IN THE SUPREME COURT

FOR THE

UNITED STATES OF AMERICA

IN RE KEVIN D. LOGGINS SR. **CASE NO._____**

(TO BE SUPPLIED BY THE COURT)

NO RELIEF AVAILIBITY IN ANY OTHER

STATE OR FEDERAL COURT

PURSUANT TO SUP. CT. R. 20

(28 U.S.C. § 2241)

Comes now, Petitioner Kevin D. Loggins Sr, pro se in compliance with Sup. Ct. R. 20(2-3), emphasizing the grounds why the relief sought can only be granted by this Superior Court, why relief is not available in any other court, as well as establish this Superior Courts Appellate Jurisdiction.

Standard of Review: 28 U. S. C. § 2241 provides:

"(a) **Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions**. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

"(c) The writ of habeas corpus shall not extend to a prisoner unless --

"(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

"(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

"(3) **He is in custody in violation of the Constitution or laws or treaties of the United States**;

or

"(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right . . . ; or

"(5) **It is necessary to bring him into court to testify or for trial.**"

Art. I, § 9, cl. 2.

The habeas corpus provisions of § 14 of the original Judiciary Act, 1 Stat. 81 (1789), were amended by 4 Stat. 634 (1833), 5 Stat. 539 (1842), 14 Stat. 385 (1867), R. S. §§ 752-753 (1875), and 43 Stat. 940 (1925).

R. S. § 751 (1875): "The Supreme Court and the circuit and district courts shall have power to issue writs of habeas corpus."

R. S. § 752 (1875): "The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of **restraint of liberty**." (Emphasis added).

"It having been held that the regulation of the appellate power of this court was conferred upon Congress, and Congress having given an appeal or writ of error in only certain specified cases, the implication is irresistible, that those errors and irregularities, which can only be reviewed by appeal or writ of error, cannot be reviewed in this court in any other cases than those in which those processes are given. Now, it has always been held that " a mere error in point of law, committed by a court in a case properly subject to its cognizance, can only be reviewed by the ordinary methods of appeal or writ of error; but that where the proceedings are not only erroneous, **but entirely void, -- as where the court is without jurisdiction of the person or of the cause, and a party is subjected to illegal imprisonment in consequence, -- the Superior Court, or judge invested with the prerogative power of issuing a habeas corpus, may review the proceedings by that writ, and discharge from illegal imprisonment**. **This is one of the modes in which this court exercises supervisory power over inferior courts and tribunals; but it is a special mode, and confined to a limited class of cases"**. See **Ex parte Parks**, 93 U.S. 18, 23 L. Ed. 787 (1876).

This Court further held:

"The general principles upon which the writ of habeas corpus is issued in England were well settled by usage and statutes long before the period of our national independence, and must have been in the mind of Congress when the power to issue the writ was given to the courts and judges of the United States. These principles, subject to the limitations imposed by the Federal Constitution and laws, are to be referred to for our guidance on the subject. A brief reference to the principal authorities will suffice on this occasion.

Lord Coke, before the **Habeas Corpus Act** was passed, excepted from the privilege of the writ persons imprisoned upon conviction for a crime, or in execution. **2 Inst. 52; Com. Dig., Hab. Corp. B**.

The **Habeas Corpus Act** itself excepts those committed or detained for treason or felony plainly expressed in the warrant, and persons convict, or in execution by legal process. **Com. Dig., Hab. Corp. B**.

Lord Hale says, "If it appear by the return of the writ that the party be wrongfully committed, or by one that hath not jurisdiction, or for a cause for which a man ought not to be imprisoned, he shall be discharged or bailed." **2 Hale's H.P.C. 144**.

Chief Baron Gilbert says, "If the commitment be against law, as being made by one who had no jurisdiction of the cause, or for a matter for which by law no man ought to be punished, the court are to discharge. **Bac. Abr., Hab. Corp. B, 10**.

"These extracts are sufficient to show, that, " when a person is convict or in execution by legal process issued by a court of competent jurisdiction, no relief can be had. Of course, a superior court will interfere if the inferior court had exceeded its jurisdiction, or was not competent to act.

The courts of the United States derive their jurisdiction on this subject from the Constitution and laws of the United States. " The fourteenth section of the Judiciary Act granted to all the courts power to issue writs of scire facias, habeas corpus, and all other writs necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law; and to the justices and judges, power to grant writs of habeas corpus for the purpose of inquiry into the cause of commitment; but it added a proviso, that the writ should not extend to prisoners in jail, unless in custody under or by color of authority of the United States, or committed for trial before some court of the same, or necessary to be brought into court to testify. It was found necessary to relax the limitation contained in this proviso; and this was done in several subsequent laws. See act of 1833 (4 Stat. 634), passed in consequence of nullification proceedings in South Carolina; act of 1842 (5 Stat. 539), passed in consequence of the McLeod Case; and act of 1867 (14 Stat. 44), passed in consequence of the state of things that followed the late rebellion.

" The power of the Supreme Court is subject to a further limitation, [***10] arising from its constitutional want of original jurisdiction on the subject; from whence it follows that, except in aid of some other acknowledged jurisdiction, it can only issue the writ to review the action of some inferior court or officer. **Ex parte Barry**, 2 How. 65.

"From this review of the law it is apparent, therefore, as [*23] before suggested, that in a case like the present, " where the prisoner is in execution upon a conviction, the writ ought not to be issued, or, if issued, the prisoner should at once be remanded, if the court below had jurisdiction

of the offence, and did no act beyond the powers conferred upon it. The court will look into the proceedings so far as to determine this question. If it finds that the court below has transcended its powers, it will grant the writ and discharge the prisoner, even after judgment. **Ex parte Kearney**, 7 Wheat. 38; **Ex parte Wells**, 18 How. 307; **Ex parte Lange**, 18 Wall. 163. "But if the court had jurisdiction and power to convict and sentence, the writ cannot issue to correct a mere error. We have shown that the court below had power to determine the question before it: and that this is so, is further manifest from the languageof Chief Justice Marshall in the case of **Tobias Watkins**, 3 Pet. 203. He there says, " "To determine whether the offence charged in the indictment be legally punishable or not, is among the most unquestionable of its [the court's] powers and duties." id. at pg.-s (19-23).

The **Suspension Clause** provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." **U. S. Const., Art. I, §9, cl. 2**. In **INS v. St. Cyr**, 533 U. S. 289, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001), we wrote that the Clause, at a minimum, "protects the writ as it existed in 1789," when the Constitution was adopted. Id., at 301 (internal quotation marks omitted).

In 1768, Blackstone's Commentaries—usually a "satisfactory exposition of the common law of England," **Schick v. United States**, 195 U. S. 65, 69, 24 S. Ct. 826, 49 L. Ed. 99, T.D. 802 (1904)—made this clear. Blackstone wrote that habeas was a means to "remov[e] the injury of unjust and illegal confinement." **3 W. Blackstone, Commentaries on the Laws of England 137** (emphasis deleted). Justice Story described the "common law" writ the same way. See 3 **Commentaries on the Constitution of the United States §1333, p. 206** (1833). Habeas, he explained, "is the appropriate remedy to ascertain . . . whether any person is rightfully in confinement or not." Ibid.

INDIRECTLY SUSPENSION OF THE GREAT WRIT.

I. State Officials Obstruction of Justice.

In the case at bar the trial judge ordered the court reporter to alter the record of trial and

withhold said record evidence from direct state appellate court review, from Habeas Motion pursuant to 28 U.S.C. § 2254 review, and release the record 2-days after the Federal Habeas Court denied the writ. See Appendix-(A) (Dating the day the hidden record was finally transcribed).

Petitioner then sought State Habeas review on the structualy and jurisdictional defected judgment pursuant to K.S.A. § 60-1507 (State Habeas Corpus Statute). See Appendixes-(E) and (F). In both Loggins-I and Loggins-II the State district Court and Kansas Court of Appeals applied a harmless error review to petitioners claims and ruled diametrically different then this Superior Courts mandate, on the well established rule of constitutional law.

Under the statute, a federal court may grant a writ of habeas corpus if the relevant state-court decision was either (1) "contrary to . . . clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "involved an unreasonable application of . . . clearly [*405] established Federal law, as determined by the Supreme Court of the United States." **Williams**, 529 at U.S. 405.

The word "contrary" is commonly understood to mean "diametrically different," "opposite in character or nature," or "mutually opposed." **Webster's Third New International Dictionary** 495 (1976). The text of **§ 2254(d)(1)** therefore suggests that the state court's decision must be substantially different from the relevant precedent of this Court. "The Fourth Circuit's interpretation of the "contrary to" clause accurately reflects this textual meaning. A state-court decision will certainly be contrary to our clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases. **Williams**, 529 at U.S. 405.

Not only is the decision reached by the lower courts diametrically different then clearly established federal law as decided by this court, the courts also applied the wrong standard of review which in itself warrants a reversal. "When a court makes a ruling applying the wrong standard of review, is grounds for reversal." **Dickerson v. Zurko**, 527 U.S. 150, 119 S.Ct. 1816; 144 L.Ed. 2d 143 (1999). The standard of review utilized by the state courts applies a harmless error review, (**Irregularity at preliminary**). This Superior Court has consistently held a structual error defies harmless error review.

We have recognized a limited class of fundamental constitutional errors that "defy analysis by 'harmless error' standards." **Arizona v. Fulminante,** 499 U.S. 279, 309, 113 L. Ed. 2d 302, 111 S. Ct. 1246 (1991); see Chapman v. California, 386 U.S. 18, 23, 17 L. Ed. 2d 705, 87 S. Ct. 824 (1967). Errors of this type are so intrinsically harmful as to require automatic reversal (i.e., "affect substantial rights") without regard to their effect on the outcome. (Quoting **Neder v. United States,** 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999) "[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis." **Rose v. Clark,** 478 U.S. 570, 579, 92 L. Ed. 2d 460, 106 S. Ct. 3101 (1986). Indeed, we have found an error to be "structural," and thus subject to automatic reversal, only in a "very limited class of cases." This Superior Court has declared the claim raised by petitioner as structual, "**Tumey v. Ohio**, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927) (**biased trial judge**). id. at pg.-8.

STATE COURTS METHOD OF SUSPENDING THE WRIT INDIRECTLY

The State Court have ignored the structual error, (***biased judge component***) and lack of jurisdiction challenge (***28 U.S.C. § 455(a) disqualifying factor***), and simply entered rulings that

are clearly in violation of well established federal law as defined by this Superior Court, applying the wrong standard of review, then asserting that petitioners claims are barred by res judicata and issue preclusion, thus forclosing the door of Habeas Relief in the state courts.

FEDERAL COURTS METHOD OF SUSPENDING THE WRIT INDIRECTLY

The lower federal courts have held that Petitioner cannot utilized Fed. R. 60(b) to challenge the courts jurisdiction, because if the court agrees with petitioner it would result in the reversal of the state court "conviction". See Appendix-(Q).

The lower federal courts held that petitioner must seeking permission to file a second 2254 motion pursuant to **28 U.S.C. § 2244**. Petitioner filed said application and therein stated exceptional circumstances. This Superior Court has consistently held:

"In **McCleskey v. Zant**, 499 U.S. 467, 493-94, 113 L. Ed. 2d 517, 111 S. Ct. 1454 (1991), the Supreme Court explained the "cause" requirement as follows:

> " In procedural default cases, the cause standard requires the petitioner to show that "some objective factor external to the defense impeded counsel's efforts" to raise the claim in state court. **Murray v. Carrier**, 477 U.S. [478], at 488 [(1986)]. Objective factors that constitute cause include **"'interference by officials'" that makes compliance with the State's procedural rule impracticable, and "a showing that the factual or legal basis for a claim was not reasonably available to counsel." Ibid**. In addition, constitutionally ineffective assistance of counsel . . . is cause." Ibid. Attorney error short of ineffective assistance of counsel, however, does not constitute cause and will not excuse a procedural default. Id., at 486-488.

Despite showing that petitioner, all petitioners direct appeal counselors and post-conviction appointed counselors was denied access to the crucial portions of the preliminary examination that establishes the structual error. Said evidence was hidden from review until 2-days after the federal district court denied federal habeas corpus relief. See Appendix-(L). Thus not only was there interference by officials but a criminal act of obstruction of justice through

spolitation of the record to prevent the raising of the claim that demands an automatic reversal.

This Superior Court has long held that petitioners that invoke the federal courts jurisdiction, and is not satisfied with the outcome may question the courts jurisdiction. "A party who has invoked the jurisdiction of the federal court and is unhappy with its decision may indeed challenge its jurisdiction even after verdict." **American Fire & Cas. Co. v. Finn** (1951) 71 S. Ct. 534, 341 U.S. 6, 95 L. Ed. 702, 19 A.L.R.2d 738.

The law is unambiguous that if the trial court proported judgment of conviction is void all other courts rulings thereupon are themselves invalid. ""A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based on it."

"Although it is not necessary to take any steps to have a void judgment reversed or vacated, it is open to attack or impeachment in any proceeding, direct or collateral, and at any time or place, at least where the invalidity appears upon the face of the record. "**All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose**." (Emphasis added.) **46 Am. Jur. 2d, Judgments** § 31, p. 393-94.

Both state and federal law acknowledges and holds that a void judgment may be challenged at anytime. "Void for want of jurisdiction may be attacked at any time and may be vacated because it is a nullity." **State v. Minor**, 197 Kan. 296, 300, 416 P.2d 724 (1966). Despite the language of Rule 60(b) that all motions for relief must be "made within a reasonable time," **a**

motion under Rule 60(b)(4) may be made at any time. See **Orner v. Shalala**, 30 F.3d 1307, 1310 (10th Cir. 1994); **12 Moore's § 60.44[5][c]**; **11 Wright & Miller** § 2862, at 324.

Thus, the lower federal courts have held that petitioner cannot utilized Fed. R. 60(b), and cannot file a second 2254 motion pursuant to 28 U.S.C. § 2244, amounts to forclosure of the Great Writ repugnant to the **Art. I § 9[2]** of the United States Constitution. Neither the lower federal courts or the state courts deny that petitioners claim is structual or jurisdictional, both state and federal courts appears to hold that laches and res judicata prohibits habeas review of petitioners claims.

A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . ." **Southern Pacific R. Co. v. United States**, 168 U.S. 1, 48-49 (1897). " Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. **Cromwell v. County of Sac**, 94 U.S. 351, 352 (1877); **Lawlor v. National Screen Service Corp.**, 349 U.S. 322, 326 (1955).

"Even as to prior determinations from state courts, the Supreme Court has long recognized that **NO PRECLUSIVE EFFECT** will attach where the court was without subject matter jurisdiction over the controversy." **Lessess of Hickey v. Stewart**, 44 U.S. 750, 11 L.Ed. 814 (1845).

A "void" judgment as we all know grounds no rights, forms no defense to actions taken thereunder, and is vulnurable to any manner of collateral attack, (thus here, by.) "No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are **NOT RES JUDICATA**, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been." **Fritts v. Krugh**, 92 .W.2d 604, 354 Mich. 97.

The law is well-settled there is no time limit when a judgment is void, see **Precision Eng.** v. **LPG**, C.A. 1st (1992), 953 F.2d 21 at pg.-22; **In re: Center Wholesale, Inc**. C.A. 10th (1985), 759 F.2d 1440 at pg.-1448; **Meadows v. Dominican Republic** C.A. 9th (1987), 817 F.2d at pg.-521; **Misco Leasing v. Vaughn** CA 10th (1971) 450 F.2d 257, **Taft v. Donellen** CA 7th (1969) 407 F.2d 807, also see "**Judgments was vacated as void after 30 years in entry**," **Crosby** v. **Bradstreet,** CA 2nd (1963) 312 F.2d 483 cert denied 83 S.Ct. 1300, 373 U.S. 911, 10 L.Ed. 2d 412. "**Delay of 22 years did not bar relief**," **U.S. v. Williams**, D.C. Ark. (1952) 109 F.Supp. 456.

The State Courts are of the legal opinion that petitioners claims are barred by laches and the doctrines of res judicata or issue preclusion, that irregardless that petitioner is challenging the courts jurisdiction or the original judgment as void, that according to Kansas Law, even if the state officials ruled in violation of law, in a manner dimetrically different then this Superiors Courts decision of well established federal law, hide evidence, or destroy it for the purpose of obstruction of justice, failure to raise the claim renders the void judgment valid, and defendants without a vehicle to seek the relief. See Exhibit-(1) hereto, pg.-(6), para.,-2 & 3.

Therein, the Kansas Courts of Appeals, addressed petitioners challenge to the trials courts jurisdiction, in both District Court Case No. 95 CR 1616 and 1859. The court held thats since petitioner raised a similar argument in a previous motion for writ of habeas corpus, that irregardless that petitioners claims are jurisdiction, petitioner is without a vehicle to challenge jurisdiction.

Likewise, the Federal District Court and U.S. Court of Appeals for the 10th Cir., both held that Rule 60(b) and a Second 2254 Motion is unavailable for petitioner to challenge the courts jurisdiction in the first instance. That although state officials interferred with petitioners ability to raise the claim in state court direct review and on petitioners previous 2254 motion, since petitioner had knowledge of the violation, that petitioner cannot file a second 2254 motion.

This Court has held that habeas corpus is not 'a static, narrow, formalistic remedy,' **Jones v. Cunningham,** [371 U.S. 236,] 243 [1963)], but one which must retain the 'ability to cut through barriers of form and procedural mazes.' **Harris v. Nelson**, 394 U.S. 286, 291 (1969). See **Frank v. Mangum**, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting). 'The very nature of the writ demands that it be administered with the initive and flexibility essential to insure that miscarriage of justice within its reach and surfaced and corrected.' **Harris v. Nelson**, supra, at 291.

"The writ of habeas corpus petition is a fundamental instrument for safeguarding individual freedom against arbitrary and unlawful state action". **Harris v. Nelson**, 394 U.S. 286, 291 (1969). The current statute confers similar power, **28 U.S.C. § 2241(c)(3)**, and provides: "The court shall ... dispose of the matter as law and justice require." **28 U.S.C. § 2243**. As the statute suggest, the central mission of the Great Writ should be the substance of "justice", not form of procedures. As Justice Frankfurter explained in his seperate opinion in **Brown v. Allen**, 344 U.S. 443, 498 (1953):

"The meritorious clams are few, but our procedures must ensure that those few claims are not stifled by undiscriminating generalities. The complexities of our federalism and the working of a scheme of government involving the interplay of two governments, one which is subjected to limitations enforced by the other, are not to be escaped by simple, rigid rules which, by avoiding some abuses, generate others." (Emphasis added).

Thus the statutory means of seeking relief in the State/Federal tribunal, pursuant to Habeas Corpus Relief, (**Art. I § 9[2]**) for the legal nullity (void judgments) is **K.S.A. § 60-1507**, Federal counterpart, **28 U.S.C. § 2254**, and **K.S.A. § 60-260(b)(4)**, federal counterpart, **Fed. R. 60(b)(4)**. As demostrated herein and in the petition, the Kansas State Courts, Sedgwick County District Court, and the Kansas Court of Appeals, holds that petitioners claims is time barred/res judicata. Although NO STATE COURT answered the challenge of jurisdiction utilizing the living record. The Kansas Supreme Court, simply refused to take jurisdiction and order the trial court/State to prove jurisdiction existed and wasn't lost. See Appendix-(K).

The U.S. District Court and the U.S. Court of Appeals for the Tenth Circuit, both held that petitioners challenge to the jurisdiction could not be raised in a **Fed. R. 60(b)(4)** motion, because if petitioners arguments are correct it would result in the reversal of the state court conviction. See Appendixes-(Q). The Tenth Circuit Court in denying petitioners Certificate of Appealability and dismissing the appeal, ruled that petitioner needed to seek authorization pursuant to **28 U.S.C. § 2244**.

Upon seeking said authorization, the Tenth Circuit Court denied permission holding that petitioners claim was known to petitioner, thus there lies no newly discovered evidence. See Appendix-(L). The record evidence was concealed by state officials to obstruct the state direct review courts and the federal district court from reviewing the record evidence. The concealment of the record from petitioner and petitioners lawyers, prevented petitioner from developing the claim previously, as well as previous to the prior 2254 motion. Said evidence was no made available until 2-days after the federal district court denied review.

Therefore, seeking to raise the claim in a subsequintial motion when the evidence was

made available after giving the state courts an opportunity to correct the structual/jurisdictional defect/error, renders the evidence **newly discovered**. Surely, the fact that officials intentionally, with malicious intent withheld, hid, altered and concealed the evidence in question to prevent review, constitutes the **Exceptional Circumstances/Extraordinary Circumstance** mentioned in the **Murray v. Carrier**, supra id. holding.

This amounts to the state officials committing a criminal act, ([**18 U.S.C. § 1512(c)(1)**]) to cover up its actions of depriving petitioner of my life/liberty for going on 26 years in violation of the **SUPREME LAW** of this land, **THE UNITED STATES CONSTITUTION.** See **Article 6 [Supremecy Clause].**

CONCLUSION

"The constitution gives the Supreme Court original jurisdiction in certain enumerated cases, and gives it appellate jurisdiction in all others. Among those in which jurisdiction must be exercised in the appellate form, are cases arising under the constitution and laws of the United States. These provisions of the constitution are equally obligatory, and are to be equally respected. If a State be a party, the jurisdiction of this Court is original; if the case arise under a constitution or a law, the jurisdiction is appellate. But a case to which a State is a party may arise under the constitution or a law of the United States. What rule is applicable to such a case? What, then, becomes the duty of the Court? Certainly, we think, so to construe the constitution as to give effect to both provisions, as far as it is possible to reconcile them, and not to permit their seeming repugnancy to destroy each other. We must endeavour so to construe them as to preserve the true intent and meaning of the instrument." **Cohens v. Virginia,** 19 U.S. 392-393.

Wherefore, there lies no other court to seek the relief petitioner seeks and as the Great Writ provides American Citizens the Right to redress, I invke this Superior Courts Jurisdiction to correct this **Manifest Miscarriage of Justice**. As our Country is a land of laws, state official can not break the law/violate the Supreme Law [Constitution] capriciously and arbitrarily to "enforce" the state laws. The case must be reversed and remanded, for it requires the protection of the Federal Constitutional laws, which the Justices and Judges of this have all vowed a oath to

uphold. To turn a blind eye upon the question, requires that the Court can only reconcile the claims and procedural mazes preventing review and relief, by holding that **Dred Scott v. Sandford** (1857) 60 U.S. (19 How.) 393, 15 L. Ed. 691, although abolished by the 13th Amendment, is still applicable to some poor blacks, thus holding that petitioner had no due process rights, therefore can not claim equal rights to the laws of the issues in controversy. This court should take up this matter for it involves the LIBERTY INTEREST of petitioner, and all black citizens in the State of Kansas.

Respectfully Submitted,

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Kevin D. Loggins Sr.

PROOF OF SERVICE

I, Kevin D. Loggins Sr., hereby certify under penalty of perjury, that the forgoing Application to Justice Sotomayor, to here the petition before a single justice was deposited in the institutional mailing system at HCF, in Hutchinson, Kansas postage prepaid addressed to the following: Kansas Attorney General, 120 SW 10th Avenue, Topeka, Kansas 66612 and the United States Attorney General , Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001.

Sworn under penalty of perjury,

_____

Kevin Deon Loggins Sr. (Pro se)
Executed this 26th day of Aug.,-2021.

EXHIBIT-A

NOT DESIGNATED FOR PUBLICATION

No. 116,716

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KEVIN D. LOGGINS SR.,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JAMES R. FLEETWOOD, judge. Opinion filed August 30, 2019. Affirmed.

Kevin D. Loggins Sr., appellant pro se.

Matt J. Maloney, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before ARNOLD-BURGER, C.J., BRUNS and WARNER, JJ.

PER CURIAM: Since Kevin D. Loggins Sr.'s convictions were affirmed in 1998, he has sought multiple avenues of relief, including a number of motions for writs of habeas corpus under K.S.A. 60-1507. In 2016, the district court summarily dismissed Loggins' fourth such motion as successive under K.S.A. 60-1507(c). Loggins now appeals that dismissal, arguing that the district court failed to make the findings of fact and conclusions of law required by Kansas Supreme Court Rule 183(j) (2019 Kan. S. Ct. R. 228). Loggins also contends that the dismissal of his motion as successive was improper and that he is entitled to relief on the merits of his claims. We affirm.

On January 8, 2016, while Loggins' appeals in *Loggins VII* and *Loggins VIII* were pending before this court, Loggins filed the K.S.A. 60-1507 motion that gives rise to this appeal. In this motion, Loggins alleged that the trial court lacked subject matter jurisdiction over him with respect to his April 1996 convictions because it failed to properly obtain his plea at arraignment.

On January 27, 2016, the district court filed a motion minutes order summarily dismissing Loggins' most recent K.S.A. 60-1507 motion. The order stated in its entirety: "The previous 60-1507 (04CV2780) is on Appeal; the Court finds this current petition for relief an abuse of judicial process, it is repetitive and without merit and is therefore dismissed."

Loggins filed a motion to reconsider before a different judge and a motion to recuse the district court judge. Six weeks later, Loggins filed a document titled "Additional Arguments," where he alleged a violation of his constitutional right to a speedy trial associated with his April 1996 convictions. The district court denied Loggins' motion to reconsider and motion for recusal, and this appeal followed.

On appeal, Loggins claims the district court erred in summarily dismissing his K.S.A. 60-1507 motion in two respects: First, he asserts that the district court's minutes order did not comply with Supreme Court Rule 183(j), which states that a district court considering a K.S.A. 60-1507 motion "must make findings of fact and conclusions of law on all issues presented." (2019 Kan. S. Ct. R. 230.) Second, he argues that the district court's summary dismissal of his motion as successive was improper and that he is entitled to relief on the merits of his claims that the trial court in case No. 95 CR 1616 failed to properly obtain his plea at arraignment and violated his constitutional right to a speedy trial.

Wilson, 308 Kan. 516, 527, 421 P.3d 742 (2018) (finding remand for failure to comply with Rule 183[j] unnecessary where it did not impede appellate review of issue). The record before us is adequate to review the court's ruling, and we do so.

2. *The district court did not err in dismissing Loggins' present K.S.A. 60-1507 motion as successive.*

A prisoner generally is entitled to a hearing on a K.S.A. 60-1507 motion "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." K.S.A. 2018 Supp. 60-1507(b); *Beauclair v. State*, 308 Kan. 284, 302, 419 P.3d 1180 (2018). When the district court summarily dismisses a K.S.A. 60-1507 motion, as the court did here, we review that dismissal de novo to determine whether the motion, files, and records of the case conclusively establish that the movant is not entitled to relief. *Sola-Morales*, 300 Kan. at 881.

A district court is not required to entertain a second or successive K.S.A. 60-1507 motion for similar relief on behalf of the same prisoner. See K.S.A. 2018 Supp. 60-1507(c); *State v. Kelly*, 291 Kan. 868, 872, 248 P.3d 1282 (2011); Supreme Court Rule 183(d). Loggins has filed at least three previous K.S.A. 60-1507 motions. See *Loggins VIII*, 2016 WL 4413504; *Loggins IV*, 2010 WL 2217105; *Loggins III*, 2007 WL 2080359. Thus, in order to avoid dismissal of his current motion as an abuse of remedy under K.S.A. 2018 Supp. 60-1507(c), Loggins must establish exceptional circumstances exist that warrant consideration of his current claims. *Beauclair*, 308 Kan. at 304; see *State v. Trotter*, 296 Kan. 898, Syl. ¶ 2, 295 P.3d 1039 (2013) ("A movant in a K.S.A. 60-1507 motion is presumed to have listed all grounds for relief, and a subsequent motion need not be considered in the absence of a showing of circumstances justifying the original failure to list a ground."). Our Kansas Supreme Court has defined exceptional circumstances as "unusual events or intervening changes in the law that prevented the defendant from raising the issue in a preceding [K.S.A.] 60-1507 motion." *State v. Mitchell*, 284 Kan. 374, Syl. ¶ 5, 162 P.3d 18 (2007).

We further note that the prohibition against successive K.S.A. 60-1507 motions is consistent with traditional notions of claim preclusion, barring not only claims actually raised in prior motions but also those claims that could have been raised in a prior motion. *Toney v. State*, 39 Kan. App. 2d 944, 948, 187 P.3d 122 (2008); see *Fowler v. State*, 37 Kan. App. 2d 477, 480-82, 154 P.3d 550 (2007). Any claim relating to Loggins' arraignment or his right to a speedy trial could have been raised on direct appeal or in his prior K.S.A. 60-1507 motions. Loggins has not provided this court with any unusual events or intervening changes in Kansas law that prevented him from being aware of and raising these issues.

In fact, Loggins challenged his arraignment for his February 1996 convictions in his first two K.S.A. 60-1507 motions and in his K.S.A. 60-260 motion. See *Loggins VII*, 2016 WL 4259943, at *2 ("Loggins claims the district court lacked subject matter jurisdiction in his case because he was never properly arraigned."); *Loggins IV*, 2010 WL 2217105, at *3 ("We have reviewed the transcript excerpts provided by Loggins, and they do not raise an issue regarding his presence at arraignment."); *Loggins III*, 2007 WL 2080359, at *6 ("There was sufficient competent evidence to support the district court's finding that Loggins was properly arraigned on all charges.").

Although Loggins currently seeks to challenge his arraignment leading to his April 1996 convictions, the two cases were tried around the same time and were consolidated on direct appeal. While the supporting arguments may differ, we find that Loggins essentially seeks successive consideration of the same issue. This does not constitute an exceptional circumstance warranting review of a successive motion. Accord *Dawson v. State*, No. 94,720, 2006 WL 3877559, at *2 (Kan. App. 2010) (unpublished opinion) (holding movant did not establish exceptional circumstances that prevented him from presenting all permutations of ineffective assistance of counsel in first K.S.A. 60-1507 motion; therefore movant "should not be permitted to piecemeal an issue of ineffective assistance of counsel to circumvent Supreme Court Rule 183[d]").