20-8128

IN THE UNITED STATES SUPREME COURT

TEDDY OGLE, PRO SE	)	Case #
Defendants/Appellants	)	
	)	
Vs.	)	
	)	
WARDEN MIKE PARRIS	)	
	)	
Respondent/Appellee	)	
	)	

Your copy
3-23-21

TEDDY OGLE PRO SE - PETITIONER, *PRO SE*

Vs.

WARDEN MIKE PARRIS - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS

No. 20-5612

TEDDY OGLE PRO SE
Tennessee Department of Correction # 309203
Morgan County Correctional Complex
541 Wayne "Cotton" Morgan Drive
P. O. Box 2000
Wartburg, Tennessee 37887

No Phone

QUESTIONS PRESENTED FOR REVIEW

1. Whether fraud, false and misleading statements in arrest & extradition warrant affidavit - irrespective of the subsequent indictment in this case - entitles Petitioner to equitable tolling for extraordinary circumstances?

2. Whether the trial court's adjudication – or lack thereof- of Petitioner's Tennessee Rules of Civil Procedure Rule 60.02 Motion for relief from Judgment, Tennessee Rules of Criminal Procedure Rule 36.1 Motion to Correct Illegal Sentence and/or Petition for the Writ of Habeas Corpus under Tennessee Code Annotated § 29-21-101 et. Seq., was contrary to, or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States?

3. Whether the trial court's failure to adjudicate the grounds in Petitioner's motion and petitions pursuant to the Rules above, to make findings of fact and conclusions of law, resulted in a waiver of the AEDPA § 28 U.S.C. standard regarding the statute of limitations?

4. Whether the trial court's arbitrary alteration ("construction") of Petitioner's motions and petitions aforesaid, addressing his sentence of "life without parole" into one seeking to "set aside certain convictions" and post conviction relief, for statute of limitations purposes, resulted in subsequent denial of these causes of action as "untimely", amounts to fundamental denial of procedural and substantive due process?

3. Whether an unknowing not understandingly made guilty "plea" to a sentence of "life without parole" where the only "mitigation" offered by counsel was a trade of the death penalty for pleading guilty to the alternative of life without parole, is an involuntary waiver of federal constitutional rights resulting in cruel and unusual punishment and denial of due process of law?

4. Whether the United States Court of Appeals for the 6th Circuit abused its discretion by failing to order an evidentiary hearing or allow Petitioner time to amend to resolve disputed factual issues on Petitioner's claims?

5. Whether Petitioner was denied his right to due process where trial court refused to grant or fairly consider his Motion to Recuse?

6. Whether the United States Court of Appeals for the 6th Circuit decision is in conflict with the decision of other appellate courts?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

*The Fifth Amendment to the United States Constitution provides that no person*** shall be compelled in any criminal case to be a witness against himself, *** that No person shall be *** deprived of life, liberty, or property, without due process of law; ****

*The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, ***and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense."*

The Eighth Amendment to the United States Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

*The Fourteenth Amendment to the United States Constitution provides that "*** nor shall any State deprive any person of life liberty, or property without due process of law; ****

Pg.

JURISDICTION

On or about November 2 2017, Petitioner filed a pro se "Petition for Rule 60.02 in the trial Court pursuant to Tennessee Rules of Civil Procedure Rule 60.02 Motion with the assistance of inmate legal aide. *(case number 13810)*

Thereafter, on May 31, 2018, 6 months after the November 2, 2017, letter from the Court Clerk, [*"On November 2 2017 my office received two (2) Petitions for Rule 60.02 on behalf of Teddy Ogle (case number 13810) and Terry Ogle (Case number 13811."]*(Circuit Court, 4th Judicial District Part III], Petitioner filed his *pro se* Motion to Correct Illegal Sentence pursuant to the amendment of Tennessee Rules of Criminal Procedure Rule 36.1(a)(1) by Tennessee S. Court, and/or for the Writ of Habeas Corpus. (Tenn. Code. Anno. 29-21-101 et. Seq.)

(The Tennessee Supreme Court *amended* Tennessee Rules of Criminal Procedure Rule 36.1(a)(1) on July 1, 2016).

Petitioner filed a Motion to Recuse the trial Court Judge. Subsequently, on August 3 2018, the trial court in *TERRY Ogle v. State,,* Judge Rex Ogle, Case *#13810*, converted Petitioner's Rule 60.02 Petition and Motion under T.R. Crim. P. 36..1 as well as his Petition for the Writ of Habeas Corpus, into a Post Conviction Procedure Petition, and dismissed it as "untimely" pursuant to the Post Conviction Act, (T.C.A. 40-30-101), without a hearing or any specific finding of fact and conclusion of law relative to the issues that were the crux of Petitioner's pro se. causes of action.(Order, pg. 3, No. 14075) and denied all actions.

Petitioner filed timely appeals to the Tennessee Court of Criminal Appeals ("TCCA") which affirmed the judgments of the trial court on June 4, 2019,(Ogle, 2019 WL 2355033) and to the Tennessee Supreme Court, (Application of TERRY/Terry Ogle for Permission to Appeal to the Tennessee Supreme Court 'State v. Ogle' which denied application on September 18 2019. Ogle v. State, *No. E2018-01520-CCA-R3-PC, 20WL2616664, E2018-01521-CCA-R3-PC, E2018-01522-CCA-R3-PC,WL 2355033.*

On or about November 5 2019, Petitioner filed his pro se Petition for the Writ of Habeas Corpus, pursuant to 28 U.S.C. 2254. (U.S..D.C. E. Dist). On May 22, 2020, Federal District Court, Case No. 20-5612, *Ogle v. Mike Parris (*"originating Case No. 3:20-cv-00039-PLR-DCP; WL 2616513") denied relief.

On June 11, 2020, Petitioner filed pro se Petition for the Certificate of Appealability to the United States Court of Appeals for the Sixth Circuit. On November 3, 2020 the 6th Circuit Court of Appeals denied the Application.(No. 20-5612)

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

STATEMENT OF THE CASE

(1) The decision below addressed multiple issues of federal law that this Court has jurisdiction to review. Not setting aside the ultimate relationship of state law regarding the importance to the public of the issues is very consequential, the trial Court did not include decisions of its own higher state courts when it ruled that petitioner's cause of actions were untimely. Petitioner submits that the amendment to T.R.Crim. P. Rule 36.1 on July 1, 2016 is the proper place to account for the statute of limitations." Burford v. State, 845 S.W. 2d 204, 208 (Tenn. 1992). In applying the *Burford* rule to specific factual situations courts should utilize a three-step process: (1) determine when the limitations period would normally have begun to run; (2) determine whether the grounds for relief actually arose after the limitations period would normally have commenced; and (3) if the grounds are "later-arising," determine if, under the facts of the case, a strict application of the limitations period would effectively deny the petitioner a reasonable opportunity to present the claim. In making this final determination courts should carefully weigh the petitioner's liberty interest in "collaterally attacking constitutional violations occurring during the conviction process," *Id. At 207*, against the State of Tennessee's interest in preventing the litigation of stale and fraudulent claims." *Id., at 208.* Slack v. McDaniel, 529 U.S. 473, 484 (2000).

(2) The adjudication of his claims by the decision of the 6th Circuit is in conflict with the decision in other appellate court(s) in the sense that the court held that *"his pro se status or lack of knowledge of the laws, these factors are insufficient to constitute an extraordinary circumstance and to excuse an untimely filing.: (Order pg. 5 No. 20-5617)* the Court below cites itself for authority e.g., Keeling v. Warden Lebanon Corr. Inst., 673 F. 3d 452, 464 (6th Cir. 2012). However, the United States Supreme Court, and other appellate courts and state courts hold to the contrary insofar as pro se prisoners filings. *"Provisions tolling actions accruing during disabilities such as infancy, insanity and incarceration, have been codified in nearly every state."* Hardin v. Straub, 490 U.S. 536, 109 S.Ct. 1998, citing, Heard v. Caldwell 364 F. Supp. 419 (S.D.Ga. 1973). Thus jurists of

reason would disagree with the court below's resolution of his constitutional claims. See also ARGUMENT , "I.A".

(3) Trial court abused its discretion and used the wrong legal standard when it accepted extradition as proper. The absence of the warrants of extradition as governmental authorization in light of the flawed affidavit, to surrender Petitioner to answer for capital offenses violated clearly established federal law in the Uniform Extradition Act (T.C.A.) and federal laws. State ex rel. Brown v. Grosch 177 Tenn. 619 152 S.W. 2d 239, 24`, citing, Illinois ex rel. Nichols v. Pease, 207 U.S 100, 28 S.Ct. 58 52 L.Ed. 121; Franks v. Delaware 98 S.Ct. 2674.

(4) Trial court abused its jurisdictional authority by converting his Rule 60.02 Petition, his Motion to Correct Illegal Sentence and his Petition for the Writ of Habeas Corpus without adjudication of the separate claims into a Petition for Post Conviction Relief. This action would b e debatable by jurists of reason without he trial court's adjudication of any of his claims as to whether the district court's procedural ruling was correct. *"...before a state may terminate a claim for failure to comply with procedural requirements such as statue of limitations...due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner."* Buford v. State of Tenn., 845 S.W. 2d 204 208 (Tenn. 12-21-92); *"First the AEDPA ("statue of limitations' defense...") is not 'jurisdictional'. Day v. McDonough 547 U.S. 198, 205 (2006). It does not set forth '"an inflexible rule requiring dismissal whenever"' its '"clock has run."' We have previously made clear that a nonjurisdictional statute of limitations is normally subject to a '" rebuttable presumption "' in favor '" of equitable tolling.'"* Holland v. Florida, 130 S.Ct. 2549 (2010).

(5) Available state remedies such as Tennessee Rule 60.02, Petition for the Writ of Habeas Corpus (T.C.A. 29-21-101) and Motion To Correct an Illegal Sentence (T.R.Crim.P. 36.1), are state created remedies to redress constitutional violations when all or most other avenues are no longer available....These state remedies should not encounter a hostile face from the federal court's if and when those state remedies are exhausted. After undergoing the states' appellate process

culminating with the supreme court decision of September 18 2019, following his pro se entry in the state corrective process, on May 31 2018, Petitioner filed his Petition for the Writ of Habeas Corpus in Federal Court on November 15 2019.

(6) The Judgment below focused on the statue of limitation *"that he has been pursuing his rights diligently"* {(1) , Order pg. 3] *"The diligence required for equitable tolling purposes is '"reasonable diligence"' see e.g.* Lonchar *517 U.S. at 326 not '"maximum feasible diligence.'"* Starns v. Andrew *524 F. 3d 612 618 (5th Cir. 2008)"* Holland, supra.

The trial court only looked at one unavoidable issue: *"The only colorable claim that can be determined from the Rule 60 petition (is) '"that if taken as true...would entitle petitioner(s) (sic) to relief under the Post Conviction Procedure Act" (is)...the sentences are the result of unknowing guilty pleas not understandingly made."(Order,* Id, *pg. 5)* No other issues have been ruled on by the state courts. Petitioner's "extraordinary circumstances" and the fact that the AEDPA limitation period should not even apply because most of his claims were never "adjudicated" in state court is clear. Muth, supra, account for justification as reasonable grounds for disagreement by jurists of reason.

(7) The record which the U.S. District Court, wrote that *"Having considered the submissions of the parties, the State-court record, and the law applicable to Petitioners claims..."* (Memorandum Opinion, No. 3:20-cv-39-PLR-DCP) also should reveal that his "affidavit of arrest contained false statements, notwithstanding that the 6th Circuit Court concluded *"...but he does not provide any basis for this assertion."* (pg. 3, No. 20-5612 *Id.*, United States Court of Appeals For The Sixth Circuit, Order; Nov. 3 2020)

Petitioner learned about these statements when he was able to receive his records from prior counsel only a few months prior to his filing of the pro se Rule 60.02 Petition. Nonetheless, the state court still failed to reach the merits of his petition due to the reconstruction of his cause of action.

(8) The only issue the federal district court dealt with was timeliness. It never weighed his claims for adjudication beyond a mere recital (Order pg. 2-3) Sticking to the view that his judgment of conviction is the correct starting point for federal statute of limitations the district court did not properly evaluate his petition in light of 28 U.S.C. § 2244 (d))(2). Equitable tolling in the federal sense has criteria that petitioner is eligible for. Where the court ruled that the statute of limitations is not resumed with a "properly filed application for state post conviction or other collateral relief..." (pg. 5 No. 3:20-cv-39-PLR-DCP), in light of the extraordinary circumstances of fraud and deceptiveness, as well as the tumult-filled environment of prison, (Hardin v. Straub, supra, 490 U.S. 536, 109 S.Ct. 1998), he has made a substantial showing of the denial of several federal constitutional rights. 28 U.S.C. § 2253©(2).

(9) Despite the rote expiration of the limitation period Supreme Court precedence allows for the renewed or exceptional starting date is the amendment of T.R. Crim. P. 36.1 (July 1 2016). Petitioner submits certain rulings of this Court, which proves that an amended state procedural rule would create a new limitations period.

REASONS FOR GRANTING THE WRIT

I. THE JUDGMENT BELOW PRESENTS MULTIPLE ISSUES OF FEDERAL LAW

A.

This Court "*possess[es] jurisdiction to review state-court determinations that rest upon federal law.*" Oregon v. Guzek, 546 U.S. 517, 521 (2006). And it is federal law upon which the decision below finds its underpinnings. As described in the Order of the 6th Circuit (No. 20-5617, 11-3-2020),***"Ogle argues that the statute of limitations should run from the date of an amended state rule, (i.e., July 1 2016). Tennessee Rule of Criminal Procedure 36. 1 went into effect. However, he cites no authority establishing that an amended state procedural rule would create a new limitations period." (Order, Id., pg. 3)*** Only certain "new rules" of criminal constitutional law apply retroactively. See Schriro v. Summerlin, 542 U.S. 348, 351-52 (2004). Where the

new rule is substantive in nature – i.e., *"narrow[s] the scope of a criminal statute by interpreting its terms"* or *"place[s] particular conduct or persons covered by the statute beyond the State's power to punish"* – *then it is generally retroactive.* But where the new rule is procedural, it applies retroactively only if it is "watershed" in the sense that it *"implicat[es] the fundamental fairness and accuracy of the criminal proceeding." Id. at 352 (citation omitted)(internal quotation marks omitted) (emphasis supplied).* Teague v. Lane, 489 U.S. 288 (1989) See Danforth v. Minnesota, 552 U.S. 264, 266 & n. 1 (2008).

T.R. Crim. P. 36. 1(a)(1) states "*to facilitate appellate review (of 36. 1 Petitions). New subdivision (e) requires state courts* ***to include their findings of fact and conclusions of law in the order disposing of motions filed under this rule.*** State courts are required under Tennessee rules of Criminal Procedure 36.1(3)©(2) *"...with or without a hearing if the court determines that the sentence is not an illegal sentence, the court shall file an order denying the motion."* In relevant part T.R. Crim.P. 36.1 (e) as amended by the Tennessee Supreme Court July 1 2016, provides that *"to facilitate appellate review new subdivision (e) requires courts to include their findings of fact and conclusions of law in the order disposing of motions filed under this rule."*

Therefore, T.R. Crim. P. 36.1(3)©(2) as amended clearly is intended to implicate the "*fundamental fairness and accuracy*" of appellate review of the denial of such motion by the state trial court. Schriro supra., *351-52.* This rule should apply as a starting point for petitioner to seek review of his illegal sentence. Further, T.C.A. § 40-30-111, which the amendment has strengthened, underscores the importance of the new amended rule, provides that state trial courts*"[u]pon final disposition of every petition the court shall enter a final order, and...shall set forth in the order or a written memorandum of the case all grounds presented, and shall state the findings of fact and conclusions of law with regard to each ground.*: T.C.A. § 40-30-111(b). The Tennessee Supreme Court "construed this statute to mean that findings of fact are mandatory." Donald Mays v. State, 2004 WL

2439255 (2004), citing, Brown v. State, 1 Tenn. Crim. App. 462 445 S.W. 2d 669 (1969).

Changing the form of a petition ("construe") to render these mandatory provisions moot is a fundamental denial of due process. A state prisoner does not have the same due process protection in the post conviction procedure act as he or she does in the rules of criminal procedure with respect to the findings of fact and conclusions of law coupled with no limitation on when he or she discovered grounds for relief. The 6th Circuit Court held that Petitioner *"...filed his state post conviction relief petition in 2017." (Id., pg. 2)* This is erroneous from the premise of a post conviction procedure act as if this was the intention of having his claims reviewed under this procedure. Factually petitioner has never filed a petition for post conviction relief. *Franks supra @ 2683 "[F]undamenal fairness entitles indigent defendants to an 'adequate opportunity, to present their claims fairly within the adversary system."* Ake v. Oklahoma 470 U.S. 68, 77, 105 S.Ct. 1087 1093 (1985);

B.

Petitioner submits that he properly filed collateral relief petitions, e.g, his Motion under T.R. Civ. P. Rule 60.02, and its non-adjudicated grounds was filed on or about "November 2 2017", sought pursuant to the amendment that was intended to make the accuracy and fairness of the appellate process possible in Tennessee from then on. Mays v. Carlton, 245 S.W. 3d 340 348 (TENN. fn. 8); T.R. Crim. P. 36.1. Holland, supra 130 S.Ct. 2549; Schriro supra.

Tennessee Rules of Civil Procedure Rule 60.02 is modeled on Federal Rules of Civil Procedure Rule 60.02 and comparatively is more expansive than the limited interpretation given it by the courts below. Within his Petition Petitioner addressed the fraud and concealment by the Jefferson County Police Department, who went to the state of Alabama kidnapped the Petitioner using affidavit of arrest containing deliberately or recklessly made false statements that were material to the erroneous findings of probable cause, supporting the search of his personal affects and domicile, and seizure of his person removing personal and subject matter jurisdiction from the Jefferson County trial

court. See In re Estate of Davis 308 S.W. 3d 832, 841 (4-23-2010): *"It is well settled in Tennessee that statutes of limitations may be tolled for a period of time where the defendant has taken actions to fraudulently conceal a cause of action"* See , e.g., Fahrner v. SW Mfg., Inc., 48 S.W. 3d 141 145 (Tenn. 2001). (*"Tennessee law has long recognized that the statute of limitations does not begin to run until the plaintiff exercising reasonable diligence, discovers the fraud which the defendant wrongfully concealed"*. Vance v. Schulder 547 S.W. 2d 927, 930. (Tenn. 1977) (*"Fraudulent concealment of the cause of action by the defendant tolls the statute of limitations. It begins to run as of the time of the discovery of the fraud by the plaintiff."* In re Estate of Davis, supra.

A prosecution for a capital offense where the accused is in effect kidnapped and ferreted out of town and state, by means of a void arrest warrant for extradition, which was fundamentally flawed by deliberately made false and reckless statements, is void. The requisition warrant issued by the state of Tennessee was not signed and authorized by the governor of TN. See T.C.A. § 40-9-103, that *"the issuance of the arrest warrant "'shall have governor's signature on warrant of arrest.'"* Petitioner was taken back to Tennessee without any concurrence of the governor of Tennessee.

The Fourteenth Amendment to the Constitution of the United States forbids the state from depriving a person of his liberty on the basis of manufactured evidence, and such an infringement invokes a defendant's right to substantive due process. Substantive due process clause of the Fifth Amendment bars the use of the statements written by Sheriff McCogic knowingly and recklessly disregarding the truth. They were relied on by the issuing magistrate and used as evidence purporting to be the singed, voluntary sworn statements of the defendants.

After undergoing the state's appellate process following trial court's denial of his Motion To Correct Illegal Sentence, and Petition for the Writ of Habeas Corpus on September 18, 2019 by the TN S.Ct., Petitioner filed a Petition for the Writ of

Habeas Corpus in Federal Court. *"AEDPA's subject matter habeas corpus – pertains to an area of the law where equity finds a comfortable home."* Holland supra, *130 S.Ct. 2549, 560 U.S. 631 (2010).*

The arrest warrant contained inculpatory statements allegedly made by the Petitioner on *April 3rd"*, agreeing to be deported back to TN to answer to the alleged confession. This affidavit was not issued until April 4th, when it purports to have been signed by the Judge in TN to execute, but his alleged confession and consent, were dated April 3rd. Petitioner could not sign in agreement to consent to be transported to TN day before the arrest warrant was even signed and issued by the magistrate Judge. This is the first indication of fraud and denial of due process. State ex rel. Brown v. Grosch 152 S.W. 2d 239 241, citing Illinois ex rel. McNichols v. Pease, 207 U.S. 100, 28 S.Ct. 58. Franks v. Delaware supra.

Secondly, in TENN *"sufficiency of governor's warrant led to discharge of prisoner in habeas corpus proceedings."* See State ex rel. Hourigan v. Robinson 257 S.W. 2d 9 (1953); State ex rel. Sivley v. Hackett, 33 S.W. 2d 422 (1930). Because habeas corpus was the proper vehicle to address a constitutionally deficient arrest warrant in TN, the state courts committed egregious error by failing to adjudicate this matter regarding state officials' misconduct, in his original Habeas Corpus petition filed in 1997 by ineffective assistance of counsel in that he never pursued this petition to a conclusion or hearing, specifically as it concerns falsification of statements in the arrest warrant affidavit. *"Extradition proceedings are and always have been summary proceedings of civil nature designed to test whether '"rendition warrant"', the legal process issued by governor of asylum state which mandates that defendant be arrested and turned over to agents of demanding state is valid." T.C.A. 40-9-119. "...allowing an evidentiary hearing after a suitable preliminary proffer of material falsity, would not diminish the importance and solemnity of the warrant-issuing process. It is the ex parte nature of the initial hearing rather than the magistrate's capacity that is the reason for the review."*

The Judgment below is bereft of the decision to hold an evidentiary hearing on this question of materiality on the Petition. The arrest warrant has never been determined by judicial review to be constitutionally firm as a matter of law and fact. Fay v. Noia 372 U.S. 391, 423, 83 S.Ct. 822, 840.

On August 22, 2018, Petitioner filed his Pro Se Petition to Correct Illegal Sentence and/or Petition for the Writ of Habeas Corpus.. The state courts treated his petition for the writ of habeas corpus (T.C.A. 29-21-101--107) with the same 'broom' at the same time as his Rule 60.02 Petition, with the result ditto of denial of relief due to untimeliness. However there is *"No statute of limitations exists for filing a habeas corpus petition"*. See Summers v. State, 212 S.W. 3d 251 255-56; Mays v. Carlton, supra. Tennessee Rules of Criminal Procedure rule 36.1(b), and Tennessee Code Annotated § 29-21-101 et. Seq. Provide that state prisoners have no statute of limitation. The denial of due process occurred when the courts below ignored the petitioner's motions and petitions relative to these rules of procedure and state legislative statutes, and converted them to fall within the "statute of limitations" of the rules for a Petition for Post Conviction Relief (Tennessee Code Annotated ("T.C.A." 40-30-101 et.seq.) and denied relief on that basis.

C.

The AEDPA standard of evaluating Petitioner's access to the Courts applies *only* when the claim in question "*was adjudicated on the merits in State court proceedings." 28 U.S.C. § 2254(d).* When a state court does not adjudicate a claim on the merits, the federal court should apply the general, less deferential habeas standard in 28 U.S. C. § 2243. See Muth v. Frank, supra, 412 F. 3d 808, 814 (7th Cir. 2005). Here, although the judgment below utilizes the more deferential AEDPA habeas standard, it reasonably should not apply to Petitioner's claims that were not adjudicated on the merits in State court. The following claims that the state courts did not adjudicate are as follows:

(1) unconstitutional guilty plea

(2) unconstitutional arrest warrant affidavit

(3) unconstitutional governor's extradition from Alabama to Tennessee

(4) " denial of Petitions in state court without findings and facts

(5) " sentence

(6) " denial of statutory appellate process by intentional abridgment of record.

Petitioner's discovery of grounds for his Rule 60.02 Petition coincides with the "July 1 2016" amendment. On or about November 2, 2017 Petitioner filed a pro se "Petition for Rule 60.02 in the trial court of Jefferson County Circuit Court, 4th Judicial District, Part III. On August 3, 2018, trial Judge Rex Ogle, converted Petitioner's rule 60.02 Petition into a Post conviction procedure petition and dismissed it as "untimely". This conversion is challenged here as an abuse of discretion. *"A finding of an abuse of discretion 'reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstance and relevant legal principles involved in a particular case.'"* State of Tennessee v. Shaffer, 45 S..W. 3d 553,555. By not complying with the requirements of the amended rule 36.1(e) the trial court merely brings his action under the statute of post conviction 40-30-101 et. seq., and "dismisses the petition" without a hearing and also does not adjudicate his claims under the Motion. *"Federal timing rules, according to the United States Supreme Court, do not implicate a state court's interpretation of state laws."* Cf. Lawrence v. Florida., 549 U.S. 327, 341 (Ginsburg J., dissenting) Thus, any calculation of statute of limitations should begin with the amendment of T.R.Crim. P. Rule 36.1. The grounds for relief therein justify his Motion and Petition as "properly filed collateral review". AEDPA (2244(d)2).

D.

Although the 6th Circuit does not include these views in its Judgment, because his claims were not adjudicated in state court, AEDPA's limitation period as held by several appellate circuits, should not apply in this case. Several federal

appellate courts have ruled differently from the 6th Circuit Court. "*A state court must specifically identify a claim and must identify and review the correct claim*" in order for the state court's action to reflect adjudication on the merits for AEDPA purposes. Muth v. Frank, supra, 412 F. 3d @ 815, n. 5; Billings v. Polk, supra, 441 F. 3d @ 252 (4th Circuit. 2006) (no adjudication on the merits where North Carolina Supreme Court *"did not consider – or at least there is no indication that it considered – petitioner's Sixth Amendment claim);* Apple v. Horn, 250 F. 3d 203, 210 (3rd Cir. 2001) (no adjudication on the merits because Pennsylvania Supreme Court "'recharacterized"' petitioner's constructive denial of counsel claim as Ineffective Assistance of Counsel claim); Hameen v. Delaware, 212 F. 3d 226, 248 (3rd Cir. 2000) (no adjudication on the merits where Delaware court "did not pass on [petitioner's] Eighth Amendment constitutional duplicative aggravating circumstances argument, even though it had the opportunity to do so").

These appellate court rulings implicate petitioner's Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment claims.

E.

Petitioner had a constitutional right to counsel at all crucial stages of the prosecution against him - sentencing hearing being a true 'crucial' state of the prosecution. Cronic v. United States 104 S.Ct. 2039 (1984); Johnson v. Zerbst, 304 U.S. 458 58 S.Ct. 1019, 1093: *"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 should not be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the constitution."* Yet at sentencing Petitioner had no idea of the purpose of *"mitigation"* and how it can affect (reduce) a sentence and indeed the influence it may have as to the nature and severity of the offense for which he is prosecuted.

"*We have held that a capital defendant is entitled to introduce any relevant mitigating evidence that he proffers in support of a sentence less than death.*"

Jells v. Mitchell, 538 F. 3d 478 (6th Cir. 8-18-2008) *"failure to use mitigation specialist was deficient (assistance of counsel).* See Fry v. Plliler, 127 S.Ct. 2321. The only "mitigation" Petitioner was offered was to plead guilty to avoid a sentence of death. Counsel committed an abject failure at guilty plea hearing and at sentencing. Mitigation is a constitutional right when an accused faces a mandatory "life" sentence if found guilty. In Tennessee, the least sentence a defendant can receive for first degree murder is mandatory life sentence. *"The right to present mitigating factors is tied to a defendant's right to present a defense."* Allen v. Hawley, 74 Fed. Appx. 457 (6th Cir. 8-7-2003), 2003 WL 21911327, citing Chambers v. Mississippi, 410 U.S. 284, 302 93 S.Ct. 1038 (1973). Petitioner's claim of denial of due process for lack of consideration or adjudication of mitigation is plain error requiring a new sentencing hearing. See Holguin-Hernandez v. U.S., 140 S.Ct. 762 (2020); United States v. Olano 507 U.S. 725 732-736 113 S.Ct. 1770 (1990).

F.

"A guilty plea does not waive the jurisdictional defects that constitute grounds for habeas corpus relief." Edwards v. State, 269 S.W. 3d 915 921-22 (TENN. 2008); State v. Pettus, 986 S.W. 2d 540, 542 (TENN. 1992). There was no fair and just reasons why the trial court changed his Petition for the Writ of Habeas Corpus, based on its statutory definition and compared with the claims for relief of his petition. *"The term 'illegal sentence' is synonymous with the habeas corpus concept of a 'void' sentence."* Cox v. State 53 S.W. 3d 287, 292 (Tennessee Court of Criminal Appeals 2001), overruled on other grounds, Moody v. State of Tennessee 160 S.W. 3d 512 (TENN. 2005). And then the high Court in Wiggins v. Smith, 539 U.S. 510, 530-31, 123 S.Ct. 2527, rejecting the dissenters' contention it was required to give deference to state court findings, because *"'the state court made no such finding'" and "' therefore"' it must determine de novo the unresolved factual issue."* Thus, because the state courts did not address Petitioner's habeas claims, no 'deference' should be afforded the Judgment below. Cf.. Taylor v. Maddox, 366 F. 3d 992 (9th Cir. 20-04). The voluntariness of

a guilty plea is subject to habeas corpus attack. See Archer v. State of Tennessee, 851 S.W. 2d 137, 159 (3-22-1992; wl 29817, pg. *5, citing, and quoting, State v. Neal, 810 S.W. 2d 131, 135 (Tenn. 1991): *(A conviction based upon a guilty plea which is not voluntary and knowing "'has been obtained in violation of due process and is therefore void.'") (Explaining the holding in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969);* Wilson v. Bell 137 F. 2d 716 721 (6th Cir. 6-22-1993).

G.

The trial court's conversion of his pro se petition for correction of illegal sentence and/ or for the writ of habeas corpus from one addressing his sentence, to one addressing his "conviction" was an abuse of discretion as well as denial of due process of law. *"A judgment in a criminal case includes both a conviction and a sentence; the adjudication of guilt that is the conviction and the sentence are distinct and severable components of the judgment." Cantrell v. Easterling 346 S.W. 3d 445, 456* (emphasis supplied).

"When analyzing a guilty plea we look to the federal standard announced in Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709, and the state standard set out in State v. Mackey, supra. Petitioner's guilty plea does not satisfy either state or federal rulings for acceptance. See also Tennessee Rules of Criminal Procedure Rule 11: *"A plea is not 'voluntary' if it results from ignorance misunderstanding coercion inducement or threats."* Blankenship v. State 858 S.W. 2d 897, 904 (TENN. 1993) To exaggerate the substance of the offense to make it death-eligible, without any argument or reasoning by defense counsel at the plea hearing only to induce petitioner to plead guilty to life without parole is not a voluntary plea. Petitioner should be resentenced to second degree murder with credit for all good time heretofore.

H.

Trial Court Judge Rex Ogle refusal to recuse himself for prejudice, bias and the overwhelming appearance of judicial impropriety, was an overt abuse of discretion, and unreasonably contributed to the denial of Petitioner receiving a fair and impartial sentencing hearing. Your Honor, who upon knowledge, information and belief is known to be a relative by blood to Petitioner in the community did not realize or account for the danger in judging this controversial case. T.C.A. § 40-30-105 provides that –the chief justice of the (Tennessee) Supreme Court should designate an appropriate judge to hear the matter. This applies to counsel and judges. The well-known adage that "appearance is as bad as the reality" applies here. Judge Ogle did take cognizance of the issue, was aware of the appearance of impropriety, but irrationally refused to recuse himself. (*"...the defendant/petitioner requested that the court herein recuse himself, and that the court denied the same""* (Order Judge Ogle, pg. 1, No. 14075 83-18) nor did the Judge offer any other information. Instead of addressing the issue directly with a hearing and investigation, resolving doubt one way or the other the court merely said in so many words 'I hear you and I'm not hearing you'.
This Court has found that similar circumstances are not approved.
"In capital cases, we have held that the sentence imposed should reflect a "reasoned moral response" not only to the crime, but also to the '"background"', and character of the defendant himself." See Dawson v. Delaware, 112 S.Ct. 1093, 1098-99, 503 U.S. 159@ 167; California v. Brown, 479 U.S. 538, 545, 107 S.Ct. 837, 841 (1987) (O'Connor, J. concurring), citing, Penry v. Lynaugh, 492 U.S. 302, 328, 109 S.Ct. 2934, 2951 (1989) (quoting California v. Brown, supra

The trial Court was aware of the danger inherent in the appearance of relationship and the shade cast on the judicial process but insisted on maintaining his hold on this case, affecting sentencing consideration of the merit of petitioner's motions. Petitioner submits that the court sentenced him to an excessive sentence in his attempt to debunk the belief in the community of his

relationship to the defendants. Petitioner submits that his failure to make findings of fact and conclusions of law in support of the denial of all of petitioner's motions and petitions, give credence to bias..

The severity of Petitioner's sentence – certainly without minimizing the offense influenced by a myriad of mitigating factors including intoxication mental competence education and sociological impairment, was influenced in part by the trial court's overcompensating the sentence, in a political climate where he is elected by popular vote in the small town where the offense was committed, so as to not appear lenient or swayed by blood kin. Sentencing him to life without parole where he had a consecutive sentence of seventy-three (73) years is proof of the excessive sentencing in this particular case. There is reasonable doubt the trial judge erred by not recusing himself in any event. The fact that the court considered not one ground for relief or evidence when accepting the guilty plea indicates the lack of dispassionate mindset required by law. *"A judge must exhibit 'impartiality in demeanor as well as in actions."* Allen v. Hawley, supra, citing, United States v. Frazier, 584 F. 2d 790 (6th Cir. 1978); Cannon 3: *"A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:*

(a) the judge has a personal basis or prejudice concerning a party or a party's lawyer." Tennessee Supreme Court Rule 10, Canon3 (E)(1).

Although a court may have subject matter and personal jurisdiction over a petitioner *"its judgment may, nevertheless be void and therefore subject to attack by habeas corpus because certain fundamental constitutional rights of the prisoner were violated during the course of the proceedings leading to his conviction. See* State ex rel. Anglin v. Mitchell, 575 S.W. 2d 284, 287.

II. The Judgment below fits the definition of fundamental denials of Justice.

A. The United States Court of Appeals for the Sixth Circuit agreed with the District Court in Tennessee, that "reasonable jurists could not disagree with the district court's conclusion that Ogle's 2254 petition was untimely." (Order, No. 20-5612, pg. 2; 11-3-2020). The trial court reconfigured Petitioner's Tenn. Rule of Civil Procedure Rule 60.02 filed Nov. 2 2017, into the same post conviction statute, on the same date (8-3-18), even though the Rule 60 procedure also does not have a statute of limitation in the clause petitioner went forward on. All of the questions regarding the statute of limitations began in the state trial court, which did not comply with its own laws and rules before denying petitioner relief. Before the state may terminate a claim for the failure to comply with procedural rules such as statute of limitations the due process clauses of the state and federal constitutions require that the claimant be given *"a reasonable opportunity to have the claimed issue heard and determined."* Burford v. State, 845 S.W. 2d 204, 208 (Tenn. 1992). Thus, the 6th Circuit unreasonably began counting the one-year statute of limitation under 2244(d)(1) without consideration of the fact that Petitioner had filed in the state court the T.R.Civ. P. Rule 60.02 on November 2 2017, and the advent of new amended criminal procedure Rule 36.1, Tennessee Rules of Criminal Procedure, was on July 1 2016. His relief was based on the time when the state supreme court amended the rules for appellate review of motions to correct illegal sentence, July 1, 2016. *"This limitation period is tolled during the time in which '"a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending."* (Order pg. 2) (emphasis mine) Petitioner will show herein that there is countenance in the high Court for amendments providing equitable tolling. Therefore Petitioner submits that he was far less than the eighteen years counted by the lower Court. 28 U.S.C. 2244 (d)(1).

B. Petitioner filed his state Petition for the Writ of Habeas Corpus under "T.C.A." § 29-21-101" which has no statute of limitation per se, on May 31 2018, but the 6th Circuit court utilized the state reconfiguration of his Petition For the Writ of habeas corpus, on August 3, 2018, into the post conviction statute of §§ 40-30-101 et.seq., which *does* have a one-year statute of limitation, similar to the federal rule. The privilege of the writ of habeas corpus is constitutionally guaranteed by Article I section 15 of the Tennessee Constitution which states that *"the privilege of the writ of Habeas Corpus shall not be*

suspended unless when in case of rebellion or invasion the General Assembly shall declare the public safety requires it." The statute authorizing the writ of habeas corpus states: *"Any person imprisoned or restrained of his liberty, under any pretence whatsoever except in case [in which the prisoner is detained in custody under federal judicial authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint." Tenn. Code Ann.("T.C.A.")* § 29-21-101.

C. All of the questions regarding the statute of limitations began in the state trial court, which did not comply with its own laws and rules before denying petitioner relief. Before the state may terminate a claim for the failure to comply with procedural rules such as statute of limitations the due process clauses of the state and federal constitutions require that the claimant be given *"a reasonable opportunity to have the claimed issue heard and determined."* Burford v. State, 845 S.W. 2d 204, 208 (Tenn. 1992 However, whereas the state statute does not limit the writ of habeas corpus for a certain period of time, yet, the more limited writ within Tennessee does not go as far as the federal writ of habeas corpus reaches which goes as far as allowed by the Constitution for convictions and sentences that are voidable for want of due process of law. So, it is a bigger deal that the federal district court denied his petition for the writ of habeas corpus on procedural grounds, in that it offers a wider range of relief to prisoners seeking redress for violations of their constitutional rights. The state Supreme Court denied his application for permission to appeal on September 18, 2019. He filed his Federal Petition for the Writ of Habeas Corpus on November 15 2019. A petitioner may nonetheless seek the writ of habeas corpus in some limited circumstances. If a reviewing court does not have the benefit of a ruling from the lower court, of conclusions of law, then there is still the question of due process to whether habeas corpus relief should be granted. See Benson v. State, 153 S.W. 3d 27, 31 (Tenn. 2004); Hart v. State, 21 S.W. 3d 901, 903. (Tenn. 2000). *("Whether a petitioner should be granted habeas corpus relief is a question of law...As such our review of the trial court's order denying the petition is de novo with no presumption of correctness given to the trial court's judgment. Id.)*

D. The principal method of post-conviction relief in Tennessee is through statutory post-conviction hearings. State v. Ritchie, 20 S.W. 3d 624, 630, (citing Tenn. Code Ann. §§ 40-30-101 to 40-30-310.The 6th Circuit Court unreasonably treated the second part of

2244(d)(2), i.e. *"...or other collateral review..."* The arbitrary action by the state that his cause of action was a "state post conviction petition (filed) in 2017", and therefore *"...that petition did not toll the statute of limitations because the 'applicable one-year period under §2244 (d)(1) already had expired by that time."* (Id.) (citations omitted) is based on a miscarriage of justice, not giving sufficient weight to the "amendment" of the Tennessee Rules of Criminal Procedure 36.1(b), by the Tennessee Supreme Court on July 1 2016, to "facilitate" a more fair and meaningful appellate review of the denial of Rule 36.1 motions. *"In certain circumstances due process prohibits the strict application of the post-conviction statute of limitations to bar a petitioner's claim when the grounds for relief whether legal or factual arise after the 'final action of the highest state appellate court to which an appeal is taken'—or in other words when the grounds arise after the point at which the limitations period would normally have begun to run."* Sands v. State of Tennessee 903 S.W. 2d 297, 301 (Tenn. 1995).

E. It is also erroneous finding by the 6th Circuit that petitioner filed a *"petition for post conviction relief".("Although Ogle subsequently filed his state post conviction petition in 2017...", pg. 2, No. 20-5612)* Petitioner did not apply for "State post conviction relief".

F. The voluntariness of his plea where the only 'mitigation' facing a capital defendant was "life without parole", the sufficiency of the governor's warrant, the constitutionality of the extradition hearing, legality of the arrest warrant, and the extraordinary circumstances which deserve equitable tolling, were never heard or adjudicated in state court. The more restrictive AEDPA standard applies only when the claim in question *"was adjudicated on the merits in State court proceedings."* Muth v. Frank, 412 F. 3d supra @ 814 (7th Cir. 2005); Billings v. Polk, 441 F. 3d supra,@ 252 (4th Cir. 2006).

Conclusion

Petitioner is TEDDY OGLE PRO SE. The petition for a writ of certiorari should be granted. His Petition is submitted on 3-29-21 date.

/s/ Teddy Ogle

CERTIFICATE OF SERVICE

I, TEDDY OGLE, TDOC # 309203, do declare under penalty of perjury that a true and exact copy of the foregoing **Petition for the Writ of Certiorari** has be sent to: Assistant Attorney General Richard Davison Douglas, Federal Habeas Corpus Division P.O. BOX 20207, Nashville, TN 37202, and to Office of the Clerk, Supreme Court of the United States Washington DC 20543-0001, by depositing same in the U.S. Mail, First Class Mail postage prepaid on this __ day of March, 2021, here at Morgan County Correctional Complex, P.O. Box 2000, Wartburg, TN 37887. Please see 28 U.S.C. § 1746; 18 U.S.C. § 1621.

TEDDY OGLE, Teddy Ogle Petitioner

APPENDIX

A.

No. 20-5612 Appeal for COA denied by United States Court of Appeals for the Sixth Circuit; 11-3-2020; 2020 WL7213498

B.

Petition for Writ of Habeas Corpus under Section 2254 denied on 5-22-2020; 3:20-cv-39-PLR-DCP; U.SD.CT., E.D. TN. WL 2020WL2616513

C.

Ogle v. State, No. E2018-01522-CCA-R3-PC, 2019 2355033; Tennessee Court of Criminal Appeals; denied on 6-4-19;

D.

Application for Permission to Appeal judgment of Tennessee Court of Criminal appeals denied by Tennessee Supreme Court on 9-18-19; 20 WL 2616664;