No. 21-5738

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Daniel Gomez — PETITIONER
(Your Name)

vs.

M.C.S.A.O., Robert Dooley et.al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal 8th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Jose Gomez
(Your Name)

1929 E33rd St N.
(Address)

Sioux Falls SD, 57104
(City, State, Zip Code)

605-906-4133
(Phone Number)

QUESTION(S) PRESENTED

1) Did Minnehaha County States Attorneys Office deprive Petitioner of the right to a Jury Trial in Case # CR 119-1983 and Part II habitual Criminal information regarding a Wrongful Conviction of Elk Point Union County States Attorneys office regarding 2nd degree Escape 2008 Case # CRI-08-237

2. Did Arther Rusch Chief Justice take an active role in Violation of 18. U.S.C 41 42 depriving Petitioner to rights of Accused when transfered Petitioner repeatedly to Avoid Writ Contrary to S.D.C.L. 21-27-11 along with the D.O.C. of South Dakota and the Army reserves

3. When M.C.S.A.O. filed Charges of Part II habitual Criminal enhancement is Accused entitled to exercise Right to a) jury Trial 2) the effective Assistance of Council 3) Due Process.?

4) Did Minnehaha County States Attorneys office effectively Deprive Petitioner from exercising the right to a jury trial and the effective Assistance of Council / Attorney when M.C.S.A.O. Moved to dismiss the case.

5) did the State of South Dakota repeatedly deprive Petitioner of the right to Effective Assistance of council by appointing 'Mike McGill[2] Judie hoffer, Melissa Sommers and any other Attorney who ineffectively represented Petitioner.

back)

6. What Problem Did Arthur Rusch Chief Justice refer to when admonishing States Attorney Jerry Miller during habeas Petition Hearing when he said "Maybe you can Hope that this Problem goes away"
Evidentiary hearing Civ 09-389 on March 1st 2010 at approximately 1:10 pm

7) How Did Arthur Rusch erroneously determine that Petitioner was flat timing in 2010 Shortly after Habeas evidentiary hearing and that any appeal would be moot when Doc. 9-7 Filed 06/07/21 Page 3 of 3 ID #262 and or doc. 1 of 1 Filed 05/07/21 Pg 54 of 54 ID #64 States that Petitioner discharged in April of 2014?? ~~Sec~~ 21-27-11
S.D.C.L. 21-27-11 Transfer or Concealment of Applicant to Avoid Writ as felony.
U.S.C 18 ch 41-42 Deprivation of Rights.
1) Due process 2) Effective Assistance of Counsel 3) the Right to trial
4) Malicious Prosecution 5) Wrongful Conviction
6) Did the State of South Dakota Deprive Petitioner of the Right to A Speedy Trial?
7) Did the State of S.D. interfere with official acts or was it perpetrated by State actors in official Capacities or personal Capacities?

8. Did S.D. engage in acts in violation of 1) USC. 18 § 241 2) 18 U.S.C. § 242 granting Petitioner access to 42. U.S.C § 1983

LIST OF PARTIES

9) Did Arthur Rusch Impede and interfere with writ of Habeas Corpus files in 2010 by falsely Claiming discharge + moot when Quashing writ

PG 74 R. 14 Transcripts

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1 Robert Dooley Warden of South dakota state Pen.
2 State of South Dakota Dept. of Corrections
3 Mike McGill Attorney
4 Phillip O Peterson Attorney
5 Steven Jensen Judge
6 Valerie Marmolejo Parker Parole officer
7 Arthur Rusch Judge
8 Melisa Larsen Magistrate
9. Mark Kadi Attorney
10. Minnehaha County Public Defenders Office
11. Minnehaha County Public Advocates Office

RELATED CASES

1) David VS. Attorney General of S.D. 4:21-CV-04085 KES

2) Daniel VS. Minnehaha County Cir 4:20-CV-04151 RAL States Attorney S office

3) Gomer V. Davis et al Civ 09-4142

4) U.S.C.A. #21-2686 Gomer VS. Dooley et al

5) Circuit Court 1st Judicial Circuit CRI 08-237 State of South Dakota V.S Gomer

6) Gomer US. Dooley CIV. 09-389 writ. HAbeas Corpus

7) State of S.D. VS Gomer CRI 08-81

~~8) State of S.D V. Gomer 63C08000~~

8.) State of S.D V. Gomer 63C080000286A0 back.

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Duncan Vs. Walker, 533 U.S. 167 (2001) 10F 6 #73

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1 18 USC. 241 Conspiracy against rights

2 18 USC. 242 Deprivation of rights under Color of law Pg. 10F54 10#11

3 42. U.S.C § 1983 ~~4:20-CV-04151~~

4) 2254 (i)(ii) there is an absence of available remedies (ii) Circumstances exist that render such process ineffective to protect rights of accused. PG 3 OF 54

5) 2244 finality of determination (d)(1)(B) Pg 8 of 54

6) S.D.C.L. 23A-7-13 Rule 11(e)(6) Evidence of Guilty Plea inadmissible after withdrawal Pg. 2 of 6 #74

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[☒] For cases from **federal courts:**

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

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

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

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

[☒] For cases from **state courts:**

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

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

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

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

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 12th 2021.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was 3-1-2010. A copy of that decision appears at Appendix E and Appendix D

[X] A timely petition for rehearing was thereafter denied on the following date: 4-27-2010, and a copy of the order denying rehearing appears at Appendix H.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendment 4
the right against unreasonable searches and Siezures

42 U.S.C Subsection 1983 Civil action for deprivation of Right

18. U.S.C 241 Conspiracy against rights

18. U.S.C. 242 Deprivation of Right under Color of law

the Double Jeopardy Clause of the 5th Amendment
Nor Shall Any Person be Subject for the same offence to be twice Put in jeapordy
the four essential Protections included are
Prohibition against, for the same offence retrial after aquitel, retrial afte conviction.
Habitual Criminal information Violates the Double Jeapardy Amendment.

additionally the 6th Amendment's right to Effective Assistance of Council attaches directly to the fidelity and competence of Defense Council's Service regardless of whether Counsel is appointed or privately retained or whether the government in Any brought about the defective representation
McMann V. Richardson 397 U.S. 759, 771 n. 14 (1970) "the right to council is the effective Assistance of Council As a Corrallary

Constitutional & Statutory provision
Continued

Constitutional and Statutory Provisions Involved
Continued.

SUPPLEMENTAL INFORMATION

In August 2004, the ABA House of Delegates approved these "black letter" standards that have been published with commentary in ABA Standards for Criminal Justice: Speedy Trial and Timely Resolution of Criminal Cases, 3d ed., © 2006, American Bar Association. For the text of the publication, click here. To go directly to individual "black letter" standards (without commentary),

PART II: DEFENDANT'S RIGHT TO A SPEEDY TRIAL

Standard 12-2.1 Speedy trial time limits

(a) A defendant's right to a speedy trial should be formally recognized and protected by rule or by statute that establishes outside limits on the amount of time that may elapse from the date of a specific event until the commencement of the trial or other disposition of the case. The time limits should be expressed in days or months.

(b) The presumptive speedy trial time limit for persons held in pretrial detention should be [90] days from the date of the defendant's first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pretrial release should be [180] days from the date of the defendant's first appearance in court after either either the filing of any charging instrument or the issuance of a citation or summons. Shorter presumptive speedy trial time limits should be set for persons charged with minor offenses.

(c) Certain periods of time should be excluded from the computation of time allowed under the rule or statute, as set forth below in Standard 12-2.3.

(d) Provision should be made for the court to determine, on motion of the prosecution or the defense or on its own motion, that a case is of such complexity that the presumptive speedy trial time limit should be extended in order to enable the parties to make adequate preparations for pretrial proceedings or for the trial itself. The court should give substantial weight to a motion for extension of the speedy trial limit on these grounds that is made, with good cause shown, by either the prosecution or the defense. In the event that a determination of complexity is made, the judge should establish a revised time limit and should state on the record the reasons for extending the time. A motion to extend the speedy trial time limit because of the complexity of the case should be made as soon as practicable.

Standard 12-2.2 Commencement and setting of speedy trial time limit

The speedy trial time limit should commence, without demand by the defendant, from the date of the defendant's first appearance in court after either a charge is filed or a citation or summons is issued, except that:

(a) If the charge is dismissed and thereafter the defendant is charged with the same offense or one arising out of the same criminal episode, or if a superseding charging instrument is filed by the prosecution in place of the original charge, then:

(i) the court should set a new speedy trial limit as set forth in Standard 12-2.1 or a shorter period. The new limit should commence at the defendant's first appearance before the court on the new charge; and

(ii) in setting the new limit, the court should consider:

(A) the degree to which the new charge is different from the

original charge;

(B) in the case of a superseding charging instrument, the extent to which the superseding instrument alleges offenses or material facts that were known to the prosecution at the time the original charge was filed;

(C) the period of time that has elapsed between the defendant's appearance on the first charge and the defendant's appearance on the second charge;

(D) the reason for the dismissal or the filing of the superseding instrument; provided, however, that if the court finds that the charge was dismissed to avoid the effect of the speedy trial time limit, the new charge should ordinarily be dismissed with prejudice;

(E) any other factor which, in the interests of justice, affects the time in which the defendant should be tried on the new charge;

(b) If the defendant is to be tried again following a mistrial, then a new reasonable speedy trial time limit should be set. The new speedy trial time limit period generally should be shorter than that applicable to the original charge and should commence from the date of the mistrial.

(c) If the defendant is to be tried again following a successful appeal or collateral attack on the conviction, then the speedy trial time limit should be that set forth in Standard 12-2.1 and should commence running from the date the order occasioning the retrial becomes final.

PART 2 INFORMATION IS A PRACTICE BY MCSAO AND OTHER STATES COURT HOUSES THAT DRECTLY INFRINGE UPON AND VIOLATE DOUBLE JEOPARDY STANDARDS EXHIBIT

Double Jeopardy

Primary tabs

Overview

The Double Jeopardy Clause in the Fifth Amendment to the US Constitution prohibits anyone from being prosecuted twice for substantially the same crime. The relevant part of the Fifth Amendment states, "No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb . . . "

Scope of the Double Jeopardy Rule

Not every sanction qualifies under the Double Jeopardy rule. Typically, only sanctions which can be considered as "punishment" would qualify under the rule.

Incorporation

As with all Amendments to the U.S. Constitution, the Double Jeopardy Clause originally applied only to the federal government. However, through the incorporation doctrine, the Supreme Court has incorporated certain amendments and clauses against the states. In Benton v. Maryland, 395 U.S. 784 (1969), the Supreme Court incorporated the Double Jeopardy Clause against the states.

Civil Sanctions

In *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984), the Supreme Court held that the prohibition on double jeopardy extends to civil sanctions which are applied in a manner that is punitive in nature.

In *United States v. Halper*, 490 U.S. 435 (1989), a civil sanction made under the False Claims Act qualifies as punishment if the sanction is overwhelmingly disproportionate in compensating the government for its loss, and if the disproportionate award can be explained only as a deterrent or as having a retributive purpose.

In *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232 (1972), the Supreme Court held, "Congress may impose both a criminal and a civil sanction in respect to the same act or omission, for the Double Jeopardy Clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense." – Habitual Criminal Information does violate this Standard and if only used as a "Credible threat" renders any Guilty Plea involuntary!!

Charged as a Juvenile for a Crime

In *Breed v. Jones*, 421 U.S. 519 (1975), the Supreme Court found that double jeopardy applies to an individual who is tried as a juvenile and is then later tried as an adult. This is because juvenile courts have the option to try a minor as an adult. If that court tries the individual as a juvenile, then another trial court may not try that same individual as an adult for the same crime, as doing so would violate the double jeopardy rule.

Where does double Jeopardy rule apply on Habitual Criminal Off. History Charges being retried or re Punished ??

Reasons for Granting Petition

~~STATEMENT OF THE CASE~~

I the 8th Circuit requires proof of malice and favorable termination indicative of innocence to show a violation of the constitution under the 4th Amendment. this is contrary to the writings of Justices Alito Gorsuch and Thomas. this is also split with the law of other Circuits

II the 8th Circuit's finding that a claim accrues when there is a finding of probable cause which is tainted, is contrary to this courts precedent as Clarified by Manuel V. City of Joliet

Proof of malice and favorable termination indicative of innocence are unnecessary elements to show a violation of the 4th Amendment

Statement of the Case

Statement of the Case

United states district court

For the District of south Dakota

Daniel j gomez	*	4:21-CV-04085-KES
PETITIONER	*	
VS	*	~~ORDER, BRIEF, AND EXHIBI~~TS
Attorney General of south dakota et al	*	SHOWING CAUSE TO PROCEED WITH 2254
DEFENDANT	*	

COMES NOW THS DAY OF MAY 2021 PETITIONER ENTERS THIS STATEMENT OF FACTS AND REFERENCE TO SEVERAL ARTICLES OF EVIDENCE OF WHY 2254 PETITION SHOULD BE ALLOWED TO PROCEED PERSUANT TO AN CONCLUSION AND ORDER SIGNED BY VERONICA L DUFFY U.S. MAGISTRATE JUDGE ON MAY 10TH 2021 WHY IT SHOULD NOT BE DISMISSED

PURSUANT TO

28 U.S.C. § 2244(d) provides in relevant part: (d) ; (B) the date on which the impediment to filing an application created by State action in violation the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action; (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

See 28 U.S.C. § 2244 (d)(1) and (2). A judgment or state conviction is final, for purposes of commencing the statute of limitation period, at "(1) either the conclusion of all direct criminal appeals in the state system, followed by either the completion or denial of certiorari proceedings before the United States Supreme Court; or (2) if certiorari was not sought, then by the conclusion of all direct criminal appeals in the state system followed by the expiration of the time allotted for filing a petition for the writ." Smith v. Bowersox, 159 F.3d 345, 348 (8th Cir. 1998).

The time allotted for filing a petition for writ of certiorari with the Supreme Court is ninety days. Jihad v. Hvass, 267 F.3d 803, 804 (8th Cir. 2001).

The limitations period for § 2254 petitions is subject to statutory tolling.

Duncan v. Walker, 533 U.S. 167, 177 (2001). Thus, § 2254's tolling provision "applies to all types of state collateral review available after a conviction." Id. State collateral or post-conviction proceedings "are 'pending' for the period between the trial court's denial of the [post-conviction relief] and the timely filing of an appeal from it." Maghee v. Ault, 410 F.3d 473, 475 (8th Cir. 2005) (citing Peterson v.

Gammon, 200 F.3d 1202, 1203 (8th Cir. 2000)); see also Johnson v. Kemna, 451 F.3d 938, 939 (8th Cir. 2006) (an application for state post-conviction review is pending until a mandate is issued).

PURSUANT TO SDCL 23A-7-13 (RULE 11(e)(6)) EVIDENCE OF GUILTY PLEA INADMISSABLE AFTER WITHDRAWEL

EVIDENCE OF A GUILTY PLEA WHICH WAS LATER WITHDRAWN IS NOT ADMISSABLE AGAINST THE PERSON WHO MADE THE PLEA

THEREFOR EVIDENCE DOES EXIST IN THE FORM OF A MOTION TO WITHDRAW PLEA FILED BY PETITIONER DOES NOT SEEK APROVAL OF THE COURT RATHER INFORMS THE COURT THAT A PLEA HAS BEEN WITHDRAWN AND WAIVERS OF RIGHTS ARE RECLAIMED HENCE THE COURTS OFFICIALS DID EVERYTHING IN ABUSE OF POWERS TO HINDER DUE PROCESS IN THE CONTINUATION OF STATE HABEAS PETITION FROM BEING APPEALED TO A HIGHER COURT FOR REVIEW

FOR ALL INTENTS AND PURPOSES PETITIONER DID IN FACT EFFECTIVELY WITHDRAW HIS PLEA OF GUILT LOWER COURTS HAD NO AUTHORITY TO OVERRULE THE GUILTY PLEA

*SEE PETITIONERS EXHIBIT 1 - LETTER FILED OCT 22 2009 FROM JUDGE RUSCH TO PETITIONER STATING "AT YOUR REQUEST COUNCIL APPOINTED "

FURTHER MORE MAKES THE STATEMENT THAT HAVING A PETITIONER CHOOSE OR DECIDE TO PROCEED PROSE OR TO BE REPRESENTED BY COUNCIL DOES NOT INFRINGE THE RIGHT TO COUNCIL BUT WHEN COUNCIL MISREPRESENTS THE PETITIONER PETITIONER HAS THE RIGHT TO REQUEST NEW COUNCIL WHO WILL EFFECTIVELY REPRESENT AND NOT MISREPRESENT AND THAT DOES INFRINGE ON THE

THE ACCUSEDS 6TH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNCIL SO IF A DEFENDANT WERE PROCEEDING PROSE HE STILL AS AN ACCUSED HAS THE RIGHT TO THE "ASSISTANCE" OF COUNCIL JUST AS AN MANAGER HAS AN ASSISTANT TO RUN ERRANDS IN CRIMINAL CASES THE DEFENDANT IS THE MANAGER AND APPOINTED COUNCIL IS THE ASSISTANT WHO FOR ALL PURPOSES COURT APPOINTED COUNCIL FAILED TO ADHERE TO THE MANAGERS NEEDS OR PROPERLY FILE DOCUMENTS PERTAINING TO RAISING THE DEFENCE

EXHIBIT 1 PG 2 STATES "IN THE FUTURE ALL MOTIONS AND CORRESPONDANCE PERTAINING TO THE CASE ARE TO COME TO THE COURTS THROUGH ATTORNEY

EVIDENTIARY HEARING OR HABEAS PETITION COURT PROCEEDING WAS HELD AT ELK POINT UNION COUNTY SOUTH DAKOTA ON MARCH 1ST 2010

(TRANSCRIPTS OF PROCEEDINGS WILL BE LOANED TO THIS COURT FOR E FILING AND RETURNED TO PETITIONER IN ORIGINAL FORM AND EFILE FORMAT)

PRESIDED BY ARTHER RUSCH CIRCUIT COURT JUDGE CLAY COUNTY COURT HOUSE VERMILLION SOUTH DAKOTA

A WITNESS AND PARTY TO THE DEPRIVATIONS OF RIGHTS ANYTHING SAID AND DONE WILL BE USED AGAINST HIM IN COURT OF LAW

ALSO WITNESS AND PARTY TO PROCEEDINGS IS MICHAEL J MCGILL APPOINTED COUNCIL FOR PETITIONER IN ORIGINAL PLEA TAKING

ALSO WITNESS AND PARTY TO IS PHILLIP O PETERSON ATTORNEY AT LAW 124 N THIRD ST BERESFORD SOUTH DAKOTA WHO WA APPOINTED TO ASSIST ME IN HABEAS PROCEEDINGS AND ALSO DIRECTED TO APPEAL WHICH HE FAILED TO DO

DENIAL OF DUE PROCESS INNEFFECTIVE ASSISTANCE OF COUNCIL

(SEE SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM CASE SUMMARY FOR CASE NUMBER 63CIV—09000389 PG 2

ON MARCH 22 2010 COURT DOCKET SHOWS RECIEVED LETTER FROM PETITIONER

(EXHIBIT 11 LETTER DATED 3-10-2010 FROM PETITIONER TO COURTS)

SEE PETITIONERS EXHIBIT 11 DATED 3-10-2010

A WRITTEN LETTER REEQUESTING COURT APPOINTED COUNCIL

ON 3-22-2010 APPLICATION FOR COURT APPOINTED COUNCIL

ON 3-22-2010 ORDER FOR COURT APPOINTED COUNCIL (FOR APPEAL OF STATE HABEAS PETITION)

NO APPEAL FILED BY COURT APPOINTED COUNCIL THEREFORE

PETITIONER IS NOT AT FAULT FOR ATTORNEYS LACK OF DUTY AND DELIBERATE INDIFFERENCE TO PROVIDE SERVICE OR RENDER EFFECTIVE ASSISTANCE

JERRY MILLER WAS A WITNESS TO AND PARTY OF DEPRIVATION OF RIGHTS USC 18 241-242

2 CHAPTER 21-27 HABEAS CORPUS

21-27-1 RIGHT OF PERSON TO APPLY FOR WRIT COURTS VIOLATED

21-27-2 INQUIRY INTO DELAY POWERS OF COURT ON RETURN OF WRIT

ARTHUR RUSCH FALSLY CLAIMED THAT FOR GOOD CAUSE SHOWN DELAY WAS ALLOWED PREJUDICIAL TO PETITIONER WHERE THE DOCKET SHEET SHOWS NO MOTION BY THE STATES REPRESENTATIVE TO MOTION FOR AN EXTENSION OF TIME YET THE COURTS GRANTED EXTENTION AFTER THE TIME FOR RESPONDING AND PRODUCING PETITIONER BEFOR THE COURTS HAD EXPIRED WITH NO GOOD CAUSE SHOWN I WAS JUST AS SURPRISED BY THE INITIAL ARREST IF NOT MORE SO THAN THE STATES ATTORNEY WOULD HAVE BEEN AT MY FINDING CASE LAW REFUTING APPOINTED ASSISTANTS COUNCIL REGARDING ANY ADVISE AND SERVICES THEY CLAIM TO HAVE RENDERED!

THEREFORE PETITIONER ASSERTS UNDER 28 U.S.C. § 2244(d) provides in relevant part: (d) ; (B) the date on which the impediment to filing an application created by State action in violation the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action; (C) the date on which the constitutional right asserted was initially recognized by the

Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

STATE INACTIONS AND ACTIONS DID IMPEDE AND PREVENT APPLICANT FROM APPEALING IN CAHOOTS WITH ANY AND ALL COURT APPOINTED REPRESENTATIVES WHY ELSE WOULD AN ATTORNEY BE APPOINTED ON 3-22-2010 AFTER HABEAS PETITION EVIDENTIARY HEARING HELD 0N 3-1-2010 THEN HOW DOES A ORDER QUASHING WRIT OF HABEAS GET ENTERED WHAT DID COUNCIL DO OR NOT DO THAT HE WAS OTHERWISE REQUIRED TO DO? ULTIMATELY COMING TO AN ORDER TO QUASH ENTERED ON 4-27-2010??? SEE EXIBIT 2 ORDER FOR COURT APPOINTED COUNCIL PHIL PETERSON WAS APPOINTED TO FILE THE APPEAL PETITIONER WAS TOLD THAT HE COULD NOT ASSIST THE ATTORNEY PERSUANT TRO RUSZCHES LETTER EXHIBIT ONE YET PHILIP PETERSON CALLED IT INNEFFECTIVE ASSISTANCE OF CLIENT ???? HOW DID ME FOLLOWING THE RUSCHES ORDER BY NOT ADRESSING THE COURTS AND ONLY THROUGH ATTORNEY AMMOUNT TO MY FAULT ?

IM SUPPOSED TO DO THE DUE DILIGENCE AND PAY MY ATTORNEY FOR MY DUE DILIGENCE RESEARCH??? HOW IS THAT EVEN FATHOMABLE?

THE COURTS WERE ON NOTICE OF APPEAL THE ATTORNEY WAS ON NOTICE OF APPEAL I INTENDED FOR COUNCIL TO EFFECTUATE THE APPEAL HE FAILED AND SINCE I AM NOT AN ATTORNEY IVE BEEN RESEARCHING AND RESEARCHING I DIDNT HAVE THE 10 YEARS OF LAW SCHOOL AND CERTIFICATES SO ITS ONLY FAIR TO ALLOW EXTENSIVE LEEWAY AS RUSCH DID FOR MILLER WHEN MILLER FAILED TO ON BEHAVE OF THE STATE TO BRING A TIMELY RETURN OF WRITE AND FOR GOOD CAUSE SHOWN ALLOW THE PETITION 2254 TO PROCEED.

See 28 U.S.C. § 2244(d)(2). This one-year statute of limitation period is tolled, or does not include, the time during which a properly filed application for state post-conviction relief or other collateral review is pending in state court. Faulks v. Weber, 459 F.3d 871, 873 (8th Cir. 2006); 28 U.S.C. § 2244(d)(2). The phrase "post-conviction or other collateral review" in § 2254's tolling provision encompasses the "diverse terminology that different States employ to represent the different forms of collateral review that are available after a conviction."

IN CURRENT PETITION THERE DID NOT ENTER A FINAL DENIAL OF THE APPEAL THERE WAS A ORDER QUASHING NO HEARINGS WERE HELD NO APPEAL FILED YET FOR THE LETTER DATED 3-22-2010 EXHIBIT 11 THAT IN ESSANCE IS AN NOTICE OF APPEAL WHERE NO APPEAL WAS HELD SO IT IS MY UNDERSTANDING THAT IT IS IN REVIEW OR PENDING

SEE 21-27-3.1 TIME FOR APPLICATION PROCEEDINGS UNDER THIS CHAPTER CANNOT BE MAINTAINED WHILE AN APPEAL IS PENDING OR DURING THE TIME WITHIN WHICH SUCH APPEAL MAY BE PERFECTED

SEE ALSO 21-27-4 COUNCIL APPOINTED FOR INDIGENT APPLICANT INNEFFECTIVE ASSISTANCE OF COUNCIL

If a person has been committed, detained, imprisoned, or restrained of liberty, under any color or pretense whatever, civil or criminal, and IF UPON APPLICATION MADE IN GOOD

FAITH (SEE EXHIBIT 11) to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is satisfactorily shown that the person is without means to prosecute the proceeding, the court or judge shall, if the judge finds that such appointment is necessary to ensure a full, fair, and impartial proceeding, appoint counsel for the indigent person pursuant to chapter 23A-40. Such counsel fees or expenses shall be a charge against and be paid by the county from which the person was committed, or for which the person is held as determined by the court. Payment of all such fees or expenses shall be made only upon written order of the court or judge issuing the writ. The ineffectiveness or incompetence of counsel, whether retained or appointed, during any collateral post-conviction proceeding is not grounds for relief under this chapter.

Source: SL 1943, ch 126; SDC Supp 1960, § 37.5504-1; SL 1969, ch 163; SL 1983, ch 169, § 5; SL 2012, ch 118, § 4.

EXHIBIT 11 LETTER DATED 3-10-2010 WAS PETITIONERS GOOD FAITH APPEAL AND RUSCH SUBSEQUENT ORDER FOR COURT APPOINTED COUNCIL DATED 3-22-2010 IS PROOF FINAL DENIAL WAS 3-1-2010 MOTION MADE FOR APPEAL 3-10-2010 ORDER FOR COUNCIL 3-22-2010 ALL WITH IN THE ALLOWED TIMES FOR APPEALEXCEPT FOR INNEFFECTIVE ASSISTANCE OF COUNCIL PHIL PETERSON, JOHN WHOEVER, AND MICHAEL MCGILL, IN CAHOOTS WITH JUDGES JENSEN,M RUSCH, AND STATES ATTORNEY JERRY MILLER, Melisa Larson, Nicholas Davis

However, state proceedings are not pending for the ninety-day period "following the final denial of state post-conviction relief, the period during which an unsuccessful state court petitioner may seek a writ of certiorari from the United States Supreme Court." Jihad, 267 F.3d at 805. Additionally, "[s]tate proceedings are not pending during the time between the end of direct review and the date an application for state [post-conviction relief] is filed." Maghee, 410 F.3d at 475 (citing Painter v. Iowa, 247 F.3d 1255, 1256 (8th Cir. 2001)). In short, the one-year statute of limitations begins to run after the state conviction is final, is tolled while state habeas proceedings are pending, and then begins running again when state habeas proceedings become final. Curtiss v. Mount Pleasant Corr. Facility, 338 F.3d 851, 853 (8th Cir. 2003). Case 4:21-cv-04085-KES Document 4 Filed 05/10/21 Page 4 of 6 PageID #: 705 The court notes the one-year AEDPA statute of limitations is not a jurisdictional bar. Baker v. Norris, 321 F.3d 769, 771 (8th Cir. 2003). The time limit is subject to equitable tolling when "extraordinary circumstances" beyond a prisoner's control make it impossible to file a petition on time. Id. A petitioner seeking equitable tolling must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. Holland v. Florida, 560 U.S. 631, 649 (2010); Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). The decision whether to equitably toll AEDPA's limitations period is a fact-intensive inquiry based upon the totality of the circumstances. Holland, 560 U.S. at 649-50. Equitable tolling represents "an exceedingly narrow window of relief." Shoemate v. Norris, 390 F.3d 595, 597 (8th Cir. 2004) (quoting Jihad, 267 F.3d at 805). The court may raise the statute of limitations issue sua sponte. Day v. McDonough, 547 U.S. 198, 209 (2006). The court must, before acting on its own initiative to dismiss the federal petition based on the AEDPA statute of limitations, "accord the parties fair notice and opportunity to present their positions." Day, 547 U.S. at 210. Further, the court must "assure itself that the Petitioner is not significantly prejudiced by the delayed focus on the limitation issue, and determine whether the interests of justice would be better served by addressing the merits or dismissing the petition as time barred." Id. Accordingly, the court will order the parties to show cause why Mr. Gomez's federal petition should not be dismissed as untimely. Both parties are asked to provide a complete picture to the court of the proceedings in state Case 4:21-cv-04085-KES Document 4 Filed 05/10/21 Page 5 of 6 PageID #: 716 court which occurred prior to Mr. Gomez filing his current petition with this court, including the dates on which pertinent actions took place.

GOMEZ HAS FILED IN ERROR SEVARAL PETITIONS INCLUDING USC 42 1983 AND 4:20CIV04151-RAL AND LETTER DATED 3-10-2010 IN ALL INSTANCES WAS REQUESTING COUNCIL TO ASSIST WHER COUNCIL WAS EITHER REPEATEDLY DENIED OR THE COUNCIL WAS SO INNEFECTIVE THAT THE CAUSE OF DELAY WAS IN PART OF THE PETITIONER IN THAT HE IS NOT A WELL STUDIED LAWYER AND THE DENIAL OF EFFECTIVE ASSISTANCE IS MORE SO TO BLAME FOR THE DELAY PLEASE SEE PRIOR EXHIBITS AND REFERENCE AS NEEDED NOTE ALSO THERE IS NO EXIBIT 10 I MISSCOUNTED AND SKIPPED NUMBERS AND ALSO NO EXHIBIT 12 HAND WRITTEN NOTES APPEAR AND I APOLOGIZE FOR ANY CONFUSION THIS MAY CAUSE IM ALSO CONFUSED AND DIDNT GET AN APOLOGY OR EXPLANATION OR COUNCILED ON HOW TO PROCEED

exhibit 1-A part II information for Habitual Criminal (SDCL 22-7-7) is also filed in case CR ~~1983~~ 19-1983 On 18 of April 2019 I believe And Assert that this alone is grounds for allowing to proceed with Petition 2254 or Habeas Since the State brought it up. again. Petitioner will gladly take up the discussion And has Submitted email evidence Demanding Speedy Trial in regards.

"S" Daniel Gomez
Daniel Gomez
1929 E 33RD ST N.
Sioux Falls SD 57104
Phone ~~#~~ 605-400-4103
email djg51104@outlook.com
Petitioner Daniel Gomez 5-10-2021

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel Gromer

Date: 8-23-2021