22-7024

SUPREME COURT OF THE UNITED STATES

Kevin Ogden, Petitioner,

vs.

Ronald Martinez, Warden Southern New Mexico Correctional Facility, State of New Mexico, Respondents.

Case Number: ____________

PETITION FOR WRIT OF HABEAS CORPUS

By: Kevin Ogden Pro Se
Kevin Ogden 44384
Southern N.M. Correctional Fa
Unit: 3B-E-103
P.O. Box 639
Las Cruces, N.M. 88004

QUESTION PRESENTED

There was insufficient evidence to convict. The N.M. Embezzlement Statute clearly says the owner's name must be used in the Criminal Complaint and Information. The statute clearly says the funds must be used. Major Due Process Violations, etc..

N.M. Statutes Annotated clearly state that an attempted fourth degree felony is a misdemeanor. This is Major Due Process Violations and right to a trial by a jury on the elements of the crime, the 6th Amendment.

Petitioner is required to have an attorney. He did not. Or at least have access to legal books. This a clear violation of the First and Sixth Amendments, etc., of The U.S. Constitution.

None of the elements of the crime were proved. This is insufficient evidence to convict.

Intent to do the crime is not an element of the crime, and can be negated for many reasons.

This is an important public interest petition because the elements of the crimes are contained in the criminal Statutes, and not in the Uniform Jury Instructions.

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SUPREME COURT OF THE UNITED STATES

Kevin Ogden, Petitioner,
vs.
Charlene Hagerman, Warden Of Penitentiary Of New Mexico South, et. al.
.... Respondents.

Case Number: ______

-Jurisdictional Statement-

28 U.S.C. §2241, 2242.

PETITION FOR WRIT OF HABEAS CORPUS

History Of The Case

1. Petitioner was charged with embezzlement of over $250.00 in 1989.
2. He was subsequently declared incompetent to stand trial and was ordered by the court to be transferred to Las Vegas Medical Center in N.M. for another competency evaluation.
3. He was not transported.

4. A second evaluation was done in Las Cruces, N.M. the place of confinement and declared competent to stand trial.

5. He then pleaded guilty to avoid further torture after seven months of confinement, and given probation.

6. He was issued a deferred sentence that allows the case to be dismissed when the probation of 18 months is completed.

7. The probation was revoked a few months later, and then subsequently reinstated.

8. He successfully completed the probation while in Muskogee, Oklahoma while awaiting disability Social Security, and for severe psychiatric and physical disabilities.

9. Previous to number 7 above he was sent to a group home for severe mental illness to serve the probation.

10. He was asked to leave the group home by the staff due to them being rude and aggressive, which was a repeat crime as petitioner has been there many times before, and has been abused by the staff.

11. Petitioner filed a Petition For Post-Sentence Relief on March 22, 2019 pursuant to N.M. Habeas Corpus Statutes.

12. The State District judge dismissed the petition without any reason stated.

13. New Mexico Court Of Appeals remanded the case so the district judge could state the reasons, that is for dissmissal. The order by the N.M. Court Of Appeals was for a written finding only. The judge, by Sua Sponte order illegally had the petitioner transported to Las Cruces, N.M. a very dangerous area for the purpose of attempted murder or other motives. Petitioner was severely injured.

14. Mr. Ogden was not allowed to present any arguments or evidence at the hearing. See Exhibit 13 (No transport ordered)

15. The district judge amended his dismissal without giving any elements of the alleged crime as reasons.

16. The N.M. Court Of Appeals adopted his insane order verbatim after the petitioner filed a 32 page Brief listing all of the elements of the crime which were not proved.

17. The petitioner filed a Petition For Certiorari in the Supreme Court Of N.M. which was dismissed without

any reasons stated which is in major violations of federal and state laws which require reasons.

18. He subsequently filed motions in the U.S. District Court and U.S. Court Of Appeals which were dismissed on jurisdictional grounds, time limits pursuant to the one year in the AEDPA.

19. Any attempt to file any petitions in the 10th Circuit are futile even though the petitioner did state the jurisdiction as 28 U.S.C. §2241.

20. The court insinuated that it was a successive petition when it clearly was not.

21. Therefore, the only recourse in the Tenth Circuit is to file in the Supreme Court Of The United States. The Tenth Circuit does not allow "any" petitions past the one year time limit in the AEDPA.

22. The petitioner did attempt to file an appeal in the U.S. District Court to the S.C. of The U.S. but the district court clerk refused to mail it to the S.C. Of The U.S.

Supreme Court Of The United States, Rule 20, 4(a):

§2242: It is futile to pursue any legal filings in the Tenth Circuit because there are not any reasons stated in their dismissals which is in violation of 28 U.S.C. §2254 (1)(b)(1)(A), B(i)(ii), and (2), and 3(d)(1)(2).

§2254(A)(B)(C): There is not any corrective process to protect the right of the accused because all petitions and certiorari are dismissed without any reasons stated which is major violations of access to the courts, due process, probable cause, equal rights, and cruel and unusual punishment for many reasons. Petitioner does not have access to a law library consisting of State and federal digests which is mandated by the State due to Lewis v. Casey. The State has created an impediment that waives the AEDPA in it's entirety until the impediment is remedied. It is virtually impossible to file a federal petition because no one knows why their previous petitions were dismissed, and also they do not have a law library. It is impossible for the federal courts to apply the AEDPA to any petition in N.M. because anyone can not determine if federal law or State law has been violated because a blank denial means absolutely nothing.

§2254(b): As stated above there is an absence of State corrective process and many major constitutional rights are violated.

It stands to reason, and a sane person can not deny, that when a State judge does not state any reasons for a dismissal it is impossible for the federal courts to determine anything at all. Highly illegal.

The AEDPA is so complex it is highly illegal, because anyone can not know with certainty what any of the highly, legal jargon and rhetoric means. It is very vague and beyond use by anyone.

An example of the State of N.M. practicing illegal law is Exhibit 1, Order Denying Rehearing. It is signed by Zelda Abeyta, Deputy Clerk. If this is legal, then I was borne on the moon. It is from another case of mine.

A blanket denial is equivalent to not allowing a petition at all. The federal courts in the Tenth Circuit practice this illegal procedure also.

As stated previously, petitioner has exhausted his State remedies and proceeded through the lower courts.

Additional Jurisdiction

The defendant could raise on appeal that a prior conviction was invalid, See State v. Brown, 2003, 134 N.M. 356, 76 P.3d 1113.

A collateral attack on a prior conviction is allowed, See State v. Darrah, 1966, 76 N.M. 671, 417 P.2d 805.; 1953 Comp §40A-29-5:

N.M.S.A. 1978 §31-18-17, Subd. B, State v. Valdez, 1988, 107 N.M. 642, 763 P.2d 76;

State v. Oneal, 1978, 91 N.M. 727, 580 P.2d 495;

State v. Gallegos, 1977, 91 N.M. 107, 570 P.2d 9[illegible]8.

Prior uncounselled convictions can not be used to enhance new charge, See State v. Russell, 1991, 113 N.M. 121, 823 P.2d 921; also State v. Ulibarri, 1981, 96 N.M. 511, 632 P.2d 746, certiorari quashed 96 N.M. 543, 632 P.2d 1181;

Lackawanna County District Attorney v. Cross, 532 U.S. 394, 121 S.Ct. 1567, 149 L.Ed.2d 608 (2001) (Attorney not appointed.)

For where there is not any proof of a prior conviction, See State v. Geeslin, 221 Ariz. 574, 212 P.3d 912 (App. 2009).

Trial counsel was ineffective when he failed to investigate prior conviction file when defendant's felony history was critical to the case, See Rompilla v. Beard, 545 U.S. 374, 383, 125 S. Ct. 2456, 162 L.Ed. 2d 360 (2005).

All of the above cases apply directly to the petitioner's case.

By way of reference, the deputy district attorney did in fact have the file from this case which came from Dona Ana County. It was used in the grand jury indictment, but it was never released to the defendant, and I assume defense counsel. If it had been released to a criminal lawyer it does in fact show the probation was reinstated with a suspended sentence. There should not be a conviction because the probation was completed successfully. The indictment was for the current conviction.

Convictions reversed due to prior convictions were fake, United States v. Tucker, 404 U.S. 443 (1972).

Prior conviction can be challenged by habeas corpus, See Johnson v. Mississippi, 486 U.S. 578 (1988); Custis v. United States, 511 U.S. 485 (1995).

Collateral attack on prior conviction, State v. Wildenstein, 1978, 91 N.M. 550, 577 P.2d 448.

The State concealed evidence of invalidity of a prior conviction. Counsel conceded to prior conviction, See Lewis v. Lane, 832 F.2d 1446 (7th Cir. 1987)

A prior conviction is invalid should have been raised by trial and appellate counsel, See Douglass v. Wainwright, 714 F.2d 1532 (11th Cir. 1983).

No lo contendre convictions can not be used as prior convictions in Alabama, See Harrison v. Jones, 880 F.2d 1279 (11th Cir. 1989).

The right to file a habeas petition on a prior conviction, See Maleng v. Cook, U.S. Wash. 1989, 109 S.Ct. 1923, 490 U.S. 488, 104 L.Ed 2d 540.

Attacking validity of prior conviction, Rules Of Civil Procedure 60(b)(4), Writ of Coram Nobis, State v. Rayburn, 1966, 76 N.M. 681, 417 P.2d 813.

Passage of time alone can not be used against a petitioner. The government must show prejudice, See United States v. Guiterrez, 1988, 839 F.2d 648.

Issue 1: The New Mexico Court Of Appeals Did Not Rule On Or Adjudicate Any Of The Petitioner's Well Documented Elements Of The Crime That Were Not Proved, Which Is Insufficient Evidence To Convict. Memorandum Opinion In The Appendix.

The elements of the crime that were not proved and were presented by the petitioner in the State District Court And Court Of Appeals are as follows:

(1) He completed his deferred/suspended sentence by way of probation completion without any crimes committed, not even a traffic ticket. The case should have been dismissed.
(2) The Criminal Complaint was not signed by the owner of the business as required under N.M. law.
(3) The restitution was $8.90 so it is an obvious misdemeanor. This is modern law.
(4) The alleged crime was attempted but not completed which under N.M. law is an automatic misdemeanor.
(5) Petitioner was not payed for 3 weeks of work which mitigates the alleged crime to a misdemeanor.
(6) All of the money was returned the same day; there was not a crime, there was not any use of funds.
(7) It is a civil case because petitioner was under written contract.
(8) There was no actual dollar amount of any money that was missing to substantiate an amount over $250.00,

and that is in the Criminal Complaint and Criminal Information.

(9) Petitioner was appointed 3 different lawyers, but they did not visit him in the county jail, or talk to him on the phone or show up for court. He had no lawyer. Total abandonment.

(10) Petitioner did not have any access to a law book to determine what the alleged crime was.

(11) Pursuant to N.M. Competency Statutes he should have been transported to a medical facility after being evaluated as incompetent to stand trial, and the second evaluation should have been done by his treatment supervisor pursuant to the same statute and not by an unknown party in Las Cruces, N.M.

(12) Use of funds is an element that was not proved.

-Authorities For Issue 1-

(1) N.M.S.A 1978, Section 31-20-8, Chapter 31 Criminal Procedure, Article 20 Sentencing; Effect of termination of period of suspension without revocation.

"Whenever the period of suspension expires without revocation of the order, the defendant is relieved of any obligations ..... and has satisfied his criminal liability for the crime. He shall thereupon be entitled to a certificate from the court reciting such facts, ..."

In Mr Ogden's case he successfully completed the suspended sentence without it being revoked after the deferred sentence was revoked without a lawyer and by a probation officer who had never talked to him. See Exhibit 2. His name is Ken Ness. Petitioner's probation officer was Susan Brown, See Exhibits 3, and 4 respectively listed. For Suspended Sentence See Exhibit 13.

The first deferred sentence was due to the untrained employees from Southwest Counselling telling him to leave the group home for the mentally ill. This was after being severely harrassed.

Petitioner did not have a lawyer at any point in time, including the revocation of the deferred sentence where total hearsay was used.

He did not return to Las Cruces, N.M. after successfully completing the suspended sentence. He assumed the case had been dismissed. Any criminal action without him being present to defend himself was illegal, a major violation of due process, access to the courts, equal rights, etc...

The State district judge and N.M. Court Of Appeals refused to consider this issue despite the fact that it was brought up several times. Very unprofessional.

(2) Specific Ownership Is An Element of Embezzlement.

The essential element of specific ownership must be proved, See Kelley v. Colorado (Defendant in error), 402 P. 2d 934, Supreme Court Of Colorado, No. 20804, June 14, 1965. The manager failed to pay the oil company $4183.32 following a reading of the gas pumps at the service station. He was the manager and the relationship is one of debtor and creditor and it is improper to proceed in a criminal case. Reversed and remanded. Mr. Ogden's case is analagous to this one because he was his own boss on the night shift and was under written contract.

The owner's name must be specified in any lawsuit, and the court does not accept generalities, See Woods v. Collins, 87 N.M. 330, 533 P.2d 759, Court Of Appeals Of N.M., No. 1303, Febuary 5, 1975. The trial court awarded Woods $2,381.18 plus interest and costs, less $560.00 in offset to the partnership of Collins and Hatfield. It is analagous to petitioner's case. He was not payed for 3 weeks of full time work

Specific ownership of property or money is required, See State v. Konviser, 57 N.M. 418, 259 P.2d 785 (1953). In this case the defendant was convicted of embezzlement from Miers Johnson, the owner, while employed as manager of a hotel and bar. Reversed and remanded. Mr. Ogden was his own boss on the night shift at the truck stop. It is analagous. Both cases were based on speculation.

It is necessary that upon larceny or embezzlement, the State must establish all elements required for a conviction under common law, See Harvey v. State, 375 P.2d 225, Supreme Court Of Nevada, No. 4487, October 12, 1962. The defendant in this case was convicted of grand larceny. Several States have by legislative enactment combined larceny and embezzlement, Id at 226.

To constitute larceny, there must exist in the mind of the perpetrator, at the time of the taking, specific intent to permanently deprive the owner of his property, Id at 226. Victor Havis, the owner of the jewelry and complainant, testified in this case but not to permanent intent.

The comments by the court concerning an instantaneous criminal intent was a reversible error lacking permanent intent to deprive the owner of the jewelry. This case also establishes that embezzlement is a civil case. Reversed and remanded.

An essential element of embezzlement is the fraudulent intent to deprive the owner of the property, See People

v. Fielden, 427 P.2d 880, 162 Colo. 574. The defendant was acquitted of embezzlement. He was entrusted with the full responsibility of the money, including personal use. As stated already Mr. Ogden was an indepedent contractor. It is analogous except that the case involved public funds which does not require the owner's name to be used in the Criminal Complaint And Information, or indictment in this case.

Specific ownership of property is necessary for an embezzlement charge, See Hovey v. State, 596 P.2d 1127, Supreme Court Of Wyoming, No. 5044, June 29, 1979. The defendant was convicted of embezzlement. He appealed on several issues, one of which was that the funds, money, or property were not the property of the State. Because it was a government entity the court ruled against him. In Mr. Ogden's case the State Of N. M. thinks they own the whole State, when they do not. The owner's name is required when it is not a government entity.

N.M.S.A. 1978 Section 30-16-8. Embezzlement: "Embezzlement consists of the embezzlement or converting to his own use anything of value with which he has been entrusted, with the fraudulent intent to deprive the owner thereof." The statute states unequivocally the owner's name is required. A building does not own anything. People are owners.

(3) Under modern law when the restitution is a small amount, such a $8.90 in this case, it is a misdemeanor. In State v. Garnick, 619 P.2d 1383, No. 16737, Supreme Court Of Utah, Nov. 10, 1980 the defendant was convicted of a class A misdemeanor. She was charged with the receipt, safekeeping, transfer or disbursement of public moneys ... to her own use. She plea bargained to an attempted felony and $3,017.30 of restitution. The court stated: "A person can be convicted of an attempt to commit a crime, although she actually committed the offense, See U.C.A. 1953, 76-3-201, 76-4-101 (3)(9). Mr. Ogden did not commit a felony.

(4) The alleged crime was attempted and under N.M.S.A. it is an automatic misdemeanor.

N.M.S.A 1978 Section 30-28-1:

In pertinent part: "If the crime is an attempted fourth degree felony, the person committing such act is guilty of a misdemeanor."

The money was recovered the same day. There are not any dollar amounts of any money missing in any legal document in this case.

Attempted Crimes Are Listed As Follows:

The money was not payed at the bank after a forgery and the defendant was convicted of attempted forgery, See State v. Lopez, 81 N.M. 107, 464 P.2d 23, Court Of Appeals Of New Mexico, No. 33, Nov. 21, 1969. If no criminal intent is involved, then there can be no criminal liability. Mr. Ogden is simularly situated.

Larceny by embezzlement is a misdemeanor by definition, See State v. Hodge, 523 P.2d 953, 11 Wash. App. 323, Court Of Appeals Of Washington, Division No. 1017-11, May 23, 1974. Mr. Ogden is similarly situated.

Intent and the substantial step required for an attempt to commit the offense must have occurred. The defendant was convicted of attempted rape, See State v. Stewart, 35 Wash. 552, 667 P.2d 1139, Court Of Appeals Of Washington, Division I, No. 11561-8-I, August 15, 1983, Re-hearing denied October 20, 1983. Mr. Ogden is similarly situated.

The defendant was convicted of attempted forgery after attempting to pass a forged check at a supermarket, See State v. Tooke, 81 N.M. 618, 471 P.2d 188, Court Of Appeals Of New Mexico, No. 452, May 23, 1970.

Attempted burglary, See State v. Everitt, 80 N.M. 41, 450 P.2d 927, Court of Appeals of New Mexico, No. 196, Feb. 7, 1979. Mr. Ogden is similarly situated.

A plea of guilty may not be induced by fear, and failure to consummate a crime is an element of an attempted crime, See State v. Snyder, 10 Kan. App. 2d 450, 701 P.2d 969, Court of Appeals of Kansas, No. 57499, June 20, 1985. Petitioner was in fear for his life at Dona Ana County Detention Center based on past attempts on his life. He had no fresh air or sunshine, or exercise for 14 months, and did not have an attorney. This induced the plea to escape segregation.

Attempted felony, See State v. Garnick, supra. The State grossly overstated and prosecuted the case, that is this petition's case.

Where the property can be returned it is not embezzlement, See State v. Leeman, 580 P.2d 1202, 118 Ariz 348, Court of Appeals of Arizona, Division 2, Feb. 2, 1978, No. 2CA-CR-137.

(5) The petitioner worked for 3 weeks full time and was not payed. He had a history of being sexually assaulted at the truck stop. He was ill, mentally and physically and had a panic attack and thought he should be payed

for the three weeks, so he took what he was owed and left. The burden shifts to the State or the owner to prove he was payed since the petitioner is making the claim.

(6) The money was obviously returned the same day because the Criminal Complaint, Exhibits 5,6, and Criminal Information do not list any money that was missing. The district judge claimed the money was kept for one day.

(7) The Petitioner was under written contract as his own boss on the night shift. Any discrepancies about money can be settled civilly. Embezzlement is purely a statutory crime which did not occur at common law which involved lawfully obtained money or property that offender later converts to his own use, See State v. Petrocelli, 675 P.2d 127, 100 N.M. 678, at 129.

The money was returned so it is not embezzlement, State v. Leeman, 580 P.2d 1202, 118 Ariz. 348, Court of Appeals of Arizona, Division 2, Feb. 2, 1978, No. 2 CA-CR-137. As noted in State v. Garnick, 619 P.2d 1383, and Kelley v. Colorado (Defendant in error), 402 P.2d 934, also Woods v. Collins, 533 P.2d 759, See also State v. Konvicer, 259 P.2d 785 (1953) where there is money missing it can be negotiated, which implies civil law.

(8) The Criminal Complaint, Exhibit 5, and Criminal Information, Exhibit 6 or any document in the file have any actual dollar amount of any money missing which is required for embezzlement. The two Exhibits here are general statements. General statements are not allowed in any court of law. Crimes must defined with appropriate ~~[illegible]~~ definitiveness. The obvious being that the money was returned the same day. There was not a crime.

(9) The petitioner was inexplicably appointed three different lawyers. None of them vistited him in jail or discussed the case in court with him, or on the phone. He was treated as a diseased thing, untouchable, and totally abandoned. In fact they did not show up for court.

(10) The petitioner did not have any access to any law books or a lawyer which is a major violation of the 5th, 6th, 4th, 1st, and 8th and 14th Amendments Of The U.S. Constitution.

(11) Pursuant to N.M.S.A. 1978 Section 31-9-1.5 which is New Mexico's Competency Statate, the petitioner was not transported to a medical facility after the transport order and incompetency order were both filed by the district judge, Exhibit 7. This is major violations of due process and liberty interest, See Oregon

Advocacy Center v. Mink, 322 F.3d 1101 (9th Cir. 2003); and A.B v. Washington State Department of Social And Health Services, class action.

The second evaluation should have been done by his treatment supervisor at Las Vegas Medical Center pursuant to N.M.S.A. 1978 Section 31-9-1.3 and his medications made known to the jury. The fake judge, Douglass Driggers, makes a self serving statement saying Mr. Ogden was treated and re-evaluated. It was not even remotely true. The second evaluation was in Las Cruces, N.M. by an unknown party, as in can not be found and the report can not be found. The judge's dismissal is Exhibit 8.

Petitioner cites Criminal Statutes and case law, while the courts in this case cite hearsay.

(12) Use of funds is the primary and main element of the N.M. Embezzlement Statute, N.M.S.A. 1978 Section 30-16-8 Embezzlement:

"A. Embezzlement consists of a person embezzling or converting to the person's own use anything of value...."

The State district judge hypothesized that intent was all that was required for a conviction. The N.M. Court of Appeals adopted it verbatim. They fantasized the concept from the N.M. Uniform Jury Instruction on Embezzlement. The N.M. Court of Appeals quotes it is as follows:

U.J.I. 1641 NMRA:

The court alleges the necessary elements in the U.J.I. are:

1. "The defended was entrusted with the money."

2. "The defendant converted the money to his own use. Converting something to one's own use means keeping another's property rather than returning it, or using another's property for one's own use or purpose..."

3. "At the time the defendant converted the money the defendant fraudulently intended to deprive the owner of the owner's property...."

4. "This happened in New Mexico..."

First of all, there was not a trial, this is for a trial.

Second, petitioner is not an accountant which is what the U.J.I is for. It is not an embezzlement case.

Third, above number 2 says: "rather than returning it." There was not a crime. The money was returned.

Fourth, the elements of the alleged crime are in the Criminal Statutes. U.J.I.s are federal rules, state rules. Petitioner discussed this last issue at length in his Memorandum. The N.M. Court Of Appeals said he did not discuss their Proposed Disposition in his Memorandum. He did, and line by line refuting every false allegation, which was legal jargon and rhetoric.

Fifth, intent is not an element of the crime in the criminal statute. It can not be considered an oversight by the legislature.

In Exhibit 9, on page 7, last paragraph the N.M. Court Of Appeals states unequivocally that pursuant to State v. Montoya, 2015-NMSC-010, para. 52, 345 P.3d. 1056, that every element is required for a conviction. It is extreme fraud on the court because on page 8 the court alleges all that is required is intent. It is obviously a political case against Mr. Ogden.

Again, the N.M. Court Of Appeals says petitioner did not brief the issues, When he did at length.

Use Of Funds Required As An Element Of Embezzlement is on page 5, 6, and 7 of his 32 page Memorandum Brief. The N.M. Court Of Appeals obviously knows that no one will ever read the petitioner's Brief. So it can state any lie it chooses and claim it as the truth. And the State district judge does the same thing.

The Memorandum Brief By The Petitioner is Exhibit 10. Only the cases are listed below which require the funds to have been used:

State v. Randecker, 464 P.2d 471, Wash. App. 834 affirmed and reversed in part, 487 P.2d 1295, 79 Wash 2d 512, Supreme Court Of Washington No. 41555, August 19, 1971.

Reynolds v. People, 471 P.2d 417, S.C. of Wash., at 449.

State v. Petrocelli, 675 P.2d 127, 100 N.M. 678, at 129.

State v. Prince, 1948-NMCA-003, 52 N.M. 15, 189 P.2d 993, 1948 N.M. LEXIS 615 (N.M. 1948)

State v. Archie, 1997- NMCA-058, 123 N.M. 503, 943 P.2d 537, 1997 N.M. LEXIS 45 (N.M. Ct. App. 1997)

State v. Ortiz, 1977-NMCA-036, 90 N.M. 319, 563 P.2d 113, 1977 N.M. App. LEXIS 596 (N.M. Ct. App. 1977).

State v. Komisar, 1953-NMSC-057, 57 N.M. 418, 259 P.2d 785, 1953 N.M. LEXIS 995 (N.M. 1953).

There are many more cases that say for embezzlement the money must be used. A small sample is provided.

The lower courts proposed a preposterous hypothesis that all that was required for a conviction was intent. At the same time, the two cases they used, State v. Archie, and State v. Montoya say that all elements must be proved. Apparently there is a one-liner in Archie that the court is using on intent. The case is not available.

If all that is required for a crime is intent, then all defendants who shot someone but the victim did not die would be guilty of murder in the first degree.

Issue Two: The Petitioner was not tried within six months of The Charge.

The Criminal Information shows the Petitioner was arrested on March 19, 1989 the same day the money was returned, Exhibit 6

Exhibit 11, Judgement And Sentence shows a deferred sentence on October 16, 1989. That is seven months after the arrest.

Cases dismissed for lack of a speedy trial:

Doggett v. United States, 505 U.S. 647, 652, 112 S. Ct. 2686, 120 L.Ed. 2d 520 (1992) (Trial required in six months)

State v. Spearman, 2012-NMSC-023, 283 P.3d 272 (2012).

State v. Stock, 2006-NMCA-140, 140 N.M. 676, 147 P. 3d 885.

State v. Hernane, 454 P.3d 385 (Haw. 2019).

State v. Lujan, May 28, 2003, 174 N.M. 24, 71 P.3d 1286.

State v. Talamante, 134 N.M. 539, 2003-NMCA-135, 80 P. 3d 476;

State v. Marquez, 130 N.M. 651, 29 P. 3d 1052.

State v. Johnson, 2007-NMCA-107, 142 N.M. 377, 165 P.3d 1153, 2007 N.M. App. LEXIS 82 (N.M. Ct. App. 2007).

State v. Harvey, 85 N.M. 214, 510 P. 2d 1085, 1973 N.M. App. LEXIS 732 (Ct. App. 1973)

State v. Montoya, 2015-NMCA-056, 348 P.3d 1057 (2015).

State v. Vigil-Giron, 2014-NMCA-069, 327 P.3d 1129 (2014).

State v. Ochoa, 2014-NMCA-065, 327 P.3d 1102 (2014).

Obviously a controversial subject in law.

If the State had transported petitioner to a medical facility as required by law, the six months to take him to trial would have been tolled. But since it was only a pretense to the ultimate goal of guilty under all circumstances, the six months is not tolled. 99% of incompetent defendants are eventually found guilty in N.M. The process involves an evaluation at a medical facility and then another and another until the defendant is eventually returned to be found guilty in court. No one escapes by being declared incompetent. It is a meaningless process. And fraud.

The second evaluation was not done at the medical facility, it is therefore invalid, and the tolling period is waived by the State, and due to major due process violations, access to the courts, and cruel and unusual punishment, etc....

Issue 3. There Was Insufficient Evidence To Convict; None of The Elements Of The Crime Were Proved.

The Due Process Clause of the Fifth Amendment requires the government to prove beyond doubt, a reasonable doubt each element of a crime for which a defendant is charged. The government's failure to meet its burden of proof must result in an acquittal.

Where the defendant does not understand and does not admit to a factual basis for each element and does not admit to a factual basis for each element of the offense the plea agreement must be vacated, See In re Gabree, 2017 VT 84, 176 A.3d 1113 (2017). In Mr. Ogden's case a standard form was used, he had no lawyer, and it is initialled line by line by an unknown party, presumbly the judge. It is totally irrelevant according to the above case. There were not any elements of the alleged crime discussed by anyone at any point in time.

Where there are no facts in the record to support each element of the offense, or the crime, the guilty plea must be vacated, See State v. Gaydas, 159 Ariz. 277, 766 P.2d 629 (App. 1988). There are no transcripts in N.M. but the form used was a standard form that does not contain any elements of the crime. It was a checklist, Exhibit 12

The defendant must fully understand the elements of the offense, See State v. Martinko, 194 A.3d 69 (N.H. 2018). The State of N.M. practices illegal law.

As discussed earlier the elements of the crime are in the criminal statutes, See State v. Desilva, 679 P.2d 1237, 209 Mont. 169. Uniform Jury Instructions that are used in N.M. are not criminal statutes and in many cases have additional elements, and in most cases omit many elements of the crime.

The essential elements are in the criminal statutes, See State v. Aragon, 690 P.2d 297;

Failure to instruct on an essential element may be raised for first time on appeal even when a U.J.I. was used, See State v. Jennings, 691 P.2d 882, at 886.

Failure to instruct on essential elements of the offense generally constitutes fundamental error mandating reversal, S.C.R.A 1986, Rule 5-608, subd. A., State v. Lopez, 1996, 122 N.M. 63, 920 P.2d 1017, rehearing denied.

Since the State district judges insists on conducting their own trial by using the U.J.I. for embezzlement, the door is opened for proof of conviction at trial; And also the N.M. Court Of Appeals.

Use of jury instructions that omits an essential element of the offense can be grounds for reversal, S.C.R.A. 1986, Rule 5-608, See State v. Acosta, 1997, 123 N.M. 215, 937 P.2d 1081, cert. granted, 123 N.M. 215, 937 P.2d 76, cert. quashed, 124 N.M. 312, 950 P.2d 285

As outlined in Issue 1, none of the elements of embezzlement were ever considered by the courts.

When assessing a sufficiency of the evidence challenge to a State Conviction in a petition for habeas relief, the court looks to State law only to establish the elements of the crime, and then turns to the federal question of whether the State court was objectionably unreasonable in concluding that sufficiency of evidence supported its decision. Here, in Mr. Ogden's case he was assumed guilty from start to finish of the case due to a political ruling, and the judges pretend to be unprofessional and ignorant as an alibi. It can not be true unless the judges are total fakes.

The reasonable doubt standard applies to both State and federal prosecutions. The Due Process Clause places on the prosecution the burden of persuasion on every element of the crime charged, See In re Winshop, 397 U.S. 358, 90 S.St. 1068, 25 L.Ed. 2d 368 (1970).

The essential elements of the crime are required under the AEDPA, See Santone v. Fischer, 689 F.3d 138 (2nd Cir. 2012)

Reversal is required **when** one element requires speculation, See State v. Cain, 419 S.C. 24, 795 S.E. 2d 846 (2017). In Mr. Ogden's case, not even one element was proved. The State's whole case was by speculation.

A fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free, See Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 2078, 124 L.Ed. 2d 182 (1993). The legal point being that the collateral consequences of a felony conviction can be enormous. In Mr. Ogden's case he is currently serving six years for possession of a firearm by a felon due to the false conviction in this petition. And the conviction stays with him for life. The case is never moot.

The trier of fact **must** find the essential elements of the crime beyond a reasonable doubt, See United States v. Nevils, 598 F.3d 1158, 1161 (9th Cir. 2010)..

In the case of Mr. Ogden, none of the elements of the crime were proved as outlined in Issue 1, the owner of the business is required and not a name of a building, use of funds is required, the suspended sentence was completed successfully, $8.90 restitution is an obvious misdemeanor, the alleged crime was clearly attempted which is an automatic misdemeanor, he was not paid for three weeks of full time work, the money was returned the same day, there was not any money missing stated in the Criminal Information and Criminal Complaint, etc...

Issue 4: The Probation Violation Was Total Hearsay.

The weird person who the petitioner had not met was the probation officer who revoked his probation. His name was Ken Ness, Exhibit 2. Susan Brown was his probation officer, Exhibit 4. All of the allegations in the probation violation are hearsay because the petitioner did not speak to either probation officer and had not even met Ken Ness, See N.M.R.A. 22-801(C) and 11-802: "Out of court statements are hearsay." The definition of a real probation violation is committing another crime. The violation was for leaving the group home for severely mentally ill patients. He was told to leave by the staff. But he did not speak to Susan Brown.

"An out of court statement offered for the truth of the matter asserted constitutes hearsay and is inadmissable," See State v. Coffin, 1999-NMSC-038, 108 N.M. 192, 991 P.2d 477, 1999 N.M. LEXIS 302 (1999).

Petitioner did not have a lawyer for the revocation court hearing and the man who showed up claiming to be a probation officer, claimed to be Mr. Ogden's probation officer.

The probation was reinstated and a suspended sentence was given. On page 10, Issue 1, (1) N.M.S.A. 1978 Section 31-20-8 requires dismissal of the case because the probation was completed successfully without any violations or crimes committed, See Exhibit 8. The violation was for the deferred sentence, not the suspended sentence when probation was reinstated. Perhaps the State of N.M. thinks it illegal to not comb your hair.

The court can not give prison time and probation, it is either one or the other, See State v. Lopez, 99 N.M. 791, 664 P.2d 989, 1982 N.M. App. LEXIS 976 (Ct. App. 1982). The petitioner did 14 months segregation time without any fresh air, sunshine, exercise, or any legal visits. The alleged crime carries 18 months. With good time he should have been released in 9 months applying day for day good time.

A court abuses its discretion when it imposes a term or condition that has no relationship to the crime of which the offender was convicted, See People v. Bryant, 10 Cal. App. 5th 396 (2017). The legal point is that the district court makes a self serving statement that also proves a conflict of interest because the judge was a D.A. for the case. He says the petitioner is competent, but at the same time he sent the petitioner to Southwest Counselling Transitional Living Center and Green Country Mental Health home for the severely mentally ill. It is fraud on the court. The petitioner was treated for mental illness after he was released and not before as the judge alleges. Again it is fraud on the court.

A defendant is entitled to a mitigation as a fundamental right before revocation of probation, See State v. Talton, 153 Ariz. 433, 737 P. 2d 409 (App. 1987). Mr. Ogden did not have a lawyer at any point in time.

The State is practicing philisophicalegal beliefs that: (1) anyone charged with a felony is automatically guilty. (2) insanity and incompetence do not excuse any crimes. This is the common social belief in society today, referring to number (2). The assigned lawyers abandoned the petitioner, perhaps on the same hypotheses.

Conclusion

The State Of New Mexico answers to no one and they know that they answer to no one.

The State of N.M. has the highest per capita percentage of prisoners compared to the total population, in the United States. It speaks volumes. The population of N.M. above.

The Governor intends to funnel millions of State dollars into an abortion clinic in Las Cruces, N.M.

When the cities learned of her plans they passed city ordinances to ban abortion. The Attorney General, Raul Torrez, quickly announced on television that under N.M. law abortion is legal and that the cities have no authority to ban abortion.

Petitioner submitted a detailed and well documented petition citing the elements of the crime which must be proved for a conviction, Issue 1 in this petition. The State district judge and New Mexico Court Of Appeals ignored all of his evidence, and hypothesized that intent to do the crime was all that was required. Intent is not an element of embezzlement. Not one comment on any of his evidence was adudicated properly or at all. The N.M. Court Of Appeals claimed a couple of the issues were not developed. It was not true. Statutes and case law was cited. Meanwhile the courts in this case cited hearsay that was self serving.

The N.M. Court Of Appeals cited State v. Montoya qouting that all elements of the crime must be proved for a conviction. Then in another section it quotes or alleges that only intent to do the crime was required. Mr. Ogden specifically negated the intent element, he was in fear for his life, he is the owner of the truck stop, he was ill, many reasons can negate intent. This was in his State Petition.

The elements of the crime are not in the Uniform Jury Instructions as alleged, they are in the criminal statutes. It is covered in much detail in his Memorandum Denying All Proposed Dispositions. The N.M. Court Of Appeals said he did not address it when he did, and in detail and in length, and citing many cases. This is a novel concept which has not been raised in any previous lawsuit. The writ should granted. It is a public interest case of great magnitude.

The State district judge and N.M. Court Of Appeals cited the Uniform Jury Instruction for embezzlement. The logic is lost on me because there was not a trial and I am not an accountant. The U.J.I. quoted says where the money is returned there is not a crime. It is gross fraud on the State Of N.M. from start to finish of this case.

In N.M. it is common practice to use the U.J.I. and ignore the Criminal Statute where crimes are defined. This is a public interest case of great magnitude that would qualify for granting the Writ. Uniform Jury Instructions are not statutes, they are state rules, federal rules. The number of defendants convicted is enormous, and illegal.

The petitioner was treated like a diseased thing. The three lawyers did not visit him in prison, talk to him on the phone, or talk to him in the courtroom about the case. The judges in district court and on appeal did not address even one of his numerous, well documented legal points of law that show the case should have been dismissed or reduced to a misdemeanor. The disrespect and conspiracy are inexplicable. It is patently obvious that Mr. Ogden is an enemy of the State Of N.M. It is patently obvious that there is not any self defense in the State Of N.M. for this petitioner. He has not one right afforded him other than food and shelter. The torture and past crimes (by) against the State Of N.M. are so bad that he is put into a category of beyond help, or beyond any relief, unclean, and due to the abuse. He is not considered to be a person who has rights, and apparently they do not think he is a human being.

The N.M. Competency Statutes are major violations of due process of law, etc.. because no one escapes prosecution. All defendants are eventually found guilty unless they can mount an impossible defense in N.M. The process is total fraud because incompetence refers to at the time of the commission of the alleged crime, and not at some other time, unknown, 30 days, 6 months, 1 year, 2 years, etc... indefinite. This is also a novel concept that waives the AEDPA and presents a major public interest case.

Reasons For Granting The Writ

Concerning Rules 20, Rule 10, and Rule 14:

All petitions in this Tenth Circuit are time barred pursuant to the AEDPA. The Petitioner filed a petition for writ of habeas corpus for this case and the U.S. District Court and U.S. Court of Appeals said they lacked jurisdiction. He can only assume that means the AEDPA.

About 2254(b), the petitioner is enclosing the lower court briefs and opinions as exhibits and in the appendix for this case. He has exhausted his State and federal remedies thoroughly, which is 2254(b)(A).

2254(b)(B)(i) there is an absence of State corrective process because there are not any reasons stated in the lower court opinions' dismissals, it is therefore impossible to proceed further, either by the petitioner or by the courts of higher jurisdiction.

2254(b)(B)(ii) The petitioner has no law library to speak of, it is impossible to prepare a §2254 petition because he has no State or federal digests. The complexities of the AEDPA are so difficult a man of ordinary intelligence can not use it all. Most prisoners are uneducated. For an example of this, 2254(d)(1) and (2) are so authoritarian and conflicting, that no one, not even lawyers and judges can figure it out. Number (2) leaves the door open for just about any ruling that was unreasonable in a State court. 2254(d)(1) presents a near impossible situation unless a litigant can find a Supreme Court Of The U.S. case that is similar to theirs. Without a law library that is impossible. Second, the S.C. Of The U.S. only takes a small number of cases each year. The conclusion is major violations of the 1st, 4th, 5th, 6th, 8th and 14th Amendments Of The U.S. Constitution. For a court to say that a litigant can file a petition, but we will not read it is not even close to access to the courts, due process, sufficiency of proof, etc... Also 2254(d)(1) is so controlling that not even judges will bypass and proceed to the many other numbers and letters in the AEDPA: §2253, 2254, 2241, 2244. It is way too complex for a man of ordinary intelligence, and, is too complex for anyone, whether a lawyer or judge to use. It is not usable by anyone.

For instance, 2254(b)(2) "may be denied..., notwithstanding the failure to exhaust..." is so ambiguous that no one can determine what it means. The AEDPA is illegal. This is only one example.

It is also illegal because it is too massive for one law.

** Concerning Rule 10 of The S.C. Of The U.S. Rules the conflicting cases are many:

**: The N.M. Court of Appeals cites State v. Archie as controlling that only one element is required for a conviction. The alleged element is intent to do the crime. Intent is not an ~~el~~ element of embezzlement. The conflicting cases are numerous and many; See ~~&~~ In re Winshop, 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed. 2d 368(1970) (Every element of the crime must be proved, Due Process). Also, petitioner is reasonably sure that State v. Archie says that all elements must be proved, but he does not have this case.

There are many cases that state the elements of the crime are in the Criminal Statutes and not in the Uniform Jury Instructions. Those are contained in Issue 3 of this petition. To put it bluntly, the State Of N.M. has imprisoned thousands, tens of thousands of prisoners over the years and up to the present time period using the Uniform Jury Instructions to define crimes and elements of the crimes. They are not criminal statutes. This is a public interest case of great magnitude and has far reaching consequences as other States probably have the same problems.

Also, the above paragraph is a novel concept that waives the AEDPA, but no one will read any of his petitions due to the AEDPA is applied in the Tenth Circuit invariably and without any exceptions.

The probation was reinstated with a suspended sentence, page 2, number 1, See Exhibit 13 . The Petitioner did not even have a traffic ticket while on probation and it was completed successfully. The case should have been dismissed pursuant to N.M. law.

Another case that conflicts with New Mexico law is Richey v. Mitchell which is a long case that rules on many issues: The difference of proof required by a 3 judge panel and a jury (the elements of the crime), ineffective assistance of counsel waives the AEDPA, all elements of the crime are required for sufficiency of evidence to convict, transferred intent is illegal, rule of lenity, men of ordinary intelligence can not understand the laws in society today, and ex post facto case law. All of these are raised in this petition except the last one. The last one applies because the State district judge and Court Of Appeals did not allege until 20 years later, after the alleged crime that all that was required for a conviction was intent to do the crime. Richey v. Mitchell, 395 F.3d 660 (2005), U.S. Court Of Appeals No. 01-3477.

New Mexico practices archaic law and archaic prison rules and regulations. It is a rogue State unless other States are as bad as New Mexico.

This court has jurisdiction to grant relief.

Additional material from this filing is available in the Clerk's Office.