Supreme Court, U.S.
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No. 22-6747

9th cir. case No. 21-16865
AZ Fed dist. No 3:19CV-08155 DGC
Yavapai county case No's. P1300CR201101146 ; CR201200975

IN THE

SUPREME COURT OF THE UNITED STATES

Jimmy wayne Guinard — PETITIONER
(Your Name)

vs.

Attorney General of Arizona, etal — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Federal District court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jimmy wayne Guinard
(Your Name)

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ORIGINAL

QUESTION(S) PRESENTED

1. Did the Trial Judge, labeling petitioner as a sex offender To The Jury, when he has never had charges of that nature and Was charged with drug offenses violate Petitioner's U.S.C. 6th and 14th Amendment rights To a fair and impartial trial by Jury?

2. Was Trial counsel in the first case No. P1300CR201101146 ineffective for failing to object To The erroneous Jury instruction listed above and for failing to object to even one of The eleven vouching incidents for The informants credibility that occurred?

3. Can the prosecution replace physical evidence when it was either lost or destroyed Just to obtain a conviction?

4. Did the prosecutor who prosecuted both cases, the 2011 and 2012 cases violate Petitioner's right to a fair and impartial Trial by Jury by Vouching and placing the States belief behind the credibility of the informants in both cases?

5. Did the Trial Judge violate petitioner's due process right to a fair and impartial Trial by denying Petitioner's motion for a new trial when The Judge herself stipulated before Trial That Prior bad acts could not come into play in this Trial?

6. Did The Prosecutor in CR201101146 violate Petitioner's due process by deliberately introducing uncharged alleged Prior bad acts into This Trial

7. was Petitioner's U.S.C. 8th Amendment (cruel and unusual punishment) and U.S.C. 14th Amendment (right to equal protection of the laws) violated by the Trial Judge sentencing Petitioner To consecutive Sentences when other Judges, in The same county Sentenced similar cases To concurrent Sentences?

8. was The trial Judges failure To recuss herself sua sponte a violation of petitioner's 14th Amendment when She had a personal interest in Petitioners cases because She tried both cases and had knowledge of both Petitioner's Trials coming before her before the first Trial and Sentencing?

LIST OF PARTIES

[X] 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

Jimmy Wayne Guinard V. Attorney General for state of Arizona; David Shinn, Director 9th cir. case NO 21-16865

Jimmy wayne Guinard V. David Shinn, Director of the Arizona Department of corrections; and Attorney General of the state of Arizona. District court case No. CV-19-08155-Pct-DGC(MHB)

State of Arizona V. Jimmy Wayne Guinard Case NO. P1300CR201101146
Arizona court of Appeals case NO. 1 CA-CR 13-0490 (Direct appeal)
Arizona Supreme court case NO. CR-14-0190-PR
Rule 32 Post conviction relief case NO. P1300CR201101146
Arizona court of Appeals case NO 1 CA-CR 16-0824 PRPC { (Post conviction) (Petition for reviews)
Arizona Supreme court case NO. CR-18-0055-PR

State of Arizona V. Jimmy Wayne Guinard case NO. P1300CR201200975
Arizona court of Appeals Case NO. 1 CA-CR 14-0810 (Direct Appeal)
Arizona Supreme court case NO. CR-15-0310-PR
Rule 32 Post-conviction relief case NO. P1300CR201200975
Arizona Court of appeals Case NO. 1 CA-CR 17-0685 PRPC { Post conviction Petitions for review
Arizona Supreme court case NO. CR-18-0190-PR

Both Petitioner's Trials were held:
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

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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

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

The opinion of the United States court of appeals appears at Appendix A & B 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 C & D to the petition and is

[ ] reported at ____________________; 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.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was July 25th 2022.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 26th 2022, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including 1-23-2023 (date) on 11-23-2023 (date) in Application No. 22 A 459.

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

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

The date on which the highest state court decided my case was ________. A copy of that decision appears at Appendix ____.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In regards To Question 1. Located on page II

Petitioners due process and 14th Amendment, section 1., due process was violated in The First Trial, case NO. P1300CR201101146, when The Trial Judge herself falsely labeled petitioner as a sex offender to the Jury, it deprived Petitioner of a fair and impartial Trial by Jury.

IN regards To Question 2. Located on page II

Petitioners 6th Amendment right To have competent Legal assistance was violated for counsel in yavapai county superior court case NO. CR201101146 failing to object To The Trial Judge falsely labeling petitioner as a sex offender To the Jury and for counsel in this same case failing to object even one Time To the eleven incidents of vouching that occurred. Counsels misrepresentation deprived Petitioner of a fair Trial.

In regards To Question 3. Located on page II

Petitioner's 5th Amendment due process and 14th Amendment, section 1., due process was Violated cause the record clearly shows The prosecution either lost or destroyed the physical evidence in The CR201101146 case and replaced it to get this conviction.

In regards to Question 4. Located on page II

When the prosecutor, who prosecuted both The CR201101146 case and The CR2012000975 vouched for his informants credibility and placed The states belief behind his vouching in both cases, he violated petitioner's 5th Amendment due process and 14th Amendment, section 1., due process

In regards to Questions 5 and 6 Located on page II

When the prosecutor in CR201101146 deliberately introduced inadmissible 404(b) uncharged prior bad acts into This Trial and the Trial Judge failed To grant a mistrial, Petitioners 14th Amendment right To have a fair and impartial trial was Violated.

In regards To Question 7 & 8 Located on page II

The Trial Judge sentencing petitioner to a life sentence of 25 flat years, considering petitioner's age, for the charged non-dangerous crimes of sales that amounted to less than one gram of meth in both cases combined was cruel and unusual punishment and a violation of Petitioner's U.S.C. 8th Amendment. And it was a U.S.C. 14th Amendment violation for the Trial Judge to sentence Petitioner To consecutive sentences when other Judges in yavapai county superior court sentenced people with almost The same convictions To concurrent sentences which violated This petitioner's EQUAL PROTECTION OF THE LAWS. In addition the Trial Judge had a Judicial obligation To recuss herself suasponte for having interest in Two seperate Trials she proceeded on which violated petitioner's 14th Amendment as well.

STATEMENT OF THE CASE

I refernce To question one and Two, Page II

In the first case, Yavapai County Superior court case NO. P1300-CR201101146, the Trial Judge falsely implied To the Jury during prelimenary Jury instructions that defendant was charged with one count of sexual assault and one count of attempted sexual assault, see Appendix F, (R+) 4-3-2013 @ 28:18-20. Petitioner has never had charges of that nature and was infact charged with Transportation for sales for Two counts Totaling ½ gram of meth. This cannot be considered a harmless error and is infact a plain, structual error, supported by factual record that was a severely prejudicial false attack on Petitioners charatter.

Trial counsel failed To object, making This not only a Judicial bias/malfeacence issue, but an I.A.C. Claim as well.

Rule 32.1 States, one area where violation of State law may give rise To the 14th amendment due Process violation is with regards to Jury instructions. see Middleton v. McNeil, 541 U.S. 433, 124 S.ct. 1830, 158 L.Ed. 2d 701 (2004) (quotations ommitted)).

Rule 32.3 States, "if There is grave doubt about whether a Trial error of federal law has 'substantial and injurious' effect or influence in determining the Jury verdict, that error is not harmless." see O'neal v. McAnich, 513 U.S. 432, 436, 115 S.ct. 992, 130 L.Ed.2d 947 (1995).

IT is well known how todays society veiws persons that are charged with sexual offenses. when This jury was attributed To determine guilt after hearing from the Trial Judge herself, false accusations of Petitioner being charged with sex offenses was severely prejudical. There is a reasonable likelihood that the jury would have understood the Trial Courts erroneous instruction To require it to presume That the Petitioner was Perpetrater of prior sexual abuse. see Estelle v. McGuire, 502 U.S. 62, 76-77 (1991) (o'connor J. dissenting)). Particularly when This Jury was also attributed to determine guilt based on physical evidence that did not match any of the sworn Testimony given by The Detective and the informant himself, "intra", Puts This erroneous structual error into question as to The Jurys determination of guilt as well.

STATEMENT of The Case

Since no curative instruction was given by the Trial Judge and no objection was made by Trial counsel demands the only curative action is to remand This case back for a New Trial before a fair and impartial Jury.

Failure To object to jury instructions or to offer alternate instructions results in plain error, see U.S. V. Bear, 439 F.3d 565, 568 (9th cir. 2006). Counsels failure to object falls below StrickLand standards, and is clearly a 6th Amendment violation, strickland V. Washington, 466 U.S. 668, 687 (1984) (citations omitted)).

The inquiry ... is not whether in a Trial That occurred without the erroneous error, a guilty verdict would surely have been rendered, but whether the Verdict actually rendered in This case was surely unattributable To the error, see Sullivan V. Louisiana, 508 U.S. 275, 113 S.Ct. 2078, 2081, 124 L.Ed.2d at 182 (1993).

The proper inquiry is whether There is a reasonable likelihood That The Jury understood The instruction To allow conviction based on proof insufficient to meet due process standards. As in This case the physical evidence clearly having been established through recorded Testimony that The Prosecution either lost or destroyed The evidence and merely replaced it in heat sealed Packages, "intra", is infact insufficient To meet due process standards, see Victor V. Nebraska, 511 U.S. at 6 (citations omitted).

When a court is "in virtual equipose as to The harmlessness of The error," The court should "Treat the error ... as if it affected The verdict", see FRY V. Pliler, 551 U.S. 112, 120, 121 n.3., 1257 S.ct. 2321, 168, L.Ed. 2d 16 (2007).

This plain, structural error falsely labeling petitioner as a sex offender was improper and clearly injurious to petitioner's character. To establish Plain error, a defendant must show That: 1) an error occurred, 2) The error was obvious and clear, 3) The error affected The defendants substantial right, and 4) The adverse impact seriously affected The fairness, integrity or public reputation of The Judicial Proceedings, Quoting U.S. V. Tam, 240 F.3d 797, 802 (9th cir. 2001).

After The Jury hearing such an erroneous false allegation from The Trial Judge herself, There was no way Petitioner could recieve a fair and impartial Trial before That particular Jury Panel.

STATEMENT OF THE CASE

Although a court is entitled to rely a great extent on the Parties attorney to protect their clients interest, the Trial court, Too, has a duty to ensure That a criminal defendant recieves a fair Trial, see U.S. V. Nobles, 422 U.S. 225, 230, 95 S.Ct. 2160, 45 L.Ed. 2d 141 (1975).

IN REFERENCE TO QUESTION Three, Page II

Petitioner was sentenced To 20 flat years on physical evidence That the record will show, "infra", was either lost or destroyed and replaced to obtain this conviction in Yavapai County Superior court case No. P1300CR20110II-46. Detective Johnson Testified That the drugs he recieved from The informant was packaged in a piece of plastic -- like The corner of a plastic bag, Torn off and spun around and Tied off, and that it was the same sort of Packaging in both incidents, (Rt) 4-4-2013 @ 27:8-12.

The informant Testified that The drugs he claims To have purchased was Packaged in small Zip-loc bag, which he Testified was The drugs he gave directly To Detective Johnson, (Rt) 4-4-2013 @ 88:8-18.

Viewing the photo's of the physical evidence used to convict, it appears to be packaged in heat sealed packages. See APPENDIX G...

The court in Johnson V. Norris, 999 F. Supp. 1256, 1259-6 (E.D. ARK. 1998) noted: Linda Burdick, a forensic drug chemist... stated That when she recieved the package in that case, The outer manila envelope was sealed with The initials "TW" written across the Tape. Burdick Testified That The packaged evidence was a ziploc bag. At The hearing, Officer Washington... stated That he placed The one piece of crack cocain That he Purchased from The female in a plastic bag; heat sealed The plastic bag and placed it in a manilla envelope. What is most disturbing and Troublesome in That case is The fact That The case agent... was unaware that The key evidence That he later Testified abount was really the same unadulterated Cocain That he purchased from The defendant. In addition, These circumstances raised not only a serious question regarding the adequate chain of custody of the evidence in that case, but of equal force, a question as to whether The evidence recieved in evidence had been Tampered with; (The court in That case granted unconditional release).

This is almost exactly what has occurred in This case. Only the lab tech testified the drugs she tested was packaged in a piece of plastic bag, (Rt) 4-4-2013 @ 157:7-8.

STATEMENT OF THE CASE

The prosecution caught this error in Testimony right away and Tried To lead his informant into changing his Testimony To match Det. Johnson's. Where the Prosecutor stated, "sometimes in other drug Transactions it's the corner of a bag... rip off the corner, Kind of Shriveling it up, Shrivel it up to Tie in a Knot". Where The informant Testified, "Not This time, no", (Rt) 4-4-2013 @ 88:12-15. The prosecutor missed The fact That The evidence he was Presenting was not Packaged in a piece of plastic Twisted up and Tied in a Knot but what appears to be heat Sealed Packaging. Counsel failed to object to the insufficent evidence or The leading The witness. the prosecution trying to lead his informant into changing his testimony could be recieved as a "Giglio error". The orgins of Giglio doctrine lie in The supreme courts decision in Napue V. Illinois, 36 U.S. 264 [.]... The court in Napue explained That "it is established That a conviction obtained through use of false evidence, Known to be such by representatives of The state, must fall under The 14th Amendment, Id. @ 269, 79 S.Ct. 1173 (omitted. the fact of The matter is The evidence The State Produced to convict was not packaged in ziploc bags, nor was it packaged in a Piece of Plastic That was Twisted up and Tied off at The Top.

Pursuant to Fed. R. Evid., 901(a), to Satisfy The requirement of authenticating or identifying evidence sufficient to support a finding That The item is what The Proponent claims it is, under 901(b) The following is an example of evidence That Satisfies the requirement, 901(b)(1), Testimony of witness with Knowledge That The item is what it is claimed To be.

In addition, Det. Johnson admitted in open court That he opened the evidence envelope after it was sealed for trial to take photos, Two days before Trial and resealed it, (Rt) 4-4-2013 @ 36:5-13. He did this without court authorization, and now The physical evidence does not match Testimony which Clearly indicates This evidence has been Tampered with. Det. Johnson Testifying to opening the evidence envelope two days before Trial after it was Sealed for Trial purposes without the courts authorization is a violation of the Chain of custody, pursuant to Rule 15.1(J)(3)(B), a Court must issue an order necessary to document the chain of custody, or protect Physical evidence. Which the Trial court did not grant documented authorization and now the evidence does not match Testimony.

Pursuant to Fed. R. Evid., 103, a party may claim error in a ruling to admit or exclude evidence if The error affects a substantial right to The Party, which the submission of replacement evidence in This case clearly shows.

STATEMENT OF THE CASE

Rule 103 (e) states, a court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved. therefore the State Courts procedurally barring the insufficient evidence Claims because State appointed direct appeals Counsel failed to preserve This obvious Constitutional violation on direct appeal does not bar federal review.

Pursuant to Perruquet V. Briley, 390 F.3d 505, 514 (7th cir. 2004), the Procedural default doctrine does not impose an absolute bar to federal relief. the Trial court as well as the Federal district court has denied petitioner a full and fair evidentiary hearing to present These facts to expose the Prosecutorial misconduct as well as The I.A.C. Claims on The record.

For The State prosecutor to imply during closing arguments in The CR-201101146 case, "That The methamphetamine the informant brought back Should leave the Jury firmly convinced of guilt" was severely prejudicial and a deliberate misrepresention of the evidence, (RT) 4-5-2013 @ 30:11-13, 45:1-2. we have already established That the prosecutor was aware the evidence did not match Testimony by the leading questions to the informant, "ante". Pursuant to Hayes V. Brown, 399 F.3d 972 (CA 9th cir. 2005) P. 981 [...] Due Process protects defendants against the known use of false evidence by the State whether it be documents; "testimony", or any other form of admissible evidence. see also phillips V. Woodford, 267 F.3d 966, 984-85 (9th cir. 2001).

under § 2254 (d)(2), a decision involves an unreasonable determination of the facts if it rest upon fact-finding That ignores the clear and convincing weight of the evidence, See Ward V. Sternes, 334 F.3d 696, 704 (7th cir. 2003).

Phillip V. Ornoski, 673 F.3d 1168 (CA 9 2012), P. 1186, it is a fundamental Principle of the American Justice system That the "deliberate deception" of a court to The Jury by the Presentation of known false evidence is incompatible with The rudimenary demands of Justice. misrepresenting facts in evidence can amount to substantial error because doing so "may Profoundly impress a Jury and may have a significant impact on The Jury deliberations", see Donnelly V. Dechristofore, 416 U.S. 637, 649, 94 S.ct. 1864, 40 L.Ed 431 (1974); Washington V. Hofbauer, 228 F.3d 689 (CA 6 2000).

Additional facts That The evidence has been Tampered with in both The P1300CR201101146 case and the CR 201200975 case can be found in the weight differences between field testing and lab testing.

STATEMENT OF THE CASE

The field Test weight in the 7-14-2011 incident was .4 grams, the scientific exam reported a piece of plasic bag Containing 0.24 gram, a difference of .16 gram. the field Test weight in the 7-19-2011 incident was recorded at .2 gram, The scientific exam report was recorded at .14 gram, a difference of .06 gram. the 5-14-2012 incident was field tested at .8 gram, the scientific exam report was .38 gram. A difference of .42 grams. Coincidentally, the amount of drugs used to convict in the 2011 case is exactly, short the amount it would have Taken The lab tech to field test the drugs in the 2012 case that is missing between the field and lab testing in the 2012 case.

The weight differences between field testing and lab testing is so disproportionate in these Three incidents that it can only be explained as Tampered evidence in both These Trials.

As previously stated, petitioner has been denied a full and fair evidentiary hearing in both state and district courts to have the opportunity to expose The prosecutor's misconduct and The I.A.C. claims on record. The Ninth Circuit has held repeatedly that where a state court makes factual findings "without an evidentiary hearing", the "factfinding process itself is deficient" and not entitled To deference. Quoting Taylor v. Maddox, 366 F. 3d 992, 1001 (9th cir. 2004) see also Jones v. Walker, 540 F. 3d 1277, 1288 n. 5 (11th cir. 2008) (en banc)). The evidence clearly being shown as Tampered with is infact deserving of unconditional release or at the very least these cases should be remanded back to district court To hold an evidentiary hearing and appoint counsel for petitioner.

In Reference To Question four, Page II & Question Two

The prosecutor, mr. Rodriguez placed his personal opinion as well as the states belief behind his informants credibility in both Trials, case No.s P1300CR201101146 and CR201200975. This was highly prejudicial because both of these cases relied solely on these informants Testimony and Credibility. Det. Johnson Testified they had not seen petitioner on location of either case and had to rely on the informants To Tell Them what happened and who they purchased drugs from. 2011 case (Rt) 4-4-2013 @ 24:23-25; 54:12-16; 144:5, 2012 case (Rt) 4-10-2014 @ 74:6-23. Nothing either of these informants Testified could be corroborated by law enforcement, therefore their credibility was vital. At no time in either Trial did The Trial Judge, Hon. Tina Ainely who presided over both Trials offer Jury instructions. Nor did counsel in the 201101146 case object even one time To The eleven incidents of vouching that occurred in That case.

STATEMENT OF THE CASE

The first Time vouching occurred in the P1300CR20110114le case was during questioning of Det. Johnson where the prosecution asked "was there any indication that mr. Marks wasn't reliable?" where Johnson answered "No, none. He was completely honest from the day of his arrest". (Rt) 4-4-2013 @ 58: 12-18. The second Time was immediatily after where The prosecutor asked "so if There was a question in your mind, you could have him, (the informant), give a urine sample and test that? where Johnson answered "we have with other informants that -- At Times were showed up and other informants have clearly displayed they were intoxicated or high, but he never was", (Rt) @ 59: 7-13. IT is misconduct for a prosecutor to pose questions to one witness regarding the veracity of other witnesse's, see U.S. V. Ramirez, 537 F. 3d 1075 (9th cir. 2008); U.S. V. Geston, 299 F. 3d 1190 (9th cir. 2002).

The Third Time vouching occurred was the first Time The prosecutor placed the states belief behind the informants credibility during closing arguments, Stating, "none of those three things, the state believes, are indicative of lying. none of them. He has a meth problem. That's not necessarily indicative of lying. He suffers from depression. Nothing to indicate he has the propensity Towards lying. He's Working off charges. No propensity Towards lying," (Rt) 4-5-2013 @ 22: 11-18. The fact is, a witness Testifying pursuant to a plea agreement is usually admissible to show bias, see united states v. Antone, 603 F. 2d 566 (5th cir. 1979); United States v. Goodman, 605 F. 2d 870 (5th cir. 1979). The Hallmark of vouching is when The prosecutor places The prestige of the government behind the witness by providing personal assurances of the witness's veracity, See U.S. V. Kerr, 981 F. 2d 1050, 1053, 37 Fed. R. Evid. Serv. 808 (9th cir. 1992); see also U.S. V. Garcia, 522 F. 3d 597, 601-02 (5th cir. 2008); U.S. V. Wright, 625 F. 3d 583, 611 n.15 (9th cir. 2010).

The fourth Time vouching occurred was in closing using The contractual agreement, stating "mr. marks is not lying to try and help himself or making all This up. He has every incentive to be honest and Truthful. If he does not be honest and truthful, he violates his contract," (Rt) 4-5-2013 @ 23: 19-24: 16. mr. Rodriguez does not understand that he engages vouching by using The informants contract to bolster his credibility, suggesting That The informant did not lie to get a deal, see U.S. V. Manning, 23 F. 3d 570, 573 (1st cir. 1994).

The fifth Time was in closing as well where Rodriguez stated

STATEMENT OF THE CASE

"nothing to indicate he was misleading somebody or setting somebody up", (Rt) 4-5-2013 @ 25:2-3. this is misleading the Jury because the whole point of the contract is to set people up and testify and Det. Johnson testified "To fulfill his contract with the state, he had to Testify, (Rt) 4-4-2013 @ 42:21-43:6.

The sixth Time vouching occurred was the last Time in closing and was The second Time the states belief was inputted to the Jury. These Two Times the states belief was inputted even the AZ court of Appeals missed because they rebutted in that courts ruling that defense vouched first during closing when defense had not even done their closing yet. Mr. Rodriguez stated "the state believes that mr. marks was being honest and his demeanor showed;" (Rt) 4-5-2013 @ 30:20-21. Vouching is dangerous, precisely because a jury maybe inclined to give weight to the prosecutor's opinion in assessing the credibility of a witness instead of making the independent Judgement of credibility to which the defendant is entitled, see U.S. V. McKoy, 771 F.2d 1207, 1211, 18 FED. R. EVid. Serv. 873 (9th cir. 1985); U.S. V. Weatherspoon, 410 F.3d 1142, 1147 (9th cir. 2005).

The seventh and eighth Time vouching occurred when the prosecutor placed Det. Johnson's assessment of his informants Trustworthyness in support of Marks credibility, (Rt) 4-5-2013 @ 41:14-42:1, ending that statement with marks never lied to Det. Johnson, He was a good informant. Det. Johnson is an agent of the government. It follows inexorably that the prosecution cannot prop-up a dubious witness by having a government agent place the stature of his office behind the witness. It's ability to convince the jury of a particular witnesse's credibility is to great. It cannot entice the Jury to find guilt on the basis of a DEA agents opinion of the witness's veracity, see U.S. V. Perez-Ruiz, 353 F.3d, 1 (1st cir. 2003). These Two Times were during rebuttal arguments.

The Ninth and Tenth Time vouching occurred was during rebuttal as well where the prosecutor placed the states belief and the states position behind his vouching, ending those statements with "its the states position that Marks was being truthful testifing to you yesterday ...." (Rt) 4-5-2013 @ 43:3-4; 43:17-20. Again this is impermissible vouching, see united states V. Young, 470 U.S. 1, 18-19, 105 S.ct. 1038, 84 L.Ed. 2d 1 (1985); united states V. Wilkes, 662 F.3d 524 (9th cir. 2011).

The eleventh and final Time in the first case was when the Prosecutor stated "He Testified to exactly what happened, and was being Truthful, honest," (Rt) 4-5-2013 @ 44:2-3. Counsel sat silent and did not object even one time to the eleven incidents of vouching by the prosecution.

The seventh circuit in "Jordan v. Hepp" applied the principle articulated by Justice Breyer in cullen v. pinholster, 563 U.S. 170, 204, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011). the petitioner in Jordan argued that his Trial Attorney Provided ineffective assistance by failing to object to the prosecutors improper vouching for a witness during closing arguments with regards to "strickland Prejudice", the circuit court found it was. see Jordan V. Hepp, 831 F.3d 837, 849-50 (7th cir. 2016).

After realizing how well his vouching worked in the 2011 case, the same Prosecutor, mr. Rodriguez continued vouching in the P1300CR201200975 case, Placing his personal opinion and the states belief behind his witness's credibility. Only in this case counsel did object but was not allowed to make a record in the presence of the Jury.

without implementing the wording, Petitioner will Just cite factual locations in the record where the impermissible vouching occurred in the 2012 case, citing the above implimented case laws. see (Rt) 4-11-2014 @ 63:4-21; 64:5-20; 106:20-22; 109:2-5; 110:1-111:2; 111:23-25; 137:1-3; 137:22-138:5 and 138:11-16.

Additionally in the 2012 case, mr. Rodriguez Placed the states belief that Petitioner sold meth to the informant, and if the state believed the defendant was innocent, they would have dismissed the charges long ago, (Rt) 4-11-2014 @ 112:10-14; id @ 134:17-22. The Prosecutor may not imply that the government would not have brought the case unless the defendant was guilty, see U.S. V. Morris, 568 F.2d 396, 401-02 (5th cir. 1978) (citations and notes omitted)). Pursuant to Fed. R. Crim. P. 46.5, The Prosecutor can argue the record, highlight inconsistencies, but they may not put fourth their personal opinions, including those concerning the credibility of witness's, their impression of the evidence or the guilt of the defendant, see U.S. V. Coutentos, 651 F.3d 809, 821 Fed. R. Evid. Serv. 155 (8th cir. 2011).

The Prosecutors misconduct in both these Trials and Counsels failure to object even once for the vouching in the first Trial was severely Prejudicial, demanding a new Trial in both cases. Only an evidentiary hearing would have resolved these issues to expose the prosecutorial misconduct and the IAC. Claims in a fair hearing. For the state court and the Federal District Court to deny such a hearing can be construde as government interference because the factual record clearly supports petitioners claims.

STATEMENT OF THE CASE

In reference To Questions five & six, Located on page II

The Trial Judge ruled on day one of Trial during Pre-Trial Conference in the first case, Yavapai county Arizona case NO. P1300-CR 201101146, That alledged Prior bad acts 404(b) evidence could not Come into play because we haven't had a hearing and the state never alleged prior bad acts, (Rt) 4-3-2013 @ 8:1-9:2.

on day Two of Trial, while questioning the very first witness, Det. Johnson, the Prosecutor did infact bring in uncharged prior bad acts To attack Petitioners' Character, (Rt) 4-4-2013 @ 30:13-16. Counsel objected and there was a side bar held outside the hearing of the Jury, (Rt) 4-4-2013 @ 30:19-31:13. where upon during that sidebar hearing outside the hearing of the Jury, the Trial Judge stated almost exactly as she stated on day one "I think unless somehow the door's opened, Those statements are not coming in because they do constitute Prior acts that haven't been -- we haven't had a hearing on Those, and the state hasn't sought to admit Those", (Rt) 4-4-2013 @ 31:14-18.

Inside The Jurys presence The Jury heard from the Trial Judge, "I'll sustain the object and ask That we move on" Id. @ 31:22-23. the Trial Judge failed to give the Jury any currative instructions. immediately after the Judge sustained the object, the prosecutor did it again with no objection from counsel this Time, (Rt) 4-4-2013 @ 31:24-32:3.

Pursuant to Fed. R. Evid., Rule 105, the court on Timely request must restrict the evidence to it's proper scope and instruct the Jury accordingly. Because This issue was central to the case, striking the Testimony without offering currative instructions was insufficient To "un ring The bell".

The prosecution's unfair Tactic's to introduce prior uncharged bad acts to the Jury To attack Petitioner's character after the Trial Judge ruled prior to trial that this could not come in was severely prejudicial. the Prosecutor must be particularly sensitive to potential prejudice That is always inherent in evidence of accussed's prior uncharged crimes or wrongs, see united states V. Burkhart, 458 F.2d 201 (10th cir. 1972)(en banc)).

Pursuant To Fed. R. Evid. Rule 103 (a)(2) once the court rules definitively on the record, "either before Trial, or at Trial" - a party need not renew an objection or offer proof To preserve a claim of error on appeal.

The final Time prior bad acts were alleged in this Trial was

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when the prosecutor was questioning the informant and asked him, "why did you identify mr. Guinard to law enforcement officers" where the informant stated, "because I bought meth from him before", (Rt) 4-4-2013 @ 77:11-13. The prosecution knew the answer he would get from the informant. The prosecution had every intention of bringing in inadmissible 404(b) evidence into this trial. Proof of the prosecutions ententions are Presented in the prosecutions arguments in pre-trial where he stated "if mr. Syme goes into the history of mr. Marks meth use, the state believes it should be able to talk about mr. Marks use of meth with the defendant", (Rt) 4-3-2013 @ 8:12-15. But as previously stated, the Trial Judge ruled This could not happen.

Counsel objected and asked for a mistrial (Rt) 4-4-2013 @ 77:14-25. The prosecution made the excuse that he was expecting a different answer, (Rt) 4-4-2013 @ 78:5-6.

the Trial Judge sustained the objection but denied the mistrial, giving the one and only limited jury instruction to this issue, (Rt) 4-4-2013 @ 78:7-18. Counsel renewed the request for mistrial, (Rt) 4-4-2013 @ 97:18-98:24. the trial court errored in denying the mistrial after she ruled before Trial. The Trial Judge denied the request for mistrial again, stating "I don't believe it's that egregious in the case at hand as to require a mistrial, (Rt) 4-4-2013 @ 100:7-9. these attacks on Petitioner's character were central to this case because the case at hand is drug related.

Current law does not allow the government to introduce negative character evidence as to the accussed unless the accussed introduces evidence of good character, see united States v. Fountain, 768 F. 2d 790 (7th cir. 1985).

The Trial Judges single instruction to disregard the informants answer was insufficient to unring-the-bell. In making this determination, The federal court must evaluate the challenged jury instruction in the context of the overall charge to the jury as a component of the entire Trial Process. A single instruction to the jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge, since this case was drug related, these unfair tactic's by the prosecution were severely prejudicial. see Boyde v. California, 494 U.S. 370, 378, 110 S.ct. 1190, 108 L.Ed. 2d 316 (1990). As noted in Fed. R. Evid., Rule 103(c), Proceeds on the supposition that a rule which excludes evidence in a jury case is likely Pointless procedure if the excluded evidence nevertheless comes to the attention of the jury, see Brunton v. united states, 389 U.S. 818, 88 S.ct. 126, 19 L. Ed. 2d 70 (1968).

STATEMENT OF THE FACTS

IT is improper for Prosecutor's To bring To the attention of The Jury, any "Purported Facts That are not in evidence and are prejudicial, see U.S. V. wiedyK, 71 F.3d 602, 610, 19 Employee Benefits Cas. (BNA) 2521, 43 Fed. R. Evid. Serv. 879, 1995 Fed. APP. 0359P (6th cir. 1995).

The Prosecutor is a representative, not of an ordinary party to a controversy, but of a sovereighnty, whose obligation To govern impartially is as compelling as it's obligation to govern at all, and whose interest, Therefore, in a criminal prosecution is not That it Shall win a case, but That Justice Shall be done. He may prosecute with earnestness and vigor, but while he may strike hard blows, he is not at liberty to strike foul ones, see U.S. V. Saunders, 641 F.2d 659, 664, 7 Fed. R. Evid. Serv. 128 (9th cir).

IT is impossible To say That The evil influenced upon the Jury by These acts of misconduct by the prosecution could be over looked by the Jury when The record Shows That The jury could not disregard The prior bad acts statements by the questions one Juror asked after examination of Det. Johnson, "was There any evidence mr. Guinard was under The influence or high when arrested?" (RT) 4-4-2013 @ 64:21-65:2.

After examination of the informant, other Juror's asked, "since it seems That Jimmy Guinard and Tom marks both sold Meth, why was Tom chosen To be an informant? was Jimmy a bigger fish to go after?" (RT) 4-4-2013 @ 131:9-18. And, "have you ever done meth with mr. Guinard?" (RT) id. @ 132:7-10. these questions were not asked by The Court and went unanswered, and Clearly establish that the Jury could not disregard The inadmissible 404(b) Prior bad act statements with The one and only Jury instruction to disregard.

Additionally, the presumption that a curative instruction is sufficient To eliminate prejudice to a defendant maybe overcome if there is an "overwhelming probability", as There is in This case, That The Jury would not have been able to disregard the comments and There is a Strong likelihood That the effect of The misconduct would be "devastating To The defendant", see Greer V. Miller, 483 U.S. 756, 766 n.8, 107 S.Ct. 3102, 97 L.Ed. 2d 618 (1987).

Particulary when during Jury deliberations, the Jury asked,

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"The defendant's lawyer used the informants current and past drug use and mental health as a reason for the jury to disregard his Testimony, doesn't that open the door on our learning about defendants past and current drug use?" (Rt) 4-5-2013 @ 48: 1-6.

the court responded, "You have all the evidence admitted for you To consider," (Rt) 4-5-2013 @ 48: 9-10. we have already established The Jury could not disregard the inadmissible 404(b) evidence. There is a very high probability that after The Trial Judge instructing The Jury That They have all the evidence admitted to consider and failing To give alternate instructions To disregard The prior bad act statements, That The Jury applied The inadmissible evidence.

Both the question and answer went without any input or objection or alternate suggestions by defense counsel, (Rt) 4-5-2013 @ 48: 11-14.

The Trial court should have given the Jury supplemental instructions on the use of inadmissible 404(b) evidence in regards to Petitioner's drug history and use, see united states v. Jenkins-watts, 574 F.3d 940, 946 (8th cir. 2009) (quoting U.S. v. wise carver, 598, F.3d 982 (CA 8 2010)).

The Trial Judge errored in not granting a mistrial after The Judge herself ruled 404(b) evidence could not come into play. The courts are not bound to defer To unreasonable-found facts or to legal conclusions that flow from them, see Taylor v. Maddox, 366 F.3d 992, 1008 (9th cir. 2004) (when we determine that the state court fact finding in unreasonable, ... we have the obligation to set those facts aside ...)).

The prosecutor's unconstitutional attacks on defendants character Just to get a conviction violates Fed. R. Evid. 404(b) and the record clearly shows this could not be overlooked by The questions the Jury imposed. If There is "grave doubt about whether a Trial court error of federal law has 'substantial and injurious' effect, or influence in determining the jurys verdict, the error is not harmless," see O'neal v. McAninch, 513 U.S. 432, 436, 115 S.Ct. 992, 130 L.Ed. 947 (1995).

when the Jury in this case was faced with determining guilt after hearing erroneous false allegations of sexual assault charges, and having to determine guilt on physical evidence That the record shows was either lost or destroyed and replaced, puts into question the Jury applying inadmissible 404(b) evidence to determine guilt.

When the court is in virtual equipose as to the harmlessness of the error's, the court should treat the error's... as if they affected the verdict, see Fry v. Pliler, 551 U.S. 112, 120, 121 n. 3, 127 S.Ct. 2321, 168 L. Ed.2d 16 (2007). Should a new Trial not be remanded, the only alternative is to hold an evidentiary hearing where petitioner will have a full and fair opprotunity to expose the Trial court errors and the prosecutorial misconduct and I.A.C. Claims as well.

In reference to Question Seven & eight, on page II

this Petitioner was charged and convicted of Two counts of Transportation for sales and Two counts of possession of drug paraphernilia in Yavapai County Superior Court case NO. P1300CR201101146.

Petitioner was sentenced To 10 Flat years on count 1. and 10 Flat years on count 3., the Paraphernilia Charges were ran concurrent to the sales charges and the Two 10 year sentences were ran Consecutively Totaling 20 Flat years in that case of a combined accussed sales of .38th Tenths of a gram of methamphetimine. (note: Paraphernilia was the drug packaging)

while petitioner was out on bond in the 2011 case, petitioner was charged with one count of Transportation for sales and one count of sales and two counts of paraphernilia, in Yavapai county superior court case NO. P1300CR201200975. Petitioner was found guilty on the Transportation for sales and not guilty on the other sales charge. The petitioner was given another 5 Flat year sentence on the Transportation for sales conviction and the paraphernilia sentence was ran concurrent to the 5 years. The 5 years was ran consecutively to the 20 Flat years already imposed, Totalling 25 Flat years in prison. the weight of drugs involved in the 2012 case was .34 tenths of a gram. The sentence imposed for these three convictions was grossly disproportionate for the severity of the charged crimes when you consider the Total amount of drugs claimed to be involved in all these charges combined Totaled .72 Tenths of a gram. (note: the Paraphernilia was the packaging)

The Trial Judge, Hon. Tina Ainely abused the courts discretion by imposing consecutive sentences to this petitioner when other Judges in the same County are imposing concurrent sentences for similar, almost identical cases. the Trial courts abusive discretion violates petitioner's U.S.C. 14th Amendment for Petitioner To have equal protection of the laws that the constitution demands, In addition To Petitioner's U.S.C. 8th Amendment, Cruel and unusual Punishment clause.

STATEMENT OF THE CASE

In "state v. Lester", Lester was charged for Transportation for Sales of meth along with other charges. On March 17th, 2020, Lester Sold 2.57 grams of methamphetamine To an informant under The Supervision of Partners Against Narcotics Trafficing ("PANT"). The next day, Lester Sold another 3.35 grams of methamphetamine To the same informant at the same location.

On April 7th 2020, Lester was involved in a Traffic stop. Police searched his vehicle and found three packages of methamphetamine weighing about Seven grams, along with syringes, beakers, and other drug paraphernalia. Lester was arrested and interviewed by PANT officiers. On May 11th, Lester posted bond.

on April 14th 2021, Lester sold about Three grams of meth To another informant. Two weeks later, Lester sold another 7.9 grams of methamphetamine To That informant.

Lester was given three 10 year sentences for These Offenses ran concurrently, see State of Arizona v. Lester, Yavapai County Superior Court case Numbers, V1300CR202080248.*2 and CR202180267. see also State of Arizona v. Falkenburry, Yavapai County Superior Court Case NO. P1300CR200901255. there are numerous other Similar Yavapai county Superior Court cases recorded where The defendants recieved Concurrent Sentences.

The Lester case is almost verbatum to petitioners cases except The recorded facts present This Petitioner as a middleman in The alledged charged crimes and the total amount of drugs involved in boTh Petitioners Trials amounted To less Than one gram of Meth.

The Trial court imposing such a grossly disproportionate sentence for the severity of the charged crimes violates petitioner's 8th Amendment right under cruel and unusual punishment and not sentencing petitioner To Concurrent Sentences violated Petitioner's 14th Amendment right to have equal protection of The laws that The constitution requires.

In addition, Petitioner's Trial Judge, Hon. Tina Ainley, Presided over both of Petitioner's Trials and she had Knowledge that Petitioner had not only a Trial coming into her court room on P1300CR201101146 case but that Petitioner had a similar case no. P1300CR00975 coming into her court before the Trial and sentencing in The 2011 case.

This Trial Judge had a Judicial obligation To recuss herself Sua sponte from both The Trials and assign These cases To Two different

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Trial Judges in Yavapai county Superior court. IT is a requirement that a Trial Judge must be both impartial and disinterested. the Trial Judges Knowledge of defendant having another Trial coming into her court shows her vindictiveness, particularly when she sentenced Petitioner to 20 flat years in the 2011 case and then places petitioner in a catagory one in the second Trial, a year later and sentences petitioner to an additional 5 flat years and runs all three convictions consecutively. Her harsh sentence in the first case puts into question her interest in both cases.

A Judge with an appearance of bias, is required to recuss herself sua sponte under the due process clause, see Johnson v. Carroll, 369 F.3d 253 (3rd cir. 2004). The Trial Judges failure to recuss herself sua sponte may have effected her judgement during Trial and Sentencing. In the appearance of Justice, this was not fair to defendant. see Bracy v. Gramley, 520 U.S. 899, 904-05, 117 S.ct. 1793, 138 L.Ed.2d 97 (1997); see also Franklin v. McCaughtry, 398 F.3d 955, 962 (7th cir. 2005).

§ 39:1 Due process clause "requires a fair Trial in a fair Tribunal, before a Judge with no actual bias against the defendant or interest in the outcome of his particular case. The Supreme court has identified four circumstances where the Due process clause requires a Judge to recuss themselves in the absence of actual bias. one is when the Due Process requires that vindictiveness must not play no part in the sentence he recieves.

The Due process clause entitles a person to an impartial and disinterested Tribunal in both civil and criminal cases. This requirement of neutrality in adjudication proceedings safeguards the Two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations, and the promotion of participation and dialogue by affected individuals in the decision making process.... the neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the laws, see Mathews v. Eldridge, 424 U.S. 319, 344, 96 S.Ct. 893, 903 (1976).

At the same Time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that Justice has been done", see Joint Anti-fascist Committee

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V. Jerrico, Inc., 446 U.S. 238, 64 L.Ed.2d 182, 100 S.Ct. 1610(1980).

Judge Ainley had a direct, personal interest in this case. See Knew how weak the case in CR201200975 was where petitioner was convicted on the one charge Just because the informant said petitioner's name on the phone. Petitioner was not even at That location and petitioner was convicted merely because the informant said petitioners name on the phone. A phone That petitioner shared with his brother, Donny Guinard. Donny presented an Affidavit before petitioners sentencing in the 2012 case stating he had the Phone on That day, the charge that was found not guilty was all heresay. The trial Judge knew how weak this case was is why she sentenced so harhly in The 2011 case.

The Federal statutory recusal statue, 28 U.S.C. § 455 describes Two catogories for disqualification. The first provides that The Judge must recuse themselves in any proceeding in which Their impartiality might be reasonably questioned. The second is where he/she has a personal bias or prejudice concerning The proceedings.

The dispute that Judge Ainley was on Two seperate trials with This defendant and had personal knowledge that defendant was coming back To her court on case No. CR 201200975 before Trial and sentencing in CR201101146 case, and The fact That the defendants brother, Donny Guinard had his case going on in Judge Ainley's Court at The Same Time (different Trials Than petitioners) puts into question of whether her impartiality might be reasonably questioned as well.

Combined with The fact That Judge Ainley denied defendants mis-Trial after ruling pre-trial That the prosecution could not introduce inadmissible 404(b) evidence, "ante", and the fact That she did not intervene when the prosecution placed The states belief behind his vouching for the states key witness's credibility in both cases during closing and rebuttal arguments, "ante", as well as The erroneous Jury instruction, falsely labeling defendant as a sex offender, "ante", further supports her impartiality might be reasonably questioned.

STATEMENT OF THE CASE

In deciding whether a partys due process rights have been violated on grounds of Judicial bias, a court may rely on the Federal Statutory recusal statue 28 U.S.C. § 455, and cases interpreting its provisions. In contrast to due process clause, the Federal recusal statue is concerned largely with insuring That the Federal Judiciary appears to be impartial in addition to actually being impartial, see U.S. V. Sypolt, 346 F. 3d. 838, 840, 62 Fed. R. Evide Serv. 1601 (8th cir. 2003).

It Thus reaches farther Than The due process clause, which is concerned Primarily with individual rights of parties, see U.S. V. Couch, 896 F.2d 78, 81-82 (5th cir. 1990). see also Railey V. Webb, 540 F.3d 393, 407 (6th cir. 2008).

Due process protection under The Federal constitution is much broader. In Tumey V. State of Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L. Ed 749, 5 Ohio L. Abs. 159, 5 Ohio L. Abs. 185, 50 A.L.R. 1243 (1927), The Supreme court held in Harrison V. McBride, 428 F.3d 652, 665-67 (7th cir. 2005), "Every Procedure which would offer a possible Temptation to the average man as a Judge... not to hold the balance nice, clear and True between the state and The accused denies The latter due process of law."

Therefore recusal is required when the probability of actual bias on The part of the Judge or decision maker is too high to be constitutionally Tolerable", see Withrow V. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed. 2d 712 (1975).

The goal of § 455(a) is to avoid even the appearance of partiality. "If it would appear to a reasonable person That a Judge has Knowledge of facts That would give him/her an interest in The litigation, Than The appearance of Partiality is created, even if no actual partiality exist." see Cheney V. U.S. Dist. Court for Dist. of Columbia, 541 U.S. 913, 924, 124 S.Ct. 1391, 158 L. Ed. 2d 225 (2004).

Judge Tina R. Ainley's failure to recuse herself sua sponte violated defendants due process of law Pursuant to U.S.C. 14th Amendment and was subject to Habeas review to which Petitioner was also denied relief.

REASONS FOR GRANTING THE PETITION

Petitioner was sentenced To 25 Flat years in Arizona state Prison for combined Total Sales of less than one gram of Methamphetimine. This grossly disproportionate sentence is unheard of, considering the severity of these non-dangerous charged victemless crimes and is infact an act of punishment that would be shocking To the Conscience of society, and any Jurist of reason would conclude this Sentence is infact grossly disproportionate. Especially when you put into factor that this petitioner had not been in Trouble with Law enforcement since 1998 before these charged crimes, except for Traffic violations, and for a usable amount of marijuana charge in 2007 that petitioner completed everything the mayer, Arizona Justice court requested and that case was dismissed.

Petitioner is 60 years old at this Time and petitioner's projected release date is may 15th 2035, which will make petitioner 72 years and 8 months old upon his release. The human health services has Projected the average American citizens life expectancies since The covid outbreak is between 73 to 75 years old. this petitioner has already had covid once since his incarceration.

The Trial Judge, did infact abuse her discretion during petitioner's Trials. Particularly in The CR201101146 case.

whereupon she severely damaged Petitioner's character To The Jury by falsely labeling Petitioner as a sex offender when infact he has never ever had charges of that nature and was charged with drug offenses. Whether it was deliberate or Just a one Time mistake on the Judges part, as The Arizona District attorney claims does not un-Ring-the-bell and is purely speculation.

She allowed the prosecutor To vouch for his informants credibility in both Trials when she Knew the informants credibility was vital to these cases because nothing either informant Testified to could be corroborated by law enforcement. She had a Judicial duty to ensure Petitioner recieved fair Trials

She denied a mistrial in the CR201101146 case even though she, herself, ruled in pre-trial That uncharged prior bad act allegations could not come into Trial.

She allowed physical evidence to be submitted that did not match any Testimony in the CR201101146 case that the recorded facts support the evidence had clearly been Tampered with.

Additionally, she basically gave this petitioner a life sentence of 25 Flat years in prison for non-dangerous crimes that Totalled alledged sales of less than one gram of meth to where petitioner has presented factual cases where defendants in the same county recieved less than half the time petitioner is serving for the same exact crimes. which clearly violates petitioner's EQUAL protection of the laws rights.

She had a Judicial obligation to recuse herself from both petitioner's Trials and her bias shows by the facts petitioner has presented in this petition and by the grossly disproportionate sentence she imposed.

Each one of these Trial court error's violated Petitioner's U.S.C. 14th Amendment due process to have a fair and impartial trial by Jury, and the 25 Flat year sentence for the severity of the charged crimes was so grossly disproportionate that it violates Petitioners U.S.C. 8th Amendment as well.

The prosecutor, mr. George Rodriguez, Knowing the physical evidence did not match any of the Testimony, used every unfair Tactic available To him to obtain these convictions, He prosecuted both Trials...

He vouched, placing the states belief behind the informants credibility in both trials. This was vital testimony because the recorded facts show nothing that the informants Testified could be corroborated by law enforcement.

He deliberately attacked petitioner's character to the Jury by Knowingly Presenting heresay alledged uncharged prior bad acts in the CR201101146 case.

He Knowingly presented Tampered with physical evidence To be admitted into these Trials. Proof of this allegation is presented when he Tried to lead the informant in the CR201101146 case into changing his Testimony of how the drugs he claims to have purchased was packaged and by the weight difference between field Testing and lab testing in both the CR201101146 and CR 201200975 cases was so disproportionate that it can only be explained as Tampered with evidence which suggest a chain of custody violation.

REASONS FOR GRANTING THE PETITION

The prosecution's prejudicial, reversible error of introducing impermissible uncharged alledged prior bad acts, after it was determined during pre-trial conference that this could not happen, and The Trial Judges failure to grant a mistrial was severely prejudicial and infact was a factor in the Jury determining guilt in the CR2011-01146 case, To where the recorded facts of the Juries Questions That where asked and not answered support this allegation.

As well as his vouching in both Trials and his Knowingly admitting Tainted evidence into These Trials violated Petitioner's U.S.C. 14th Amendment due process to have a fair and impartial Trial by Jury.

Trial counsels error's in The CR201101146 case of failing To object To The erroneous Jury instruction falsely labeling Petitioner as some Kind of sex offender and failing to object even once to the eleven incidents of vouching that occurred in That case or even trying to object to the admission of clearly tampered with physical evidence clearly suggest ineffective assistance of counsel in violation of Petitioner's U.S.C. 6th Amendment as well.

There was no way This petitioner could recieve a fair and impartial Trial by Jury under The cercumstances petitioner has Presented that are clearly supported by factual records.

The Arizona General Attorney and the Federal District Court of Arizona was unreasonable in Their determination of The facts when petitioner presented The factual records for Their review. Particularly in determining the erroneous Jury instruction falsely labeling petitioner as a sexual predator was a one Time mistake and didn't prejudice the Jury. This is purely speculation. It is well Known how society views people charged with sex offenses, and this Petitioner, as stated Throughout This petition, has "Never had Charges of That nature"... There is a very high probability That The Jury hearing such erroneous statements from the Trial Judge herself would suggest defendant either has or has had charges of That nature. Clearly prejudicial and unfair To This petitioner.

the Ninth circuit court abused it's discretion by not even giving Petitioner review and granting a certificate of appealability. To give petitioner The opprotunity To expose The Judicial misconduct, The Prosecutioral misconduct and the I.A.C. Claims as well.

Therefore, petitioner Respectfully request the Supreme Court Justices review these cases and remand the cases back for a new Trial based on the Trial courts unconstitutional errors, The Prosecutorial misconduct and the ineffective assistence of Counsel Petitioner has presented. At the very least the CR2011-01146 case.

Or, remand this case be granted unconditional release based on the recorded facts of the evidence being Tampered with.

Or, remand these cases back for resentencing because including the county Jail back Time credits in both cases, Petitioner will have 13 years served on the 25 Flat year sentence on may 15th 2023, and pursuant to the constitution, Petitioner's equal protection of the laws guarantee's petitioner should not be sentenced to a harsher sentence than others with similar cases, with similar or more in their criminal history.

In the alternative, petitioner would respectfully request This court remand This case back to the Federal District court to hold the an Evidentiary Hearing that we have been denied in both State and federal courts so That petitioner will have the opprotunity to expose the judicial trial court errors, the prosecutioral misconduet, and the I.A.C. claims on the record in a fair and impartial hearing that this petitioner is entitled to by law.

IT should also be noted that the Arizona court of Appeals did not ever review the erroneous false attack on petitioner's character by the Trial Judge labeling Petitioner as a sex offender because the trial court allowed the state to alter the Trial Transcripts so she wouldn't have to address this obvious constitutional violation in Post-conviction. when the full discovery was sent To Fed. dist. court, the original Trial Transcript was submitted, this would suggest government interference, and this was presented to the Fed. dist. court in the reply brief. This erroneous instruction was heard by the Jury and recorded by the Trial court reporter.

Attention Supreme Court Justices:

Petitioner is unlearned in Law, if petitioner has not successfully submitted the writ of certioria correctly, Petitioner Respectfully request the opprotunity to make any corrections and re-submit his writ.

CONCLUSION

Petitioner has presented factual records where his 14^{th} Amendment, due Process and Equal protection of the laws was violated as well as his 6^{th} Amendment right to have effective assistance of Counsel where the record show Counsels errors and that Petitioner's 8^{th} Amendment was violated as well.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BY: Jimmy W. Guinard
Jimmy Wayne Guinard

Date: January 10^{th}, 2023