

No. 20-7960

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL ANTHONY CARROLL — PETITIONER
(Your Name)

vs.

STATE OF MICHIGAN — RESPONDENT(S)

FILED
APR 30 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL ANTHONY CARROLL

(Your Name)
Saginaw Correctional Facility
9625 Pierce Road - MDOC

(Address)
Freeland, Michigan 48623

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. THE STATUTORY TIME LIMITS IMPOSED BY THE INTERSTATE AGREEMENT ON DETAINERS ARE STRICTLY JURISDICTIONAL AS APPLIED TO THE CONSTRUCTION OF A COMPACT, AND CANNOT BE WAIVED OR PROCEEDED UPON AFTER A TIME LIMIT VIOLATION(S); FURTHER, THE FUNDAMENTAL DEFECT EXCEPTION SHOULD BE APPLIED IN CARROLL'S IAD CLAIMS.....7
- II. CARROLL'S CLAIM REGARDING AN UNSWORN JURY IS A QUESTION OF LAW OF WHETHER DUE PROCESS REQUIRES THAT A JURY BE SWORN UNDER THE SIXTH AMENDMENT'S GUARANTEE TO AN IMPARTIAL JURY.....30
- III. CARROLL'S DEFECTIVE JURY VERDICT FORM SHOULD BE REVIEWED UNDER THE BRECHT STANDARD FOR SUBSTANTIAL AND INJURIOUS EFFECT AND UNDER THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM.....33

PETITIONER WOULD ANSWER THESE QUESTION "YES"

RESPONDENT WOULD ANSWER THESE QUESTION "NO"

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LIST OF PARTIES

☒ 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:

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People v. Carroll, MISCT 77713 (June 3, 1986)
People v. Carroll, Genesee Cty. Cir. Ct. No. 82-31970-FC (MRJ Nov. 14, 2003)
People v. Carroll, MICOA 259113 (June 24, 2004)
People v. Carroll, MISCT 129114 (2005)
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JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Nov. 24, 2020. A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: Mar. 2, 2021, 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 N/A (date) on N/A (date) in Application No. ____ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State 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.

18 U.S.C. app. §2, Art. III(a), IV(c), VI(a) (1982)

MCLA 780.601 et seq.

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

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

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

☒ reported at 2021 Mich. LEXIS 245 (Mar. 2, 2021); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Michigan Supreme Court court appears at Appendix B to the petition and is

☒ reported at 2020 Mich. LEXIS 2064 (Nov. 24, 2020); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

STATEMENT OF THE CASE

Petitioner Michael Anthony Carroll had been serving a 20 year sentence in the State of Arkansas for Aggravated Robbery in 1982. On May 7, 1982, while serving this sentence at the Cummings Prison Unit, a detainer was placed on him for murder in the State of Michigan. Carroll on the same day signed a final disposition request in accordance with the Interstate Agreement on Detainers, MCL 780.601, hereafter "IAD".

On September 23, 1982, 139 days after requesting final disposition of the detainer, law enforcement agents from the City of Flint, Genesee County, Michigan took custody of Carroll. Carroll arrived in Michigan on September 24, 1982, which marked the 140th day of the IADs Art. III, and day 1 of the calculation of the 120 day provision of Art. IV of the IAD.

On September 29, 1982, Carroll was arraigned in the 68th District Court for the City of Flint and 145th day under Art. III. On September 30, 1982, the 146th day into Art. III, he was appointed counsel, and 6 days had elapsed under Art. IV.

On October 29, 1982, Carroll was bound over to the Circuit Court on the 175th day of his 180 days under Art. III, and 36 days had concurrently passed under the 120 day provision of Art. IV(c). There was no annotations in his District Court file of the IAD, nor, had appointed counsel discussed any IAD knowledge or IAD time limits of the 180 days under Art. III(a).

On November 8, 1982, 10 days after the bindover to Circuit Court, Carroll was arraigned in the Circuit Court on the 185th day in violation of Art. III(a), and 46 days had passed within the 120 day provision of IAD Art. IV(c). The State of Michigan continued to proceed as if they had complied with Art. III(a) 180 day time limitation.

On January 11, 1983, the 110th day of the 120 day provision of MCL 780.601, Art. IV(c), a pre-trial conference was held, and 69 days had passed from the expiration of the 180 provision of Art. III(a). On January 21, 1983, Art. IV(c)'s 120 period expired uninterrupted , and 14 days before the alleged waiver on February 4, 1983.

On February 4, 1983, the alleged waiver date, Art. III(a) - 180 day period had expired by 93 days, and concurrently, 14 days had passed on the expiration of the 120 provision of Art. IV(c). Per all pre-trial records in the District and Circuit Courts, there had been no discussion or notice by the Court or Prosecutors of the IAD. The record does reflect that Carroll's court appointed counsel was unable to function as counsel guaranteed by the Sixth Amendment as he was acting under an actual "Conflict of Interest".

This recorded conflict of interest claim is the first constitutional claim that caused a fundamental defect, and jurisdictional defect, since counsel under the conflict could not promote the absolute defense of the IAD, which resulted in a miscarriage of justice. Additionally, any Speedy Trial waiver promoted by appointed was inapplicable since it was under MCL 768.1; void since Carroll was specifically a an IAD prisoner under MCL 780.601.

On or about March 19, 1983, Carroll retained attorney Kenneth M. Siegel, who entered an appearance and substitution for court appointed counsel - Joseph Baessler, on March 21, 1983. On March 21, 1983, Attorney Siegel during a motion hearing was denied an adjournment on his recent appointment for the purpose of investigation, preparation and research of Carroll's case. Notably, the People [APA Lazzio] raised for the first time the issue of the IAD, indicating that Carroll had rights under the IAD, She specifically raised the 180 day provision of the IAD, but misrepresented to the trial court and counsel, that the 180 day period had not expired using a calculation which was specified only for the Art IV(c) duration.

This Court may further note the continuing fundamental defects of Carroll's IAD claims were constitutional, where retained counsel was surprised on the belated announcement of the IAD, and counsel argued the wrong dates for the Art. III(a) duration period of the 180 day period. Counsel announced the 180 day period started on September 26th or 27th 1982 dates, which were his incorrect arrival dates to Michigan, and inapplicable to Art. III(a), VI(a). The non-disclosure and misrepresentation of the IAD by the prosecutor, affected retained counsel's ability to be effective.

Noteworthy, the People did not surrender its IAD file to retained counsel on the March 21st motion hearing date, nor, previously to appointed counsel; vis-a-vis, retained counsel did not request production of Carroll's IAD file to make further argument on the IAD, contending at this late point in time Carroll could waive the IAD, which was false, supporting ineffectiveness.

The Court without referring to MCL 780.601, or compelling production of the IAD documents, denied the 180 day IAD claims on an inapplicable waiver after two time limitation violations of Arts. III(a), IV(c), and VI(a), which mandated a calculation of Arts. III(a), IV(c). The failure to comply with any articles of the IAD subjected Carroll's case for dismissal, moreover, the three violations on March 21, 1983, was cause for lost of subject-matter jurisdiction - further, the denial of the right to effective counsel under the Sixth Amendment amounts to a fundamental defect and miscarriage of justice.

These ineffective assistance of counsel claims under the Cronin/Strickland standards required a presumption of prejudice sufficient to authorize the release of Carroll on IATC/IAD grounds, as his proceedings were fundamentally unfair and unreliable.

These ineffective assistance of counsel claims on appointed and retained counsels under constitutional law requires a presumption of prejudice, as explained in arguments presented.

On April 8, 1983, Carroll was found guilty of 1st Degree Murder and on April 21, 1983, was sentenced to LIFE and given credit for 211 days spent in custody prior to sentencing. Carroll was thereafter returned to Arkansas.

Appellate counsel - Earl Spuhler was assigned and after review of the trial record submitted a brief on appeal on Carroll's behalf without consulting on the issues selected. Carroll did not have consultation with counsel prior to submission of his brief on appeal and only received a letter of notice of counsel appointment while in prison in Arkansas.

The appellate brief notably mentioned the IAD [only] in the Statement of Facts, but articulated an incorrect assumption of the IAD, because counsel never on the record waived the IAD. Had appellate counsel raised the IAD claims that are apparent of the face of the record, and promoted the IAD defense on appeal, coupled with ineffective assistance of counsel/Conflict-of-Interest claim - which had recently been ruled on by this Court in Cronin and Strickland, Carroll's case was likely to have been vacated on the Conflict of Interest grounds of Cronin, cumulative effect of deficient performance of Strickland, and lost of subject-matter jurisdiction under the multiple IAD violations in this case.

Per the initial filings in the Michigan State Courts, his habeas claims would have been pre-AEDPA, and the procedural bars under MCR 6.500 et seq., would not have been presence. Counsel on direct appeal did not raise any ineffective assistance of counsel claims, though an apparent conflict of interest was announced to the trial court on February 4, 1983.

Carroll's procedural history is cited as:

People v. Carroll, Genesee Cty. Cir. Ct. No. 82-31970-FC (JOS April 21, 1983)
People v. Carroll, MICOA 74712 (Oct. 29, 1985)
People v. Carroll, MISCT 77713 (June 3, 1986)
People v. Carroll, Genesee Cty. Cir. Ct. No. 82-31970-FC (MRJ Nov. 14, 2003)
People v. Carroll, MICOA 259113 (June 24, 2004)
People v. Carroll, MISCT 129114 (2005)
People v. Carroll, 475 Mich 890 (2006)
Carroll v. Burt, 2008 WL 3010784 (E.D. Mich. Aug. 4, 2008)
Carroll v. Burt, 2010 WL 2549895 (E.D. Mich. June 30, 2010)
Carroll v. Burt, 443 Fed. Appx. 991 (6th Cir. 2011)
Carroll v. Burt, 2013 WL 440167 (E.D. Mich. Feb. 5, 2013)
Carroll v. Burt, No. 13-1240 (6th Cir. Aug. 14, 2013)
People v. Carroll, Genesee Cty. Cir. Ct. No. 82-31970-FC (MRJ Aug. 8, 2019)
People v. Carroll, 2020 Mich. App. LEXIS 1856 (Mar. 11, 2020)
People v. Carroll, 2020 Mich. LEXIS 2064 (Nov. 24, 2020)
People v. Carroll, 2020 Mich. LEXIS 245 (Mar. 2, 2021)

Petitioner raised the constitutionality of his conviction and sentence, where his conviction was based on jurisdictional defects of (1) IAD's 180 and 120 day Compact provisions, (2) jurisdictional defect in jury impaneling oath/swearing, (3) defective jury verdict form; each premised on ineffective assistance of counsel grounds and ineffective assistance of appellate counsel grounds.

Per the record before this Court, the last reasoned opinion of the State Court failed to indicate a procedural bar or, that relief was not cognizable under any Michigan Court Rule or statute. The Court declining to review the constitutional claims on "IATC" or IAC on appellate counsel to overcome any procedural defaults.

REASONS FOR GRANTING WRIT

Petitioner Carroll was denied Due Process of Law and Equal Protection, where the Michigan State courts failed to abide by the Compact of the Interstate Agreement on Detainers - "IAD," under its statute - MCL 780.601 et seq., where the time limits imposed under the IAD were violated by the willful failure to count the time periods under Articles III(a) and IV(c) pursuant to Article VI(a) of the Compact. Further the trial court allowed the court appointed counsel to continue to represent Petitioner under a Conflict of Interest. This case involves the failure to disclose the IAD file under the rules of discovery, and ineffective assistance of retained counsel due to his inability and restriction by the trial court to prepare the case, research and investigate contrary to the Sixth Amendment's guarantee to effective counsel. On Due Process grounds, appellate counsel was ineffective for failure to raise an absolute defense, the IAD, and these other meritorious grounds which would have resulted in dismissal of Carroll's state charges in Michigan.

The dismissal in the State of Michigan would have resulted in a lowered custody level and earlier release from the ADOC.

The questions subject-matter jurisdiction and a fundamental defect, which caused a miscarriage of justice, are Due Process of Law questions, so closely related under the IAD, that authorities discuss the together. See Hill v. United States, 368 U.S. 424, 428 (1962); See e.g., Enright v. United States, 434 F.Supp 1056 (S.D. N.Y. 1977).

In Enright, the District Court for the Southern District of New York, held, "[W]here the alleged violation is constitutional in nature or goes to a jurisdictional defect, a collateral attack is always permitted." Id at 1058. See also People v. Estelle, 93 Mich App 449, 455 n.3 (1979)(citing Enright v. United States, 434 F.Supp 1056 (SD N.Y. 1977)(IAD Case)).

This Court in *Reed v. Farley*, 512 U.S. 339, 348 (1994), further supports this fundamental defect inherently resulting in a complete miscarriage of justice [or] omission inconsistent with the rudimentary demands of fair procedures standard. *Reed, Id.*, citing Supreme Court case on this standard.

Petitioner's claims to this Court are not speculative, as the documentary evidence submitted to the State Courts are **due proofs** that there were obvious jurisdictional defects, and constitutional grounds that cannot be overlooked regarding the presumption of prejudice under this Court's ruling IATC and appellate counsel regarding the fundamentally fair proceeding under the Due Process Clause.

Further, this Court has reason to GRANT relief where State of Michigan Courts did not employ the rules of statutory construction, equitable doctrines in review of the legal analysis of Petitioner's claims.

Petitioner Michael Anthony Carroll now presents the following grounds for review as reason granting the Great Writ.

- I. THE STATUTORY TIME LIMITS IMPOSED BY THE INTERSTATE AGREEMENT ON DETAINERS ARE STRICTLY JURISDICTIONAL AS APPLIED TO THE CONSTRUCTION OF A COMPACT, AND CANNOT BE WAIVED OR PROCEEDED UPON AFTER A TIME LIMIT VIOLATION(S); FURTHER, THE FUNDAMENTAL DEFECT EXCEPTION SHOULD BE APPLIED IN CARROLL'S IAD CLAIMS.

Petitioner Carroll raises on certiorari that the Interstate Agreement on Detainers - "IAD", is strictly jurisdiction to the subject-matter and cannot be waived under its construction as a Congressionally approved Compact. See *United States v. Rauscher*, 119 U.S. 407, 420-24 (1886)(extradition agreements limits the subject-matter under which prisoner is to be tried); 18 U.S.C. app. §2; Art. III(a), IV(c) (1982). See also *United States ex rel. Louisville Cement Co. v. I.C.C.*, 246 U.S. 638, 642 (1918)(holding, "the lapsing of a statute of limitation contained in a statute, a condition on the statutory

right created, is jurisdictional, limiting the power of the adjudicating body").

The circumstances of IAD violations are reviewable under a "Fundamental Defect" which inherently results in a miscarriage of justice, so that it "present[s] exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent." See *Reed v. Farley*, 512 U.S. 339 (1994); *Hill v. United States*, 368 U.S. 424, 428 (1962).

In this case at bar, it is without question that Petitioner Carroll was a prisoner under the IAD Compact, per the detainer placed on him by the State of Michigan to the Arkansas Department of Corrections - ADOC. See MRH Exhibit C- MI Detainer (5/7/82).

Petitioner presents due proofs that the State of Michigan took custody of him from the ADOC under the IAD on September 23, 1982. See MRJ Exhibit D - Temp. Custody Form (9/23/82).

On September 24, 1982, Petitioner was delivered to the State of Michigan. The applicable IAD statute for Michigan is MCL 780.601 for the enforcement of contractual agreement entered with Michigan and Arkansas to secure Carroll from the ADOC. Further, Michigan agreed to abide by such IAD conditions as signed by the Court and prosecutor of the appropriate jurisdiction. On this date of September 24, 1982, both articles III(a) and IV(c), were active for calculation under article VI(a).

On Carroll's 120 day claim, in accordance with the explicit commands of the IAD, his trial was to commence by January 21, 1983. Petitioner's trial was neither schedule in accord with the IAD mandated time limitation, nor held by January 21, 1983.^{1.}

Note 1 - Carroll's ROA shows that there were no motions filed by court appointed counsel which would interrupt the time limits for dismissal on his Articles III(a) and IV(c) claims.

What is noteworthy is that no party raised or acknowledged the IAD in open court until the expiration of both the 180 and 120 provisions had long since expired.

On March 21, 1983, after Carroll had retained counsel, the Prosecution announced for the first time that Carroll was an inmate [prisoner] in the State of Arkansas, and under the Uniform Detainer Act or something of that nature - announcing the 180 day time limit, which had to be specifically addressed. (MT, 3/23/83 at 7-10).

Contrary to the requirements of the IAD the issue was not addressed per the MCL 780.601, arts. III(a), VI(a), nor did the People present retained counsel with the IAD file belatedly announced. Egregiously, counsel did not request the IAD file in possession of the prosecution. This non-disclosure and misrepresentation are IAD violations in and of themselves, as explained under equitable exceptions.

This late disclosure by the prosecutor to the trial court, is the specific violation that this Court should address under Reed, for addressing the fundamental defect test articulated in Hill. Reed, 512 U.S. at 355-364.

The first indicator of a fundamental defect under the IAD, is an absence of notice of the IAD to promote the agreement and to encourage the expeditious and orderly disposition of such charges and determination of the [proper status] of any and all detainers based on untried indictments, informations or complaints under MCL 780.601, art. I.

It is well established that the Interstate Agreement on Detainers adopted standard forms. See *Casper v. Ryan*, 822 F2d 1283, 1285 n.2 (3rd Cir. 1987).

Here the IAD Form I - Notice of Untried Indictment, Information, or Complaint and Right to Request Disposition, is the [only] form that cites the mandatory language that a prisoner shall be brought to trial within 180 days ...after having cause to be delivered to said prosecuting officers' jurisdiction written notice of the place of his imprisonment...". See Sample IAD Forms as Offer of Proof.

The language of Form I was the similar language used by APA Lazzio on the March 21, 1983 proceedings where she stated the 180 day provision and that carroll was a prisoner in Arkansas under the detainer act. (MT, 3/21/83 at 10). Therefore, this Court may infer that APA Lazzion was in possession of this document and Carroll's complete IAD file to entitle him to review under the 180 day provision of MCL 780.601, art. III(a) and calculation of the duration period under art. VI(a).

Further, IAD Form I provides the States notice of the only waiver authorized by the IAD Compact sanctioned by Congress. Congress enacted the Interstate Agreement on Detainer Act, Pub. L. No. 91-5338, 84 Stat. 1397 (1970)(codified at 18 U.S.C. App. (1982)), the United States and Washington, D.C. participate fully in the IAD as "states". See United States v. Mauro, 436 U.S. 340, 343 (1978).

IAD Form II, identifies prisoner's Sixth Amendment right to counsel, whether appointed or retained. Thus, providing all IAD documents to counsel in the receiving state is paramount to secure the IAD prisoner's state and federal rights to effective counsel upon deliver from the sending State. Further, to an IAD defense which is an absolute defense. See Strickland v. Washington, 466 U.S. 668, 681 (1984)(If there is only one plausible line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense).

Petitioner contends that the non-disclosure and misrepresentation by the Genesee County Assistant Prosecutor [Lazzio] in this case, equitably estopped the State from claiming a statute of limitation tolling defense against the Petitioner. The equitable exceptions of discovery and fraudulent concealment are applicable to Petitioner's IAD claims, and reviewable as fundamental defects, where the non-disclosure and/or belated discovery claims affected his right to effective counsel under the Sixth Amendment.

A. EQUITABLE ESTOPPEL DOCTRINE

Under the doctrine of Equitable Estoppel, there is an equitable principle that, "One may not take advantage of one's own wrong". See *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232-33 (1959).

This equitable doctrine is applicable to Petitioner's case for IAD habeas relief, where the late disclosure by the prosecutor on March 21, 1983, of Carroll being an IAD inmate hindered his right to promote an IAD defense through his appointed and retained counsels. It was evident that all of Carroll's statute of limitations under the IAD had expired under Arts. III(a) and IV(c). The 180 day period in November of 1982, and the 120 day period in January of 1983.

The prosecution specifically announced the addressing of the IAD, and argued against dismissal under Art. III(a) grounds, and misrepresented the 180 day calculation contrary to Arts. III(a) and VI(c). Thus, reasonable reliance on a fraudulent concealment is required for application of equitable estoppel. *Santa Maria v. Pac. Bell*, 202 F3d 1170, 1173 (9th Cir. 2000). See also *Rhodes v. Guiberson Oil Tools Div.*, 927 F2d 876, 878-79 (5th Cir. 1991)(citing *Pruett Prod. Co. v. Ayles*, 784 F2d 1275, 1280 (5th Cir. 1986)(applying equitable estoppel where employer concealed or misrepresented facts to support a discrimination charge).

In context of the statute of limitation laws contained in the Compact of the IAD, the prosecutor took actions which prevented Petitioner or counsels from complying with the IADs statute of limitations being enforced. Thus, this Court may find that the State was estopped from asserting their IAD statute of limitations defense against Petitioner Carroll. See e.g., *Cada v. Baxter Healthcare Corp.*, 920 F2d 446, 450-51 (7th Cir. 1990)(stating that equitable estoppel is a general principle that is not confined to statute of limitations framework, and can be applied if a defendant takes affirmative steps to impede the plaintiff from suing in time, such as promising to refrain from pleading the statute of limitations as a defense).

This Court, however, has not articulated a comprehensive interpretive approach for determining when Congress intends to include (or exclude) a consideration in a statute of limitations.

In this case, as many federal statutes of limitations do not contain a discovery rule of accrual. The limitations provisions merely requires that a plaintiff to file the action within a certain period of time from the date of the cause of action "accrues" or "arises". See e.g., 28 U.S.C 2401(b)(2000) (indicating that statute of limitations for a tort claim filed against the United States); 45 U.S.C. 56 (2000)(the statute of limitations of the Federal Employers Liability Act).

Accordingly, whether the discovery rule of accrual or any other equitable exception should be imported into a federal statute of limitation necessarily requires an inquiry into Congressional intent, using well-know rules of statutory construction.

Here, Congress placed in its construction of the IAD Compact two specific mandatory statutes of limitations, for the purpose of argument; (1) the 180 day provision, and (2) the 120 provision. See 18 U.S.C. app. §§2, art. III(a), art. IV(c). See also MCL 780.601, art. III(a), IV(c).

Congressional understanding of the IAD is important, as an indicator of what this federal law demands. See *Stroble v. Anderson*, 587 F.2d 830, 834-839 (6th Cir. 1978), cert. denied, 99 S.Ct. 1298 (1979).

This Court has looked to discern the legislative intent of Congress in each of its decisions construing the IAD. See *Reed v. Farley*, 512 U.S. 339 (1994); *Carchman v. Nash*, 105 S.Ct. 3401 (1985); *Cuyler v. Adams*, 449 U.S. 443 (1981); *United States v. Mauro*, 436 U.S. 340 (1978).

The IAD Compact claim is properly raised before this Court, as a federal law subject to federal construction. *Carchman*, 105 S.Ct. at 3403. Further, since the IAD contains statutes of limitations, a plenary review of a federal statute is appropriate to grant the Writ and dismiss the conviction and sentence imposed on this Petitioner, under the IAD's construction as a Compact and a federal law.

B. THE IAD CANNOT BE WAIVED OR PROCEEDED UPON AFTER A TIME LIMIT VIOLATION

The IAD is not merely a federal statute, but, rather, an interstate compact. This distinction is critical because a compact is not subject to unilateral alteration. A compact establishes a contractual relationship between the signatory states. See *Virginia v. Tennessee*, 148 U.S. 503, 520 (1893) (Compacts ... cover all stipulations affecting the conduct and claims of the parties). Further, the IAD explicitly states that it is a contract in its preamble. See 18 U.S.C. app. §2, preamble ("The contracting States solemnly agree...") (emphasis added).

In *Ex Parte Coy*, the District Court for the Western District pointed out an obvious point of law regarding extradition treaties that, "[p]risoners cannot waive provisions of an extradition treaty because he is a third party to the contract". *Coy*, 32 F. 911, 917 (W.D. Tex. 1887).

This Court in similar fashion has accepted this premise of law as applied to other Congressional created acts.

In *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945), this Court ruled "no waiver allowed of rights under the Fair Labor Standard Act". Again, in *Tony & Susan Alamo Found. v. Secretary of Labor*, 105 S.Ct. 1953 (1985) (same; purpose of the FLSA "requires that it be applied even to those who would decline its protection"). See also *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51 (1974) (refusing to allow individual to waive cause of action conferred by Title VII of the Civil Rights act because to do so "would defeat the paramount congressional purpose behind Title VIII").

Thus, the circumstances of the State's claim of an IAD violation by waiver and Carroll's claim that the IAD cannot be waived are reviewable under the construction of the Compact and federal law, and reviewable as a "Fundamental Defect" which inherently results in a miscarriage of justice, so that it "present[s] exceptional circumstance where the need for the remedy afforded the writ of habeas corpus is apparent." See *Reed*, 512 U.S. at 342; *Hill*, 368 U.S. at 428.

The IAD Compact sets forth conditional promises in both the sending and receiving states to act. The receiving state allows the prisoner, as a third party beneficiary to the contract between the states to enforce the IAD seeking specific performance of the contract. See e.g., *Henderick v. Lindsay*, 93 U.S. 143, 149 (1876) (A third party to a contract may enforce that contract when it is made for his benefit).

In this case at bar, Petitioner could not waive his IAD rights for several reasons, primarily because, "a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy." See e.g. *Wilko v. Swan*, 346 U.S. 427, 434-38 (1953)(refusing to allow investor to waive "judicial trial and review" of claim under the Securities act of 1933 against a securities brokerage firm); *McLendon v. Continental Group, Inc.*, 602 F. Supp. 1492, 1505 (D.N.J. 1985)(rights granted by § 510 of ERISA are unwaivable; even assuming identity of the employees with the union, waiver is "neither statutorily permissible nor logically possible").

The public interest represented by the IAD, overrides any desires of the prisoner to act contrarily to its provisions. See e.g., *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77-78 (1982)(refusing to enforce contract violating both the Sherman Act and the Taft-Hartley Act "only on account of the public interest")(quoting *McMullen v. Hoffman*, 174 U.S. 639, 669 (1899)).

Thus, logically and legally Petitioner could not waive an expired statute of limitations, as in this case. The Article III(a) violations occurred before his arraignment "AOI" in circuit court on November 8, 1982. Secondly, the 120 day violation of Article IV(c) occurred on January 21, 1983, calculated at eleven days before the February 4, 1983, waiver by the State of Michigan. Petitioner contends that in violation of Article VI(c) the actual time limit violation of the 120 days was 14 days before February 4, 1983.

It is without question that the IAD was drafted with reference to and was intended to be analyzed in light of the [entire] body of legal principles applicable to the interpretation of statutes. See e.g., *F. Zimmerman & M. Wendell, The Law and Use of Interstate Compacts* 7 (1976)("The substantive law of compacts is principally contract law").

In *People v. Estelle*, 93 Mich App 449 (1979), the Michigan Court of Appeals was well aware for IAD relief that, "for a waiver to be effective it must be show that there is a right, *Enright v. United States*, 434 F. Supp 1056 (S.D. N.Y. 1977), since the record in the instant case does not show that defendant was told what his rights were under the IAD, we do not base our decision on waiver." Id. 93 Mich App at 455 n.3.

Without question there is no IAD waiver on the record, and in accordance with the explicated commands of the IAD as a Compact, a waiver is not allowed by a prisoner since he is a third party beneficiary to the contract between the states.

Petitioner's alleged waiver, which was cited as him acting contrary to the IAD, was an erroneous ruling, because there is no waiver of an expired statute of limitation, and the alleged waiver of February 4, 1983, occurred after Articless III(a) and IV(c) had long since expired.

This Court may find that the trial court explained on February 4, 1983, a Speedy Trial waiver under MCL 768.1, rather than the applicable law of MCL 780.601. The 180 day rule is not actually written in 768.1, but rather MCR 6.004(A)(C). The Michigan Supreme Court being cognizant of MCL 768.1, and MCL 780.131(2) 180 day rule, did not purposely include MCL 780.601 which contained similar rules, but was aware of the statutory construction of the specific and general rule - IAD is a specific statute applicable only to IAD prisoners. Alternatively, 768.1 and MCR 6.004(A)(C) is applicable to all criminal pre-trial detainees.

Secondly, the Court erred in the denial of relief on the 180 day violation when raised on March 21, 1983, where the Court failed to calculate the days of the IAD provision announced, ruling that a prior waiver had occurred. This was a clear violation of Article VI(a), and Carroll's due process right to equal treatment and protection as other similarly situated IAD prisoners. The Court had an independent duty to treat Petitioner exclusively as an IAD prisoner for his grant or denial of relief to be specifically addressed in this instance. This Equal Protection/Due Process claim is constitutional and falls into the category for a "Fundamental Defect" review under Hill.

Certiorari should be granted, where the alleged waiver of the IAD was inapplicable under the IAD provisions as a **Compact, Statute of Limitations, and Subject-matter jurisdiction, which cannot be waived or forfeited**. See *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 (2006) ("Subject-matter jurisdiction involves a court's power to hear a case, and can never be forfeited or waived").

C. THE FUNDAMENTAL DEFECT EXCEPTIONS SHOULD BE APPLIED IN CARROLL'S IAD CLAIM.

Petitioner contends that *Reed v. Farley*, and part of its holdings are specifically applicable to the determination for relief in accord with the *Hill* fundamental defect standard. *Id.* 512 U.S. at 339-341.

In this case at bar, Petitioner's case does not resemble *Reed's*, nor, in his submitted arguments, because Carroll has an aggregate of constitutional violations shown on the face of his pre-trial, and appellate records during the appeal of rights. Without question had these IAD and Constitutional claims been addressed in the trial court, there would have been no need for a trial upon compliance with the IAD Compact.

It is well-established in law that the most important limitations on the power of government is found in the Fifth and Fourteenth Amendments to the Constitution, entitlements to Due Process. These amendments prohibit the national and state governments, respectively, from depriving any person of life, liberty, or property without due process of law.

As a result of liberal interpretation of the Constitution, the Due Process Clause is now held to be a guarantee of protection from unreasonable procedures and unreasonable laws. See *Mennonite Board of Missions v. Adams*, 462 U.S. 792 (1983). It is also held to be a guarantee of equal protection of the law and guarantees of protection of significant interests.

Petitioner had a significant interest under due process of law to being treated exclusively as an IAD prisoner, the sole purpose behind Michigan initiating the IAD proceedings to obtain him for compliance with the Compact on the untried indictment, information and complaint in accordance with the safeguards of "due process of law" and "equal protection of the law". *Stroble v. Anderson*, 587 F2d at 831 (quoting *Malinski v. New York*, 324 U.S. 401, 413-14, 65 S. Ct. 781, 787, 89 L. Ed. 1029 (1945)).

This Court has stated that habeas review is available to check violations of federal law when the error qualifies as "a fundamental defect which inherently results in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedures." *Reed*, 512 U.S. at 348 (citing cases).

Unlike *Reed*, Petitioner does have aggravating circumstances rendering "the need for the remedy afforded by the writ of habeas corpus... apparent." *Hill*, 368 U.S. at 428.

Further, Reed's argument for entitlement to habeas relief based on the IAD's speedy trial provision "effectuates a constitutional right," the Sixth Amendment's guarantee to a speedy trial, is misplaced as the IAD is a Compact and a federal statute. The Sixth Amendment - [Speedy Trial] is inapplicable to the IAD, as IAD time limitations for trial only apply to IAD prisoners under the Compact's statutory and contractual provisions.

Petitioner raised the following argument to the trial court on relief from judgment on his IAD claims, co-joined with IATC and appellate counsel. See MRJ Issue II at *10.

II. DEFENDANT IS ENTITLED TO RELIEF FROM JUDGMENT WHERE THE TRIAL COURT COMMITTED AN ERROR OF LAW CONTRARY TO MCL 780.601, ARTICLE III, WHERE IT FAILED TO TOLL WHETHER 180 DAYS HAD ELAPSED FOR DISMISSAL UNDER THE IAD; THE TRIAL COURT ERRED AS A MATTER OF LAW WHERE IT ADVISED THE DEFENDANT TO WAIVE HIS SPEEDY TRIAL BY CITING AN INAPPLICABLE 180 DAY RULE; DEFENDANT'S WAIVER IS VOID SINCE IT WAS ACCEPTED UNDER MISADVICE OF LAW; ALTERNATIVELY, TRIAL AND APPELLATE COUNSELS WERE CONSTITUTIONALLY INEFFECTIVE FOR FAILURE TO KNOW AND RESEARCH THE LAWS APPLICABLE TO DEFENDANT'S CASE AND ASSERT THEM IN A TIMELY MANNER; DEFENDANT'S CONVICTION AND SENTENCE SHOULD BE SET ASIDE AS TIME BARRED UNDER THE PROVISIONS OF THE IAD. U.S. CONST. AMS. VI, XIV.

In Issue II, Petitioner presented to the trial court its mistake by the lack of knowledge that he was an IAD prisoner and advising him to waive his speedy trial [constitutional rights] under MCL 768.1, which encompasses the Sixth Amendment's right to Speedy Trial. The language employed by the court is found in MCL 768.1 and MCR 6.004(A)(C). See Adj. Hrg. 2/4/83 at *5.

On February 4, 1983, Articles III(a) and IV(c) had expired before the motion date set for the adjournment hearing. This Court cannot find in any prior proceedings, that any clerk of the court, attorney, prosecutor or member of the bench made an implicit or explicit mention of the IAD. This Court has made it clear that, "Judges and prosecutors are players who are expected to know the straightforward requirements and to make simple time calculations at the outset of the proceedings against a transferred defendant. Reed, 512 U.S. at 570-571.

Petitioner's arguments in Issue II contained Due Process arguments and denial of his Sixth Amendment guarantees to effective assistance of counsel, and on Due Process grounds under the Fourteenth Amendment the right to the effective assistance of counsel on appeal, by the failure to raise the obvious IAD violations, Conflict-of-Interest, IATC and mistakes of law by the court. These constitutional violations support relief under the then recent precedent of *Jones v. Barnes*, 463 U.S. 745 (1983); *Strickland v. Washington*, 466 U.S. 668 (1984); See also *United States v. Cronin*, 466 U.S. 648 (1984).

This Court has made clear that a criminal defendant alleging prejudice under the Strickland test must show that errors committed by counsel were so serious as to deprive the defendant of a fair trial. See *Kimmelman v. Morrison*, 477 U.S. 365 (1986). Error by counsel so serious as to upset the "adversarial balance" between the defense and prosecution is the essence of an ineffective assistance of counsel claim. *Nix v. Whiteside*, 475 U.S. 157 (1986), and an analysis based solely on outcome determination, "without attention to whether the result...was fundamentally unfair or unreliable is defective." *Lockhart v. Fretwell*, 506 U.S. 364, 370 (1993).

Petitioner moved the trial court on relief from judgment for an evidentiary hearing pursuant to MCR 6.508(C); *People v. Ginther*, 390 Mich 436 (1973), on his ineffective assistance of counsel grounds under the Strickland standard for both trial and appellate counsels. Further citing the miscarriage of justice standard and under the Cronin standard - presumption of prejudice that his court-appointed counsel labored under an [actual] on record stated conflict-of-interest. That the Court could find IATC on the IAD grounds raised. The claims raised in the evidentiary motion had been thoroughly federalized for review. See Mtn. Evid. Hrg. (1/23/2018).

The trial court was supplied with due proof of Petitioner's asserted claims, and notably the last reasoned opinion by the state trial court declined to place a procedural bar on the denial of relief from judgment under the rules second or successive. See MCR 6.502(G)(2). Thus, this claim is ripe for review by this Court on the constitutional grounds that were not addressed on their merits.

Petitioner in the Michigan Supreme Court moved for an Article VI(a) time calculation of his Article III(a), IV(c) violations for dismissal of the case. See Defendant-Appellant's In Pro Per Motion for Leave to Supplement Amendment (9/2020).

This time calculation by Petitioner demonstrated the following:

- a. The IAD was triggered by Michigan placing detainer on Carroll on May 7, 1982, while in prison in Arkansas. See MRJ Exhibit C - Detainer;
- b. Defendant on May 7, 1982, signed his request for final disposition, which triggered the 180 day period of the IAD Art. III(a);
- c. On September 23, 1982, Michigan accepted custody of Carroll, 139 days after final disposition request of this prosecutor initiated proceedings. See MRJ Exhibit D - Temp. Custody Receipt;
- d. On September 24, 1982, Carroll arrived in Michigan on the 140th day of the 180 days of Art. III(a); and triggering day 1 of the 120 day provision of the IAD, Art. IV(c);
- e. On September 30, 1982, Carroll was appointed Joseph Baessler as counsel on the 146th day of Art. III(a), and 6 days into the 120 days of Art. IV(c);
- f. On October 29, Carroll was bound over to the Circuit Court on the 175th day of his 180 days of Art. III(a), and 36 days had concurrently passed under the 120 day provision of Art. IV(c);
- g. On November 8, 1982, [10 days] after the bindover to the Circuit, the AOI occurred on the 185th day, 5 days had expired passed the 180 day time period of Art. III(a), concurrently 46 days had passed with the 120 day time period of Art. IV(c). The Court and the People continued to proceed as if they complied with the Compact's statutory time limit of the 180 days under Art. III(a);

h. On January 11, 1983, pre-trial conference was held on the 110th day of the 120 day provision of MCL 780.601, Art. IV(c); and 69 days passed the expired 180 days of Art. III(a);

i. On January 21, 1983, Art. IV(c) 120 day provision expired uninterrupted - 14 days before the alleged Speedy Trial waiver under MCL 768.1, which was recited to Carroll on February 4, 1983;

j. On February 4, 1983, the alleged waiver date, Art. III(a) violation had occurred 93 days prior, and the Art. IV(c) violation occurred 14 day prior on January 21, 1983.

On March 21, 1983, a motion hearing was conducted with Kenneth Siegel - [retained] appearing as substituted counsel. (MT *3). Counsel moved for an adjournment on multiple grounds due to recent retention on March 18, 1983. (3-6). The Prosecutor opposed the defense's motion on multiple grounds. (7-12).

APA Lazzio placed the trial court on notice of the end of the court term, which held a remaining two weeks and that the Court's docket was very crowded in April. (9). The prosecutor was very aware of the 180 day for Speedy Trial purposes [Sixth Amendment], where the record reflects her concern for four of five people in the April term that were set for trial on violent crimes. (9).

APA Lazzio further placed the Court on notice that Carroll was under the IAD for the first and only time since her appearance as the prosecutor of this case. (10).

Miss Lazzio: Judge, there is one other issue too, that Mr. Carroll is currently an inmate I believe in the State of Arkansas, and he is present in the State of Michigan under the Uniform Detainer Act or something to that nature, and according to that, we are bound to try him in the hundred and eighty days, so there has to be a specific addressing of that issue.

Mr. Siegel: If that's the case, I think the hundred and eighty days have already passed.

Miss Lazzio: They have not, Judge.

Mr. Siegel: Mr. Carroll informs me that he thinks he got here September 26th or 27th, and he is willing to waive his right to trial within a hundred and eighty days in any event.

Mr. Carroll informs me that when it was adjourned before, Mr. Baessler request, he already put on the record his agreement to waive the hundred and eighty day requirement.

The Court: Well, I remember him doing that, and I remember scheduling the case for trial at that time, and the trial schedule was arranged to accommodate this case, Mr. Siegel.

If I adjourn it again, I am going to, it's going to have an affect on a whole lot of other case that have been scheduled as they were because this trial was adjourned before,

How many witnesses do you have subpoenaed, Miss Lazzio.

(MT, 3/21/83, pp. 10-11).

This disposition of the motion hearing supports that an Article III(a) violation occurred by the Court's failure to address the IAD pursuant to the Compact's agreement terms of Articles III(a), VI(a). Carroll was entitled to his Due Process of Law and Equal Protection by the simple counting of the duration and expiration period of MCL 780.601, Art. III(a), under Art. VI(a).

The historical facts, supports that Carroll was never advised of his IAD rights prior to the February 4, 1983, hearing, nor did the Court obtain a specific waiver in accordance with the expressed language of the IAD, but, rather, the language of MCR 6.004(A)(C), recital for MCL 768.1 - Speedy Trial. See Adj. Hrg, at 2/4/83 at 5.

Carroll expressed in his motion for relief from judgment, the court's error in statutory construction between the IAD statute versus Speedy Trial statute. See MRJ Mem. of Law in Support at *15.

Carroll further employed the legal reasoning that an expired statute of limitation cannot be waived under the IAD. Further, Carroll demonstrated by the record a constitutional reason why he had not promoted an IAD defense on February 4, 1983, that Attorney Baessler was laboring under a conflict of interest, the reason for the adjournment, stating, "It would be difficult,

if not impossible to prepared for trial." (2-3). Further, that the prosecutor had not been ready for trial before February 4, 1983, because of a trial before this court.(3).

These constitutional problems that Petitioner had incurred pre-trial on "IATC" grounds were so prevalent in the States and Federal Courts that by the 1980's this Court laid a series of precedent cases on the constitutional duties and responsibilities regarding the effective representation of criminal defendants. See e.g., *Cuyler v. Sullivan*, 446 U.S. 335 (1980)(Conflict of Interest). See also *United States v. Cronin*, 466 U.S. 648 (1984); *Strickland v. Washington*, 466 U.S. 668 (1984)(IATC).

These three case in particular address the specific circumstances of the constitutional violations that concurrently affected Carroll's IAD relief and serve as the requisite causes for a "Fundamental Defect" determination for relief.

Attorney Baessler, first and foremost labored under a conflict of interest which affect his trial preparation and discerning of any defenses due Carroll, specifically, the IAD defense. See *Williams v. Taylor*, 529 U.S. 362, 391-92 (2000)("there are ...situations in which it would be unjust to characterize the likelihood of a different outcome as legitimate "prejudice"). In rare cases, such as this one where the burden is meet by showing a reasonable probability of a different outcome but for counsel's error. However, due to concerns about fundamental fairness, the court may also examine whether counsel's ineffective assistance "deprive[d] the defendant of a substantive or procedural right to which the law entitles him." *Williams*, 529 U.S. at 392-93. The IAD defense was such a right in this case.

In regards to Attorney Siegel, the impediment of his preparation, research and investigation of the case was shown on the March 21, 1983 motion hearing. Counsel's retention so close to the hearing was a circumstance that he could not provide effective assistance, due to the belated and surprise announce that his client was an IAD inmate. Therefore, without adequate notice counsel could not prepare an IAD defense, which was an "absolute defense."

In *United States v. Cronin*, this Court noted circumstances that warrant the presumption of prejudice. Prejudice occurs when the circumstances are such that "even a fully competent [attorney], could [not] provide effective assistance of counsel." *Cronin*, 466 U.S. at 659. Circumstances falling into this category includes the appointment of counsel "so close upon trial [or hearing] as to amount to denial of effective and substantial aid." *Id.* at 660 (quoting *Powell v. Alabama*, 287 U.S. 45, 53 (1932)) (emphasis added).

Petitioner's trial record demonstrates that Siegel was retained the weekend prior to the [Monday] March 21, 1983 motion hearing, and was not prepared for trial, least of all a surprise notice of the IAD. The record reflects such unpreparedness, where counsel cited the wrong dates for the Art. III(a) argument before the Court.

Further, the dates cited were applicable to Art. IV(c) to determine the 120 day calculation for Art. VI(c). Egregiously, counsel contended that he could waive the IAD statutory time limits, under the IAD Compact. Therefore, counsel inability to research laws applicable to his client's defense, an unawareness that Carroll was an IAD prisoner, supports a different result but for counsel's error and that if raised or properly argued the IAD claim(s) were ripe for dismissal.

Moreover, the State conceded to this fact, that had counsel moved for the dismissal under the 120 that it would have been granted. See People's Answer in Opposition to Defendant's Application for Leave to Appeal - MISCT No. 129114 (12/22/05).

The State being represented by Donald A. Kuebler, Chief, Research, Training & Appeal, Assistant Prosecuting Attorney for Genesee County in opposition made the following concessions:

- a. That on March 21, 1983, - "trial prosecutor opposed the second request for request for continuance. The prosecutor being cognizant of the Interstate Agreement of Detainers, pointed out that the defendant was an Arkansas prison inmate, but that he was present in Michigan for trial in the case sub judice" [Trans. Mar. 21, 1983, pp. 7-9] Brief in Op. at 9.
- b. The discussion concerning defendant's motion for trial continuance between defendant, defense counsel, the trial prosecutor and the trial court, appeared to involve the 180 day speedy trial provision of the IAD. Brief at 10.
- c. Had defendant gone to trial on February 4, 1983, as originally scheduled, his trial would have commenced on day 131, or eleven days beyond the 120 day period. Had a motion been made pursuant to Article IV, an order for dismissal may have been appropriate. Brief at 13.
- d. Had the trial court denied defendant's first request for continuance defendant may well have sought reversal after conviction on appeal because defense counsel was not prepared to conduct the trial. Brief at 13-14.

APA Kuebler saw every fundamental defect in Carroll's case regarding the IATC, and omissions of appellate counsel, rather than promote the purpose of the IAD, per the IAD Compact's agreement, he denounced them - stepping on the fabric of Carroll's constitutional claims of the Sixth and Fourteenth Amendment of the Federal Constitution. Brief at 22-23.

Writ should be granted where Petitioner has demonstrated that the State of Michigan contrary to MCL 780.603, knowingly, and willfully refused to enforce the agreement and effectuating its purpose, as admitted by State in its responsive pleadings and opinions/orders of the State Courts.

D. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, AS SHOWN WAS A CONSTITUTIONAL VIOLATION UNDER THE DUE PROCESS CLAUSE AND WAS CAUSE FOR FAILURE TO RAISE THE NUMEROUS IATC GROUNDS AND IAD DEFENSES.

Petitioner had a Due Process right to effective assistance of appellate counsel on his direct appeal. See *Evitts v. Lucey*, 469 U.S. 387 (1985); *Jones v. Barnes*, 463 U.S. 745, 749 (1983). The standard for judging ineffective assistance of counsel is the same for both trial and appellate lawyers under the Strickland standard. See *Whiting v. Burt*, 395 F3d 602, 617 (6th Cir. 2005).

The Sixth Circuit Court of Appeals has suggested the following list of considerations that ought to be taken into account in determining whether an attorney on direct appeal has performed reasonably competently. See *Mapes v. Coyle*, 171 F3d 408, 427-428 (6th Cir. 1999) (list is not exhaustive, nor designed to produce a correct "score," and is merely offered as list to be considered).

What the Sixth Circuit saw for consideration of the ineffective claims, as applicable to Petitioner are - his omitted issues were significant and obvious, i.e., IATC, IAD, Conflict-of-Interest, and the impediment of the IAD defense attributable to the prosecution and court; Carroll's inability to meet with appellate counsel and go over possible issues since he had been returned to Arkansas to complete his prison term. Lastly, Carroll's issues of relief from judgment(s) were clearly stronger than those presented on direct appeal.

On July 13, 1984, appointed appellate counsel, Earl R. Spuhler P20863, only raised three grounds, none of which were - IATC, the IAD, or the Conflict of Interest, which were apparent of the face of the pre-trial record.

Moreover, the Genesee County Prosecutor's office on the IAD claim found that had counsel raised the 120 claim it may have been grounds for dismissal. See MISCT Appellee Brief in Op. at 13.

Carroll raised in his second motion for relief from judgment, which attacked the judgment of denial of his original 180 day claim raised pre-trial, and the ruling of his original motion for relief from judgment on the 120 day IAD claim, asserting that the Courts misapplied the IADs congressional intent and the waiver ruling as applied to his case.

Carroll further raised several structural trial court errors, the swearing [absence of oath] to inpanel his jury, and the jury verdict form's absence of a general "NOT GUILTY" verdict on due process grounds. These claims were along with the IAD raised as jurisdictional defects.

Appellate counsel could have, but did not raise these claims. Thus, the existence of certain structural defects in a trial, such as in this case, as the deprivation of the right to counsel, requires automatic reversal of the conviction, because it infects the entire trial process. See *Brecht v. Abrahamson*, 507 U.S. 619, 629-30 (1993).

This Court has routinely found constitutional error without any specific showing of prejudice to a defendant when the counsel is either totally absent, or prevented from assisting the accused during a critical stage of the proceedings. *Cronic*, 466 U.S. at 659, n. 25; *United States v. Minsky*, 963 F2d 870, 874 (6th Cir. 1992).

For all intended purposes, Petitioner was denied his right to counsel from apparent conflict of interest of appointed counsel; on the recently retained counsel first appearance stating his need for preparation, and investigation to research Carroll's case - surprise IAD notice. *Cronic*, Id. at 659.

Had appellate counsel himself researched the laws and facts of the case, he could have raised that Carroll did not waive the IAD at anytime, since the accused must "know what he is doing" so that "his choice is made with eye open." *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942).

Petitioner pre-trial, trial or appeal never had the counsels guaranteed under the Sixth and Fourteenth Amendment, where these counsels failed and/or were impeded from being effective. This Court in *Von Moltke v. Gillies*, 332 U.S. at 708 (1942), held:

"It is not for a lawyer to fabricate defenses, but he does have an affirmative obligation to make suitable inquiry to determine valid ones exist. Such duty is imposed for salutary reason that 'prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then offer his informed opinion as to what plea should be entered.'" *Id.* at 721.

Under due process of law, ...requires that the accused should be advised of the charges and a reasonable opportunity to meet the defense, or by an explanation. This includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty imposed. See *Cooke v. United States*, 267 U.S. 517, 537 (1925) (emphasis added).

In this case, Certiorari should be granted because Carroll's IAC claims and IAD claims involves the Court's authority to enforce Compacts, and the ability to provide remedies necessary to prevent abuse. This Court may further invoke the equitable principles as consistent with the Compact itself, to devise fair solutions to disputes and provide effective relief for violations. See e.g., *Kansas v. Nebraska*, 574 U.S. 445, 470-71 (2015).

II. CARROLL'S CLAIM REGARDING AN UNSWORN JURY IS A QUESTION OF LAW OF WHETHER DUE PROCESS REQUIRES THAT A JURY BE SWORN UNDER THE SIXTH AMENDMENT'S GUARANTEE TO AN IMPARTIAL JURY. U.S. CONST. AMS. VI, XIV.

Petitioner raised in the Michigan State Courts that his judgment of sentence was void due to the absence of the verbatim swearing to enpanel his jury and that this claims was cognizable for relief from judgment pursuant to MCR 6.508(D)(3), as a jurisdictional defect.

This Court may further consider that Petitioner raised a claim that there was cumulative effect of trial errors which denied him due process and that the trial record supports the fundamental unfairness and unreliable results - and that due process of law was denied by the cumulative effect of trial counsel's deficient performance and should be evaluated for their prejudicial effect under the Strickland standard.

Further, this Court may note that in Petitioner's Statement of Jurisdiction for relief from judgment, the citation of controlling Michigan case law and federal law that his claims were jurisdictional and his judgment and sentence were void as a nullity, and could raise an "Actual Innocence" claims to avoid any procedural bars.

Moreover, a cursory review of the last reasoned opinion by the trial court shows that it did not place any procedural bars in the denial for relief from judgment. Further, avoided addressing the IATC claims on their merits or on appellate counsel grounds to avoid such procedural bars.

When a state court fails to adjudicate a habeas petitioner's claims on the merits, federal habeas review is not subject to the deferential standard contained in §2254(d) and a federal court is required to review that claim de novo. *Cone v. Bell*, 129 S.Ct. 1769, 1784 (2009).

Here, the trial court addressed the jury oath issue as a [sufficiency] to the oath. The argument before this Court is that the oath to be charged for inpaneling the jury by statute is mandatory, and in accordance with due process of law is to be transcribed. Further, the absence of the transcribed oath is reviewable to ascertain if due process of law was constitutionally adhered to under the Sixth Amendment's guarantee to an impartial jury, and the Fourteenth Amendment's equal protection of the law.

The problem with the state's denial of relief was premised on a *People v. Cain*, 498 Mich 108 (2015), where the state Supreme Court disregarded past case law, which disregarded past case law which allowed for automatic reversal for an unsworn jury. See *People v. Pribble*, 72 Mich App 219 (1976).

This Court should note in *Cain*, the lengthy dissent by Justice Viviano, who laid out the historical and common law history of the swearing/oath for inpaneling a criminal jury. *Cain*, 498 Mich at 129-161 (dissenting Viviano, J.).

Further, pointing out the holdings in other states that failure to swear the jury constitutes a mistrial and/or a jurisdictional defect. *Cain*, *Id*. See also *Dennis v. United States*, 339 U.S. 162, 171 (1950)(holding, "an impartial jury is one that can honor their oath").

Therefore, the inpaneling oath is the latchkey to a properly inpaneled jury that is affirmed to try the case in a just and impartial manner and in accordance to the law and evidence. See *Skilling v. United States*, 561 U.S. 538, §98-99 (2010). The absence of the oath to determine the duty imposed on the jury, questions whether the jury in Petitioner's case met the demands of the Sixth Amendment for an impartial jury.

The oath's procedural and substantive due process of law are found in the statute - MCL 768.14 and in applicable court rule, MCR 6.412(F) regarding the mandatory charging of the swearing/oath. See also MCLA §600.1111;MSA 27a.1111; MCR 8.108(B)(1)(a-d).

It is well-established law that, "[C]ourts, in construing Constitution, are obligated to resort to historical evidence, and to seek meaning of words in use and in opinion of those whose relations to government, and means of knowledge, warranted them to speak with authority." *Veaszie Bank v. Fenno*, 75 U.S. 533 (8 Walls) 533, 19 L.Ed. 482 (1869). Thus, the interpretation of Constitution is necessarily influenced by fact that its provisions are framed in language of English Common law and are to be read in light of its history. *Smith v. Alabama*, 124 U.S. 465, 8 S.Ct. 564, 31 L.Ed 508 (1888); *Mc Pherson v. Blacker*, 146 U.S. 1, 13 S.Ct. 3, 36 L.Ed 869 (1892).

The Michigan state courts knew that the common law history of the jury, that a criminal jury must be affirmed by oath. Moreover, due process of law enjoins upon the jury that the jury be given notice of their legal obligations as jurors upon oath - MCL 768.14. Further, at any stage that the accused be able to challenge the validity of the oath reviewable of direct and/or collateral reviews.

This Court looking again at the *Cain* case, Cain's jury was given the voir dire oath, which did not bind them to their obligation to judge the evidence under the law. Thus, as in Petitioner's case the absence of the correct oath was not supported by the transcribed record, but, the other charging oaths were provided. Therefore, there is no reason to assume that Petitioner's jury were constitutional affirmed absence record of the oath.

In this matter before the Court there is not a Supreme Court precedent regarding whether the absence of an unsworn jury is a structural error and jurisdictional defect on Sixth Amendment grounds as argued by Petitioner to the State of Michigan. Therefore, Petitioner moves this Honorable Court grant Certiorari on the Due Process grounds that the Sixth Amendment requires a verbatim swearing of the jury oath, or reversible error occurs, and a new trial in all cases should be ordered.

III. CARROLL'S DEFECTIVE JURY VERDICT FORM SHOULD BE REVIEWED UNDER THE BRECHT STANDARD FOR SUBSTANTIAL AND INJURIOUS EFFECT AND UNDER THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM. U.S. CONST. AMS VI, XIV.

The passage of the AEDPA in 1996, did not replace the Brecht standard of "substantial and injurious effect"; Brecht remains the correct standard of review in assessing the prejudicial impact of federal constitutional error in a criminal trial in state court. See *Fry v. Pliler*, 551 U.S. 112, 119-120 (2007); *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

Petitioner on relief from judgment raised that he was entitled to relief from judgment since his jury verdict form was absence a general "NOT GUILTY" verdict of the listing of [all] his possible verdicts. See MRJ Exhibit I - Jury Verdict Form (4/8/83).

As opined in the opinion of denial, the trial court observed the correct legal standard, that the criminally accused is entitled to a properly instructed jury. *People v. Hawthorne*, 474 Mich 174, 182 (2006) MRJ Op. at 2 (8/18/19).

Further, "the accused is entitled to a properly formulated jury verdict form". MRJ Op. at *2. Per Petitioner's pleadings and the opinion of denial there were ten possible verdicts in this case. Op. at *3.

The Court noted that this error was not preserved and counsel expressed satisfaction, and clear error must be established to warrant relief. Moreover, no post-conviction effort nor post-appeal endeavor addressed the error claimed now. Op. at ¶3, p. 3.

The Court further opined that a verdict form is erroneous if it forestalls the possibility of a general verdict of not guilty and/or by its flow compels only a guilty verdict. See *People v. Wade*, 283 Mich App 462, 467 (2009).

The denial of relief was based on the fact that counsel agreed to the jury instruction, but missed the point of Carroll's numerous deficient acts of performance of trial counsel, and did not analyze this claim under the Strickland standard to assess the deficient performance in aggregate to determine prejudice. See *Wiggins v. Smith*, 539 U.S. 510, 534-36 (2003) (The totality of errors must be considered to properly determine prejudice). MRJ Br. at 29.

Under the Brecht standard, "If the judge has "grave doubt," meaning "the matter is so evenly balanced" as to whether the error had a substantial and injurious effect, the judge must find in favor of habeas petitioner." *O'Neal v. McAninch*, 513 U.S. 432 (1995). See e.g., *Robertson v. Cain*, 324 F3d 297, 309-10 (5th Cir. 2003) (erroneous jury instruction effectively enabling jury to convict defendant of murder without specific intent to kill created a grave doubt on reliability of verdict); *Jackson v. Edwards*, 404 F3d 612, 627-28 (2d Cir. 2005) (federal habeas relief granted because the jury instruction violated due process).

Here in accord with the Brecht standard the trial court did find doubt in the jury verdict form and stated. "[W]hile another verdict form - one listing an option of not guilty for each of the numerous charges - would have been a legitimate option..." Op. at 4.

The real question for review is, was the formulation of the jury verdict form have the possibility to confuse or mislead the jurors into a verdict on the highest charge. Noteworthy, the jury verdict form was read to the jury.

This Court may note that in this case, the trial court did not engage in its duty to review this claim for "substantial and injurious effect or influence in determining the jury's verdict under this Court's precedent cited in this case.

Petitioner contends that the failure to include a choice of NOT GUILTY to align with each stated possible verdict, was erroneous and misled his jury which denied him the right to have a [properly] instructed jury... where the evidence did not support that defendant intended to rob and/or murder the decedent . See MRJ Amend/Supplement to MRJ at ¶3, p. 4.

Further, the failure to review these claims under the applicable standard of review of Strickland for both trial and appellate counsels, this Court may further review these claims as contrary to or an unreasonable applicable of Supreme Court precedent as cited in Petitioner's arguments to the State Courts.

Writ of Certiorari should be granted on Ground Three upon the finding of error in the jury verdict and/or on the IATC claim and appellate counsel claim, a structural error review is therefore appropriate.

CONCLUSION

In conclusion, Petitioner Carroll claims support the granting of certiorari, where the IATC claims amount to a constructive and/or actual denial of counsel contrary to the Sixth Amendment's right to counsel under both the Cronin and Strickland standards. See Strickland, 466 U.S. at 692. Petitioner then would be entitled to the presumption of prejudice.

Further, on the IATC grounds applicable to the IAD, this Court may employ the applicable equitable doctrines when evaluating the misrepresentation by the State Prosecutor by failing to timely disclose the IAD to the court and trial counsel for IAD relief.

The consideration requested is that this Court review these claims under well-established Compact laws and application, where Congress considered all legal consideration when it created the Interstate Agreement on Detainer, and set forth specific statute of limitation laws in the contractual agreement terms of the IAD as a Compact, and incorporated subject-matter jurisdiction clause. See *Bowen v. Johnston*, 306 U.S. 19, 23-24 (1939) ("If it be found that the Court had no jurisdiction to try the petitioner, or that in its proceedings his constitutional rights have been denied, the remedy of habeas corpus is available"); *Hill v. United States*, 368 U.S. 428 (Fundamental defect resulting in a miscarriage of justice).

This Court is well aware of the "miscarriage of justice pre-AEDPA standard Supreme Court case - *McCleskey v. Zant*, 499 U.S. 467, 494 (1991), and *Sawyer v. Whitley*, 505 U.S. 333, 346-47 (1992), which permit Petitioner to show actual innocence on successive claims, petitioner must show by clear and convincing evidence that no reasonable juror would have found him eligible for death penalty under applicable state law.

Petitioner contends that where the State of Michigan has admitted error and that an IAD violation, and Petitioner has shown other acts that constitute IAD violations, logically he could not have been tried and found guilty; therefore, with no jurisdiction to find Petitioner guilty in a criminal matter the presumption of innocence does not disappear. An "Actual Innocence" and "Legally Innocence" claims are conjunctive and may be applied to overcome 28 U.S. 2244(b)(2)(B).

Petitioner's Innocence claim premised on the cumulative due process IAD, IATC, trial court errors and prosecutorial misconduct further allows this Court to review relief request under the individual harmless errors requiring reversal because of their cumulative effect. See *Taylor v. Kentucky*, 436 U.S. 478, 488 n. 15 (1978)(cumulative errors violate due process guarantee of fundamental fairness and necessitate new trial).

Lastly, the law of the case doctrine, does not prohibit the court's power to reconsider those ruling, as the law of the case doctrine is discretionary. *Arizona v. California*, 460 U.S. 605, 618 (1983). Rather, "A clear conviction of error on a point of law...will prevail over the "law of the case." *Id.* 618.

WHEREFORE, Petitioner Michael Anthony Carroll humbly prays that this Court review the asserted claims for plenary review, as the claims assert questions of law important to the construction and interpretation of the IAD applicable to the 48 signatory states, and where the states are in controversy where there is no Supreme Court precedent on the applicability of the oath as a constitutional Sixth Amendment guarantee for an impartial jury.

This Court should therefore order the Respondent to forward the complete State file, pleadings to the State Courts and provide this Court with the complete IAD file and correspondence transmitted between Arkansas and Michigan to ascertain the knowledge of the Court and prosecutor of receiving state's jurisdiction for IAD compliance.

Alternative order responsive pleadings of the parties regarding any of the allegations in this petition, or relief this Honorable Court may deem appropriate.

Respectfully submitted,

Date: April 29, 2021

/s/ Michael A. Carroll #149733

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