No. 22-5096

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Theodore Luczak - Petitioner,

VS.

Kwame Raoul - Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

Theodore Luczak
Reg No. #B-00780
Pinckneyville Correctional Center
5835 State Route 154
Pinckneyville, Ill 62274

COVER PAGE

QUESTIONS PRESENTED

.I.

WHETHER A STATE'S ATTORNEY SHOULD BE ALLOWED TO ENACT LEGISLATION ON THEIR OWN THAT WOULD VIOLATE THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF EACH CITIZEN OF THE STATE OF ILLINOIS

.II.

WHETHER THE STATE OF ILLINOIS SHOULD BE ALLOWED TO USE THE JUDICIAL SYSTEM AS A POLITICAL WEAPON TO DENY A CITIZEN THEIR CONSTITUTIONAL RIGHTS

LIST OF PARTIES

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

RELATED CASES

People State of Illinois v. Fowler, 01-CR-4355-01
Appellate No: 92422

People State of Illinois v. Tellez-Valencia, 723 N.E. 2d 223 (ILL. 1999)

People State of Illinois v. Nelson, 210 Ill.App.3d 977 569 N.E. 2d 1197

TABLE OF CONTENTS

OPINIONS BELOW.....-6-

JURISDICTION.....-7-

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....-8-

STATEMENT OF THE CASE.....-12-

REASONS FOR GRANTING THE WRIT.....-15-

CONCLUSION.....-21-

INDEX TO APPENDICES

APPENDIX A - Ruling By The Circuit Court Of Cook County Denying Petitioners Actual Innocence Post Conviction Petition

APPENDIX B-- Petition For Judicial Notice

APPENDIX C - Denial Of Petition For Judicial Notice

APPENDIX D - Motion To Reconsider Denial Of Judicial Notice

APPENDIX E - Denial Of Motion To Reconsider

APPENDIX F - Order Denying Appeal

APPENDIX G - Order Denying Petition For Leave To Appeal To The Illinois Supreme Court

APPENDIX H - Application To Stay The Mandate Denial In The Illinois Supreme Court

APPENDIX I - Public Act 87-1005

APPENDIX J - Indictment

TABLE OF AUTHORITY CITED

CASES — PAGE NUMBER

People v. Tellez-Valencia,
723 N.E. 2d 223.....-17-

People v. Nelson,
210 Ill.App.3d 977.....-17-

Weaver v. Graham,
101 S.Ct. 960, 450 U.S. 24, 67 L.Ed.2d 17.....-18-

Dobbert v. Florida,
432 U.S. 282, 298.....-18-

McClueskey v. Zant,
499 U.S. 467.....-19-

Murrray v. Carrier,
477 U.S. 478.....-19-

Gernstain,
420 U.S. at 103.....-19-

Pennsylvania v. Ritchie,
480 U.S. 39.....-20-

Brady v. Maryland,
373 U.S. 83.....-20-

United States v. Tucker,
404 U.S. 443.....-20-

McQuiggin v. Perkins,
569 U.S.___. No. 12-126.....-21-

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINION BELOW

There is no opinion of the highest State Court on the merits of the case in question.

The opinion of the Circuit Court of Cook County, Illinois on the petitioner's Actual Innocence Post-Conviction appears at Appendix A. Unpublished.

The denial of petitioner's Judicial Notice from the Illinois Appellate Court First District, appears at Appendix C.

The denial of petitioner's Motion To Reconsider The Denial of Judicial Notice appears at Appendix E.

The Order of the Illinois Appellate Court First District denying petitioner's appeal appears at Appendix F.

The Order denying the Petition For Leave To Appeal To The

Illinois Supreme Court appears at Appendix G.

The Order denyinh the Application to Stay the Mandate appears at Appendix H.

JURISDICTION

The jurisdiction of this Honorable Court on Certiorari is pursuant to Rule 10 of the Supreme Court, and Title 28 U.S.C. §2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in the time of War or public danger; nor shall any person be subject for the same offense to be twice put in jerpardy of life or limb; nor be compelled in any criminal case to be witness against himself, nor be deprived of life or liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted

with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ILLINOIS STATE CONSTITUTION

Article 1§2 Due Process

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Article 1§12.

Every person shall find a certain remedy in the law, for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

Articel 1§16 Ex Post Facto Law Impairing Contracts

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

Articel 2§1 Separation Of Power

The Legislative, Executive and Judicial branches are separate. No branch shall exercise powers properly belonging to another.

ILLINOIS STATE STATUTES

The Illinois Complied Statutes of 1992 as amended; is an Indix Book and does not contain any criminal charges.

Public Act 87-1005(e)

In order to allow for an efficient transition to the organizational and numbering scheme of the Illinois Compiled Statutes, the State, units of local government, school districts, and other governmental entities may, for a reasonable period of time, continue to use forms, computer software, systems, and data, published rules, and other electronically stored information and printed documents that contain references to the Illinois Revised Statutes. However, reports of criminal, traffic, and other offenses and violations that are part of a state-wide reporting system, shall continue to be made by reference to the Illinois Revised Statutes until July 1, 1994, and on and after that date

shall be made by reference to the Illinois Compiled Statutes, except that an earlier conversion date may be established by agreement amoung all of the following: the Supreme Court, the Secretary of State, the Director of State Police, the Circuit Clerk of Cook County, and the Circuit Clerk of DuPage County, or the designee of each. References to the Illinois Revised Statutes are deemed to be references to the corresponding provisions of the Illinois Complied Statutes.

STATEMENT OF THE CASE

In May of 1995, the office of the Cook County State's Attorney sought a duplicitious indictment against the petitioner, charging him with Aggravated Criminal Sexual Assault; Unlawful Restraint, and Kidnapping related to one person, and informed the petitioner that he was in violation of the Illinois Compiled Statutes of 1992 as amended. Prior to trial; the petitioner filed a motion to dismiss the indictment but it was subsequently denied. After a jury trial, the petitioner was found guilty of Aggravated Criminal Sexual Assault and sentenced to 100-years.

In 1999, upon the petitioner's appeal to the Illinois Appellate Court First District, his apponted counsel elected to file or raise one issue with the court; but at the same time she informed the petitioner that she did not review the entire potion of the trial transcripts, so on February 16, 1999. The petitioner moved the appellate court to suspend the briefing until his counsel had reviewed the other portion of the transcripts, but the appellate court denied said motion and denied his appeal, but now hold that the petitioner waived the very issues that he attempted to raise and they denied to be raised.

Upon the petitioner's first post-conviction petition, the Circuit Court of Cook County, denied the petition at the first stage, and upon appeal to the Appellate Court First District, his appointed counsel filed a Finly Motion that the appellate court granted and denied the petitioner's appeal. The Illinois Supreme Court denied

the petitioner's petition for Leave To Appeal.

On March 15, 2010, the petitioner caused to be filed in the Circuit Court of Cook County, a Successive Post-Conviction Petition invoking Actual Innocence arguing that he was (1) Subjected to a Warrentless Arrest; (2) Faborcated Statements; (3) Police Torture; (4) Insufficient Indictment; (5) Denial of a Probable Cause hearing; (6) Denial of Due Process, and (7) The denial of DNA evidence. The petition advanced to the second stage; at which time counsel was appointed. The petition was continued for 61-times and the petitioner was never allowed to appear before the court dispite the fact that the petitioner upon filing his petition; filed a Writ Of Habeas Corpus Ad-Testificandum. The petition stayed in the Circuit Court from March 15, 2010, until May 12, 2017, at which time judge Thomas J. Hennelly denied the petition based upon his own opinion and thereupon calling the petitioner a "Poster Child" and a "Rapist". Upon appeal to the Illinis Appellate Court First District, the appellate court denied any oral argument and refused to reach the merits of the case holding that the petitioner waived his issues, and denied the appeal. Upon petitioner's appeal to the Illinois Supreme Court, the court advanced the political contention against the petitioner; by once again denying his petition for Leave To Appeal on his birth day of May 25, 2022. The first time the Supreme Court of Illinois denied the petitioner's PLA challging the States lack of jurisdiction was on May 25 2016. It is clear that the Illinois Judicial System is making a statement against

the petitioner that no law applies to him, whereas at no time; has either the Circuit Court, Appellate Court, nor the Illinois Supreme Court; demonstrated that the evidence in the case supports the conviction. In fact, the State has taken further measures to ensure that the petitioner does not obtain review from the federal court system, as on June 16 2020, the United States Northern District Court; filed a pleading that was originally filed in the Supreme Court of the United States, and filed it in the Northern District Court just to deny it and then referd it to the Executive Committee for the imposition of sanctions against the petitioner. The petitioner is now prohibited from filing any pro-se petitions for Release/Habeas Corpus Complaints in the District Court.

REASONS FOR GRANTING THE PETITION

WHETHER A STATE'S ATTORNEY SHOULD BE ALLOWED TO ENACT LEGISLATION ON THEIR OWN THAT VIOLATES THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF EACH CITIZEN OF THE STATE OF ILLINOIS

The issue now being presented befor this Honorable Court, is of National Importance; where the case not only effects the petitioner, but all those whom are similarly situated in the State of Illinois, and where the judicial system has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this courts supervisory power, to correct said course.

In 1995, the petitioner was indicted on several criminal charges in the Circuit Court of Cook County, Illinois. In said indictment, the petitioner was informed that he was in violation of the Illinois Compiled Statute of 1992 as amended.

In 1992, the Eighty-Seventh General Assembly of Illinois; codified and revised their state statutes, (1992 ILL. Legis. Serv. P.A. 87-1005(H.B. 3810(WEST)) and contained within said Public Act was an Enacting Clause that provided in part:

504(e) However, reports of criminal,

traffic, and other offenses and violations that are part of a state-wide reporting system shall continue to be made by reference to the Illinois Revised Statutes until July 1, 1994.

The public act in question; is absent any language used by the State Legislatures to indicate that the Illinois Compiled Statutes of 1992 as amneded would become effective law, rather; legislatures made it clear and unambiguously stated that the compilation would become effective on July 1, 1994. If a criminal defendant in the state of Illinois would request to review the Illinois Compiled Statutes of 1992 as amended, they would be provide an Indix Book with no criminal charges contianed within.

Legislatures shall direct when statutes or acts are to take effect, and it is not the proper function of the judicial branch of government to ignore or even over-ride; the legislature acting within it's constitutional power. The State of Illinois has been expressly making reference to the unconstitutional statutory provision of 1992 as amended for well over thirty(30) years now, with a reckless disregard of the citizens rights of the State of Illinois. In fact, the State of Illinois has been advancing the Illinois Compiled Statutes of 1992 as amended with complete and utter contempt for the legislative body who was acting within it's duty to enact legislation pursuant to Illinois Constitution Article 2§1.

The Cook County State's Attorney's Office arrogantly took it upon itself to indicate that the amendatory act of 1992, Public Act 87-1005, implied that the promulgation of the statutes indicated that the compliation would thereafter be refered to as the Illinois Complied Statutes of 1992. The State had no authority to forward this implication, nor did the General Assembly suggest that they wanted the promulation to be refered to as a reference point for future prosecutions in compliance with the amendatory act of 1992. (See Public Act 87-1005 Attached as Exhibit #1)

The interpretation of the Illinois Compiled Statutes of 1992 as amended; has invalidated the statutory provision under which the State has secured an indictment and conviction against the petitioner. In fact; the Illinois Supreme Court has held that "defects caused by charging an offense based upon a statute not in effect when the alleged offenses have occured is fatal, rendering the entire instrument invalid and warranting reversal of the conviction for offenses". People v. Tellez-Valencia, 723 N.E. 2d 223. See also People v. Nelson, 210 Ill.App.3d 977, holding that "under the constitution and statutes of this state (see Ill. Const. (1970)), art 1 §2,7 & 8: Illinois Complied Statutes 725 ILCS 5/111-3, 113-4) no one may be convicted of a crime which he has not been chagred with having committed." The court explained that ***section 11-501(a) does not state an offense until it is compined with one of the four subsections. From this holding, one can reason that it's not technically possible to charge an offense without both a valid statutory provision and an appropriate subsection(s); as the two are in conjunction. A violation of Due

Process occures when there is a conviction of a crime which does not exist. See Amendmants V and VI of the United States Constitution.

The States reliance and continued use of the edition ILCS of 1992 as amended, which is expressly advanced, further violates Articles 1§2; 1§16 and 2§1 of the Illinois State Constitution.

In addition to these violations, the statute in question is at odds with the holding by this Honorable Court in Weaver v. Graham, 101 S.Ct. 960, 450 U.S. 24, 67 L.Ed.2d 17, "through this prohibitation, the framers sought to assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." See Dobbert v. Florida, 432 U.S. 282, 298.

.II.

WHETHER THE STATE OF ILLINOIS SHOULD BE ALLOWED TO USE THE JUDICIAL SYSTEM AS A POLITICAL WEAPON TO DENY A CITIZEN THEIR CONSTITUTIONAL RIGHTS

Due to the petitioner's concervative beliefs, the Illinois Judicial System has expressed their content against him, and have maliciously ignored and/or violated every constitutional right that the petitioner may have.

Upon the filing of petitioner's Actual Innocence Post

Conviction petition on March 15 2010, the petitioner supported the issues of a Warrentless Arrest; Faborcated Statements; Police Torture; Insufficient Indictment; Denial of Probable Cause Upon Arrest, and the deial of DNA Evidence, and for seven years the petitioner was denied any right to appear before the court to present his defence. The court demonstrated it's content against the petitioner on May 12, 2017, upon denying his post-conviction petition the judge based it's denial on his own opinion thereupon calling the petitioner a "Poster Child" and then a "Rapist", but at no time did the judge demonstrate through any kind of cases that the petitioner was wrong in his arguments.

Upon the petitioners appeal to the Illinois Appellate Court First District, the petitioner demonstrated that; his claim of ineffective assistance of coulsel meets the cause and prejudice test, not onaly through counsel; but also the error of the appellate court upon his direct appeal where the court refused to allow the petitioner to raise all his claims. McCleskey v. Zant, 499 U.S. 467 quoting Murray v. Carrier, 477 U.S. 478.

Petitioner further demonstrated that; he was denied a probable cause hearing within 72-hours of his warrentless arrest. Gernstain, 420 U.S. at 103. The use of Faborcated Statements and a oral confession obtained through physical force by the Chicago Police. The fact that the State has a prosecutorial duty to disclose exculpatory DNA evidence, as recognized in this Honorable Courts holding in Pennsylvania v. Ritchie, 480 U.S.

39 and in Brady v. Maryland, 373 U.S. 83. The States knowing use of perjured testimony of a prior conviction during petitioner's jury trial. United States v. Tucker, 404 U.S. 443. All of the above issues have been willfuly ignored by every state court of Illinois, and in fact; at no time has any state court issued a fact finding regarding the petitioner's issues.

In further support that the State of Illinois is using it's judicial system to impose it's political will upon the petitioner; this Honorable Court need only review the actions taken by the United states District Court [Northern] of Illinois. On May 1, 2020, the petitioner caused to be filed in the Supreme Court of the United States; a Writ of right entitled In re., Theodore Luczak v. State of Illinois. On June 16, 2020, the judge of the Norther District Court of Illinois Robert M. Dow Jr., filed the matter in his court room, and thereafter denied the matter only to refer it to the Executive Committee for sanctions against the petitioner. On July 15, 2020, the Executive committee issued an Order against the petitioner, prohibiting him from filing any pro-se; Release/habeas Corpus Petitions.

How could the Northern District Court have any kind of jurisdiction over a pleading filed in the united States Supreme Court, as it cannot be found in any Article or Amendment of the United States Constitution that; a District Court could have any kind of jurisdiction over a matter filed in the United States Supreme Court. Given these facts; it can only be found that

the State of Illinois Judicial System will take any kind of unconstitutional actions to ensure that his claim of Actual Innocence is not addressed, and this holding is at odds with the holding by this Honorable Court in McQuiggin v. Perkins, 569 U.S.___, No. 12-126. Thus violating the petitioner's Due Process rights at will.

CONCLUSION

WHEREFORE, this Honorable Court should invoke it's supervisory power, to correct the States departure of the accepted and usual course of judicial proceedings and it's National Importance of the case that; calls for such exercise of this Courts supervisory power.

The petition for writ of certiorari should be granted.

July 5, 2022.

Respectfully Submitted

Theodore Luczak Pro-Se;