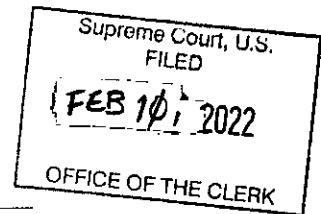


21-7481
NO. ~~7481~~

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY K. PRINCE - PETITIONER,
vs.

STATE OF MICHIGAN - RESPONDENT.



On Petition for Writ of Certiorari to the
Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

BY: Timothy K. Prince #359035
Petitioner in propria persona
Marquette Branch Prison
1960 U.S. Highway 41 South
Marquette, Michigan 49855

* NOTICE: This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

QUESTION PRESENTED FOR REVIEW

- I. Did the Michigan Supreme Court err by refusing to review this claim where a judge must disqualify itself where it is actually biased or where the possibility of actual bias is too high to be constitutionally tolerated because of a pecuniary interest?
- II. Did the Michigan Supreme Court err by refusing to review the lower court opinion where Petitioner was denied his right to the effective assistance of trial counsel when counsel failed to object to Petitioner being sentenced under a statute that clearly creates a pecuniary interest for the judge in the outcome of the proceeding?
- III. Did the Michigan Supreme Court err by refusing to review the lower court opinion where Petitioner was denied the effective assistance of counsel on his appeal when counsel neglected strong and critical issues which must be seen as significant and obvious, and because of ineffective assistance of counsel, for failing to raise the within issues, should any procedural defaults be overcome?

LIST OF PARTIES

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

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The June 13, 2019, order of the Michigan Circuit Court denying the motion for relieve from judgment. (*Appendix A: People v. Prince, LCN: 09-2294-FC (Macomb County Circuit Court August 14, 2020)*). The April 17, 2020, Michigan Court of Appeals denial of petitioner's application for leave to appeal. (*Appendix B: People v. Prince, 2021 Mich. App. LEXIS 2925 (Mich. Ct. App. May 11, 2021)*). Lastly, the July 6, 2021, Michigan Supreme Court denial of Petitioner's application for leave to appeal. (*Appendix C, People v. Prince, 2021 Mich. LEXIS 2169 (Mich. Sup. Ct. December 1, 2021)*).

STATEMENT OF JURISDICTION

Petitioner seeks review of the December 1, 2021, opinion of the Michigan Supreme Court, the highest court in the State. This Court has jurisdiction pursuant to *28 U.S.C.A. § 1257(a)*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. CONSTITUTIONAL PROVISIONS:

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

U.S. Const. Amend. XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the 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 to any person within its jurisdiction the equal protection of the laws.

B. STATUTORY PROVISIONS:

Mich. Comp. Laws § 769.1k(1)(b)(iii): (iii) . . . any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following: (A) Salaries and benefits for relevant court personnel. (B) Goods and services necessary for the operation of the court. (C) Necessary expenses for the operation and maintenance of court buildings and facilities.

Mich. Comp. Laws § 600.4803: (1) A person who fails to pay a penalty, fee, or costs in full within 56 days after that amount is due and owing is subject to a late penalty equal to 20% of the amount owed. The court shall inform a person subject to a penalty, fee, or costs that the late penalty will be applied to any amount that continues to be unpaid 56 days after the amount is due and owing. Penalties, fees, and costs are due and owing at the time they are ordered unless the court directs otherwise. The court shall order a specific date on which the penalties, fees, and costs are due and owing. If the court authorizes delayed or installment payments of a penalty, fee, or costs, the court shall inform the person of the date on which, or time schedule under which, the penalty, fee, or costs, or portion of the penalty, fee, or costs, will be due and owing. A late penalty may be waived by the court upon the request of the person subject to the late penalty. (2) Within 30 days after receiving a late penalty, the clerk of the court shall transmit the amount received to the treasurer or chief financial officer of the funding unit of the court, for deposit in the general fund of the funding unit. (3) As used in this section, "funding unit" means 1 of the following as applicable: (a) For the circuit court, each county in the circuit. (b)

For the recorder's court of the city of Detroit, the county. (c) For the district court, the district funding unit of the district, as defined in section 8104. (d) For a municipal court, the political unit where the municipal court is located.

Mich. Comp. Laws § 769.1f(2)(d): (2) The expenses for which reimbursement may be ordered under this section include all of the following: (d) The salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction.

C. COURT RULES:

Mich. Ct. Rule 6.508(D)(3)(a)-(b): (D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion (3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates (a) good cause for failure to raise such grounds on appeal or in the prior motion, and (b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that, (i) in a conviction following a trial, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal.

Mich. Ct. Rule 6.508(D)(3)(iii): (D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion (3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates (iii) in any case, the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case.

Mich. Ct. Rule 6.508(C): (C) Evidentiary Hearing. If the court decides that an evidentiary hearing is required, it shall schedule and conduct the hearing as promptly as practicable. At the hearing, the rules of evidence other than those with respect to privilege do not apply. The court shall assure that a verbatim record is made of the hearing. [Dealing with an evidentiary hearing in the state circuit court]

Mich. Ct. Rule 7.211(C): (C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion. (1) Motion to Remand. (a) Within the time provided for filing the appellant's brief,

the appellant may move to remand to the trial court. The motion must identify an issue sought to be reviewed on appeal and show (i) that the issue is one that is of record and that must be initially decided by the trial court; or (ii) that development of a factual record is required for appellate consideration of the issue. [Dealing with an evidentiary hearing in the Michigan Court of Appeals]

Mich. Ct. Rule 7.305(C)(8): (C) When to File. (8) Orders Denying Motions to Remand. If the Court of Appeals has denied a motion to remand, the appellant may raise issues relating to that denial in an application for leave to appeal the decision on the merits. [Dealing with an evidentiary hearing in the Michigan Supreme Court];

STATEMENT OF THE CASE

Timothy K. Prince, (known hereafter as "Petitioner") *in propria persona*, states the following in support of his petition.

On January 22, 2010, following a Jury Trial before the Honorable Mary A, Chrzanowski, Macomb County Circuit Court Judge, Petitioner was convicted First Degree Murder, contrary to *Mich. Comp. Laws § 750.316(A)*, Felony Murder, contrary to *Mich. Comp. Laws § 750.316(B)*; Armed Robbery, contrary to *Mich. Comp. Laws § 750.529*; Kidnapping, contrary to *Mich. Comp. Laws § 750.349*; Arson of Personal Property, \$1,000 or more, contrary to *Mich. Comp. Laws § 750.74(1)(c)(i)* and Habitual Offender, Second Offense, contrary to *Mich. Comp. Laws § 769.10*.

On February 23, 2010, Petitioner was sentenced to Life Without Parole for the First Degree Murder and Felony Murder Conviction; 25 to 60 years for Armed Robbery, Kidnapping 25 to 60 years, and 3yrs 4mos to 7yrs 6mos. for Arson- Personal Property, \$1,000 or More, fees and costs. Petitioner was being represented by Steven R. Freers.

On March 1, 2012, the court ordered Petitioner to pay \$3,765.16 in late fees, to be paid to the court for not being able to pay court cost and other fees ordered by the court.

Petitioner filed a timely notice of appeal and request for the appointment of counsel and Appellate Counsel, Danial Rust, who raised the following three issues in Petitioner's appeal by right to the Court of Appeals, which was docketed as case number 332077:

I. Is Petitioner entitled to dismissal of one of the charges and sentences against him where the constitutional provision against double jeopardy was violated?

II. Is Petitioner entitled to a new trial where there was insufficient evidence for the conviction of kidnapping?

III. Is Petitioner entitled to a new trial where the trial court failed to instruct the jury as to the tracking dog instruction, cji2d 4.14, and was his trial counsel ineffective for failing to request the instruction?

On August 8, 2017, the Court of Appeals affirmed Petitioner's convictions in an unpublished opinion. *People v. Prince*, 2017 Mich. App. LEXIS 1271 (Aug 8, 2017).

Petitioner then filed a timely Application for Leave to Appeal within the Michigan Supreme Court in *pro per*, which was docketed as MSC 156404. On March 5, 2018, the Michigan Supreme Court denied the application. *People v. Prince*, 501 Mich. 983; 907 N.W.2d 553 (2018).

On July 11, 2014, Petitioner filed a Motion for Relief from Judgment within trial court, raising the following issues of error:

I. Petitioner was deprived of the right to present a defense where the trial court excluded exculpatory evidence.

II. Substantial prosecutorial misconduct deprived Petitioner of a fair trial where the prosecution (1) withheld exculpatory evidence from discovery; (2) the prosecution used false testimony from witnesses; (3) the prosecution repeatedly spoke of evidence not introduced into the record in closing arguments; (4) the prosecutor altered evidence that was presented during that preliminary hearing and trial; (5) the prosecutor made an improper golden rule argument.

III. Investigating officer committed multiple acts of misconduct with regards to evidence handling, search and investigatory practices; violating the Petitioner's constitutional rights.

IV. Trial counsel denied the Petitioner of effective assistance of counsel and a fair trial by withholding evidence, failing to call witnesses and presenting false facts in closing argument about witness testimony.

V. Appellant counsel provided ineffective assistance of counsel by neglecting to raise meritorious issues on appeal of right; subjecting the Petitioner to a stricter level of review.

On September 1, 2015, the Honorable Mary A. Chrzanowski denied the motion for relief from judgment, without an evidentiary hearing. *People v. Prince*, LCN: 09-2294-FC (Macomb County Circuit Court September 1, 2015).

Petitioner realizing that three other issues needed to be included then filed a motion to supplement his July 14, 2014 motion for relief from judgment raising three additional issues:

I. Must a judge disqualify itself where it is actually biased or where the possibility of actual bias is too high to be constitutionally tolerated because of a pecuniary interest. Here *Mich Comp. Laws § 769.1k(1)(b)(iii)* gave the district and circuit court judges a pecuniary interest in the outcome of Petitioner's case where the money from finding of guilt goes to the justices and its personnel that assist them, including the prosecution, and is Petitioner entitled to have his conviction and sentence reversed and be granted a new trial?

II. Was Petitioner denied his right to the effective assistance of trial counsel when counsel failed to object to Petitioner being ordered to pay for being sentenced under two statutes that clearly create a pecuniary interest for the judge in the outcome of the proceeding, denying Petitioner his right to a fair trial?

III. Was Petitioner denied the effective assistance of counsel on his appeal when counsel neglected strong and critical issues which must be seen as significant and obvious and because of ineffective assistance of counsel for failing to raise the within issues, should any procedural defaults be overcome?

The motion to supplement was denied on 08/14/20, without the trial court reviewing the merits of the issues presented to it and misinterpreting *Mich. Ct.*

Rule 6.502(F). People v. Prince, LCN: 09-2294-FC (Macomb County Circuit Court August 14, 2020). (Appendix A: People v. Prince, LCN: 09-2294-FC (Macomb County Circuit Court August 14, 2020)).

Petitioner then filed within the Michigan Court of Appeals, which was docketed as Mich. Ct. App. #356511. Level to appeal was denied on May 11, 2021. *People v. Prince, 2021 Mich. App. LEXIS 2925 (Mich. Ct. App. May 11, 2021). (Appendix B: People v. Prince, 2021 Mich. App. LEXIS 2925 (Mich. Ct. App. May 11, 2021)).*

Petitioner lastly file an application for leave to appeal within the Michigan Supreme Court, which was docketed as Mich. Sup. Ct. #163191. Leave to appeal was denied on December 1, 2021. *People v. Prince, 2021 Mich. LEXIS 2169 (Mich. Sup. Ct. December 1, 2021). (Appendix C: People v. Prince, 2021 Mich. LEXIS 2169 (Mich. Sup. Ct. December 1, 2021)).*

Petitioner is now before this Court in hopes to get a just and proper reviewing of the claims where the state courts have refused to follow the relevant standing precedent of this Court. *Sup. Ct. Rule. 10(b)(c).*

Any additional facts are retained *infra*.

REASONS FOR GRANTING THE WRIT

I. THE MICHIGAN SUPREME COURT ERRED BY REFUSING TO REVIEW THIS CLAIM WHERE A JUDGE MUST DISQUALIFY ITSELF WHERE IT IS ACTUALLY BIASED OR WHERE THE POSSIBILITY OF ACTUAL BIAS IS TOO HIGH TO BE CONSTITUTIONALLY TOLERATED BECAUSE OF A PECUNIARY INTEREST. *U.S. CONST. AM. XIV.*

A. ARGUMENT:

A defendant in a criminal prosecution has a constitutional right to an impartial decision maker that has no pecuniary interest in its outcome. *United States Constitution XIV Amendment.*

In *Withrow v. Larkin*, 421 U.S. 35, 46-47; 95 S. Ct. 1456; 43 L. Ed. 2d 712 (1975) the Court held:

“Concededly, a fair trial in a fair tribunal is a basic requirement of due process.... Not only is a bias decisionmaker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness. In pursuit of this end various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome....” (quotation and citations omitted).

In *In re Murchison*, 349 U.S. 133, 136; 75 S. Ct. 623; 99 L. Ed. 942 (1955), the Court expresses this rule more generally as “every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused denies the latter due process of law.” Also see *Williams v. Pennsylvania*, 579 U.S. 1, 21; 136 S. Ct. 1899, 1919; 195 L. Ed. 2d 132 (2016):

"[I]t certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case."

Michigan, adopting the United States Supreme Court precedent, in *People v. Stevens*, 498 Mich. 162, 178-180; 869 N.W.2d 233 (2015), when it held:

"[When] a judge has pierced the veil of judicial impartiality, a structural error has been established that requires reversing the judgment and remanding the case for a new trial. [T]he deprivation of the right to an impartial judge as a structural error and explaining that [t]he entire conduct of the trial from beginning to end is obviously affected . . . by the presence on the bench of a judge who is not impartial[.] Despite the strong interests that support the harmless-error doctrine, . . . some constitutional errors [including adjudication by a biased judge] require reversal without regard to the evidence in the particular case. . . . Judicial bias creates a structural defect[] in the constitution of the trial mechanism, which defies analysis by harmless-error standards. [F]urther that judicial partiality is a defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. . . . The right to an impartial judge is so fundamental that without [this] basic protection[], a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair. Such structural error requires reversal without regard to the evidence in a particular case. . . . Accordingly, judicial partiality can never be held to be harmless and, therefore, is never subject to harmless-error review. The conviction must be reversed even if no particular prejudice is shown and even if the defendant was clearly guilty. To this extent, we overrule . . . all other cases applying harmless-error analysis to questions of judicial partiality."

The Court in *People v. Konopka*, 309 Mich. App. 345, 358; 869 N.W.2d 651 (2014), held that all sentences, in regards to *Mich. Comp. Laws § 769.1k(1)(b)(iii)*. "applies to all fines, costs, and assessments ordered under MCL 769.1k before June

18, 2014," making the statute completely retroactive.

Mich. Comp. Laws § 600.4803, dealing with a 20% late fee on all court costs, fees, and other monies ordered by the court is being enforced against Petitioner through *Mich. Comp. Laws § 769.1k(1)(b)(iii)*.

Mich. Comp. Laws §769.1k(1)(b)(iii), states in relevant part:

(iii) . . . any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

- (A) Salaries and benefits for relevant court personnel.
- (B) Goods and services necessary for the operation of the court.
- (C) Necessary expenses for the operation and maintenance of court buildings and facilities.

In *People v. Cameron*, 319 Mich. App. 215, 220; 900 N.W.2d 658 (2017), the Court determined that *Mich. Comp. Laws § 769.1k(1)(b)(iii)*, is a tax after finding that it was revenue raising, was not proportionate to the service, and was involuntarily imposed. This determination was appealed to the Michigan Supreme Court, whom refused to rule upon it. *People v. Cameron*, 504 Mich. 927, 928-929; 929 N.W.2d785 (2019). Yet, in a concurring opinion by Justice McCormack, it was determined that there is a pecuniary interest, of the lower court justices, to find a defendant guilty. This was based on the Michigan District Judges Association (MDJA), in an *amicus curiae* brief, describing the pressures they face to ensure their courts are well-funded, i.e., threatening to evict district courts for being unable to generate enough revenue and eliminating personnel because of operation costs.

Mich. Comp. Laws § 769.1k(1)(b)(iii). prevents the justices in Michigan from "accomplishing its constitutionally assigned functions." *Nixon v. Administrator of*

gen Serve, 433 U.S. 425, 443; 97 S. Ct. 2777; 53 L. Ed. 2d 867 (1977).

This was admitted by the MDJA where *Mich. Comp. Law* § 769.1k(1)(b)(iii) creates a conflict of interest by shifting the burden of court funding onto the courts themselves. It incentivizes courts to convict as many defendants as possible and the constant pressure to balance the court's budgets could have a subconscious impact on even the most righteous judge. *Cameron*, 504 Mich at 927-929.

The MDJA believes that the statute thus violates the *Fourteenth Amendment to the United States Constitution* because the "possible temptation" *Tumey v. Ohio*, 273 U.S. 510, 532; 47 S. Ct. 437; 71 L. Ed. 749 (1927), of raising more revenue by increasing the number of convictions infringes defendant's due process rights. *Id.* at 928.

The foregoing applies to the district court and circuit courts alike, where it puts pressure, in a time when more citizens are wondering why all the tax money is being siphoned up into the judiciary system and not for schools. The justices have to find guilt to justify the wages of the judiciary system and all its personnel, including the prosecutor. *Mich. Comp. Laws* § 769.1f(2)(d); *Mich. Comp. Laws* § 769.1k(1)(b)(iii).

Petitioner was order to pay \$3,765.16 in late fees because of other prior court ordered costs that he was not able to pay because he is a pauper. This money will go to ensure that Judge Mary A. Chrzanowski does not have to perform her own secretarial function, i.e.; scheduling cases, filing documents, etc.; and will go to the maintenance and upkeep of not only the court room, but if the Honorable

Chrzanowski wants something for her own chambers, she will need the money from the court cost and 20% late fee to purchase the item(s) or to have her chambers remodeled, among other things around her courtroom and controlled area.

B. PRESERVATION:

Under Michigan law, this issue was not objected to, thus was not properly preserved, thus, unpreserved claims of judicial bias are reviewed for plain error. *People v. Jackson*, 292 Mich. App. 583, 597; 808 N.W.2d 541 (2011) determined: “Under the plain error rule, defendants must show that (1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected a substantial right of the defendant.” The third element generally requires a showing of prejudice that the error affected the outcome of the proceedings. *People v. Borgne*, 483 Mich. 178, 196; 768 N.W.2d 290 (2009). Finally, “reversal is only warranted if the defendant is actually innocent or the error seriously undermined the fairness, integrity, or public reputation of the trial.” *People v. Pipes*, 475 Mich. 267, 274; 715 N.W.2d 290 (2006).

First, an error occurred when *Mich. Comp. Law* § 769.1k(1)(b)(iii) created a conflict of interest by shifting the burden of court funding onto the courts themselves and allowing them to use this money for their personal areas or go without the necessities that keep their court moving forward in a reasonable manner. *Cameron*, 504 Mich. At 927-929; *Jackson*, 292 Mich. App. At 597.

Second, the error was plain, clear and obvious because it created a pecuniary interest for all district and circuit court justices in Michigan to find guilt or go

without personnel and other luxury's. This created the "possible temptation to the average man as a judge ... not to hold the balance nice, clear and true between the State and the accused." *In re Murchison*, 349 U.S. at 136; *Jackson*, 292 Mich. App. At 597.

Third, the plain error affected substantial rights of the Petitioner where his *United States Constitution Fourteenth Amendment* right under the *Due Process Clause* were violated where the district court judge and circuit court judge has a "direct, person, substantial pecuniary interest in reaching a conclusion against" Petitioner, *Williams*, 136 S. Ct. at 1919, where the revenue goes to ensure that the court, and its personnel that keep the court running smoothly, do not lose their jobs because of lack of revenue to pay for everything, and the court cost and fees he was charged, are going directly for that, to be used at her whim. *Cameron*, 504 Mich. At 927-929; *Withrow*, 421 U.S. at 46-47; *Jackson*, 292 Mich. App. At 597. Further, reversal is warranted because "the error seriously undermined the fairness, integrity, [and] public reputation of the trial." *Pipes*, 475 Mich. At 274.

C. CONCLUSION:

WHEREFORE, this Court should find that *Mich. Comp. Law § 769.1k(1)(b)(iii)* has created judicial bias where the court has a pecuniary interest in finding guilt, which establishes a structural error and requires a new trial. *Arizona v. Fulminante*, 499 U.S. 279, 309-310; 111 S. Ct. 1246; 113 L. Ed. 2d 302 (1991); *Tumey*, 273 U.S. at 510.

II. THE MICHIGAN SUPREME COURT ERRED BY REFUSING TO REVIEW THE LOWER COURT OPINION WHERE PETITIONER WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO OBJECT TO PETITIONER BEING SENTENCED UNDER A STATUTE THAT CLEARLY CREATES A PECUNIARY INTEREST FOR THE JUDGE IN THE OUTCOME OF THE PROCEEDING. *US CONST AMS VI, XIV.*

A. ARGUMENT:

A criminal defendant has the constitutional right to the effective assistance of counsel. *United States Constitution, VI Amendment.*

This Court "has recognized that 'the right to counsel is the right to the effective assistance of counsel.'" *Strickland v. Washington*, 466 U.S. 668, 686; 104 S. Ct. 2052; 80 L. Ed. 2d 674 (1984).

A successful ineffective assistance of counsel claim requires the defendant to show two things: that trial counsel performed deficiently and that he or she suffered prejudice as a result of counsel's missteps. *Strickland*, 466 U.S. at 687. The first *Strickland* prong is met when defense "counsel's representation fell below an objective standard of reasonableness considering all the circumstances." *Strickland*, 466 U.S. at 688. To establish the second prong, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine the confidence in the outcome." *Id* at 694. That standard is lower than a preponderance of the evidence standard, and "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." *Id* at 693.

First, Steven R. Freers' performance was objectively unreasonable, where he should have been aware of the fact that *Mich. Comp. Law* § 769.1k(1)(b)(iii) and *Mich. Comp. Law* § 600.4803, by their wording alone, created a pecuniary interest in every judge having a stake in the outcome of the proceeding and should have objected to them being utilized in Petitioner's case. There is no sound trial strategy that can justify Mr. Freers not objecting to the statutes being used against Petitioner, where they created a pecuniary interest. Not to do so was not the exercise of reasonable and professional judgment. *Strickland*, 466 U.S. at 688.

Second, but for his unreasonable performance, there is a reasonable probability that the result of the proceeding would have been different where Petitioner would not have been forced to pay the judge's personal tax against him, and he would have been tried before a non-bias judge that did not have a pecuniary interest in the outcome of the proceedings, where without the additional funding of finding Petitioner guilty, and ordering him to pay over \$3,000, the Court may have lost a clerk or secretary, both of which keep her courtroom running smoothly, or may not have been able to afford necessities for her courtroom or her chambers, or an office party. *Id* at 694.

B. CAUSE AND PREJUDICE:

Petitioner has established "good cause" and "actual prejudice", under the Michigan standard, and is entitlement to relief. *Mich. Ct. Rule* 6.508(D)(3)(a)-(b); (See *Issue III infra*, ineffective assistance of appellate counsel).

Further, Petitioner is entitled to the relief he seeks as the errors presented

are so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case.

Mich. Ct. Rule 6.508(D)(3)(iii).

C. CONCLUSION:

WHEREFORE, because of the forgoing reasons, this Court should find that Petitioner was denied his constitutional rights to a fair trial and to the effective assistance of trial counsel and vacate his conviction and sentence and remand for a new trial.

III. THE MICHIGAN SUPREME COURT ERRED BY REFUSING TO REVIEW THIS ISSUE WHERE PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL ON HIS APPEAL WHEN COUNSEL NEGLECTED STRONG AND CRITICAL ISSUES WHICH MUST BE SEEN AS SIGNIFICANT AND OBVIOUS. FURTHER, BECAUSE OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO RAISE THE WITHIN ISSUES, ANY PROCEDURAL DEFAULTS SHOULD BE OVERCOME. *U.S. CONST. AM.'S VI, XIX.*

A. PROCEDURAL DEFAULT:

Mich. Ct. Rule 6.508(D)(3)(a)-(b) relevantly provides that this Court may not grant relief to the defendant if the motion ... alleges grounds which could have been raised on appeal from the conviction and sentence ... unless the defendant demonstrates (a) good cause for failure to raise the grounds on appeal ... (b) actual prejudice from the alleged irregularities that support his claim for relief. *People v. Watrobe*, 193 Mich. App. 124, 126; 483 N.W.2d 441 (1992). “Where a procedural default is the result of ineffective assistance of counsel, the Sixth Amendment mandates that the state bear the risk of the constitutionally defective performance.” *People v. Reed*, 449 Mich. 375, 381; 535 N.W.2d 496 (1995). This requirement exists as the Court determined in *Martinez v. Myan*, 566 U.S. 1, 11; 132 S. Ct. 1309; 182 L. Ed. 2d 272 (2012), because:

“... if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State’s procedures and obtain an adjudication on the merits of his claims.”

Petitioner submits that the foregoing arguments, i.e., *Issues I-II, supra.*, demonstrates both winning appeal claims and failure of appeal counsel to recognize and present those claims provides “cause” excusing failure to previously present the

issues.

Actual prejudice exists where the defects in the proceedings was such that it renders the conviction and sentence manifestly unjust and should not be allowed to stand. *Mich. Ct. Rule 6.508(D)(3)(b)(ii)*. Michigan law has determined that “Manifest injustice results if the defect is of such a magnitude as to constitute plain error requiring a new trial or if it pertains to basic and controlling issues.” *UAW v. Dorsey*, 268 Mich. App. 313, 324; 708 N.W.2d 717 (2005). The defects that have been argued within Issues I & II amounts to plain error – which are basic controlling issues. The constitutional violations are a denial of a non-bias judge and the right to effective assistance of counsel. Therefore, actual prejudice has been demonstrated excusing any procedural default when appellate counsel did not raise these claims.

B. INEFFECTIVE ASSISTANCE:

A criminal defendant has a right to the effective assistance of counsel in his appeal of right to the Michigan Court of Appeals. *Ross v. Moffitt*, 417 U.S. 600, 610; 94 S. Ct. 2437; 41 L. Ed. 2d 341 (1974); *Coleman v. Thompson*, 501 U.S. 722, 756; 111 S. Ct. 2546; 115 L. Ed. 2d 640 (1991); *Evitts v. Lucey*, 469 U.S. 387, 391-400; 105 S. Ct. 830; 83 L. Ed. 2d 821 (1984).

The *Strickland* standard is generally utilized and deference, though certainly not unlimited, is afforded to counsel’s decisions. The Supreme Court has recognized that a criminal defendant does not have a constitutional right to have appellate counsel raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 754; 103 S. Ct. 3308; 77 L. Ed. 2d 987 (1983). However, courts have routinely

insisted that *Strickland* mandates appellate counsel to have sound strategic reasons for failing to raise important and obvious appellate issues, or “dead bang winners.” *Smith v Murray*, 477 U.S. 527, 536; 106 S. Ct. 2661; 91 L. Ed. 2d 434 (1986). Also see *Meade v. Lavigne*, 265 F. Supp. 2d 849, 870 (E.D. Mich. 2003):

“[A]n appellate advocate may deliver deficient performance and prejudice a defendant by omitting a ‘dead-bang winner,’ even though counsel may have presented strong but unsuccessful claims on appeal....A ‘dead-bang winner’ is an issue which was obvious from the trial record. . . . and must have leaped out upon even a casual reading of [the] transcript’ was deficient performance, and one which would have resulted in a reversal on appeal.” (internal citations omitted).

C. NEGLECTED STRONG AND CRITICAL ISSUES:

The key factor in this matter is the open and obvious nature of the wording within *Mich. Comp. Laws* § 769.1k(1)(b)(iii):

(iii) . . . any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

- (A) Salaries and benefits for relevant court personnel.
- (B) Goods and services necessary for the operation of the court.
- (C) Necessary expenses for the operation and maintenance of court buildings and facilities.

The wording jumps out at a reasonable person as being wrong and giving court a different reason for finding guilt other than the evidence against someone. (*Issue I, supra*).

Trial counsel should have made an objection to Issue I, but because he did not, he was ineffective. (*Issue II, supra*).

Though appellate counsel, Daniel Rust, raised three questions within the

Michigan Court of Appeals on Petitioner's appeal by right:

- I. Is Petitioner entitled to dismissal of one of the charges and sentences against him where the constitutional provision against double jeopardy was violated?
- II. Is Petitioner entitled to a new trial where there was insufficient evidence for the conviction of kidnapping?
- III. Is Petitioner entitled to a new trial where the trial court failed to instruct the jury as to the tracking dog instruction, Crim. Jur. Instruction 2d 4.14, and was his trial counsel ineffective for failing to request the instruction?

In comparison to the issues raised by appellate counsel, the issues raised in this motion are open and obvious issues under state and federal jurisprudence. In the context of this case, the issues were of substantial importance and must be considered outcome determinative. Failure of direct appeal counsel to raise the issues demonstrates "good cause" and where there is a reasonable probability that the issues would have resulted in a new trial, it was prejudicial to Petitioner for them not being raised. Petitioner suffers from a miscarriage of justice. *Schlup v. Delo*, 513 U.S. 298; 115 S. Ct. 851, 856; 130 L. Ed. 2d 808 (1995).

D. CONCLUSION:

THEREFORE, Petitioner submits that he was denied the effective assistance of appellate counsel and has met the "cause" and "prejudice" standard for overcoming the reason as to why the issues were not previously raised within the Court of Appeals.

IV. THE MICHIGAN SUPREME COURT ERRED BY REFUSING TO GRANT AN EVIDENTIARY HEARING FOR INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND APPELLATE COUNSEL.

A. ARGUMENT:

In *Ballinger v. Prelesnik*, 844 F. Supp. 2d 857, 867 (E.D. Mich. 2012) (citing *Brown v. Smith*, 551 F.3d 424, 429-30 (6th Cir. 2008)), the court stated: “the Sixth Circuit determined that deciding an ineffective assistance of counsel claim without a hearing when the record was not sufficiently developed did not even count as an ‘adjudication on the merits’ as contemplated by § 2254(d), let alone a reasonable one.” *Id.* at 867.

In *Townsend v. Sain*, 372 U.S. 293, 314-316; 83 S. Ct. 745; 9 L. Ed. 2d 770 (1963), this Court held that state and federal factual determinations not fairly supported by the record cannot be conclusive of federal rights.

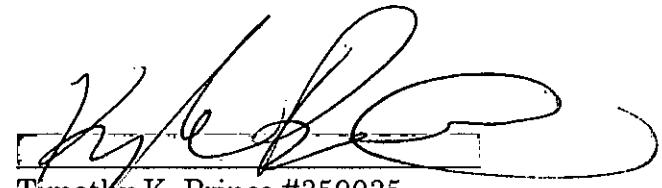
Petitioner requested an evidentiary hearing, pursuant to *Mich. Ct. Rule 6.508 (C)* [State Circuit Court]; *Mich. Ct. Rule 7.211(C)* [Michigan Court of Appeals]; *Mich. Ct. Rule 7.305(C)(8)* [Michigan Supreme Court]; and *People v. Ginther*, 390 Mich. 436; 212 N.W.2d 922 (1973), to expand the record dealing with ineffective assistance of trial and appellate counsel, along with prosecutorial misconduct, for as argued within *Issues I-III, supra*. The record needs to be expanded to further delve into the constitutional violations that transpired during Petitioner’s trial and on his appeal by right.

CONCLUSION

Petitioner, Timothy K. Prince, respectfully requests that this Court grant this petition for a writ of certiorari and any other relief that it deems is just and proper in this case.

Respectfully submitted,

Executed on: 2/7/22

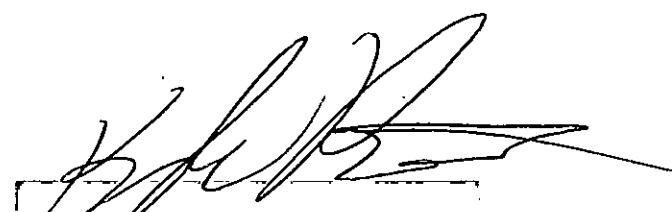


Timothy K. Prince #359035
In propria persona
Marquette Branch Prison
1960 U.S. Highway 41 South
Marquette, Michigan 49855

DECLARATION

I, Timothy K. Prince, pursuant to *28 U.S.C. § 1746*, depose and swear, under the penalties of perjury, with my signature below, that the forgoing is true and accurate and will testify in open court to such.

Executed on: 2/7/22



Timothy K. Prince
In propria persona