No. 21-7777

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



VEDAL A. DAVIS PRO SE — PETITIONER
(Your Name)

vs.

Texas Court of Criminal Appeals — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

# PETITION FOR WRIT OF CERTIORARI

VEDAL A. DAVIS
(Your Name)

RAMSEY ONE UNIT; 1100 FM 655
(Address)

ROSHARON, TX 77583
(City, State, Zip Code)

(281) 595-3491
(Phone Number)

## QUESTION(S) PRESENTED

Davis alleged that his trial counsel was ineffective for failing to independently investigate the legal facts, pleadings, and circumstances surrounding the "amendment and tolling" hearing pertaining to Davis' Statute Barred Indictment(s), (18564 & 18640). On July 13, 2010 Davis trial attorney "stipulated" to the tolling of Davis' NON PROSECUTORABLE INDICTMENT(S) [without] Davis presence, knowledge, nor consent.

1. Did the Court of Criminal Appeals err in deferring to the Trial Court finding that Davis was not prejudiced by his trial counsel's failure to independently investigate the legal facts, pleadings, and circumstances surrounding Davis' Statute Barred Indictments?
2. Did the trial court err and violate Davis' Due Process Rights by allowing a hearing to proceed [without] Davis' presence, knowledge, nor consent for the sole purpose of reindicting Davis' statute barred indictment(s)?
3. Did the trial court have jurisdiction to try Davis in cause no. 20784 on indictment that was void from conception because it did not have a subsequent indictment from which to legally tolled the statute of limitations bar?
4. Did the trial court violate Davis' Due Process Rights and have jurisdiction to circumvent the Grand Jury process by using a motion to amend an indictment and not take the case back to the Grand Jury and seek indictment?

Davis alleged that his trial counsel was ineffective for failing to independently investigate the legal facts, pleadings, and circumstances surrounding the "finality" of his prior conviction(s), the State used for enhancement purposes in Cause No. 20784.

5. Did the Court of Criminal Appeals err in deferring to the Trial Court finding that Davis was not prejudiced by his trial counsel's failure to independently investigate the legal facts, pleadings, and circumstances surrounding the "finality" of Davis' prior conviction(s), the State used for enhancement purposes?
6. Did the State Prosecutor(s) violate Davis' Due Process Rights and engaged in Prosecutorial Misconduct by presenting false evidence to the trial court and jury about Davis being sent to the penitentiary for his prior conviction(s), the State used for enhancement purposes?
7. Can a person become a habitual offender despite never coming to the penitentiary for his prior conviction(s), the State used for enhancement purposes?
8. Did the State Prosecutor(s) commit fraud and perjured themselves by intentionally lying under "oath" to the trial court and jury about Davis being sent to the penitentiary for his prior conviction(s), the State used for enhancement purposes?

Davis' trial counsel "admits" upon the court record that he was ineffective by not investigating and understanding the circumstances surrounding the "stipulation" to the tolling of Davis' Non Prosecutorable Indictment(s), and stated that its not trial strategy, but a mistake, and it was ineffective on his part.

9. Did the Trial Court Judge err, abused its discretion, and violate Davis' (5th, 6th, and 14th Const.Amend.Rights) by deeming Davis' trial counsel ineffectiveness excusable solely on the grounds of their personal relationship and not take in consideration the totality of the evidence upon the court record?
10. Did the Trial Court Judge err, abused its discretion, and violate Davis' (5th, 6th, and 14th Const.Amend.Rights) by not establishing the BENEFIT' FOR DAVIS BY HAVING HIS NON PROSECUTORABLE INDICTMENT TOLLED?
11. Is the "stipulation" and "tolling" of Davis' statute barred indictment (18640) to (20784) VOID because indictment 20784 had no subsequent indictment from which to legally tolled the statue of limitations bar and Davis did not give his consent to the tolling of his statute barred indictment?
12. Did the Trial Court Judge err, abused its discretion, and violate Davis' (5th, 6th, and 14th Const.Amend.Rights) by "BLOCKING" the defense from asserting the statute of limitations defense [which] had merits?

Davis alleged that at his Amendment and Tolling Hearing (absent Davis), he is [without] effective assistance of counsel at the [most] critical point of his entire trial process, and the fundametal fairness and even JURISDICTION of the court is in question. The State Prosecutor, "Mr. Sheffield", stated on the record...,"that 20784, is a reindictment of that old case, 18640. JURISDICTION is something that the state are going to have to prove, concerning the TOLLING of the statute of limitation."

13. Did the Trial Court err and violate Davis' 6th Amendment-Secured Autonomy Right by allowing Davis' trial counsel to usurp control of an issue within Davis' sole prerogative, thus "blocking" Davis' Right to make fundamental choices about his own defense?
14. Did the Trial Court have personal and/or subject matter jurisdiction over Davis with regard to cause no. 20784?
15. Can a judgment and/or sentence conviction be upheld by courts without jurisdiction of the defendant or is the judgment and sentence is an absolute nullity from their inception?
16. Does a Court without jurisdiction have authority to render any other judgment other than one of dismissal?
17. Does the lack of jurisdiction over a case render the judgment void, and can such a judgment be collaterally attacked?
18. Can a court establish its own jurisdiction 'absent the existing authority vested in the court by the Constitution and statutes?

Davis alleged that throughout his entire post-conviction process proceeding pro se, he has argued that he is in custody in violation of his protected U.S. Constitutional Amendment Rights,(5th,6th & 14th). Davis further argued that the Trial Court proposed Tex.Art. 1.14(b), Tex.Code.Crim.Proc.Ann.Art. 1107 §4(a), the United States District Court for the Eastern District of Texas, Beaumont Division, [AEDPA] ruling, nor any other state procedural rule shall apply to Davis' Void Indictment. Indictment 20784 was void from conception and thus "NEVER" legal and is "ABSENT" any legal force from its inception.

19. Does a Trial Court and/or Appellate Court violate's a person 6th Amendment Constitutional Right to effective assistance of counsel by ruling and holding a client at default for being ineffective [when] in fact the client's lawyer was the person ineffective?
20. Can arguments (claims), attacking a court's subject matter jurisdiction be waived and/or forfeited?
21. Does the Antiterrorism and Effective Death Penalty Act [AEDPA STATUTE], violate the Federal Constitution's Due Process Clause by "failing" to provide any notice of its existence and/or its one-year time limitations in state trial court, state appellate court, nor state habeas court to [alert] person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly?
22. Is there any set of circumstances under which the [AEDPA STATUTE] would be constitutional, because it fails to provide those targeted by the statute a reasonable opportunity to know what conduct is prohibited, thus allowing arbitrary and discriminatory enforcement?

23. Does a procedural rule/statute override the U.S. Constitution, and/or a person constitutional claim(s) that has merits, thus binding him in illegal restraint all because he did not present his claim(s) at a specific time?

24. Under the Federal Constitution's Suspension Clause, is a person entitled to be heard on the merits of his constitutional claim(s) or be subject to illegal restraint by applications of State Rules and Statutes?

25. Does applications of State Rules and Statutes effectively suspend the Writ of Habeas Corpus by "denying" a person merits from being heard in his constitutional claim(s) of unlawful conviction and restraint?

## LIST OF PARTIES

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

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

## RELATED CASES

- Davis v. The State of Texas, No. 09-10-00538-CR, Ninth Court of Appeals of Texas. Judgment entered July 25, 2012.

- Davis v. The State of Texas, No. PD-1205-12, Court of Crimial of Texas. Judgment entered Feb. 6, 2013.

- Davis v. The State of Texas, Tr.Ct.No. 20784-A/WR-84,123-01, Court of Criminal Appeals of Texas. Judgment entered June 8, 2016.

- Davis v. The State of Texas, Tr.Ct.No. 20784-A/WR-84,123-01, Court of Criminal Appeals of Texas. Judgment entered July 11, 2016.

- Davis v. Director,TDCJ-CID, No. 1:16-cv-00398, United States District Court For The Eastern District Of Texas Beaumont Division. Judgment entered Nov. 29, 2016.

- Davis v. Director,TDCJ-CID, No. 16-41706/USDC No. 1:16-cv-00398, United States Court of Appeals For The Fifth Circuit. Judgment entered (in 2017) NO DATE WAS ON ORDER.

- Davis v. The State of Texas, Tr.Ct.No. 20784-B/WR-84,123-03, Court of Criminal Appeals of Texas. Judgment entered Nov. 17, 2021.

- Davis v. The State of Texas, Tr.Ct.No. 20784-B/WR-84,123-03, Court of Criminal Appeals of Texas. Judgment entered Jan. 18, 2022.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

## OPINIONS BELOW

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

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

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

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

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

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

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

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

The opinion of the 356TH DISTRICT COURT, HARDIN COUNTY, TX court appears at Appendix B to the petition and is

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

## JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

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

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

The date on which the highest state court decided my case was Nov.17,2021. A copy of that decision appears at Appendix A.

[x] A timely petition for rehearing was thereafter denied on the following date: January 18, 2022, and a copy of the order denying rehearing appears at Appendix C.

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

**U.S. CONST., AMEND.V:** No person shall be held to answer for a capital, or otherwise infamous crime... without due process of law.

**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... 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:** ... No State shall... deprive any person of life, liberty, or property, without due process of law.

**U.S. CONST., ART.I§9:** The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion of the public safety may require it.

**TEXAS CONST., ART.I§10:** Rights of accused in criminal prosecutions. ...the defendant and the State shall have the right to produce and have the evidence admitted by deposition... no person shall be held to answer for a criminal offense, unless on an indictment, of a grand jury...

**28 U.S.C. §2254:** State custody; remedies in Federal courts.

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States...

**28 U.S.C. §2244(d)(1):** Finality of determination. A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-....

**TEXAS PENAL CODE §12.42(d):** Penalties for Repeat and Habitual Offenders. Except as provided by Subsection (c)(2), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses... on conviction he shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

**TEXAS ADMINI. CODE. TITLE 37, CHP. 145 PAROLE, RULE §145.21:** Parole in Absentia (Parole Review and Mandatory Supervision for Offenders Not in Actual Physical Custody of the TDCJ-CID). Offenders serving state prison sentences for Texas crimes and offenders whose parole or mandatory supervision has been revoked who are not in the actual physical custody of the TDCJ-CID...

**VERNON'S TEXAS STATUTES ANN. ART. 1.14(b):** Waiver of rights. If the defendant does not object to a defect, error, or irregularity of form or substance in an indictment or information before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding...

**VERNON'S TEXAS STATUTES ANN. ART. 11.07 §4(a):** Procedure after conviction without death penalty. If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:...

**VERNON'S TEXAS STATUTES ANN. ART. 12.01:** Felonies. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:...

**VERNON'S TEXAS STATUTES ANN. ART. 12.05(b):** Absence from State and time of pendency of indictment, etc., not computed. The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

**VERNON'S TEXAS STATUTES ANN. ART. 28.01:** Pre-trial. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant **must be present** at the arraignment, and his **presence** is required during any pre-trial proceeding.

**VERNON'S TEXAS STATUTES ANN. ART. 42.01:** Judgment. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment shall reflect:...

**VERNON'S TEXAS STATUTES ANN. ART. 42.02:** Sentence. The sentence is that part of the judgment, or order revoking a suspension of the imposition of a sentence,...

## STATEMENT OF THE CASE

On November 15, 2010 in the 356th District Court of Hardin County, Texas; Davis pled NOT GUILTY to the charge of a 2nd degree felony, Aggravated Assault with a deadly weapon. Davis was found guilty by a jury for the charge, the jury also found Davis guilty under Habitual Offender Penal Code, thus sentencing Davis to 33 years prison time.

The judgment was affirmed on direct appeal on July 25, 2012. Davis attorney Bryan Laine filed a petition for discretionay review, it was refused on February 6, 2013. Davis filed his State Habeas Corpus Pro se September 8, 2015. The Texas Court of Criminal Appeals denied it on June 8, 2016 without written order. [Judge Alcala, filed a dissenting opinion in which Judge Johnson., joined. "NO.WR-84,123-01].

Davis proceeding pro se, filed his original Motion For Leave to Proceed In Forma Pauperis on September 14, 2016 along with his §2254 petition for writ of habeas corpus. The United States District Court Judge, Marcia Crone for the Eastern District of Texas, Beaumont Division referred Davis petition to the Honorable Zack Hawthorn, United States Magistrate Judge for findings of facts, conclusions of law, and recommendations for the disposition of the case. Judge Hawthorn tendered his "RECOMMENDATION" to the United States District Court September 30, 2016 and Judge Crone "adopted" the Magistrates Recommendation and Dismissed Davis' petition as barred by statute of limitation on November 29, 2016. [Applied 28 U.S.C. §2244(d)(1), A.E.D.P.A.].

Davis timely filed a "Notice of Appeal" as well as his Request For Certificate Of Appealability to the Fifth Circuit Court of New Orleans, LA. On January 3, 2017 the Fifth Circuit Court notified Davis that his appeal has been docketed and his motion for In Forma Pauperis is pending in the district court. USDC No. 1:16-CV-398.

However, Davis' Certificate of Appealability was denied by The Eastern District of Texas, Beaumont Division on January 20, 2017. The Fifth Circuit Court of New Orleans, LA also denied Davis' C.O.A.

Davis filed a Subsequent Application for Writ of Habeas Corpus pro se on June 30, 2021. The 356th District Court of Hardin County, Texas rendered it's Facts and Conclusions of Law on July 21, 2021. The Court of Criminal Appeals "adopted" the trial court facts and conclusions of law and Dismissed Davis' subsequent application for writ of habeas corpus on November 17, 2021. Davis filed a "timely" Motion For Rehearing on December 17, 2021. However, Davis' Motion For Rehearing was denied on January 18, 2022. (See App. A;B,C)

Davis avers that in [prior] filings and this instant case attempts "demonstrating" that FIRST Cause No. 20784 indictment is NOT LAWFUL and that it had no "subsequent" indictment fromwhich to legally amend and then toll the statute of limitations bar. Davis' "original" indictments 18564 and 18640 was issued by the 2007 Grand Jury as Lechadrien Cole being assaulted by Davis, allegedly hitting him with a Motor Vehicle and causing injury to his hip and leg and the assault occurring was on a local highway on March 16, 2007. The alleged George Stewart assault occurred at a residence on June 2, 2007 where Davis allegedly hit Stewart with a "pipe", (evidence of which was "never" presented to the 2007 Grand Jury) nor did the 2007 Grand Jury "issue" an indictment in "ERROR" intending to be for George Stewart. George Stewart's injuries to the "HEAD" by a pipe and the location of the assault is at a residence outside the home, NOT on a "HIGHWAY" as the alledged "subsequent" indictment claiming Lechadrien Cole is assaulted by a Motor Vehicle is hit while walking on the local highway by Davis, (as depicted in the "separate" police report, and

conceded to by the State", the State identifies the Lechadrien Cole indictment issued by the 2007 grand Jury as 18564 and 18640. SECOND, the State would allude to the "two" as being issued, thus one would have to be issued for George Stewart just in name, date, and weapon, BECAUSE BOTH ARE ASSAULTS BY DEFINITION. The George Stewart 20784 "MUST" by law be created-"amended" and "tolled" by a subsequent indictment: the State makes claim that 18640 indictment is such "subsequent" indictment allowing legal amendment and tolling of the "RE-INDICTED" 20784 from 18640(RR4:7-8). The State offered State's exhibits 1 through 7, copies of the prior indictment, the docket sheets in both causes, 18640 and 20784, the defendant's motion to quash, and a motion to dismiss the new indictment,(RR4:8) acknowledging 18640 and 20784 as speaking to the same complainant when the facts on the court record provide contrary evidence and though appearing that 18640 is an indictment in error in name, date, and weapon, "subsequent to 20784, simply because they both are assaults", DOES NOT evidence the legality of amending and tolling the 20784 from the 18640 anymore than the State taking an unrelated incident from another defendant's cause and saying that because it is an assault it is "subsequent" in nature and thus legal for amendment and tolling. Actually that is exactly what has occurred upon the court in Davis' instant cause. The State circumvented the Grand Jury process by using a motion to amend an indictment and not take the case back to the Grand Jury and seek indictment. The trial court lacked jurisdiction to hear the case because the State's first indictment was not amended properly; due to the fact it was not **incorporated** into the court's record under the direction of the court, with the knowledge and affirmative assent of the defense.

Davis attorney (Bryan Laine) rendered ineffective assistance of counsel [BEFORE] he went to the AMENDMENT AND TOLLING HEARING, by failing to independently investigate the legal facts, pleadings, and circumstances surrounding the hearing, an act required by the Strickland v. Washington 104 S.Ct. 2052 (1984), standard for effective counseling, thus, Davis' claim of his AMENDMENT and TOLLING HEARING he is without effective assistance of counsel at the [most] critical point of his entire trial process, the fundamental fairness and even jurisdiction of the court is in question. (Strickland Id); (Const. Amend.6). The State Prosecutor "Mr. Sheffield" stated on record that 20784, is a reindictment of that old case, 18640. JURISDICTION is something that the State are going to have to prove, concerning the tolling of the Statute of Limitation.(RR.2,pg.8 L 5-10). On July 15, 2010 the State Filed a Motion to Dismiss cause no. 18640 and Reindicted it to cause no. 20784. Davis contends that the Trial Court erred by allowing the State Prosecutors and Davis' trial attorney (Laine) to "proceed" with a tolling and amendment hearing [on July 13, 2010], **after** the statute of limitations period had expired for the sole purposes of reindictment. The State knew Davis' offense had a three(3) year statute of limitations period.(RR.4:10L12-21).

Davis had no knowledge, was not informed, was not present, and definitely didn't give his consent to the tolling of his non prosecutable indictment 18640.

> "In Vernon's Texas Statutes Annotated Art. 28.01." Pre-trial Sec. 1. "States...The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. **The defendant must be present** at the arraignment, **and his presence is required during any pre-trial proceeding.**

Davis contends that he had no notice of any Motion to Amend Hearing AND HIS ATTORNEY, Laine, **never** relayed any such information to him, to the contrary, Laine, instead told Davis that he would be simply going into the court and motioning the court to dismiss Davis' causes because they were time barred from prosecution. Davis would find out later that Laine had in fact attended a Motion to Amend Hearing and "so-called" mistakenly "stipulated" to a tolling paragraph within the Motion to Amend, thus making Davis' Non-Prosecutable indictments "prosecutable".

Davis contends that his Ineffectiveness claim(s) require a "NEW" analysis in that:

1. the time in question that an attorney is **deemed** ineffective and the point of error, is critical in Davis' case because it determines jurisdiction and fundamental fairness of his entire trial process.

EXAMPLE: (a. Davis counsel, (Laine), had total control of what Davis would or could know about his own trial process, PRIOR TO ANY HEARING, MOTION, OR PLEADING, ENTERED IN HIS BEHALF.

(b. Davis enters the Court November 15, 2010 believing he is facing TWO BARRED BY STATUTE OF LIMITATIONS INDICTMENTS-18564 and 18640, and knows nothing about the indictment(20784) until court commences, because Laine has assured Davis prior to entering the courtroom that, (1. Laine would only have to request dismissal of his 18564 and 18640 indictments and (2. Davis would be returning home THAT DAY.

2. Davis only discovers that he has been REINDICTED TO 20784 and is actually being taken to trial that same day on November 15, 2010 even though Laine had not only the knowledge of his reindictment but as a fact of the trial court record, he himself(Laine) had **FILED** November 12, 2010 just three days prior a "Motion to Quash in which he refers to the tolling paragraph" in cause number 20784(quoted from APPELLANT'S BRIEF No.09-10-00538-CR IN THE COURT OF APPEALS NINTH DISTRICT Pg. 6 paragraph 2) and (Clerk's Record Vol 1,pg.28)

3. Laine not only is in control of what Davis could know, he also had full control of when Davis would be aware, of the **events** that had [ALREADY] been adjudicated upon the court in his name and to his detriment, thus Davis because of his attorney's **seemingly deliberate errors**, DID NOT and COULD NOT HAVE knowledgably [waived] and/or [forfieted] his right to APPEAL, or challenge to Tex.Art.1.14(b) where his "only" defense he knew of was 18564 and 18640 indictments were statute barred and he would be motioning the court for dismissal of the two as such.

Davis contends that Laine, deliberately kept him unknowing of events within his causes 18564 and 18640 and the record support this fact.

Davis also argues that the trial court's SINGLE reason used to establish that Laine's performance was "trial-stragety" undermines Davis' Constitutional Right to a Constitutional Court Process. An act required by Strickland v. Washington. The trial court Judge Britt Plunk assessed SINGLELY ONE piece of evidence to reach his conclusion and that was (1. RR.Vol.V.pg.17.L15-18 "Mr. Hardy: Your Honor,..., It was trial strategy. It was obvious that the defense counsel DID NOT WANT the tolling statute read to the jury, FOR WHATEVER REASON. That was his own reason, and he made that pretty clear.")(emphasis added)

The Judge's opinion he made clear in the record:

> (RR.Vol.V.pg.17-18,L25-pg.18L1-4 "The Court Judge: I will say one thing for the record: I have known Mr. Laine for many years, and I know he's a very fine lawyer. And I find it very, very difficult to believe that he's ineffective at anything. And that's a compliment, Mr. Laine.")

Davis presents record proof that NO other evidence other than Laine's SO-CALLED STRATEGY, "counsel did not want the tolling statute read to the jury, FOR WHATEVER REASON [and] the Judge "knowing Laine for many years," lead to Laine's ineffectiveness deemed excuseable solely on this single evidence upon the court.

Davis demonstrates to this Honorable Court that NO TRIAL STRATEGY offered by Laine could or would BENEFIT Davis cause and the Judge (PLUNK), fails to utilize a totality of the evidence upon the court record that would indicate that what Laine had obviously failed to do was prepare a defense, by NOT independently investigating the Amendment Hearing and in NOT doing so he simply did not know or understand that he was entering stipulation to a "TOLLING" paragraph NOT an "enhancement paragraph just as he swore to and testified to upon the court record (RR.Vol.V.Pg.9.(9-14...,when all the way I DIDN'T UNDERSTAND IT WAS A TOLLING PARAGRAPH..., And it wasn't until I Looked at the OLD INDICTMENT AND RETAINED THE FACTS THAT I QUICKLY FILED A MOTION TO DISMISS...,

(pg.9,L19-21) Laine...("I think that's clear from the record I didn't know the underlying facts of what (we) were "stipulating" to...)

[and] (pg.17,L12-13("That is not trial strategy. It was a mistake, and it was INEFFECTIVE ON MY PART.")

Lines 22-24 ("Your Honor, my thoughts are on the record. And what I was thinking at the time is on the record. IT WASN'T TRIAL STRATEGY.")

Davis presents these excerpts from the trial record, (emphasis added), as evidence that not only did the trial court error in not deeming Laine's failing to investigate the facts [prior] to stipulating away Davis' ONLY DEFENSE, but that the trial court judge errors in not establishing the BENEFIT within this so-called trial strategy would have to offer Davis should the Statute Tolled NOT be read to the jury.(RR.Vol.V.pg.17L14-17).

Davis has layed out in his presentation of the record facts that Laine professionally unreasonable acts at his trial denied his rights to effective assistance of counsel simply by failing to render adequate legal assistance, his performance was deficient such that he did not perform as a functioning counsel guaranteed by the Sixth Amendment, Laine's deficient performance were so deficient that his errors was so serious that it deprive Davis of a fair trial process, and that trial result is unreliable.(Strickland Id.);(Const.Amend.6&14)

Davis also presents record facts that doing his punishment phase of trial the State Prosecutor(s) perjured themselves by committing FRAUD upon the Court. The State Prosecutor(s) tender into evidence that cause No. 15093 and 13718 was a "FINAL CONVICTION",, thus using both for enhancement purposes. Both [prior convictions] was illegal to used for enhancement purposes because they was not FINAL ACCORDING TO TEXAS LAW, PENAL CODE §12.42.

Davis' [prior felony] cause no. 15093 was illegal to use for enhancement purposes, because it NEVER became a "FINAL" conviction according to law. Davis sentence of two years was suspended and becomes VOID for want of VALID SENTENCE, thus NOT FINAL. Davis was sentence to two(2) years TDCJ by the 88th District Court of Hardin County, Tx. Davis "immediately" appealed his two year sentence, and NEVER goes to prison on cause no. 15093.(RR.Vol.VI.pg.43,L8-25), also (pg.44,L1-14). On Direct Examination Davis then Probation Officer, Mr. Cropper testified in open court under "OATH" that he recall Davis in the "88th District Court took a plea for a two-year TDC term; revocation of probation. And also remembered that Mr. Laine appealed it immediately afterwards."(RR.Vol.VI.pg.44,L10-14). [Bryan Laine knew that Davis NEVER went to the penitentiary because "he represented Davis on cause. no. 15093, Bonded Davis out, and filed Davis' Appeal.]

Prosecutor Mr. Dallas Barrington, under "OATH", stated...,

> Davis went to the penitentiary on Oct. 4th, 2004 and got out on Sept. 8th, 2005 for cause no. 15093.(RR.Vol.VI.pg.71,L15-20)

Davis NEVER went to the penitentiary for cause no. 15093. The 88th District Court on Oct. 4th, 2004 sentenced Davis to a two year TDC term, and granted Davis permission to Appeal. Bryan Laine bonded Davis out that same day, Oct. 4th, 2004. Davis remain "free" on appeal bond the entire duration of his two year sentence and NEVER goes to prison for cause no. 15093. The date Sept. 8th, 2005, the Prosecutor stated when Davis got out is false. On Oct. 26, 2005 the COURT OF APPEALS IN THE NINTH DISTRICT OF THE STATE OF TEXAS entered a judgment(No. 09-04-00418-CR) stating..."Although this properly invokes our appellate jurisdiction, it does not breathe "life"

into Davis' appellate issue; it simply means that we overrule Davis' issue instead of dismissing his appeal." As matter of the record Davis appeal NEVER became FINAL, therefore 15093 was "illegal" to use for enhancement purposes. Davis pleas that this Honorable Court take JUDICIAL NOTICE on the basis that the State Prosecutor entered into evidence, "exhibits" that was NOT TRUTHFUL. Mr. Barrington on record stated..."Davis [had] went to the penitentiary on Oct. 4th, 2004 and got out on Sept. 8th, 2005." There is no FACTUAL/LEGAL BASIS TO BARRINGTON claim(s) , because (1) it's simply NOT TRUE and contrary to the facts, and (2) How did Barrington arrived to this "false" conclusion that Davis got out on Sept. 8th, 2005, when Davis NEVER went to the Penitentiary for 15093.(RR.Vol.VI.pg.71, L15-20). Barrington continued to commit fraud upon the Court by "allegedly" showing the jury "exhibits" as evidence to show that Davis was finally convicted on cause no. 15093, Barrington Stated...,

> "You've also got evidence over here that shows that he was convicted by this Court in cause -- not by this Court, but in the 88th District Court in 15093; that he was convicted of selling drugs and **sent to the penitentiary** and that his appeal went nowhere. And that was a final conviction. Look at the papers. Look at that stuff. It's final. okay? Look at it.(RR.Vol.VI.pg. 72,L24-25), and (pg.73,L1-5).

AS evidence by the REPORTER'S RECORD THE STATE PROSECUTORS MISLED THE TRIAL COURT AND JURY SEVERAL TIMES ON DAVIS BEEN SENT TO THE PENITENTIARY. The State Prosecutor's knew or should have known the "legality" of Davis' prior conviction(s) before introducing/ presenting them to the trial court and jury for enhancement purposes.

The State of Texas also used cause no. 13718 for enhancement purposes [which] was illegal, because it NEVER became a "FINAL" conviction according to Texas Law Penal Code §12.42. Davis' 13718 was "tainted by constitutional defects", thus making 13718 VOID for want of VALID SENTENCE.

Davis was sentenced to two(2) years TDCJ by the 356th District Court of Hardin County, Tx on February 18, 1998. Davis served his entire two year sentence in the Hardin County Jail and NEVER goes to the penitentiary. Davis PIA;(PAROLE IN ABSENTIA) from the County Jail. In Texas Administration Code Title 37, Chapter 145 Parole, Rule §145.21 "States...Parole in Absentia is a Parole Review and Mandatory Supervision for Offenders NOT IN ACTUAL PHYSICAL CUSTODY OF THE TDCJ-CID". The State of Texas "FAILED" to deliver Davis in the custody of TDCJ-CID for cause no. 13718, thus violating the **terms of agreement**, Davis and the State agreed upon. The agreement is governed by the State's Texas Code of Criminal Procedure §42.01:

It states... "A judgment is the written declaration of the court signed by a trial judge and entered of records showing the conviction or acquittal of the defendant. The sentence shall be based on the **information** contained in the judgment."

and §42.02; "States... "Sentence is that of the judgment, or order revoking a suspension of the imposition of a sentence, that the punishment be carried into excution in a manner prescribed by law." Acts 1965,59th Leg.vol.,2:1317. ch.722.

Davis understanding from his lawyer, prosecutor(s) at trial, and the law governing his sentence, he was to serve his two year sentence "IN ACTUAL PHYSICAL CUSTODY OF TDCJ-CID". Davis entered into this contract with the State with the understanding that the State would abide by the contract as understood in law.(T.C.C.P. Art.§42.01 and §42.02)

The State of Texas failed to carrry out Davis' sentence and punishment into excution in a manner prescribed by law, BY NOT DELIVERING DAVIS IN ACTUAL PHYSICAL CUSTODY OF TDCJ-CID. Therefore, by the State failing to oblige by the terms of the contract, the contract was "breached" and became VOID for want of VALID SENTENCE. The judgment and sentence became defaulted, thus "illegal" to used for enhancement purposes.

Once again, Prosecutor MR. Barrington committed fraud upon the Court by presenting false evidence to the jury and lying under "OATH" about Davis being sent to the penitentiary for cause no. 13718.(See RR.Vol.VI.pg.33,L20-25),(pg.34,L1-7), also (RR.Vol.VI.pg.71,L1-4). In the RR.Vol.VI.pg.72,L18-23; Barrington stated...

> "I would submit to you the evidence that's in, that was in from the last several days and from today--you've got the judgments to consider. It shows beyond a reasonable doubt that the Defendant was, in fact, convicted of a felony offense and **sent to the penitentiary** by this Court in Cause No. 13,718."

As evidence by the REPORTER'S RECORD THE STATE PROSECTOR(S), INTRODUCED/PRESENTED FALSE EVIDENCE TO THE TRIAL COURT AND JURY SEVERAL TIMES ON DAVIS BEING SENT TO THE PENITENTIARY FOR CAUSE No. 13718.

It is well established that, under Texas Law Penal Code §12.42, only convictions that are "FINAL" can be used for enhancement purposes. As a result of the Fraud committed upon the Court by the Prosecutor(s), the jury found Davis guilty of being a Habitual Offender, thus sentencing Davis above the Statutory Maximum for a 2nd degree felony.

This is Davis **first time ever** coming to TDCJ-CID, TDCJ# 01682276 is Davis **only** TDCJ#. DAVIS IS NOT EVEN A REPEAT OFFENDER ACCORDING TO TEXAS LAW PENAL CODE §12.42. Davis is in Illegal Restraint of his Constitutional Right(s), pursuant to an illegal sentence that exceeds the statutory maximum.

Davis did not receive a fair trial. Davis was denied his right to present a defense to the State's prosecution, either by errors committed by the trial judge or by Davis' trial counsel. Based on the trial record, the defense that the prosecution was barred by the Statute of limitations had merit. The State indicted Davis and proceeded to trial on a charge that the State conceded would be barred by the statute of limitations, if the statute of limitations was not tolled by a prior indictment returned against Davis and which the State tried to amend. The State's position that the statute of limitations had been tolled lacked merit for two reasons:

1.) The first indictment against Davis set forth an offense which did not allege the same conduct, act or transaction as does the indictment returned in the case on appeal. The State filed a motion to amend the first indictment and changed the name of the complaining witnesses, the manner and means of how the offense was committed and the date on which the offense occurred. The State circumvented the Grand Jury process by attempting to charge Davis with a completely different offense by using a motion to amend an indictment and not take the case back to the Grand Jury and seek indictment.

2.) The trial court lacked jurisdiction to hear the case because the State's first indictment was not amended properly; due to the fact it was not incorporated into the court's record under the direction of the court, with the knowledge and affirmative assent of the defense.

The State also asserts that the statute of limitations defense was waived by Davis' trial counsel. Davis' trial attorney **admits** on the record that he originally overlooked that the prosecution may have been barred by the statute of limitations. Davis' trial attorney

further states that due to this oversight he did not timely file a motion to quash the indictment and that he entered into a stipulation which was later used by the State to block the defense from asserting the statute of limitations defense. Trial attorney states that his actions, related to the presentation of the statute of limitation defense, were in no way trial strategy, but was ineffective assistance of counsel on his part.

CLOSING ARGUMENT.

An indictment was returned by a Hardin County Grand Jury on October 10th, 2007 in Cause No. 18640 and styled the State of Texas vs. Vedal Davis charging Davis with the felony offense of aggravated assault with a deadly weapon(Reporter's Record Vol.VIII, Court Exhibit S-1). The charging portion of the indictment read as follows: "VEDAL ABDUL DAVIS, hereinafter styled Defendant, heretofore on or about March 16th 2007 in Hardin County, Texas did; then and there intentionally or knowingly cause bodily injury to **Lechadrien Cole** by **striking him with his motor vehicle**, and the defendant did then and there use or exhibit a deadly weapon, to-wit; a pipe, during the commission of said assault.(Reporter's Record Vol.VIII,Court Exhibit S-1). The indictment also contained two enhancement paragraphs.(Reporter's Record Vol.VIII, Court Exhibit S-1).

Davis was **later arrested, charged, arraigned and made bond on June 2, 2007** in Hardin County, Texas assault on George Stewart, intentionally and knowingly causing bodily injury by **striking him with a pipe**, and the defendant did then and there use or exhibit a deadly weapon, to-wit; a pipe.

Davis' **March 16, 2007 Lechadrien Cole assault [and] June 2, 2007**

**George Stewart assault** are (TWO) "separate arrest, charges, Arraignments, bond-settings, and incidents that actually occurred.

Hardin County Judicial District Court 356/88 brought "new" "indictment" 20784 against Davis, stating it amended and tolled the GEORGE STEWART indictment which was Barred By Statute Of Limitations, thus using the LECHADRIEN COLE indictment which was "ALSO" Barred By Statute Of Limitations and allowed by the Hardin County 356/88 Court to be so amended from 18640 Lechadrien Cole to 20784 George Stewart, July 13, 2010.(Clerk's Record Vol.I, Pgs. 2-3).

Davis is convicted under VOID INDICTMENT 20784 and sentenced by jury to 33 years in prison for a 2nd degree felony. THE AMENDING AND TOLLING OF 18640 to "CREATE" 20784 THEN TAKE DAVIS TO COURT, ON INDICTMENT THAT "BOTH" WERE "BARRED" BY STATUTE OF LIMITATIONS IS AN ACT ON IT'S FACE "VOID" AND NOT REPARABLE. (See App. M & N)

The Texas Court of Criminal Appeals ("TCCA") held that, although a "subsequent indictment" recited the same statutory language as the original indictment, the statute of limitations ("SOL") was not tolled because the subsequent indictment failed to charge the same conduct, act, or transaction, as required by Hernandez v. State, 127 S.W.3d 768 (Tex.Cr.App.2010), for tolling of the Statute of Limitations. Of "RECENT" holdings in State v. West, 632 S.W.3d 908 (Tex.Crim.App. 2021), it states in part...,

> "The TCCA observed that an indictment must state, on its face, that the prosecution is not time-barred by the governing SOL. Cited Mercier v. State, 322 S.W.3d 258 (Tex.Crim.App.2010). TCCA noted that the SOL is not tolled by just any indictment. Id. It explained that a prior indictment tolls the SOL with respect to a subsequent indictment only when "both indictments allege the same conduct, same act, or same transaction."Id. The applicable SOL is not tolled and thus bars a subsequent indictment if "it broadens or substantially amends the charges in the original indictment."Id.

Davis "quoting" this recent holdings in West v. State from the "Criminal Legal News: Published by the Human Rights Defense Center Vol.5, No.3, March 2022 Issue."

Davis argues that the 20784 indictment was VOID FROM CONCEPTION and thus NEVER legal and is "absent" any legal force from it's conception; the court held in Cook v. State 858 S.W.2d 467 (Tex.Crim. App.1993) "that the indictment vest the trial court with jurisdiction," Davis makes claim that the trial court had no jurisdiction to even hear 20784 or convict him because 20784 is (1. Barred by statute of limitations', (2. is "without" (subsequent) indictment as required by Tex.Art.12.05 from which to be tolled and amended, (3. trial court record and motions therefore serve as Davis' proof that 18640 and 20784 indictments "provide" (insufficient) evidence to support 18640 and 20784 specifically speaking to the "SAME COMPLAINTANT" as claimed by the State in reasoning "WHY" Davis is re-indicted to 20784, (4. the State would have no reason to invoke Tex.Art.1.14(b) [IF] "ALL" has been enacted legal and presented upon the court under protection of Davis' constitutional rights to due process of law (Const.Amend.5&14); see also Cook v. State.Id.

To determined the facts of the case for the purpose of making the prejudice analysis, the Texas Court of Criminal Appeals relied on and adopted the 356 trial court facts and conclusions of law. Based on that decision, (TCCA) ignored all the overwhelming evidence that Davis presented "as matter of the records", thus making (TCCA) decision unreliable and prejudice; and entered a decision in conflict with the decision(s) of another United States Court of Appeals on the same important matter.

## REASONS FOR GRANTING THE PETITION

I. THE COURT OF CRIMINAL APPEALS OF TEXAS MISAPPLICATION OF THE PREJUDICE STANDARD OF STRICKLAND WARRANT'S THIS COURT'S ATTENTION.

The Court of Criminal Appeals opinion **misapplied** the Strickland v. Washington, 466 U.S. 668, 687-88(1984), test for prejudice in some important ways. First, the Court of Criminal Appeals "adopted", the 356th District Court Of Hardin County, Tx "RECOMMENDATION" for Dismissal in Davis' Subsequent habeas application [without] making the prejudice analysis under Strickland. This Honorable Court requires, in making the prejudice analysis under Strickland, that the reviewing court consider **all of the evidence** in the record, both that which was admitted at the trial and that which is developed at the post-conviction stage. Strickland v. Washington,(1984). Rompilla v. Beard, 545 U.S. 374(2005); Wiggins v. Smith, 539 U.S.510(2003); Williams (Terry) v. Taylor, 529 U.S.362(2000). Under this test, it is inappropriate to consider the evidence in the light most favorable to the verdict.

Davis argues that he has a constitutional right to his Writ(s) being heard on the **merits** to see and then determined if he "illegally restrained" in violation of his protected constitutional rights. Davis trial attorney provided ineffective assistance of counsel by failing to investigate the "finality" of his [prior] convictions the State used for enhancement purposes; Davis' Sixth Amendment Secured Autonomy Right was also violated when he was "blocked" from presenting the defense he wanted. McCoy v. Louisiana, 138 S.Ct. 1500,(2018). Davis relies upon Ex Parte Pue, 552 S.W.3d 226(Tex.Crim.App.2018) and McCoy v. Louisiana(2018) as providing previously unavailable ruling(s) [after] he filed his original 11.07 application.(2015)

It is clear that the Court of Criminal Appeals here disregarded this principle. In the trial court facts & conclusion of law the State Prosecutor,(See App. B ), stated...,

> "Pue is inapplicable to Davis' case because Pue addressed whether the finality determination of an out-of-state prior conviction is to be determined under Texas law or the law of the State out of which the conviction arises...However, Applicant's convictions in cause number 15093 and cause number 13718 are both Texas convictions, Thus, Pue is inapplicable to this case and does not present Applicant with new legal basis previously unavailable to him.(App. B.pg.4)

The State Prosecutor reasoning for PUE CASE being inapplicable to Davis' case was based on Pue's conviction was out of State and Davis' case was in Texas; instead of determining to see if Davis' [prior] conviction(s) was actually "FINAL" according to Texas Law and legal to use for enhancement purposes. The Prosecutor determination of the facts was incorrectly applied to Davis' Writ. "Trial Court's conclusion of law should be attacked on the ground that the law was incorrectly applied". See Heritage Resources, Inc v. Hill, 104 S.W.3d 612. The appellate court must independently evaluate trial court's conclusion of law to determined their correctness when they are attacked as a matter of law. The State Prosecutor also stated... "Accordingly, these claims are procedurally barred because they could have been raised on direct appeal but were not." (App. B.pg.6). Contrary to the State's determination, "An illegal sentence is one that is not Authorized by law; therefore, a sentence that is outside the range of punishment authorized by law is considered illegal." See Mizell v. State, 119 S.W.3d 804,806(Tex.Crim. App.2003). "A claim that a sentence is illegal because it exceeds the statutory maximum is **cognizable** in a writ of habeas corpus and may be raised **at any time, even if not raised on direct appeal.**" Ex parte Rich, 194 S.W.3d 508,511(Tex.Crim. App.2006).

Davis argues that the State's reasoning for dismissal of his third and fourth grounds to effective assistance of counsel is contrary to clearly established law that was set forth by this Honorable Court in Strickland v. Washington and McCoy v. Louisiana. The Prosecutor stated..., "Applicant also argues McCoy provides him a previously unavailable legal basis for relief. Contrary to Applicant's assertions, the Court of Criminal Appeals has definitively rejected such an argument."(App. B .pg.5)

The State cited and relied on Ex parte Barbee, 616 S.W.3d 836, 844-45(Tex.Crim.App.2021) for her determination to recommend Dismissal of Davis' [McCoy] claim. The State failed to construe then determined Davis' claim(s) as established by law/precedents set forth by this Honorable Supreme Court in Strickland Id and McCoy Id. Instead the State based her determination on a ruling that was made by the Courts of Criminal Appeals in Ex parte Barbee. "While State Courts may draw upon the precedents of any Federal or State Court, they are **"obligated"** to follow only higher State Courts and the United States Supreme Court." See Gillespie v. Scherr, 987 S.W. 2d 129(Tex.App,-Houston[14th Dist.] 1998. "Court of Appeals had to follow directly applicable precedent of the U.S. Supreme Court, even if that precedent appeared to be weakened by pronouncement in subsequent Supreme Court decisions, and would leave to the Supreme Court the prerogative of overruling its own decisions." See Randall v. Johnson, 227 F.3d 300 (5th Cir.). "The Supreme Court has left no doubt that as a constitutionally inferior court, we are compelled to follow faithfully a directly controlling Supreme Court precedent unless and until the Supreme Court itself determines to overrule it. We may not reject, dismiss, disregard, or deny Supreme Court precedent..." See U.S. v. Dabeit, 231 F.3d 979 (5th Cir.2000).

The State Prosecutor and the Court of Criminal Appeals "abused it discretion" by misapplying law to undisputed facts in Davis' subsequent writ application, thus acting arbitrarily and unreasonably. [Both] the Trial Court and Court of Criminal Appeals rejected, dismissed, disregarded, and denied such ruling(s) that was made by this Supreme Court; **when** by law both Courts was compelled to follow faithfully a directly controlling Supreme Court precedent.(ie.Strickland, ie. McCoy). "A trial court clearly abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." See In re Replublic Lloyds, 104 S.W.3d 354. The Court of Criminal Appeals "adopted" the trial court recommendation(s) and relied on **procedural rules and Ex parte Barbee** to Dismiss Davis' Subsequent Writ Application. The Court of Criminal Appeals **did not** base it determination on the facts within Davis' Writ and evaluate the **totality of the evidence** to see if Davis is illegally restrained in violation of his constitutional rights.(5th, 6th, and 14th Amend.) "When a procedural rule setting jurisdictional time limits conflicts with sixth amendment rights, the Court of Criminal Appeals has held that **the procedural rule must yeild to the superior constitutional right."** See Whitmore v. State, 570 S.W.2d 889,898(Tex.Crim.App.1978). Denial of meaningful appeal due to ineffective assistance of counsel presents ground for habeas corpus relief. U.S.C.A. Const.Amend.6. In "Hamdi v. Rumsfeld, 124 SCt 2633, 542 US 507 it states in part...All agree that, absent suspension, the writ of habeas corpus remains available to every individual detained within the United States. U.S. Const.,Art.I,§9,cl.2 ("The Privilege of the Writ of Habeas Corpus **shall not be suspended,**

unless when in Cases of Rebellion or Invasion the public safety may require it.")

Davis argues that his trial court defense attorney,(Laine), rendered ineffective assistance of counsel at his trial [admitting as such upon the court record], then confidencing Davis "again" to let him be his DIRECT APPEAL ATTORNEY. Telling Davis that because of his errors at trial he wanted to make up for his mistakes by successfully representing him in his DIRECT APPEAL. Davis "again" duped by Laine, agreed to allow Laine to prepare and present his appeal.(See No. 09-10-00538-CR, 9th Court of Appeals, Vedal Davis v. The State of Texas, Appellant's Brief; Oct.6, 2011). Laine acting as "APPEAL" attorney in Davis' direct appeal to the Ninth Court of Appeals intentionally "failed" to show a reasonable probability under the circumstances that the result of Davis' trial would have been different but for counsel's conduct. [His own conduct at trial]. See id. at 740 (citing Strickland 466 U.S. 668).

Davis argues further that he should not be held at fault for events, acts, ommissions, or inactions within his trial court or appeal court where his attorney Laine is vested full control of his information by the trial, and appeals courts. Laine would be the first and only contact under operational law to receive "NOTICE" from the court clerk as to any events, motions, and/or hearings held upon the court. Again Laine used his mistakes and errors at trial to fool Davis into believing that he would "make things right" for a botched defense he had presented in Davis' trial. The Ninth Court of Appeals would exact that Laine's submissions upon the court were deficient on the **most critical issue** upon the court **"his own ineffective assistance of counsel at Davis' trial"** (See

Vedal Davis v. The State of Texas; Ninth Court of Appeals, July 25, 2012 MEMORANDUM OPINION, Justices Gaultney, Kreger, and Horton,JJ, pg.8-9)(quoting, "furthermore, Davis has not shown a reasonable probability under the circumstances that the result would have been different but for counsel's conduct. See id. at 740(citing Strickland, 466 U.S. 666)Issue overruled.). Davis presenting that the Ninth Court of Appeals **supports the facts** that Laine fails to adduce the required prong as necessary, to prevail in Strickland yet the 356th Trial Court and equally the Ninth Court of Appeals "both", enumerating the many failures and errors in Laine's trial court and appeals court filings, he somehow is not ineffective. These findings are so clearly contrary to justice where the courts themselves exact more than 12 FAILURES OF LAINE TO SUFFICIENTLY ACT AS ADEQUATE DEFENSE ATTORNEY IN SITUATIONS CRITICAL TO DAVIS' TRIAL PROCESS.

Bryan Laine filed afterwards Davis' PDR and it also was refused on February 6, 2013.(See No.PD-1205-12). Laine stopped all contact with Davis' family at the tune of wanting additional money to further help Davis fight for his freedom. Davis, because he had no more money for Bryan Laine to pursue from him [is] left to suffer the many errors Laine accumulated throughout Davis' trial and direct appeal process. Davis still believing in the Texas Attorney System hires an attorney to represent him in his filing of his Post Conviction Writ. JWO Campell Law Firm charged Davis' family $3,000.00 to assist in filing an "1107" Writ of Habeas Corpus and like BRYAN LAINE Davis received only lies and no legal performances or relief for his money. JWO Campbell Law Firm **NEVER** filed Davis' Post Conviction Writ or offered any services for the pay he received. Because of JWO Campbell inactions and lies about filing Davis' habeas corpus, the delays he

caused Davis, [the court(s) is now time barring Davis from relief, (adjudication), of his claims, because Davis was late filing; due to no fault of his own.] (See.App. O .). Davis filed a grievance on JWO Cambpell Law Firm to the Texas State Bar and was awarded his money back. (See.App. P .). Still the Federal Courts for the Eastern District of Beaumont Division Time Barred Davis' claims [using the AEDPA] against him arbitrarily and capriciously. (See.App.E)

In U.S. v. Wynn 292 F.3d 226(5th Cir.2002), it states in part...,

> "Attorney's deception in convincing prisoners that he has filed timely habeas Petition or motion for postconviction relief on his behalf, presents a rare and extraordinary circumstances that is beyond prisioner's control, and that may warrant equitable tolling of the one-year time limit imposed by the Anti-terrorism and Effective Death Penalty Act(AEDPA) on habeas petitions and motions for post conviction relief."

Davis argues that his situation is similar to Wynn's Case and the Eastern District of Beaumont ruled contrary to clearly established law(s). Davis a pro se litigant [left] illegally restrained in violation of his constitutional rights; due to ineffective assistance of counsel by his trial, direct appeal, and post-conviction attorney [who never filed anything on Davis' behalf], now suffering an illegal conviction and sentence because of their mistakes. Davis subsequently filed a subsequent writ of habeas corpus believing that the Texas Court(s) will grant relief based on the overwhelming evidence Davis [has] provided **throughout** his entire Post-Conviction process. The Court of Criminal Appeals "adopted" the trial court recommendation for dismissal of **Davis'** colorful claim(s). The trial court NEVER stated that my claim(s) was not Meritorious, only that I should have raised it on direct appeal.(See.App. B .pg.6). [AND] if that is the case, [that I should have raised it on direct appeal], The trial court itself agreeing with me that my trial, and direct

appeal attorney (Bryan Laine) was ineffective, because he was the one who prepared, and then filed Davis' direct appeal NOT DAVIS.

It is also shown upon the record that Laine's so-called trial strategy would not be sound or even reasonable given the CONTRAST in the RISK to be taken with Davis LIBERTY at stake, versus Davis FREEDOM already in Davis' control **absent Laine's stipulation** to a tolling paragraph **BENEFITTING** the State. Davis finally argues that he has by a preponderance of the evidence, he has proved beyond a reasonable doubt that his defense attorney Laine, rendered ineffective assistance of counsel and that ineffectiveness prejudiced his defense, such that it caused an adverse trial result and now he suffers an illegal 33 year sentence due to Laine's errors which give right to Davis' request for relief from the fundmental miscarriage of justice occuring within his trial upon the court. (Const.Amend.5,6,&14)(Bone v. State 775 S.W.3d 828,833(Tex.Crim. App.2002)

Davis thus, request that "IN THE INTEREST OF JUSTICE", his relief be **analyze** under **"NEW" STANDARD** determining whether Laine's ineffectiveness is [PRIOR] to the error he made in stipulating at the AMENDMENT HEARING by virtue of him not performing an independent investigation into the law, facts, and circumstances, surrounding the Hearing and if so does the **stipulation** have any legal force within the trial or is the ACT within itself and under the circumstances VOID. Take in consideration that this HEARING TOOK PLACE AFTER DAVIS' CAUSES WAS TIME BARRED, (18564 and 18640) ON JULY 13th, 2010. "A court has no authority to act outside the periods permitted by statute." See Houlihan v. State, 579.S.W.2d 213 (Tex.Crim.App.1979). (See.App.Q-). Davis had a three(3) year statute

of limitations period for his alleged offense, the offense occurred June 2, 2007 and the limitations period expired June 2, 2010. The State Prosecutor(s) failed to prosecute Davis [within] the appropriate time prescribed by law. (See Vernon's Texas Statutes Annotated Art.12.01. felonies). (See.App.Q.) and (See.App.R.)

Davis believes "IN THE INTEREST OF JUSTICE", this Honorable Court should grant his relief by setting aside his judgment and/or sentence, resetting his trial back to it's original state, and determining in favor of Davis that Laine his trial, and direct appeal attorney rendered ineffective assistance in accordance with Strickland standards and prior Supreme Court rulings.

Because the Court of Criminal Appeals has truncated the Scope of Strickland v. Washington, 466 U.S. 668,687-88(1984), prejudice review, this Honorable Court must grant certiorari.

## II. THE DECISION OF THE COURT OF CRIMINAL APPEALS IS IN CONFLICT WITH THE DECISIONS OF OTHER APPELLATE COURTS.

The decision of the Court of Criminal Appeals is in conflict with US Supreme Court Case Strickland v. Washington. Under the Strickland standard the U.S. Constitution VI, vest Davis with the right to have the Assistance of Counsel for his defense. Supreme Court in Strickland v. Washington, allows for a "two" prong test to establish "two" things, (1. Whether Davis has proved his attorney to be ineffective, and (2. Whether the attorney in his action/inactions falls below the "standards" set to establish his ineffectiveness, Davis nonetheless demonstrates relying on the trial court records, the findings of the Trial Judge, Direct Appeal Court Judge, the District Attorney for the State, to show just how ineffective Laine is, in trial and on direct appeal, and that ineffectiveness caused Davis to suffer trial without a defense, effective counsel, undue risk of prosecution, unfair trial process, thus an unreasonable trial result.

COURT FINDINGS UPON THE RECORD

(1. Laine attended then stipulated to a tolling of Davis' indictments,

(2. Laine Claimed it was in error that he stipulated to the tolling, (RR.Vol.II.,pg.7.L11-25) Vol.V.,pgs.7-18)

(3. Laine is ineffective [at] proving himself ineffective at trial, (RR.Vol.V.,pg.9-18)

(4. State's attorney deemed Laine's acts: (failures) to:
   (a. Demonstrate ["Moreover, appellant has not cited any authority nor made any argument that any defect in the amendment procedure would prevent the prior amended indictment from tolling the statute of limitations."];(pg.18-NTH,CRT.BFTS)
   (b. Demonstrate ["For whatever reason, defense counsel determined prior to trial that he did not want the tolling provision placed before the jury, he affirmatively requested that it be "stricken" and not placed before the jury because the defense did not question the jurisdiction of the court to proceed on the new indictment.(RR2:10)

(5. ["Appellant has not demonstrated, on this record, that he was deprived of constitutionally adequate representation by trial counsel, and in any event, he has failed to demonstrate on this record that his right to a fair trial was prejudiced by any acts of counsel because the prosecution was within the statute of limitations pursuant to article 12.05(b).(pg.25., NTH,CRT,BFTS)

(6. ["Moreover, despite counsel's willingness to fall on his sword, the RECORD DOES NOT reflect that there was no conceivable trial stragety for counsel's actions.(Pg.29.-NTH,CRT.BFTS)

(7. ["Appellant has failed to demostrate on this record that on this record that admission of testimony about the excited utterance of the child bystander witness, XXXXXXXX XXXXX -J.H., violated his Sixth Amendment Confrontation right, and in any event,"] (Pg.30.-NTH,CRT.BFTS)

(8. NTH.CRT.APP.,MEM.OP.,No.09-10-00538-CR "stated" Laines failures to "demonstrate" and prove: ["To overcome the presumption of reasonable professional assistance, 'any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness.'"Id.(quoting Thompson v. State, 9 S.W.3d 808,813 (Tex.Crim.App.1999). (Pg.8Mem.Op.)

(9. ["Furthermore, **Davis has not shown** a reasonable probability under the circumstances that the result would have been different but for counsel's conduct.See id. at 740(citing Strickland, 466 U.S. 688)."] (Mem.Op.July 25,2012) (do not publish)

Davis clearly show(s) and proves, that the Court(s) would seem **bias** in their **own establishment** of "what" Laine, or any other attorney would have to do when applying the Standard in Strickland, since the very same court then demonstrates in making it's opinion and mandate, "what" the attorney has **failed** to do in order to prevail for his client(Court Findings Upon The Record) this 1 thru 9, pg.6 thru 7..

Davis argues that the ruling in the Court of Criminal Appeals is contrary to the evidence within these records showing clearly the multitude of "failures" and "mistakes" Laine has made in trial and in Direct Appeal for Davis, and though Laine is well learned in law and the applications of law he would **stop [just] short of**

**proving himself ineffective for Davis** since he would surely know what it would take to show and prove the "two" prong requirements set in Strickland and to demonstrate [he] actually rendered ineffective assistance of counsel at trial for Davis. (Const.Amend. 6)(Strickland Id at 688)

Davis would like to present to this Honorable Court an opportunity to set "NEW STANDARDS" for ineffective assistance claims, BY NOT ALLOWING APPELLATE COURTS TO HOLD CLIENTS AT FAULT FOR THEIR LAWYERS INEFFECTIVENESS. That is exactly what occurred in Davis' appellate process. The Ninth Court of Appeals **ruled** that **Davis failed** to do all the things that **Laine actually filed and presented, [on Davis' behalf]**.

The right to the assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Art. 1, Section 10 of the Texas Constitution. This right to [the] "assistance of counsel has long been understood to include a "right to the effective assistance of counsel." See, McMann v. Richardson, 397 U.S. 759, 771, n.14, 90 S.Ct. 1441,1449,25 L.Ed.2d 763(1970). "The integrity of our criminal justice system and the fairness of the adversary criminal process is assured only if an accused is represented by an effective attorney." See, United States v. Morrison, 449 U.S. 361,364, 101 S.Ct. 655,667(1981). ABSENT the effective assistance of counsel "a serious risk of injustice infects the trial itself." See, Cuyler v. Sullivan, 446 U.S. 335,343, 100 S.Ct. 1708,1715(1980). Thus, a defendant is constitutionally entitled to have effective counsel acting in the role of an advocate. See. Anders v. California, 386 U.S. 738, 743, 87 S.Ct. 1396,1399(1967).

The right to be represented by counsel is by far the most important of a defendant's constitutional rights because it affects the ability of a defendant to assert a myriad of other rights. As Justice Sutherland explained in Powell v. Alabama, 287 U.S. 45,53 S.Ct. 55, 77 L.Ed.158 (1932): Justice Sutherland states in part..,

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamilar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or other inadmissible. He lacks both the skill and the knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at **every step in the proceedings against him.** Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense." Id., at 68-69, 53 S.Ct., at 63-64.

Davis is in custody in violation of the U.S. Constitution and Laws of the United States. Davis trial decision resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented [and] resulted in a decision that was contrary and involved an unreasonable application of clearly established Federal Law as determined by this Supreme Court of the United States.(Const.Amend.5,6,14.). This was precisely the type of review that this Court condemned in Williams(Terry) v. Taylor, 529 U.S. 362, 397-398 (2000).

Davis' 20784 indictment is VOID FROM CONCEPTION and he is held in illegal restraint because of the same, because 20784 is NOT "subsequent" indictment to the State's 18640 indictment as required by Texas Law to amend and toll,(art.12.05(b)), 18564 and 18640 indictments DO NOT "SPEAK" to the "SAME COMPLAINANT" that is in 20784 and as depicted by the State prosecutor;

> The **"minutes"** of the 2007 Grand Jury "hearing" evidence on 18564 and 18640 indictments were AND ARE NECESSARY TO PROVE and "SUPPORT" the State's "SAME COMPLAINANT" claim and without the same the State presented and the trial court relied on **evidence that is insufficient** to support the amendment, tolling and the 356th Court's ruling **absent establishment** that the address of incident, injuries sustained and official hospital and police reports "SPOKE" to the "SAME COMPLAINANT".
>
> In Monge v. California 118 S.Ct. 2246(1998) the court states in part..., "Until today, the Court has never held that a retrial or resentencing is permissible when the evidence in the first proceeding was "insufficient", instead, the Court has consistently drawn a line between insufficiency of evidence and legal errors that infect the first proceeding. In his unanimous opinion for the Court in Burger v. United States, Chief Justice Burger emphasized this critical difference, i.e., "between reversals due to trial error and those resulting from evidentiary insufficiency," id., at 15, 98 S.Ct. at 2149.

Davis further argues, at his punishment phase of his trial, Prosecutor Barrington committed fraud upon the court by presenting false evidence to the trial court and jury pertaining to his prior conviction(s), causes 13718 and 15093. Barrington tender into evidence that [both] causes was a "FINAL CONVICTION", and Davis [had] actually went to the penitentiary for [both] priors, the State Prosecutor(s) made no effort whatsoever to prove by preponderance of the evidence that Davis' prior(s) was FINAL. If the State wanted to show and prove that Davis prior conviction(s) was "actually" final, according to Texas law Penal Code 12.42, it could have easily introduced/presented an actual PEN PACKET to prove up the finality of Davis' prior(s) it used for enhancement purposes.

It would have been proper and admissible evidence to show a "PEN PACKET" to prove up the finality of Davis' prior(s). The State fail to show any proper method of proof that Davis [had] actually went to the penitentiary. " Introduction of indictment resulting in Prior Convinction [And] Authenticated copies of Records of Department of Correction **including** certified copies of judgment and sentence, mugshot, and set of fingerprints, **was proper method of proof of prior conviction**." See Rinehart v. State, 463 S.W.2d 216 (Tex.Crim.App.1971).

Davis argues that there is **no evidence whatsoever to support a "final conviction"**, for causes 13718 and/or 15093 the State used for enhancement purposes. Davis **NEVER** went to the penitentiary for either prior(s). This is Davis first time coming to TDCJ and Davis further argues that this is his first and only TDCJ No. 01682276. Davis pleading with this Honorable Court to **Review his TDCJ History**. There is need for an "inquiry" of the records because "absent" Davis being able to "confront" the legality of his prior conviction(s) his U.S. Constitutional 5th, 6th, and 14th Amend. Right(s) to Due process will certainly remain violated by the court(s) decision, and a fundamental miscarriage of justice will occur.

"In Duggan v. State 778 S.W.2d 465 (1989) it states in parts...,

> "The prosecutor's constitutional duty to correct known false evidence is well established both in law and in the professional regulations which govern prosecutorial conduct. This overriding duty falls upon the prosecutor in his capacity as the State's Representative in criminal matters as a TRUSTER OF THE STATE'S INTEREST IN PROVIDING FAIR TRIALS, the prosecutor is obliged to illuminate the court with the "TRUTH" of the cause, so that the judge and jury may properly render justice. Thus, the prosecutor is more than a mere advocate, but a Fiduciary to FUNDAMENTAL PRINCIPLES OF FAIRNESS."

"A claim that there is no evidence whatsoever to support a conviction, by contrast, is always cognizable in a post-conviction habeas corpus proceeding, regardless of whether it was, or could have been, raised at any previous stage." See Ex parte Perales, 215 S.W.3d at 419-420.

CLOSING ARGUMENT.

Davis argues that the 5th and 14th United States Constitutional Amendments vest him with right to protections from arbitrary court actions by guaranteeing that his liberty not be jeopardized "but by due process of the law". (Const.Amend.5), the Const.Amend.14, particularizing specifically that "NO STATE SHALL DEPRIVE ANY PERSON OF ,..."LIBERTY",.., WITHOUT DUE PROCESS OF LAW: NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.", **mandates** the courts to protect Davis' rights to "CONFRONT" his accuser(s) whether that be complaintants, written documents, (i.e. INDICTMENTS), or the "COURTS" themselves (Const.Amend.6). "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO..., BE CONFRONTED WITH THE WITNESSES AGAINST HIM:..., AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.", This right is clearly established in the U.S. Constitution that not only does Davis have a constitutional right to confront his accusers, which is violated by the Texas Court of Criminal Appeals (TCCA), **by ruling contrary to clearly established federal law, as determined by the Supreme Court of the United States.** The United States Supreme Court interpreted that language in Williams(Terry) v. Taylor, 529.U.S.362 (2000).

Davis a pro se litigant demostrated throughout his [entire] Post Conviction Process (filings) "ie. initial 11.07, 2254,C.O.A., motions, objections, and his subsequent 1107", Davis claim(s) the State was barred by statute of limitations and the State failed to sufficiently prove that the 18640 indictment actually is "SUBSEQUENT" indictment from which 20784 could be legally amended and tolled to law of art. 12.05(b), and **absent** identification of victim through evidence presented to 2007 Grand Jury the State's

evidence and facts fall short of sufficient evidence to prove beyond a reasonable doubt, rendering the court's determination "unreasonable", since it lacked sufficient evidence to support the 18640 amendment and tolling. (see Sebesta v. State 783 S.W.2d 811,814, (1990).

Where the (TCCA) "adopted" the 356 trial court facts & conclusions of law, as well as the Federal Court [Eastern District of Texas, Beaumont Division], and the 5th Circuit not granting Davis a C.O.A., "ALL" APPELLATE COURTS ABUSED THEIR DISCRETION(S), by not establishing [IF] Davis in custody "Illegally" in violation of his Constitutional Rights. (5,6, & 14). Davis further argues, [throughout] his Post Conviction process as a pro se litigant, his claim(s) have not been heard on the merits. The Texas Court(s) **applying procedural rules** to deny Davis a meaningful opportunity to be heard on the merits. Trial Court **applied Tex.Art. 1.14(b),** (TCCA) "adopted" the trial court facts & conclusions of law, Federal Court **applied A.E.D.P.A., 28 §2244(d)(1),** and in Davis' "subsequent writ", the trial court **applied 'TEX.CODE.CRIM.PROC.ANN.art. 1107 §4(a),** and (TCCA) "adopted" the trial court facts & conclusions of law.

Davis argues that Tex.Art. 1.14(b), A.E.D.P.A., T.C.C.P.Art.1107 §4(a), nor any other procedural rule shall apply to his instant cause 20784. Indictment 20784 was VOID FROM CONCEPTION and thus, NEVER legal and is absent any legal force from it's conception,(see Cook v. State.Id). Davis argues that his constitutional rights are rights not subject to supplementation(s) by STATE PROCEDURAL RULES and presents "mixed questions of law and rules of law" that jeopardize his rights and protections within the laws and rules of law that

"ABSENT" Davis' claims being adjudicated upon the court(s) on the merits of the claims, deny Davis right to confront his accusers,(ie. 356 Judicial District Court), (20784 indictment),(State of Texas v. Vedal Davis in cause no. 18564 and 18640), the subject(s) of his illegal restraint under VOID INDICTMENT-20784.

Davis argues that his constitutional rights vest his right through the (5,6,&14) amendments to the United States Constitution, to be heard on the merits of his claims (due process), and the 'application of the A.E.D.P.A, 1.14(b), 1107§4(a), nor any other procedural rule' **shall deny that right**, or even deny the liberal construing of Davis' Writ, an act contrary to the holdings within Haines v. Kerner, 404 U.S. 519,520-21(1972) (per curiam) (a pro se inmate's petition should be viewed liberally and is not held to the stringent standards applied to formal pleadings drafted by attorneys), and sanctioned by the U.S. Supreme Court, (see also Hernandez v. Thaler, 630 F.3d 420,426-27(5th Cir.2011) (filings by habeas petitioners are "entitled to the benefit of liberal construction"), Brown v. Roe, 279 F.3d 742,746(9th Cir,2002)("Pro se habeas petitioners are to be afforded the benefit of any doubt,")(citations ommitted).

Davis puts forth arguments and demostrations that his claims and the totality of the evidence within the records support his claims and require "new" standard of analysis as to the questions of whether the court(s) would act contrary to mandated language within the U.S. Constitution [or] apply rules of the State that would cause absurb results, "meaning", the court(s) would by virtue of the State Procedural Rules act contrary to the (1. U.S. Constitution Article I,§ 9 specifically states that: "The privilege of the Writ of Habeas Corpus **shall not be suspended**, unless when in Cases of Rebellion or Invasion of the public safety may require it."

Davis' Subsequent Writ is in essence an extention of his initial 11.07 Writ of Habeas Corpus and [IF] his privilege of the Writ is "suspended" by the procedural rules of 1.14(b), A.E.D.P.A., 1107§4(a), or any other procedural rule, then each rule as well as the court(s) applying the same would impliment an act contrary to the basic fundamental principles within the U.S. Constitutional Protections, thus altering the very intent of the U.S. Constitution to afford fairness and absent Davis' claims being heard on the merits to determined whether he is or is not illegally restrained of his liberty [is] certainly contrary to those constitutional protections;

(1. SUSPEND HIS PRIVILEGE OF THE WRIT,
(2. ALLOW DAVIS TO REMAIN ILLEGALLY RESTRAINED,
(3. DENY DAVIS EQUAL PROTECTION OF THE LAWS OF THE U.S. CONSTITUTION 5,6, and 14 AMENDMENT.

Davis argues his protections in Art.I,§9, he certainly DOES NOT present his cause in rebellion or invasion of the public safety and his bringing his cause in the manner he has [is] to further protect the interest of the public that an analysis of the intent of the State Rules [IN CONTRAST] with the intent of the "INTEREST OF JUSTICE", be weighed against application(s) of the A.E.D.P.A, 1.14(b), 11.07§4(a), and any other procedural rule. When the fundamental principles of the intent of applications of laws **suspend** the very intention of the Writ of Habeas Corpus itself and **deny** basic specific language of the U.S. Constitution; Texas Court of Criminal Appeals **certainly entered** a decision in conflict with the **mandated language** of the U.S. Constitution in Art.I.§9, thus so far departing from the accepted and usual course of judicial proceedings, Davis call for an excercise of this Honorable Court's supervisory power.

It is well established that the practice of liberally construing pro se pleadings is a proper judicial function that does not transform a judge into an advocate for a habeas applicant. See Hall v. Bellmon, 935 F.2d 1106,1110(10th Cir.1991).("Explaining that, although a court "should not assume the role of [an] advocate for the pro se litigant and may not rewrite a petition to include claims that were never presented," a court acts properly when it look[s] carefully at the facts and the pleadings in an effort to ascertain what occurred in prior state proceedings and the true nature of the petitioner's claims").Id. at Hall v. Bellmon, 935 F.2d 1106,1110 (10th Cir.1991).

Davis argues that he has made a good faith showing that he is illegally restrained under VOID INDICTMENT AND HIS SENTENCE IS ABOVE THE STATUTORY MAXIMUM ALLOWED FOR A 2nd DEGREE FELONY. Davis' cause gives rise to constitutional mixed questions of law and rules of law that effect his having privilege of the writ as ascribed in Art. I,§9, and his constitutional protections within Const.Amend.5,6,&14, where applications of State rules would **"allow"** his imprisonment under illegal restraint.Id.

Davis argues that he has met the constitutional requirements in this Writ Of Certiorari that would allow under conditions of fundamental miscarriage of justice, this Honorable Supreme Court hearing his claims on the merits and determining the facts as to his illegal restraint, ("a simple matter"), of examing the records of the 2007 Grand Jury for "ANY" evidence of recordings specific to a GEORGE STEWART ASSAULT by Davis, [IF] "NOT" Davis is then correct and 20784 indictment is in fact VOID by virtue of it NOT being amended and tolled from subsequent indictment 18640, thus illegal from conception.

CONCLUSION.

The Texas Court of Criminal Appeals decision(s) in Davis' cause is in conflict with the decisions of another appellate court. It is important for this Honorable Supreme Court to step in and invoke its judicial discretion. Davis has claimed he been in illegal restraint throughout his entire appellate process. The decision of the (TCCA) in Davis' cause was erroneous because Davis is similar situated liken unto Strickland Id, McCoy Id, Pue Id, and "all" the other cases Davis aforementioned throughout this instant filing.

In Copeland v. Washington, 237 F.3d 969,974(8th Cir.2000), it states in part...,"this Court has held that in determining whether a state court has reasonably applied United States constitutional law, cases which have decided "factual similar issues" should be considered." Thus, the same result should apply.

Davis argues that his case is important not only to him but to others who are similar situated. "MEANING", [IF] a person "who have a colorful claim and can prove [he] is illegally restrained in violation of their constitutional rights", [BUT] REMAIN illegally restrained [BECAUSE] applications of States rules would "ALLOW" his imprisonment.

The Cases Davis aforementioned "illustrate" the fact that the (TCCA) is out of step with this Honorable Court and with other Appellate Court(s) in its decision in Davis' cause.

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Texas Court of Criminal Appeals.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vedat A. Davis

Date: _____