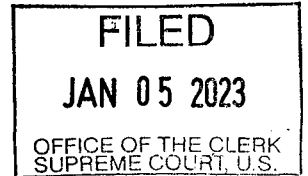


No. 22 - 6647



IN THE
SUPREME COURT OF THE UNITED STATES

Randal T. Young-Petitioner

vs.

William Cool/Warden -RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
COURT OF APPEALS OF OHIO, Sixth Circuit Appellate Court

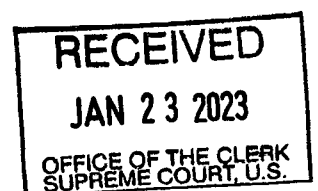
PETITION FOR WRIT OF CERTIORARI

RANDAL T. YOUNG

R.C.I.

P.O. BOX 7010

CHILLICOTHE, OHIO 45601



I.QUESTIONS PRSENTED

(1) Was petitioner deprived of his Constitutional right to a fair trial when a statutorily prohibited specification was submitted to the jury with instructions and deemed “Harmless Error”?

(2) Was petitioner deprived of his Constitutional rights to Due Process when the trial court judge published flawed jury instructions to the jury concerning a prohibited specification (2941.149)

(3) Was the petitioner deprived of his Constitutional rights to effective assistance of counsel when his trial counsel submitted a prohibited specification in conjunction with his prior bad acts to a jury.

LIST OF PARTIES

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

State v. Banks 2015-Ohio-5413
State v. Young, 2017 Ohio Lexis 2674
State v. Young, 2019-Ohio-1815
State v. Young, 2019-Ohio-3819

III.TABLE OF CONTENTS

I.QUESTIONS PRESENTED.....	i
II. LIST OF PARTIES AND RELATED CASES.....	ii
III.TABLE OF CONTENTS.....	iii
IV.INDEX OF APPENDICES.....	iii
V.TABLE OF AUTHORITIES	
VI.OPINIONS BELOW.....	p.1
VII.JURISDICTION.....	p.2
VIII.CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	p.3
IX.STATEMENT OF CASE.....	p.4
X.REASON FOR GRANTING PETITION.....	p.7
XI.CONCLUSION.....	p.22
XII. PROOF OF SERVICE.....	p.23

IV.INDEX OF APPENDIXES

XIII.APPENDIX A.	
XIV. APPENDIX B.	
XV. APPENDIX C.	
XVI. APPENDIX D.	
XVII. APPENDIX E.	
XVIII. APPENDIX F.	
XVIII. APPENDIX G.	
XX. APPENDIX H.	
XXI. APPENDIX I.	

V.TABLE OF AUTHORITIES

Cases:

Arizona v. Fulminate 499. U.S. 279, 310, 111, S.Ct. 1246 113 L. Ed. 2 nd (1991).....	p.16
Rose v. Clark 478, U.S. 570.....	p.9,16
United States v. Burton, 802 Fed , appx. 896.....	p.16
United States v. Commacnche.....	p.20
United States v. Vonn, 535 U.S. 55.....	p.9
United States v. Zajac, 748 F. Supp. 2d 1327.....	p,11
Cupp v. Naughten, 414 U.S. 141, 146, 94 S.Ct. 396, 38 L. Ed. 2d 368 (1973).....	p.14
Dowling v. U.S. 493 U.S. 342.....	p.15
Marshall v. United States, 360 U.S. 310.....	p,20
Michelson v. United States, 335 U.S. 469, 475.....	p.20
Mooney v. Holohan, 294 U.S. 103, 112 (1935).....	p.15
Rochin v. California, 342 U.S. 165, 170 (1952).....	p.15
Weaver v. Massachusetts, 137 S.Ct. 1899, 1907, 198, L.Ed. 2d 420.....	p.16
Rosencrantz v. Lafler, 568 F. 3d. 577, 589, (6 th Cir).....	p.16
Pearson v. City of Grand Blanc, 961 F. 2d 1211, 1216, 6 th Cir. 1992.....	p.14
Ventas, Inc. v. HCP, Inc 647 F. 3d. 291.....	p.15
Hartsook v. Miller, 2016 U.S. Dist. Lexis 125642.....	p.17
Harrold v. Collier 107 Ohio St. 3d 44, 2005-Ohio-5334.....	p.17
In re N.M.P. 160 Ohio St. 3d 472. 2020-Ohio-1458,159 N.E. 241	

Lovasco, Supra at 790.....p.14

Portor v. Eppinger, 2021 U.S. app.lexis 26020.....p.15

Sanders v. Rewerts, 202 U.S. app.lexis 3340.....p.15

State v. Banks, 2015-Ohio-5413.....p.14

State v. Young 2017-Ohio-4476.....p.4,7,8,12,13,14,18

STATUES

Repeat Violent Offender (R.C. 2941.149) (2929.01(cc)).....4,7,8,12,13,14,18

Weapons Under Disability (R.C. 2923.13).....p.7,12

RULES

Rule 52 of the Federal Rules of Criminal Procedure.....p.9

App.R.25.....p.5

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 A to the petition and is

☐ reported at Young v. Hill, 2022 U.S. App. LEXIS 28410,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at Young v. Wainwright, 2022 U.S. Dist. LEXIS 60648, or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

VII.Jurisdiction

Mr. Young's petition for a hearing for a Certificate of Appealability and Appointment of Counsel was denied on Oct. 12,2022. Mr. Young attempted to receive an extention of time to file a petition for a Panel Rehearing/En Banc, however that was denied as well. Now Mr. Young is invoking this court's jurisdiction under 28 U.S.C 2254.

VII.CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution VI Amendment;

Amendment 6 Rights of the accused.

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

United States Constitution XIV Amendment Section I;

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 2254 (see appendix) J

IX.STATEMENT OF CASE

Petitioner went to trial in Dec. 2015 and was convicted on an 8ct. indictment as well as the six (6) additional specification three (3) which were prohibited for the jury to decide by statute (R.V.O. 2941.149) and sentenced to 36yrs. On January 14, 2016 Mr. Young, through counsel appealed the Dec. 15 judgement to the 6th District Court of Appeals, Erie County Ohio, arguing that; (1) He received ineffective assistance of counsel in violation of the 14th Amendment; and (2) the trial court committed prejudicial error in permitting the jury to determine the existence and nature of his prior convictions of an offense of violence in violation of O.R.C. 2941.149. The 6th District Court Appeals rejected Mr. Young's 1st ground for relief, but found his 2nd ground for relief well-taken and remanded the case for a resentencing limited to the R.V.O. specification. Mr. Young filed a pro-se Application for Reconsideration of the State Appellate Courts June 23rd 2017 judgement, arguing that the state appellate committed error when concluded that the submission of the R.V.O. specification to the jury, although in error, was harmless. The State Appellate Court denied the application for reconsideration, concluding that it was untimely filed and that petitioner did not provide substantive grounds for relief, subsequently petitioner filed an appeal to the Ohio Supreme Court, alledge the same counts of error. The court rejected his appeal and declined to accept jurisdiction over the appeal. Petitioner then filed a App.R. 26(B) raising that his appellate counsel was ineffective for;

(1) Failing to file a motion to certify a conflict pursuant to App.R.25 depriving appellant of Due Process and Equal Protection of the Law as guaranteed by the 14th Amendment of the U.S. Constitution and Article I Section 16 of the Ohio Constitution

(2) For failure to raise the issue that a pretrial motion requesting expert witness was not ruled on before trial which denied the appellant a fair trial in violation of the 14th & 6th Amendment of the U.S. Constitution

(3) Trial court erred when it submitted multiple convictions to the jury in order to convict appellant of having weapons under disability (R.C. 2923.13), which was prejudicial and deprived appellant of a fair trial and due process of law as guaranteed by the 14th Amendment of the U.S. Constitution and Article I Section 16 of the Ohio Constitution

(4) Failing to raise the issue the issue that the trial counsel was ineffective by submitting evidence of prior bad acts which deprived appellant of a fair trial and due process of law as guaranteed by the 14th Amendment of the U.S. Constitution and Article I Section 16 of the Ohio Constitution

(5) For failure to raise as a single assignment of error violation of Evidence Rule 404(B) which violated appellant's rights to due process of law and deprived him of a fair trial as guaranteed by the 14th Amendment of the U.S. Constitution

(6) Appellate counsel was ineffective for failure to raise the fact that the trial court gave faulty instructions regarding the R.V.O. specification in violation of the both the appellants Ohio & U.S. Constitutional

rights which violated appellant's right to due process of law deprived him of a fair trial as guaranteed by the 14th Amendment of the U.S. Constitution and Section 16 Article I of the Ohio Constitution.

Petitioner also filed this to the Ohio Supreme Court in which justices showed that they would accept the case and appoint counsel, jurisdiction was ultimately declined. Dec. 20, 2018 Mr. Young then filed a 2254 petition challenging the Constitutionality of his convictions in State v. Young Erie County Court of Common Pleas Case No: 2015-CR-0013 asserting the following grounds for relief;

Ground One: Ineffective Assistance of Trial Counsel in violation of the 5th, 6th and 14th Amendments

Ground Two: Ineffective Assistance of Appellate Counsel in Violation of the 5th and 4th Amendments.

Ground Three: Improper Denial of a New Trial Motion in violation of the 5th & 14th Amendments.

Petitioner's Habeas Corpus Petition was denied and then the petitioner filed a Motion for A Certificate of Appealability and Appointment of Counsel which was denied. Petitioner attempted to receive an enlargement of time to file a Motion for a Panel Rehearing Enbanc which was also denied and now petitioner is here at the highest court in the land seeking relief.

X.REASONS FOR GRANTING THE WRIT

- A. To avoid petitioner being deprived of his constitutional rights to a fair trial, this court should review the fact that a specification that was statutorily prohibited to be submitted to the jury, *was* submitted the jury and deemed “Harmless Error” on the state courts remand back to trial court for resentencing

In Mr. Young’s case the 6th District C.O.A. acknowledged that it was error in submitting the “Repeat Violent Offender” specification to the jury and overruling their prior holding and finding in petitioner’s favor stating:

“...we find that the language of R.C. 2941.149 requires that the trial court, not the jury, make determinations regarding whether one is a repeat violent offender. Wherefore, we find appellant's [**10] second assignment of error to be well-taken.” State v. Young 2017-Ohio-4476

However, they went further to say;

“... We note that our reversal in this matter is limited to the sentencing finding that appellant is a repeat violent offender. In this case, appellant's prior convictions would have been admissible to prove the possessions of weapons under disability charge pursuant to R.C. 2923.13. We further note that under these circumstances, the finding by the jury rather than the court that appellant is a repeat violent offender constitutes harmless error as there would have been no reasonable probability that this evidence may have contributed to appellant's underlying convictions.”

The trial court should not be allowed to “*correct*” its mistakes by hiding behind the fact that –in this case- petitioner’s prior convictions would have been admissible to prove a weapons under disability charge to justify failing to properly follow the law and fairly present an issue at trial and give the petitioner an opportunity to confront the “Repeat Violent Offender” claim against him. Also it should not be overlooked that the court gave the jury information that is statutory prohibited from deliberations. (2941.149/2929.01(cc)) Furthermore, Mr. Young sat through trial and never even attempted to defend himself or stipulate to the said specification trusting the trial court and his trial counsel to not only follow but enforce the law and not publish this specification to the jury.

“Some constitutional errors require reversal without regard to the evidence in the particular case. This limitation recognizes that some errors necessarily render a trial fundamentally unfair. The State of course must provide a trial before an impartial judge, with counsel to help the accused defend against the State's charge. Without these basic protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair. Harmless-error analysis thus presupposes a trial, at which the defendant, represented by counsel, may present evidence and argument before an impartial judge and jury.” Rose v. Clark, 478 U.S. 570

In petitioner's case he never had a chance to put up a defense or stipulate being that the specifications (3cts) were submitted to the trial court for the court to decide (See appendix B. Doc#13-5 Page ID#1381 lines 4-11)

It should also be noted that harmless errors do not affect substantial rights.

"With respect to Rule 52 of the Federal Rules of Criminal Procedure--which provides (1) in Rule 52(a), that any error that does not affect substantial rights shall be disregarded, and (2) in Rule 52(b), that plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of a Federal District Court--when an appellate court considers error that qualifies as plain:

(1) An accused who sat silent, rather than objecting, when the error was committed at trial has the burden to show that the accused's substantial rights were affected.

(2) Because relief on plain-error review is in the discretion of the reviewing court, the accused has the further burden to persuade the reviewing court that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings." United States v. Vonn, 535 U.S. 55

In petitioner's case, the record will reflect that after discussion with the trial court judge, the prosecutor, and Mr. Young's trial counsel, the complained of specification (R.V.O.) was submitted to the court to decide. (see appendix C. Doc#13-5 Page ID#1380 lines 7-25, Page ID# 1381 lines 1-25) However, the trial court judge still submitted a specification that was prohibited by statute (2941.149) in

conjunction with his prior bad acts to the jury, and then...the trial court judge published jury instructions and directed and/or instructed the jury to come forward with a verdict on a specification (2941.149) that was prohibited for the jury to lay eyes on, let alone determine a verdict. (see appendix D. Doc# 13-5 Page ID# 1528 lines 13-15, Page ID# 1529 lines 1-4, Page ID #1533 lines 18-22)

The court should note Rose also held;

“A trial judge in a criminal case is prohibited from entering a judgment of conviction or directing the jury to come forward with such a verdict regardless of how overwhelmingly the evidence may point in that direction; this rule stems from the Sixth Amendment's command to afford jury trials in serious criminal cases; where that right is altogether denied, the state cannot contend that the deprivation was harmless error because the evidence established the defendant's guilt; the error in such a case is that the wrong entity judged the defendant guilty.”

Petitioner never had a chance to stipulate or defend himself prior to the R.V.O. specification being presented to the jury contrary to its statutory language, furthermore, the trial court judge published jury instructions and directed the jury to come forward with a verdict on an issue in which they (the jury) should not have had in their possession in the first place. It is established federal court case law that a trial court judge is prohibited from **“FORCING”** a jury to come forward with a verdict whether it be guilty or not guilty, especially if the trial court failed to properly follow the law and fairly present an issue giving the petitioner a chance to

confront it, and most importantly, if the jury was not supposed to have an issue or instructions directing them (the jury) on the issue in the first place. When this occurred it deprived the petitioner of his substantial rights making this admitted supposedly "Harmless Error" no longer harmless. This should have been a plain, structural and/or prejudicial error due to the circumstances in which the error was implemented and occurred.

Petitioner's weapons under disability charge should not contribute to this admitted error being supposedly harmless because;

"Even if these other acts were relevant, their probative value does not outweigh the risk of unfair prejudice. In *United States v. Commanche*, the Tenth Circuit held that relevancy cannot "depend on a defendant likely [**28] acting in conformity with [*1340] an alleged character trait." 64 Using prior "bad acts to demonstrate conformity with a particular character trait is prohibited because it is prejudicial" *United States v. Zajac*, 748 F. Supp 2d 1327.

And clearly, the prior bad acts in conjunction with the prohibited specification submitted to a jury with jury instructions directing the jury to come forward with a verdict was prejudicial.

So here lies the question for the highest court in the land. In petitioners case, when the prior bad acts in conjunction with a specification that is prohibited by the language in the statute (2914.149- 3cts) was submitted to the jury contrary to the

language along with a weapons under disability (2923.13- 6cts), and on top of it all with the case in its entirety the trial court judge published jury instructions and instructed the jury on how to determine petitioners guilt or innocence (on the prohibited specification as well) and the jury returns guilty verdicts on all counts (including all 9 specifications) and the petitioner was given the maximum sentence on all counts (including the R.V.O. specification), how is this not a plain and/or structural error? How was this admitted error overlooked as “Harmless” when clearly it affected Mr. Young substantial rights?

So it is here where petitioner asserts his claim (liberally construed) that he was ultimately deprived of his rights to Due Process of Law, Effective Assistance of Counsel and his Rights to a fair trial as guaranteed by the U.S. Constitution.

B. To avoid depravation of the Petitioners Constitutional rights to Due Process the court should review the error in which the trial court judge submitted improper and flawed jury instructions to the jury pertaining to the R.V.O. specification.

Here the petitioner will get straight the issue at hand. The trial court judge published instructions to the jury that were obviously incorrect, misconstrued and/or flawed being that the Repeat Violent Offender Specification statute clearly states;

“...the repeat violent offender specification is to be determined by the trial court not the jury...” (2941.149 (B))

The jury instructions themselves were prejudicial, plain or either structural error being that the trial court judge instructed the jury that they could use the petitioner's prior bad acts to decide on a specification that by statute the jury was not allowed to have in their possession in the first place. (see appendix E. Doc #13-5 PageID#1542 lines 1-10) Prejudice was shown to the petitioner when the jury actually returned a verdict (guilty) by instruction of the trial court judge for three (3) repeat violent offender specifications on which they were prohibited to have, and then being sentenced to three 10yr prison sentences on each specification. Once again, this severely prejudiced the petitioner and affected the jury's deliberations as well as the structure of the trial and its entirety.

The legal question at this juncture is this:

If Ohio law does not allow a RVO specification to be submitted to a jury and ultimately the RVO specification is still given to the jury along with incorrect jury instructions by the trial court judge and Mr. Young's trial counsel after the prosecution attempted to stop the submission of the jury instructions as well as the R.V.O in general; then how could the error be harmless instead of plain error? The record confirms this sidebar was held and the court reporter was present at the sidebar in which the transcripts records are attached. (see appendix F. Doc # 13-5 Page ID#: 1521 lines 17-25, Page ID#: 1522, and 1523 lines 1-19)

The transcripts and the record confirms the trial court and all parties sent the RVO specification along with instructions into the jury room where the law forbids.

This court must take under advisement that the structural error improperly bolstered/tainted the jury's mind from the flawed instructions? See: *Wadding v. Sarausad*, 555 U.S. 191" viewing the jury instructions in their totality.

In Young's case the jury instructions as a whole were not a correct instruction under Ohio law and created a U.S Due process violation.

Under Ohio law as noted in *State v. Banks*, 2015-Ohio-5413:

"By statute, the repeat violent offender specification is to be determined by the trial court, not the jury. R.C. 2941.149(B)." And it is settled that if the statutory language is clear and unambiguous, a court will apply the statute as written and will not add or delete words. In re N.M.P., 160 Ohio St.3d 472, 2020-Ohio-1458, 159 N.E.3d 241, ¶ 21.

Thus the question here pertaining to the jury instructions is not whether the instructions were "undesirable, erroneous, or even 'universally condemned.'" *Cupp v. Naughten*, 414 U.S. 141, 146, 94 S. Ct. 396, 38 L. Ed. 2d 368 (1973). Instead, before a federal court may overturn a state conviction, the instructions must have violated "some right which was guaranteed to the defendant by the Fourteenth Amendment" or the **ailing instructions** themselves must have "so infected the entire trial that the resulting [*31] conviction violates due process." *Id.* at 146-47. The constitutional right in question here is the right to due process.

Substantive due process is defined generally as "[t]he doctrine that governmental deprivations of life, liberty or property are **subject to limitations regardless** of the adequacy of the procedures employed[.]" *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1216 (6th Cir. 1992).

So Mr. Young is asserting his claim, liberally construed, as "some right which was guaranteed to him by the 14th amendment as well as the unlawful instruction themselves so infected the entire trial." (emphasis added)

Now veering to the U.S Supreme court case of *Dowling v. U.S.*, 493 U.S. 342. THE COURT HELD:

*"Beyond the specific guarantees enumerated in the Bill of Rights, the **Due Process Clause** has limited operation. We, therefore, have defined the category of infractions that violate "fundamental fairness" very narrowly. As we observed in *Lovasco, supra*, at 790*

*Judges are **not free**, in defining 'due process,' to impose on law enforcement officials [their] 'personal and private notions' of **fairness** and to '**disregard** the limits that bind judges in their judicial function.' *Rochin v. California*, 342 U.S. 165, 170 (1952). [They] are to determine only whether the **action complained** of . . . violates those 'fundamental conceptions of justice which lie at the base of our civil and political institutions,' *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), and which define 'the community's sense of fair play and decency,' *Rochin v. California, supra*, at 173."*

Mr. Young asserts and complains that the trial court giving jury instructions that are prohibited under law and cannot be instructed to the jury whatsoever is extremely unfair and beyond prejudicial that transpired in his due process. *Sanders v. Rewerts*, 202 U.S. app.lexis 33420, *Porter v. Eppinger*, 2021 U.S. app.lexis 26020

Keeping in mind; The **purpose of jury instructions** is to inform the jury on the law and to provide proper guidance and assistance in reaching its verdict. *Ventas, Inc. v. HCP, Inc* 647 f.#d 291

So if the trial court informed the jury on the law that was forbidden on a RVO specification then how could proper guidance and assistance be said when the jury reached its decision on **flawed jury instructions**?

Now Mr. Young veers this court to this court case law authority of *U.S v. Burton*, 802 Fed.appx.896 at headnote 17 where this court noted:

*"Structural errors 'are the exception and not the rule.' *Rose v. Clark*, 478 U.S. 570, 578, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986). '[T]he defining feature of a structural error is that it 'affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.'"* *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907, 198 L. Ed. 2d 420 (2017) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)). Unlike

*trial errors, which may be found harmless, structural errors are "defects in the constitution of the trial mechanism, which **defy analysis by 'harmless-error' standards.**" Fulminante, 499 U.S. at 309. Accordingly, the Supreme Court has found structural errors "only in 'a very limited class of cases, including: total deprivation of the right to counsel; judicial bias; the unlawful exclusion of grand jurors of defendant's race; denial of the right to self-representation at trial; the denial of the right to a public trial; **and erroneous reasonable-doubt instruction to jury.**" Lawrence, 735 F.3d at 401 (quoting Rosencrantz v. Lafler, 568 F.3d 577, 589 (6th Cir. 2009)).*

Mr. young asserts his structural error falls under the reasonable-doubt instruction to the jury but with the forbidden instructions not even being allowed to be published and/or submitted to the jury.

Now why is this so rare and narrow in Mr. Young's Due process? Because this issue has never been blasted on any other petitioner in the federal venue what-so-ever, so matching a point on point case is virtually impossible.

So here, petitioner is asserting his claim (liberally construed) that he was deprived of his Constitutional rights to Due Process of law and his Constitutional rights to a fair and impartial trial by jury.

C. To avoid depravation of petitioner's constitutional rights to effective assistance of counsel, rights to a fair trial, and his rights to due process of law, this court should review the facts that his prior bad acts in conjunction this a specification that was

prohibited to be submitted to the jury by statue was submitted to the jury by his trial counsel

Petitioner is challenging the constitutionality of the statutorily prohibited specification (R.V.O. 2941.149) being submitted to the jury by his trial counsel. The court held in *Hartsook v. Miller* 2016 U.S. Dist. LEXIS 125642, that:

Because of the presumption of constitutionality, the extent of the appellate court's review is determined by the nature of the appellant's challenge to the statute. *Eppley* at ¶ 13. A party may challenge a statute as either unconstitutional on its face, or as applied to a particular set of facts. *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, ¶ 37, 836 N.E.2d 1165. A facial challenge is the most difficult to bring successfully because the challenger must establish that there are no circumstances under which the statute would be valid. *Id.* Where statutes are challenged as applied to a particular set of facts, the challenger bears the burden of presenting clear and convincing evidence of a presently existing set [*32] of facts that make the statutes unconstitutional and void when applied to those facts. *Id.* at ¶ 38.

The complained of statue (2941.149) was unconstitutional when applied to the following set of facts;

- (1) The specifications were submitted to the jury volunteeringly in conjunction with his prior bad acts by petitioner's trial court counsel
- (2) The jury was prohibited from determining if petitioner was a Repeat Violent Offender
- (3) The trial court judges jury instructions pertaining to the specification should've been void being that the jury never should've possessed the specification by law.

The Repeat Violent Offender Specification is prohibited from being submitted to the jury by statute in which the State Appellate Court acknowledged by overruling one of their prior holding and finding in favor of petitioner stating:

“... we find that the language of R.C. 2941.149 requires that the trial court, not the jury, make determinations regarding whether one is a repeat violent offender. Wherefore, we find appellant's [**10] second assignment of error to be well-taken.” State v. Young 2017-Ohio-4476

Mr. Young's trial counsel volunteeringly chose to have the statutorily prohibited specification submitted to the jury “intentionally”, when he knew the prosecutor's intentions of publishing Mr. Young's prior bad acts along with a totally different specification which was a

Weapons Under Disability 2923.13 (6cts). (see appendix G. Doc# 13-5 Page ID# 1381 Lines 13-15) The record clearly shows here that trial counsel along with the prosecutor submitted the R.V.O. specification in conjunction with Mr. Young's prior bad acts to the court to decide out of the hearing of the jury. (appendix H. Doc# 13-5 Page ID# 1381 Lines 4-11) But later on following this 5day trial Mr. Young's trial counsel chose to have the specification in conjunction with his prior bad acts along with the trial court judges jury instructions pertaining to the complained of specification submitted to the jury over the prosecutions sidebar alerting the trial court judge that this specification itself had been set aside for the trial court judge to decide. (see appendix I. Doc#13-5 Page ID#1521 Lines 17-25, and, Page ID#1522 lines 1-25 and Page ID#1523 Lines 1-19) Here Mr. Young's trial counsel displayed blatant ineffective assistance of counsel as well as a blatter lack of concern for what was in petitioner's best interest being that he should've stipulated to the prosecutors sidebar being that the jury instructions themselves were prejudicial because the trial court judge misled the jury and instructed them that they could use petitioner's prior bad acts to determine the repeat violent offender specification in which they couldn't even determine the specification itself.

The United States Court held;

“Where the jury becomes aware of highly prejudicial evidence of a defendant's past criminal behavior through news media coverage, it is pre-se, prejudicial to the defendant” Marshall v. United States, 360 U.S. 310

The court also held here;

The [****6] prejudice to the defendant is almost certain [313] to be as great when that evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence. Cf. Michelson v. United States, 335 U.S. 469, 475. It may indeed be greater for it is then not tempered by protective procedures.

Even though the clear and unambiguous language of the R.V.O. statute protected the petitioner with a tempered procedure by prohibiting it to be submitted to the jury, stating verbatim;

“2941.149(B) provides that the trial court shall determine the repeat violent offender specification”

The specification was still submitted it to the jury ignoring the statutory language and submitting it in conjunction with the petitioner's prior bad acts. The same should hold for petitioner being that in Mr. Young's case, the jury did not receive his prior bad acts through news media coverage, but volunteering, in conjunction with a statutorily prohibited specification. (2941.149) with the approval of his trial counsel.

Petitioner is asking that the same hold in his case, because although the “Repeat Violent Offender” specification may be constitutional on its face when presented properly and correctly, but it is also unconstitutional as well as prejudicial on its face when presented to a jury against the language of the statute in conjunction with petitioner’s prior bad acts by the trial counsel. This admitted error never would’ve occurred had petitioners trial counsel not allowed the specification to be submitted to the jury and let the jury instructions be published to the jury over the prosecutor’s sidebar alert to the judge.

So here is where petitioner asserts his claim (liberally construed) that his Constitutional Rights to effective assistance of counsel, his rights to a fair trial and his rights to due process of law as guaranteed by the U.S. Constitution were violated.

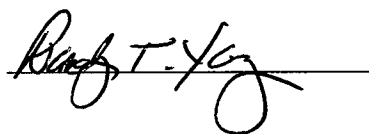
This court should accept this case because it could once and for all *finally* set an U.S. Supreme Court precedent and open the floodgates for thousands, possibly tens of hundreds of thousands of individuals in situations in which prior bad acts ,other acts, and prior convictions are being mishandled in situations and circumstances errily similar to the petitioners and depriving individuals of their substantial rights. Plus, being that this court has “NEVER” held a case in which the admission of evidence of other acts, prior bad acts, and prior convictions to show propensity has violated a

defendant's rights to Due Process, ^{THIS} has enabled courts (especially in the State of Ohio) to create a cheating mechanism in which they can consistently rely upon unreasonable applications of clearly established federal law and strategically deny individuals their substantial rights that are guaranteed by the U.S. Constitution while having biased and unfair opinions on a specific class of individuals. (convicted felons) We are still entitled to the rights of law of the land. And Clearly in petitioner's case. He was deprived of his.

XI.CONCLUSION

For the foregoing reasons, Mr. Young respectfully request for the Honorable Court to issue a Writ of Certiorari to review the U.S. Court of Appeals decision.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Randal T. Young", is written over a horizontal line.

Randal T. Young/680-052
Ross Correctional Inst.
P.O. Box 7010
Chillicothe, Ohio 45601