATED THAT FRAZIER HAS NOT INDENTIFIED ANY POINT OF LAW OR FACT THAT THIS COURT OVERLLOKED OR MISAPPREHENDED IN DENYING A CERTIFICATE OF APEALABILITY.

In denying Frazier a certificate of appealbility, the Sixth Circuit appeals court made the above statement in it's reconsideration. This statement conflict their own holding in Crangle V. Kelly, 8383 F. 3d 673 (6th Cir 2016) as well as this courts holding in Magwood V. Patterson, 561 U.S. 320 (2010). And Frazier will point out why:

Frazier In 2014 Recieved a new judgment and new plea agreement, in State Case No 04-097, due to the illegal nature of the plea agreement containing the inducement of concurrent sentencing. This violated Tennessee law, because Frazier was released on bomd when he was charged for another charge for Felony Evading areest.

On July 19, 2004, Frazier, Through Counsel agreed to plea guilty to two Felony Evading arrest charges in exchange for Two two year sentences to run concurrent with one another. Unaware

at the time, these sentences were illegal and the plea void, because pursuant to Tennessee Statute and Criminal proceedure, Tenn. Code. Ann §40-20-111(b) and Tenn. R. Crim. P. 32(c)(3)(C) mandates that these sentences be ran consecutive with one another.

Thus on July 21, 2014 Pursuant to the Newly enacted rule of Tennessee Rule of Criminal proceedure 36.1, a Petitioner could "at any time" file a motion to correct a illegal sentence. Frazier filed the motion, and after Remand from the appeals court in Tennessee, was able to withdraw his void plea agreement entered in 2004. As these prior convictions were used to enhance a unrelated Federal Sentence, Frazier followed the holding in Johnson V. United States, 544 U.S. 295 (2005). In April of 2015. Frazier filed another Motion to correct an illegal sentence, because the State again sentenced Frazier illegally again by entering corrected Judgments, and not placing on the Record that the illegal sentence was a material component of the negoiated plea agreement. Tennessee Rule of Criminal proceedure required that if the court found that the illegal nature of the sentence was a material component of the plea agreement and the defendant wishes to withdraw his plea to state this on the record in the order setting aside the invalid plea agreement. Also the new rule did not contain a provision to enter corrected judgments.

Without notice to Frazier, nor to standby counsel, because the trial judge did not appoint counsel as required under the rule, if a defendant states a colorable claim, the trial court in August 2015 entered a order setting the matter for an evidentiary hearing and vacating the eariler trial judges judgments and order agreeing to allow Frazier to withdraw is invalid guilty plea.

The Newly appointed trial judge stated that the Motion which became final 30 day's after it was entered, was being treated as validity pending on remeand, vacating the agreed order and corrected judgments as void ab-initio. As stated eariler, with out notice violating the due process, the court in december 2015 held a hearing, where it applied a new case law From the Tennessee Supreme Court that recognized a departure from the holding in in the Tennessee Appeals courts holding that the rule extended to Expired sentences (it should be recognized that Frazier never asserted that his sentences in this matter were expi'red because onder Tennessee void judgments means that the sentence has never started). The trial court in this hearing abandoned his proper role as a Fair, netural judge, and instead entered the role as A District Attorney, feircely defending the judgments. Thus Frazier, acting pro-se because no counsel was appointed, and Standby counsel had no obligation, had to defend against not only the A.D.A but the judge acting as a District Attorney. The Trial court, brought up Fraziers unrelated Federal sentence, and based it's ruling, not on the law of the case, but his belief that the only reason for Frazier bringing the cause of action was so that he could then challenge his Federal sentence. All this can be seen in it's order of Dismissal, Indeed it's important to note at this time that the transcripts has been altered in this case, and that Frazier filed a affidavit attesting this fact with the Appeals court in Tennessee.

In any event, the newly appointed trial judge placed a unfair price on Fraziers appeal rights because of his belief that Frazier was using the new rule unjustly to then chanllenge his Federal

sentence. This effectively served to "chill" his constitutional right to appeal and to be sentenced to a legal sentence as the court sentenced Frazier illegally twice. This was A biased, and vindictive decision maker which denied Frazier his law ful right, simply because of the trial judges belief that Fraziers true motive was to hcallenge his Unrelated Federal sentence. Something he discribed as "unjust and difficult to imagine". See Page 19 of The December 2015 Transcripts Line 7-9.

Further, on July 14 2020 the Sixth Circuit court of appeals denied reconsideration stating that Frazier has not identified any point of law or fact that this court overlooked or misapprehended. Frazier would submit that Under the Standard of Haines V. Kerner, 404 U.S. 443 (1972) Pro-se individuals needed only to state a claim on which he could prevail. A court should grant the motion despite failure to cite proper legal authority, poor syntax and sentence construction, confusion of legal theories, or unfamilarity with a pleadings requirments. Having said this, Frazier points to the law and fact's that the court overlooked and misapprehended.

* FRAZIER CITED SIXTH CIRCUIT PRECEDENT OF CRANGLE V. KELLY, 7838F. 3d. 673 (6th Cir. 2016) FOR THE PROPOSITION OF THE FACT IN LAW THAT THE NEW 2014 JUDGMENT (s) WERE NEW JUDGMENTS THAT RESET THE ONE YEAR WINDOW UNDER 28 U.S.C.S. §2244(d)(1): A or D.

The Sixth Circuit in its initial denial of a certificate of appealbility, stated that although the Corrected judgments entered in 2014 was a new judgment which opened a new one year window, the trial court vacated that as void ab-initio. But the Court failed to Recognize that Frazier was challenging the fact that the trial court could not Vacate those judgments and re-impose the eariler judgments because of the agreed order allowing Frazier to withdraw

the 2004 plea agreement. But on Page 9 in the Crangle opinion the court dealt with similiar judicial creation or curation. In the third paragraph of the Slip opinion, the court stated that :"The state walked back the trial court statement concerning post release and reworded Crangles sentence.

The same happened here, the newly appointed walked backed and revisited a settled matter when it stated that the State never agreed to allow Frazier to withdraw his invalid plea. And that the illegal sentence was not contained in the plea agreement, or not a material component, which is the same saying. This can easily be contradicted by the record in this case. It is clear from the 2014 trial transcripts that Frazier plea agreement was set-aside by the retired judge Ross. The State and court and Defendant agreed and signed the order which the court adopted. This can be seen on Page 7 of the 2014 transcripts line 17 the trial judge clearly stated "We set aside the original plea agreement". Event though most of the Transcripts were altered, it is clear that the parties intent to allow Frazier to withdraw his plea. Also in the 2015 Transcripts the stand by counsel can be heard explaining to the trial judge that the eariler trial judge did allow Frazier to withdraw his plea. Thus the Crangle court stated this when dealing with the states walkback of Crangles Post control release;"No matter the label, the November 2010 order changed the substance of his sentence and thus amounted to a new judgment. A state court decision to affix the label nunc pro tunc to an order does not control the Federal questions whether the order changes his conditions of confinement. The Crangle court went on to state, because the November 19 2010 nunc pro-tunc order created a new sentence it was a new

judgment that reset the one-year statute of limitations to file a habeas corpus petition under 28 U.S.C.S §2244(d)(2). Frazier poses the question of is this fact of the trial courts order vacating Frazier's 2014 plea agreement "new evidence" not previously discoverable which triggered the renewed limitation period, and/or if the new 2014 order and judgment a fact to trigger the new limitations period as this court held in Magwood V. Patterson, 561 U.S. 3200 (2010). Because "as a matter of custom and usage" This court observed, a "judgment in a criminal case includes both the adjudication of guilt and sentence." Deal V. United States, 508 U.S. 129 (1993). And because the court entered a invalid judgment in 2014 a second time, and Frazier wished to have that corrected, Frazier appealed again to the Trial court but was punished for doing so. This brings us to Fraziers next showing of a misapprehension of the law by the lower courts of law and Fact.

* THE STATE COURT[NEWLY APPOINTED] IN WALKING BACK THE AGREED ORDER REVISITED A SETTLED MATTER, VIOLATING RES-JUDICATA

Frazier submits that when the Newly appointed judge stated the illegal nature of Fraziers sentence was not a material component of his plea agreement, effectively walking back the agreed order, he revisited a settled matter. Specifically the matter of whether or not the illegal sentence was contained in the plea agreement. Since it was well settled in the law that Frazier and the State looked at when the retired Judge gave the parties time to review the law on this issue which was Mclaney V. Bell 59 S.W. 3d 90 (Tenn 2000) it was settled that the illegal nature of the sentence was a material component of the plea agreement, as made clear

when the parties came back on the record in the July 2014 transcripts. In Support of this, Frazier points to the July 21, 2014 transcripts, page 3 line 23-25, where Frazier clearly states that the A.D.A. was trying to argue against it being a material component of the plea and Frazier bringing this up to the Judge. As Frazier having notice that this hearing was going to take place brought along the relevant case law to show the law of the case. See Page 4 line 15-18.

After looking at the law, the parties agreed to allow Frazier to withdraw his plea. Thus this was a settled matter. This court in the case of Federated Department Stores V. moitic, 452 U.S. 394 (1981) Held: The Doctrine of Res-judicata applied to preclude the refiling retail purchasers from relitigating thier Federal claims, even though parties in similiar actions against the same defendants successfully appealed the judgment against them, the res-Judicata consequences of a final unappealed judgement on the merits not being altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case, there being no general equitable doctrine countenancing an exception to the finality of a party's failure to appeal merely because his rights were "closely interwoven" with those of another party, "simple justice" not requiring rejection of accepted principles of res-judicata where no grave injustice was being done by the application of these principles, and public policy also not requiring any other result. Thus, had not the state agreed to allow Frazier to withdraw his plea, it could have appealed the decision. It did not, that

judgment became final 30 days after it's entry . yet the trial courts Judicial curation, treating the matter as validity pending remand was extra-judicial and vindictive and violated Res-judicata.

* THE TRIAL COURTS RULING EFFECTIVELY "CHILLED" FRAZIERS RIGHT TO A LEGAL PROCESS, AND APPEAL AND WAS VINDICITIVE IN NATURE.

The trial court in its order of dismissal was biased and vindictive. It was not based on any aspect of law, instead was based on the trial (Newly appointed) judges belief that Frazier was unjustly using the new rule to then challenge his unrelated Federal sentence. This can be seen very clearly if read in this context in this order of dismissal, where Six pages is dedicated specifically to Fraziers unrelated Federal sentence. For this courts convience, Frazier will point out some of those Vindictive and biased Statements made by the New trial judge.

On page 051 of the record on appeal, the trial court speaks of Fraziers unrelated Federal sentence. Stating that petitioner did atmit that his true motive in pursuing this motion was to vacate at least one felony conviction off his record, or agree to plea to a new plea of identical terms so that he could thereafter challenge the length of his current, unrelated Federal sentence. In the last paragraph of the same page the court stated: "The petitioner admitted that a vacated state conviction, or subsequently re-entered plea, could shorten his Federal sentence and possibly enable his release from Federal prison eariler than expected. [record page 051-052]. His discription of Fraziers attempt to have these illegal sentence's corrected or removed as "A more unjust consequence of this collatteral attack. were petitioner

to sucessfully obtain his desired relief, is DIFFICULT FOR THIS COURT TO IMAGINE". It must be noted that Frazier never made the statements that the Trial court taxes him with making. Although Frazier did state that he was correct in his assessment that Fraziers Federal sentence was enhanced by these convictions and that Frazier wished to be free from Prison, when asked why he was attacking his prior convictions, Frazier stated that he was trying to correct an illegal sentence. He characterized my reasons as High minded and prepostrious. The false statement that Fraziers true motive pursuing this motion was to vacate at least one felony off his record is not supported on hte record. Inded on Record page no. 053 in the second paragraph the court stated: "Currently this court is not left with any ability to grant any meaningful relief by distrubing the terms of an agreed plea beyond simply imposing a new sentence without petitioners consent, or alternatively vacating a felony conviction by plea from the record of a multiple Felon and possibley assisting petitioner in obtaining release from Federal prison eariler than anticipated. Again in Record page no 055 the court stated:" Allowing petitioner to pursue his claim would merely afford petitioner a means to challenge the length of his Federal incarceration sentence. Even a subsequently re-entered plea to these state charges would allow petiitoner to say his Federal sentence was unlawfully enhanced with now vacated and subsequent, as opposed to prior state felony convictions." And as a parting shot to Frazier, the court stated:" If either the legal or factual analysis guiding this court to dismiss this matter as moot and expired were to come under scrutiny and review, it should be noted that

that the petitioner is nevertheless entitled to the relief sought as this court did not find the illegal concurrent sentences at issue in this case to have been a material component attendant to a plea following an evidentiary hearing". The trial judge did this because of his attempt to bar the order of dismissal from being used in Federal court where Frazier's sentence was enhanced. But it's the realibility that controls. These are not realiable in Federal Court for enhancing purposes.

The Determination of guilt is in question. In any event, this is a total vindicitive action which is biased toward the DEFENDANT. Based on this courts holding in Borenkircher V. Hayes, 434 U.S. 357 (1978) considering Vindictiveness Holding:" This court held in North Carolina V Pearce, 395 U.S. 711(1969) that Due Process Clause of the Fourteenth Amendment "Requires that Vindictiveness against a defendant for having sucessfully attacked his first conviction must play no part in the sentence he recieves after a new trial'". The same principle was later applied to prohibit a prosecutor from reindicting a convicted misdemeanant on a felony charge after the defendant had involked an appeallate remedy, since in this situation there was also a "realistic likelihood of vindictiveness'". Blockledge V. Perry, 417 U.S. at 27.

But What about a Judge acting as A District Attorney and does not like the fact that A Defendant sucessfully attacked his prior conviction and sentence, and vacates all the eariler Judges holdings in a Vindictive manner? Does the Fourteenth Amendment safe Guard a Defendant from this situation? In those cases, this court was dealing with the states unilateral imposing of

a penalty upon a defendant who had chose n to exercise a legal right to attack his original conviction This court has emphasized that the Due process violation in cases such as Pearce and Perry lay not in the possibility that a defendant might be deterred from the exercise of a legal right, See Colten V. Kentucky, 407 U.S. 104; Chaffin V. Stynchombe, 412 U.S. 17, but rather in the danger that the state might be retaliating aginst the accused for lawfully attacking his conviction. See Blackledge V. Perry, Supra 417 U.S. At 26-28. This effectively is what the state did in this instant case. It Punished Frazier for successfully attacking his State conviction, after it sentenced Frazier illegally again the second time. To Do so because Frazier has done what the law plainly allows him to do is a Due process violation in the most basic sort. See North Carolina V. Pearce, Supra 395 U.S. At 738, and for an agent of the State to pursue a course of action whose "objective" is to penalize a person's reliance on his legal rights it "patently unconstitutional". Chaffin V. Stynchombe, Supra, 412 U.S. at 32-33. See United States V. Jackson, 390 U.S. 570.

And this very treatment to Frazier and individuals in prison of the inherent existance of such a punitive policy would, with respect to those still in prison, serve to "Chill the exercise of basic constitutional rights". Id at 582, 88 S. Ct. at 1216. But even if the First conviction has been set aside for non-constitutional error, the imposition of a penalty upon the defendant, for having successfully pursued a statutory right to appeal or collateral remedy would be no less violation of the Due process of law. A courts judicial curation not founded or based upon

law or fact to deny redress, would also be flagrent violation of the rights of the defendant. Nichols V United states, 106 F. 2d 672 (8th Cir. 1901). This calls for the severest censure. This court in Johnson V. United States 544 U.S. 295 (2005) imposes a strict time limit upon the attack of a State conviction used to enhance a Federal sentence. In stating that the state court vacatur is a matter of "Fact" for purposes of the limitations rule, both being subject to proof and disproof. This court, while recognizing the reality ot the prison system Stated Due dilligence "is an inexact measure of how much delay is too much". Johnson , 544 U.S. 390 at 309 N.7, but stating it entails "prompt action... as soon as the petitioner was in a position to realize that he ha[d] a intrest in" "Challenging the conviction and thereby generating the state court order that serves as the factual predicate, id. at 308." As Soon as Frazier became aware of the New rule of 36.1 In Tennessee which allow the defendant at the time to file a motion to correct an illegal sentence "at any time" he filed the motion within Two months of it's enactment. Yet the end result was the State court condeming the practice of attempting to practice his right approved by this court. Any inordinate delay by Frazier would have been fatal to his Federal sentence being corrected. Yet the State court characterized Fraziers collatteral attack as "Unjust, and Difficult for this court to Imagine for it to provide relief". And the Sixth circuit approved this practice, by denying Frazier redress. Thus, even if Frazier argued the claim wrong, the Court was mandated by this court to construe any valid claim in his

favor. As this court has stated that a Court is without a right to put a price on a right to appeal. A defendants exercise of a right of appeal must be free and unfettered. It is un-fair to use a great power given to the court to determine extra judicialy a decision which places a defendant in the dilemma of making a unfree choice. By walking back the agreed order, allowing the State to breach it's contract made in July of 2014, hte trial court attempted to hide this fact by failing to place in the record the agreed Order to withdraw his plea in the appeal record. This was prejudicial because the reviewing courts was without this document, yet when brought to the sixth Circuits attention, it still denied Frazier redress.

See Worcester V. Comm Of Internal Revenue, 370 F. 2d 713 (1966). Due process of law, then, requires that this type of vindictiveness against a defendant for having successfully attacking his first conviction must play no part in the subsequent judicial proceedings. And since the fear of such vindictiveness may unconstitutionally deter a defendants exercise of the right to appeal or collatteral attack his first conviction, Due process also requires that a defendant be freed of apprehension of such a retalitory motivation on the part of the sentencing judge. Frazier submits that never did he think a court could freely violate the law by such blatent and flagrent actions by the State trial court. Holding Frazier responsible for the State's ignorance of the law is a new all time low, and Frazier respectfully ask this court, has the system reached the point, to where it will be ok and affirmed where courts overlook all the Due process violations, inorder to keep a prisoner locked up illegally? have we reached the nadir where

the constitution only serves the rich and well connected? Or is it still justice and peace for all? Or do we allow the courts in the State to violate the Klu Klux Klan act, which was enacted to curb states bent on violating citizens rights which are Federally protected, mainly citizens of Color? As the order of dismissal does not attempted to hide it's ultimate reason for denying Frazier relief, altering the transcripts, and walking back agreements made by all parties, including the court, then blaming the Defendant Frazier for the mistakes made by the state in entering the order and judgments by holding :"Only petitioner appeared savvy enough to understand the potential opportunity to use this new rule of State proceedure to then challenge his current Federal sentence? Does not a defendant have a Due process right to be sentenced based upon accurate and reliable information? UnitedStates V Tucker, 404 U.S. 443 (1972) says we do. And did this court not approve the practice of challenging Prior invalid state convictions used to enhance a sentence in Johnson V. United States, 544 U.S. 295(2005)? In Closing, Frazier submits, will this court be the first judicial review which is a fair one founded upon law applied as written? Will this court provide a true review of a Pro-Se pleading who does not have access to State case law and now only is awarded one day a week for three hours to to legal research?

THE INCORPORATION OF RULE 60(b) AND AND FRAZIERS REASONING AS TO IT'S APPLICABILITY COUPLED WITH THE TREATMENT OF VOID JUDGMENTS IN GENERAL

Frazier Submist as his last claim for relief, his reasoning as to the applicability of rule 60(b)(4) to this unique case.

This reasoning is simple. The trial court in this case agreed that the sentences are illegal. He also agreed that the determination of guilty was pursuant to a guilty plea, meaning that Contract law applies. Mabray V. Johnson,467 U.S. 504.

Generally a contract made contrary to statutory authority is void under civil law, Ewell V. Daggs, 108 U.S. 143(1883) and criminal law United States V. Broce, 488 U.S. 563 (1989). Under Tennessee contract law, Fraud engenders all contracts void ab-initio as when the Trial court vacated the 2014 judgments as void ab-initio. This is at the option of the defrauded party Brandon V. Wright, 838 S.W. 2d 532 (Tenn. Ct. App. 1992). Moreover, this is not the main reason of Fraziers Reasoning of rule 60(b)(4)'s applicability under it's plain language and a pro-se reading. Frazier submits that there is no law on the books that allows a court to leave in place viod judgments, after they have been found so, At least Frazier has not found any. As the Sixth Circuit stated in in Re: Ruehle, 412 F. 3d 619 (6th Cir. 2005) either the judgment is void or it is isn't. And a trial court has no jurisdiction to leave in place a void judgment. In Tennessee, is a contract providing for a conviction at minimum is valid, but the sentence is illegal and therefore void, the judgments of conviction is incomplete. Cantrell V. Easterling, 346 S.W. 3d 445, 455-56 (Tenn.2011) Tis case stands for the proposition that the judgment has both a sentence and conviction. Both of these components must be valid to be enforceable. Likewise, is the fact that the Criminal courts jurisdiction is limited to legislative enactments and must be executed in

in compliance with the acts rules. McConnell V. States, 12 S.W. 3d 795, 798 (Tenn. 2000), and the trial court cannot usurp the jurisdiction by consent of parties, Brown V. brown, 281 S.W. 2d 492, 497 504 (T3nn. 1955) at 501.

The important factor is that Frazier shown a Fact that is subject to proof and or disproof. That fact is the Trial courts Order vacating the judgments in August of 2015 and the December 30, 2015 order of dismissal dismissing Fraziers challenge to his "new 2014 judgments and plea agreement/order entered". In that order or orders the trial court agreed that the sentences were illegal in this case and were pursuant to negoiated plea agreements. The Factual nature is if the trial court, for the reason's explained and that follow, was his holding correct. Frazier also submitd is if these cases' in support is still good law, or are they just become locker room banner? Since the Trial court is in agreement that Frazier's Due process rights has been violated in this case, Fraizers sentences are illegal, does this vacating of illegality intrude on the comity between the state and Federal government,or the intrest of finality, as well at the treatment of void judgments in general? Thus Frazier submits, Rule60(b)(4), the rule carries two types of proceedures to obtain relief. Because the State judge in this case is in agreement that the sentence's are illegal thus rendering the Negoiated plea agreement void as well, and pursuant to Tennessee Supreme court law "When the face of the judgments or record of the underlying proceedings shows that... the sentences is illegal, such sentence creates

a void judgment. Smith V. Lewis, 202 S.W. 3d 124, 129 (Tenn. 2006); MClaney V. Bell,59 S.W. 3d 90, 93(Tenn. 2001), such judgment is viod ab-initio, it is /as if the judgments has never existed: Indeed, Tennessee Supreme court stated: "Courts derive their powers to adjudicate not from parties, but from law. A court acting without jurisdiction of subject matter jurisdiction, or beyond the jurisdiction conferred upon it, it therefore acting without authority of law and it's judgments and decrees in so acting are viod and bind no one. Sheffy V. Mitchell, 142 Tenn,. 48 215 S.W. 403.

Moreover, the law with reference to void judgments is well settled and stated in 1 Freeman Judgments, 643 Sec. 322:

> " A judgment viod upon it's face and requiring only an inspection of the record to demonstrate it's invalidity is a mere nulity in legal effect no judgments at all, conferring no right and affording no justification. Nothing can be acquired or lost by it, it neither bestows nor extinguished any right, and may be sucessfully assailed whenever it is offered at the foundation for the assertion of any claim of title. It neither bind nor bars anyone. All acts performed under it and all claims flowing out of it are void the parties attempting to enforce it may be responsible at trespassers. The purchaser at a sale by virtue of it's authority finds himself without title and without redress] No action upon the part of the defendant, no resulting equity in the hands of third person, no power residing in any

legislative or other department of the Government can invest it weith any elements of power or vitality. It does not terminate or discontinue the action inwhich it is entered, nor merge the cause of action; and it therefore cannot prevent the plaintiff from proceeding to obtain a valid judgment upopn the same cause, either in the action inwhich the void judgments was entered or in someother action. "The fact that the void judgment has been affirmed on review in an appellate court or an "order of judgment renewing of reviving it entered adds nothing to it's validity'". Such judgment has been characterized as a dead limb upon a judicial tree which may be chopped off at any time, capable of bearing no fruit to plaintiff, but constituting a constent menace to defendant!' It has been said by This court, that because a void judgment is null and without effect, the vacating of such judgment is "merely a formality" and does not intrude upon the notion of mutual respect in Federal/State intrests. Kaleb V. Feuerstien, 308 U.S. 433, 438-40 (1940).
Frazier has not had a full and fair opportunity to litigate this dispute. Not is Frazier aware of any case law overruling the cases dealing with viod judgments and the courts treatment of such.

* CONCLUSION *

As the court can easily conclude Violations of Due process among other laws in this chse have occurred, Frazier request this honorable judge review and afford a liberal reading of this case, keeping in mind as a Federal Inmate, the BOP. By policy Restrict access to Direct case law in thier law

libraries,and Frazier has had to act Pro-Se throughout this whole case. Frazier Submits that he has been sentenced illegally twice in this case.Frazier request that this court reverse the lower courts rullings on conclusions of law and findings of facts, and provide a proper appeal. Frazier also points out that he did not recieve notice of the evidentiary hearing taking place, as the trial court did not provide Frazier nor Standby Counsel a copy of the August order inwhich he order a hearing and counsel be provided, and where he also vacated the Judgements and Order allowing Frazier to withdraw his 2004 plea agreement.

* PROOF OF SERVICE *

I assest that a true and correct copy of the above motion was sent via U.S. Mail, Postage pre-paid to the follwing address on 12 31 2020. 3-1-21

Dated//: 12 31 2020 3-1-21

S//: DAVID FRAZIER PRO-SE

[redacted]