No. 21-____

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL ANTHONY CARROLL

Petitioner,

v.

STATE OF MICHIGAN,

Respondent.

PETITIONER'S APPENDIX

BY: Michael A. Carroll #149733
Petioner In Pro Se
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

TABLE OF CONTENTS

TABLE OF CONTENTS - (CONT.)

APPENDIX A

Order of the Michigan Supreme Court in Michigan v. Carroll, 2021 Mich. LEXIS 245 (Mar. 2, 2021), Reconsideration denied

Order

Michigan Supreme Court
Lansing, Michigan

March 2, 2021

Bridget M. McCormack,
Chief Justice

161295(21)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 161295
COA: 351741
Genesee CC: 82-031970-FC

MICHAEL ANTHONY CARROLL,
Defendant-Appellant.

/

On order of the Court, the motion for reconsideration of this Court's November 24, 2020 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 2, 2021

Clerk

b0222

APPENDIX B

Order of the Michigan Supreme Court in Michigan v. Carroll, 2020 Mich. LEXIS 2064 (Nov. 24, 2020), App. Lv. Appeal denied

Order

Michigan Supreme Court
Lansing, Michigan

November 24, 2020

161295 & (18)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 161295
COA: 351741
Genesee CC: 82-031970-FC

MICHAEL ANTHONY CARROLL,
Defendant-Appellant.

/

On order of the Court, the motion for leave to amend supplement is GRANTED to the extent that it adds additional arguments, but is DENIED in all other respects. The application for leave to appeal the March 11, 2020 order of the Court of Appeals is considered, and it is DENIED, because the defendant's motion for relief from judgment is prohibited by MCR 6.502(G).

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 24, 2020

Clerk

b1116

APPENDIX C

Order of the Michigan Court of Appeals in Michigan v. Carroll, 2020 Mich. App. LEXIS 1856 (Mar. 11, 2020), Lv. Appeal denied

Court of Appeals, State of Michigan

ORDER

People of MI v Michael Anthony Carroll

Docket No. **351741**

LC No. **82-031970-FC**

Christopher M. Murray, Chief Judge, acting under MCR 7.203(F)(1), orders:

The Court orders that the motion to waive fees is GRANTED for this case only.

The motion to amend the delayed application is GRANTED.

The delayed application for leave to appeal is DISMISSED. Defendant has failed to demonstrate his entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. MCR 6.502(G).

The motion to remand is DISMISSED.

Christopher Murray

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 11 2020

Date

Jerome W. Zimmer Jr.

Chief Clerk

APPENDIX D

Order/Opinion of the Genesee Cty. Cir. Ct. in Michigan v. Carroll, Case No. 82-31970-FC, on Relief from Judgment (2nd MRJ, Aug. 8, 2019), denied; Evidentiary Hearing, denied (Aug. 8, 2019)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff, **CASE NO. 82-31970-FC**

-vs- **JUDGE JOSEPH J. FARAH**

MICHAEL A. CARROLL, **OPINION REGARDING MOTION FOR RELIEF FROM JUDGMENT**

Defendant.

At a session of said Court held in the City of Flint, County of Genesee, State of Michigan on the _____ day of August, 2019.

PRESENT: HONORABLE JOSEPH J. FARAH, CIRCUIT JUDGE

Defendant Michael Carroll challenges his conviction and sentence for first degree murder in a combined motion for relief from judgment. Together his motions raise four claims of error he believes warrant relief. The Court will discuss each, albeit in a different order than presented, devoting the time needed as related to the merits.

Carroll continues to claim the circuit court had no jurisdiction to try his case because of a violation of MCL 780.601, the Interstate Agreement on Detainers. At bottom Carroll's claim is a speedy trial violation. However, this issue was previously raised – and rejected – in a prior motion filed by counsel on Carroll's behalf. His repackaged arguments, based on everyone involved misunderstanding, misapprehending, and misrepresenting the issue, makes his claim no better than it was previously. No relief is warranted.

Carroll also claims that, basically, his trial was a nullity because his jury was not sworn. No one can reasonably dispute that trial by an unsworn jury is error warranting reversal. See *People v Allan*, 299 Mich App 205 (2013); lv denied 494 Mich 863 (2013). Yet this is not Carroll's precise argument, nor can it be because the record indicates:

THE COURT: Miss Lazzio, are the People satisfied with the jury?

MS. LAZZIO: Yes, we are, Judge.

THE COURT: Mr. Siegel, are you satisfied with the jury?

MR. SIEGEL: We are satisfied, Judge.

THE COURT: Ladies and gentlemen, I will ask that you rise and raise your right hands to be sworn by the clerk. (Whereupon the jury was sworn by the clerk.)

Those of you who were not selected on this jury should return to the fourth floor jury room. Thank you.

As can be gleaned from review of the record, the jury was sworn and Carroll's claim to the contrary quickly loses altitude. The Court will regard Carroll's challenge as one to the sufficiency of the oath.

The analysis begins with recognizing no particular oath is required so long as what is presented instills in the jury the solemnity and weightiness of its task. Giving the wrong oath may not be reversible error. See *People v Cain*, 498 Mich 108 (2015).

The instant record is indistinguishable from the record in *People v Kleehammer*, Court of Appeals No. 289570, unpublished opinion[1] of the Court of Appeals released January 26, 2010. At the conclusion of jury selection, the following occurred:

THE COURT: Would you please swear the jury to hear the case.

All stand to take the oath of the jurors.

(9:28 a.m. – jury sworn)

Like in *Kleehammer*, Carroll has no support on his claim the jury was not sworn, nor insufficiently sworn, nor that the record supports either position. Defendant cannot show plain error concerning the trial court's actions in having the prospective jurors, and the jury, sworn prior to trial.

Carroll's next issue warrants fuller discussion. He maintains his jury verdict form limited the jury's options to the point that he could not receive a favorable verdict. Accordingly, he contends, a new trial is warranted.

As a threshold matter, the Court observes that the jury verdict form is part of jury instructions. *People v Garcia*, 448 Mich 442, 483-484 (1995). Moreover, the criminally accused is entitled to a properly instructed jury. *People v Hawthorne,* 474 Mich 174, 182 (2006). Axiomatically, therefore, the accused is entitled to a properly formulated jury verdict form. Michigan's appellate courts have frequently addressed the sufficiency of a jury verdict form, especially of late. The decisions specifically address the precise shortcomings in those verdict forms and grant – or deny relief – accordingly. The Court believes it is likely most prudent to start with Carrol's verdict form and juxtapose it with those in the applicable cases.

As a backdrop, the Court observes that the trial judge instructed the jury on the possible verdicts as follows:

---

[1] This Court recognizes that unpublished opinions of the Court of Appeals are not binding but may be considered. MCR 7.215.

THE COURT: There are ten possible verdicts in this case. When you have agreed upon a verdict, the foreperson should mark that verdict on the verdict form that will be given to you and notify the Court officer. The possible verdicts are as follows:

No guilty, guilty of first degree murder, guilty of second degree murder, guilty of involuntary manslaughter, guilty of assault with intent to rob armed, guilty of assault with intent to rob unarmed, guilty of attempted armed robbery, guilty of attempted unarmed robbery, guilty of attempted larceny from the person, guilty of negligent use of a firearm.

THE COURT: People satisfied with the instructions as given?

MISS LAZZIO: We are satisfied.

THE COURT: Mr. Siegel, is that correct?

MR. SIEGEL: Yes, we are satisfied. That is correct.

The verdict form correspondingly indicates:

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one box on this sheet.

- Not Guilty
- Guilty of First Degree Murder
- Guilty of Second Degree Murder
- Guilty of Involuntary Manslaughter
- Guilty of Assault with Intent to Rob Armed
- Guilty of Assault with Intent to Rob Unarmed
- Guilty of Attempted Armed Robbery
- Guilty of Attempted Unarmed Robbery
- Guilty of Attempted Larceny from the Person
- Guilty of Negligent Use of a Firearm

The Court begins its analysis of the issue by establishing the framework for review of Carrol's claims. Because any error was not preserved (indeed trial counsel expressed satisfaction), clear error must be established to warrant relief. Additionally, no post-conviction effort nor post appeal endeavor addressed the error claimed now. Nevertheless, this Court will consider it, albeit under the restrictive standard.

Reading the applicable cases harmoniously renders the conclusion that a verdict form is erroneous if it forestalls the possibility of a general verdict of not guilty[2] and/or by its flow compels only a guilty verdict. Where a not guilty verdict is stated only within a particular count and then not repeated in additional counts, a "general not guilty verdict" is not stated. However, preservation of an accused's right to a jury trial and a

[2] See *People v Wade*, 283 Mich App 462, 467 (2009).

corresponding properly instructed jury through a proper jury verdict form is not accomplished by one type of verdict form. The test is whether sufficient opportunity was given to the jury to acquit the accused.

Verdict forms were found wanting in *People v Grondin III*, Court of Appeals No. 331809, unpublished, Mich App June 12, 2018, relying on *People v Wade*, 283 Mich App 462, 464 (2009). However, in each of those cases, the not guilty option was either subsumed under a particular count and not repeated regarding a lesser offense or not stated generally unconnected to a particular count on the verdict form.

The shortcoming claimed by Carroll on his verdict form cannot be squared with the applicable precedents. His verdict form contained a separate, unconnected to or subsumed in any particular count, not guilty option. It stood separate and apart and atop any verdict of guilty for any crime. Carroll's jury was given ample opportunity and ability to acquit him. While another verdict form – one listing an option of not guilty for each of the numerous charges – would have been a legitimate option,[3] the selection of a verdict form listing a not guilty option standing apart – and agreed to by counsel[4] cannot be deemed clear error. No relief is warranted.

Having disposed of all of Carroll's claims against him, any related claim of counsel's ineffectiveness additionally precludes relief.

IT IS SO ORDERED.

JOSEPH J. FARAH, Circuit Judge

Dated 8/8/19

[3] See *People v Muhammad*, Court of Appeals No. 301944, unpublished, Mich App June 28, 2012.

[4] See *People v Robinson*, Court of Appeals No. 342261, unpublished, Mich App May 9, 2019.

APPENDIX E

Motion for Relief from Judgment in Michigan v. Carroll, Case No. 82-31970-FC submitted (1/23/2018)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

MICHAEL ANTHONY CARROLL #149733,
Defendant In Pro Per.

Case No. 82-031970-FC
Hon. Joseph J. Farah

Genesee County Prosecutor
Attorney for the Plaintiff

MOTION FOR RELIEF FROM JUDGMENT

NOW COMES, Michael A. Carroll, MDOC No. 149733, and moves this Honorable Court for Relief from Judgment pursuant to **MCR 6.500 et seq.**, and the following reason in support:

1. On May 7, 1982, while serving a 20 year sentence in the State of Arkansas, Defendant was served with a detainer on a pending charge of murder in the State of Michigan, County of Genesee.

2. On September 23, 1982, temporary custody was turned over to two City of Flint Detectives to bring defendant to the jurisdiction of Michigan.

3. On September 24, 1982, Defendant Carroll was surrendered to the custody of the Genesee County Sherriff's Department and lodged in the Genesee County Jail.

4. On September 29, 1982, Defendant was arraigned in th e68th District Court for the City of Flint.

5. On September 30, 1982, **Joseph E. Baessler P23968** was appointed as counsel for defendant.

6. On March 21, 1983, Attorney **Kenneth M. Siegel P20431** made an appearance as retained counsel for defendant and moved the trial court for an aorder of substitution for Attorney Joseph E. Baessler. The order was later granted on the first day of defendant's trial.

7. On March 29, 1983, Defendant's trial began - Attorney Joseph E. Baessler granted a withdrawal as court appointed counsel.

8. On April 8, 1983, Defendant's jury found him guilty of 1st Degree Murder.

9. On April 21, 1983, the Honorable Robert **M.** Ransom sentenced Defendant to LIFE w/o parole on the murder, with 211 days credit for time spent in custody.

10. Defendant timely filed a notice of appeal as of right and appointment of appellate counsel.

11. On June 8, 1983, **Charless A. Grossman** was appointed as appellate counsel.

12. On September 19, 1983, an order was filed for substitution of counsel - **Earl Spuhler** for **Charles A. Grossman.**

13. On July 16, 1984, while defendant Carroll was serving the remainder of his sentence in the State of Arkansas, Attorney Spuhler filed defendant's brief on appeal in the Michigan Court of Appeals. Although, Attorney Spuhler identified an **IAD** issue in defendant's case in the Statement of Facts, counsel did not raise any **IAD** issues or claims of ineffective assistance of counsel(s).

14. On December 3, 1985, the Court of Appeals affirmed defendant's conviction and sentence.

15. Defendant by-and-through Attorney Earl Spuhler timely filed Defendant's Leave to Appeal the Michigan Court of Appeals' opinion affirming conviction. On June 6, 1986, the Michigan Supreme Court denied the Application for Leave to Appeal.

16. In 1987, Defendant Carroll was returned to the State of Michigan on a detainer after serving his term of imprisonment in the State of Arkansas.

17. On February 28, 2001, defendant through retained counsel **Angela D. Collette** filed a Motion for Relief from Judgment.

18. On November 17, 2003, the trial court denied the Motion for Relief from Judgment.

19. Defendant through retained counsel **Michael Skinner** filed a Delayed Application for Leave to Appeal in the Michigan Court of Appeals, which was subsequently denied on June 28, 2005.

20. On December 6, 2005, the Michigan Supreme Court issued an order directing the Genesee County Prosecutor to answer defendant's application for leave to appeal on the 120 day rule of the **IAD.**

21. On December 27, 2005, the People answered in Opposition for Leave to Appeal citing that defendant waived his 180 Speedy Trial and therefore subsequently waived his 120 rule claims. (emphasis added).

22. Defendant now asserts that his case was wrongly decided on the facts and laws that were misapplied and/or misrepresented to him by the assigned counsel, retained counsel, prosecutor and the trial court contrary to the state and federal constitutions guarantees to Due Process of Law and guarantees to effective assistance of trial and appellate counsels. USCA AMS V, VI, XIV.

23. Defendant is entitled to relief from Judgment and a new trial for the following grounds establishing "actual prejudice", and "cause" as more fully argued in the attached Memorandum of Law in Support:

A. DEFENDANT IS ENTITLED TO RELIEF FROM JUDGMENT WHERE THE TRIAL RECORD IS ABSENT OF THE VERBATIM SWEARING TO ENPANEL THE JURY; THE FAILURE TO PROPERLY SWEAR THE JURY CONSTITUTED A VOID JUDGMENT AND IS COGNIZABLE FOR RELIEF PURSUANT TO MCR 6.508(D)(3), AS A JURISDICTIONAL DEFECT. U.S. CONST. AMS VI, XIV.

B. 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 AND CORRECT MANNER; DEFENDANT'S CONVICTION AND SENTENCE SHOULD BE SET ASIDE AS TIME BARRED UNDER THE PROVISIONS OF THE IAD. US CONST. VI, XIV.

C. THE CUMULATIVE EFFECT OF TRIAL ERRORS DENIED DEFENDANT DUE PROCESS, WHERE THE TRIAL RECORD SUPPORTS FUNDAMENTAL UNFAIRNESS AND UNRELIABCE RESULTS; AND, DUE PROCEES OF LAW WAS DENIED BY THE CUMULATIVE EFFECT OF TRIAL COUNSELS ERRORS CONTRARY TO THE STRICKLAND STANDARD. US CONST. AMS V, VI, XIV.

24. These issues could have been raised on appeal, MCR 6.508(D)(3), but defendant submits that he is entitled to relief because he had good cause for failure to properly raise these issues on appeal, MCR 6.508(D)(3)(a); namely, ineffective assistance of appellate counsel. See e.g., **People v. Reed,** 449 Mich 375 (1995); **People v. hardaway,** 459 Mich 878 (1998); **People v. Kimble,** 470 Mich 305 (2004).

25. The factual and legal basis behind each of these claims is set forth in the accompanying Memorandum of Law. Defendant submits thathe has demonstrated "actual prejudice" in that but for the alleged errors, he would have had a reasonably likely chance of acquittal. MCR 6.508(D)(b)(i).

RELIEF REQUEST

For these reasons and those set forth in the accompanying Memorandum of Law, Defendant Michael A. Carroll asks that this Court grant relief fromjudgment and set aside or modify the judgment intthis case, or alternatively, order a Ginther hearing pursuant to **People v. Ginther,** 390 Mich 436 (1973) on the claims of IAC of both trial and appellate counsels, or relief this Court may deem approrpiate to avoid a Miscarriage of Justice.

Respectfully submitted,

/s/_____

Michael A. Carroll #149733
Defendant In Pro Per
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

DATE: _____/_____/2018

APPENDIX F

Memorandum of Law in Support of Motion for Relief from Judgment in Michigan v. Carroll, Case No. 82-31970-FC (1/23/18) 39 pages

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR GENESEE COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

MICHAEL ANTHONY CARROLL, #149733,

Defendant In Pro Per.

Genesee County Prosecutor
Attorney for Plaintiff

82-031970-FC

Hon. Joseph J. Farah

MOTION FOR RELIEF FROM JUDGMENT

MCR 6.500 ET SEQ.

BY: Michael A. Carroll #149733
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

TABLE OF CONTENT

STATEMENT OF JURISDICTION

Defendant Michael A. Carroll contends that this Court has jurisdiction to hear this matter pursuant to MCR 6.508(D)(3), where the claim(s) presented supports a "RADICAL JURISDICTIONAL DEFECT", which does not require a showing of "GOOD CAUSE" or PREJUDICE". People v. Carpentier, 446 Mich 19 (1994). A jurisdictional defect is therefore, always subject to collateral attack. See Edward v. Meinberg, 334 Mich 355 (1952).

Defendant further contends that since a failure to swear the jury nullifies not only the jury, but also nullifies the sentence/judgment - This Court may therefore hear this matter pursuant to MCR 6.508(D)(3)(a) "ACTUAL INNOCENCE", since the presumption of innocence does not disappear from a void judgment. See e.g., Taylor v. Kentucky, 436 US 478, 98 SCt 1930, 1933, 56 LEd2d 468 (1978)(holding that the "[P]rinciple that there is a presumption of innocence in favor of accused is undoubted law, axiomatic and elementary, and its enforcement lies at foundation of administration of criminal law").

Jurisdiction is also found where Defendant can raise these claims as an original Motion for Relief from Judgment where the rules of collateral estoppel does not apply to any previous appeals of rights or collateral proceedings, which are void ab inito based on the initial void judgment by the failure to swear the jury in accordance with applicable State laws and court rules.

QUESTIONS PRESENTED

I. IS DEFENDANT ENTITLED TO RELIEF FROM JUDGMENT WHERE THE TRIAL RECORD IS ABSENT OF THE VERBATIM SWEARING TO ENPANEL THE JURY?

DOES THE FAILURE TO PROPERLY SWEAR THE JURY CONSTITUTE A VOID JUDGMENT AND IS IT COGNIZABLE FOR RELIEF PURSUANT TO MCR 6.508(D)(3), AS A JURISDICTIONAL DEFECT?

II. IS DEFENDANT 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?

DID THE TRIAL COURT ERR AS A MATTER OF LAW WHERE IT ADVISED THE DEFENDANT TO WAIVE HIS SPEEDY TRIAL BY CITING AN INAPPLICABLE 180 DAY RULES?

IS DEFENDANT'S WAIVER VOID SEINCE IT WAS ACCEPTED UNDER MISADVICE OF LAW?

WERE TRIAL AND APPELLATE COUNSELS CONSTITUTIONALLY INEFFECTIVE FOR FAILURE TO KNOW AND RESEARCH THE LAWS APPLICABLE TO DEFENDANT'S CASE AND ASSERT THEM IN A TIMELY AND CORRECT MANNER?

SHOULD DEFENDANT'S CONVICTION AND SENTENCE BE SET ASIDE AS TIME BARRED UNDER THE PROVISIONS OF THE IAD?

III. DID THE CUMULATIVE EFFECT OF TRIAL ERRORS DENY DEFENDANT DUE PROCESS, WHERE THE TRIAL RECORD SUPPORTS FUNDAMENTAL UNFAIRNESS AND UNRELIABLE RESULTS?

WAS DEFENDANT DENIED DUE PROCESS OF LAW BY THE CUMULATIVE EFFECT OF TRIAL COUNSELS' ERRORS CONTRARY TO THE STRICKLAND STANDARD?

DEFENDANT WOULD ANSWER THESE QUESTIONS "YES"
PEOPLE WOULD ANSWER THESE QUESTIONS " NO "
THE TRIAL COURT HAS NOT ANSWERED THE QUESTIONS PRESENTED.

STATEMENT OF FACTS

In May of 1982, Defendant had been serving a 20 year sentence in the State of Arkansas for Aggrevated Robbery.

On May 7, 1982, the Genesee County Prosecutor's Office filed a detainer under the IAD with the Arkansas authorites on Defendant on charges of murder contrary to MCLA §750.316.

On September 23, 1982, the Flint Police Department assumed custody (Temp) on Defendant pursuant the IAD detainer lodged by the Genesee County Prosecutor.

On September 24, 1982, the Flint Police Department delivered Defendant to the custody of the Genesee County Sheriff's Department - Genesee County Jail.

On September 29, 1982, Defendant was arraigned in the 68th District Court for the City of Flint and a plea of Not Guilty was entered by the court; the Court advised Defendant of his right to counsel and Defendant filed for counsel as an indigent person.

On September 30, 1982, by order of the Court Joseph E. Baessler P23968, was appointed as counsel for Defendant.

On October 29, 1982, Defendant's Preliminary Examination was held in the 68th District Court for City of Flint, MI; Defendant bound over on Complaint and Felony Information. Arraignment in Circuit Court scheduled for November 8, 1982.

STATEMENT OF FACTS

On November 8, 1982, Defendant was arraigned on the Felony Information in Circuit Court. Trial was scheduled for February 4, 1983.

In January of 1983, Attorney Baessler visited Defendant at the Genesee County Jail - (GCJ), with an offer of 2nd Degree Murder. This plea did not have a number of years. Defendant thereafter became suspicious since the alleged plea was not reduced to writing. Defendant informed his family to retain counsel on the belief that Baessler was not acting in the best interest of his client.

In February of 1983, days before trial, Baessler visited defendant again to inform him that he was not prepared for trial because his wife had been in the hospital. Counsel advised defendant that he simply would move the court to adjourn the trial and a quick hearing would be held. There was no discussion of defendant's Speedy Trial rights or rights under the IAD.

On February 4, 1983, counsel moved the trial court for adjournment due to his wife's hospitalization. Counsel's alleged advice to waive Speedy Trial was announced at the exact moment of the adjournment hearing since there was no previous conversation about Speedy Trial rights, waiver or 180 days to be tried by any law or court rule, or the IAD. Defendant's understanding of the Speedy Trial came from the simple explanation of the trial court, that the 180 days tolled from the time of arrest. The adjournment hearing make no mention of the 180 days under the IAD, which, if had been tolled had expired long before February 4, 1983.

STATEMENT OF FACTS

In March of 1983, defendant's family retained Kenneth M. Siegel P20431, who explained at the initial consultation his thoughts on the case. Defendant then explained that he had been brought here from Arkansas where he had just started serving a 20 year prison sentence for Aggrevated Robbery. Defendant informed counsel that he had been in the State of Michigan from Arkansas since September 24, 1982.

On March 21, 1983, Attorney Siegel appeared with defendant in the Circuit Court to move for a continuance to prepare for trial due to his recent appointment as trial counsel. The trial court denied this motion and a discussion was held about defendant's speedy trial rights, which, for the first time made the court aware that defendant had been under the IAD - MCL 780.601. (MT, pp. 10-11). The issue of the IAD was addressed by Attorney Siegel who cited the incorrect dates for tolling under Article III, which applies to the 180 days. Counsel did not move for tolling or dismissal since defendant had not waived any rights under MCL 780.601, Articles III, IV. Per the record the State (APA LAzzio) denied that a IAD violation of the 180 day had occurred. (10-11).

On March 29, 1983, defendant proceeded to trial and jury selection began. The Court ordered the clerk to give the "Voir Dire" oath to the prospective jurors. (JT Vol I, p. 48). The trial record reflects the transcribed record of the verbatim voir dire oath. (48).

On March 30, 1983, after the voir dire examination of jurors, the Court order the swearing of the inpaneled jurors. The transcribed record only shows "JURY SWORN". (JT II, p. 226). The entire entry of the inpaneling oath as prescribed is absent from the trial record.

STATEMENT OF FACTS

On April 8, 1983, Defendant's trial concluded with the jury's findings of guilty on the 1st Degree Murder charge.

On April 21, 1983, defendant was sentenced to LIFE in prison for the 1st Degree Murder as mandated by statute. Defendant was given credit for 211 days spent in custody prior to sentencing. Defendant noticed of right to appeal.

On June 6, 1983, an order was entered appointing appellate counsel: Charles A Grossman.

On September 19, 1983, an order was filed for substitution of appellate counsel: Earl Spuhler for Charles A. Grossman.

On July 16, 1984, Earl Spuhler filed defendant's appellate brief to the Michigan Court of Appeals.

On November 26, 1985, the Michigan Court of Appeals affirmed defendant's conviction/sentence.

On December 12, 1985, Defendant filed leave to appeal with the Michigan Supreme Court.

On June 6, 1986, the Michigan Supreme Court denied leave to appeal the Court of Appeal's decision affirming conviction/sentence.

Defendant Carroll, now contends that his conviction/sentence is void where the trial court lost jurisdiction where the record is absent the verbatim swearing oath on the inpaneling of the jury. Further, his case should have been dismissed under the IAD for violations of both Articles III, IV, MCL 780.601. That both his trial counsels and appellate counsel(s) where ineffective for failure to know the rules/laws of the IAD, and assert the absolute defense of a time-barred offense,as more thoroughly argued in the Memorandum of Law in Support of Relief from Judgment.

ISSUE I

DEFENDANT IS ENTITLED TO RELIEF FROM JUDGMENT WHERE THE TRIAL RECORD IS ABSENT OF THE VERBATIM SWEARING TO ENPANEL THE JURY; THE FAILURE TO PROPERLY SWEAR THE JURY CONSTITUTES A VOID JUDGMENT AND IS COGNIZABLE FOR RELIEF PURSUANT TO MCR 6.508(D)(3), AS A JURISDICTIONAL DEFECT. U.S. CONST. AMS VI, XIV.

STANDARD OF REVIEW: A trial court's conduct at trial is reviewed for an abuse of discretion. **People v. Ramano**, 181 Mich App 204, 220 (1989). The de novo standard is applied to construing constitutional provisions, court rules and statutes. **Seals v. Henry Ford Hosp.**, 123 Mich App 329 (1983).

LEGAL ANALYSIS

The right to an impartial jury is applicable to the States via the Fourteenth Amendment. **Turner v. Louisiana**, 379 US 466, 471-72 (1965). Further, "due process alone has long demanded that, if a jury is to provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to extent commanded by the Sixth Amendment". **Morgan v. Morgan**, 504 US 719, 727 (1992).

In 1983, at the time of defendant's jury trial - MCLA 768.14;MSA 28.1037 and GCR 1963, 611.7 provided the rules / laws applicable to the oath to be administered to jurors for trial of all criminal cases. Here, the jury impanelling oath is absent from the trial transcripts.

In accordance with the law applicable at the time of defendant's trial and conviction- **People v. Pribble**, 72 Mich App 219 (1976), an improperly and sworn an inpaneled jury results in an invalid conviction. See e.g. **Pribble**, 72 Mich App at 225: "[I]t is apparent that had this trial proceeded to conclusion without a properly impaneled and sworn jury, any resulting conviction would have been invalid. Defendant would have had the right to have any conviction resulting from a nonsworn-jury overturned on appeal".

Pribble was the controlling law at the time of defendant's appeal of right and claim of leave to appeal with the Michigan Supreme Court, but for appellate counsel's ineffectiveness this calim would have been brought forth on the initial appeal of rights.

DISCUSSION

In this case, Defendant contends that relief from judgment should be granted where there is no verbatim record of the oath given to inpanel his jury pursuant to statute - **MCL 768.14; MCR 6.412(F); MCR 8.108.**

> **MCL 768.14** decrees that jurors in criminal cases be sworn to "well and truly try, and true deliverance make, between the people of this state and prisoner at bar, whom you shall have in charge, according to the evidence and the laws of this state. . ." **MCL 768.15** in turn authorizes use of secular affirmations, with reference to pains and penalties of perjury, in place of religious language.
>
> **MCR 6.412(F)** requires that jurors be sworn "[a]fter the jury is **selected** and before trial begins".
>
> **MCR 8.108(B)(1)(a) - (e)** decrees that: "[T]he Court reporter and Recorder **[SHALL]** attend the court session under the direction of the court and take a verbatim record of the following:
>
> (a) the voir dire of prosepective jurors
> (b) the testimony
> (c) the charge of the jury
> (d) in a jury trial, the opening statements and final arguments
> (e) the reasons given by the court from granting or refusing any motion made by a party during the course of the trial.

Thus, it is **BLACK LETTER LAW** in Michigan that the failure to adminsiter an oath or affirmation concerning the jurors' duties in decideing the case is of such grave significance and is the sort of error that seriously affects the fairness, integrity, or public reputation of the judicial proceedings. Thus, making this claim ripe for review under **MCR 6.508(D)(b)(iii).**

ARGUMENT

In this case, defendant's trial transcripts clearly indicate that there is no verbatim swearing of the jury's impaneling oath contrary to MCLA §768.14.

MCLA §768.14 provides:

> The following oath [shall] be administered to the jurors for the trial of all criminal cases: You shall well and truly try, and true deliverance make, betwen the people of this State and the prisoner at bar, whom you shall have in charge, according to the evidence and the laws of this State; so help you God. Mich. Gen. Ct. R. 511.7 (1963) provides that the jury shall be sworn by the clerk substantially as follows: You and each of you do solemnly swear (or affirm) that you will well and truly try the issue discharged by the court, a true verdict render; and that you will so solely on the evidence introduced and with the instructions of the Court; so help you God.

The failure to take a jury oath in substantially the form prescribed by law renders all the proceedings invalid. It is essential, in the orderly procedure in a case to be tried before a jury, that the jury be duly sworn, and the failure in a criminal prosecution to swear the jury is regarded as a fatal defect. See People v. Pribble, 72 Mich App at 225.

This Court should note that there is no evidence of a verbatim record of the oath, whether it was correctly given or the oath prescribed by law for inpaneling.

Defendant contends that the fatal and/or radical defect is jurisdictional. A radical defect in jurisdiction contemplates 'we think an act or omission by States' authorities that clearly contravenes an expressed legal requirement at the time or act or omission. See People v. Price, 23 Mich App 663, 671 (1970). See Fox v. Board of Regents, 375 Mich 238, 242-43 (1965).

Further, since the oath for inpaneling was not transcribed, the Court cannot assume that the alleged oath was properly given to confer the court with jurisdiction to proceed to try the defendant. Nothing is presumed in favor of jurisdiction, it must be affirmatively shown. Spear v. carter, 1 Mich 19, 22 (1947). See Ex parte Smith, 94 US 455, 456 (1876).

On March 29, 1983, the Court ordered the clerk to give the "VOIR DIRE" oath to the prospective jurors. (JT Vol I, p. 48) attached as Exhibit A. The oath verbatim is shown in these transcripts.

On March 30, 1983, after voir dire examination the Court ordered the clerk to swear the jury, but contrary to MCR 6.412(A)(F); MCLA 768.14, there is no verbatim record of the oath given. See JT Vol II, p. 226 attached as Exhibit B. The lack of this entry is evidence that the swearing by law did not in fact take place. See e.g., Nicholson by Nicholson v. Children's Hosp. of Michigan, 139 Mich App 434 (1984)(holding that a gap in the nurse's notes regarding the monitoring of an intravenenous tube supported an inference that such monitoring did not take place). See also MCLA §600.2146

Defendant was denied Due Process of Law where the trial court did not keep strictly within the limits of the law authorizing it to take jurisdiction, and to try the case, and to render judgment. The judgment is void and ripe to be set aside and a new trial to be ordered. See e.g. Post v. United States, 161 US 583, 585 (1896)(holding "[I]n all cases where life, or liberty is affected by its proceedings, the Court must keep strictly within the limits of the law authorizing it to take jurisdiction, and to try the case, and to render its judgment. It cannot pass beyond those limits, in any essential requirement, in either stage of those proceedings; and its authority in those particulars is not enlarged by mere inferences from law, or doubtful construction of its term." When the court goes out of these limitaions, its actions to the extent of excess is void).(citing In re Bonner, 151 US 242, 256 (1894))

The absence of the inpaneling oath thereby created a jurisdictional defect reviewable by this Court pursuant to MCR 6.508(D)(3). Only jurisdictional defects appearing on the face of the judgment may be attacked collaterally. Life Ins. Co. v. Burton, 306 Mich 81 (1943).

CONCLUSION

In conclusion, this claim is not barred by time or prior efforts of appeal or relief since a void judgment subsequently annuls the affirming of defendant's conviction on appeal. Claims of jurisdictional defect are cogniziable on a claim of relief from judgment, and "Good Cause" and "Prejudice" does not apply. See People v. Carpentier, 446 Mich 19 (1994).

The Due Process clause of the Fourteenth Amendment obliges the States to provide meaningful backward-looking relief to rectify any unconstitutional deprivation. See McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco, 496 US 18, 31 (1990).

The relief applicable to defendant's claim is that his conviction and sentence be set aside and a new trial be ordered consistent with the laws in effect at the time of his orginal trial and appeal of rights. In alternative, this Court may conduct an evidentiary hearing pursuant to MCR 6.508(C), on claims of IAC of appellate counsel for failure to raise this issue on direct appeal or relief this Court may deem appropriate, as this matter is over 30 years old, and to retry defendant would result in a "Miscarriage of Justice".

ISSUE 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 IN APPLICABLE 180 DAYS RULE; DEFENDANT'S WAIVER IS VOID SINCE IT WAS ACCEPTED UNDER MISADVICE OF THE LAW; ALTERNATIVELY, TRIAL AND APPELLATE COUNSELS WHERE CONSTITUTIONALLY INEFFECTIVE FOR FAILURE TO KNOW AND RESEARCH THE LAWS APPLICABLE TO DEFENDANT'S CASE AND ASSERT THEM IN A TIMELY AND CORRECT MANNER; DEFENDANT'S CONVICTION AND SENTENCE SHOULD BE SET ASIDE AS TIME BARRED UNDER THE PROVISIONS OF THE IAD. US CONST. AMS VI, XIV.

STANDARD OF REVIEW: The clearly erroneous standard applies to appellate review of trial court's findings of fact. MCR 2.613(C). Factual findings are reviewed for clear error, while the decision to waive or retain jurisdiction is subject to an abuse of discretion standard. In re Fultz, 211 Mich App 299 (1995), rev on other grounds and dep. 453 Mich 937 (1996). Claims of ineffective assistance of counsel are reviewed de novo. People v. Pickens, 446 Mich 298, 359 (1994); Strickland v. Washington, 466 US 668 (1984).

LEGAL ANALYSIS

The purpose of the Interstate Agreement on Detainers (IAD) is to encourage expeditious disposition of charges and provide cooperative procedures among States to facilitate such disposition. Interstate agreement of detainer Act, §2, Arts, I, III, IV, V, VII, IX. 18 U.S.C App. Stroble v. Anderson, 587 F2d 830 (6th Cir. 1978); MCL 780.601 Art. III, IV.

Article III, provides that a prisoner can demand to be brought to trial within 180 days on untried indictments, information or complaint which is the basis for a detainer lodged against him. If the prisoner is not brought to trial within 180 day time limit, the appropriate court of the jurisdiction in which the outstanding charge is pending is [required] to dismiss the charge with prejudice. Stroble, 587 F2d at 835; MCL 780.601, Arts. III, V.

Article III, thereby, creates a purely arithmetical excess over the number of permissible days to indictment or trial and courts of jurisdiction are required to toll days for dismissal, even without a request from a defendant. See Reed v. Farley, 512 US 339, 370-71 (1994).

DISCUSSION

In this case, Defendant Carroll contends that his conviction and sentence shouold be set aside as a matter of law, where the trial court failed to toll the number of days under the IAD, **Article III**; where more than 180 days had elapsed since the Genesee County Prosecutor had lodged a detainer against him.

On May 7, 1982, while serving a sentence in the State of Arkansas prison, the Genesee County Prosecutor lodged a detainer on the Arkansas prison authorities. See **Detainer as Exhibit C.**

On September 23, 1982, a Temporary Custody form was filed on Defendant, when two Flint Police Department detectives came to Arkansas, took custody of defendant and transported him to the State of Michigan. See **Temp. Custody Form - (9/23/82) as Exhibit D.**

On September 24, 1982, Defendant was delivered to the State of Michigan. The May 7, 1982 date of the detainer activated the 180 day provision of MCL 780.601, Art. III and the September 23, 1982 date activated the 120 day provision of MCL 780.601, Art. IV. In accordance with MCL 780.601, these articles are for all purposes interdependent on each other for tolling purposes but exclusively independent in their applications by reading and interpretation of law. Thus, a Court "must hot be guided by a single sentence or member of a sentence, but look to the provision of the whole law". Gade v. National Solid Waste Mgmt Assn, 505 US 88, 99 (1992); Deal v. United States, 508 US 129, 132 (1993)(holding, " accurate interpretation depends on parsing the structure and language of the statute in the context in which it is used").

A defendant may waive either provisions of Article III and IV of the IAD before their statutory expiration periods, but under the IAD there is no provision in the statutory language that the defendant, his counsel or the court of jurisdiction may waive an expired tolling period of the articles outlined in MCL 780.601. Once these articles have been past a violation of the IAD is cause for dismissal since the trial court loses its jurisdiction. See e.g., People v. Crawford, 147 Mich App 244, 252 (1985)(holding that a violation of the Interstate Agreement on Detainers, MCL 780.601;MSA 4.147(1) results in the catastrophic consequence of the trial court's losing jurisdiction, prosecutors and trial courts have an obligation to pay special attention to the statutory requirements).

A. THE TRIAL COURT COMMITTED AN ERROR OF LAW CONTRARY TO MCL 780.601, ART. III, WHERE IT FAILED TO TOLL WHETHER 180 DAYS HAD ELAPSED FOR DISMISSAL UNDER THE INTERSTATE AGREEMENT ON DETAINER.

An issue is preserved if it is raised before and addressed by the trial court. See Steward v. Panek, 251 Mich App 546, 652 NW2d 232 (2002).

This issue is preserved where the issue was raised in open court by the Genesee County Prosecutor at the Motion Hearing on 3/21/83, and improperly ruled on where no tolling under Article III of the IAD was performed and defendant had not waived his IAD rights. See (MT, 3/21/83, pp. 10-11) attached as Exhibit E.

On March 21, 1983, at a Motion Hearing Attorney Kenneth Siegel appeared as defendant's retained and substitued counsel.(MT *3). Counsel move for adjornment on multiple grounds, and his recent appointment on March 18, 1983. (3-6). The Prosecutor opposed defense motions 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 prosecution was very aware of the 180 days for Speedy Trial purposes, where the record reflects her concern of four or five people in the April term that were set for trial on violent crimes. (9).

APA Lazzio placed the Court on notice that defendant was under the IAD for the first time since her initial appearance as the prosecutor of the 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 of 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 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. Beassler requested, 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 accomodate 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 cases 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).

The March 21, 1983, motion hearing supports that the court did not ascertain if the 180 days applicable to the IAD had actually expired. The court recalled a waiver, but that waiver did not comport to the controlling law under the IAD. See Adjournment Hearing, 2/4/83, as Exhibit F. This waiver of the 180 days is shown to have been a misrepresentation of the law, which caused an inducement to waive his full rights of Speedy Trial, but this waiver was not applicable where defendant had been under the constraints of the IAD. See MCL 780.601.

On February 4, 1983, an adjournment hearing was held where defense counsel moved the court for an adjournment due to his wife's recent hospitalization. (Adj. Hrg *3). Defense counsel further informed the court that the setting of the current February 4th trial date had been due to a conflict in the schedule of the prosecutor which had been cleared up. (*3). The prosecutor, thereafter informed the court that a continuance would cause a problem because there was an issue with the 180 days in this case. (*4).

In this case, the language of the law as represented by the officers of the court, mislead defendant to believe the waiver as explained was applicable as a reason to submit to a waiver. Yet, the waiver as shown is not the language of MCL 780.601 et. seq., thus, the waiver was a misrepresentation of the IAD provisions of MCL 780.601, art. III(a). See Excerpt Transcripts 2/4/83 *5.

THE COURT: Mr. Carroll, you understand you have a right to a speedy trial which means you have a right to have your case tried within a hundred and eighty days of the time of your arrest.

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand if you ask to have the trial adjourned, you would waive the right to a speedy trial?

Do you understand that?

Do you understand what I have said?

THE DEFENDANT: Yes, sir.

(Adj. Hrg 2/4/83 *5)

Here none of the players of the court, specifically, the court were abreast of the rules/laws which applied to the IAD. Thus, the judge sitting as fact-finder, is presumed to possess an understanding of the law. In re Forfeiture $19, 250, 209 Mich App 20, 31 (1994).

The court failed to employ the fundamental rule of statutory construction, that when two statutes encompasses the same subject matter, one general and the other specific, the latter will control. Const. art. 1, §2; US Const. Am XIV; People v. Ford, 417 Mich 66, 79 (1982). Here, MCL 768.1 was the general statute and MCL 780.601, art. III(a) was the specific and controlling law applicable to defendant's 180 day waiver.

Strictly speaking, the IAD applies, as the name suggest, ONLY to interstate detainers. MCL 780.601, art. III(a)("[W]henever a person has entered upon a term of imprisonment in a . . . party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any . . . indictment . . . on which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days. . ."(emphasis added).

A substantive mistake occurred where the court erred as a matter of law by explaining to defendant that the 180 days for speedy trial purposes was started by the arrest of defendant. (Adj. Hrg *5). Under the IAD the 180 days starts by the lodging of the detainer. MCL 780.601,art.III(a). Defendant's detainer was lodged on May 7, 1982.

> A substantive mistake is a conclusion on decision that is erroneous, because it is based on a mistaken belief in the facts or applicable law. See People v. Jones, 203 Mich App 74, 80 (1983).

Had the court tolled the dates from May 7, 1982, to November 3, 1982, he would have determined that the 180 days would have expired, or upon argument from the prosecutor of its receipt of the waiver of IAd for IAD purposes of the tolling. An evidentiary hearing is mandatory under MCR 6.508(C) to resolve claim of defendant's waiver under a mistaken belief of law.

B. THE TRIAL COURT ERRED AS A MATTER OF LAW WHERE IT ADVISED DEFENDANT TO WAIVE HIS SPEEDY TRIAL BY CITING AN INAPPLICABLE 180 DAY RULE

The trial court had a legal duty at the February 4, 1983, Adjournment hearing to toll the 180 day period before accepting a waiver. Therefore, the court committed a clear legal error when it incorrectly advised defendant of the law which must govern his 180 day speedy trial waiver under the IAD. The court further had a legal duty to sua sponte ascertain which 180 day rule was applicable to defendant's case. This misadvice of law is reviewable under **MCR 6.508(D)(3)(b)(i)(iii)**. See **Bracco v. Michigan Technological University**, 231 Mich App 578, 588 NW2d 467 (1998)(When a trial court incorrectly chooses, interprets, or applies the law, it commits legal error that appellate court is bound to correct). See also **Anderson v. Bessemer City**, 470 US 564, 105 SCt 1504, 1511, 84 LEd2d 518 (1985)(When a trial judge adopts proposal findings verbatim, the findings are those of the court and must be reversed only if clearly erroneous).

Defendant in this case may claim ignorance of the law, where the oneous of knowledge of the laws was placed on the prosecutor, trial counsel and trial court. See e.g., **Utermehle v. Norment**, 197 US 40, 57, 20 SCt 291, 49 LEd 655 (1905)(The ignorance of the law does not excuse a wrong done or a right withheld; that relief from liabilities under the law arising from a known state of facts, will be denied. But to these general rules, there are exceptions,as where there is a mistake of law cause by fraud, imposition on misrepresentation).

In **Light v. Light**, 21 PA 407 (1853) a case involving an inducement to religuish the right to dower, the plaintiff knew she had a right to dower but was induced by the party who knew the law to release it. The Light Court, in setting aside the judgment held:

> "If a widow who is acquainted with all the facts, but is wholly unaware of the law, she has a right to dower...is induced by one who knows the law and at the same time knows her ignorance of it to release or assign it, for totally inadvertency consideration, she aught be relieved."
> **Id. at 412-13.**

This void waiver holds no force of law to determine a waiver of any Speedy Trial rights, whether statutory or constitutional; simply because the court applied the incorrect interpretation of the controlling law under the IAD. This Court must answer the question of whether it lost jurisdiction per the IAD, art. III(a). A violation of the Interstate Agreement of Detainers, Mich. Comp. Laws §780.601, results in the trial court losing jurisdiction. See People v. Crawford, 147 Mich App 244 (1985)(emphasis added). See also City of Riverview v. Michigan, 292 Mich App 516 (2011)(A court must be vigilant in respecting the limits of its jurisdiction).

The presumption of correctness does not apply to questions of law or mixed questions of law and fact. Miller v. Fenton, 474 US 104, 111 (1985), and, the presumption of a State court's determination of a factual issue may be rebutted only by clear and convincing evidence. Miller v. Cockrell, 537 US 322, 341 (2003)(A state court's determination of factual issue is presumed correct and may be rebutted [only] by clear and convincing evidence).

C. DEFENDANT'S WAIVER IS VOID SINCE IT WAS ACCEPTED UNDER MISADVICE OF LAW

Whether costitutional due process applies and, if so, has been satisfied are legal questions reviewed de novo. U.S.C.A. Amend. XIV; Reed v. Reed, 265 Mich App 131, 693 NW2d 825 (2005).

Defendant contends that his Due Process of notice was violated where under the advice and explanation of the trial court, the court presumed he was waiving his Speedy Trial right under a different statute and court rule. The court assumed defendant's rights to a Speedy Trial started at the time of arrest for purposes of the 180 day rule. The error of law occured where the 180 days applicable to defendant started on the date the prosecutor lodged a detainer under the IAD. Had this fact been explained to defendant he would not have waived an expired time limit since 180 days under the IAD expired in the early part of November 1982.

It is well-established law that, "[T]o satisy the due process requirement, notice to defendant must be of a quality that reasonably likely in all circumstances of the case, to appraise the defendant of the pending action and afford an opportunity to defense".

Here, the only defense defendant had against the trial court's deviation from a legal rule - error of law, was his court appointed counsel. The record shows counsel sat silent as the trial court explained the inapplicable Speedy Trial rule to allow a waiver. See Adj. Hrg., 2/4/83, at p.5.

Defendant further contends that where an agreement is obtained by mistake, a court may reform the agreement to that originally intended by parties, or rescind the agreement and declare it void ab initio. See Peterson v. New York Life Ins. Co., 94 FSupp2d 828 (E.D. Mich 2000). Futher, the waiver rule as a procedural bar need not be applied when the interest of justice so dictates. See Thomas v. Arn, 474 US 140, 155 (1985).

Relief should be granted in this case where the waiver was accepted under the misadvice of the trial court and trial counsel, whether by ignorance of the controlling law, neglect or the conflict of interest due to his wife's hospitalization - the waiver should be voided and the tolling instituted to determine if an actual 180 day violation had in fact occurred pursuant to MCL 780.601, art. III, and dismissal is warranted pursuant to the IAD.

D. TRIAL AND APPELLATE COUNSELS WERE CONSTITUTIONALLY INEFFECTIVE BY THEIR FAILURES TO KNOW AND RESEARCH THE LAWS APPLICABLE TO DEFENDANT'S CASE AND ASSERT THEM IN A TIMELY AND CORRECT MANNER.

STANDARD OF REVIEW: whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. People v. LeBlanc, 465 Mich 575, 579 (2002). Sixth Amendment effective assistance of claims of both trial and appellate counsels are reviewed under the Strickland standard. See Whiting v. Burt, 395 F3d 602, 617 (6th Cir. 2005).

Courts have not hesitated to find ineffective assistance in violation of the Sixth Amendment when counsel fails to conduct a reasonable investigation into one or more aspect of the case and when that failure prejudiced his or her client. Wiggins v. Smith, 539 US 510, 524-29 (2003).

Mr. Carroll argues that he was prejudiced by his trial and appellate counsels failure to know and investigate the rules and laws applicable to his defenses and their failures to properly and timely assert the substantial defenses of violations of the IAD time limits under Articles III and IV. The records of this case supports a violation of both the 180 day time limit under MCL 780.601, art. III, and, a concurrent violation of the 120 day time limit under art. IV. Prejudice is demonstrated where the failure to timely and properly assert these violations of the IAD, caused defendant to be convicted on a time-barred offense contrary to the IAD. Deficient performance is further shown where neither trial counsels knew or properly asserted the laws pursuant to defendant's case as a IAD prisoner from the State of Arkansas.

> " [C]ounsel must investigate all apparently substantial defenses available to the defendant and must assert them in a proper and timely manner, failure to do so may warrant habeas relief. See Meeks v. Bergen, 749 F2d 322 (6th Cir. 1983). Further, if there is only one plausible line of defense . . . counsel must conduct a reasonably substantial investigation into that line of defense. Strickland, 466 US at 681.

The right of an accused to present a defense has long been recognized as "a fundamental element of due process". Washington v. State, 388 US 14, 19 (1967). A defendant is therefore entitled to have his counsel prepare, investigate, and present all substantial defenses. People v. Kelly, 186 Mich App 524 (1990). A substantial defense is one that might have made a difference in the outcome of the trial. Id. at 526.

In this case, defendant can show a different outcome, where if trial counsels had research the laws of the IAD, he could have moved the court for dismissal for failure to prosecute defendant's case in the time limits as applicable to both the 180 and 120 day rules of MCL 780.601, arts. III, IV. See Stroble v. Anderson, 587 F2d 830, 836-37 (6th Cir. 1978)(citing U.S. v. Mauro, 436 US 340 (1978)).

FACTS

Mr. Carroll initially had been represented by the court-appointed counsel: Joseph Baessler; an attorney that admittedly had been laboring under a conflict of interest due to his wife's recent hospitalization. As admitted by counsel to the trial court - "It would be difficult, if not impossible to be prepared for trial.."(emphasis added) See Adj. Hrg, 2/4/83, *2-3. Counsel futher made the record that the impediment to defendant's speedy trial had been caused by the prosecutor. (*3).

ATTORNEY BAESSLER: I was under the impression that the Prosecutor herself had a conflict because they had a trial going before the Court now, but apparently that's been cleared up.

Adj. Hrg. 2/4/83 *3.

Defendant has asserted in his putative affidavit outlining ineffective assistance of counsel grounds, that Baessler did inform him of the intent to adjourn the trial date due to his wife's recent hospitalization but there was never a discussion prior to February 4, 1983 or on the date of the adjournment a discussion about waiver of the 180 day rule. Counsel gave notice to the court without prior advice or any explanation of the law. See Defendant's Affidavit as Exhibit G.

Defendant further contends that had counsel explained the laws of the 180 day rule or the 120 day rule of the IAD, he would not have waived these two terms that had expired. Defendant had no knowledge of the IAD until retained counsel Kenneth Siegel, made the record that the 180 days had already expired. See Motion Hearing, 3/21/83, as Exhibit E. The record supports that the prosecutor erred where she verified by her calculations (September 1982) dates that the 180 days had not expired. Mtn Hrg. 3/21/83 at p.10.

The record supports that both retained and court appointed counsel were ineffective for failure to research and know the laws applicable to defenses, applicable to defendant's case.

The Sixth Amendment to the U.S. Constitution guarantees a criminal defendant the right to assistance of counsel in order to protect the fundamental right to a fair trial. See U.S.C.A. Amend, VI; Strickland v. Washington, 466 US 668, 684-85 (1984). Under Michigan law ineffective assistance of counsel must be found to have be prejudicial in order to reverse an otherwise valid conviction. People v. Pickens, 446 Mich 298, 299 (1994).

It is well-established that, "[I]t is especially important that counsel adequately investigate the case in order that at the very least he can provide minimally competent professional representation". U.S. v. Barbour, 813 F2d 1232, 1234 (D.C. Cir. 1987). Further, "Counsels in criminal cases are charged with responsibility of conducting appropriate investigation, both factual and legal, to determine if matter of defense can be developed". U.S. v. Mooney, 497 F3d 397, 404 (4th Cir. 2007).

Defendant further will assert in putative affidavit that Attorney Baessler knew or should have known that he was under the IAD because defendant informed upon their initial consultation in October 1982, that he was brought here to Michigan from an Arkansas State prison. The second time defendant and counsel discussed him being sent here from Arkansas was in November of 1982 before the November 8, 1982 appearance in Circuit Court. Defendant was questioned about clothing for trial and informed counsel that the only clothing he had was prison cloths from Arkansas. Counsel advised defendant to try an obtain appropriate clothing or a suit. Defendant informed counsel that he would have his father bring dress clothing to the jail for trial.

Our Supreme Court in Olitkowski v. St. Casmir's Saving & Loan Ass'n, 302 Mich 303 (1942) held:

> " A lawyer of much experience must be presumed to understand and be familiar with well established principles of law". Id. at 309.

The principle doctrine of statute of limitation is a well established doctrine of law and an affirmative defense, which if proven requires dismissal. See U.S. v. Hansel, 70 F3d 6 (2d Cir. 1995)(A time-barred defense is an absolute defense and is not waived where counsel failed to raise a statute of limitation defense).

Counsel in this case was ineffective for failure to dispute which statute of limitation applied to his case, but, merely stood silent while the court stated an inapplicable statute of limitation and waiver to defendant. See Frommert v. Bobson Constr. Co., 219 Mich App 735 (1996)(Parties may dispute which statute of limitation applies in a given case).

Had counsel been functioning as the counsel guaranteed by the Sixth Amendment, rather than labouring under a conflict of interest due to his wife's illness, he could have raised the undisputable fact that both the 180 and 120 day rules under the IAD had expired. The facts of this case support that counsel did not research the laws applicable to his client's case.

> If there is only one plausible line of defense . . . counsel must conduct a "reasonably substantial investigation" into that line of defense. Strickland, 466 US at 681.

In United States v. Williams, 615 F2d 585 (3rd Cir. 1980), the Court of Appeals found that Williams trial counsel's failure to investigate the violation of the Interstate Agreement on Detainer Act, which would require dismissal of the indictment, required an evidentiary hearing to resolve the ineffective assistance of counsel claim. Again in United States Ex Rel. Holleman v. Duckworth, 652 FSupp 82 (N.D. Ill. 1986), the District Court found that trial counsel's failure to argue that the State violated the Interstate Agreement on Detainer constituted ineffective assistance of counsel and established "cause" for failure to raise the issue.

Here, the record is replete with opportunities for both retained and court appointed counsels to argue the IAD violations. The record further supports that both counsels failed to argue the correct interpretation of the laws applicable to defendant under the IAD.

Attorney Siegel could not have had a correct understanding of the IAD, where the record demonstrates that on March 21, 1983, counsel argued that the 180 days expired because defendant had been in State custody since September 27th or 28th. Counsel's argument failed because the IAD violation limitation was Art. III(a), the IAD State custody time limit was art. IV, the 120 day rule. Counsel had no idea of the actual Speedy Trial Act violation because he had not researched the law.

Our Sixth Circuit Court of Appeals in Richey v. Mitchell, 395 F3d 660, 681 (6th Cir. 2005) held:

> " [A]t the least, defense counsel in a criminal case should understand the elements of the offenses with which his client is charged and should display some appreciation of the recognized defenses thereto..."

Thus, the failure to know and understand the laws applicable to the defenses in this case, and the failure to explain the applicable rules/laws to defendant, caused him to concede to an inapplicable waiver of his Speedy Trial rights. A right which if explained to defendant regarding the applicable laws of the IAD, defendant asserts he would not have waived. Defendant's claim of ineffective assistance meets the showing of a "reasonable probability" that absent the error, the outcome would have been different. Strickland, 466 US at 684.

This Court can note that his trial counsels were ineffective, where both knew defendant had an out-of-state felony conviction he had been currently serving. Defendant offers as proof, the case register of action, where the prosecution intended to use defendant's prior convictions against him. See Register of Action, at p.2 as Exhibit H.

Attorney Siegel's Motionto Suppress Evidence of Prior Convictions, supports defendant's claim of knowledge that defendant had been brought here from the State of Arkansas. Ineffective assistance is demonstrated where it is well-established law, "Defense counsel must obtain information that the State has and will use against the defendant." Romoilla v. Beard, 545 US 374, 387 (2005).

Defense counsel was required to move the prosecutor for the file regarding defendant's extradition, lodging of detainer and the temporary custody receipt under the IAD provisions. The time gap and the custody of defendant, was explained to both appointed and retained counsels.

MISADVICE OF WAIVER IS "CAUSE"

The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. See Strickland, 466 US at 687. The touchstone for determining whether an attorney's performance falls below the constitutional norm is whether counsel has brought "to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Id. 688.

The inquiry has two foci. First, a reviewing court must assess the proficiency of counsel's performance under prevailing norms. This evaluation demands a fairly tolerant approach; after all, the Constitution pledges to an accused an effective defense, not necessarily a perfect defense or a successful defense.

The second line of inquiry is needed because, in itself, dreary lawyering does not offend the Constitution: rather, a finding that counsel failed to meet the performance standard merely serves to advance the focus of the Strickland inquiry to question of whether the accused suffered prejudice in consequence of counsel's blunders. See Id. at 692. This entails a showing of "a reasonable probability that, but for counsel's unprofessional errors, the results of the proceedings would have been different." Id. 694.

Thus, it is counsel's duty to use all legitimate means to convince the jury, or court, that a finding for the client will be in accord with justice; after all, the art of advocacy is the art of persuasion. Elliot v. A.J. Smith Contracting Co., 358 Mich 398 (1960). An effective attorney "must play the role of an active advocate, rather than a mere friend of the court. Evitts v. Lucey, 469 US 387, 394 (1985).

Defendant contends that trial counsels appointed and retained failed to advocate his case and both provided misadvice, contrary to the constitutional norm under the Strickland standard.

In **People v. Stubli**, 163 Mich App 376 (1987), the Court of Appeals found Stubli's trial counsel ineffective for failure to invoke defendant's claim of martial privilege. On argument by the people, who contended that Stubli waived his privilege, the Court further held, "even if we conclude that the defendant waived this privilege, counsel should have never advised waiver since the wife's testimony was very damaging." Stubli, Id. at 380. (Emphasis added).

Moreover, in **United States v. Hansel**, 70 F3d 6 (2d Cir. 1995), the Hansel Court found that defendant demonstrated that his indictment on two of the eight counts were brought outside of the applicable statute of limitations and on counsel's advice to plead to all counts without researching the applicable statute of limitations on these counts. Defendant contended counsel failed to inform him that count seven and eight were time-barred at the time of advice to plea to all eight counts of making a false statement. The Court found that his subsequent waiver of time-barred defense without objection of counsel was not [voluntary]. Reversing defendant's convictions on count seven and eight.

In Michigan. "[W]hen a trial counsel does not make appropriate objections or file a necessary motion he/she is not acting as counsel guaranteed by the constitution and defendannt's rights are violated." **People v. Johnson**, 451 Mich 115, 121 (1996).

Defendant contends that both counsels' inactions and misadvice to applicable laws of the IAD was due to incompetence and ignorance of the law rather than part of a reasonable trial strategy. This Court should further note the legal ignorance of trial counsels, where the prospective waiver of Speedy Trial Act, did not comport with a required **"End of Justice"** determination. See **Zedner v. United States**, 547 US 489, 506 (2006)(holding "[A] defendant may not prospectively waive his rights under the Speedy Trial ACt, such as by agreeing to a continuance"). Further, such prospective waivers are inconsistent with the purpose of the Act, because such waivers do not account for public interest in speedy trials. Zedner, Id. at 500-01.

Courts of jurisdiction are required by the Speedy Trial Acts to make an "End of Justice" determination or dismissal is required. See U.S. v. Bryant, 523 F3d 349, 361 (D.C. 2008)(finding continuance improper because trial court failed to make expressed "end of justice" determination); See also U.S. v. Henry, 538 F3d 300, 306 (4th Cir. 2008)(indictment dismissed on speedy trial grounds because trial court did not expressedly find that the "end of justice" required continuance and instead relied on defendant's prospective waiver).

Mr. Carroll contends that he is not judicially estopped, where the defense raised the speedy trial prosective waiver because the waiver did not comport with any of the requirement of the Speedy Trial Act of the IAD under the 180 day rules and was a product of misadvice of counsel, trial court and the false representation of the prosecutor. See e.g., Lorenzo v. Noel, 206 Mich App 682 (1994)(holding, "[I]t is well settled that suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false misrepresentation"). It is apparent that at all time the Genesee County Prosecutor was aware the defendant had been under the IAD purpose at the time of the first and second announcements of Speedy Trial rights.

The "Plain Error" rule provides this court with the limited power to correct an error that was not timely raised. See United States v. Olano, 507 US 725, 731-733 (1993)(An error is a [d]eviation from a legal rule).

Relief in this matter should be granted where the alleged waiver of the 180 day rule was surrender involuntarily under the misadvice of law by trial counsels, the trial court and such waiver was obtained past the expired time limitation of MCL 780.601, art. III(a). Due process of law is violated where an accused person is misadvised of the law by those in authority to possess an understanding of the law.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution. Johnson v. Zerbst, 304 US 458, 465 (1938). Thus, the right to counsel has been accorded, not for its own sake, but because of effect it has on the ability of accused to recieve a fair trial. McElrath v. Simpson, 595 F3d 624 (6th Cir. 2010).

A defendant is entitled to effective assistance of appellate counsel, as guaranteed under the Sixth and Fourteenth Amendments U.S. Constitution. See Evitts v. Lucey, 469 US 387, 396-97 (1985). This constitutional entitlement will only be satisfied when evidence, laws and circumstances of a particular case, viewed in their totality and at time of the representation demonstrate that a defendant recieves "meaningful representation" from his or her appellate counsel.

This requires an appellate counsel to undertake a [thorough] review of the trial record and select the most promosing issues for review. Jones v. Barnes, 463 US 745, 752, 103 SCt 3308, 3313, 77 LEd2d 987 (1983). To overcome the presumption of competence of appellate counsel in these circumstance, a petitioner must show that the omitted issues were "clearly stronger" than those counsel chose to assert. Rhea v. Jones, 622 FSupp2d 562, 592 (W.D. Mich. 2007)

Counsel's failure to raise an issue on appeal is ineffective assistance only if there is a reasonable probability that inclusion of issue would have changed the result of the appeal. Rhea v. Jones, Id. at 592.

A counsel's failure to raise issues which "was obvious on the record and must have leaped out even upon a casual reading of the transcript" is deficient performance. See e.g. Matire v. Wainwright, 811 F2d 1430, 1438 (11th Cir. 1987).

Defendant's trial records support that his appellate counsel overlooked the obvious issues of : 1) the absence of the enpaneling oath, 2) trial counsel's failure to assert the dismissals under the IAD for violations of both Article III and IV - (180 & 120 day time limits) and , 3) misadvice of waiver of the Speedy trial by both trial counsels and trial court; lastly, 4) the trial court's acceptance of Speedy Trial waiver absent an "END OF JUSTICE" determination. Had counsel on appeal timely and properly raised these issues, a different result was mandated by law, either a new trial on the swearing issue, or dismissal of the entire case for violations of the IAD's articles III/IV.

Per the record defendant had been returned to the State of Arkansas and the appellate counsel's representation occurred by mailed correspondences. Defendant had no ability to discern whether his appellate counsel performed effectively or deficiently. The State of Arkansas was under no obligation to supply defendant with Michigan law in their limited law library.

This Court must determine the ineffectiveness claim on appellate counsel, by first doing it's own independent examination of the trial record on the claims of IAC of trial counsels. Then, after reviewing the trial record to determine each claim of deficient performance and whether prejudice was established, if no single claim amounted to prejudice, the court must assess the cumulative impact of all deficient perfromance claims. See Wiggins v. Smith, 539 US 510, 534-36 (2003)(the totality of errors must be considered to properly determine prejudice).

Relief should be granthed where both trial and appellate counsels were not performing as effective advocates for defendant during the trial or appellate terms contrary to the Sixth Amendment's guarantees for effective assistance of counsel on trial or appeal. Defendant's conviction should be set-aside and an evidentiary hearing held on the ineffective assistance claims.

ISSUE III

THE CUMULATIVE EFFECT OF TRIAL ERRORS DENIED DEFENDANT DUE PROCESS, WHERE THE TRIAL RECORD SUPPORTS FUNDAMENTAL UNFAIRNESS AND UNRELIABLE RESULTS; AND, DUE PROCESS OF LAW WAS DENIED BY THE CUMULATIVE EFFECT OF TRIAL COUNSELS ERRORS CONTRARY TO THE STRICKLAND STANDARD. U.S. CONST AMS V, VI, XIV.

STANDARD OF REVIEW: Constitutional questions are reviewed de novo. People v. Swint, 225 Mich App 353 (1997). Whether an error is constitutional in nature is an issue of law reviewed de novo. People v. Blackmon, 280 Mich App 253 (2008). The cumulative effect of trial counsel's errors are reviewed under the STRICKLAND standard. Strickland v. Washington, 466 US 668, 695-96 (1984).

DISCUSSION

Where the cumulative effect of errors operates to deprive a defendant of due process of law, even if no single error in isolation does so, a new trial is required. U.S. Const Ams V, XIV; Const 1963, art 1, §17; Herbert v. Loisiana, 272 US 312, 316 (1926); People v. Ackerman, 257 Mich App 434 (2003); People v. Miller, 211 Mich App 30, 44 (1995); People v. Malone, 180 Mich App 347 (1989): People v. Skowronski, 61 Mich App 71, 77 (1975).

In 1987 the Court of Appeals published several cases focusing on the importance of overall record free of multiple "harmless errors". In People v. Smith, 158 Mich App 220 (1987); it took notice of a broad range of errors and reversed based on their cumulative effect despite the facts that they were harmless in themselves. In People v. Wallace, 160 Mich App 1 (1987), the Court discussed a rangne of prosecutorial acts, including various improper opening and closing arguments, and reversed based on their cumulative effect despite the absence of objection. In People v. Rosales, 160 Mich App 304 (1987), the Court recounted a series of prosecutorial errors, none of which standing alone would have changed the results, and reversed becaused they "cause the trial to cross the lines from merely an imperfect trial to a trial violative of due process and consistent with fairness".

The wide-ranging nature of serious errors which occurred in this case and are described in the argument in Memorandum of Law in Support of Relief from Judgment strongly militate in favor of reversal of Defendant's conviction.

Here, none of the officers of the court - the presiding judge, prosecutor, court-appointed and retained counsels, acted within reasonable competence to satisfy the Due Process Clause of both the State/Federal Constitutions. Their combined actions, inaction and omissions are replete; where each officer either misrepresented and/or misapplied applicable laws or as contended by Mr. Carroll were willfully ignorant of the laws of the IAD's Speedy Trial Act. Willfull ignorance is demonstrated where Defendant in asserting a statute of limitation defense, no member of the court stop to research the applicable laws under the IAD, being MCL 780.601. Had the issue of statute of limitation been simply researched as demanded by due process of law, defendant would have been entitled to dismissal by either Article III(a) or Article IV(c).

ARGUMENT

It is well-established that "where the cumulative effect of multiple errors acts to deny the defendant a fair trial, the resulting conviction must be reversed". See People v. Malone, supra.

DUE PROCESS

Both the Michigan and United States Constitutions preclude the government from depriving a person of life, liberty or property without due process of law. U.S. Const Ams V, XIV; Const. 1963, art 1, §17. The aim of the due proces clause is not to punish society for the misdeed of the prosecutor or court, but the avoidance of an unfair trial to the accused. See Brady v. Maryland, 373 US 83 (1963).

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend VI. The Sixth Amendment right to counsel in criminal proceedings applies to states through the Fourteenth Amendment. Gideon v. Wainwright, 372 US 335, 342 (1963). Thus, since the Sixth Amendment constitutionally entitles one charged with a crime to assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a [] court's authority to deprive an accused of his life or liberty. Johnson v. Zerbst, 304 US 458, 467 (1938).

This Court may also review the cumulative effect of all constitutionally infirm actions by counsel(s) under the Strickland standard. See e.g., Strickland, 466 US at 690 (requiring consideration of counsel's actions "in light of all the circumstances"); id. at 695 (noting that the question to be answered in cases such as this is whether, "absent the errors, the factfinder would have had a reasonable doubt respecting guilt"(emphasis added)).

Defenant moves this Court to review his case on numerous grounds that his trial violated due process of law, where the cumulative effect of trial error deprived him of a fundamentaly fair trial or procedures, where if the applicable laws had been complied with dismissal would have been required in this case.

The following errors are claimed in aggregate and require for defendant's conviction to be set-aside:

a. Absence of the impaneling oath contrary to People v. Pribble, 72 Mich App 219 (1976); MCL 768.14;

b. Ineffective assistance of trial counsel (Baessler) who failed to investigate the affirmative defense of statute of limitations under the IAD - MCL 780.601, articles III & IV. See Issue I & II;

c. Misadvice of the law of the trial court which mislead defendant to waive his Speedy Trial right - the prosepective waiver should have been explained under the legislative intent of MCL 780.601, art III (180 day rule); See Issue I & II;

d. Ineffective assistance of counsel (Baessler) who announced a 180 day waived contrary to MCL 780.601, art III(a), where 180 days had actually elapsed. See Issue I & II; See also Defendant's Affidavit on IAC;

e. Trial counsel was ineffective where counsel (Baessler) had been laboring under an actual "Conflict of Interest" and failed to zealously advocate his client's case; See Issue I & II; See Defendant's Affidavit on IAC;

f. Trial counsel was ineffective where counsel (Baessler) failed to file a single pretrial motion to adocate defendant's case or defenses; See Defendant's Affidavit on IAC; See also Case Register of Actions;

g. Trial counsel failed to move the trial court for removal under the incapacity rule. See People v. Coones, 216 Mich App 721, 728 (1996)(Holding " A trial court may remove appointed counsel for gross incompetence, physical incapacity, or contamacious conduct");

h. Trial counsel (Siegel) was ineffective where he failed to move the trial court for dismissal under the IAD's 180 rule and failed to know the laws applicable to his client's defenses; Counsel's actions support he was ineffective for moving the trial court for a prospective waiver by defendant; See Issue I & II; Defendant's Affidavit on IAC; MT 3/21/83, pp. 10-11;

i. Trial counsels (Baessler & Siegel) both failed to know the laws applicable to waiver under the Speedy Trial Act, where no "End of Justice" determination was placed on the record contrary to Zedner v. U.S., 547 US 489, 506 (2006).

Prejudice occurs when there is a "reasonable probability that but for counsel's unprofessional errors, the resulting proceedings would have been different". See Strickland, 466 US at 694.

As a reviewing court, this Court must ask itself, if defendant was deprived of a reasonable shot of acquittal. See Avery v. Prelisnik, 548 F3d 434, 439 (6th Cir. 2008)(Holding, "We do not ask whether [the defendant] was innocent, but, rather, he was deprived [of] a reasonable shot of acquittal").

Here, the presumption of corectness is overcome where the accuracy of counsel's legal advice is not supported by the record regarding the waiver of his IAD claim, and there is clear and convincing evidence that there was a defect in the fact-finding process regarding the 180 day waiver of the IAD.

Relief should be granted under the cumulative effect of errors rule under the State and Federal standards.

CONCLUSION

In Conclusion, Defendant's convictions and sentence should be set-aside and a new trial order by the failure to swear the jury with a recorded impaneling oath contrary to the law in effect at the time of his trial and appeal.

Alternatively, this Court may look to the number of trial errors and set-aside the conviction/sentence as a due process violation under Michigan law. See People v. Skowronski, 61 Mich App 71, 77 (1975), or, under the Strickland standard citing the cumulative effect of trial counsel's errors. Strickland, 466 US at 690, 695-96; See also Kyles v. Whitley , 514 US 419, 434 (1995)(considering cumulative effect of errors in another context in which the Strickland standard for prejudice (though) not the Strickland test for ineffective assistance had been applied).

Under the Federal standard, the analysis must not focus soley on outcome determination, but also take into prominent consideration "whether the resulting proceedings were fundamentaly unfair or unreliable." See Lockhart v. Fretwell, 506 US 364, 113 SCt 838, 842, 122 LEd2d 180 (1993).

This Court should look cautiously at Attorney's announcement of being under the IAD for purpose of an 180 day dismissal but reliance on the wrong dates, which was contrary to MCL 780.601, art III(a), and conceding to the prosecution by use of the date only applicable of article IV(c) of the IAD.

A case on point is Henry v. Poole, 409 F3d 48, 64 (2d Cir. 2005)(Holding, but for counsel's elicitation of an alibi for the wrong date and reliance on that alibi, reasonable probability of a different trial result). Had counsel used the correct date of May 7, 1982 rather than September of 1982, defendant would have had a "reasonable probability of a different trial result or alternatively, counsel would have been able to assert a 120 day violation under the IAD under article IV, each of these dates had expired according to the calculations of defendant.

RELIEF REQUEST

For these reasons set forth, Defendant Michael A. Carrol ask that this Court grant relief from judgment and set aside or modify the judgment in this case, or, alternatively, order a Ginther hearing pursuant to MCR 6.508(C) in accord with the additionally filed Motion for Evidentiary hearing - People v. Ginther, 390 Mich 436 (1973), to make a testimonial record on both trial and appellate counsels, or relief this Court may deem appropriate to avoid a Miscarriage of Justice.

Respectfully submitted,

/s/_____
Michael A. Carroll #149733
Defendant In Pro Per
Saginaw Correctional Facility
9625 Pierce Road - M DOC
Freeland, MI 48623

Date: _____/_____/2017

PROOF OF SERVICE

I, Michael A. Carroll, Defendant in this matter declare that I mailed the foregoing Motion for Relief from Judgment w/accompanying Memorandum of Law in Support w/exhibits to "ALL PARTIES OF INTEREST": 1 Original and 1 Copy of MRJ to: Office of the County Clerk, Attn: John J. Gleason, 900 S. Saginaw St., Flint, MI 48502 and (1) Copy of MRJ to: Genesee County Court Prosecutor, Attn David S. Leyton P35086, 100 Courthouse, Flint, MI 48502, by handing said documents to an Employee of the MDOC w/accompanying LEGAL EXPEDITED MAIL Form for affixing proper U.S. First Class Postage and delivery, on this _____ day of _____, 2017.

Respectfully submitted,

/s/_____
Michael A. Carroll #149733
Defendant In Pro Per

Date:_____/___/2017

Additional material from this filing is available in the Clerk's Office.