No. 21-5933

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Kevin Deon Loggins Sr., — PETITIONER
(Your Name)

vs.

State of Kansas, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the State of Kansas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin D. Loggins Sr. No. 63088
(Your Name)

HCF PO BOX 1568
(Address)

Hutchinson, Kansas 67504
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER THE KANSAS STATE COURT FINDING THAT PETITIONER SENTENCE IS NOT AN ILLEGAL SENTENCE, A ABUSE OF DISCRETION REPUGNANT TO THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION 14TH AMENDMENT PROTECTIONS IN SENTENCING PHASE?.....5

II. WHETHER THE KANSAS STATE COURTS WITHHOLDING OF ITS DISPARITY IN SENTENCE BENEFITS FROM PETITIONER, AMOUNT TO THE DENIAL OF EQUAL PROTECTIONS OF THE LAW, THUS REPUGNANT TO THE 14TH AMENDMENT OF THE U.S.C.A.?.....10

III. WHETHER PETITIONER REMAINING IMPRISONED ON CRIMES COMMITTED BY CODEFENDANTS, THAT KANSAS STATE COURTS HAVE LONG SINCE RELIEVED OF THE PUNISHMENT IMPOSED, BASED UPON FALSE & UNTRUE INFORMATION, (ABUSE OF DISCRETION) AND AFOUL TO THE FUNDAMENTAL RIGHT TO DUE PROCESS OF THE LAW, EQUAL PROTECTION OF THE LAW AND RIGHT TO A SPEEDY TRIAL, RENDER THE SENTENCE A FUNDAMENTAL MANIFEST MISCARRIAGE OF JUSTICE?.....27

LIST OF PARTIES

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

[ ] 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:

RELATED CASES

U.S. Court of Appeals for the Tenth Circuit, Case No. 20-3007 & 20-3009.

Kansas Supreme Court Petition for review, Case No. 95 CR 1859 (Denial for Writ of Habeas Corpus).

PETITION FOR THE GREAT WRIT OF HABEAS CORPUS, pursuant to 28 U.S.C. 2241, U.S. SUPREME COURT, Case No._____.
(To be Supplied by the Court)

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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 _____ 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[ ] is unpublished.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 _____ to the petition and is

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[ ] is unpublished.

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

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

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

[ ] 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).

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

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix ___A___.

[X] A timely petition for rehearing was thereafter denied on the following date: March 15, 2021, and a copy of the order denying rehearing appears at Appendix ___B___.

[ ] 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

STATEMENT OF THE CASE

In the Fall of 1995 petitioner was charged with the crimes of robbing, kidnapping, aggravated burglary, aggravated sexual battery, and criminal possession of a firearm of residential robberies of two local drug houses in Wichita, Kansas. Petitioner and two other codefendants Mr. Jones and Mr. Upchurch was charged under a theory of aiding and abetting. In District Case No. 95 CR 1616 petitioner was charged as the principal on the criminal possession of a firearm, and on District Case No. 95 CR 1859 as the principal of Agg., burglary and criminal possession of a firearm, and Agg. kidnapping, which was reversed and dismissed on direct appeal.

The same direct appeal panel acknowledged that the remaining aggravated kidnapping which the state alleged Mr. Upchurch was the principal on was not a kidnapping as well but since counsel argued it wrong the panel upheld the conviction.

Despite the crimes was alleged to have occured only 6-days apart and a District court judge (Clark Owens II) ordering the case consolidated for trial, the cases was tried apart, and reconsolidated for sentencing. At sentencing the presiding judge calculated each of the cases and each count in the criminal history when sentencing in each case. Thus sentencing petitioner as a two time felon for criminal history purposes in Case No. 95 CR 1859 and a three time felon for criminal history in Case No. 95 CR 1616.

The Judge then made additional fact finding to run the cases consecutive, ultimately sentencing petitioner to 678 months imprisonment irregardless of petitioner only having one juvenile adjudication prior to the convictions in the cases. In 2002 petitioner filed a Motion to Correct an Illegal sentence pursuant to K.S.A. 22-3504(1). The district court (original judge) denied the motion and the Kansas Court of Appeals upheld the denial.

In 2007 the original sentencing court resentenced codefendant Mr. Upchurch and downward departed resentencing Mr. Upchurch to a 12 year sentence. Petitioner filed the current motion arguing the enhanced disparity in sentences, abuse of discretion in the previous motion, and the use of false & untrue information during the sentences phase, and presence of a bias & prejudice judge at sentence. The district Court summarily denied the motion, the Court of Appeals upheld the district court, and the Kansas Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

I. WHETHER THE KANSAS STATE COURT FINDING THAT PETITIONERS SENTENCE IS NOT AN ILLEGAL SENTENCE A ABUSE OF DISCRETION, REPUGNANT TO THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION 14TH AMENDMENT PROTECTIONS IN SENTENCING PHASE?

Standard of review: "Whether a defendant's due process rights were violated is a question of law over which this court exercises unlimited review". **State v. Kirkpatrick**, 286 Kan. 329, 351, 184 P.3d 247 (2008).

"In determing whether the procedures employed by the sentencing court conformed to minimal due process requirements, the Court applies the four factors enuciated in **Mathews v. Eldridge**, 424 U.S. 319, 335, 47 L.Ed. 2d 18, 96 S.Ct. 893 (1976): "(1) the nature of the individual interest at stake, (2) the risk of error inherent in the present method of obtaining information, (3) the usefulness of additional procedural safeguards in securing accurate information, and (4) the goverment's interest in being free of fiscal and administrative burdens that provision of additional safeguards would impose." **Gonzales**, 911 F. Supp. at 126.

"The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a State's depriving any person of liberty 'without due process of law.' It 'contains a substantive component that bars certain arbitrary, wrongful government actions **"regardless of the fairness of the procedures used to implement them.'" Zinermore v. Burch**, 494 U.S. 113, 125, 108 L.Ed. 2d 100, 110 S.Ct. 975 (1990).

Petitioner sought to correct the illegal sentence imposed in the case pursuant to **K.S.A. 22-3504(1)**, which provides:

"**K.S.A. Supp. 22-3504(1)** states that the court may correct an illegal sentence at **any time**"

Petitioner demostrated to the Sedgwick County district court and Kansas Court of Appeals that petitioners sentence was imposed in violation of the Due Process Clause of the Fourteenth Amendment because said sentence imposed was based upon false and untrue information. Said finding was additional fact finding by the sentencing court of factors not presented to the the jury nor found by the

-jury.

Petitioner supported this agrument with federal authority, commencing with a citation to **Gardner v. Florida**, 430 U.S. 349, 358, 51 L.Ed. 2d 393, 97 S.Ct. 1197 (1977), for the proposition that a defendant is entitled to **due process of law at sentencing.** Gardner was a death penalty case in which the jury recommended a life sentence, but the trial judge sentenced the defendant to death, relying in part on confidential information in the presentence report which had not been disclosed to the defendant. In a plurality decision, six members of this Superior Court voted to invalidate the death sentence, albeit for differing reasons. Four of the justices explicitly bases their decision, at least in part, on the applicability of the **Due Process Clause** to sentencings proceedings.

Both Kansas Court of Appeals and the Kansas Supreme Court agree that sentencing phase has due process protection. "The potential for depriving a defendant of his or her liberty at sentencing would likewise mandate the applicability of due process limitations at that critical stage of criminal proceedings." **State v. Palmer**, 37 Kan. App. 2d 819, Syl. P.4, 158 P.3d 363 (2007). Also see, **State v. Easterling**, 289 Kan. 470 (2009).

FALSE & UNTRUE FACTORS RELIED UPON AT SENTENCE

At the conclusion of sentencing, the presiding Judge Rebecca L. Pilshaw stated on the record the reason why theres a disparity in the sentences imposed in petitioners case and co-defendant David L. Upchurch sentenced the same day.

VOLUME -4, pg.-34 & 35 (Appendix-C).

Transcript of posttrial motions and sentencing

Page-(34), lines 21-25 & Page-(35), lines 1-17:

Pg-(34), lines 22-25

22. MR ZACHARIAS: Just as I understood the Court's
22. order, sentence in 1616 is to be consecutive to 1859?
24. THE COURT: That is correct. And I want to
25. point out, I did not do that in Mr. Upchurch's case; and I

Continued Page-(35), lines 1-17:

1. do want to make the record very clear why I have
2. distinguished between the sentences that I imposed on
3. Mr. Upchurch and the sentence that I imposed on
4. Mr Loggins.
5. I consider Mr. Loggins to be the leader in this
6. situation. The targets that were selected in each of the
7. jury trial and the bench trial were people that were
8. personally known to Mr. Loggins. One, in fact, was a very
9. close neighbor of Mr. Loggins. I consider him the leader
10. of these.
11. Certainly Mr. Upchurch's behavior and conduct
12. was worthy of the sentence that I imposed, but I felt that
13. he was more of a follower of Mr. Loggins, and that is my
14. reason for the disparity in sentences. It has
15. nothing to do with anything that occured during the trial
16. or the fact that Mr. Loggins exercised his right to a
17. trial.

The State Prosecutor never asserted a Leadership role theory to the jury, in its complaint/information nor arguments in the case. In neither of the cases did the alleged victims asserted that they personally knew petitioner. In Case No. 95 CR 1859 (jurytrial) the alleged victim Daron Green testified that he only encountered petitioner once prior to the incident. See Transcript of Jury Trial, Vol.-15, pg-5, lines 4-25 and pg.-6, lines 1-5. (Appendix-D)

In Case No. 95 CR 1616, the alleged victims testified that petitioner was only known because he use to talk to her daughter and thats how she knew his voice.

-Transcript of Bench Trial, Vol.-3, pg.-44, lines 1-5 and pg.-52, lines 14-25. The allege victim never testified to ever personally knowing Petitioner, and her daughter never testified to knowing petitioner or ever talking to him. (Appendix-E).

Neither petitioner nor, nor any of the co-defendants admitted nor testified that petitioner was the leader in the crimes. The States case was that all defendants was equal participants in the case. See Transcript of Partial transcript of jury trial (Opening statements, Reading of the instructions, and Closing Arguments,)Vol.-16, pg.-29, lines 13-25 and pg.-30, lines 1-16. (Appendix-F).

In both cases the State omitted to the court and jury that in both cases, both residents was know drug houses to law enforcement. In Case No. 95 CR 1616 (Benchtrial) the residences was a known Weed house. In Case No. 95 CR 1859 (Jurytrial) the residence was a known Crack Cocaine house. Petitioner sought to add Transcript of Mr. Upchurch resentencing to the record on appeal, and Lab reports from Case No. 95 CR 1616. The Transcript of Resentencing would have established that the robbery in Case No. 95 CR 1859 and 1616 was both motivated by drug addiction, and the lab reports would have established that robbery consisted of crack cocaine in which the alleged victim: Stephanie Lyons was the only finger print found thereon. See Appendix-(G).

The Clerk of the District court alleged that itcould not locate either of the documents. See Appendix-(H). Petitioner sought to subsitute the record on appeal. See Appendix-(H), pg's-(2-5).

Thus, the record is void of any evidence supporting the imposition that Petitioner was the leader in the crimes or that petitioner was personally known to any of the defendants.

In **Blakely v. Washington**, 542 U.S. 296 (2004), this Superior Court reiterated the long standing principles concerning additional fact-finding during the sentence phase. The Court quoted: "the "truth of every accusation" against a defendant "should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours," **4 W. Blackstone, Commentaries on the Laws of England** 343 (1769), and that "an accusaction which lacks any particular fact **which the law makes essential to the punishment** is ... no accusation within the requirements of common law, and it is no accusation in reason," **1 J. Bishop, Criminal Procedure syl 87, p.** 55(2d ed. 1872). "These principles have been acknowledged by courts and treatises since the earliest days of graduated sentencing; we compiled the relevant authorities in Apprendi, 530 U.S., at 476-483, 489-490, n 15, 147 L.Ed. 2d 435, 120 S.Ct. 2348; id., at 501-518, 147 L.Ed. 2d 435, 120 S.Ct. 2348. (Thomas, J., concurring), and need not repeat them here."

In the case at bar, the sentencing court (Judge) made the untrue and false accusation that petitioner was **"The leader"** and that he was **"personally known to the victims"** essential to the punishment . Based off the courts own findings the only reason she imposed the consecutive sentences in petitioners case is because of the additional fact-finding that was never presented to the jury.

If not for the additional fact-finding petitioners sentence would have been significantly different. As stated by this Court in the Gardner v. Florida, case **Due Process Clause**, prohibits a sentence based upon false and untrue information. The fact that in this case, the information used was not presented to the jury nor even required to meet any standard of reliability compounds

-the issue. Also the fact that said information was not alleged in the PSI, nor prior to sentence, the defense was not allowed the opportunity to test or contest its reliability. This fact renders the sentence afoul to the **Due Process Clause.**

This Superior Court has long since held, "Every person is entitled to an opportunity to be heard in a court of law upon **every question involving his rights and interest,** before he is affected by any judicial decision on the question." **Earle v. McVeigh,** 91 U.S. 503, 23 L.Ed. 398, also see, **Renaud** v. **Abbott,** 116 U.S. 277, 29 L. Ed. 629, 6 S.Ct. 1194.

In the case at bar neither of these principles was complied with, the information (False & Untrue Information) was not presented until after petitioners right to liberty was affected by the sentencing courts decision.

Neither the district nor the court of appeals answered this issue, wherefore the **Ends of Justice** will best be served if this Superior Court grant the Writ and answer this due process claim.

II. Whether the Kansas state courts withholding of its disparity in sentences benefits from petitioner, amount to the denial of Equal Protection of the Law, thus repugnant to the 14th Amendment of the U.S.C.A.?

USCS Const. Amend. 14, USCS Const. Amend. 14, syl. 1

Sec. 1. (Citizens of the United States)

"All persons born or naturalized in the United States, and subjected to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law; **nor deny to any person within its jurisdiction the equal protection of the laws."** (Emphasis added)

Standard of review:

Disparity in sentences is reviewed on appeal under a abuse of discretion, thus subjected to unlimited review. "The discretion in imposing sentences which is lodged with a court is not boundless, but a judicial discretion. It is a discretion limited to sound judgment to be exercised, not arbitrary, but with regards to what is **right** and **equitable** under the circumstances. **State v. Goering**, 225 Kan. 755, Syl. P 9, 594 P.2d 194 (1979).

Discretion is abused if no reasonable person could take the view of the district court, if the district court ruled based on error of law, or if it ruled based on an error of fact. **State v. Ward**, 292 Kan. 541, Syl. 3, 256 P.3d 801 (2011); cert. denied 132 S.ct. 1594, 182 L.Ed. 2d 205 (2012) "With regard to whether a mitigating or aggravating factors found by the sentencing court "can ever, as a matter of law, be substantial and compelling in any case," our review is de novo. **Spencer**, 291 Kan. 807.

This Court should find a "substantial disparity" between the sentences occured, meaning a difference not explained by the respective criminal histories or some other relevant consideration. See, **State v. Sweat**, 30 Kan. App. 2d 756, 772, 48 P.3d 8, rev. denied 274 Kan. 1118 (2002).

The Kansas Supreme Court in **State v. Smith**, 254 Kan. 144, 864 P.2d 709 (1993), addressed this issue concerning disparity of sentencing between co-defendants. It was held:

> "Generally, "disparity in sentences of codefendants does not amount to abuse of discretion where the trial court considers the individual characteristics of the defendant being sentenced, the harm caused by that defendant, and the prior criminal conduct of that defendant." Syl. P 4.

"A trial judge is not bound to sentence a defendant to a term equal to or shorter than the sentence given his or her codefendant. When a defendant receives a longer sentence than his codefendant and the reason therefor appear in the record, the sentence imposed will be tested on appeal against a standard of abuse of discretion." Syl. P 5.

As the record reflects, the sentencing court (Judge) relied upon untrue and false information to reach the original disparity in the case. Thus leading the court to impose a sentence beyond the jury's verdict in the case called for. There was a substantial disparity when viewing the sentence in compliance with the standard issued in the Smith case, concerning 1.) Individaul characteristics of the defendants; 2.) the harm caused by the defendants; and 3.) prior criminal conduct of the defendants.

In both the Jurytrial (95 CR 1859) and Benchtrial (95 CR 1616), the State prosecution and victims alleged that Mr. Upchurch was the aggressive defendant. The State Prosecution alleged that Mr. Upchurch struck the victims in both cases, that Mr. Upchurch is the defendant that kidnapped the female victim in the Jurytrial (95 CR 1859) and that Mr. Jones is the defenedant that committed the Aggravated Sexual battery in the jurytrial.

Thus when comparing the harm inflicted by the defendants according to the states case its as follows:

Case No. 95 CR 1859:

Petitioner (Loggins): Principal of, Aggravated burglary, Criminal possession of firearm.

Codefendant (Upchurch): Principal of, Kidnapping of Jessica Green, Aggravated Robbery of Jessica Green, Aggravated burglary.

Codefendant (Jones): Principal of, Aggravated Sexual Battery of Jessica Green, Aggravated Robbery of Daron Green, Aggravated burglary.

Case No. 95 CR 1616:

Codefendant (Upchurch), Principal of Aggravated Robbery of Mr. Larkins.

Codefendant (Jones), Aider and abettor of Agg. Robbery of Mr. Larkins and Ms. Lyons.

Petitioner (Loggins), Principal of Agg. Robbery of Ms. Lyons and criminal possession of a firearm.

In the previous claim of disparity in sentences, petitioner argued the original disparity resulted in petitioner receiving a sentence that was 20-plus years greater than Mr. Upchurch, and approximately 50-years greater than Mr. Jones. The state courts alleged that there was not enough information before it to rule upon the disparity claim. See Appendix-(I), pg-(7)(para.,-6).

Neither the district court or court of appeals acknowledged that on April 18th, 1996 that the current crimes of conviction, Case No. 95 CR 1616 and 95 CR 1859 was the cases in which petitioner was being sentenced upon. The sentence court relied upon State v. Roderick, 259 Kan. 107 (1996), as authority to allow counting each count in each case as criminal history to enhance the sentence in each case. The Roderick case was subjected to the 1994 Sentencing guideline, after the 1993 version which contained sentencing event language, was amended to remove said language.

Roderick plead to three different cases on the same date and at sentencing the 1994 version permitted the court to calculate each of the cases against the other in criminal history. In 1995 the Kansas Legislature again changed the Sentencing guideline, to add K.S.A. 22-3203 (Consolidated cases) to prevent the

this action in cases under the new version. Thus once joined together in a single complaint/information or multiple informations joined together for trial, must be excluded from criminal history computation. The legislature did not draft the statute holding that a defendant has to actually go to trial to reap the benefits of K.S.A 22-3203, simply that the cases be join for trial.

Likewise, K.S.A. 21-4710(d)(11) excludes the use of of any conviction where the prior felony provides an element of the current offense, or which enhances the possible penalty for the current crime. In the case at bar both situations is applicable. 92-JV-1548 was utilize as an element to establish the Criminal possession of a firearm, See Appendix-(J), thus enhancing the crime of pession of a firarm from a misdemeanor to a felony (Criminal possession of a firearm). The prior court held that, State v. Vontress, 266 Kan. 248, 259 (1998) was authority on petitioners claim.

However, petitioner challenges the conclusion drawn by the Vontress court verses the legislatures intent. The rules of statutory construction controls. K.S.A. 21-4710(d)(11) is unambiguous, the legislature was specific in its intent, that a conviction that is a element of the current conviction or which enhances a current conviction, **CANNOT**, be utilized for criminal history purpose.

The Statute does not convey that it can be utilized in the calculation of primary crime, it conveys that it cannot be utilized as a element or to enhance a crime, and then again be utilized for **CRIMINAL HISTORY** purposes. "Ordinary words are to be given ordinary meaning, and a statute should not **be read so as to add that which is not readily found therein** or to read out what as a matter of ordinary English language is found in it." **GT, Kansas, L.L.C. v. Riley County Register of Deeds**, 271 Kan. 311, 316 (2001) Furthermore, K.S.A

21-4710(a) provides:

> "A prior conviction is any conviction, **other than another count in the current case which was brought in the same information or complaint** **or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3202** and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or conviction in the current case."

In the current cases in the case at bar (95 CR 1616 and 95 CR. 1859), at waiver of jurytrial in Case No. 95 CR 1616 the following agreement between the Court, Prosecution and defense was reached:

Transcript of Waiver of Jury Trial Case No. 95 CR 1616 (Vol.-2, pg.-(3)). (Appendix-K).

THE COURT: I'll accept your waiver. And now, when is the other case set?

MR. KAUFMAN: Janury 22nd of 96.

THE COURT: Is that when you want to set this one? Is that what you all want to do?

MR. KAUFMAN: I think that would be a good idea, Your Honor.

MR ZACHARIAS: I think that is.

THE COURT: Okay, set on January 22nd, nine o'clock in the morning, 1996. That way **all your cases will be one date so you can figure out what to do.**(Emphasis added).

Prior to the January, 22nd, 1996 date the case (95 CR 1616 and 95 CR 1859) was continued until Feburary, 26, 1996. On the 26th of Feb., 1996 the Jury trial commenced and neither the state nor court made mention of Case No. 95 CR 1616.

Approximately 37-days after the jury trial concluded petitioner was called to a bench trial before former Judge Rebecca L. Pilshaw and forced to proceed to trial. Although the record of action report claims that the defense continued the case the district court record is void of any transcript of a verbal continuance or any motions filed by the defendant or counsel requesting a continuance in the case. Had there been a continuence in the case it would have required petitioners **personal participation in the** continuance because said continuance would require the waiver of petitioners **Constitutional Right to a Speedy Trial, U.S.C.A. Amend. Sixth.**

The district court and court of appeals for the state of Kansas reasoned that although counsel, prosecution and the magistrate agreed to consolidate the case for trial, the cases remained seperate because one was a benchtrial and the other a jurytrial, and said cases was tried apart. Neither court looked to the record to determine why the cases was tried apart, nor did the courts exercise any logic as to why the bench and jury trial could not be tried together.

There is neither case or statute law which prohibits a jury and bench trial from being tried together. After the jury retired each day in the jury trial, the court could have heard testimony of witnesses in the bench trial. Furthermore once the cases was joined, in order to sever them required a hearing to sever the joiner wherein petitioner could have been notified of the intent to sever and be heard on the subject, in compliance with the **Due Process Clause.** "It is a **fundamental doctrine of law** that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard." **Renaud v. Abbott,** 116 U.S. 277, 29 -

-L.Ed 629, 6 S.Ct. 1194.

The language used by the Kansas Legislature in **K.S.A. § 22-3203** "Joined for trial" denotes joining together. "**Join**", is defined in **Blacks Law Dictionary** as: "To unite; to come together; **to combine or unite in tim**e, effort, action; to enter into alliance". (6th ed.). Blacks Law also defines "**Joinder of Indictments or Informations**", as: "**The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information**. The procedure shall be the same as if the prosecution were such single indictment or information. **Fed. R. Crim. P.** 13." (Emphasis added).

K.S.A. 22-3203 " governs consolidation for trial of separate complaints or informations:

" "The court may order two or more complaints, informations or indictments against a single defendant to be tried together if the crimes could have been joined in a single complaint, information or indictment."

" Joinder in the same complaint or information is proper if the crimes charged: (1) are of the same or similar character, (2) are based on the same act or transaction, or (3) are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan. **K.S.A. 22-3202(1)**.

"Consolidation in the instant action rests on the same or similar character of the crimes involved. **State v. Ralls,** 213 Kan. 249, 256-57, 515 P.2d 1205 (1973), further delineated the prerequisites for consolidation under these circumstances:

" "When all of the offenses are of the same general character, require the same mode of trial, the same kind of evidence and occur in the same jurisdiction the defendant may be tried upon several counts of one information or if separate informations have been filed they may be consolidated for trial at one and the same trial."

Kansas Statute and case law echoes the Blacks Law definition of joinder. From the plain and unambiguous language of Kansas Legislature and the joining of the complaints together for one trial date, Judge Clark Owens III., effectively joined the cases pursuant to **K.S.A. § 22-3203**.

Since plaintiff crimes occurred after the July 1st, 1995 amendment the the benefits of said amendment was applicable in plaintiffs case.

K.S.A. 22-3204:

"When two or more defendant are jointly charged with any crime, the court may order a separate trial for any one defendant when requested by such defendant or by the prosecuting attorney."

Neither the prosecution nor defendant requested a severance of the joined trials pursuant to the K.S.A. 22-3204. Once Judge Owens III joined the cases for trial, law required a move for severance in pursuant to the statute. Judge Rebecca L. Pilshaw could not defeat the joinder by falsefying the record and incerting that the defendant took a continuence. Had Appellant/defendant requested a continuence it would have required continuing the entire case [95 CR 1859 and 95 CR 1616]. Throughout the trial and during sentencing Judge Rebecca L. Pilshaw acted in partiality and with corrupt motives by relying on untrue and false information, by not requiring the state to prove every essential elements of the crimes charged to convict, and by stating on the record her own personal interest in seeking charges against Appellant.

Judge Rebecca L. Pilshaw stated for the record:

Partial Transcript of Preliminary Examination **(Vol.-18)**

containing 14-pages, pg-11, lines 10-12: (Appendix-L).

10. THE COURT: Thank you. Well I--**I am**

11. **interested in adding an aggravated sexual battery**

12. **charge, and I am adding aggravated sexual battery.**

Due Process of Law Clause of the 14th Amendment of the United States Constitution prohibits a judge from setting in judgment on a case wherein he/she has a personal interest. See 28 U.S.C. 455, Also see, Concrete Pipe & Prods. v. Constr. Laborers Pension Trust, 113 S. Ct. 2264:

"Due process requires a "neutral and detached judge in the first instance." Ward v. Village of Monroeville, 409 U.S. 57, 61-62, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972). "That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule." Tumey v. Ohio, 273 U.S. 510, 522, 71 L. Ed. 749, 47 S. Ct. 437 (1927). [****31] Before one may be deprived of a protected interest, whether in a criminal or civil setting, see Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610, and n.2 (1980), one is entitled as a matter of due process of law to an adjudicator who is not in a situation "'which would offer a possible [*618] temptation to the average man as a judge . . . which might lead him not to hold the balance nice, clear and true . . . .'" Ward, supra, at 60 (quoting Tumey, supra, at 532). Even appeal and a trial de novo will not cure a failure to provide a neutral and detached adjudicator. 409 U.S. at 61.]"Justice," indeed, "must satisfy the appearance of justice, and this stringent rule may sometimes bar trial [even] by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." Marshall v. Jerrico, Inc., supra, at 243."

In light of all the circumstance in this particular case and the presence of a strucual error of a presence of a bias judge and clearly corrupt motive of denying Appellant the benefits of K.S.A. 22-3203 and its prohibition of including the current crimes of 95 CR 1616 and 95 CR 1859 in Appellant/defendants criminal history score in sentencing appellant in the current case of 95 CR 1616 and 1859, as well as a lack of evidence to support the cases being severed or appellant/petitioner waiving the **Constitutional Speedy trial right**, this Court should find the previous ruling on the original disparity is a clear **manifest injustice.**

Petitioner in the current petition and on appeal argued that said **disparity in sentences** was enhanced by the sentencing judges resentencing of codefendant David Upchurch, in Jan., 2007. Mr. Upchurch was called back to court for resentence based off the re-

-versal of the Aggravated Kidnapping of Daron Green in Case No. 95 CR 1859. On direct appeal, the Kansas court of appeals held that petitioner (Loggins) did not commit aggravated kidnapping, the panel also acknowledged that the aggravated kidnapping of Jessica Green was not a kidnapping, but since petitioners counsel attacked the bodily harm element of the kidnapping, instead of arguing there was no kidnapping the panel upheld the aggravated kidnapping of Jessica Green which was alleged to have been committed by Mr. Upchurch. See Appendix-(M), pg-(3).

Former Judge Rebecca L. Pilshaw presided over resentencing of petitioner on the reversal of the aggravated kidnapping of Daron Green. The Judge held that since the aggravated kidnapping of Daron Green was ran concurrent with the aggravated kidnapping sentence of Jessica Green, there was no need to resentence petitioner and upheld the sentence imposed.

The U.S. District Court for the State of Kansas reversed codefendant (Upchurch) aggravated kidnapping of Daron Green finding that if petitioner did not commit the crime of aggravated kidnapping of Daron Green, there could be no aiding and abetting on that offense. See **Upchurch v. Bruce**, Case No. 01-CV-3196-DES.

At resentencing on Mr. Upchurch, Former Judge Rebecca L. Pilshaw presided. Therein she granted Mr. Upchurch a downward departure on his conviction of aggravated kidnapping of Jessica Green. This resulted in Mr. Upchurch serving only 12-years on the crimes of conviction in Case No. 95 CR 1616 and 95 CR 1859. In petitioners current motion it was argued the disparity of sentence was enhanced

resulting in petitioner being required to serve a sentence 50-plus years greater than codefendant (Jones) and 40-plus years greater than codefendant (Upchurch). Thus requiring petitioner to serve excessive time on crimes committed by codefendants which the state courts have long since relieved those defendants of the punishment for the crimes committed.

Neither the district court or court of appeals for the State Kansas took these factors into consideration. Both courts sought to invoke the doctrine of res judicata, issue preclusion and finality of litigation. The state argued multiple state cases to support why these doctrines should apply. Although theres no previous ruling.

This Superior Court has long since held, "The conventional notions of finality of litigation have no place where life or liberty are at stake and infringement of constitutional rights is alleged." **McClesky v. Zant**, 499 U.S. 467. Petitioner presented evidence that the sentence imposed was by a bias judge whom lacked impartiality, and acted with corrupt and arbitrary motives. Likewise, said judge committed a overt criminal act of obstruction of justice to hide her lack of impartiality. See Vol.-(11) and Vol.-(18).

Volume-18 was spolitated from Volume-11 and withheld from petitioner and all petitioner counsel on appeal and postconviction proceedings Federal and State. Volume-18 consisted of the first 9-pages, and last 4-page of the preliminary examination. Said record was spolitated to concealed to hide the conflict of interest between petitioner and counsel, and most importantly the **Structual Error**, of the presense of a bias judge at trial. See Appendix-(L).

The fundamental laws in this country prohibits judges from setting in judgment of their own case. This Superior Court in **In re Murchison,** 349 U.S. 133 (1953) mandated, **"No man can be judge in his own case" adding that "No man is permitted to try cases where he has an interest in the outcome."** Id. at 136, 75 S.Ct. 623, 99 L.Ed. 942. Thus, Judge Pilshaw was prohibited from setting in judgment on the trial let alone the sentencing phase, for she abandon her neutrality to be a advocate and partisan for the states cases. See Volume-18, pages-(10-11). Appendix-(L).

"When a judge lose its color of neutraility and tends to accentuate and emphasize the prosecutions case, he or she failed to play the role of Art. III Judicial Officer." **U.S. v. Leuth,** 807 F.2d 719, 727 (8th Cir. 1986). "Once a trial judge steps outside the role of detachment, **he or she assumes the role of partisan or advocate.** At that point the judge is no longer, nor even appears to be neutral and impartial." **Limitation of Judicial Activism in Criminal Trials,** 33 Conn. L. rev. 243, 273-74 (2000).

The fact that the judge ordered/conspired with the court reporter to conceal these facts constitutes a crimibal act. See **18 U.S.C. 1512(c)(1).** "The destruction of evidence, it constitutes an obstruction of justice. The destruction or **'significant and meaningful alteration of documents'** or instruments. See **Application of Boykins, D.C.N.Y.,** 165 F. Supp. 25, 30. "To hide or withdraw from observation, cover or keep from sight, or prevent discovery." See **People v. Eddington,** 201 Cal. App. 2d 524, 20 Cal. Rptr. 122-124.

The law provides such a error of this magnitude cannot be barred for it effects a substantive due process right. **Roger v.**

Gibson, 173 F.3d 1278, 1289 (10th Cir. 1999). Substantive due process right, such may be broadly defined as constitutional gurantee that no person shall arbitrary deprived of his life, liberty or property; the essences of substantive due process is protection from arbitrary and unreasonable action." **Babineaux v. Judiciary Commission**, La., 341 So.2d 396, 400.

In the case at bar, the record reflects that Judge Pilshaw not only knew she was depriving petitioner of a substantive due process right to an impartial tribunal, but it reflects that she committed a criminal act to hide the deprivation of the constitutional right. "To clearly establish, the contours of a right 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." **Hope v. Pelzer**, 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed. 2d 666 (2002).

The Presiding judge not only was aware but she allowed her bias to be manifested in here arbitrary use of False & untrue information, with out due process to be heard on said information, falsification of the record to allege that petitioner continued the case and waived his **Constitutional Speedy trial right**, and utilization of the current crimes of conviction as criminal history in sentence imposed.

Both the district court and court of appeals, ignored all these factors and did not answer petitioners **manifest injustice** component of the agrument. Although Kansas Court normally apply the res judicata, issue preclusion and finality of litigation doctrines, the Kansas Supreme Court has acknowledged that there is a narrow exception to the rule.

The Kansas Supreme Court discussed and held:

"Nevertheless, with a nod toward the benefits of finality, "courts have limited their discretion and generally recognized only three exceptions that allow changing the law of the case. These exceptions apply when (1) a subsequent trial produces substantially different evidence, (2) a controlling authority has made a contrary decision regarding the law applicable to the issues, or (3) **the prior decision was clearly erroneous and work a manifest injustice.**" **18B Wright, Miller, & Cooper, Federal Practice and Procedure: Jurisdiction 2d** Syl. 4478, pp. 670-72 (2002); see **Collier**, 263 Kan. 633. (citing federal case for explanation of doctrine as applied in Kansas). "The law of the case rule is not inflexibly applied to require a court to blindly reiterate a ruling that is clearly erroneous." **Collier**, 263 Kan. at 632.

When as here the prior ruling was clearly erroneous and not supported by the record of trial, and the prior court did not inquire into the facts surrounding the disparity of sentences, the fact that the sentencing court relied upon misiformation that was untrue and false, as well as that the current crimes of conviction which petitioner was being sentenced on was calculated to enhance the sentence, its substantially support the position that the prior decision worked a **manifest injustice.**

Likewise, the fact that said sentence was imposed by a Judge whose impartiality was in question, whom through capricious and arbitrary finding reached the unreasonable decision, as well as denied petitioner due process of law by not granting the defendant fair notice of intent to utilize those factors at sentence, and allow the defense to contest them support the position of a **manifest in-**

-justice.

Last but not least in support of the position that the prior decision was so erroneous so as to work a **manifest inustice**, the prior court fanciful finding that the trials was not consolidated. Despite the fact the record support the cases was consolidated. See Appendix-(K). The prior decision makers concluded because one trial was a bench trial and one was a jury trial, as well as that the trials was not held together, there was no consolidation.

The court did not support this conclusion with any statute or caselaw to support its findings. Nor was it inquired as to why the trials was tried seperately. Had the court inquired it would have found that the sentencing court/trial court committed fraud upon the court, and that said fraud encroached upon petitioners **Sixth Amendment Constitutional speedy trial right.** Said fraud was accomplish by merely falsifying the record of action to reflect that the defendant continued the case. When the facts of the case, and record reeals there was no verbal nor written request (motion), to continue the case beyond that speedy trial right, filed by the defendant or on behalf of the defendant.

Kansas Supreme Court has held, "District courts are courts of record. Their proceedings of significance such as events touching upon the right to speedy trial are to be recorded. **The only safe practice if the interests of the accused, the prosecution and the public are to be effectively protected is those records shall control." State v. Higby**, 210 Kan. 554(1972) Id. at 558.

The prior decision makers neglected to inquire into the record, thus allowing it to reach a decision that is contrary to the facts of the case and arbitrary to the law of the land.

The fact that no hearing was held to sever the cases, that neither the defense or prosecution motioned or requested the severance of the trials in compliance with Kansas Statute to sever **(K.S.A. 22-3204)**, and said severance was accomplished through fraud renders the judgment of sentence void. **FRAUD UPON THE COURT: "fraud in the procurement of a judgment"** sufficient to warrant relief therefrom is properly identified with **"fraud on the court". Browning**, 826 F.2d at 345, also:

> "fraud which is directed to the judiciary machinery itself and is not between the parties .... It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function - thus where the **impartial functions** of the court have been directly corrupted."

In a majority decision by the United States Tenth Circuit Court of Appeals discussed and held as to this matter, "The majority points out that when a court is defrauded, the **judgment never becomes final.** See Maj. Op. at 16 (stating that courts have historically enjoyed the power to invoke fraud on the court because judgments procured through fraud had **never become final**); see also **Kenner v. Comm'r**, 387 F.2d 689, 691 (7th Cir. 1968) ("We think .... that it can be reasoned that a decision produced by fraud on the court is **not in essence a decision at all**, and **never becomes final.**") Because the Judgment never became final, the court can act through its jurisdiction over the original proceeding. Otherwise, the case would continue in perpetuity." (quoting **United States v. Williams**, 790 F.3d 1059 (10th Cir. 2015).(Emphasis added).

Thus, not only was the court corrupt, and impartiality in question, but the court committed fraud in order to have a trial,

and based off said **fraud** at sentence utilized it to deprive petitioner of the Kansas Legislated Statute Laws of consolidation pursuant to **K.S.A. 22-3203.**

The fact that the original (sentencing) court commited fraud to procure its judgment, permits this court to reach back to exercise the original jurisdiction, and the fact that the prior courts decision in the case was in error of fact and law, this Court must find that "**the prior decision was clearly erroneous and worked a manifest injustice**", thus meeting the required exception to change the law of the case.

Wherefore, this court should find in light of the unique circumstance, facts and intricate laws surround petitioners claims warrant review of the case, pursuant to the **Equal Protection of the Law Clause** mandated of the **U.S.C.A. 14th Amend.**

III. Whether petitioner remaining imprisoned on crimes committed by codefendants, that the Kansas State Courts have long since relieved of the punishment imposed, upon false & untrue misinformation, (Abuse of Discretion) and afoul to the Fundamental Right to Due Process of Law, Equal Protections of Law and Constitutional Speedy Trial right render the sentence a Miscarriage of Justice?

Standard of Review:

"In discussing what constituted "manifest injustice" in a sentencing case, in **State v. Cramer**, 17 Kan. App. 2d 623, 635, 841 P.2d 1111 (1992), we said: "In a very recent decision, we dealt with a similar question. Although we concluded that the term '**manifest injustice**' as used in the statute was not possible of exact definition, we said: 'A sentence which is "**obviously unfair**" or

"**shocking to the conscience**" accurately and permissibly characterizes one which would result in **manifest injustice.**'" **State v. Turley,** 17 Kan. App. 2d 484, Syl. 2, 840 P.2d 529 (1992).

"In Turley, we concluded that a sentence which 'shocks the conscience of the court' is manifestly unjust. This is similar to saying that, while it is difficult to define 'pornography', one will most certainly know it when he or she sees it. While this may not be an entirely satisfactory definition, we believe it to be the only definition possible."

"In **State v. Torrance,** 22 Kan. App. 2d 721, 730, 922 P.2d 1109 (1996), the determination of whether manifest injustice existed was said to be made on a **case-by-case** basis under a "shocking to the conscience" **that is obviously unfair.**" In **Lloyd v. State,** 672 P.2d 152, 155 (Alaska App. 1983), manifest injustice was equated to mean something that was **obviously unfair.**

"Other states have used slightly different definitions such as "miscarriage of justice" (**Clay v. Dormine,** 37 S.W. 3d 214(Mo. 2000); or "injustice that is direct, obvious and observable." **State v Arnold,** 81 Wash. App. 379, 914 P.2d 762, rev. denied 130 Wn.2d 1003, 925 P.2d 989 (1996).

In the Case at bar, petitioner was arrested at the tender age of 18 years of age for the residential robbery of two local drug houses. The robberies is alleged to have occurred 6 days apart. Prior to the arrest in this case petitioner had no adult conviction, and only one Juvenile adjudication, that could be counted.

The State Prosecution allegations was that petitioner and multiple codefendants committed the crimes in concert. Appendix-(F), pg-(1-3) thus compiling all the charges under a aiding and abetting-

theory. According to the states case and witness testimony petitioner was the less culpable defendant, that petitioners codefendants committed the crime of Aggravated Sexual Battery, Appendix-(F), pg-(38-39) and Aggravated Aggravated Kidnapping of Jessica Green, Appendix -(F), page-(37-38).

The Aggravated kidnapping charge resulted in petitioner being sentence to 453-months imprisonment. Thus equivalent to 37-years, and on the Aggravated sexual battery charge 36-months which amounts to 3 years. Both these sentences was ran consecutive to all the crimes that the state alleged that petitioner was the principal of.

Petitioner calls to the courts attention the direct appeals panel on the case admission that the conduct in the case did not amount to Aggravated Kidnapping, but since appellants counsel argued that the aggravated sexual battery charge doesn't support the bodily harm element of Aggravted kidnapping, instead of there was no kidnapping the panel upheld the charge. See Appendix-(M), Pg.-(3).

On petitioners first state habeas motion, petitioner raised the claim that appellate counsel was ineffective for failing to raise the deadbang winner that there was no aggravated kidnapping citing, **Bledsoe v. State**, 283 Kan. 81, 88-89, 91 150 P.3d 868(2007), and **Trotter v. State**, 288 Kan. 112(2009), which holds ineffective assistance of appellate counsel establishes exceptional circumstance warranting raising the claim in a Habeas motion. As for the underlining issue concerning no kidnapping occurred, petitioner cited, **State v. Buggs**, 219 Kan. at 216, and **State V. Fisher**, 257 Kan. at 78 leading authorities on Aggravated kidnapping.

The district court refused to hear the claim citing res judicata, and the court of appeals for the State of Kansas upheld the district courts finding. See Appendix-(P), pg.-(9). Both courts ignored the "identical claim" component to invoke the doctrine of res judicata. Said component is recognized by the State of Kansas and all jurisdictions. In **Chatagnier**, 27 Kan. App. 2d at 310-11, it was reiterated, However, "(f)or issue preclusion to apply, ... the previously resloved issue must be **'identical'** to the one presented in current litigation; **'similarity'** between the issues is insufficient." Also see **District of Columbia v. Gould**, 852 A.2d 50, 56 (D.C. 2004), and **47 Am. Jur. 2d. Judgments** 489, **Restatement (Second) Judgments** 26(1) (1980).

On petitioners second state habeas motion petitioner argued that the district and court of appeals ruling on the previous motion was in error of facts of law thus a abuse of discretion, which supports an exceptional circumstance warranting relitigating the claim to prevent a miscarriage of justice. The district court summarily dismissed the motion as sucessive and out of time, the court of appeals upheld the district courts finding, holding that petitioner arged the previous rule was in error of law, (Appendix-(Q), pg.-(2)), also that petitioner did not raise the claim in his first habeas motion, (Appendix-(Q), pg.-(3)).

Its obvious the courts did not review the record of the case for both courts ruled the issue was res judicata on the first motion and appeal. See Appendix-(P). The court of appeals panel then reasoned had the court reviewd the issue, it would rule against petitioners since the **State v. Fisher**, supra case is distinguish-

able from petitioners case, because unlike petitioners case the **Fisher**, case was not a aggravated kidnapping committed to facilitate another crime.

Again the court did not even review the caselaw cited because the **Fisher**, case circumtances, facts and allegation was more then similar to petitioners case, and could be deemed identical. The state prosecutor in **Fisher**, supra alleged that the victims was kidnapped to facilitate the crime of Aggravated Robbery. See Appendix-(O), pg.-(12-13). Thus the Kansas courts not only deprived petitioner of the **Equal Protections** of Kansas laws, these courts didn't even give petitioners case the **Due Process of Law**, nor due review that a U.S. Citizen and Kansas Citizen is do. The courts enter rulings and issued orders void of record support and in contradiction to Kansas Supreme Court Precedent, and the record of the case.

Petitioner further calls the Courts attention to the fact that in 2002 the United States District Court for the State of Kansas reversal of the the Aggravated kidnapping of Jessica Green in petitioners codefendant case, finding that the conduct did not amount to aggravated kidnapping. See Appendix-(R), pg.-(12-13).

On appeal therefrom, the United States Court of Appeals for the 10th Circuit, reversed the district court on that charge, finding that Kansas Kidnapping laws is ambiguous so its unclear whether the conduct constituted aggravated kidnapping. See Appendix-(S), pg.-(11-12). The 10th Cir. Court of Appeals ignored its on holding in **Messer v. Roberts**, 74 F.2d 1009 (10th Cir. 1996). See Appendix-(T), pg.-(7-9).

This ruling by the 10th Cir. Court of Appeals effectively held that petitioner could be held in prison for 37 years on a crime in which the laws of the state of Kansas being ambiguous as to what actually constitutes Aggravated kidnapping. The state courts then simply continued to hold that the issue is res judicata/issue preclusion. Thus, legitamizing holding a American Citizen in prison for a crime of which his guilt isn't well established beyond a reasonable doubt in compliance with the **14th Amend., of the U.S.C.A.**

Surely, its is **'Shocking to the conscience'** and **'obviously unfair'** to deprive an American Citizen of liberty on a crime that the law does not clearly support his guilt beyond a reasonable doubt of. In this instance, petitioner is alleged to have been an aider and abettor of the charge, whereas codefendant Upchurch was the alleged principal of the charge. The original sentencing court found that in light of these circumstance cited herein and other factors a downward departure was appropiate in the case and released Mr. Upchurch after 14 years in prison.

However, the aider and abettor (Petitioner) has remained in prison 12 years later on the crime that the state alleged Mr. Upchurch commited, with a standing outdate of 2045. This must be deemed to meet the **'shocking to the conscience'/'obviously unfair'** standard.

Likewise, the states case alleged that codefendant Mr. Jones committed the crime of Aggravated sexual battery with the intent to arouse his sexual desire. See Appendix-(F), pg-(41-42). Petitioner was charged with aiding and abetting the crime under the theory that it was reasonable forseeable to petitioner that an aggravated sexual

battery would occur.

The jury was told that it need not find any essential element of the crime of aggravted sexual battery, nor that petitioner shared in codefendant Jones intention. See Appendix-(F), pg.-(41-42). That the law supports finding of guilt since a sexual crime often occurs at night time. Thus, relieving the state of its duty to establish its case beyond a reasonable doubt on every essential element to convict, as well hold that guilt could be established on intuition.

This Superior Court in **In re Winship**, 397 U.S. 358, 363-64, 90 S.Ct. 1068, 1072-73, 25 L.Ed. 2d 368 (1970), (**"intuition cannot substitute for admissible evidence when a defendant is on trial"**). In **U.S. v. Batts**, 811 F. Supp. 625 (D. Kan. 1993), the U.S. District court rejected a similar theory citing multiple Circuit Courts and even this Superior Court therein. The Court ultimately held, "The court believes that use of the "reasonably foreseeability" standard in the instruction was erroneous. By use of these words, the court permitted the jury to convict Batts upon a negligence standard rather than a criminal standard. See **United States v. Pope**, 739 F.2d 289, 292 (7th Cir. 1984); **United States v. Greer**, 467 F.2d 1064, 1069 (7th Cir. 1972), cert. denied 410 U.S. 929, 35 L.Ed 2d 590, 93 S.Ct. 1364 (1974). "A negligence standard would not support the imposition of criminal liability on the principal, and it should likewise not support accomplice liability. See generally **W. LaFave & A. Scott, Criminal Law** syl. 6.8, at 590." Id at 628.

In the Case at bar the State admits that theres no evidence the crime was plan, See Appendix-(F), pg.-(41), nor does the state allege that the aggravated sexual battery was commited in

-furtherance of the intended crime of Aggravated robbery.

This result in a classic case of "manifest miscarriage of justice standard". The 11th Circuit Court of Appeals for the U.S., defined said standard as, The "**manifest miscarriage of justice**" standard has been interpreted by this court "to require a finding that 'the evidence on a key element of the offense is so tenuous that a conviction would be **shocking**'". **United States v. Tapia,** 761 F.2d 1488, 1491-92 (11th Cir. 1985)(quoting **United States v. Landers,** 484 F.2d 93, 94 (5th Cir. 1973), cert. denied, 415 U.S. 924, 94 S. Ct. 1428, 39 L.Ed. 2d 480 (1974).

In the case at bar, its not whether the evidence is tenuous on one element but on all elements. This Superior Court have mandated and consistently held, "a conviction based upon a record wholly devoid of any relevant evidence of a critical element of the offence charged is constitutionally infirm." **Vachon v. New Hampshire,** 414 U.S. 478; **Adderly v. Florida,** 385 U.S. 39; **Gregory v. Chicago,** 394 U.S. 111; **Douglas v. Buder,** 412 U.S. 430. The "**no evidence**" doctrine of **Thompson v. Louisville,** 362 U.S. 199, thus secures to an accused the most elemental of due process rights: "freedom from a wholly arbitrary deprivation of liberty".

Petitioner calls the Courts attention to this factor, simply to emphasis the 'shocking to the conscience'/'obviously unfair' component of this claim. Because to hold a man liable for a charge the law does not support has to establish **"UNFAIRNESS"**. Further emphasizing this component as to the aggravted sexual battery charge, is the **fact,** that the state did not charge codefendant Jones (the alleged principal) or codefendant Upchurch with the charge.

Despite the states accusations that when the crime of Agg. sexual battery occurred the only people present was codefendants Jones and Upchurch and the victim. See Appendix-(F), Pg.-(37-38). The victim testified that when she was sexually assaulted that petitioner was in the apartment with her husband.

Its clearly **'Shocking to the conscience'/'obviously unfair'** that the principal and other codefendant that was alleged physically present when the crime occurred was never charged with the crime, but petitioner was the only one charged with said crime. That the jury was told they need not find any elements of the crime to convict, and as a result petitioner can be labeled as a **SEX OFFENDER** for the rest of his life, required to register as such, and pay $25 everytime registry is required, as well as be deprived of other constitutional rights. See **Loggins . Norwood**, Case No. 20-3009, a related case pending before the United States Court of Appeals for the Tenth Circuit for full panel review.

This Court should find that requiring petitioner to remain in prison on a crime that the principal and all other codefendants was never charged with, stigmatized as a sex offender, ordered to attend a sex offender treatment program, and to register as a sex offender upon release, with the requirement to pay quarterly fee's to register or face criminal conviction for failure to register, in light of the facts and circumstances of this case is 'Shocking to the conscience' and 'Obviously unfair'.

Wherefore the Court should find, if it was not for the unreasonable and UNCONSTITUTIONAL find of guilt upon the charges the sentence would be extremely different. That since the sentence im-

-posed through arbitrary and capricious means by a clearly bias judge whose impartiality was in question, whom committed a criminal act of obstruction of justice to hide her lack of impartiality, that the sentence is a **MANIFEST MISCARRIAGE OF JUSTICE.**

CONCLUSION

This Superior Court should find that in light of all the facts in the case at bar, the issuing of the writ is necessary to protect petitioners fundamental constitutional rights and to vindicate said fundamental rights. Find that a sentence based upon misinformation, false & untrue is repugnant to the **Due Process Clause, XIV. Amend., U.S.C.A., Townsend v. Burke**, 334 U.S. 736, id. at 741.

This Superior Court should find that the under the unique facts of the case at bar the disparity in sentences between petitioner and codefendants is unreasonable, unjustified and unjust. That the previous courts did not rule on petitioners disparity in sentences claims, thus issue preclusion/res judicata doesn't apply. That denying petitioner the benefits of **K.S.A. 22-3203** amounts to a denial of equal protection of the law. Furthermore, find that Kansas Statute law does not require a actual trial in order to receive the benefits of the consolidation law (K.S.A. 22-3203).

The statute simply requirs that the cases be consolidated by the court. **State v. Taylor**, 262 Kan. 471 (1997), (Three cases that was consolidated for trial which the defendant plead out to. Thus, no trial was held yet he reaped the benefits of the consolidation laws). The Court should hold the severance of the case was based on-

fraud upon the court, by a bias judge, deprivation of the statute benefits cannot be withheld from petitioner. Last but not least since the previous courts made a error of law, basing its decision on facts not supported by the the evidence its decision was unreasonable, **Longoria**, 301 Kan. at 509, thus, its prior ruling worked a **manifest injustice**, and warrant changing of the law of the case. **Collier**, 263 Kan. 633.

This Court should find that under the facts of this case the fact that the Kansas State Courts sentence petitioner to greater than 50 years, a miscarriage of justice has occurred. In the State of Kansas a Hard-50 sentence is reserved for defendants that commit the most heinous of murders. So the fact that the sentencing court sentenced petitioner whom only had one prior juvenile adjudication, prior to sentencing in these cases to a sentence 6-years greater than a Hard-50 sentence, is unjustified considering the states allegations of petitioners culpability in these crimes.

The Court should find that the fact that the most culpable defendants in the case have been relieved of the sentences imposed over decades now, enhances the **Miscarriage of justice** in this case, and the fact that by Kansas law the crimes in which petitioner remains in prison on as the accomplice to are by statute and caselaw definition not supported by the facts and conduct in this case.

The Court should last but not least find that petitioner has a **Due Process** right to a sentence by an impartial tribunal (judge), and the fact the record reveals that petitioner was sentenced by a

-bias judge whom based the sentence upon false/untrue information, procurement of judgment by fraud upon the court and whom committed a crime of obstruction of justice to hide her bias , **warrants a reversal of the sentence, and remand for resentencing.**

Respectfully Submitted,

Kevin Loggins Sr.
Kevin D. Loggins Sr.

Certificate of Service

I, Kevin D. Loggins Sr., hereby certify under penalty of perjury the forgoing Writ of Cert., was deposited in the institutional mailing system at HCF, in Hutchinson, Kansas on this 8th day of Sept. , 2021 postage prepaid and addressed to the following:

Sedgwick County DA
535 N. Main St.
Wichita, Kansas 67504

Kevin D. Loggins Sr.
Kevin D. Loggins Sr