21-6607 ORIGINAL

No._____

IN THE
SUPREME COURT FOR THE UNITED STATES
_____ TERM 2021

In re,
ANDREW THOMAS BURNS, Sr.,
Pro Se Petitioner,

PETITIONER'S PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION WITH SUPPORTING BRIEF.

ANDREW THOMAS BURNS, Sr.
LAW TON CORRECTIONAL FACILITY
HOUSE 1
8607 S.E. FLOWERMOUND ROAD
LAW TON, OKLAHOMA 73501
PRO SE PETITIONER

DATE: 12/8/21

ISSUES FOR REVIEW

1. DID THE TRIAL COURT'S FAILURE TO CONDUCT AN AFFIRMATIVE WAIVER INQUIRY PRIOR TO ORDERING PETITIONER TO PROCEED PRO SE AT TRIAL, DENY PETITIONER OF HIS SIXTH AMENDMENT ENTITLEMENT TO BE REPRESENTED BY COUNSEL?
2. DID THE LOWER STATE AND FEDERAL COURT'S REPEATED DENIAL OF PETITIONER'S REQUEST TO BE PROVIDED WITH A COPY OF THE TRIAL RECORD VIOLATE EQUAL PROTECTION AND DUE PROCESS OF THE LAWS, AND DEPRIVE PETITIONER THERE OF?
3. DID THE TRIAL COURT COMMIT STRUCTURAL ERROR BY PERMITTING TRIAL COUNSEL TO WITHDRAW AS COUNSEL, PRIOR TO TRIAL, WITHOUT CONDUCTING AN INQUIRY OF PETITIONER REGARDING THE MATTER, ESSENTIALLY LEAVING PETITIONER WITHOUT THE ASSISTANCE OF COUNSEL DURING THE COURSE OF HIS TRIAL, CONSTITUTE FATAL ERROR TO THE TRIAL COURT'S JURISDICTION?
4. DID THE LOWER COURT'S DENIAL OF PETITIONER'S RIGHT TO HAVE A COMPLETE COPY OF THE TRIAL RECORD, WHICH PREVENTED HIM FROM HAVING THE ABILITY TO FILE A MEANINGFUL APPEAL, DENY HIM OF HIS RIGHT TO APPEAL AND HIS RIGHT TO PETITION THE GOVERNMENT?
5. DOES THE LOWER COURT'S HAVE A DUTY TO PROVIDE NOTICE OF ITS INTENT TO INCORPORATE THE USE OF INTER- STATUTORY PROVISIONS (OF WHICH FALLS OUT-SIDE OF THE ORIGINAL PLEADINGS/PROCEEDINGS), AND PERMIT THE PETITIONER AN OPPORTUNITY TO BE HEARD, PRIOR TO RENDERING A DECISION.

LIST OF ALL PARTIES TO THE PROCEEDINGS

1. THE UNITED STATES COURT OF APPEALS, FOR THE TENTH CIRCUIT

2. THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF OKLAHOMA

3. THE OKLAHOMA COURT OF CRIMINAL APPEALS

4. THE DISTRICT COURT OF TULSA COUNTY, STATE OF OKLAHOMA

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STATEMENT OF BASIS FOR JURISDICTION

Rule 17, of the Rules of the Supreme Court provides, "Procedure in an Original Action', 3. The initial pleading shall be preceded by a motion for leave to file, and may be accompanied by a brief in support of the motion. This Rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also U.S.C. § 1251 and U.S. Const., Amdt. 11.

A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20.

Petitioner Burns is in compliance with the above set out as is possible for him to be. Petitioner Burns is an inmate who is currently incarcerated in a penal facility located within the state of Oklahoma. Petitioner Burns has repeatedly sought relief through the lower state and federal courts in the State of Oklahoma and within the United States Court of Appeals for the Tenth Circuit. Therefore, this application is the only adequate forum left for petitioner to seek redress and relief. This Court has repeatedly stated that, "We seek to exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim." See Illinois v. City of Milwaukee, 406 U.S. 91, 31 L. Ed 2d 712, 92 S. Ct. 1385 (1972); Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493, 28 L. Ed 2d 256, 91 S.Ct. 1005 (1971); and Massachusetts v. Missouri, 308 U.S. 1, 84 L. Ed 3, 60 S.Ct. 39 (1939).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

FEDERAL STATUTES

STATE STATUTES

SUPREME COURT RULES

STATE RULES

UNITED STATES SUPREME COURT DECISIONS

UNITED STATES COURT'S OF APPEALS DECISIONS

STATE COURT DECISIONS USED IN THIS PROCESS

Continued List of Oklahoma Exoneree's

YANCEY LYNDELL DOUGLAS, Appellant, -vs- STATE OF OKLAHOMA, Appellee.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
1997 OK CR 79; 951 P.2d 651; 1997 Okla. Crim. App. LEXIS 79; 69 O.B.A.J. 68
No. F-95-834
December 17, 1997, Filed

PARIS LAPRIEST POWELL, Appellant, v. THE STATE OF OKLAHOMA, Appellee.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
2000 OK CR 5; 995 P.2d 510; 2000 Okla. Crim. App. LEXIS 5
Case No. F-97-763
February 2, 2000, Filed

No._____

IN THE
SUPREME COURT FOR THE UNITED STATES
_____ TERM _____

In re,
ANDREW THOMAS BURNS, Sr.,
Pro Se Petitioner,

PETITIONER'S PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION WITH SUPPORTING BRIEF.

ANDREW THOMAS BURNS, SR., appearing Pro Se, pursuant to Rule 20 of the Rules of the Supreme Court of the United States of America, and hereby seeks this Court's supervisory powers in order to adjudicate the matters as presented therein.

1) The Rules of the Supreme Court provides, Rule 20. Procedure on a Petition for an Extraordinary Writ. (in pertinent part)

"1. Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Petitioner states that he has no available remedies for which to seek in the lower State or Federal Court's. Petitioner further states that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This Petitioner seeks to invoke this Court's supervisory jurisdiction in this matter and requests this Court issue an extraordinary writ hereto for the reasons stated below. Petitioner respectfully submits the attached Petition for a Writ of Mandamus and/or Prohibition in support hereof.

The undersigned swear under penalty for perjury that the above Application for a Writ of Mandamus is true and correct, pursuant to 28 U.S.C. § 1746.

ANDREW THOMAS BURNS, SR. #187038
LAW TON CORRECTIONAL FACILITY
8607 S.E. FLOWERMOUND ROAD
LAW TON, OKLAHOMA 73501

STATEMENT OF THE CASE

Petitioner was convicted in 1990, in a State Court trial by jury which concluded that Petitioner was guilty of murder in the first degree, subsequently imposing a sentence of Life without the possibility of parole. Thereafter, Petitioner, being indigent, utilized the only resources he had available (the assistance of prison law clerks untrained in law) in attempt to obtain a copy of the trial record/ transcript at public expense in order to avail himself of the appellate process established by the state for persons claiming to be illegally convicted of public offenses.

For several years, the Oklahoma state courts improperly denied Petitioner of a copy of, or access to the trial record for purposes of obtaining timely relief in this matter, and the federal district court affirmed the decision of the state court. This matter derives from an application for a writ of mandamus filed by Petitioner in the Tulsa County District Court, on September 27, 2018, seeking order directing the Tulsa County Court Clerk to locate and prepare the trial record for "purchasing", which was denied on October 26, 2018 (CF-1989-0069). Petitioner, thereafter, sought review in the Supreme Court of the State of Oklahoma, which was transferred to the docket of the Oklahoma Court of Criminal Appeals on December 17, 2018. (No. 117,547). On January 8, 2019, the Oklahoma Court of Criminal Appeals entered order denying Petition for Extraordinary Relief in this matter, for non applicable reasons, (No. MA-2018-1255). Petitioner thereafter sought review in the United States District Court for the Northern District of Oklahoma, which was dismissed without prejudice for lack of jurisdiction pursuant to 28 U.S.C. § 2254's successive petition provision. (Case No. 19-CV-0349-JHP-JFJ). Petitioner then sought order authorizing a second or successive application pursuant to 28 U.S.C. 2244 et seq., also being denied on January 27, 2020, by the United States Court of Appeals for the Tenth Circuit, which invoked 28 U.S.C. § 2244 (b)(3)(E) precluding this denial from being appealable or the subject of a petition for rehearing or for a writ of certiorari, (No. 20-5002).

Brief in Support

Petitioner was convicted in 1990, in a State Court trial by jury which concluded that Petitioner was guilty of murder in the first degree, subsequently imposing a sentence of Life without the possibility of parole. Thereafter, Petitioner, being indigent, utilized the only resources he had available (the assistance of prison law clerks untrained in law) in attempt to obtain a copy of the trial record/ transcript at public expense in order to avail himself of the appellate process established by the state for persons claiming to be illegally convicted of public offenses.

For several years, the Oklahoma state courts improperly denied Petitioner of a copy of, or access to the trial record for purposes of obtaining timely relief in this matter, and the federal district court affirmed the decision of the state court. This matter derives from an application for a writ of mandamus filed by Petitioner in the Tulsa County District Court, on September 27, 2018, seeking order directing the Tulsa County Court Clerk to locate and prepare the trial record for "purchasing", which was denied on October 26, 2018 (CF-1989-0069). Petitioner, thereafter, sought review in the Supreme Court of the State of Oklahoma, which was transferred to the docket of the Oklahoma Court of Criminal Appeals on December 17, 2018. (No. 117,547). On January 8, 2019, the Oklahoma Court of Criminal Appeals entered order denying Petition for Extraordinary Relief in this matter, for non applicable reasons, (No. MA-2018-1255). Petitioner thereafter sought review in the United States District Court for the Northern District of Oklahoma, which was dismissed without prejudice for lack of jurisdiction pursuant to 28 U.S.C. § 2254's successive petition provision. (Case No. 19-CV-0349-JHP-JFJ). Petitioner then sought order authorizing a second or successive application pursuant to 28 U.S.C. 2244 et seq., also being denied on January 27, 2020, by the United States Court of Appeals for the Tenth Circuit, which invoked 28 U.S.C. § 2244 (b)(3)(E) precluding this denial from being appealable or the subject of a petition for rehearing or for a writ of certiorari, (No. 20-5002). Therefore, there is no other adequate forum in which petitioner may seek redress in this matter. This Court has enunciated that,"We seek to

exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim." Illinois v. City of Milwaukee, 406 U.S. 91, 31 L Ed 2d 712, 92 S Ct 1385 (1972); Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493, 28 L Ed 2d 256, 91 S. Ct. 1005 (1971); Massachusetts v Missouri, 308 U.S. 1, 84 L.Ed 3, 60 S. Ct. 39 (1939). The above being substantiated thereby, this Court is Petitioner's only recourse.

Right to Trial Record

It is a long-standing law that require state's to afford an indigent defendant the right to appeal when a system of appeals has been established and that "[d]estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts," 351 US, at 19, a holding restated in Eskridge to be "that a State denies a constitutional right guaranteed by the Fourteenth Amendment if it allows all convicted defendants to have appellate review except those who cannot afford to pay for the records of their trials," 357 US, at 216, 78 S.CT 1061, 2 LED2D 1269, 357 US 214 Eskridge v. Washington State Board, where the United States Supreme Court reiterated it's holding in recent decisions, stating, "In a Per Curiam opinion, it was held that the State of Washington had deprived petitioner of a constitutional right guaranteed by the Fourteenth Amendment in that it denied him appellate review of his conviction merely because he could not afford to pay for the record of his trial. The earlier Supreme Court holding in Griffin v Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585, 55 ALR 2d 1055, was deemed controlling." The Supreme Court went on to decide that states could not make arbitrary and unreasoned denials of defendants right to appeal. "The Fourteenth Amendment ... does require that the state appellate system be 'free of unreasoned distinctions,' Rinaldi v Yeager, 384 US 305, 310 [16 L Ed 2d 577, 86 S Ct 1497] (1966), and that indigents have an adequate opportunity to present their claims fairly within the adversary system. Griffin v Illinois, supra; Draper v Washington, 372 US 487 [9 L Ed 2d 899, 83 S Ct 774] (1963). The State cannot adopt procedures which leave an indigent defendant 'entirely cut off from any appeal at all,' by virtue of his indigency, Lane v Brown,

372 US, at 481 [9 L Ed 2d 892, 83 S Ct 768], or extend to such indigents merely a 'meaningless ritual' while others in better economic circumstances have a 'meaningful appeal.' Douglas v California, supra, at 358 [9 L Ed 2d 811, 83 S Ct 814]. The question is not one of absolutes, but one of degrees." 417 US, at 612, 41 L Ed 2d 341, 94 S Ct 2437, quoted in, 83 S. CT 774, 9 L. ed 2d 899, 372 US 487 Draper v. Washington.

In this instant cause, Petitioner Burns in his first applications alleged denials of his right to a direct appeal, his right to representation at trial, and his right to counsel during a critical stage of the process (the 10 day period for filing notice of intent to appeal). Petitioner also alleged that a meaningful opportunity has not been given him with regards to providing access to a complete copy of the trial record/transcript. Several decisions of this Court and lower Circuit court's have established the necessity for providing indigents access to a complete trial record, whether by providing a free copy of the record, providing access thereto by means of a check out/return system, or some other method of providing access to the complete trial record. "An indigent criminal defendant, on direct appeal, has an absolute right to a copy of the trial transcript or to an alternative device that fulfills the same function. Griffin v. Illinois, 351 U.S. 12, 18-20, 76 S. Ct. 585, 100 L. ed 891 (1956). In Eskridge v Washington State Board, 78 S. CT 1061, 2 L. ED 2D 1269, 357 US 214, the United States Supreme Court enunciated,"We do hold that, "[d]estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." Griffin v Illinois, 351 US 12, 19, 100 L ed 891, 76 S Ct 585. This Court has also recognized, in several decisions, that "The Fourteenth Amendment ... does require that the state appellate system be 'free of unreasoned distinctions,' Rinaldi v Yeager, 384 US 305, 310 [16 L Ed 2d 577, 86 S Ct 1497] (1966), and that indigents have an adequate opportunity to present their claims fairly within the adversary system. Griffin v Illinois, supra; Draper v Washington, 372 US 487 [9 L Ed 2d 899, 83 S Ct 774] (1963). The State cannot adopt procedures which leave an indigent defendant 'entirely cut off from any appeal at all,' by virtue of his indigency,

Lane v Brown, 372 US, at 481 [9 L Ed 2d 892, 83 S Ct 768], or extend to such indigents merely a 'meaningless ritual' while others in better economic circumstances have a 'meaningful appeal.' Douglas v California, supra, at 358 [9 L. Ed 2d 811, 83 S Ct 814]. The question is not one of absolutes, but one of degrees." 417 US, at 612, 41 L Ed 2d 341, 94 S Ct 2437, cited in Murray v Giarratano, 109 S. CT 2765, 106 LED2D 1, 492 US 1. And then in Pension v Ohio, 109 S. CT 346, 102 L. ED 2D 300, 488 US 75, this Court recognized that: "[t]he duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process." Ross v Moffitt, 417 US 600, 616, 41 L Ed 2d 341, 94 S Ct 2437 (1974). Over the past several decades, the Supreme Court has ruled unconstitutional, as violative of the Equal Protection Clause, numerous practices that limited the access of defendants to the appeals process. The typical case involved a requirement that an indigent criminal appellant pay for a transcript or a filing fee necessary for an appeal to a reviewing court. See, e.g., Mayer v. Chicago, 404 U.S. 189, 30 L. Ed. 2d 372, 92 S. Ct. 410 (per curiam) (1971); Williams v. Oklahoma City, 395 U.S. 458, 89 S. Ct. 1818, 23 L. Ed. 2d 440 (1969); Gardner v. California, 393 U.S. 367, 89 S. Ct. 580, 21 L. Ed. 2d 601 (1969); Long v. District Court of Iowa, 385 U.S. 192, 87 S. Ct. 362, 17 L. Ed. 2d 290 (1966) (per curiam); Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 16 L. Ed. 2D 577 (1966); Draper v. Washington, 372 U.S. 487, 83 S. Ct. 774, 9 L. Ed. 2d 899 (1963); Lane v. Brown, 372 U.S. 477, 83 S. Ct. 768, 9 L. Ed. 2d 892 (1963); Smith v. Bennett, 365 U.S. 708, 81 S. Ct. 895, 6 L. Ed. 2d 39 (1961); Burns v. Ohio, 360 U.S. 252, 79 S. Ct. 1164, 3 L. Ed. 2d 1209 (1959); Eskridge v. Washington Prison Board, 357 U.S. 214, 78 S. Ct. 1061, 2 L. Ed. 2d 1269 (1958) (per curiam); Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, {1988 U.S. Dist. LEXIS 8}100 L. Ed. 891 (1956).

Petitioner states that he, first being an indigent, has a constitutional entitlement to a complete copy of, or access to the trial record for purposes of appeal, the same as one who could afford to pay for the

record. In furtherance, petitioner claims that even after he became able to purchase the transcript, the Court Clerk for Tulsa County District Court failed to locate, transcribe and prepare the transcript for purchasing. The rulings entered by the Oklahoma State Court's and the lower federal Court's both have served to effectively block this Petitioner from gaining access to the court's in which to redress his grievances. The District Court for Tulsa County, State of Oklahoma denied the original application for a writ mandamus for grounds that "Petitioner has failed to establish entitlement to any relief," that "Petitioner cited authorities that does not support his request", that "Petitioner failed to show that the Tulsa County Court Clerk's Office is refusing or failing to fulfill its statutory duties." In the original application for a writ of mandamus Petitioner cited the Oklahoma State Statutes that set out the duties of the Court Clerk, thereby requiring the clerk of record to keep and preserve the records of all proceedings had in the court. See Title 11, § 28-160. And in Title 20 O.S. § 106.4a the law provides, "a party who desires a copy shall be furnished a copy by the court reporter upon payment of the costs for that copy by said party." Prior to 1944 there was no law of the United States creating the position of official court stenographer and none requiring a stenographic report of any case, civil or criminal. See Miller v. United States, 317 U.S. 192, 197, 63 S. Ct. 187, 87 L. Ed. 179 (1942). In 1944 Congress adopted the Court Reporters' Act authorizing the appointment of reporters for the district courts and defining their duties. At the time of petitioner's trial, August, 1965, as amended the statute, 28 U.S.C. § 753 provided in pertinent part:

"The reporter shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than 10 years.

The Act is mandatory in its requirements, and it has been held that its very purpose was to satisfy 'the long-felt need for a verbatim record of all court proceedings, particularly in criminal cases 289 F.2d 308.", @ 372 US 489.

The above statutory law clearly imposes a non discretionary duty upon the Court Clerk to preserve and keep and make available the court records upon request. Therefore, the Tulsa County District Court's

denial of the application for a writ of mandamus on the ground that Petitioner failed to establish entitlement to any relief, failed to cite applicable authorities, and failed to show that the Tulsa County Clerk's Office failed to fulfill its statutory duties" is clearly erroneous and should have been found in Petitioner's favor or subsequently, overturned by the state and federal appellate courts. In Draper v. Washington, 83 S. Ct. 774, 9 Led. 2D 899, 372 US 487, This Court has dealt recently with the constitutional rights of indigents to free transcripts on appeal in Griffin v Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585, 55 ALR2d 1055, and Eskridge v Washington State Board of Prison Terms & Paroles, 357 US 214, 2 L ed 2d 1269, 78 S Ct 1061. The principle of Griffin is that "[d]estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts," 351 US, at 19, a holding restated in Eskridge to be "that a State denies a constitutional right guaranteed by the Fourteenth Amendment if it allows all convicted defendants to have appellate review except those who cannot afford to pay for the records of their trials," 357 US, at 216. In Eskridge the question was the validity of Washington's long-standing procedure whereby an indigent defendant would receive a stenographic transcript at public expense only if, in the opinion of the trial judge, "justice will thereby be promoted." Id. 357 US at 215. This Court held per curiam that, given Washington's guarantee of the right to appeal to the accused in all criminal prosecutions, Wash Const Art I § 22 and Amend 10, "[t]he conclusion of the trial judge that there was no reversible error in the trial cannot be an adequate substitute for the right to full appellate review available to all defendants in Washington who can afford the expense of a transcript," id. 357 US at 216, and remanded the cause for further proceedings not inconsistent with the opinion. In this instant case, Petitioner Burns made several applications to be provided with a transcript at states expense. The trial court denied the request, "there is no action currently pending with this Court requiring the items requested. A bare request for materials or a request for materials in anticipation of litigation does not allow this Court to expend State funds for their production." In petitioner's "Motion for transcript at public expense" filed April 1994, it was

clearly stated that petitioner was aware that Oklahoma's Post-conviction Procedure Act required petitioner's to "present **ALL** grounds for relief available in his original, supplemental and/or Amended Application; that any ground adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the Applicant has taken to secure relief, may not be a basis for a subsequent Application unless the Court finds a ground for relief asserted which, for the sufficient reason, was not raised in the prior Application. See Title 22 O.S. Supp. 1980, § 1086." Petitioner Burns further stated that, "the Petitioner is a simple layman, not skilled in the ways and knowledge of the law or the mechanics thereof; that he does not possess the knowledge of his trial proceedings to adequately, knowingly, and intelligently, present this Honorable Court ***ALL*** grounds for relief in his Application For Post-Conviction Relief. Further, petitioner can, in no way, support and present what few issues that he is aware of, or all the issues of legal merit without the full and complete benefit of his Trial transcript and/or records." This Court has long held that "The State must afford the indigent defendant a trial record of sufficient completeness to permit proper consideration of his claims." See Mayer v. Chicago, 404 U.S. 189, 30 L. Ed 2d 372; quoting Draper v. Washington. Also see (Tate v. State, Court Of Criminal Appeals Of Oklahoma 2013 OK CR 18; 313 P.3d 274; @ {313 P.3d 285}); In failing to identify a specific claim that defense counsel should have raised, Petitioner has failed to show that defense counsel's performance was deficient; Le v. State, 1998 OK CR 1, ¶ 11, 953 P.2d 52, 57 (finding conclusory allegations of ineffective assistance standing alone will not support a claim of deficient performance); (Le v. State, Court Of Criminal Appeals Of Oklahoma 1998 OK CR 1; 953 P.2d 52; As this Court has often said, such conclusory allegations standing alone will not support a claim of deficient performance. Le has not established that counsel's failure to challenge sentencing instructions was deficient, and his substantive claim remains barred. This proposition is denied).: Smith v. State, Court Of Criminal Appeals Of Oklahoma, 1998 OK CR 20; 955 P.2d 734 @{955 P.2d

738} (As Petitioner has failed to show his direct appeal attorney's performance was deficient under the first prong of the Strickland test, he has failed to establish ineffective counsel under this Court's test. Accordingly, this proposition of error must fail.): Edinburgh, v. State, Court Of Criminal Appeals Of Oklahoma, 1995 OK CR 16; 896 P.2d 1176 @ {896 P.2d 1181}; United States v. Fisher, 38 F.3d 1144, 1147 (10th Cir. 1994); U. S., v. Garcia, U. S. Court Of Appeals For The Tenth Circuit, 2020 U.S. App. LEXIS 27679; Wagner v. Live Nation Motor Sports, Inc., 586 F.3d 1237 (10th Cir. 2009); Gallagher, 587 F.3d at 1068 ; Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991); Taylor v. Meacham, 82 F.3d 1556, 1560-63 (10th Cir. 1996) (concluding that an officer did not violate the Fourth Amendment because the plaintiff failed to provide any evidence showing the officer omitted any facts knowingly or with reckless disregard for the truth). As set out herein above, there exists long standing and well established law mandating dismissal of conclusory allegations standing alone without factual support, i.e., transcript, affidavits, or proof of some kind. First, the state district court required petitioner to have an action pending prior to any ruling on his motion for transcript at public expense which was upheld by the United States Court of Appeals for the Tenth Circuit. The lower courts requirement for petitioner to have an action pending in the court prior to submitting the request for a transcript, thereby requiring petitioner to submit conclusory allegations prior to filing a "Motion for Transcript at Public Expense" which is tantamount to filing the prohibited conclusory allegations, risking and sometimes guaranteeing, a premature dismissal. These practices has repeatedly denied petitioner and former petitioner's their right to review. In Pension v Ohio, 109 S.CT 346, 102 L.Ed. 2d 300, 488 US 75, this Court recognized that: "[t]he duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process." Ross v Moffitt, 417 US 600, 616, 41 L Ed 2d 341, 94 S Ct 2437 (1974). In this instant cause, Petitioner Burns was denied an adequate

opportunity to present his claims fairly in the context of the State's appellate process, when the state denied his request for a complete copy of the trial proceedings, thereby requiring him to file his appeal on grounds (without a copy of the trial record/transcript) amounting to conclusory allegations which was doomed to fail. Such requirements undoubtedly serves to deny appellants their right to appeal, the due process, and to equal protection of the laws. The various methods utilized by the several state and federal lower courts, for providing indigents access to the trial record and often times a complete denial thereto, necessitates utilization of the supervisory powers of this Court, to provide guidance for a uniform application of law among the several united states circuit appellate courts and lower state and federal courts. Petitioner prays this Court will exercise it's inherent powers and assume original jurisdiction of this matter.

Due Process Issues

The Fourteenth Amendment, which provides that " No person shall . . . be deprived of life, liberty, or property, without due process of law."

In Fuentes v. Shevin, 407 U.S. 67, 32 L. Ed. 2d 556, 92 S. Ct. 1983 (1972), the Supreme Court established that procedural due process requires notice and an opportunity to be heard before the government may authorize its agents to seize property, except in "extraordinary situations." Id. at 91, cited in Richmond Tenant's Organization, Inc. v. Kemp, 936 F.2d 1300 (4th Cir. 1991) @ 1307; also in another decision, this Court held,"Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." Brinkerhoff-Faris Trust & Sav. Co. v. Hill, supra, 281 US at 682, 74 L ed 1114, 50 S Ct 451.

In this instant cause, *The record of these proceedings also reflect that Petitioner's initial application for a writ of mandamus was brought under Title 12 O.S., § 1451 et seq., which has a specific procedure for seeking extraordinary relief. This said process does not require Petitioner to provide the reviewing*

court with the record in accordance with Rule 10.1 of the Rules of the Oklahoma Court of Criminal Appeals. Relief was being sought pursuant to Title 12, "Civil Procedure" is strictly civil in nature, however, the Oklahoma Supreme Court entered order transferring the matter to the docket of the Oklahoma Court of Criminal Appeals which has exclusive jurisdiction over criminal cases. (See ex. #__) The Oklahoma Court of Criminal Appeals denied the application for extraordinary relief based upon what it concluded was Petitioner's failure to ensure that a copy of the proceedings was filed with Clerk of the Court of Appeals in accordance with Rule 10.1, of the Rules of the Oklahoma Court of Criminal Appeals. The United States District Court for the Northern District of Oklahoma and the United States Court of Appeals for the Tenth Circuit upholding the state court ruling clearly contradicts unambiguous precedents by this Court as set out above. The Tenth Circuit cited as it's reason for denying relief, that, Mr. Burns failed to state or show any newly discovered evidence that would have, if presented rendered a different outcome. This ruling was entered although Petitioner stated, repeatedly throughout state and federal court proceedings, "that the state trial court forced him into assuming the position of self-representation, notwithstanding the fact that he was illiterate at that time." Any reading of the sentencing hearing transcript, ***in good faith***, will clearly reveal that petitioner was not a very well-read individual and that the sentencing transcript reflect that the trial court (notwithstanding the court's decision to order petitioner to proceed pro se without conducting the required inquiry to determine his level of competence to do so) chose to permit the Public Defenders Office to speak in his behalf during the sentencing hearing regarding his appeal rights and whether he wished to appeal. The trial Court permitted Ms. Sid Conway to advise the court that petitioner did not want to appeal and the court accepted said advice without making an *affirmative record of petitioner* actually stating that he did not wish to appeal. (see pp.3-5, Transcript of formal sentencing, before the Honorable Clifford E. Hopper, Case Number CF-89-69, District Court of Tulsa County, State of Oklahoma). In fact, the sentencing transcript reveals the court was showing exasperation with this petitioner's responses due to

petitioner's low level of intelligence and his base level of communication skills being displayed in the court proceedings. (Ex. D, sentencing transcript)

The trial court failed to correct or even inquire into the date of birth provided for the court as being February 16, 1920. (p.4, sentencing transcript) At that hearing petitioner was very vocal regarding his disapproval at being convicted and sentenced to a crime he was innocent of, (p.3, sentencing transcript) but yet, sit silently throughout the dialogue between the court and public defender Sid Conway making a record of petitioner's desire to waive his appeal "(at this time)". This should be taken as evidence of petitioner's non-ability to adequately understand the proceedings taking place around him in open court. The 10th Circuit Court of Appeals ruling stating that "Mr. Burns failed to state or show any newly discovered evidence that would have, if presented, rendered a different outcome", is grossly erroneous, in that, if he were provided a complete copy of the trial transcript, he could show that the proceedings during which the trial court held in making it's determination for petitioner to proceed pro se, was conducted without the prerequisite inquiry as mandated in Faretta v. California, 422 U.S. 806, 821, 835, 95 S.Ct., 2525, 45 Led 2d 562 (1975) (a defendant has the Sixth Amendment right to waive his right to counsel and represent himself in a criminal case), but the waiver must be "an intentional relinquishment or abandonment of a known right or privilege, and before a court may grant a waiver, it must ensure the defendant is aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with open eyes" Maynard v. Boone, 468 F. 3d 665, 676 (10th Cir. 2006) quoting Faretta, 422 U.S. at 835. The appeals court has enunciated that it conducts a two-part test to determine whether a defendant has effectively waived his right to counsel. It has held, "First, we must determine whether the defendant voluntarily waived his right to counsel and second, we must determine whether the defendant's waiver of his right to counsel was made knowingly and intelligently. U.S. v. Taylor, 113 F.3d 1136,1140 (10th Cir. 1997), Under the first part of the analysis, whether a defendant's waiver of counsel is voluntary, turns on

whether defendant's objections to present counsel are such that he has a right to new counsel. U.S. v. Padilla, 819 F. 2d 952, 955(10th Cir.1987) "A defendants waiver is involuntary if he is forced to choose between incompetent counsel or appearing pro se." Taylor, supra. And unless a defendant demonstrates good cause warranting the appointment of new counsel, the defendant's decision to waive counsel will be considered voluntary. Taylor, 113 F.3d at 1140. These are constitutional procedures constructed by the Court of Appeals for the Tenth Circuit to comply with the mandates set out by this Court in Faretta v. California, 422 U.S. 806, 821, 835, 95 S.Ct., 2525, 45 Led 2d 562 (1975). The meager portion of the record provided in this instant case reflect, (1) during the sentencing hearing, the trial court forced petitioner into a role of self-representation without conducting a full and affirmative hearing as to the competence of petitioner to undertake such an endeavor; there is no record of the trial court inquiring as to petitioner's knowingly and intelligently waiving the right to representation by counsel, no record as to the trial court inquiring as to petitioner's understanding the rights he would waive by self-representation, and no record of petitioner requesting to proceed pro se; (2) during the sentencing hearing, the scanty transcript provided shows a dialogue between the trial court and petitioner where the responses and language used by petitioner is discernibly that of an under educated or non-educated person. Notwithstanding the above dialogue, the trial court completely disregarded the display of unintelligent, banter and proceeded to pronounce sentence. The court paused only to permit "trial defense counsel" to make a record claiming that petitioner did not wish to appeal, the trial court never addressed petitioner regarding his desire to appeal or inquired as to if he was voluntarily waving his right to appeal, the court just accepted "trial defense counsel's" word that petitioner did not wish to appeal and proceeded to pronounce judgment in this matter. A complete record of the trial court proceedings would have proven petitioner's claims as true. However, the court's repeated denail of the trial transcripts deprived petitioner of his opportunity to fairly present his claims to the court on appeal. These erroneous rulings of the lower courts has effectively left petitioner entirely cut off from having

benefit of any appeal at all, due to, (1) initially, not having the funds to purchase the trial record; (2) subsequently due the record becoming unavailable for legally inexcusable reasons, thereby depriving this Petitioner of his rights to a fair trial, to due process of law and to equal protection of the laws, all in violation of the Fifth and Sixth Amendments to the United States Constitution, being applicable to the several states through the Fourteenth Amendment.

In this instant cause, the state of Oklahoma and the United States Court of Appeals for the Tenth Circuit effectively destroyed Petitioner Burns's only existing remedies by entering a decision denying his Application for a Writ of Mandamus for reasons of failing to comply with Rule 10.6 without first giving notice that it was a prerequisite to the pending proceedings, although the proceedings were initiated through title 12 Oklahoma Stautes § 1451 et seq., (a completely different and independent statutory authority that did not require such), which was ultimately overlooked and upheld by the lower federal courts. The OCCA's making a ruling on this case without first providing an opportunity for petitioner to respond and make the necessary adjustments to the new rule of law being applied to the matter, violated due process.

The record in this case reflect that (1) application for a writ of mandamus filed by Petitioner in the Tulsa County District Court, on September 27, 2018, seeking order directing the Tulsa County Court Clerk to locate and prepare the trial record for "purchasing", which was denied on October 26, 2018 (CF-1989-0069). (2) Petitioner, thereafter, sought review in the Supreme Court of the State of Oklahoma, which was transferred to the docket of the Oklahoma Court of Criminal Appeals on December 17, 2018. (No. 117,547). (3) On January 8, 2019, the Oklahoma Court of Criminal Appeals entered order denying Petition for Extraordinary Relief in this matter, for non applicable reasons, (No. MA-2018-1255). Petitioner *Burns's original mandamus complaint* was that he was being denied access to a complete copy of the record in his case for appellate purposes.

This Court has long held that there is no right to appeal, but when a system of criminal appeals having

been established, it must conform to due process. Frank v. Mangum, 237 U.S. 309, 59 L.Ed 969, 35 S.Ct. 582; Cole v. Arkansas, 333 U.S. 196, 92 L.Ed 644, 68 S.Ct. 514. (Since...provides for an appeal...and on that appeal considers questions raised under the federal constitution, the proceedings in that court are a part of the process of law under which the petitioner's convictions must stand or fall." Id at 333 U.S. 201). It is also well established law requiring all trial court proceedings, held in open court, to be properly recorded. See exhibit "E". In order to satisfy due process requirements, the notice must be the "best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811-12, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). The State and lower federal courts never apprised Petitioner Burns that there was a Rule 10.6 prerequisite necessary for proper adjudication of this matter, prior to disposition thereof. Thereby rendering said rulings as legal nullity's, in violation of due process. Rulings being made without the Court providing fair notice that it was necessary for Petitioner to submit documents pursuant to a completely different statutory procedure in Rule 10 of the Rules of the Oklahoma Court of Criminal Appeals, irregardless of the initial filing being pursuant to *Title 12 O.S., § 1451 et seq.*, whereby petitioner sought relief, denies due process and an opportunity to be heard. The Oklahoma Court of Criminal Appeals upheld the lower State and Federal Courts ruling that "Petitioner failed to show the Court Clerk failed to discharge their legal duty; the authority cited by petitioner in his Application does not support Petitioner's request; Petitioner has failed to establish entitlement to any relief." See Order Denying Application For Writ Of Mandamus, signed by District Court Judge William LaFortune, on October 24th, 2018. (Ex."D"-Petitioner's Appendix Of Exhibits, to Petitioner's Motion For An Order Authorizing A Second Or Successive Application, Pursuant To 28 U.S.C. § 2244 et seq.) It is to be noted that in "Petitioner's Pro Se Application For A Writ Of Mandamus and Brief in Support", Peti-

tioner clearly cited Oklahoma state laws requiring the keeping, filing the records with the Clerk of the Court, preserving and distribution upon payment of the costs for that copy by said party. See Rule 26, of the Rules for the District Courts of Oklahoma; Title 11,§ 28-160; Title 20 O.S. § 106.4. The plain language set forth in the above state statute entitled "Duties of Clerk", provide, "The Clerk of the municipal court of record shall keep and preserve the records of all proceedings had in the Court..." (in pertinent part). Also see Oklahoma Rev. Laws § 1834 (1910); Wiswell v. State, 1918 OK CR 63, 173 P. 662, and progeny. *All of which were enacted to be in conformity with federal law.* See "The Court Reporters Act", which requires that all proceedings in criminal cases held in open court be recorded verbatim by shorthand or mechanical or electrical means. 28 U.S.C.S. § 753(b). The requirements of which are mandatory, and no request for recordation is required. See U.S. v. Haber, 251 F.3d 881 (10th Cir. 2001). In furtherance, Petitioner cited Supreme Court Decisions in support, i.e., Griffin v. Illinois, 351 U.S. 12, 100 L. Ed.891, 76 S.Ct. 585 (1956); Lane v. Brown, 372 U.S. 477, 9 L. Ed 2d 892, 83 S. Ct. 768 (1963); Eskridge v. Washington Prison Bd., 357 U.S. 214, 78 S.Ct. 1061, 2 L. Ed 1269 (1958). All of which were well established prior to the proceedings had in this matter.

Due process of law ***requires an orderly proceeding adapted to the nature of the case***, in which the citizen has an opportunity to be heard and to defend, enforce, and protect his rights. A hearing, or an opportunity to be heard, is absolutely essential. Black, Const. Law, p. 481, § 212; Pennoyer v. Neff, 95 U. S. 715, 24 L. ed. 565. Also see L'Hote v. New Orleans, 44 LED 899, 177 US 587.

In this instant cause, Petitioner filed his application for a writ of mandamus pursuant to Title 12 O.S., § *1451 et seq., invoking the process under that state statute*, which did not require his active production of the record. Petitioner, however did provide the Court with copies of pertinent parts of the record in substantiation to his claims which was originally filed in the Oklahoma Supreme Court then transferred to the Oklahoma Court of Criminal Appeals. Thereafter, being transferred, the OCCA arbitrarily ruled upon the matter without giving notice that the court would be adjudicating the matter pursuant to a

completely different statute or rule other than *the original nature of the case* and providing petitioner with an opportunity to be heard and to defend, enforce, and protect his rights which is absolutely essential to due process. "Due process of law requires both due notice and opportunity to be heard; and if the proceeding be found to be arbitrary, oppressive, and unjust it is not due process."Hagar v. Reclamation Dist. No. 108, 111 U. S. 712, 28 L. ed. 573, 4 Sup. Ct. Rep. 663, and cases cited.

Defendant must be properly brought into court, and must be given an opportunity to make his defense; and when this is not done there is no due process of law." Bardwell v. Collins, 44 Minn. 97, 9 L. R. A. 152, 46 N. W. 315, 20 Am. St. Rep. 547, 556 and notes; State v. Billings, 55 Minn. 467, 57 N. W. 206, 794; Larson v. Dickey, 39 Neb. 463, 58 N. W. 167; Re Doyle, 16 R. I. 537, 5 L. R. A. 359, 18 Atl. 159; Violett v. Alexandria, 92 Va. 561, 31 L. R. A. 382, 23 S. E. 909; St. Louis Girardeau & F. S. R. Co. v. State of Missouri, 39 LED 502, 156 US 478 and cases cited.

In this instant case, the scanty record provided by petitioner reflect the lower state and federal courts completely ignored this essential element prior to, during and following their entering of rulings that are contrary to the commands of due process. (exhibit D, sentencing tr.). The proceedings conducted in the lower courts in this matter are akin to a sentence being imposed against a defendant without providing him with the opportunity to be heard and defend against the charged offense. This Court holds that, "A sentence of a court pronounced against a party without hearing him or giving him any opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal." Windsor v. McVeigh, 93 U. S. 277 (23: 915); Salling v. Johnson, 25 Mich. 492; People v.<*pg. 504> O'Brien, 2 L. R. A. 255, 111 N. Y. 62; Stuart v. Palmer, 74 N. Y. 184, 30 Am. Rep. 289; Devoe v. Ithaca & O. R. Co. 5 Paige, 521. This Court holds that once a state establishes a post-conviction procedure, it must provide all the process that is due before depriving a person of life, liberty, or property. See 131 S.Ct.1289, 179 LED 2D 233, 562 U.S. 521 Skinner v. Switzer @*pg. 248. "although a State is not required to provide procedures for postconviction review, it seems clear that

when state collateral review procedures are provided for, they too are part of the ``process of law under which [a prisoner] is held in custody by the State." Ibid. As this Court has explained, when considering whether the State has provided all the process that is due in depriving an individual of life, liberty, or property, we must look at both pre- and post-deprivation process. See Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532, 547, n. 12, 105 S. Ct. 1487, 84 L. Ed. 2D 494 (1985). Petitioner Burns was not afforded the process that was due under the circumstances of this case and therefore was denied due process of law in this respect. Peralta vs. Heights Medical Center, Inc., 485 US 80, 99 L Ed 2d 75, 108 S.Ct. 896, where this Court decided that, "State court ruling that default judgment entered against party who had not been given proper notice must stand, absent showing of meritorious defense, held violative of due process. Petitioner Burns states that for the above set out, it is imperative that this High Court exercise it's supervisory powers to correct arbitrary decisions of the lower courts in order to establish a more uniform procedure designed to protect the due process rights of individuals who are indigent and unskilled in the law.

Right to Petition the Courts for Redress of Grievances

The First Amendment provides that Congress "shall make no law ... abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." The Fourteenth Amendment makes that prohibition applicable to the States. As we explained in Thornhill v Alabama, 310 US 88, 95, 84 L Ed 1093, 60 S Ct 736 (1940), Meyer v Grant, 108 S.Ct 1886, 100 Led 2d 425, 486 US 414. The First Amendment guarantees "the right of the people ... to petition the Government for a redress of grievances." The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression, McDonald v Smith,105 S.Ct. 2787, 86 Led, 2D 384, 472 US 479. In the Richmond case this Court decided in dicta that, "The First Amendment, in conjunction with the Fourteenth, prohibits governments from "abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances." These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted; as we have shown, recognition of this pervades the centuries-old history of open trials and the opinions of this Court." Supra, at 564-575, and n 9, 65 L Ed 2d, at 982-988. 100 S.CT 2814, 65 L.Ed 2D 973, 448 US 555, Richmond Newspapers, Inc. v Virginia.The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. And in earlier cases this court announced in dicta a federal right to assemble to petition the Congress for a redress of grievances. Further stating, "For example, the first amendment as it passed the House of Representatives on Monday, August 24, 1789, read as follows: "Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed."The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall not be infringed." Records of the United States Senate, 1A-C2 (U. S. Nat. Archives). The right to petition the government for a redress of grievances is guaranteed by the Fourteenth Amendment to the Constitution of the United States; it is therefore fundamental in its nature and should be liberally construed. 2 Story, Commentaries on Constitution, 5th ed. §§ 1894, 1895; 1 Cooley, Constitutional Limitations, 8th ed. pp. 728, 729." States v Cruikshank, 92 US 542, 552, 23 L ed 588, 591.

The right to petitioner the government for a redress of grievances is fundamental and should be liberally construed. This rule of liberal construction "means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax

and sentence construction, or his unfamiliarity{2018 U.S. Dist. LEXIS 5}with pleading requirements." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991) quoted in, In Re Petition Of, Hebert Shawn Nowlin, Jr., In The Matter Of The Adoption Of T.L.N. And D.S.N., minor children,U. S. D. C. For The Northern District Of Oklahoma, 2018 U.S. Dist. LEXIS 22513. Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2D 652 (1972). In this instant cause, Petitioner's claims, presented to the lower courts included, (1) ineffective assistance of counsel; (2) lack of counsel; (3) failure of the Court to permit access or a complete copy of the trial record; (4) denial of right to appeal; (5) denial of due process; and (6) denial of equal protection of laws. The state courts denial of these issues without applying a liberal construction; and the erroneous upholding of the denial by the lower federal courts effectively infringed upon petitioner's fundamental rights. First, the state court denied petitioner's request to be provided a copy of the trial record at public expense, although, the state court's erroneous ruling permitting trial counsel to prematurely withdraw as counsel prior to the expiration of the statutory ten day period for filing notice of intent to appeal and designation of record, erroneously relieving trial counsel of any residual obligation to maintain an open line of communication with petitioner in the event that petitioner wishes to appeal. (Although the record clearly reflects that petitioner's erratic behavior and incoherence, served to irritate the sentencing judge rather that raise the question of his competence as it should have done). Petitioner has shown the lower courts that at the time of the original trial in this matter, he was virtually illiterate. Which is another reason the state court should have made a formal inquiry of petitioner as to whether he was voluntarily and intelligently waiving his right to appeal, and if he sought self-representation on appeal. These subjects were never broached by the court prior to or following the court's permitting the withdrawal of trial counsel prior to the expiration of time for filing notice of intent to appeal and designation of record. Secondly, the trial court's denial of petitioner's request to be provided with a copy of or access to a complete

copy of the trial record/transcript for reasons that petitioner had no pending action filed in the court was erroneous in that the court required petitioner to file his claims without the benefit of reviewing the record prior to requesting a copy be provided. This method of filing for relief provides the trial court an opportunity to dismiss the petition on grounds of conclusory allegations prior to petitioner obtaining a copy of the record which would then be rendered moot. As was in this case. Thirdly, trial counsel's duty is to provide effective representation for their client's. When trial counsel (according to the only portion of the record available) moved the court to withdraw from the case during a critical stage of the proceedings, thereby abandoning petitioner, and leaving petitioner without his 6th Amendment right to have assistance of counsel, counsel's actions in this regard were intentional and therefore constitute ineffective assistance thereof, in violation of the U.S. Constitution and derivative laws. Fourthly, it was the duty of the trial court to provide the assistance of counsel during every critical stage of the proceedings unless there was an affirmative waiver of such." it is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request." Carnley v. Cochran, 1962, 369 U.S. 506, 513, 82 S. Ct. 884, 889, 8 L. Ed. 2d 70.{1965 U.S. App. LEXIS 23} Nor can there be a presumption of waiver of counsel. Johnson v. Zerbst, 1938, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 [146 A.L.R. 357],' 322 F.2d at 777. Petitioner's right to the assistance of counsel does not end until the prosecution and the conviction is final. At all times during the proceedings against him, petitioner is entitled to the assistance of counsel, unless he voluntarily, knowingly and intelligently waives this personal entitlement affirmatively. Petitioner Burns asserts that the rulings entered by the lower federal courts upholding the erroneous denial by the state court has served to deny him of his entitlement to have redress of grievances by effectively eliminating his appellate process. Therefore, Petitioner was denied his rights under the First Amendment to the United States Constitution made applicable through the Fourteenth, and corresponding State Constitutional provisions.

RIGHT TO COUNSEL

Amendment 6 Rights of the accused.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." **Amendment 6.**

In 1990 Petitioner Burns's was convicted after a jury trial of first degree murder and sentenced to life in prison. The Tulsa County Office of Public Defender had been appointed by the Tulsa County District Court to represent petitioner in this cause. During the course of formal sentencing, however, the assistant public defender approached the court for withdrawal as counsel for the case and request that the court order petitioner to represent himself in the proceedings. See (Sentencing Hearing Transc. March 2, 1990, p. 5) (Ex. "D") where the following colloquy is memorialized.

"MRS. CONWAY: Judge, may I make a record with regard to his appeal rights?

THE COURT: "Yes.

MRS. CONWAY: It's my understanding from my conversation with my with Mr. Burns at this time he does not wish to appeal the judgment and Sentence against him. I talked with Mr. Burns at length up in the jail, advised him of all of his rights to appeal. I advised him to go ahead with the appeal and told him it was against my advice not to. It's my understanding that he has chosen not to follow my advice and he does not wish to appeal at this time. In that regard, Judge, we'd ask to be allowed to withdraw from this case subject to being re-appointed if Mr. Burns applies to this Court to have our office re-appointed in the event he changes his mind and wishes to appeal."

THE COURT: *All right. The Public Defender will be allowed to withdraw based on those representations."*

MRS. CONWAY: Thank you, Judge."

The above court proceeding was conducted on March 2, 1990, in the Tulsa County District Court, State of Oklahoma, the Honorable Clifford E. Hopper, presiding. The State was represented by Mr. John Kelson, Assistant District Attorney. Petitioner was represented by Mrs. Sid Conway, Assistant Public Defender, Tulsa County Office of Public Defender, State of Oklahoma. The United States Court of Appeals for the Tenth Circuit has long held in conformity with the decisions of this Court that, ***"a defendant in a criminal case is entitled to be represented by competent counsel at every stage of the proceedings, which includes sentencing, this is a personal right which the accused may waive. Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461, 146 A.L.R. 357; Willis v. Hunter, 10 Cir., 166 F.2d 721, certiorari{1960 U.S. App. LEXIS 4} denied 334 U.S. 848, 68 S. Ct. 1499, 92 L. Ed. 1772; Caldwell v. Hunter, 10 Cir., 163 F.2d 181, certiorari denied 333 U.S. 847, 68 S. Ct. 649, 92 L. Ed. 1130; Batson v. United States, 10 Cir., 137 {283 F.2d 653} F.2d 288; Creel v. Hudspeth, 10 Cir., 110 F.2d 762; Nunley v. United States, 283 F.2d 651,(U.S.C.A.Tenth Circuit, 1960).***

In Petitioner's Motion for an Order Authorizing a Second or Successive Application pursuant to 28 U.S.C. § 2244, filed by petitioner, in the United States Court of Appeals for The Tenth Circuit, Petitioner sought redress of his grievances namely, "denial of right to appeal"; "denial of right to counsel during a critical stage of the proceedings"; "denial of right to a complete copy of the trial record/transcript"; "denial of rights to due process and equal protection of the laws". In setting forth his denial of right to counsel" claim, petitioner asserts this Court's decision in ***Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461, where this Court enunciated that, "a defendant in a criminal case is entitled to be represented by competent counsel at every stage of the proceedings, which includes sentencing, this is a personal right which the accused may waive."*** As transcribed above in the proceedings conducted in the District Court for Tulsa County, State of Oklahoma, the trial court permitted defense counsel to withdraw from the case prior to the ten day period for filing

the notice of intent to appeal, thereby depriving petitioner of his right to be represented by counsel at every critical stage of the proceedings. The Trial court, having heard counsel's reasoning to support motion for withdrawal, entered order in favor of withdrawal, without making an affirmative record whereby establishing petitioner's intelligent and knowing waiver of his right to counsel and right to counsel on appeal. The trial court erred in this regard and deprived petitioner of the protections guaranteed him under the United States Constitution. This Court, in Johnson v. Zerbst, **held**, "The constitutional right of an accused to be represented by Counsel invokes, of itself, the protection of a trial court, in which the accused whose life or liberty is at stake-is without Counsel. *This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused.* While an accused may waive the right to Counsel, ***"whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record."*** Johnson v. Zerbst, 82 LED 1461, 304 US 458, @ 304 US 465. In this instant cause, the record clearly reflects appointed counsel's request to withdraw as counsel, (during the sentencing hearing (ex.D)) was heard by the trial court and granted, prior to the ten (10) day period for filing notice of intent to appeal, (a critical stage of the proceedings). The Trial Court erred by neglecting to address petitioner personally during the sentencing hearing and inquire as to the validity of counsel's request to withdraw and if petitioner sought to represent himself on appeal. This Court holds that, **"While an accused may waive the right to Counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record."** [304 US 465].

In this instant case, there exist no record, of petitioner personally waiving the assistance of counsel for his trial or his direct appeal. The Sixth Amendment guarantee of the effective assistance of counsel extends to the appeal as of right. The direct appeal. Evitts v Lucey. In Carnley v. Cochran, 369 U.S.

516, 82 S.Ct. 884, 8 L.Ed 2d 70, this Court, in deciding a case involving a guilty plea enunciated that, **"The record must show**, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. ***Anything less is not waiver* [369 US 517].** Where, as in this case, the constitutional infirmity of trial without counsel is manifest, and there is not even an allegation, much less a showing, of affirmative waiver, the accused is entitled to relief from his unconstitutional conviction."[369 US 517]. This Court holds further in Evitts v Lucey, that "Effective assistance of counsel on first appeal as of right held guaranteed by due process clause of Fourteenth Amendment." 105 S.CT 830, 83 LED2D 821, 469 US 387. The Sixth Amendment protects the right to counsel in every "critical stage" of a criminal prosecution. Coleman v. Alabama, 399 U.S. 1, 90 S. Ct. 1999, 26 L. Ed. 2d 387 (1970). A critical stage in a criminal prosecution "is one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected." Black's Law Dictionary 375 (6th ed. 1990). See also Mempa v. Rhay, 389 U.S. 128, 88 S. Ct. 254, 256, 19 L. Ed. 2d 336, 340 (1967). The right to counsel further extends to a defendant's first appeal of right. Randall v. State, 861 P.2d 314, 315 (Okl.Cr.1993). This includes the 10 day period for filing a notice of intent to appeal. Baker v. Kaiser, 929 F.2d 1495, 1499 (10th Cir.1991). "Sentencing is critical stage in criminal process at which counsel is required...Gutierrez v. Estelle, 474 F.2d 899 (5th Cir. 1973). Pursuant to state and federal law, Petitioner had a right to appeal following his formal sentencing hearing. Title 22 O.S.,§ 1051. Right of Appeal-Review-Corrective Jurisdiction-Procedure-Scope of Review on Certiorari, provides, "(a) An appeal to the Court of Criminal Appeals may be taken by the defendant, as a matter of right from any judgment against him, which shall be taken as herein provided; and, upon the appeal, any decision of the court or intermediate order made in the progress of the case may be reviewed...(b) The procedure for the filing of an appeal in the Court of Criminal Appeals shall be as provided in the Rules of the Court of Criminal Appeals; and the Court of Criminal Appeals shall provide by court rules, which will

have the force of statute, and be in furtherance of this method of appeal..." (in pertinent part). Pursuant to Okla. Ct. Crim. App. R. 2.1(B), Okla. Stat. tit. 22, ch. 18. "An appeal is commenced and pending upon filing of a defendant's notice of intent to appeal and designation of record. Okla. Ct. Crim. App. R. 2.1(B), Okla. Stat. tit. 22, ch. 18, app. (1991)." Rule 2.1 B. of the same rules provide, "An appeal is commenced by the trial counsel's filing with the trial court a written notice of intent to appeal and a designation of record as prescribed in Rule 1.14(C) within ten (10) days from the date the Judgment and Sentence is imposed in open court. *The filing of the Notice of Intent to Appeal and Designation of Record in the District is jurisdictional and failure to timely file constitutes waiver of the right to appeal."* It is unquestionably evident from the *sentencing hearing colloquy* that petitioner would require the assistance of counsel in order to file notice of intent to appeal during the ten (10) day period for filing such, and subsequently to perfect his appeal if so desired. Trial court's permitting withdrawal of counsel left petitioner without his constitutional safeguards and subsequently denied his rights to the assistance of counsel and his right to petition for redress of grievances, thereby violating the 1st, 6th and 14th Amendments to the United States Constitution. In this instant cause, the criminal proceedings against Petitioner Burns continued to be in effect during the period for perfecting an appeal where the 6th Amendment right remains attached. In furtherance of the above, the trial court repeatedly denied petitioner a complete copy of the trial transcript/record, either at public expense or when petitioner became financially able to obtain a copy. Petitioner states that a complete copy of the record would reflect that during the sentencing hearing, trial counsel's request to withdraw as counsel preceded petitioner's formal sentencing. (the sentencing hearing transcript should read, P. 5,lines 2-19 should be on page 1, followed by the proceedings recorded on p.2 l.24-p.3, l.1-2 should be on page 5 as the last entry.) According to Petitioner's memory, the trial court permitted trial counsel to withdraw as counsel prior to the court pronouncing judgment in the case, thereby forfeiting the court's jurisdiction and rendering the judgment in this matter, void. The audio recording of these proceedings, if made available

would reflect such, thereby denying petitioner of his right to counsel prior to the case becoming final. "This Court's decision in Clay v. United States, 537 U.S. 522, 123 S. Ct. 1072, 155 L. Ed. 2D 88 (2003). In that case, the Supreme Court observed that "[f]inality attaches" under § 2255 "when the time for filing a certiorari petition expires." Id. at 527; Gonzalez v. Thaler, 565 U.S. 134, 149-50, 132 S. Ct. 641, 181 L. Ed. 2D 619 (2012) (same); Jimenez v. Quarterman, 555 U.S. 113, 119, 129 S. Ct. 681, 172 L. Ed. 2D 475 (2009). See also Sup. Ct. R. 13(1) (setting ninety-day limit for filing a petition for a writ of certiorari). In this case, the case became final during the period that Petitioner was seeking a copy of his record at public expense, thereby denying Petitioner of his basic right to the effective assistance of counsel during every critical stage of the proceedings. The record does not reflect at any point therein, Petitioner personally waiving his rights to counsel or to appeal the conviction he suffered in the underlying case. This Court has repeatedly held that "in order for a defendant to validity waive his right to counsel, his choice must be knowing, as well as voluntary and must be an knowing, intelligent act done with sufficient awareness of the relevant circumstances. See Iowa v. Tovar,541 U.S. 77, 81, 124 S. Ct. 1379, 1383, 158 L. Ed. 2d 209 (2004) (quoting Brady v. United States,397 U.S. 742, 748, 90 S. Ct. 1463, 1469, 25 L. Ed. 2d 747 (1970)). Whether a defendant has waived his rights knowingly depends "upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." Johnson, 304 U.S. at 464, 58 S. Ct. at 1023. " Put another way: To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances {2008 U.S. App. LEXIS 28}in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.Von Moltke v. Gillies, 332 U.S. 708, 724, 68 S. Ct. 316, 323, 92 L. Ed. 309 (1948); cited in United States Of America v. Garey, 540 F.3d 1253; 2008 U.S. App. LEXIS 17698, U. S. C. A. (11th Circuit). The judgment of the Florida Supreme Court is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

Reversed and remanded. On certiorari, the United States Supreme Court reversed. In an opinion by Brennan, J., expressing the views of five members of the Court, it was held that (1) the due process clause of the Fourteenth Amendment guarantees the assistance of counsel, unless that right is intelligently and understandingly waived by the accused, in a state criminal case where the lack of assistance of counsel makes the trial unfair, and (2) the circumstances of the case showed that the accused had a right under the Fourteenth Amendment to the assistance of counsel, which right was not intelligently and understandingly waived by him. Id. It is well-established that a defendant wishing to waive his right to counsel may do so by invoking his right to self-representation and confirming his knowing choice through a cooperative dialogue with the court. See Faretta v. California, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541, 45 L. Ed. 2D 562 (1975). In this instant case, Petitioner has shown that during a critical stage of the proceedings (sentencing hearing) the trial court permitted trial counsel to withdraw from representation prior to the court's pronouncement of sentence. There was no dialogue established between the court and Petitioner regarding the right of self-representation and the potential perils or disadvantages petitioner would face if he chose such a path. This Court has repeatedly held and required lower courts to establish an affirmative record of defendants wishing self-representation, and without such a record, there is no knowing, intelligent or voluntary waiver. However, this Court has also established an exception to this rule as being, "when a defendant refuses to cooperate with the court, as happened in the above case. Such exception is not applicable in this instant case, as there is no record of Petitioner refusing inquiry into his right to the effective assistance of counsel or wish for self-representation, thereby invalidating the judgment and sentence imposed by the state district court. The trial court then repeatedly denied Petitioner a copy of or access to the trial record (at public expense and when petitioner became able to pay for the transcript) for appellate purposes, which deprived Petitioner of his rights to the effective assistance of counsel during a critical stage of the proceedings, thereby forfeiting the trial court's jurisdiction to proceed in judgment of this matter; and his rights to

appeal, and to due process of the laws, requiring reversal of this matter. This Court has held that, "A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court, the Sixth Amendment requires providing Counsel for an accused who is unable to obtain Counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. ***If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed.*** The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus."

Complete Denial of Counsel, Constitutes Trial Court's Loss of Jurisdiction

In this case, Petitioner sets out several instances above and below, of counsel's denial and abandon ment: Prior to the second trial, trial counsel moved the court for withdrawal as counsel, in which the trial court entertained said motion, permitted trial counsel to offer her reasons for the request as being that she could not effectively represent petitioner due to a breakdown in communication and petitioners unwillingness to accept her style of representation, which included, excluding petitioner's proposed witnesses. The trial, without conducting the required Faretta hearing, permitted counsel to withdraw and ordered petitioner to proceed pro se with counsel standing by. (See Ex. G, Summary Information Case No. CF-1989-69, entry #3, dated 02/21/1990).

This Court has repeatedly stated that the Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." We have construed [372 US 340] this to mean that in ... courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. [372 US 340]. This Court in Gideon v Wainwright, 83 S.Ct 792, 9 LED2D 799, 372 US 335 set forth, "In an opinion by Black, J., expressing the views of seven members of the Court, it was held that the Sixth Amendment's provision that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense was made obligatory upon the states by the Fourteenth Amendment." In an

opinion by Stewart, J., expressing the view of six members of the court, it was held that (1) a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so," 95 S.Ct 2525, 45 L.Ed. 2d 562, 422 U.S. 806, Faretta v. Calfornia. This Court in Johnson v. Zerbst, @[304 US 468] made it perfectly clear that, "Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of Counsel, compliance with this constitutional mandate is an ***essential jurisdictional prerequisite*** to a ... court's authority to deprive an accused of his life or liberty. When this right is properly waived, the assistance of Counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by Counsel and has not competently and intelligently waived his constitutional right, ***the Sixth Amendment stands as a jurisdictional bar to a valid conviction*** and sentence depriving him of his life or his liberty. A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court-s the Sixth Amendment requires by providing Counsel for an accused who is unable to obtain Counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake.22 *If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed.* The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus." This Court also requires waiver of his right to the assistance of counsel for his defense to depend in each case upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. And that where a defendant without counsel acquiesces in a trial resulting in his conviction and later seeks release by the extraordinary remedy of habeas corpus, the burden of proof rests upon him to establish that he did not competently and intelligently waive his constitutional right to assistance of counsel.

In this instant cause, Petitioner, submits to this Court, the fact that on the day of the commencement of trial, the trial court failed to make an inquiry into whether petitioner actually wished to represent himself. The trial court only relied upon the statement of trial counsel stating that there was a breakdown in communications existing between petitioner and counsel, which served to hinder the proposed defense of trial counsel. Therefore, trial counsel should be allowed to withdraw as counsel, thereby permitting petitioner to serve as his own counsel. The Trial Court, without conducting an inquiry, to determine whether petitioner was competently and intelligently waiving his right to the assistance of counsel, accepted trial counsel's word, permitted withdrawal, and delegated trial counsel to the role of stand by counsel. This Court holds that "To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances {2008 U.S. App. LEXIS 28}in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." Von Moltke v. Gillies, 332 U.S. 708, 724, 68 S. Ct. 316, 323, 92 L. Ed. 309 (1948). Evidence of knowing and intelligent *waivers can only be shown by the record* during the course of a "Faretta hearing" The lower courts construe the dictates in Von Moltes as the guidelines for faretta hearings. The Untied States Court of Appeals for the Tenth Circuit has stated that "A proper Faretta hearing apprises the defendant of the following:{2020 U.S. App. LEXIS 9} "the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." Hansen, 929 F.3d at 1250 (quoting United States v. Weninger, 624 F.2d 163, 164 (10th Cir. 1980)) (emphasis omitted) (noting that these factors are known as the "Von Moltke factors," as such areas of inquiry are taken from the Supreme Court's opinion in Von Moltke, 332 U.S. at 724). Petitioner Burns states that in this instant cause, the State trial court failed to make such an inquiry (Von Moltke, Faretta or otherwise) prior to announcement of petitioners pro se status

prior to trial. The State trial court's failure in this regard in addition to granting permission for trial counsel to withdraw, effectively and completely left petitioner without his sixth amendment right to the assistance of counsel, thereby depriving him of his right to counsel. This denial of counsel was a structural error, fatal to the trial courts jurisdiction to conduct trial and pronounce sentencing in this matter. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. A judge of the United States to whom a petition for habeas corpus is addressed-should be alert to examine "the facts for himself when if true as alleged they make the trial absolutely void."24 [304 US 468].This combination of arbitrariness effectively deprived petitioner of his right to a fair trial, to have counsel for his defense (by a complete tribunal), and his right to appeal thereafter. Therefore, the judgment pronounced by the State court is void and the release of petitioner is mandated. See [304 US 468] **Johnson v. Zerbst.**

STAND-BY COUNSEL IMPERMISSIBLY EXCEEDED DUTIES OF STAND-BY COUNSEL AND THEREBY VIOLATED PETITIONER'S RIGHT TO SELF-REPRESENTATION.

This Court has strongly and sensibly suggested that no ineffective assistance of counsel claims can lie where a defendant undertakes self-representation. See Faretta v. California, 422 U.S. 806, 834 n.46, 95 S. Ct. 2525, 2541 n.46, 45 L. Ed. 2d 562 (1975) ("[W]hatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amount to a denial of 'effective assistance of counsel.'") (quoting United States v. Dougherty, 473 F.2d 1113, 1124-26 (D.C. Cir. 1972)). As to stand-by counsel, the Court has said only that their role should be limited to participation either outside the jury's presence or "with the defendant's express or tacit consent." McKaskle v. Wiggins, 465 U.S. 168, 188, 104 S. Ct. 944, 956, 79 L. Ed. 2d 122 (1984). "A defendant's right to self-representation plainly encompasses certain specific

rights to have his voice heard. The pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial."[465 US 175].

However, in this instant cause, Petitioner Burns after being determined by the trial court to be proceeding pro se, stand-by counsel, (without the consent of petitioner) approached and addressed the jury during closing arguments and stated, *"Ladies and Gentlement of the jury, you see my defendant over there? I say to you that you sentence him to life in prison."* After counsel made this statement, counsel retuned to the defense table and sat down. Petitioner asked stand-by counsel "what was that?" and counsel replied,"shut up." Under McKaskle v. Wiggins, 465 U.S. 168, 188, 104 S. Ct. 944, 956, 79 L. Ed. 2d 122 (1984). "A defendant's right to self-representation plainly encompasses certain specific rights to have his voice heard. The pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial."[465 US 175]. In this instant case, the right of a pro se defendant to personally address the jury or the court is clearly encompassed as being one of his/her specific rights. Petitioner Burns is not submitting this subproposition as an ineffective assistance of counsel claim, he is presenting this issue as a clear and distinguishable violation of his right to self-representation. This Court as above set out, enunciated that "a pro se defendant must be allowed to.....to personally address the jury or the court."[465 US 175]. Petitioner, in this instant case, states that during closing arguments of the guilt or innocence phase of the underlying trial, stand-by counsel Sid Conway, approached the jury, without consent (implied or expressed) and in addressing the jury, stated, "Ladies and Gentlement of the jury, you see my defendant over there? I say to you that you sentence him to life in prison." Which is tantamount to a concession of guilt when Petitioner is on trial to prove his innocence. Stand-by Counsel's

actions in this regard amounted to a prejudicial interference with the petitioner's right to self-representation and due process. This Court case law establishes unequivocally that a violation of the right {2008 U.S. App. LEXIS 23}to self-representation recognized in Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), is structural...See McKaskle, 465 U.S. at 177 n.8 ("Since the right of self-representation is a right that when exercised usually increases {533 F.3d 735} the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis."); see generally United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 2564, 165 L. Ed. 2d 409 (2006) (surveying constitutional errors characterized as structural and not subject to harmless error analysis). This Court in Faretta did not recognize an unqualified right for pro se defendants to stand alone in a courtroom. Instead, this Court allowed states to appoint "standby counsel" to aid pro se defendants "if and when [they] request[ ] help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." Faretta, 422 U.S. at 834 n.46. In defining structural errors this Court has often observed, structural errors occur in only a "very limited class of cases." Johnson v. United States, 520 U.S. 461, 468, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997). Errors deemed to be "structural" have included the total deprivation of the right to counsel at trial, a biased presiding judge, the systematic exclusion of members of the defendant's own race from a grand jury, the denial of the right to self-representation at trial, the denial of the right to a public trial, the denial of the right to have a district judge (rather than a magistrate judge) preside over jury selection, and a defective reasonable doubt instruction. Petitioner Burns, in the underlying matter, did not request the assistance of stand-by counsel to address the jury in closing arguments. At that point Petitioner, being rendered illiterate from a severe brain injury, due to a gunshot wound to the head, (as previously presented in the Appendix's of petitioner's application for a writ of habeas corpus filed in the United States District Court for the Northern District of Oklahoma; Petitioner's Motion for a Writ of Mandamus- filed in the District Court for Tulsa County; Petitioner's

Motion Seeking Authorization to File A Second or Successive Habeas Application), he was left at the mercy of stand-by counsel and the 'protections' of the trial court. Petitioner was unaware that he could object to stand-by counsel's unsolicited actions at that time, so he addressed the issue with with counsel when she returned to the defense table. Petitioner asked counsel, "what was that? (meaning-why did you do that?). Counsel's response was, ***"just deal with it."*** This prejudicial action committed by stand-by counsel deprived Petitioner of his right to self-representation during a critical period of the trial which has been held to be structural error by this Court.

This Court has identified two categories of constitutional error. "Structural errors," which are "structural defects in the constitution of the trial mechanism, defy analysis by 'harmless-error' standards." Id at 629. (quoting Arizona v. Fulminante, 499 U.S. 279, 309, 113 L. Ed. 2d 302, 111 S. Ct. 1246 (1991)). An example of such an error is the deprivation of the right to counsel; such a structural error "requires automatic reversal of the conviction because they infect the entire trial process." 507 U.S. at 629-30. In furtherance, this Court enunciated that, "A "structural error" requires automatic reversal and is not subject to harmless error analysis because it involves a deprivation of a constitutional protection so basic that in its absence, 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.' Arizona v. Fulminante, 499 U.S. 279, 310, 113 L. Ed. 2d 302, 111 S. Ct. 1246 (1991), reh'g denied 500 U.S. 938, 114 L. Ed. 2d 472, 111 S. Ct. 2067 (1991). In this instant matter, Petitioner Burns has been effortlessly attempting to obtain a certified copy of the trial record in order to file a meaningful appeal that is factually supported by the record. The Oklahoma state and federal court's has denied these repeated attempts/requests by utilization of one or another procedural rule against Petitioner instead addressing the heart of the matter, thereby depriving him of his due process right to appeal and contributing to his unlawful incarceration in violation of the laws of the United States of America. Petitioner implores this High Court to not turn a blind eye to this matter and to

render a just decision in accordance with precedents as herein set out above.

ROBERT LEROY McCOY, Petitioner v. LOUISIANA
SUPREME COURT OF THE UNITED STATES
138 S. Ct. 1500; 200 L. Ed. 2d 821; 2018 U.S. LEXIS 2802
OVERVIEW: ISSUE: Whether it was unconstitutional to allow defense counsel to concede guilt over the defendant's intransigent and unambiguous objection. HOLDINGS: [1]-The Sixth Amendment rights of defendant, who was charged with three murders, were violated because even though he vociferously insisted that he did not engage in the charged acts and objected to any admission of guilt, the state trial court permitted counsel at the guilt and sentencing phases of the capital trial to tell the jury that defendant was guilty of committing the charged murders; [2]-Counsel could not admit his client's guilt of a charged crime over the client's intransigent objection to that admission, and violation of a defendant's Sixth Amendment secured autonomy constituted structural error, warranting a new trial, because the admission blocked the defendant's right to make fundamental choices about his own defense.

OUTCOME: Reversed and remanded. 6-3 Decision; 1 Dissent.

DECISION
{200 L. Ed. 2d 821} Federal Constitution's Sixth Amendment guaranteed criminal defendant right to choose objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experienced-based view was that confessing guilt offered best chance to avoid death penalty.

OBERT LEROY McCOY, Petitioner v. LOUISIANA
SUPREME COURT OF THE UNITED STATES
138 S. Ct. 1500; 200 L. Ed. 2d 821; 2018 U.S. LEXIS 2802;
GUILT -- ADMISSION BY COUNSEL -- STRUCTURAL ERROR
Headnote: 10
Counsel's admission of a client's guilt over the client's express objection is error structural in kind. Such an admission blocks the defendant's right to make the fundamental choices about his own defense. And the effects of the admission would be immeasurable, because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt. (Ginsburg, J., joined by Roberts, Ch. J., and Kennedy, Breyer, Sotomayor, and Kagan, JJ.)

Conclusion

Petitioner's Application for this Court to issue a Writ of Mandamus and/or Prohibition is petitioners last resort at being heard. Petitioner's consistent and adamant maintenance of his innocence throughout the course of the above State Court trial; his several failed attempts at obtaining relief; and his lengthy incarceration and current attempt at obtaining relief are testament hereto. Petitioner requests this Court to consider herewith, the recent exposures regarding the Tulsa County law enforcement, Prosecutorial and Judicial processes resulting in the reexamination of several convictions and

subsequent release of wrongfully convicted individuals spanning back for decades.(see ex."H") Petitioner states that the entire nature of his complaints are structural, requiring review and relief, which are being completely ignored by the lower state and federal courts.

This Court has repeatedly stated that ***"We seek to exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim."*** Illinois v City of Milwaukee, 406 US 91, 31 L Ed 2d 712, 92 S Ct 1385 (1972); Ohio v Wyandotte Chemicals Corp., 401 US 493, 28 L Ed 2d 256, 91 S Ct 1005 (1971); Massachusetts v Missouri, 308 US 1, 84 L Ed 3, 60 S Ct 39 (1939).

Petitioner filed several motions to obtain the trial records at public expense, all were denied (with exception to the state providing a copy of the sentencing hearing transcript), (Ex.'s G), he then sought to have the court clerk and/or court reporter compelled to provide the requested items, the state district court denied said request. (Ex. F) Petitioner then sought relief in the highest state court of appeals, which was also denied. (Ex.'s B & C) Thereafter, relief was sought in the United States District Court for the Northern District of Oklahoma, which was dismissed without prejudice due to a federal law requirement for petitioner's to seek authorization to file second or subsequent petitions. (Ex. ___) Petitioner then sought to obtain authorization to file a second or subsequent petition in the United States Court of Appeals for the Tenth Circuit. That Court entered order denying authorization. (Ex. "A") Petitioner states that this Application to Assume Original Jurisdiction is his only forum left for him to attempt and/or obtain relief thereby. Petitioner is a United States citizen whose rights are required to have meaningful protection under the United States Constitution. The State of Oklahoma is notoriously flagrant with disregard to constitutional law. Statistics show that since 1993, 35 wrongfully convicted Oklahoman's have been officially exonerated, according to the "National Registry of Exonerations, with 15 inmates being freed just in the last decade. (See Ex. H, Judicial Notice requested.) According to the same source as above, almost half of the state's exoneree's had been

wrongly convicted of murder. ***This extraordinarily unconstitutional conduct exhibited by Oklahoma law enforcement and judiciary, spanning several decades, has inflicted dire and oftentimes deadly consequences on undeserved United States citizens, with impunity.*** As only a proper investigation can uncover; the lower federal court's residing within the State of Oklahoma and the United States Court of Appeals for the Tenth Circuit has either aided, enabled or turned a blind eye to the atrocities being committed upon the people by the State of Oklahoma. Petitioner implores this High Court to take action,(in the interest of true justice), and announce the judgment pronounced in this matter as rendered void and thereby remand this cause back to the district court with instructions to conduct an evidentiary hearing to determine "whether petitioner was denied his right to be represented by counsel as required by the Sixth Amendment, with the trial court, losing it's jurisdiction as set out in Johnson v.Zerbst"; "whether petitioner was denied his right to counsel at every critical stage of the proceedings including the sentencing hearing where the meager record reflects trial counsel abandoning petitioner during the period for appealing the conviction;" "whether petitioner was denied his right to have a complete copy of the trial transcripts or reasonable access thereto by some means of a check-out system or otherwise"; "whether issues of equal protection of laws exist in this matter and whether petitioner's right to due process has been violated."

For the above set-out, Petitioner Burns implores this Most High Court to Assume Original Jurisdiction of this matter, so as to render necessary guidance to the lower court of appeals regarding the public policy issues at stake as presented herein, i.e., **"**providing copies of or access to the trial record for purposes of appeal for all defendants, whether represented by counsel or pro se, indigent or financially able to purchase them**"**; **"**closely guarding defendants rights to the effective assistance of counsel; and **the right to counsel**, or proof of a knowing and intelligent waiver**"**. Petitioner further states, that the refusal of the lower courts to hear his requests for the production of the trial record for his purchase effectively denied him of his right to file a meaningful appeal in this matter, which are all

protected rights guaranteed by the First, Sixth and Fourteenth Amendments to the United States Constitution. Petitioner is now a sixty-nine year old man, who was thirty four years of age when the underlying trial was conducted. Most of his immediate relatives, with exception to his children, are now all deceased. Petitioner has been made to endure this unfathomable atrocity for thirty-five years with no end in sight and with no-one to render meaningful assistance hereto.

Wherefore the above premised, Petitioner Burns requests this High Court to assume supervisory jurisdiction pursuant to and thereby enter it's decision as above stated.

PETITIONER PRAYS THIS HONORABLE COURT WILL ISSUE A WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION , THEREBY ORDERING THE LOWER COURTS TO MAKE READY AND PERMIT PETITIONER TO PURCHASE A FULL AND COMPLETE COPY OF THE RECORD IN CASE NO. CF-1989-0069, IN COMPLIANCE WITH THIS COURT'S PRECEDENTS. IN THE ALTERNATIVE, AND SHOULD SAID RECORDS BE UNAVAILABLE FOR PETITIONER TO MAKE A MEANINGFUL CHALLENGE TO THE UNDERLYING CONVICTIONS AND SENTENCES, THE CONVICTIONS AND SENTENCES BEING CURRENTLY EXECUTED AGAINST PETITIONER SHOULD BE VACATED AND THE COURTS PROHIBITED FROM RE-TRYING THIS MATTER.

(UNDER PENALTY FOR PERJURY, PURSUANT TO 28 U.S.C. § 1746).

Date: 12/8/21

Respectfully submitted,
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