No. 21-6801

DECEMBER TERM, 2021

IN THE SUPREME COURT OF THE UNITED STATES

In re McMAHON, Petitioner

V.

THE STATE OF NEVADA; WARDEN GARRETT,
Real Party of Interest, Respondents

On Petition for Second or Successive Petition to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF MANDAMUS

JOHNNY EDWARD McMAHON #1022589
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419

In Proper Person

TABLE OF CONTENTS

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit filed an unpublished Order on August 18, 2021 denying McMahon's request for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition. See Appendix A.

JURISDICTION

Subject-matter jurisdiction has been collaterally attacked in the Eighth Judicial District Court for the State of Nevada since 2011. The United States District Court For the State of Nevada had origination jurisdiction over this case, pursuant to 28 U.S.C. § 2254. The District Court denied a Certificate of Appealability absent a memorandum of points of authority or conducting a de novo review of the Subject-Matter Jurisdiction challenge. The Ninth Circuit denied McMahon's request for leave to file a second or successive petition under 28 U.S.C. § 2254. This Court has jurisdiction pursuant to 28 U.S.C. § 1254. See also Sup. Ct. R. 13(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution guarantees the right to redress of grievances of government. The Sixth Amendment to the United States Constitution guarantees the right to assistance of counsel in a criminal prosecution. The Fourteenth Amendment to the United States Constitution guarantees Due Process of law in criminal convictions.

QUESTIONS PRESENTED

Petitioner, Johnny E. McMahon, has been collaterally attacking subject-matter jurisdiction since 2011. However, this is the first time this Honorable Court has been presented with this meritorious claim.

Both the United States District Court for the District of Nevada and the Ninth Circuit Court of Appeals failed to conduct a de novo review to certify the question of jurisdiction or fraud upon the court pursuant to Rule 60(b)(6)(d)(3).

The questions presented in this case are:

1. Whether the Ninth Circuit erred in denying Petitioner a second or successive petition in failing to review the State of Nevada Clark County District Attorney's Office statutory requirement following the law to, both timely and legally, obtain subject-matter jurisdiction to prosecute McMahon of any crime depriving McMahon of his Fourteeth Amendment right to due process of law?

2. Whether the Ninth Circuit erred in denying Petitioner a second or successive petition in failing to review the Las Vegas Justice Court State of Nevada statutory error in obtaining subject-matter jurisdiction to even hear the case depriving McMahon of his Fourteenth Amendment right to due process of law?

3. Whether review of subject-matter jurisdiction, in a collateral attack, be laches, time barred, or procedurally defaulted by respondents?

4. Whether the August 18, 2021 Order of the United States Court of Appeals for the Ninth Circuit erroneously apply the opinion of United States District Court for the District of Nevada case number 2:14-cv-00076-APG-CWH decided on September 29, 2017 deny Petitioner's First Amendment Right of redress of grievances to file a Motion for Reconsideration pursuant to Ninth Circuit Rule 27-7 and Rule 27-10 foreclosing appellate review of Petitioner?

5. Whether State of Nevada prosecutors can secure a criminal conviction by introducing faulty DNA evidence in a trial to inflame the passions and mislead the jury committing fraud upon the court under Rule 60(b)(6)(d)(3) depriving Petitioner of a fair trial under Fourteenth Amendment right to due process of law?

6. Whether a first direct appeal order of affirmance be held as legal when State prosecutors failed to serve a copy of their answer brief on the Petitioner, or counsel of record, in violation of Nevada Rules of Appellate Procedure in denying Petitioner the right to file a reply brief Violate Fourteenth Amendment due process rights?

7. Whether an evidentiary hearing be held as procedurally full and fair when state prosecutors intentionally introduce erroneous forged documents of a sitting judge create extrinsic fraud upon the court under Rule 60(b)(6)(d)(3) in Violation of Fourteenth Amendment Rights to due process of law?

8. Whether a new evidentiary hearing is constitutionally warranted when trial counsel, in their criminal trial, impeaches himself and is found to be mentally impaired to represent Petitioner at trial?

9. Whether judicial discretion can be invoked under Circuit Court Rule 10 and 20(1) when the power of the court to act, in matters of jurisdiction, are Federal mandates?

LIST OF PARTIES

The only parties to this proceeding are those listed in the caption.

STATEMENT OF CASE

1. In the fall of 2004 McMahon's 14 year old babysitter, E.H., of 4 months was fired from her position for accessing McMahon's computer an going on sexually explicit adult websites, falsifying her age as 21. McMahon and daughter, R.M., were out of town at the time, as E.H. had a key to access his apartment.

2. Upon being fired the following day E.H's mother, L.R.K., filed a complaint with police alleging that McMahon had repeatedly sexually assaulted E.H. while she was at his apartment in Las Vegas, Nevada.

3. Shortly before E.H. accused McMahon, she went to McMahon's daughter RM's birthday party where she spoke with a childhood friend of R.M., a S.K., E.H. allegedly told SK what she claimed happened to her and asked S.K. if McMahon had also sexually assaulted her.

4. In March, 2005, S.K's mother, D.R., accused McMahon of touching S.K.'s vagina once while she was asleep at R.E's, R.M's mothers apartment in Henderson, Nevada. D.R. then changed the location, in a new police report, to Clark County, Las Vegas.

5. McMahon cooperated with the investigation. He voluntarily let police search his apartment, observed a LVMPD officer sit at his computer install a disk and download data off his computer. He drove himself to the police station, where he spoke with a detective, A.C. for forty minutes. In the interview A.C. averred that the allegations of E.H. were not a rape, but he lied and claimed E.H. was pregnant. At trial he called

the lie a ruse to secure a DNA buccal swab sample. At the close of the interview, McMahon left A.C. 5 phone number references. McMahon was not arrested and he left the station.

6. McMahon's mother, MM, then "took a bad fall, had a bad accident." McMahon traveled back to Texas to "help my mother leave Texas and go to a rest home which my sister was working on in Florida." McMahon would later testify that while he was away E.H. called him to apologize for fabricating the allegations against him, blaming L.R.K., who was upset at McMahon because he refused to continue subsidizing L.R.K's "cat bed venture" as a motive for calling police. Later retained trial counsel convicted felon, Paul Wommer, never subpeonaed McMahon's cell phone records to confirm the call and impeach E.H., as later at trial E.H. claimed she never talked to McMahon subsequent to her complaint.

7. On December 12, 2005, some 14 months after E.H.'s complaint, McMahon, R.M., and a child friend dropped off a belated birthday/Christmas card to E.H's apartment, L.R.K. called the police, both E.H. and police set up McMahon, flushing him out into the public executing an unwarranted arrest on private property for expired license plates on a friends car.

8. During the next 72 hours in custody McMahon was not afforded a probable cause hearing for the unwarranted arrest. On December 15, 2005 at the initial appearance, McMahon in custody, on a monitor Wommer in justice court, the state prosecutor failed to present a proper charging instrument to prosecute McMahon. Justice court magistrate, K.B.H., absent power to hear the cause, passed the case ordered McMahon

released on O.R. (own recognizance) while Wommer stood mute.

9. Some 6 hours later, at 1:34 p.m., state prosecutors faxed over to justice court an information, absent a declaration statement from either E.H. or S.K., nor a warrant summons / declaration from A.C. Between December 15, 2005 up to March 23, 2006, some 96 days later, neither McMahon, nor Wommer appeared for an initial arraignment to plead, waive or post bail.

10. When McMahon retained Wommer to represent him, on December 12, 2005, Wommer failed to disclose to McMahon that he had frontal-lobe brain damage from a 1991 skiing accident or diminished capacity.

11. At the March 23, 2006 preliminary hearing both E.H. and S.K. testified. McMahon brought Dr. P.C., an alibi witness to impeach S.K., yet Wommer did not present him. The state prosecutor C.K. continued to aver that an arrest warrant was in place for McMahon's arrest, yet the court opined, on numerous occasions, that an arrest warrant was not a part of the clerks file. The court found that the state did not meet its burden on 14 of the 20 counts related to E.H., due to her vague and shifting memory. McMahon was held to answer only six counts related to E.H. (and three of them were lesser included offenses and one count related to S.K.). Wommer failed to challenge the 3 sexual assault counts as to acts against the will of a victim carrying 20 years to life sentences, or the non-existent arrest warrant, as well as want of subject-matter jurisdiction. The court again released McMahon on O.R. Again, absent the power to act, bound the case over to the district court.

12. After the preliminary hearing Wommer did very little pre-trial investigation or litigation. He filed one motion, asking to dismiss the case due to the state losing the hard drive to McMahon's computer, which would have confirmed that McMahon fired E.H., as a babysitter, because she accessed adult websites, using McMahon's password, and falsified her age of 21. However, irrespective of whether the police had made a copy of the hard drive, the computer itself had been returned to the store where McMahon rented it. Wommer made no attempt to subpeona the computer itself or have it forensically examined. Wommer later testified that he had no knowledge of accessing IT data from the service provider or host. At the hearing police testified that no one got on McMahon's computer during the voluntary initial search, yet again McMahon testified that a LVMPD official did get on his computer and installed a disk to download data as mandated by police procedures of sex crime search engagement.

13. Wommer failed to sever the independent counts of E.H. and S.K. as neither case was cross-admissible. McMahon would enter the courtroom on an unlevel playing field forced to defend himself against both cases in a single trial inferring prior bad act evidence against two witness accusers.

14. Subsequent to the preliminary hearing, in April, 2005 at a bail hearing before magistrate, K.W., DDA C.K. averred in limine that L.R.K. was mentally challenged, yet the state failed to turn over the mental health records of L.K.R. after 2 seperate discovery requests filed by Wommer.

15. In April, 2007 DDA G.O. presented McMahon with a reduced plea agreement proposal for one count of statutory sexual seduction to include one count of gross misdemeanor lewdness, both probational crimes. Based upon Wommer rendering faulty legal advise. McMahon, maintaining his actual innocence, refused to accept the plea agreement.

16. Prior to trial in May, 2008 Wommer filed no subpeonas for defense alibi or expert witnesses, or exculpatory evidence in support. Wommer failed to utilize the retained services of private investigator, J.T., Wommer would later testify that J.T. was not retained. The case amounted to a misjoined "he said, she said" case absent a scintilla of real or inculpatory evidence. The state subpeonaed L.K.R. on 4 occasions and in opening statements to the jury promised to call L.K.R. to testify as a material witness to support E.H.'s testimony, yet the state failed to produce L.K.R.

17. The S.K. count was based solely on S.K.'s testimony. She testified she had fallen asleep at Dr. P.C.'s house while visiting R.M. and when she woke up McMahon's hand was on her vagina. She testified at trial that the incident took place over two minutes, but she told police that it took twenty minutes. When shown photographs of the interior of Dr. P.C.'s house she couldn't identify anything - even though she claimed the incident took place there.

18. E.H. testified that McMahon met her in a park and asked her - within minutes of meeting her - if she was a virgin. She explained on numerous occasions that she was "absent minded" so agreed to babysit and go to his apartment, even though warning bells went off. Also according to E.H.

McMahon immediately brought her to his apartment and sexually assaulted her by performing oral sex on her and forcing her to perform oral sex on him. McMahon left his phone number with E.H. and she called sometime later to babysit, although at trial E.H. testified that McMahon called her.

19. Over the course of 4 months, from June- October, 2004, E.H. claimed she never actually babysat R.M, or was paid. Instead, she testified she went to McMahon's almost every weekend during the summer and fall of 2004 and he sexually assaulted her. McMahon allegedly assaulted her 20 to 40 different times- with half of those times through oral sex and the other half through vaginal intercourse. Even though McMahon was only on trial for 6 counts. Wommer did not object to this inadmissible testimony, or any of the cumulative errors, or ask for a mistrial.

20. To shore up E.H.'s credibility, the state tried to present evidence that R.M., who was four at the time of the alleged assaults, had witnessed the assaults. However, R.M. testified she had no memory of seeing anything sexual between McMahon and E.H. Wommer failed to request a hearing to establish whether R.M. was competent to testify given her lack of memory and young age at the time of the alleged assaults at trial. Thus, the state was able to bolster its case with testimony from A.C. and R.F. R.F. testified that R.M. once told her that she saw McMahon and E.H. on top of each other moving around. But R.F also testified that R.M. told her she had seen them wrestling, not doing something sexual. A.C. claimed that at four years old, R.M. told him McMahon and E.H. French kissed and had sex. Again, Wommer failed to object to this hearsay testimony.

21. During the course of the trial the state introduced a blanket from McMahon's apartment (State's Exhibit #33) containing the menstural period blood spot- testified by E.H. in voluntary statement- yet the state committed fraud upon the court intentionally misleading the jury to aver that the DNA blood spot was derived from the initial sex act in June, 2004 whereby E.H's hymen was torn in the initial sex act by McMahon. Again, Wommer failed to object to this faulty DNA evidence.

22. To shore up this misleading DNA evidence and ruse the state called P.S., a nurse practioner, who examined E.H. some two months subsequent to the initial complaint, P.S. testified-absent an opinion from a medical physician gynecologist- that E.H's hymen was torn by an act consistent with a sexual assault. Again, Wommer stood mute and failed to object to this junk forensic science analysis.

23. When states witness, R.F., testified she impeached her best friend, states witness D.R., S.K.'s mother, who claimed that McMahon never loaned D.R. $1,000 to pursue internet love interests in New York. R.F. testified that McMahon did loan D.R. $1,000. As such both adult complainants, L.R.K. and D.R., for the minor witness accusers, E.H. and S.K. possessed a motive to lie.

24. McMahon testified and denied any sexual allegations took place against E.H. or S.K. and further testified that E.H. informed him, when she was hired to babysit R.M., that she was sexually active with her boyfriend Lewis, a black teenager, and that E.H. suffered from Graves disease. Again, Wommer failed to subpeona Lewis or anyone known to E.H. including her best friend Sharona or cousin Chelsea.

25. Wommer failed to present a single jury trial instruction and further failed to object to any of the states jury instructions including a "flight instruction" which implied that McMahon had fled the state to Texas to evade law enforcement in 2004. Wommer failed to file a curative instruction based on states witness R.F. and McMahon claiming mere leaving. Wommer failed to challenge the states sexual assault counts based upon evidence of EH's testimony as to acts against the will, or introducing the states proposed plea agreement to the jury. McMahon got slaughtered.

26. At sentencing McMahon, in colloquoy with the court, fired Wommer and asked for his case file back. Instead, Wommer committed fraud upon both the district court and Nevada Supreme Court in his filing forms claiming that McMahon retained him at the appellate level, then claimed to district court in minutes that he was appointed to the case at the lower level and should be appointed to prosecute the direct appeal.

27. McMahon, not hearing from Wommer subsequent to sentencing, was unaware of the extrinsic fraud upon the courts, yet when he finally found out filed 3 timely motions to disqualify Wommer for conflict of interest; be appointed a conflict-free counsel; and a Feratta hearing be conducted to self-represent the direct appeal. The court stayed the motions. McMahon continued to do everything he could to get Wommer off the case: he filed numerous motions and even a writ of mandamus to the Nevada Supreme Court; McMahon additionally filed a complaint on Wommer to the Nevada State Bar Association for conflict of interest in strick violation of Bar Rules of Code of Model Conduct - to no avail. McMahon also filed a complaint on Judge Barker to the Commission on Judicial Discipline for forcing Wommer

back on the direct appeal after McMahon terminated the attorney/client relationship at sentencing- again to no avail. McMahon strongly asserts that based on judge Barker and Wommer being friends and ex-prosecutors in the district attorneys office that the court protected Wommer throughout the lower level and allowed Wommer to stay on the case to profit and not present any Sixth Amendment IAC claims on direct appeal. This assertion is supported by Wommer's nine page brief and no IAC claims. The Nevada Supreme Court imposed sanctions for repeatedly missing deadlines.

28. Wommer admitted after the appeal that he and McMahon had irreconcilable differences and could not maintain "any semblance of communication." While the appeal was pending in 2011, Wommer was indicted and tried in federal court with tax evasion, fraud, structuring financial transactions and submitting a false tax return. At the April, 2013 trial Wommer revealed, for the first time, that he had "diminished capacity", which rendered him unable to understand the law, or make good decisions - as a result from a 1991 head injury. McMahon had been strongly asserting multiple errors of cumulative effect, to no avail, as the courts treated Wommer's errors and omissions as tactical and strategic. The U.S. District Court of Nevada, Ninth Circuit Court of Appeals and the United States Supreme Court found no fault in the numerous 6th Amendment IAC claims. Wommer was sentenced to forty-one months in federal prison and finally disbarred. In an article, by the Las Vegas Review-Journal, Wommer and 9 other local lawyers were chronicled in billing the state taxpayers for millions of dollars in legal fees - Wommer was in the middle with $400,000.00. His double-dipping practices of IAC at the lower level, to profit off of clients/ defendants at the direct appeal level finally came to fruition and an end.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT SHOULD HAVE GRANTED A SECOND OR SUCCESSIVE PETITION ON McMAHON'S CLAIM THAT HE WAS DEPRIVED OF HIS RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BASED UPON WANT OF SUBJECT-MATTER JURISDICTION.

McMahon strongly asserts that an extraordinary writ of mandamus, 28 U.S.C. §1651(a) is the appropriate vehicle to collaterally attack a void judgment and compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. Whereby, a writ of certiorari is a habeas corpus application under 28 U.S.C. § 2254 and is not a fast and speedy remedy to collaterally attack a void judgment that can aid this court's jurisdiction, as such exceptional circumstances warrant an extraordinary writ to seize the case and for the court to exercise its discretionary powers and that adequate relief cannot be obtained in any other form or from any other court.

A void judgment has been legally described as a judgment that has no legal force and effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally. From its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed, ratified, or enforced in any manner or to any degree.

The United States Supreme Court in Chaney, 524 US at 381. The Supreme Court has required that a party seeking Mandamus

demonstrate that he has no other adequate means of relief and that his right to the writ is clear and indisputable.

It is widely held that a writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control an arbitrary and capricious exercise of discretion. NRS 34.160; Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197 P3d at 558.

The procedural history of the instant case clearly reflects:

1. On December 12, 2005 McMahon was arrested, absent an arrest warrant, or probable cause, on private property for a non-moving traffic offense of expired license plates on Dr. P.C.'s vehicle and taken to CCDC.

2. On December 12, 2005 McMahon retained private attorney, Paul Wommer. During the 72 hour period of unlawful incarceration at CCDC, from December 12th-15th, 2005, McMahon was not afforded a probable cause Gernstein hearing for unwarranted arrest (changed to 48 hours in County of Riverside v. McLaughlin, 500 US 44 (1991).

3. On December 15, 2005 at 7:45 a.m. McMahon appeared on a video monitor at CCDC, in Las Vegas Township Justice Court magistrate KBH presided, along with Wommer and a DDA from Clark County District Attorney's Office. When event number 051212-2137 was called State DDA requested the cause be passed, as a sworn criminal information was not available, or prepared

to present to justice court to confer subject-matter jurisdictional power to the court to hear the cause, or to hold McMahon to any crime. Wommer stood mute and failed to motion the court in limine to dismiss the case with prejudice as lawful subject-matter jurisdiction had not been established. Justice court exceeded its authority and power to pass the case releasing McMahon on O.R. legally subjecting him to appear at a future date.

4. Some 6 hours later, at 1:34 p.m., the Clark County District Attorney's Office faxes over to justice court magistrate KBH a criminal information, absent a declaration warrant/summons for arrest warrant consideration and devoid of a declaration statement from either witness accuser, E.H. or S.K., or a movant party adult to a criminal act. Moreover, absent the presence of McMahon before a lawful court of jurisdiction. See NRS 173.035; NRS 34.138 and NRS 171.178 legislative intent.

5. From the period of the unwarranted arrest to the unlawful initial hearing on December 15, 2005 through the preliminary hearing on March 23, 2006 McMahon was denied a procedurally full and fair statutory due process hearing under 14th Amendment. In that 96 day period McMahon was never arraigned or given the opportunity to waive, plead or bail set.

6. From December 15, 2005 forward all orders and court rulings should have been held as constitutionally null and void. Which continues today.

7. When McMahon retained Wommer to represent him, on December 12, 2005, Wommer failed to disclose to McMahon that he suffered from frontal-lobe brain damage, or possessed "diminished capacity" to know or understand the law resulting from a 1991 skiing accident.

8. At the March 23, 2006 preliminary hearing State DDA C.K. continued to aver ad nauseum that an arrest warrant was in place for McMahon's arrest on December 12, 2005. Yet the court opined on numerous occasions that an arrest warrant was not part of the clerks file. Again, Wommer stood mute and failed to motion the court for the State to produce the arrest warrant pursuant to: NRS 171.108; NRS 171.152; NRS 173.145; NRS 173.155; and NRS 173.205. The court again, absent the power to act, released McMahon on O.R. and bound the case over to district court.

9. Subsequent to the preliminary hearing Wommer did very little pre-trial investigation or litigation, even though McMahon retained a private investigator J.T., and again failed to motion the court to certify the question of jurisdiction accompanied by authority in support.

10. In April 2007 DDA G.O. presented McMahon with a reduced plea agreement for one count of statutory sexual seduction to include one count of gross misdemeanor lewdness, both crimes probational. Based upon Wommer rendering faulty legal advise McMahon, maintaining his actual innocence, refused to accept the plea agreement which pre-dated this Courts controlling cases of Lafler v Cooper and Missouri v Frye rendering McMahon's claim of IAC ex post facto not retroactive. See Ex # 27-28.

As far back as 1868 this Honorable Court held, ("Jurisdiction is the power to declare the law, when it ceases to exist. The only function remaining to the court is that of announcing the fact and dismissing the case"). See Ex parte McCardle, 7 Wall 506, 19 L Ed 264 (1868). This Court has traditionally held that a jurisdictional fact consists of a fact which must exist for a court to properly exercise its jurisdiction over a case party or thing-jurisdictional fact-doctrine. (citations omitted). In Maine v Thiboutot, 448 US 1, 100 S Ct 2052 (1980). ("There is no discretion to ignore the lack of jurisdiction and once jurisdiction is challenged, it cannot be waived or assumed, it must be proven to exist"). See also United States v. Cotton, 535 US 625, 636, 122 S Ct 1281 (2002).

This Court in Ruiz v. Norris, 117 S.Ct 725 held, (States failure to comply with its own criminal procedures can be egregious enough to denial of Federally required Due Process USCA 14). The Ruiz Court went on to hold, ("If a timely objection is not made an appellate court will reverse the conviction if the lower courts allowance of the prosecutor's conduct constituted plain error that both impaired the defendant's rights and harmed the integrity of the proceedings").

By virtue of State prosecutors, some 6 hours later, faxing over to justice court a criminal information, absent a declaration warrant/ summons for arrest warrant consideration, and devoid of a declaration statement from either witness accuser, E.H. or S.K., or a movant party adult to a criminal act, as required by law comports to the State respondents usurping the legal process. The Nevada legislature enacted NRS 34.738 which mandates that justice court cannot accept lawful jurisdiction of a case unless: First: the allegations of State are timely and properly presented; Second: A sworn criminal information "must" be presented to a lawful court to create a cause of action; Third: Jurisdiction cannot be established by the State unless the

appropriate legal charging document(s) have been presented to an accused in a lawful court of jurisdiction by the movant party; and Fourth: Justice court has a duty to the accused to either dismiss or lawfully accept jurisdiction to bind case over for trial. (See Ex.# 15).

Nevada statutory law was additionally usurped by State respondents. NRS 171.178(4) states: (4) When a person arrested without a warrant is brought before a magistrate a complaint must be filed forthwith. This never happened which violates the language of the legislative intent. The Nevada Supreme Court in Sheriff Clark County v Levinson, 95 Nev 436, took up this very narrow argument holding. ("A complaint must be filed forthwith and the peace officer must produce the accused before a magistrate court of proper jurisdiction accompanied by a sworn criminal complaint or indictment to hold accused to a crime").

It is noteworthy that in legislative notes during the enactment of NRS 173.035 that the Nevada Attorney General pursued the passage of the curative/corrective statute to allow prosecutors to pursue the prosecution when the initial process fails, based on inadvertence or other matters failed to present a proper charging instrument. Essentially giving the state another bite at the apple. As such, no where in NRS 173.035 does the legislature grant State prosecutors the unfettered right to usurp and improperly circumvent pre-trial process by faxing over criminal informations to justice court absent declaration statements or the presence of the accused to legally establish subject-matter jurisdiction.

The Nevada Supreme court took up this very argument holding (that the proper avenue for obtaining a valid charge is for the prosecution to file a new complaint in justice court or take the matter to a grand jury). See Cranford v. State, 92 Nev 89 (1976). The Cranford court found support

in Murphy v State, 110 Nev 794 and reversed the conviction holding that the State improperly circumvented the pre-trial charging holding NRS 173.035(2) was a device to rectify "egregious errors" and not a mechanism for safe-guarding the deficiences in evidence. The court went on to hold that to correct such plain error the proper vehicle to bring charges against [Murphy] would have been by filing a second complaint or by indictment and presenting him before a court of jurisdiction. As such jurisdiction dissolved in the instant case at 7:45 a.m. on December 15, 2005.

Several courts have weighed in on improper methods used by prosecutors in pursuing prosecution of a case. In Homomichi v. State, 333 N.W. 2d 797 (S.D. 1983). (Should these charging instruments be invalid there is a lack of subject-matter jurisdiction and thus the accused may not be punished). In United States v. Siviliglia, 686 F2d 832 (1981). (A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceeding in which it becomes apparent that jurisdiction is lacking which renders the argument ripe for collateral attack).

NRS 34.738 states that justice court cannot accept lawful jurisdiction of a case unless:

First: The allegation of State are timely and properly presented;

Second: A sworn criminal information must be presented to a lawful court to create a cause of action;

Third: Jurisdiction cannot be established by the state unless the appropriate legal document(s) have been presented to an accused in a lawful court of jurisdiction by the movant party; and

Fourth: Justice court has a duty to the accused to either dismiss or lawfully accept jurisdiction to bind case over for trial.

As far back as 1912 in Eureka v Smith, 126 P. 65 (1912) Nevada Supreme court held, ("The intentions of the legislature is to be collected from the words there is no room for construction"). The court went on ("... no court or officer can acquire jurisdiction by the mere assertion of it, or by falsely alleging the existence of facts on which jurisdiction depends. The power of the State cannot be made an engine of persecution. The filing of a proper complaint with the magistrate is the condition precedent to his jurisdiction to issue a warrant"). The court went on to hold, ("... that this act is in contravention of the United States that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of law").

A case on all 4's with the instant case occured in 1994 in Parsons v. 5th Judicial Dist. Ct. ex rel County of Nye, 885 P. 2d 1316 (1994). The court held that subject-matter jurisdiction did not properly attach to justice court. This is not a discretionary act availing to justice court rather a statutory duty that the Nevada legislature put in place to protect the rights of the accused against arrest and prosecution. No court can grant the State exigency or unfettered right to violate the law, if that were the case what would be the need for any rules or laws?

The Nevada Supreme court in Rueben Barrios-Lomeli v State of Nev., 114 Nev 778, 961 P2d 750 (1998). (Courts are not empowered to go beyond the face of a statute to lend construction contrary to its clear meaning if a statute clearly and unambiguously specifies the legislature's intended result such result will prevail even if the statute is impractical or inequitable. See also Sheriff Clark County v. Witzenburg, 122 Nev 1056 (2006).

McMahon strongly asserts that State respondents can not ignore statutory law and corrective statutes, to invoke laches, time barrments and procedural default underpinning Chapter 34 (Nevada's AEDPA statutes) and expect to profit from such lawlessness and be granted windfalls from their outrageous conduct in prosecuting criminal cases, this runs afoul of McMahon's federally protected rights and taints the integrity of the system of jurisprudence. This ground alone should have resulted in a second or successive petition being granted. However, the 9th Circuit Court of Appeals three judge panel failed to conduct a de novo review of the facts and law and erroneously held that jurisdiction claim was raised in a 28 U.S.C. § 2254 habeas corpus petition filed in United States District Court for the District of Nevada case number 2:14-cv-00076-APG-CWH, decided on September 29, 2017; which is patently incorrect and belied by the 31 page Order of Judge Gordon, as neither McMahon or Federal public defender Jonathan Kirshbaum raised want of subject-matter jurisdiction as a ground. This is exactly why post card denials and boiler plate orders take less time; 2 minutes and 23 seconds, less time than it takes to boil an egg in deciding a man's life and liberty interest, rather than grant an evidentiary hearing to ferret out the truth from fiction.

McMahon has presented controlling 9th Circuit case law and authority in support of want of subject-matter jurisdiction. See Cooper v Woodford, 358 F3d 1117, 1123 (9th Cir. 2004); US v Broadwell, 959 F2d 292 (9th Cir 1992); Barquis v Merchants Collection Association, 70 Cal 3d 94, 101 Cal Rptr 745, 496 P2d 817 (1972).

McMahon has additionally presented several United States Supreme Court cases and authority as this Court has held in a long line of venerable cases that without proper jurisdiction a court cannot proceed at all, but

can only note the jurisdictional defect and dismiss the case. See Capron v. Van Noorden, 2 Cranch 126, 2 LEd 229; Arizonians for Official English v. Arizona, 520 US 43, 73, 117 S Ct 1055; National Passenger Corp. v National Assn. of Railroad Passengers, 414 US 453, 46 n. 13, 38 LEd 2d 646, 94 S Ct 690; Norton v Matthews, 427 US 524, 531, 49 LEd 2d 672, 96 S Ct 2271. This Court as far back as 1879 in Ex parte Siebold, 100 US 371, 376-77 (1879) which remains well established authority. ("... any unconstitutional law is 'no law at all', it has no force or effect, it is void and no legal consequence in criminal penalty may flow from it Period. That is the law of the land. Therefore, it would be a 'fundamental miscarriage of justice' to hold someone prisoner on a legally unenforceable law"'). See Coleman v Thompson, 501 US 722, 750 (1991). In Neber v United States, 527 US 1, 119 S Ct 1827, 144 LEd 2d 35 (1999) the Court went on to hold most constitutional errors can be harmless but some errors are 'structural' and thus subject to automatic reversal in 'very limited classes of cases'.

The Nevada State district court and Court of Appeals have created a split in the circuits laching, time barring and defaulting subject-matter jurisdiction claims. In Kenoshe v Bruno, 412 US 507, 93 S Ct 2222 (1973). (Jurisdiction claims may not be defaulted, a defendant need not show "cause" to justify his failure to raise such a claim"). ("The burden shifts to the court to prove jurisdiction"). See also Rosemond v. Lambert, 469 Fd 416. ("Courts must prove on the record all jurisdictional facts related to the jurisdiction asserted"). Article 6 Sec 4 "Jurisdiction of Powers Thereof". Ultra Vires Treasonist Acts". See also 100 S Ct 2502 (1980) (Jurisdiction can be challenged at any time), Basso v Utah Power & Light Co., 495 F2d 906, 910.

However, the controlling standard used by this Court was opined by

Justice Scalia in Steel Company aka Chicago Steel and Pickling Company v. Citizens for Better Environment, 523 US 83, 140 L Ed 2d 210, 118 S Ct 1003 (1998) severly chastising the Ninth Circuit Court of Appeals stating. (" The Ninth Circuit has dominated this practice (of addressing merits prior to proving jurisdiction) calling this split in the circuits as " hypothetical jurisdiction").

So here we are 23 years later and the Nevada courts and Ninth Circuit are still engaging in such contrary practices in splitting the circuits as such acts are converse to Federal law and controlling res judicata / stare decisis cases of the remaining 10 circuits and D.C. circuit as well as cases of the United States Supreme Court. This split in the circuits must be addressed and a message sent which goes to the very reasoning judicial discretion is exercised, as well as brings about an important federal question in a way that conflicts with AEDPA. Subject-matter jurisdictional claims can not be lached, time barred or procedurally defaulted; the State of Nevada, U.S. District Court of Nevada and Ninth Circuit Court must certify the question of jurisdiction on the record and reverse this radical departure of controlling standards. FRCP 59(e) Relief from Void Order. Void judgments are unconstitutional ab initio and would constitute treason to not recognize these standards.

What is equally egregious is that on December 16, 2011, in an evidentiary hearing in district court, state prosecutors G.O. and C.B. continued to puke out salacious legal fiction of the existence of an arrest warrant in place for McMahon's arrest; as officers of the court knowing full well that det. AC testified in the May, 2008 jury trial that an arrest warrant did not exist. (See Ex # 7 and 62) State prosecutors went on to engage in fraud upon the court Rule 60(b)(6)(d)(3) avering that a probable cause Gernstein hearing was conducted and that a re-

booking process occured between December 12-15, 2005 which is belied by the record and indicia on the original TCR (temporary custody report), devoid of a judges signature, and the States altered TCR now reflecting the signature of magistrate KBH are diametrically opposite. The signature of KBH appears as a forgery under the line and several altered white out crop marks. The declaration warrant / summons of det. A.C. was retrieved by the DDA G.O. and C.B. from A.C. file and faxed over to counsel Nguyen. This document has no legal force an effect as it wasn't presented to a court of jurisdiction for the consideration of the issuance of an arrest warrant, as testified by A.C. (See Ex # II(A)(B)(C)).

These desperate acts by State DDA continued through the jury trial to manufacture faulty DNA evidence which McMahon will address in ground two. This fraud upon the court by Clark County District Attorneys Office vitiates the legal process and rendered the proceeding not worthy of confidence. Pursuant to NRS 173.205 Return of Warrant and Summons; reissuance.

1. The peace officer executing a warrant shall make return thereof to the court. At the request of the attorney general acting pursuant to a specific statute or the district attorney any unexpected warrant must be returned and canceled.
3. At the request of the attorney general acting pursuant to a specific statute or the district attorney, made at any time while the indictment or information is pending, a warrant returned unserved or a duplicate thereof may be delivered by the clerk to a peace officer or other authorized person for execution or service. See Tellis v Sheriff of Clark County, 85 Nev. 557, 459 P2d 364 (1969).

NRS 173.145 Warrant and Summons:

1. Upon the request of the Attorney General acting pursuant to a specific statute or the district attorney the court shall issue a warrant for each defendant named in the indictment or information.
2. The clerk shall issue a summons instead of a warrant upon the request of the district attorney, the attorney general or by direction of the court.
4. The clerk shall deliver the warrant or summons to the peace officer or other person authorized by law to execute or serve it.

NRS 173.155 Form of Warrant; fixing and endorsement of amount of bail. The form of the warrant shall be as provided in NRS 171.108 except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

There is no legal question in dispute, based on the tantamount of evidence that an arrest warrant was never presented, or in place, for the arrest of McMahon at any time. Further reflective of Ex's 11(A)(B)(C) as the box for Warr/NCIC Number is devoid of any entry. Moreover, the state respondents can manufacture any document they wish but they can not present a legal and valid arrest warrant which renders NRS 173.035 as impossible to achieve and proves want of subject-matter jurisdiction.

Based on the fraud upon the court by state respondents and the glaring forged affixed signature on Ex's 11(A)(B)(C) running under the pre-printed line, which defies forensic science, McMahon filed a Motion for Certification of Record, requesting magistrate KBH to authenticate and certify her signature affixed to the TCR as being original and true. (See Ex# 74(A). The court failed to authenticate her signature as valid or have the document forensically examined. McMahon additionally sent a copy of the document to the Clark County Sheriffs Office and to the FBI for the prosecution of felony forgery. No response was forthcoming.

This Fraud upon the court FRCP Rule 60(b)(6)(d)(3) can be arrested at any time it comes to the courts attention that a party has engaged in activity to disrupt the integrity of the court. In Alexander v Robertson, 882 F2d 421 (9th Cir 1989). ("Fraud on the coort occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some un-consciousable scheme calculated to interfere with the judicial systems ability to impartially adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense"). See also In re Levander, 180 F3d 1114, 1119 (9th Cir 1999).

In furtherance reflective of Ex. 75(A)-(C) the Justice Court docket sheet is replete with clerical errors as on 01/18/06 neither McMahon nor Wommer appeared at the Initial Arraignment. McMahon has additionally attempted to secure a copy of the Court Reporter Transcripts to secure the real evidence. (See Ex# 74(B)-(E). According to the Court Reporter Act the State respondents have no standing to present prima facie evidence in support. Absent this showing the proceedings did not happen. See U.S.v Piascik, 559 F2d 545, 1977 (9th Cir); U.S.v Antoine, 906 F2d 1379 (9th Cir 1990); U.S. v Anzalone, 886 F2d 229, 332 (9th Cir 1989) cert. denied 434 US 1062.

Accordingly, the Ninth Circuit should have granted a second or successive petition on McMahon's claim that he was deprived of his rights to due process and equal protection under the first, fifth and fourteenth amendments to the United States Constitution based upon want of subject-matter jurisdiction as Las Vegas Township Justice Court magistrate KBH acted, absent authority, vested in the court to even hear the case, and the State respondents engaged in fraud upon the court Rule 60(b)(6)(d)(3) in violation of McMahon's constitutional rights. This additionally extends to disgraced convicted felon attorney Wommer's ineffective assistance of counsel sixth amendment violations, as Wommer's performance fell below stricklands two prong test as a competent advocate to put the States case to a meaningful adversarial testing. Collectively these actors not only ran roughshod over McMahon's federally protected rights but in fact McMahon has been constructively kidnapped against his will and held hostage by the State of Nevada for the past 5035 days. This case ends here!

II. THE NINTH CIRCUIT SHOULD HAVE GRANTED A SECOND OR SUCCESSIVE PETITION ON PETITIONER'S CLAIM THAT HE WAS DEPRIVED OF HIS RIGHT TO A FAIR JURY TRIAL BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL AND PROSECUTORIAL MISCONDUCT BY EXTRINSIC FRAUD UPON THE COURT PURSUANT TO RULE 60(b)(6)(d)(3).

McMahon strongly asserts that subject-matter jurisdiction can not be conferred to the district court from justice court until first the court of origin, justice court, has legally obtained subject-matter jurisdiction

to bind the case over to district court. No court can acquire jurisdiction when statutory law has been violated. The appellant courts have additionally held that all plain error occuring in the court of origin is subject to review. As such all ensuing court orders must be held as constitutionally nugatory rendering all findings as a void judgment.

The jurisdictional process was eloquently opined by the court in Ralph v Police Court of El Centro, 190 P2d 632, 634, 84 Cal App. 2d 257 (1948) (An invalid law charged against one in a criminal matter also negates subject-matter jurisdiction by the sheer fact that it fails to create a cause of action. Subject-matter is the thing in controversy. Without a valid law there is no issue or controversy for a court to decide upon, thus were a law is invalid, void or unconstitutional there is no subject-matter jurisdiction to try one for an offense alleged under such a law. Without a valid law there can be no crime charged under that law, and where there is no crime or offense there is no controversy or cause of action and without a cause there can be no subject-matter jurisdiction to try a person accused by virtue of bare-naked allegations of violating said law. The court has no power or right to hear and decide a particular case involving such invalid or non-existent law).

Thomas Jefferson eloquently opined in 1826, "A society that will trade a little liberty for a little order will deserve neither and lose both." Wommer's performance at the trial stage was equally abysmal. Over the course of a two year plus span Wommer failed to adequately investigate the case or utilize the retained services of private investigator, J.T. Wommer filed one motion for Outrageous Government Conduct, claiming that LVMPD officer confiscated McMahon's home computer. His brief was completely misguided and incoherent as McMahon informed Wommer and J.T. that during

the consential search of McMahon's apartment on October 26, 2004 a LVMPD officer sat at McMahon's computer and installed a CD to download data off said computer. At hearing several LVMPD officials, including det. AC testified that no one got on the computer. McMahon testified to the contrary, which conforms to LVMPD Rules of Engagement in respect to claims of a sexual crime that computers must be investigated for indicia of inculpatory evidence. Had Wommer subpeoned the computer hard drive or IT data from the provider and host the evidence would have been favorable to impeach E.H. who testified she didn't use McMahon's password to access sexual chat rooms falsifying her age as 21 when McMahon was out of town.

It is noteworthy that at the December 16, 2011 evidentiary hearing Wommer testified that he knew nothing about computer technology or IT data retrieval. During the consential search McMahon's comforter was confiscated which contained a menstural period discharge of E.H. when McMahon was out of town. Wommer failed to challenge and suppress the innocuous evidence. State prosecutors G.O. and P.S. with malice and aforethought introduced Exhibit #33 engaging in extrinsic fraud upon the court to taint the evidence inferring that the menstural spot was the by-product of the initial sex act (four months prior in June, 2004) whereby McMahon tore E.H.'s hymen. Again, Wommer failed to suppress Exhibit #33.

Wommer's multiple errors had a cumulative effect on imflaming the passions of the jury. Neither witness accuser E.H. or S.K. were together in McMahon's apartment only E.H. as such neither E.H. or S.K's testimony had anything to do with one another and vice versa. Nor was their testimony cross admissible. Again, Wommer failed to sever the independent cases, and preserve the record for appeal. Yet after McMahon fired Wommer at sentencing Wommer committed fraud on both the district court and Nevada Supreme Court in filing forms to prosecute McMahon's direct appeal. In Wommers unauthorized direct appeal brief he raised the claim

of retroactive enjoinder, which again was misguided and in error to infer that enjoinder was initially impermissible but later was proper. At the said evidentiary hearing Wommer was asked why he didn't raise the claim pre-trial? Wommer claimed it didn't dawn on him until reviewing the trial transcripts.

Being that a sixth amendment IAC claim is a mixed question of law and fact, McMahon will address some of the 20 plus reversible errors and omissions of Wommer which could have reversed and remanded the case or exhonerated McMahon. These sixth amendment IAC violations goes to the deficient performance prong of Strickland v. Washington, 466 US 668, 692 (1984). Wommer at the said evidentiary hearing claimed that he does not file frivolous claims yet agreed that the enjoinder should have been challenged at the pre-trial stage. It is additionally noteworthy that the Nevada Supreme Court fined Wommer $500 for failing to secure TT yet the fine was later rescinded by the court.

In United States v Cronic, 466 US 648, 653 (1984) the Court held there are "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." The Court indicated that a presumption of prejudice is appropriate when there has been a constructive denial of counsel. This happens when a lawyer "fails to subject the prosecutions case to a meaningful adversarial testing," thus making "the adversary process itself presumptively unreliable." The differences between the situations addressed by Strickland and Cronic is "not of degree but of kind." Bell v Cone, 535 US 685, 698 (2002). McMahon was prejudiced based on Wommer's numerous errors in a complex case.

There is no legal question in dispute that a competent advocate must first raise the challenge to sever pre-trial as courts do not sever or enjoin cases sua sponte. Prior to trial Wommer failed to subpeona

McMahon's 3 alibi witnesses, after the State subpeonaed witnesses on four seperate occasions and flew witnesses in from the States of Washington and Utah. Wommer additionally failed to subpeona an expert forensic witness to rebut the States expert witness testifying to the DNA on States Exhibit #33 and nurse practioner P.S. who's diagnosis of E.H., months after the initial complaint alleged that E.H.'s hymenal tear was consistent with a sexual assault. This junk science analysis prejudiced McMahon and Wommer failed to challenge such hearsay.

Wommer also failed to present a single jury instruction in a life sentence case and further failed to challenge a single state jury instruction including a "flight instruction" to infer that McMahon fled the State and law enforcement subsequent to E.H's initial complaint, which is belied by the record and TT of both McMahon and States witness R.F. as mere leaving as McMahon was under no legal obligation to report to anyone.

Based on Wommer's errors and omissions pre-trial McMahon constructively entered the courtroom on an unlevel playing field forced to defend himself against two witness accusers in a single case inferring prior bad act evidence in a highly charged sex case. Wommer acted in the capacity of a second prosecutor. McMahon got slaughtered. McMahon strongly asserts that the flight instruction is not only prejudicial but infers that McMahon had commited some crime and failed to cooperate with the investigation which is belied by the record and TT of det. A.C. These multiple errors reflecting a fraud upon the court by State respondents to secure a conviction using any means necessary have been addressed by this Court in Cupp v Naughten, 414 US 141, 94 S Ct 396 (1973). (Before a Federal court may overturn a conviction resulting from a State trial in which [the disputed] instruction was undesirable, erroneous, or even "universally condemned" but that it violated some right which was

guaranteed by the fourteenth amendment).

There is no legal question in dispute, as in the misjoinder, to infer prior bad act evidence, that the passions of the jury were inflamed by the flight instruction in a way to relieve the state of its burden based on the record and IAC of Wommer. (See Estelle at 72, 112 S Ct 475). Wommer cannot invoke strategic or tactical reasoning to not subpeona witnesses or present jury instructions in a life sentence case. In Henderson v. Kibbe, 431 US 145, 154, 97 S Ct 1730 (1972). (It is the rare case in which an improper instruction will justify reversal of a criminal conviction which no objection has been made in the trial court). This IAC of Wommer equally applied to the States jury instruction of sexual assault as the TT and lack of evidence in support was glaring to reflect a lack of statutory requirement pursuant to NRS 200.366 Sexual Assault acts against the will of a victim: there was no force; no violence; no intimidation; no coercion; and no threat. E.H. freely came and went from her job as a babysitter for R.M. for 4 months from June-October, 2004. McMahon will put this complex pro se writ up against any rare case granted certiorari.

Had Wommer simply presented the proposed plea agreement and introduced a curative instruction the court could have struck the three counts of sexual assault. In Puckett v United States, 556 US 373, 387, 119 S Ct 1423, 1428 (1999). (Claim reviewed for plain error because defendant failed to object at trial to violation of plea agreement). As held by the Ninth Circuit in United States v Sneezer, 983 F2d 920 (9th Cir. 1992). (A defendant is entitled to a lesser included offense instruction when elements of lesser offense are subset of the charged offense and a factual basis supports the instruction). McMahon asserts that absent a curative instruction or challenges a denial of due process rights to a procedurally full and fair trial under the Fourteenth amendment.

Under The All Writs Act, 28 U.S.C. § 1651 gave federal courts the power

to "fashion appropriate modes of procedure" 394 US at 299... including discovery to dispose of petitions "as law and justice require". See Harris v Nelson, 394 US at 296. In Harris this Court stated that "where specific allegations before the court show reasons to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is... entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry". 394 US at 300, 89 S Ct at 1091.

McMahon asserts that when a jury trial is infected with fraud such a structural defect vitiates all jury findings. Sullivan, 508 US at 281, See also Cage v Louisiana, 498 US 39, 111 S Ct 328 (1990). This Court in Berger v. U.S., 295 US 78, 88 (1935). (Prosecutors may not use "improper methods calculated to produce a wrongful conviction"). In United States v Swanson, 943 F2d 1010 (9th Cir 1991). ("The adversarial system protected by the United States Constitutional 6th Amendment requires the accused to have counsel acting in the role of an advocate... a defense attorney who abandons his duty of loyalty to his client an effectively joins the state in an effort to attain a conviction suffers from an obvious conflict of interest").

A case on all 4's with McMahon's and a shining example of State prosecutors G.O. and P.S. misrepresenting DNA and sufficiency of evidence occurred in Miller v Pate, 386 US 2, 87 S Ct 785 (1972). In 1955 Miller, the prosecutor, knowingly misrepresented a pair of mens under shorts as "blood spots". In truth the prosecutor knew that the red stains were paint. Pate was convicted and sentenced to death. 12 years after numerous appeals the Court of Appeals reversed and the United States Supreme Court granted certiorari to consider whether the trial led to the conviction was constitutionally valid. The Court concluded it was not.

More than 30 years ago this Court held that the fourteenth amendment

cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. Mooney v Holohan, 294 US 103, 55 S Ct 340. There can be no retreat from the principle here. [Judgment of the Court of Appeals reversed]. See also Strickler v Green, 527 US 263, 281-82 (1990); Kyles, 514 US at 932-35; US v Bagley, 473 US 667, 674-75 (1985). Prosecutors duty to disclose material evidence - reasonable probability under Rule 3.8(d). In Kyles the Court held. ("The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." See also Bennett L. Gershman, Misuse of Scientific Evidence by Prosecutors, 28 Okla. City U. L. Rev. 17, 21-8 (2003).

Extrinsic Fraud is a basis for relief from judgment and a defense to Full Faith and credit, USCA Art 4 § 1. This Court in Gonzales v Crosby (2005) held that FRCP 60(b)(6) petitions of fraud are not treated as second or successive petition when motion attacks the integrity of petitioner's habeas proceeding. In Gonzales the Court held Rule 60(b) motion attacks not the "substance" of the Federal court resolution of a claim on the merits but some defect in the integrity of the habeas proceeding.

Using this type of tainted evidence to secure a guilty verdict is not foreign to SCOTUS and is why Brady held that "material evidence relevant to innocence or guilt violates due process irrespective of good faith or bad faith of the prosecution." 373 US at 87. See also Skinner v Switzer, 562 US 521, 536-37, 131 S Ct 1289 (2001). This Court in Pickford v Talbott, 322 US at 244-45, 64 S. Ct 225 weighed in on fraud holding. ("The spirit of fraud on the court role is applicable whenever the integrity of the judicial process or functioning has been undercut"). Had Wommer simply motioned the court for a mistrial under this pretext of fraud upon the court to preserve the record on appeal. In Donnelly v De Christoforo, 416 US 637, 94

S.Ct 1868, 40 LEd 2d 431 (1974). (Prosecutorial misconduct justifies declaring a mistrial where it "so infect(s) the trial with unfairness as to make the resulting conviction a denial of due process".

McMahon's federally protected rights under United States Supreme Courts holding in Hazel-Atlas Glass Co. v Hartford Empire Co., 322 US 238 (1944). The Court in an opinion entered by Justice Black held that the judgment be vacated (a claim brought 10 years after the judgment was entered) holding. ("[T]he general rule [is] the [federal courts will] not alter or set aside fraudulently begotten judgments"). The Court went on to hold, (" Furthermore tampering with the administration of justice in the manner indisputably shown here involves far more than injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public institutions in which fraud cannot complacently be tolerated consistently with the good order of society it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud"). The Court directed the 3rd Circuit to vacate the 1932 judgment (12 years earlier) and to direct the district court to deny any relief to Hartford. Id at 251.

Nearly all of the principles in civil and criminal law, that govern a claim of fraud upon the court, came from the Courts decision in Hazel-Atlas. The Court put in place a (4) four prong test similiar to England v Doyle;

First: The power to set aside a judgment exists in every court;

Second: In whichever court the fraud was committed the court should consider the matter;

Third: While parties have the right to file a motion requesting the court set aside a judgment procurred by fraud the court may

also proceed on its own motion. Indeed one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist"; and

Fourth: Unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting a judgment obtained by fraud, nor can laches bar consideration on the matter. The logic is clear, "[T]he law favors discovery and correctness of corruption of the judicial process even more than it requires and end to lawsuits".

McMahon has given both the court of origin, Eighth Judicial District Court and Nevada Supreme Court under NRCP 60(b)(6)(d)(3). See Index to Appendix. The courts collectively endorsed and sanctioned laches under Chapter 34. The Innocence Protection Act of 2002 spoke to the use of faulty DNA evidence while alone the Innocence Project has successfully secured the release of over 500 innocent prisoners and in each case the prosecutor was as adamant about the guilt of the defendant as now.

The State prosecutors, in closing arguments, continued to aver that the DNA evidence was compelling and overwhelming to support E.H.'s testimony and Wommer's failure to rebut the faulty DNA evidence. First and foremost E.H's TT and credibility was suspect at best, she testified that she was a liar and had no problem lying. The sanitized case was a "he said, she said" absent a scintilla of credible evidence, Forensic or otherwise, The Court in Rinaldi, 98 SCt 85 held.

(In examining prosecutorial misconduct, it is necessary to view the conduct at issue within the context of the trial as a whole. The Court went on to hold that the district court judge represents defendants sole source of protection against "prosecutorial misconduct and must be careful to safeguard the rights."

This dictum sounds proper in writing however the reality of the instant case clearly reflects the underlying degree of collusion between ex-prosecutor judge's David Barker and William Kephart to protect friend and ex-prosecutor Wommer as well as rogue prosecutors hell bent on securing a conviction using any means necessary. Allegedly, state prosecutors must adhere to ABA and Nevada Rules of Professional Conduct in the administration of law and oath of public office. Rule 3.8. Special Responsibilities of a Prosecutor. The prosecutor in a criminal case shall: (a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. However, rarely does an independent jurist hold prosecutors to these rules, nor are prosecutors held accountable for going outside the scope of their official capacity. Fraud upon the court alone warrants an evidentiary hearing to determine if the judicial machinery was upset and the integrity of the fair process can not be relied upon to render a just result?

In closing arguments State prosecutors continued to misrepresent the innocuous DNA evidence averring that the evidence was one hundred thirty-eight thousand to one against McMahon. (See Ex# 34 Vol IV pp 148-49, 163, pp. 166-67 and 169). Wommer in closing arguments failed to rebut the state respondents lies and fraud upon the court acting in the capacity of a second prosecutor. In Carter, 236 at 783, the court put in place a 4 part litmus test to establish if the evidence was so arbitrary that the fact-finder and the adversary system [were] not... competent to whether the

the comments by prosecutor in trial affected the defendants substantial rights a court must consider: (1) whether the conduct and remarks of the prosecutor tended to mislead the jury or prejudice the defendant; (2) whether the conduct or remarks were isolated or extensive; (3) whether the remarks were deliberately or accidentially made; and (4) whether the evidence against the defendant was strong.

In summing up Wommer's cumulative errors in Harris v Wood, 64 F3d 1432, 1439 (9th cir 1995). (The cumulative impact of multiple errors by counsel can amount to IAC). In Correll v Ryan, 539 F3d 938, 949 (9th Cir 2008). (when evaluating counsel's performance an "uninformed strategy" is "no strategy at all"). (1) the underlying legal claim was of arguable merit; (2) Counsel had no reasonable strategic basis for his action or inaction, and; (3) the petitioner was prejudiced - that is, but for counsel's deficient stewardship, there is a reasonable likelihood the outcome of the proceedings would have been different.

Accordingly, the Ninth Circuit should have conducted a de novo review and granted a second or successive petition on petitioners claim that he was deprived of his right to a fair trial based upon Wommer's ineffective assistance of counsel and prosecutorial misconduct of extrinsic Fraud upon the court Rule 60(b)(6)(d)(3).

III. THE NINTH CIRCUIT SHOULD HAVE GRANTED A SECOND OR SUCCESSIVE PETITION ON PETITIONER'S CLAIM THAT HE WAS DEPRIVED OF HIS RIGHT TO A FAIR FIRST DIRECT APPEAL BY STATE PROSECUTORS IN FAILING TO SERVE A COPY OF THEIR ANSWERING BRIEF ON McMAHON OR COUNSEL DENYING THEM OF THE RIGHT TO FILE A REPLY BRIEF RENDERING STATE SUPREME COURTS AFFIRMANCE A CONSTITUTIONAL NULLITY.

McMahon strongly asserts that denying a petitioner or counsel of the right of redress of grievances of government runs afoul of a bedrock principle of the First amendment guarantees. This structural error was in violation of FRAP and NRAP Rule 25(b) and Rule 31(a)(d)(e) specifically holds: Failure of service on opposing party of briefs is required, "...service on party represented by counsel shall be made on party's counsel." Rendering "shall" as operative and a structural error violating Due Process under the Fourteenth amendment, (See Ex#57 p. 16). By virtue of the fact that McMahon was denied the right to file a reply brief in his first direct appeal to rebut and correct the States plain error in their answer brief - either by design or inadvertance - pursuant to legal standards renders their ex parte brief as null and void which equally attaches to the Nevada Supreme Courts Order of Affirmance. (See Ex. # 58).

In Kitchen Factor Inc. v Brown, 91 Nev 308, 535 P2d 677 (1975). The court addressed NRAP 31(c) holding in its discretion, treat failure of respondent state to file and serve opposition party with a copy of their answer brief as a confession of error and reverse judgment without consideration of merits on appeal. See also Toiyable Supply Co. v Arcade, 74 Nev 314, 330 P2d 121 (1958). Had Wommer, in his unauthorized brief, been afforded the right pursuant to NRAP Rule 25(b) the states arguments to misjoinder and their $20 bill theory and sufficiency of evidence to their blatant manufacturing Falsifying DNA evidence could have been rebutted and persuaded the court to reverse and remand the case ordering a new trial. Moreover, had Wommer not created a conflict of interest, in constructively hijacking McMahons First direct appeal, after being fired at sentencing terminating the attorney/client relationship, then McMahon or a competent counsel could have raised subject-matter jurisdiction and prosecutorial mis-

conduct under Rule 60(b)(6)(d)(3) fraud upon the court as well as the numerous sixth amendment IAC claims on Wommer and the case would have been dismissed with prejudice for void judgment.

During this unauthorized direct appeal process McMahon put the Nevada Supreme Court on notice of Wommers conflict of interest by filing a writ of habeas corpus and writ of mandamus for the court to seize the case and remand back to district court court. However, the court invoked NRAP 46(b) stating that Wommer was the attorney of record and that McMahon should address all concerns with Wommer-rendering the proper person petition as improper. (See Ex's #50, 54).

On July 16, 2008 Wommer filed a Notice of Appeal to the Eighth Judicial District Court claiming the defendant/appellate McMahon was given notice, yet in the certificate of mailing a copy was not served on or mailed to McMahon. (See Ex# 44). On July 29, 2008 Wommer filed a Case Appeal Statement/Notice of Appearance of counsel to the Nevada Supreme Court declaring that he was the attorney for defendant McMahon and that he was retained as Appellate counsel in the district court on or about April 24, 2006 as trial counsel. Which is belied by the record as McMahon retained Wommer on December 15, 2005. (See Ex# 45). Again, Wommer in the certificate of mailing on July 23, 2008 fails to provide McMahon with a copy of the document. At no time subsequent to July 29, 2008 did Wommer write, correspond or visit with McMahon.

On or about July 29, 2008 Wommer Filed a Docketing Statement Criminal Appeals, however in his certificate of service, the date unknown, again fails to serve a copy on McMahon. In the general information Wommer stated that he was retained in the district court and again engaged in extrinsic fraud upon the court to claim that he was retained as appellate counsel. Yet, as an officer of the court, in his verification averred that the docketing statement was true

and complete - which was false. On September 12, 2008 Wommer filed a Motion for Appointment of Counsel for Appeal in the district court. Motioning the court for appointment of appellate counsel, in stark constrast to what he averred to the Nevada Supreme Court in filing forms claiming that he was retained at the appellate level. Wommer continues his campaign of falsehood claiming that McMahon requested the affiant [Wommer] to remain as appellate counsel, absent any proof of waived consent or verification of retainer contract by McMahon. Again, Failing to serve notice on McMahon. (See Ex. #47).

On September 22, 2008 Wommer's friend and co-conspirator district court Judge Barker granted and Ordered Wommer's Motion for Appointment of Counsel. The court noted in Minutes that Wommer had been appointed as counsel at the lower level and is familiar with the case - another falsehood. (See Ex#47 p. 14). After finally being served a document reflecting Wommers fraud and conflict of interest on October 07, 2008 McMahon Filed 3 proper person motions in the district court challenging Wommer's conflict of interest constructively hi-jacking McMahon's first direct appeal: (1) Motion to Withdraw Wommer as counsel; (2) Motion for Appointment of Conflict-Free Counsel; and (3) Motion for an Evidentiary Hearing / Feretta Hearing. On October 15, 2008 State Filed an Opposition to the 3 motions claiming that McMahon does not have a right to pick and choose counsel. The ABA Rules of Professional Conduct, which mirrors Nevada Rule 1.1-6 clearly states (c) a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) The representation will result in violation of the Rules of Professional Conduct or other law; (2) The lawyers physical or mental condition impairs the lawyers ability to represent the client; or (3). The lawyer is discharged. McMahon also served a copy on Wommer of the 3 motions in a certificate of mailing on September 28, 2008. (See Ex#48).

On October 20, 2008 district court ordered a hearing for all pending motions and continued the matter until Wommer's presence. (See Ex# 47). Between November 05, 2008 and November 21, 2008 Wommer failed to appear on 3 occasions. (See Ex.# 47, 48 and 56). It is noteworthy that Wommer did not file his opening brief until May 04, 2009. On November 21, 2008 district court heard pending motion, waiving McMahon's appearance. Upon courts inquiry Wommer stated he was appointed as appellant counsel and advised the court that he did not receive a copy of the 3 pending motions - which is belied by the record. Wommer requested the matter be stayed and set for a status check for (6) six months until the appeal process has been completed. Court Ordered matter stayed, and further instructed Wommer to contact defendant to see what is going on and, if there is a problem he can place matter back on calendar.

When McMahon received a copy of the court Minutes he forwarded another letter to Wommer for him to withdraw as counsel for conflict of interest and to return McMahon's case file. (See Ex# 51). Receiving no response from Wommer McMahon forward a letter to Judge Barker informing the court of the conflict of interest pursuant to NRAP (8)(ii) holding: if the petitioner is indigent directions for the appointment of appellate counsel other than counsel for the defense in the proceedings leading to conviction and sentence is a violation of McMahon's rights and Wommer's failure to communicate in contrast to the courts order. (See Ex# 49). Upon no response from either Wommer or Judge Barker on or about January, 2009 McMahon filed a complaint with the State Bar of Nevada as to Wommer's conflict of interest, fraud upon the court and hijacking the direct appeal requesting sanctions. On February 17, 2009 McMahon received a response from the Nevada Bar against Wommer. The boiler plate denial was identical to that of other prisoner correspondence. (See Ex# 52).

On or about January, 2009 McMahon additionally filed a complaint on

Judge Barker in failing to protect McMahons rights to a fair direct appeal. The complaint languished with the Commission on Judicial Discipline until June 26, 2012 whereby the complaint was dismissed. (See Ex# 53). Wommer's 9 page brief failed to address any of his IAC errors or omissions. (See Ex# 56) However Wommer's incessant greed to double dip and bill the state for legal services was widely reported in an article by the Las Vegas Review-Journal as Wommer being one of the top 10 lawyers. Wommer's billings exceeded $400,000.00.

The State respondents answering brief, filed May 29, 2009 in their certificate of service averred that a copy of the document was mailed to: Marc A. Saggese, Esq. Christalli & Saggese LTD, 732 S. Sixth Street, Suite 100, Las Vegas, Nevada 89101 by Eileen Davis, Employee District Attorney Office. (See Ex.# 57 p. 16).

In Faretta v California, 397 US 237 Justice Black concurring. Id at 834. ("To force a lawyer on a defendant can only lead him to believe that the contrives against him... Personal liberties are not rooted in the law of averages. The right to defend is personal the defendant and not his lawyer or the state will bear the consequences of a conviction. It is the defendant therefore who must be free personally to decide whether in his particular case counsel is to his advantage... his choice must be honored out of the respect for the individual which is the lifeblood of the law").

In Evitts v Lucey, 469 US 387 (1985). ("In bringing an appeal as a right from his conviction, a criminal defendant is attempting to demonstrate that the conviction with its consequence drastic loss of liberty is unlawful... nominal representation at trial does not suffice to as nominal representation on an appeal of right suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all." "A defendant whose lawyer

does not provide him with effect assistance on direct appeal and whois prejudiced by the deprivation is thus entitled to a new appeal". See Mayo v Henderson, 13 F 3d 528, 537 (2nd Cir) cert. denied 130 L Ed 2d 35, 115 S Ct 81 (1994).

The Seventh Circuit Court of Appeals in Stallings v U.S. 536 F3d 624, 627 (7th Cir 2008). (In assessing whether an attorney missed a "significant and obvious" issue, if so the court compares the neglected issue to those actually raised, if the ignored issues were clearly stronger than appellate counsel was deficient; to show prejudice a petitioner must show that there is a "reasonable probability" the omitted claim would have "altered the outcome" of the appeal had it been raised). McMahon has made a colorful claim to pass such a test.

In Cuyler v Sullivan, 446 US 335, 100 S Ct 1708 (1980). (In order to find a sixth amendment violation based on conflict of interest, the reviewing court must find: (1) that counsel actively represented conflicting interests; and (2) that an actual conflict of interest adversely affected the attorneys performance. Again, McMahon has clearly and convincingly shown that Wommer's failure to raise meritorious claims in the unauthorized direct appeal brief denied McMahon of a fair appeal and due process. NRS 34.810(1)(b). This Court over the last 30 years has recognized that a lawyer who disregards specific instructions to perfect a criminal appeal acts in a manner that is both professionably unreasonable and presumptively prejudicial. See Roe v Flores-Ortega, 528 US 470, 477, 484-85 (2000).

Accordingly, McMahon should have been granted a second or successive petition by the Ninth Circuit based on petitioner's claim that he was deprived of his right to a fair first direct appeal by State prosecutors in failing to serve a copy of their answering brief on McMahon or counsel denying them of the right to file a reply brief rendering State Supreme Courts Affirmance a constitutional nullity as well as Wommer's fraud upon the court Rule 60(b)(6)(d)(3).

his memory to the termination of the attorney-client relationship at sentencing, "... I think I asked to be appointed for appellate purposes." Counsel Nguyen concluded the direct examination asking Wommer. "You didn't do any specific investigation, or retain any experts to fully develop what type of DNA was collected in that apartment?" Wommer answered, "No".

On cross examination the state failed to prove that Wommer's strategy or tactics at trial were proper to pass Stricklands test or how the direct appeal was legal. The state prosecutors open-ended questioning was designed to gloss over the issues and color the facts. The state begins their campaign of fraud upon the court averring that an arrest warrant was in place, creating a ruse with deft A.C. Declaration Warrant/Summons document. Then they lie averring, "Are you aware that the defendant had prior convictions in this case?" Wommer replies, "Yes". This falsehood is belied by the record. The state then claims absent proof that a re-booking process occured on a newly disclosed TCR, then goes on to commit more fraud upon the court averring that a 72 hour hearing was conducted, which is belied by the record. (See Ex.#17 p. 44; pp 47-56). Then state injects the Fraudulently TCR into the court, (See Ex# 63) when compared to the original Ex.# 11 the document reflects a single booking event and the forged signature of justice court magistrate KBH, which is a felony crime in Nevada. The uttered document reflects discrepancies: white-out crop marks; different event numbers; different time stamp hours, all evidence tampering. The December 13, 2005 date above KBH's superimposed forged signature would have meant that a probable cause hearing was conducted in justice court on record, which is belied by the record. (See Ex# 76). Additionally, not only are the time stamps different dates, the box of O.R. release is checked, which is belied by the record as McMahon was not released on O.R. until the initial appearance on December 15, 2005.

McMahon testified in direct examination and cleared the record as to

Wommer's IAC and rebutted the states fraudulent assertions of the existence of an arrest warrant; probable cause hearing; no subject-matter jurisdiction; the bogus TCR as no rebooking process occured; Wommer was fired at sentencing; Wommer's faulty legal advise in regard to the states plea agreement; The State passed McMahon on cross-examination. In closing arguments the State claimed that Wommer's representation was both competent and his defense strategic and tactical. The state went on to mislead the court in claiming the Nevada Supreme Courts order of Affirmance makes it law of the case.

On February 01, 2012 judge Barker's Finding of Fact, Conclusions of Law and Order was a blue print draft of the States signed by the judge. (See Ex.#67). Not enough pages are left to rebut the errors and falsehood. Not only was the courts reasoning fatally flawed the appeal to the Nevada Supreme Court found no fault. However, Wommer's luck ran out as the United States Attorney General's Office indicted him of embezzlement, fraud, money laundering and tax evasion. (See Ex.#68) The voluminous 469 pages of TT reflects that Wommer had a serious Dr. Jekyll and Hyde personality disorder and had lied profusely in the December 16, 2011 evidentiary hearing.

In United States v Frady, 456 US at 163 n. 14, 102 S Ct 1584. (The fundamental good faith application of oath is to eliminate fraud and corruption that taints the integrity of the fair process). The Court in Sullivan v Louisiana, 508 US 275, 279, 113 S Ct 2078 (1993) held that judicial bias, if proven, requires automatic reversal and is not subject to harmless error review, like most trial errors. This Court relied upon earlier holdings as in Vasquez v Hillery, 474 US 254, 263, 106 S Ct 617, (1986). (Bias, when it is at work, will not necessary announce itself in either the judges rulings or his rationale. When the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are "hidden from review."

In the context of judge Barker's judicial misconduct at trial and overt bias in forcing Wommer back onto the direct appeal and failing to recuse sua sponte in the evidentiary hearing. The courts bias and protective orders go beyond the appearance of judicial bias and manifest of justice. McMahon has proven by a preponderance of evidence that due process rights were violated. This is systemic in the State of Nevada as its been more than two decades since a pro se petitioner has been granted relief from imprisonment in district courts or Nevada Supreme Court.

The documented history of Nevada State district attorneys is equally egregious withholding exculpatory evidence, manufacturing or planting false evidence, intimidating witnesses and suggestive line up identification practices is not foreign to the courts, media and conscious citizens at large. See Mills Lane v Second Jud. Dist. Ct., 104 Nev 427, 760 P2d 1245 (1985). Judge Accuses DA of Withholding Evidence, Reno-Gazette-Journal, February 12, 1988. The court in Mills Lane held. ("[I]n order for a court to obtain jurisdiction of a given case proper procedures must be pursued. Proceedings in a court which has not acquired jurisdiction as provided and recognized by laws are "void and a nullity"). United States Supreme Court Justice Douglas eloquently opined: "A lie can travel around the world before the truth can buckle its shoe."

Accordingly, the Ninth Circuit should have granted a second or successive petition on petitioner's claim that he was deprived of his right to a procedurally full and fair evidentiary hearing based upon State prosecutors intentionally introducing forged documents of a sitting judge creating extrinsic fraud upon the court under Rule 60(b)(6)(d)(3) and the fourteenth amendment rights to the United States constitution.

V. THE NINTH CIRCUIT SHOULD HAVE GRANTED A SECOND OR SUCCESSIVE PETITION ON PETITIONER'S CLAIM THAT HE WAS DEPRIVED OF HIS RIGHT TO A NEW EVIDENTIARY HEARING TO IMPEACH COUNSEL WOMMER UNDER CRONIC STANDARDS.

What the December 16, 2011 evidentiary hearing confirmed was the fact that Wommer is a pathological liar and when counsel Nguyen motioned the Nevada Supreme Court pursuant to their controlling standard of Mann v State, 118 Nev 351, 353, 46 P3d 1228-29 (2002). ("A petitioner is entitled to a post-conviction evidentiary hearing when he asserts claims supported by specific factual allegations not belied by the record that if true would entitle him to relief"). The court went on to hold. ("If the petitioner did not receive a full and fair evidentiary hearing then a new hearing is warranted"). The court denied the motion reversing their own res judicata controlling authority as Wommer impeached himself in claiming he knew and understood the law and standards in stark contrast to his TT in his criminal trial.

In Wommer's criminal trial defense of "diminished capacity" trial expert witness neuropsychologist Dr. Louis E. Mortillaro diagnosed Wommer to confirm his frontal-lobe brain damage analysis:

> "[F]rontal-lobe damaged individuals have a devil of a time in inhibiting their impulses because they think that the reward is worth the risk, because that's what the damaged brain is telling them. But certainly the brain is not worth the risk, because if you look at something logically, there are other alternatives..."

Dr. M goes on to aver that attorneys suffering such mental conditions are incapable of mounting an effective defense due to impaired decision-making,

poor impulse control and faulty logic... that Wommer was angry, paranoid and hostile. He was "emotionally immature." He failed to consider the "seriousness of the consequencies of his actions" because people with brain damages like this "do stupid things." According to Wommer's ex-wife he had poor judgment because he didn't" see the world like people that don't have a damaged brain Dr. M. goes onto hold: "Quick to anger. Quick to act on the anger. Poor impulse control. Anybody that has poor impulse control may not always make the best decisions. People that look at the world through a damaged brain just don't see the world like people that don't have a damaged brain."

Wommer's trial attorney avowed that in 1991 Wommer was in a coma for several days and required months of recovery time before he returned to work as an Assistant United States Attorney and that Wommer's criminal conduct was "beyond his control" and "nothing but madness." McMahon strongly asserts that the instant case showcases Wommer's errors and omissions were based upon his mental capacity to even practice law. The evidence is glaring that Wommer did not act in the capacity to render effective assistance under Strickland or Cronic as the degree of prejudice. (a lawyer in this condition and capacity is unreliable to defend a client, as such no court can have confidence in their performance based upon the errors and omissions of record to strike a blow at the states case).

Neither McMahon's opinion nor this Honorable Court are medically qualified to refute Dr. M's medical analysis, which Chief Judge Gloria M. Navarro, in Wommer's criminal trial, took under advisement finding Wommer's testimony to be fabricated which can equally attach to Wommer's prior testimony on December 16, 2011, as an officer of the court. McMahon strongly asserts that Wommer's testimony cannot be held to be more reliable and trustworthy than McMahon's. Contrarily, McMahon was never impeached, discredited nor did he commit extrinsic fraud upon the court.

Wherefore, McMahon's testimony must be given equal weight in a sanitized case, devoid of fraud, and not belied by the record.

In Townsend v Sain, 372 US 293, 83 SCt 745 (1963). A defendant is entitled to an evidentiary hearing if he can show that: (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears the state trier of fact did not afford the habeas applicant a full and fair hearing.

If the objective in justice is to get to the truth then to deny McMahon of an evidentiary hearing can only suppress the truth and facts in the administration of justice. The government considers innocent people in prison as collateral damage and simply the cost of enforcing law and order. McMahon strongly asserts that the "ends of justice" cannot be defeated by immersing the truth in a quagmire of procedural detail so dense and opaque as to hide simple right from wrong. Rogue lawyers have set back the trust and integrity in the courts by a century. This must stop.

CONCLUSION

McMahon strongly asserts that before any court can address the merits of a claim certifying the question of subject-matter jurisdiction must first be proven to exist with memorandum of points and authority in support. The evidence of record is prima facie to prove that neither the Las Vegas Township Justice Court nor the State of Nevada Clark County district attorney's office legally obtained subject-matter jurisdiction to hear or the authority to prosecute McMahon for any case. This void judgment should have been arrested by the Ninth Circuit Court.

McMahon strongly asserts that based on the evidence of record State prosecutors

engaged in extrinsic fraud upon the court under NRAP Rule 60(b)(6)(d)(3) by injecting faulty DNA evidence into the trial to mislead the jury and inflame their passions to prejudice McMahon denying him of a fair trial. McMahon has presented multiple errors and omissions of Wommer who's mental state cannot be held as competent at the trial stage in violation of his sixth amendment rights

McMahon strongly asserts that the first direct appeal constructivly hijacked by Wommer became a nullity under Nevada Rules of Appellate Procedure when state prosecutors failed to serve a copy of their answer brief on McMahon or counsel rendering the Nevada Supreme Courts order of Affirmance a statutory nullity. McMahon's rights to a full and fair direct appeal were clearly violated.

McMahon strongly asserts that the post-conviction evidentiary hearing by the state respondents deliberately engaging in extrinsic fraud upon the court by injecting erroneous forged documents of a sitting judge into evidence. This fraud upon the court violated McMahons Fifth, sixth and fourteenth amendment rights to a fair hearing. Had the Ninth Circuit granted McMahon a second or successive petition a new evidentiary hearing would have proved Wommer's IAC violated McMahon's rights.

McMahon strongly asserts that had the Ninth Circuit not invoked discretion and would have conducted a de novo review the court would have rendered Wommer as mentally unfit to practice law and would have rendered the instant case as a void judgment. Accordingly, the writ of Mandamus should be granted.

Dated this 21 day of December, 2021.

Respectfully submitted,

Johnny Edward McMahon #1022589
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419
In proper person