CASE NO. 21-436

IN THE UNITED STATES SUPREME COURT

FOR THE

UNITED STATES OF AMERICA

IN RE PETITION FOR HABEAS CORPUS,

KEVIN D. LOGGINS SR.

PETITIONER/MOVANT

VS.

STATE OF KANSAS AND THE UNITED STATES

RESPONDENTS.

MOTION FOR REHEARING THE COURTS DENIAL OF PETITIONERS WRIT FOR HABEAS CORPUS PURSUANT TO RULE 44, IN COMPLIANCE WITH RULE 22, APPLICATION TO INDIVIDUAL JUSTICE [JUSTICE SONIA SOTOMAYOR]

Respectfully submitted,

Kevin D. Loggins Sr. 11/10/2024

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I. WHETHER PETITIONER WAS DENIED PROCEDURAL DUE PROCESS AFTER PLAINTIFF PAID THE $300.00 FILING FEE AND FILED THE PETITION PURSUANT TO SUP. CT. R. 20 AND SUP. CT R. 22 AND THE CLERK OF THE COURT FAILED TO SUBMIT PLAINTIFF'S PETITION PURSUNAT TO RULE 22?

Standard of review: The **Fourteenth Amendment's Due Process Clause** protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake. A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word "liberty," see, e.g., **Vitek v. Jones**, 445 U.S. 480, 493-494, 63 L. Ed. 2d 552, 100 S. Ct. 1254 (1980).

"Because the requirements of due process are "flexible and cal[l] for such procedural protections as the particular situation demands," **Morrissey v. Brewer**, 408 U.S. 471, 481, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972), we generally have declined to establish rigid rules and instead have embraced a framework to evaluate the sufficiency of particular procedures. The framework, established in **Mathews v. Eldridge**, 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976), requires consideration of three distinct factors:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id., at 335, 47 L. Ed. 2d 18, 96 S. Ct. 893.

Our procedural due process cases have consistently observed that these are among the most important procedural mechanisms for purposes of avoiding erroneous deprivations. See **Greenholtz v. Inmates of Neb. Penal and Correctional Complex**, 442 U.S. 1, 15, 60 L. Ed. 2d 668, 99 S. Ct. 2100 (1979); **Cleveland Bd. of Ed. v. Loudermill**, 470 U.S. 532, 543, 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985); **Fuentes v. Shevin**, 407 U.S. 67, 80, 32 L. Ed. 2d 556, 92 S. Ct. 1983 (1972) ("For more than a century " the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified'" (quoting **Baldwin v. Hale**, 68 U.S. 223, 1 Wall. 223, 233, 17 L. Ed. 531 (1864))).

Rule 20(2). Procedure on a Petition for an Extraordinary Writ, Provides:

2. A petition seeking a writ authorized by 28 U.S.C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "In re [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding in forma pauperis under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed in forma pauperis, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

Rule 22. Applications to Individual Justices, Provides:

1. **An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.**

2. **The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.**

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. An application arising from the United States Court of Appeals for the Armed Forces shall be addressed to the Chief Justice. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

In the case at bar movant complied with both of these rules and made it clear on multiple occasions that Petitioner is paying the filing fee and submitting the petition to Justice **Sonia Sotomayor**. Once the court docketed the case the clerk did not comply with **Sup. Ct. R. 22(1).** Three days after the case was submitted for conference, the court denied the writ. See Appendix-(A).

To accept movants property [money] and deny petitioner/movant the procedures offered to pursue the relief as **Art. I § 9** provides, is to deprive me of the basic right to access the court according to my wishes, and that which Petitioner/movant paid his money to enter into a business transaction with the court.

"This Court now has rejected the concept that " constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.'" **Graham v. Richardson**, 403 U.S. 365, 374 (1971). Whether any procedural protections are due depends on the extent to which an individual will be "condemned to suffer grievous loss." **Joint Anti-Fascist Refugee Committee v. McGrath**, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), quoted in **Goldberg v. Kelly**, 397 U.S. 254, 263 (1970). "The question is not merely the "weight" of the individual's interest, but whether the nature of the interest is one within the contemplation of the "liberty or property" language of the **Fourteenth Amendment**. **Fuentes v. Shevin,** 407 U.S. 67 (1972).

"Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands." "Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." **Cafeteria & Restaurant Workers Union v. McElroy**, 367 U.S. 886, 895 (1961).

In the case at bar, Petitioner sought to pursue the writ pursuant to **Sup. Ct. R. 22 "Application to Individual Justices"**, as the right to seek the relief pursuant to this rule provides. To allow the Clerk of the Court to disregard my wishes and submit my case to the court as the clerk saw fit, is to deprive petitioner/movant of my finanicial investment, by leading me to believe that I could file my case in the court pursuant to **Sup. Ct. R. 22**, then deprive me of that option after receiving petitioner/movant funds/payment.

If petitioner/movant knew that filing pursuant to rule 22 was not an option, then petitioner would not have pursued this avenue nor paid the $300.00 filing fee, because said rule is not applicable nor available for petitioner pursue said course. "The constitutional guarantee of procedural due process applies to governmental deprivation of a legitimate "property" or "liberty" interest within the meaning of the **Fifth** or **Fourteenth Amendment**. It requires that any such deprivation be accompanied by minimum procedural safeguards, including some form of notice and a hearing. **Arnett v. Kennedy**, ante, p. 164 (separate opinion of POWELL, J.); **Board of Regents v. Roth**, 408 U.S. 564 (1972); **Perry v. Sindermann**, 408 U.S. 593 (1972).

Likewise in the case at bar, if seeking Application to submit the case to an individual justice was not an option for petitioner, the court should have notified petitioner that said avenue was unavailable and extended to petitioner the option of withdrawing the petition or in opposition to have the case submitted to the entire court. Thus, giving a 'Fair Notice' and 'Opportunity to be Heard' in compliance with petitioners intent to invoke the Court as to the intent of the pro se litigant whom is paying to invoke the court jurisdiction, and not as the clerk of the court restricted petitioners filings to.

The **Fifth Amendment** provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." Although the amount and quality of process that our precedents have recognized as "due" under the Clause has changed considerably since the founding, see **Pacific Mut. Life Ins. Co. v. Haslip**, 499 U.S. 1, 28-36, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991) (Scalia, J., concurring in judgment), it remains the case that no process is due if one is not deprived of "life, liberty, or property," **Swarthout v. Cooke**, 562 U.S. 216, 219, 131 S. Ct. 859, 178 L. Ed. 2d 732 (2011) (per curiam).

Wherefore, the Court should find petitioner had a due process right to have the case submitted to the court pursuant to Rule-22, and that since the clerk of the court ignored this request, and submitted the case to the whole of the court, that petitioner was deprived of his property $300.00 filing fee, by withholding the benefits of Rule-22, and order the case reversed and remanded to be submitted to Justice Sonia Sotomayor in compliance with R. 22.

I. WHETHER THIS SUPERIOR COURTS KNOWLEDGE THAT BOTH STATE AND FEDERAL HABEAS CORPUS STATUTES BEING FORCLOSE TO PETITIONER IN FACE OF A PLAIN ERRORS OF STRUCTUAL AND JURISDICTIONAL MAGNITUDE AMOUNT TO TURNING A BLIND-EYE TO DEPRIVATION OF PETITIONER / MOVANT'S LIBERTY IN VIOLATION OF THE FUNDAMENTAL LAWS EMBEDDED IN THE FEDERAL CONSTITUTION?

Standard of review: 28 USCS § 2241, Part 1 of 2 Provides:

§ 2241. Power to grant writ

(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**.

(b) **The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it**.

(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, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

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

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination. (Emphasis added).

USCS Const. Art. I § 9 Habeas Corpus provides: "The Privilege of the Writ og Habeas Corpus shall not be suspended, unless in Cases of Rebellion or Invasion the public Safety

requires it."

Under the **Habeas Corpus Act**, U.S. Congress held: "This act is regarded as the great constitutional guranty of personal Liberty." The primary function of the Writ is to release from unlawful imprisonment. **People ex rel., Luciano v. Murphy,** 160 Misc. 573, 290 N.Y.S. 1011. The office of the Writ is not to determine prisoner's guilt or innocence, and only issue which it presents is whether the prisoner is restained of his liberty by due process." **Ex Parte Persnell**, 58 Okl. Cr. 50, 49 P.2d 232.

In the case at bar all State Courts, Sedgwick County District Court, Kansas Courts of Appeals and Kansas Supreme Court have found that petitioner can not utilize the State Habeas Corpus Statute **K.S.A. § 60-1507**, nor **Fed. R. 60(b)(4)**'s counterpart, **K.S.A § 60-260(b)(4)**, affectively finding that petitioner/movant has no legal vehicle to challenge the courts jurisdiction, despite the judgment of conviction being void from its inception. The State Courts also held petitioner/movant could not correct the illegal sentence pursuant to the States Illegal sentence Statute, **K.S.A. § 22-3504(1)**. The State courts held that said claims are forclosed due to the Doctrine of laches and res judicata.

Likewise, the United States District Court for the District of Kansas and the Court of Appeals for the Tenth Circuit held, that petitioner can not utilize either **28 U.S.C. § 2254** or **Fed. R. 60(b)(4)** to challenge the voidness of petitioner/movants judgment of conviction, enacting a procedural bar despite the extrraordinary and exceptional circumstances of "**Official Interference**" [**Obstruction of Justice**] by altering and supressing portions of the trial transcript from both state and federal appellate and post-conviction review courts. In **United States v. Ahrensfield**, 698 F.3d 1310(10th Cir. 2012), it was held,

"Defendant was charged with obstruction of justice in violation of "**18 U.S.C. § 1512(c)(2),** which makes it a crime to corruptly obstruct, influence, or impede an official proceeding, or attempt to do so. **18 U.S.C. § 1512(c)(2).** To sustain a conviction under **§ 1512(c)(2),** the government does not need to prove the defendant knew of the existence of an ongoing official proceeding. **United States v. Phillips**, 583 F.3d 1261, 1264 (10th Cir. 2009) (citing **18 U.S.C. § 1512(f)(1)).** "Nor does the government need to "prove the defendant knew that the official proceeding at issue was a federal proceeding such as a grand jury investigation." Id. at 1264-65 (citing **18 U.S.C. § 1512(g)(1)).** "Rather, a conviction under the statute is proper if it is foreseeable that the defendant's conduct will interfere with an official proceeding." Id. at 1264. "This has been referred to as the "nexus" requirement. Id.; **United States v. Aguilar**, 515 U.S. 593, 599-600, 115 S. Ct. 2357, 132 L. Ed. 2d 520 (1995) (discussing the similar crime of

obstructing or impeding the due administration of justice, **18 U.S.C. § 1503**). "A conviction is proper if there exists a nexus between the defendant's conduct and interference with the official proceeding—"if interference with the official proceeding is the 'natural and probable effect' of the defendant's conduct." **Phillips**, 583 F.3d at 1264 (quoting **Aguilar**, 515 U.S. at 601)."

"[C]ause for a procedural default on appeal ordinarily requires a showing of some external impediment preventing counsel from constructing or raising the claim." Id. at 753 (quoting **Murray v. Carrier,** 477 U.S. 478, 492, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986)). For example, "a showing that the factual or legal basis for a claim was not reasonably available to counsel, . . . or that some interference by officials made compliance impracticable." Id. at 753 (quoting **Murray**, 477 U.S. at 488). (quoting, **Harmon v. McCollum,** 652 Fed. Appx. 645 (10th Cir. 2016).

Petitioner/Movant in his pleadings argued and demostrated that the State Officials spolitated the transcript record, altering and concealing portions of the Preliminary Examination Transcript and Transcript of Arraignment. In said document evidence it is exposed that the Fundamental right to a "**Impartial tribunal**" (14th Amendment Due Process Clause) and "**Fair Notice**"(6th Amendment Fair Notice Clause) was denied rendering the judgment a legal nullity from the onset, and exposing that the judgment was entered in access of the trial judges jurisdiction.

It is bipartisan federal and state as well as universally held that laches and res judicata can not cure a void judgment. "In the Tenth Circuit, the consequence of constitutionally ineffective notice is that an administrative forfeiture is "void and must be vacated." **Clymore v. United States**, 164 F.3d 569, 573 (10th Cir. 1999) (citing cases). "The government seeks to avoid this result by asserting that Libretti's subsequent plea bargain served to cure the defect in notice. " A void action, however, is "incapable of later cure or validation." **Easley v. Pettibone Michigan Corp.**, 990 F.2d 905, 910 (6th Cir. 1993).

"**Rule 60(b)(4)** . . . authorizes the court to relieve a party from a final judgment if 'the judgment is void.'" **Espinosa**, 559 U.S. at 270; accord **Kile v. United States**, 915 F.3d 682, 686 (10th Cir. 2019). A judgment is void under **Rule 60(b)(4)** "only in the rare instance where [the] judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." **Espinosa**, 559 U.S. at 271. "If voidness is found, relief is not a discretionary matter; it is mandatory." **V. T. A., Inc. v. Airco, Inc.**, 597 F.2d 220, 224 n.8 (10th Cir. 1979); accord **Kile**, 915 F.3d at 686. "We review de

novo the district court's ruling on a **Rule 60(b)(4)** motion." **Kile**, 915 F.3d at 686 (quoting **United States v. Buck**, 281 F.3d 1336, 1344 (10th Cir. 2002)).

Both the inferior state and federal courts have closed the door on petitioner/movants claims. Thus equivalent to Suspending petitioner/movants constitutional right to the Writ of Habeas Corpus. This Court on the 18th day of Oct., denied the Writ, but issued no order to transfer the case to the appropiate court, despited that being in the courts discretion. **28 U.S.C. § 2241(b)** provides: (b) **The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it**.

The court accepted the **$300.00 filing fee** from petitioner/movant and denied the relief. **Sup. Ct. R. 20(b)**, provides: "(b) Habeas corpus proceedings, except in capital cases, are ex parte, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of **28 U.S.C. § 2241(b),** is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought."

In **Cohens v. Virginia**, 19 U.S. 264 (1821), it was held:

It is most true that " this Court will not take jurisdiction if it should not: but it is equally true, **that it must take jurisdiction if it should**. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. **We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them**. All we can do is, to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, "we find this tribunal invested with appellate jurisdiction in all cases arising under the constitution and laws of the United States. We find no exception to this grant, and we cannot insert one."

The United States Constitution **Article III [Judicial Branch] Sec. 2[2]** provides: "In all Cases affecting Ambassadors, other public Ministers and consus, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction." It has been held by this Superior Court in **Ex Parte Parks**, 93 U.S. at 22, "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**." (Emphasis added).

In the case at bar the record reflects that the trial judge was disqualified from setting in judgment in the case do to her advocacy and interest in the case. See **28 U.S.C. § 455(a).** Also the record reflects that there was no Fair Notice given as to what charges petitioner was to stand trial for, so that petitioner could prepare a adequate defense. See **6th Amend. U.S. Const.** In both instances the transcript evidence that can expose these access of jurisdiction was obstructed from appellate review as well as post-conviction review federal and state, through official interference.

Although the court may believe that the relief sought can be had in another court, the Court did not order the case transferred to the U.S. District Court. When viewing the facts and procedural history of this case, the court shoud find the Futility Exception is appropiate. "A futility exception to exhaustion requirements, we have applied the futility exception in habeas cases brought under **§ 2254**, See **Wallace v. Cody**, 951 F.2d 1170, 1172 (10th Cir. 1991); **Goodwin v. Oklahoma**, 923 F.2d 156, 157-58 (10th Cir. 1991) and other circuits have applied the doctrine in habeas cases brought under **§ 2241**, see **Fraley v. United States Bureau of Prisons,** 1 F.3d 924, 925 (9th Cir. 1993).

Alternatively, the Supreme Court has approved of the Futility exception to exhaustion requirement where further appeals would be procedurally barred. **Harris v. Reed,** 489 U.S. 255, 263 n. 9, 103 L.Ed. 2d 308, 109 S.Ct. 1038 (1989). As demostrated in petitioners petition, and concise argument why relief is unavailable in any other court, its shown that any further Petitions for Writ of Habeas Corpus rather in state or federal court will be procedurally barred by Sedgwick County District Court, Kansas Courts of Appeals, Kansas Supreme Court, U.S. District Court and the Court of Appeals for the Tenth Circuit.

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 the case at bar, all lower state and federal courts have accomplished indirectly what they could not do directly, is to suspended the writ, by holding laches and res judicata bars petitioner from filing another petition for writ of habeas corpus in either the state or federal inferior courts. To hold that petitioner has no avenue to challenge the courts lack of jurisdiction, is implicit suspension of the writ. The Kansas Appellate court held:

"While it is true that Kansas courts have routinely observed that questions of subject matter jurisdiction can be raised "at any time," there remain reasons why courts may decline to reach the merits of jurisdictional issues. For example, jurisdictional arguments may be barred by claim or issue preclusion. See, e.g., Waterview Resolution Corp. v. Allen, 274 Kan. 1016, 1023-26, 58 P.3d 1284 (2002) (parties were bound by bankruptcy court's previous conclusions regarding jurisdiction); In re Care & Treatment of Johnson, 32 Kan. App. 2d 525, 531, 85 P.3d 1252 (2004) ("While granting a motion to dismiss for lack of subject matter jurisdiction is not a decision on the merits, however, it does have a res judicata effect on the question of jurisdiction.").

"On a basic level, before a party may argue the merits of a jurisdictional claim, there must be a procedural mechanism for presenting the question to the court. See Trotter, 296 Kan. at 905 (holding that movant could not use K.S.A. 60-1507 motion to present subject matter jurisdiction argument for first time when he was procedurally barred from bringing his K.S.A. 60-1507 motion). A K.S.A. 60-1507 motion is the mechanism for postconviction relief from the judgment of conviction, and that mechanism is unavailable to Loggins absent exceptional circumstances excusing his failure to raise his current claims in a prior proceeding."

As stated herein, petitioner raised exceptional circumstances by arguing that there was "Official Interference" which this Superior Court in Murray v. Carrier, supra, held is a exception for a defaulted claim. The lower court seem to argue that 'Irregardless that a judgment that was imposed without subject-matter jurisdiction and in contradiction to due process, that said claim can be barred by simply suspending petitioner from utilizing the state habeas statute 60-1507 to invoke the writ. This flies in the face of reason and logic, as well as the States Supreme Courts holdings concerning such claims.

This argument ignores the fact that " a judgment rendered without jurisdiction is void.

State v. Chatmon, 234 Kan. 197, 205, 671 P.2d 531 (1983) And, significantly, a judgment "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). (quoting **In re M.K.D.,** 21 Kan. App. 2d 541, 901 P.2d 536 (1995)). In a Kansas Court of Appeal decision the court discussed the contours of a claim of void judgment for lack of subject-matter jurisdiction. Therein it was found and held:

"A party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf; he is entitled to have the judgment treated for what it is, a legal nullity, if he establishes that the judgment is void."

The treatise further states at § 60.25[4], pp. 314-315:

"Unlike clauses (1)-(3), a motion under clause (4) is not subject to a maximum time limitation of one year, but like a motion under clauses (5) and (6), the Rule provides that the 60(b)(4) motion must be made within a 'reasonable time'. What is the meaning of this 'reasonable time' limitation with respect to a motion for relief from a void judgment?

"The theory underlying the concept of a void judgment is that it is legally ineffective -- a legal nullity; and may be vacated by the court which rendered it at any time. Laches of a party can not cure a judgment that is so defective as to be void; laches cannot infuse the judgment with life. Further, it may, when appropriately called in question, be adjudged void in any collateral proceeding, and this collateral attack may be made at any time. Since a federal judgment that is void can be so collaterally attacked, and since the judgment sustaining the collateral attack would have to be given effect in a subsequent 60(b)(4) motion to set the federal judgment aside as void, the 'reasonable time' limitation must generally mean no time limit, although there may be exceptional situations where the reasonable time limitation would require diligence on the part of the movant."

11 Wright & Miller, Federal Practice and Procedure: Civil § 2862, pp. 197-198 (1973), provides the following discussion on this issue:

"Rule 60(b)(4) authorizes relief from void judgments. Necessarily a motion under this part of the rule differs markedly from motions under the other clauses of Rule 60(b). There is no question of discretion on the part of the court when a motion is under Rule 60(b)(4). Nor is there any requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly.

"By the same token, there is no time limit on an attack on a judgment as void. The one-year limit applicable to some Rule 60(b) motions is expressly inapplicable, and even the requirement that the motion be made within a 'reasonable time,' which seems literally to apply to motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion. A void judgment cannot acquire validity because of laches on the part of the judgment." (quoting **Barkley v. Toland**, 7

7 Kan. App. 2d 625, 646 P.2d 1124 (1982)).

The Kansas courts have held that petitioner cannot utilize **Fed. R. 60(b)**'s State counterpart **K.S.A. § 60-260(b)** to reopen the case, and found that the jurisdictional claims would be barred by the doctrine of res judicata. The Kansas Appellate Courts held:
Res Judicata :

"If, however, we were to reach the merits of Loggins' remaining issue on appeal, we would find it unsuccessful under the doctrine of res judicata. "The essence of the doctrine of res judicata is that issues 'once finally determined . . . cannot afterwards be litigated.' [Citation omitted.]" Kingsley, 299 Kan. at 901. Four elements are required for application of this preclusive doctrine: "(1) same claim; (2) same parties; (3) claims were or could have been raised; and (4) a final judgment on the merits." State v. Martin, 294 Kan. 638, 641, 279 P.3d 704 (2012); State v. Neer, 247 Kan. 137, Syl. ¶ 2, 795 P.2d 362 (1990). These elements are met in this case as to the only claim Loggins raises. See, **Loggins v. State**, 2016 Kan. App. Unpub. LEXIS 696.

If the record reflects that a judgment is void for lack of subject-matter jurisdiction and it being in contradiction to due process of law, the claims can never be res judicata. \"Under the doctrine of res judicata, '[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.'" **State ex rel. Denton v. Bedinghaus,** 98 Ohio St.3d 298, 2003-Ohio-861, 784 N.E.2d 99, ¶ 14, quoting **Grava v. Parkman Twp.,** 73 Ohio St.3d 379, 1995 Ohio 331, 653 N.E.2d 226 (1995), syllabus. A "void" judgment is a not a "valid" judgment, so it can never be res judicata. **State v. Fischer**, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 40.

Likewise when the the U.S. District Court for Kansas holds that petitioner is procedurally barred from attacking its prior judgment enter without jurisdiction pursuant to **Fed. R. 60(b)** because it would require the reversal of the case, and hold that petitioner must seek permission to file a successive motion pursuant to **28 U.S.C. § 2254**, and upon application for said authorization to file a successive motion, the U.S. Court of Appeals for the 10th Circuit denying authorization despite the extraordinary circumstances presented (Officiial Interference), it must be held that petitioner has no other avenue to seek the relief sought in petitioner Petition for the Great writ filed in this Superior Court, pursuant to **28 U.S.C. § 2241**.

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.

We have often made the same point. See, e.g., **Preiser v. Rodriguez**, 411 U. S. 475, 484, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973) ("It is clear . . . from the common-law history of the writ . . . that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody"); **Wilkinson v. Dotson**, 544 U. S. 74, 79, 125 S. Ct. 1242, 161 L. Ed. 2d 253 (2005) (similar); **Munaf v. Geren**, 553 U. S. 674, 693, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008) (similar).

In this country, the habeas authority of federal courts has been addressed by statute from the very beginning. The **Judiciary Act of 1789, §14, 1 Stat. 82**, gave the federal courts the power to issue writs of habeas corpus under specified circumstances, but after the Civil War, Congress enacted a much broader statute. That law, the **Habeas Corpus Act of 1867**, provided that "the several courts of the United States . . . shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." **Judiciary Act of Feb. 5, 1867, §1, 14 Stat. 385**. The Act was "of the most comprehensive character," bringing "within the habeas corpus jurisdiction of every court and of every judge every possible case of privation of liberty contrary" to federal law. **Ex parte McCardle**, 73 U.S. 318, 6 Wall. 318, 325-326, 18 L. Ed. 816 (1868). This jurisdiction was "impossible to widen." Id., at 326, 6 Wall. 318, 325-326, 18 L. Ed. 816; see **Fay v. Noia**, 372 U. S. 391, 415, 83 S. Ct. 822, 9 L. Ed. 2d 837 (1963) (noting the Act's "expansive language" and "imperative tone").

Wherefore, this Superior Court should hold it has both original and appellate jurisdiction to hear as well as grant the Great Writ under the unique circumstances of this case. Find that the Court has a Quasi-Judicial duty to vindicate the federal constitutional right, since a failure to hear the case will result in a ffundamental miscarriage of justice, (continued illegal detention of petitioner in violation of the constitutional fundamental laws of this country). Additionally, the Court should find that this is of a urgent matter, seeing as how petitioner has been held for 26-years in a penal institution upon a legal nullity.

Conclusion

"That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the State, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions". **Hebert v. Louisiana,** 272 U.S. 312, 316, 317. "The ratification of the Fourteenth Amendment radically changed the federal courts' relationship with state courts. That Amendment, one of the post-Civil War Reconstruction Amendments ratified in 1868, is the source of this Court's power to decide whether a defendant in state proceedings received a fair trial -- i.e., whether his deprivation of liberty was without due process of law". **U.S. Const. Amdt. 14 § 1** ("[N]or shall any state deprive and person of life, liberty, or property, without due process of law"). In construing that amendment, we have held that it imposes minimum standards of fairness on the States, and requires state criminal trials to provide defendants with protections "implicit in the concept of ordered liberty." **Palko v. Connecticut,** 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937).

"Originally, criminal defendants whose convictions were final were entitled to federal habeas relief if the court that rendered the judgment under which they were in custody lacked jurisdiction to do so. **Ex Parte Watkins**, 28 U.S. 193, 3 Pet. 193, 7 L.Ed. 650 (1830); **Ex Parte Lange**, 85 U.S. 163, 18 Wall. 163, 176 l.ed. 872 (1874); **Ex Parte Siebold**, 100 U.S. 371, 376-377, 25 L.Ed. 717 (1880). "**In 1915, the realm of violations for which federal habeas relief would be available to state prisoners was expanded to include state proceedings that deprive[d] the accused of his life or liberty without due process of law**." **Frank v. Mangum**, 237 u.S. 309, 335, 35 S.ct. 582, 59 L.Ed. 969. (Emphasis added).

In 1867, Congress enacted a statute providing federal courts "shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty of law of the United States .... " **Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385**. Over the years, the federal habeas corpus statute has been repeatly amended, but the scope of that jurisdictional grant remains the same.

"It is of course, well settled that the fact that constitutional error occurred in the proceedings that led to a state-court conviction may not alone be sufficient reason for concluding that a prisoner is entitled to the remedy of habeas. See, e.g., **Stone v. Powell,** 428 U.S. 465, 49

L.Ed. 2d. 1067, 96 S.Ct. 3037 (1976); **Brecht v. Abrahamson,** 507 U.S. 619, 123 L.Ed. 2d 353, 113 S.Ct. 1710 (1993). "**On the other hand, errors that undermine confidence in the fundamental fairness of the state adjudication certainly justify the issuance of the federal writ**." See, e.g., **Teague v. Lane**, 489 U.S. 288, 311-314, 103 L.Ed. 2d 334, 109 S.Ct. 1060 (1989) (quoting **Mackey v. United States**, 401 U.S. 667, 692-694, 28 L.Ed. 2d 404, 91 S.Ct. 1160 (1971) (opinion of Harlan, J., concurring in judgments in part and dissenting in part), and (STEVENS, J., dissenting)).

The denial of an "Impartial Tribunal at trial" is recognized as an error that affects the framework of the proceedings rendering them fundamentally unfair in determining a defendants guilt or innocence. See **Neder v. United States**, 527 U.S. 1(1999) (quoting **Brecht v. Abrahamson,** supra Id. at 8. Likewise, the right to fair notice as guranteed by the 6th Amendment, is deemed a fundamental sole right of a defendant. **Faretta v. California**, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), also see **In re Ruffalo,** 390 U.S. 544, 20 L.Ed. 2d 117, 88 S.Ct. 1222 (1968) and **Cole v. Arkansas**, 333 U.S. 196, 92 L.Ed. 644, 68 S.Ct. 514 (1948), failure to provide such notice deprives the court of its subject-matter jurisdiction.

When as here the State Official task with providing its citizens with constitutional safeguards are the individuals that deprive the petitioner of the fundamental rights, then commit a criminal act [obstruction of justice(Concealing record evidence)] to deprive petitioners of his liberty for 26 years, this court should find it has a quasi-judicial duty to vindicate the constitutional right and issue the writ.

Wherefore, petitioner pray that the court adjudge, decree and order the case for rehearing before Justice Sotomayor in compliance with **Rule 22**, and find that issuance of the writ is necessary to prevent a miscarriage of justice. Or as an alternative order the case transferred to the United States District Court for further proceedings pursuant to **28 U.S.C. § 2241(b).**

Respectfully submitted,

Kevin D. Loggins Sr.

Kevin D. Loggins Sr.

CERTIFICATE

PURSUANT TO SUP. CT. R. 44(2)

The forgoing pleadings is restricted to the grounds specified in this document and that it is presented in good faith and not for delay. The pleadings involve a serious matter of Constitutionally protected freedom to personal liberty and requires urgent intention to end the ongoing injury that is irreparable.

Wherefore, the pleadings is filed not to delay but solely for the purpose of the Ends of Justice,

Respectfully,

Kevin D. Loggins SR.

Kevin D. Loggins Sr.

NATASHA K. HAYS
Notary Public - State of Kansas
My Appt. Expires 4/13/2023

Sworn to before me on this 10th day of November, 2021.

Notary Stamp:

Notary Signature