No. 22-7057

IN THE

SUPREME COURT OF THE UNITED STATES

Raymond Pniewski, Jr. — PETITIONER
(Your Name)

vs.

Fredeane Artis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NO STATE OR FEDERAL COURT HAS RULED ON THE MERITS OF CASE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Raymond Pniewski, Jr.
(Your Name)
Thumb Correctional Facility
3225 John Conley Drive
(Address)

Lapeer, Michigan 48446
(City, State, Zip Code)

N/A
(Phone Number)

LIST OF PARTIES

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

RELATED CASES

* ***People v Pniewski***, No.: 07-012810-FC, [Plea], Third Circuit Court, Wayne County, MI. Judgment entered Oct. 17, 2007. [APPENDIX "N"]
* ***People v Pniewski***, No.: 248557, [Leave to Appeal] MI Court of Appeals. Judgment entered May 15, 2008. [APPENDIX "M"]
* ***People v Pniewski***, No.: 136808 [Leave to Appeal], MI Supreme Court. Judgment entered Nov. 25, 2008. [APPENDIX "L"]
* ***People v Pniewski***, No.: 07-012810-FC [MCR 6.500 Motion For Relief From Judgment (MFRFJ)], Third Circuit Court, Wayne County, MI. Judgment entered Jul. 8, 2019. [APPENDIX "K"]
* ***People v Pniewski***, No.: 07-012810-FC [Motion For Reconsideration], Third Circuit Court, Wayne County, MI. Judgment entered Dec. 2, 2019. [APPENDIX "J"]
* ***People v Pniewski***, No.: 352296, MI Court of Appeals. [Leave to Appeal], Judgment entered Apr. 22, 2020. [APPENDIX "I"]
* ***People v Pniewski***, No.: 161814 & (22)(23)(24)(25), MI Supreme Court [Leave to Appeal], Judgment entered Mar. 2, 2021. [APPENDIX "H"]
* ***People v Pniewski***, No.: 161814(29), MI Supreme Court [Motion For Reconsideration], Judgment entered Apr. 27, 2021. [APPENDIX "G"]
* ***Raymond Pniewski, Jr. v Chandler Cheeks***, No.: 21-cv-11414 U.S. District Court (ED MI). [Writ of Habeas Corpus]. Judgment entered May 25, 2022. [APPENDIX "F"]
* ***Raymond Pniewski, Jr. v Fredeane Artis, Acting Warden***, No.: 22-1655, U.S. Court of Appeals, for the Sixth Circuit. [Order to show cause in writing within 21 days, why appeal should not be dismissed for failure to comply with 28 USC § 2107(a)]. Judgment entered Aug. 2, 2022. [APPENDIX "C"]
* ***Raymond Pniewski, Jr. v Fredeane Artis, Acting Warden***, No.: 22-1655, U.S. Court of Appeals, for the Sixth Circuit [Order dismissing Writ of Habeas Corpus for failure to file a timely notice of appeal to show cause]. Judgment entered Oct. 12, 2022. [APPENDIX "B"] [**NOTE:** Petitioner did file a Delayed Request For Extension of Time, which was never heard by the U.S. District Court (ED MI)].
* ***Raymond Pniewski, Jr. v Fredeane Artis, Acting Warden***, No.: 22-1655, U.S. Court of Appeals, for the Sixth Circuit [Order dismissing Motion To Correct Court Error]. [**NOTE:** Petitioner considered the original dismissal -failing to respond by the U.S. District Court (ED MI), a court error.] Judgment entered Nov. 3, 2022. [APPENDIX "A"]

Petitioner states: "None of the above court proceedings addressed any of Petitioner's issues, except during review of his MFRFJ, where the trial court only responded to one of twenty-four issues raised." The trial court only addressed the same issue in the Motion For Reconsideration.

QUESTIONS PRESENTED

(1) DO THE RULINGS OF ***BOYKIN v ALABAMA***, 395 U.S. 238 (1969), AND ***PEOPLE v JAWORSKI***, 387 MI 21 (1972), VIOLATE PETITIONER'S CONSTITUTIONAL AND DUE PROCESS RIGHTS, BY FALLING SHORT, ONLY REQUIRING THE COURT TO ADVISE A DEFENDANT OF JUST THREE (3) OF SO MANY CRITICAL CONSTITUTIONAL RIGHTS WAIVED WHEN PLEADING GUILTY, MAKING HIS GUILTY PLEA UNKNOWING AND INVOLUNTARY? [NOTE: THERE WERE EIGHT (8) CONSTITUTIONAL VIOLATIONS OCCURRING BEFORE PETITIONER'S PLEA, FOUR (4) OBVIOUS IN THE COURT RECORDS, THE OTHERS COULD HAVE (SHOULD HAVE) BEEN DISCOVERED WITH PROPER INVESTIGATION BY TRIAL COUNSEL; THIS APPLIES TO APPELLATE COUNSEL TOO!]

The Trial Court has yet to respond.
The Michigan Court of Appeals has yet to respond.
The Michigan Supreme Court failed to respond.
The U.S. District Court (ED MI) failed to respond.
The Sixth Circuit failed to respond.
This Honorable U.S. Supreme Court has yet to answer.
Petitioner responds: YES.

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(2) DID THE MIHIGAN TRIAL COURT VIOLATE THE U.S. CONSTITUTION AND PETITIONER'S CONSTITUTIONAL AND DUE PROCESS RIGHTS, BY MISINTERPRETING MCR 6.504(B)(2)'s AMBIGUOUS LANGUAGE, WHICH STATES IN RELEVANT PART:

['IF IT PLAINLY APPEARS FROM THE FACE OF THE MATERIALS DESCRIBED IN (B)(1) THAT A DEFENDANT IS NOT ENTITLED TO RELIEF, THE COURT SHALL DENY THE MOTION WITHOUT DIRECTING FURTHER PROCEEDINGS. THE ORDER MUST INCLUDE A CONCISE STATEMENT FOR THE **"REASONS"** FOR THE DENIAL....],

WHERE THE WORDING OF (B)(2) ALLOWS THE TRIAL COURT TO CHOOSE TO NOT GIVE THE MOTION TO THE PROSECUTOR, AND, GENERATE THE OPINION WITHOUT A PROSECUTOR'S RESPONSE (CIRCUMVENTING THE "SEPARATION OF POWERS" REQUIREMENT); AND, DID THE TRIAL COURT ALSO VIOLATE THE "FINALITY REQUIREMENT" OF 28 USCS § 1291, WHERE THE TRIAL COURT ONLY RESPONDED TO ONE (1) OF TWENTY FOUR (24) ISSUES PRESENTED IN PETITIONER'S MCR 6.500 MOTION FOR RELIEF FROM JUDGMENT; AND DID THE MICHIGAN AND FEDERAL COURTS VIOLATE § 1291, FAILING TO ADJUDICATE ANY ISSUES ON THE MERITS?

The trial court failed to fully respond on the merits.
The Michigan Court of Appeals failed to respond on the merits.
The Michigan Supreme Court failed to respond on the merits.
The U.S. District Court (ED MI) failed to respond on the merits.
The Sixth Circuit failed to respond on the merits.
This Honorable U.S. Supreme Court has yet to answer.
Petitioner responds: YES.

(3) DID THE U.S. DISTRICT (ED MI), AND THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT, VIOLATE PETITIONER'S CONSTITUTIONAL RIGHT TO HAVE HIS ISSUES ADJUDICATED UNDER "EQUITABLE TOLLONG", WHERE THE CIRCUITS ARE DIVIDED ON WHETHER OR NOT BEING AN INCARCERATED PRO SE LITIGANT (AND ONLY THEM) QUALIFIES AS "EXTRAORDINARY CIRCUMSTANCES"?

The U.S. District Court (ED MI) answered: NO.
The Sixth Circuit answered: NO.
This Honorable U.S. Supreme Court has yet to answer.
Petitioner responds: YES.

QUESTIONS PRESENTED (cont.)

(4) DO THE RULINGS OF ***BOYKIN v ALABAMA***, AND ***PEOPLE v JAWORSKI***, SUPRAS., FALL SHORT ON **HOW** THE COURT IS ALLOWED TO ADVISE A DEFENDANT OF THE THREE (3) MAIN RIGHTS (S)HE WAIVES WHEN PLEADING GUILTY?

The Trial Court has yet to respond.
The Michigan Court of Appeals has yet to respond.
The Michigan Supreme Court failed to respond.
The U.S. District Court (ED MI) failed to respond.
The Sixth Circuit failed to respond.
This Honorable U.S. Supreme Court has yet to answer.
Petitioner responds: YES.

(5) DID THE TRIAL COURT VIOLATE ***BOYKIN v ALABAMA***, AND ***PEOPLE v JAWORSKI***, SUPRAS., BY INFORMING PETITIONER OF THE THREE (3) RIGHTS WAIVED WHEN PLEADING GUILTY WITH AMBIGUOUS STATEMENTS IN THAT REGARD, MAKING HIS GUILTY PLEA UNKNOWING AND INVOLUNTARY?

The Trial Court has yet to respond on the merits.
The Michigan Court of Appeals has yet to respond on the merits.
The Michigan Supreme Court failed to respond on the merits.
The U.S. District Court (ED MI) failed to respond on the merits.
The Sixth Circuit failed to respond on the merits.
This Honorable U.S. Supreme Court has yet to answer.
Petitioner responds: YES.

(6) DID ALL THE STATE AND FEDERAL COURTS VIOLATE PETITIONER'S CONSTITUTIONAL AND DUE PROCESS RIGHTS UNDER 28 USCS § 1291, BY FAILING TO ADJUDICATE PETITIONER'S CLAIMS ON THE MERITS?

The Trial Court has yet to respond.
The Michigan Court of Appeals has yet to respond.
The Michigan Supreme Court failed to respond.
The U.S. District Court (ED MI) failed to respond.
The Sixth Circuit failed to respond.
This Honorable U.S. Supreme Court has yet to answer.
Petitioner responds: YES.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

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

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

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

The opinion of the MI Court of Appeals court appears at Appendix I@ to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was Oct. 12, 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: Nov. 3, 2022, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including Apr. 8, 2023 (date) on Feb. 7, 2023 (date) in Application No. A.

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

U.S. Constitutional Amendment V:

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

U.S. Constitutional Amendment VI:

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

U.S. Constitutional Amendment VIII:

Excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishments be inflicted.

U.S. Constitutional Amendment XIV, § 1:

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

Michigan Court Rule 6.504(B)(1),(2):

(B) Initial Consideration by Court.

(1) The court shall promptly examine the motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack. The court may request that the prosecutor provide copies of the transcripts, briefs, or other records.

(2) If it plainly appears from the face of the materials described in subrule (B)(1) that the defendant is not entitled to relief, the court shall deny the motion without directing further proceedings. The order must include a concise statement of the reasons for the denial. The clerk shall serve a copy of the order on the defendant and the prosecutor. The court may dismiss some requests for relief or grounds for relief while directing a response or further proceeding with respect to other specified grounds.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (cont.)

Federal Rules of Criminal Procedure; Rule 11

[SEE APPENDIX V]

Michigan Department of Corrections (MDOC) Policy Directive (PD) PD-05.03.115

[SEE APPENDIX W]

MDOC's Thumb Correctional Facility (TCF) Operating Procedure (OP) OP-05.03.115

[SEE APPENDIX X]

STATEMENT OF THE CASE

(1) Petitioner, Raymond Pniewski, Jr.'s mental illness was initiated by a disfunctional childhood, from no mentoring, wondering when he would eat or what he would wear and if anyone cared, because of a violently abusive alcoholic father, setting him on the path to mental illness.

(2) The court records show the following:

(a) The mother of the two female victims' was an alcoholic and compulsive gambler, that had an "on again, off again" sexual relationship with Petitioner, where all lived with him in his home.

(b) While the relationship was "off", the mother of the victims' was arrested and convicted of drunk driving and served around 3 months in the county jail. During that time, her girls were cared for by Petitioner.

(c) Upon her release from jail, she found a "new boyfriend" (and others thereafter), parading them in and out of his home.

(d) During this time, Petitioner was already highly unstable from all the disfunction and stress in his life: *i.e.* loneliness, alcoholism, alimony, child support, bankruptcy, desire to harm a former supervisor for firing him, etc.

(e) At the plea/sentencing proceedings, the mother did not appear or testify.

(f) Petitioner, Pniewski, did not have a criminal record, and the **Cobbs Motion** (See APPENDIX M) [*People v Cobbs*, 443 MI 276 (1993)] showed he was divorced in 1992 [factually 1995] and suffered from extreme emotional depression due to the divorce, causing a mental breakdown and admittance to the hospital, with treatment with psychiatric medication.

(g) Sometime after, Petitioner's new girlfriend was gravely injured in an auto accident in 1996. He cared for her until her passing 14 months later.

(h) Petitioner then turned to alcohol, drinking heavily on a regular basis.

(i) After divorce, Petitioner was paying alimony & child support of $680.00/wk.

(j) The "**Cobbs**" states: In 2002 [actually 2004], he retired for mental health reasons. And in 2005, Petitioner again filed bankruptcy.

(k) Over time, Petitioner's mental illness led to his crime, charged with 6 counts of CSC 1st Deg. -child under 13, and 3 counts of child sexual abuse, in Westland, Michigan.

(3) Petitioner's confession was coerced by a private citizen before "**Miranda**" warnings given [*Miranda v Arizona*, 348 U.S. 436 (1966)], where trial court failed to inform him, pleading guilty waives this Constitutional violation.

STATEMENT OF THE CASE (cont.)

(4) Petitioner illegally detained, where trial court and appointed counsel failed to inform him, by pleading guilty he waived this Constitutional violation.

(5) Petitioner, **WITHOUT COUNSEL**, was: interrogated, arraigned, and waived prelim. exam; where the trial court and appointed counsel failed to inform him, by pleading guilty he waived these Constitutional violations.

(6) Petitioner was held incommunicado for 2½ week without a phone call, not given hygiene supplies (*i.e.* soap, toothpaste, towels, etc,), and unable to **shower** (non-existent in the city jail) or shave. Petitioner was prevented from having **clean clothes** brought in for court [See AFFIDAVIT of Arlene Pniewski, (APPENDIX N)], where trial court and appointed counsel failed to inform him, by pleading guilty he waived these VIII Amendment Constitutional violations.

(7) Petitioner avers, the trial court failed to properly inform him of the three main Constitutional Rights waived when pleading guilty, as required by ***Boykin v Alabama***, supra, and ***People v Jaworski***, supra., where both **fall short**, failing to inform Petitioner of **MORE THAN** just three main rights waived by pleading guilty.

(8) Petitioner states: Appointed counsel failed to investigate and discover all the prior stated Constitutional violations, where her "advice" to plead guilty waived the afore mentioned Constitutional violations, making her **INEFFECTIVE**.

(9) Petitioner states: The trial court and appointed counsel failed to properly inform him of **ALL THE CONSEQUENCES** of a guilty plea.

(10) Petitioner states: The trial court and appointed counsel failed to order/demand a "competency hearing" based upon Petitioner's documented psychiatric history.

(11) Petitioner's appointed counsel failed to discuss any type of defense with him.

(12) The trial court lied to Petitioner when he asked, "Is there any way that the guidelines could be...circumvented...in certain cases where, I feel that the 25 year sentence is worse than lethal injection..." The court said, "NO". (Plea Transcripts (PT); pg.10, lns. 4-9; APPENDIX Q). Earlier the court said, "...if this man is willing to step up and take responsibility, then he's entitled to a break...." (PT: p.4, lns.1-2; APPENDIX Q). The court went on to say, "...I would think one of the things since they changed the Statute, I expect to see a lot more pleas to lesser offenses." (PT: p.5, lns.7-10; APPENDIX Q).

(13) Petitioner's appointed counsel failed to inform him of the possibility of a plea bargain and failed to initiate plea negotiations with the prosecutor.

(14) Petitioner's appointed counsel negotiated his sentence with the trial court [See: (PT), pg. 3, lns. 13-18; (APPENDIX Q)].

STATEMENT OF THE CASE (cont.)

(15) The trial court violated its own stipulation when sentencing Petitioner to a 25 year minimum, because during the plea proceedings, three times the court stated, "My COBBS evaluation is a minimum under the guidelines." (PT: p.3. lns. 22-23; p.4 lns. 1-2, 17-19; APPENDIX Q).

(16) Petitioner entitled to a 5th Amendment right to remain silent before sentencing, because, being forced to "tell" what he did changed his sentence from guidelines to Statutory. See *U.S. v Tindle*, 808 F.2d 319, 325 (4th Cir. 1986).

(17) Petitioner claims appointed Appellate Counsel: (a) failed to investigate and challenge the Constitutional violations that occurred (many apparent in the record); (b) only attacked the sentence instead of the integrity ("fair play") of the proceedings; (c) failed to file an Ineffective Assistance of Trial Counsel claim; and/or failed to file a Motion to Withdraw Plea because of all the violations that occurred.

(18) On 10/2/17, in front of Wayne County Circuit Court Judge, Vera M. Jones, Petitioner pled guilty to 5 counts of 1st Deg. CSC (person under 13); count 1, MCL 750.520(2)(b); counts 2-5, MCL 750.520(1)(a), and sentenced to 25 to 60 yrs. on all counts (concurrent)(APPENDIX N). Only count 1 requires 25 years.

(19) Petitioner is currently in state custody at the Thumb Correctional Facility, Lapeer, MI, in violation of the Constitution and laws of the United States.

(20) Petitioner, through appellate counsel, filed an Application For Leave To Appeal (AFLTA) to the Michigan Court of Appeals (MI CoA), raising only one issue on 2/25/08, which was denied without adjudication on 5/15/08 (APPENDIX M).

(21) Petitioner filed a Pro Se AFLTA to the Michigan Supreme Court (MI S.Ct.) on 6/25/08, denied without adjudication on 11/25/08 (APPENDIX L).

(22) Petitioner, in the trial court, filed a MCR 6.500 Motion For Relief From Judgment (MFRFJ) on 2/21/19, the court only responding to 1 of 24 issues presented, denied on 7/8/19 (APPENDIX K).

(23) Petitioner filed Motion For Reconsideration (MFR), in trial court on 7/23/19. The court responded to same one issue, denied on 12/2/20 (APPENDIX J).

(24) Petitioner filed an AFLTA to the MI CoA on 1/7/20, denied without adjudication on 4/22/20 (APPENDIX I).

(25) Petitioner filed an AFLTA to the MI S.Ct. on 7/31/20, denied without adjudication on 3/2/21 (APPENDIX H),

(26) Petitioner filed a MFR on 3/12/21 to the MI S.Ct, denied on 4/27/21 (APPENDIX G).

STATEMENT OF THE CASE (cont.)

(27) Petitioner filed a Writ of Habeas Corpus (Habeas) in the U.S. District Court (ED MI), on 6/11/21, the brief filed on 7/16/21. A supplemental brief was filed on 9/7/21. The District Court did not adjudicate the merits of the claims raised and denied Habeas for failure to meet the AEDPA's one year statute of limitations on 5/25/22 (APPENDIX **F**).

(28) Recently this Honorable United States Supreme Court ruled in *Brown v Davenport*, 142 S.Ct. 1510 (2022), that if the courts do not address the merits of the claim(s) raised the AEDPA falls away.

(29) Petitioner sent a letter to the Sixth Circuit Clerk (APPENDIX **R**) regarding the dismissal, and the letter stated, "If this letter could be considered a Motion to Appeal, so be it." The Sixth Circuit assigned case No. 22-1655 (APPENDIX **H**) and informed Petitioner (court filed 7/28/22) to remit to the District Court $505.00 to move forward with the case. This letter was received by Petitioner about 8/2/22. The $505.00 was sent 8/3/22, by expedited legal mail (APPENDIX **D**) On Aug. 4 or 5, 2022, Petitioner received a letter from the Sixth Circuit (court dated Aug. 2, 2022)(APPENDIX **C**), informing him that his case will be held in abeyance until he "showed cause" as to why, in writing, within 21 days of Aug. 2nd, why it was filed late. Petitioner filed a Motion to Extend Time to Request a Certificate of Appealability (MTET)(APPENDIX **S**), on Aug. 12, 2022. The motion was never responded to.

(30) Petitioner received a dismissal letter (court filed Oct. 12, 2022)(APPENDIX **B**), from the Sixth Circuit because he had "failed to respond." But Petitioner **DID FILE A RESPONSE** that was not heard.

(31) Petitioner considered the non-review of his MTET a court error, so he filed a Motion to Correct Court Error (APPENDIX **T**), on Oct. 19, 2022. The Sixth Circuit denied the motion on Nov. 2, 2022. (APPENDIX **A**).

(32) Petitioner, Raymond Pniewski, Jr., under the penalty of perjury, states and affirms the foregoing statements are true and correct to the best of his knowledge, understanding and belief.

REASONS FOR GRANTING THE PETITION

STANDARD OF REVIEW

The ruling in *Boykin v Alabama*, 395 U.S. 238; 89 S.Ct. 1709; 23 L.Ed.2d 274 (1969), cited by *People v Jaworski*, 387 MI 21; 194 N.W.2d 868 (1972), states:

> "HN5 'A defendant who enters such a [guilty] plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this wavier to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege.' *Johnson v Zerbst*, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possess the understanding of the law in relation to the facts.' *Id.* @ 466." *"Boykin"* @ 243, 244.
>
> "The question of an effective wavier of a federal constitutional right in a proceeding is governed by federal standards, *Douglas v Alabama*, 380 U.S. 415, 422." *"Boykin"*, @ 243.

And Regarding *"Boykin"*, *People v Jaworski*, supra, states:

> "While it may be true, as the majority of the Court of Appeals reasoned, that "*Boykin* is devoid of any specific language stating that in order to have a valid wavier of the three Federal constitutional rights involved when a plea of guilty is entered the three rights must be specifically enumerated and specifically waived", 25 Mich. App. 540, 548, in our opinion both Justice Douglas' language and his logic require that the defendant must be informed of these three rights, for without knowledge he cannot understandingly waive those rights." *"Jaworski"*, @ 28-29.

ARGUMENT

ISSUE I:

> **THE RULINGS OF: *BOYKIN v ALABAMA*, SUPRA, AND *PEOPLE v JAWORSKI*, SUPRA, VIOLATED PETITIONER'S CONSTITUTIONAL AND DUE PROCESS RIGHTS BY ONLY REQUIRING THE COURT TO ADVISE A DEFENDANT OF JUST THREE OF SO MANY RIGHTS WAIVED WHEN PLEADING GUILTY.**

As in *"Boykin"*, supra, Petitioner did not challenge the voluntariness of his guilty plea until discovering the violation and submitted a Supplemental Brief (SEE: APPENDIX **U**, pgs. 1-4) to the MI S.Ct., which accepted the motion, but denied the AFLTA without adjudication, and where the MI S.Ct., the U.S. District Court (ED MI), and the U.S. Court of Appeals for the Sixth Circuit followed suit, by not adjudicating this issue of Constitutional magnitude.

Petitioner now states, he knows its nearly impossible to inform a defendant of everything (s)he waives by pleading guilty. The following will virtually eliminate any question of "knowledge requirement" in a guilty plea.

In the case at bar, 8 Constitutional violations were committed against Petitioner before he pled guilty (4 evident in court records, and the fifth should have been noticed by trial counsel by the way Petitioner looked when she first saw him): coerced and involuntary confession, illegal detention; and without counsel was ——> interrogated, arraigned and waived preliminary exam; excessive bond; incommunicado incarceration; and, had to appear in court unshowered, unshaved and in dirty clothes.

Petitioner states, he never knew, by pleading guilty, he waived all these Constitutional violations, because he was **NEVER INFORMED** by trial court or trial counsel about the consequences of a guilty plea. Petitioner avers, **THE FOLLOWING WARNING** by the trial court **IS NECESSARY**:

> "Defendant (NAME), by pleading guilty, you waive any Constitutional violations that may have occurred before your plea is accepted."

This lack of warning/knowledge to/by Petitioner that: "A guilty plea waives all Constitution violations committed before the plea is accepted," is evident by this fact: Petitioner attacked these violations in his MFRFJ, and in all successive motions/appeals filed in the state and federal courts. After Petitioner wasted all the time, energy and money filing all the afore mentioned motions/appeals, is when he discovered a guilty plea **INVOKES THIS PARTICULAR WAIVER**. Since Petitioner was never informed by his trial counsel or the trial court that a guilty plea waived so many Constitutional violations, he affirms that his guilty plea was **UNKNOWING AND INVOLUNTARY**.

And considering the violations evident (in record/noticable) where trial counsel advised Petitioner to plead guilty without investigating & discovering, then addressing the violations [This was raised in MFRFJ without adjudication]; then **NOT WARNING HIM**, Pleading guilty waives them, she was **INEFFECTIVE**.

ISSUE II:

PETITIONER CONTENDS THAT MCR 6.504(B)(2)'s LANGUAGE IS AMBIGUOUS AND BEING MISINTERPRETED BY THE MICHIGAN TRIAL COURTS, BECAUSE IT ALLOWS THE TRIAL COURT TO DECIDE WHETHER OR NOT TO GIVE THE MOTION TO THE PROSECUTOR, VIOLATING "THE SEPARATION OF POWERS" AND ALLOWS THE COURT TO RESPOND TO ISSUES AND GENERATE AN OPINION/DECISION. THE TRIAL COURTS ARE ALSO DISREGARDING THE WORD "REASONS", AND ONLY ANSWERING A MOTION WITH A CONCISE DENIAL ON ONE ISSUE, REGARDLESS OF THE NUMBER OF ISSUES RAISED, ALSO VIOLATING 28 USCS § 1291's "FINALITY REQUIREMENT".

Petitioner now brings this issue of first impression regarding all Michigan trial courts unconstitutionally interpreting the wording of MCR 6.504(B)(2)'s language, by doing exactly whet the title line of this issue states. First, Petitioner cites *United States v McLean*, 95 U.S. 750; 24 L.Ed 579; 13 S.Ct. 521 (1878), which states, "Courts cannot perform executive duties...." Allowing courts to decide if a motion should be adjudicated is no different than allowing the court to decide whether or not to charge a suspect with a crime. Presenting a motion to the court is presenting evidence toward the defendant's cause, which is the prosecutor's duty to evaluate that "evidence". So, having the court review the "evidence" violates the "Separation of Powers" requirement. *United States v Mardis*, 2009 U.S. Dist. LEXIS 109110, states:

> "The separation of governmental powers into the legislative, executive, and judicial branches is fundamental to our constitutional form of government. Although the separation of powers doctrine is not explicitly enunciated in the Constitution, 'the principle of separation of powers derives from the structure of the Constitution and the allocation of power within that structure.' *United States v Williams*, 15 F.3d 1356, 1360 (6th Cir. 1994).... Officials of one branch should not be forced to act by any other branch: '[t]he fundamental necessity of maintaining each of the three general departments of government entirely free from control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question.' *Humphrey's Ex'r v United States*, 295 U.S. 602, 629; 55 S.Ct. 869; 79 L.Ed 1611 (1935). The constitution sets up a system of "checks and balances" to enforce the separation among the branches, and to ensure that no one branch becomes more powerful in such a way that it encroaches on the other branches. *Williams*, 15 F.3d @ 1360; *Morrison v Olsen*, 487 U.S. 654, 693; 108 S.Ct. 2597; 101 L.Ed.2d 569 (1988)." "*Mardis*" @ 7-8.

In support *People v Piaseki*, 133 MI App. 122; 52 N.W.2d 626 (1952), states:

> "The requirement of the Constitution that no person belonging to one department of government shall exercise powers properly belonging to another does not mean they must be kept wholly and entirely separate and distinct and have no common link of connection or dependence, but rather that the whole power of one department shall not be exercised by the same hands which possess the whole power of either of the other departments." *Id.*

Petitioner contends, MCR 6.504(B)(2) allows the court to perform duties of the executive branch when the court responds to the issue(s), and then makes a judicial decision of their own argument.

The judge, not the prosecutor, reviewed Petitioner's MFRFJ, and only answered ONE (1) of TWENTY FOUR (24) issues presented, where MCR 6.504(B)(2) states: "the order must include a concise statement of the **reasons** [not reason] for the denial....", where answering one (1) of twenty four (24) issues presented is another misinterpretation/violation of MCR 6.504(B)(2)'s requirement.

With the presented argument, Petitioner asks this Honorable United States Supreme Court to evaluate his claim and issue a decision whether or not the wording of MCR 6.504(B)(2) needs to be modified/updated to not allow the trial court to respond to a MFRFJ with an ambiguous denial, and, if/when they respond, **they must respond to EVERY ISSUE PRESENTED.**

ISSUE III:

THE U.S. DISTRICT COURT (ED MI) AND THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHT TO HAVE HIS ISSUES ADJUDICATED UNDER "EQUITABLE TOLLING", WHERE THE U.S. CIRCUITS ARE DIVIDED ON WHETHER OR NOT BEING AN INCARCERATED PRO SE LITIGANT QUALIFIES AS "EXTRAORDINARY CIRCUMSTANCES".

MIXED STANDARD OF REVIEW IN THE U.S. CIRCUIT COURTS

"Courts are divided as to whether inadequate access to legal materials constitutes an extraordinary circumstance that warrants equitable tolling of the AEDPA limitations period. *Compare* ***e.g. Hendon v Lamarque***, 19 Fed. Appx. 599 (9th Cir. 2001) (holding that petitioner must establish equitable tolling with adequate proof of his claims of prison lockdowns and administrative segregation resulted in long term denial of access to materials, *with* ***Lucero v Suthers***, 18 Fed. Appx. 964 (10th Cir. 2001) (holding that a petitioner challenging Colorado conviction was not entitled to equitable tolling while incarcerated in a Texas state prison and allegedly denied access to personal legal materials and Colorado legal publications. On the other hand, the Third Circuit has suggested that prison transfers and inadequate access to legal materials could satisfy the "extraordinary circumstances" prong of the equitable tolling doctrine. (SEE ***Miller v New Jersey State Dep't of Corrections***, 145 F.3d 616, 617 (3rd Cir. 1998)(Remanding of consideration of equitable tolling.)" ***Crawford v Bickell***, 2012 U.S. Dist. LEXIS 185429 (3rd Cir. 2012) @ 26-27.

ARGUMENT

Petitioner maintains, the U.S. Circuit Courts should not be divided on consideration of equitable tolling because of inadequate resources and restricted access for Pro Se incarcerated litigants. either it is or it isn't. The "prison law libraries???" [See ***Thaddeus-X v Blatter***, infra, later in argument, prison law libraries **"are not law libraries"**] policies and procedures themselves (at least in Michigan) causes inmates an exorbitant amount of time languishing in prison, waiting to be put on a callout to the law library to be able to do research and develop a MFRFJ/AFLTA/HABEAS, etc., with any chance of success, especially for unrepresented immates (incarcerated pro Se litigants). In the argument to follow, Petitioner will demonstrate the "cause and prejudice" created by prison restrictions themselves, with or without other "extraordinary circumstances" not mentioned in ***"Crawford"***, supra.

Let's review what an attorney has to do to be able to "practice" law [that is what most attorneys do when defending indigent defendants,

"PRACTICE"]: (1) minimum four years of college in law school; (2) pass bar exam; (3) work under established lawyers to gain experience; and, (4) while working, take specialized courses in the area of law they desire to pursue, then they **"might"** be a decent lawyer. So to expect Petitioner, a first time offender (or other indigent incarcerated Pro Se litigants) to adhere to stringent timely requirements for filing motions/appeals is a rediculous expectation.

Now Petitioner states: The hurdles that an indigent incarcerated Pro Se litigant has to overcome are enormous, and more often than not, they have no experience preparing legal motions/appeals. Even though Petitioner is academically intelligent, when convicted in 2007 was completely ignorant of the law & legal system. It took many years to discover all the Constitutional and Due Process violations the trial court and trial counsel committed and Petitioner is still finding violations: [*e.g.* (1) disparaged by the court during sentencing demonstrating judicial bias -see *People v Hudgins*, 125 MI App. 140; 336 N.W.2d 241 (1983); (2) the court forced Petitioner to "tell" what he did, violating his 5th Amendment right to remain silent -"A convicted defendant retains the 5th Am. privilege before sentencing, if his/her testimony could enhance sentence." *Georgetown Law Journal*, (Vol. 80, 1992), p. 1449, para 3. See also *U.S. v Tindle*, 808 F.2d 319, 325 (4th Cir. 1986), because it caused him to receive a more severe sentence]. And, appellate counsel failed to (and should have) raised all issues in the initial AFLTA filed in 2008, or at a minimum, file a Motion To Withdraw Plea to preserve all issues, including Ineffective Assistance of Counsel (IAC).

For the moment, set aside the Covid-19 protocols and concentrate only on actual conditions Petitioner encountered within the prison system. The first 9 years of incarceration the only access to "law materials" was "HARDBOUND CASELAW BOOKS". It wasn't until about 2016, when the Michigan Department of Corrections

(MDOC) acquired internet access [Electronic Law Library (ELL)], to a legal website [LEXIS NEXUS, a total garbage website] that gave Petitioner a bit better access to materials allowing a little better access to the law and discover the violations affecting his conviction.

Even with ELL access, MDOC Policy Directive (PD) 05.03.115(L) (APPENDIX W), regarding its use is extremely restrictive, only "supposedly" allowing prisoners four (4) hours of use per week. But realize, MDOC's Thumb Correctional Facility (TCF) Operating Procedure (OP) OP-TCF-05.03.115 (APPENDIX X), says an inmate is allowed four (4) hours per week in the "prison law library" [which cannot be considered a law library], where *Thaddeus-X v Blatter*, 175 F.3d 378 (6th Cir. 1999), states:

> "(law library of D.O.C. is by name only, they are not considered an actual law library)" *Id.*

After considering what the Sixth Circuit said about "prison law libraries", the TCF "law library" OP-TCF-05.03.115, states:

> **"INFORMATION:** A regular schedule of hours will be maintained.... 'prisoners shall be permitted at least 4 hours per week of law library use in sessions of not less than one hour each.... Law library time includes ELL use, **hard copy** research **["HARD COPY" CASE LAW BOOKS HAVE BEEN REMOVED FROM THE LIBRARY AND DESTROYED. I WATCHED IT HAPPEN.]**, or a combination of both. If a prisoner requests a full four (4) hours in the library, he will be scheduled for two (2) hours of ELL and two (2) hours of Table Time. If a prisoner needs more than four hours per week, he will be required to demonstrate the legal need per PD 05.03.115, Law Libraries.
>
> **PROCEDURE:**
>
> | WHO | | DOES WHAT.... |
> |---|---|---|
> | Library Staff | 2. | Upon receipt of a Library service request, staff will place prisoner on callout.... Per policy, each prisoner is entitled to four (4) hours of law library. If a prisoner requests a full four (4) hours in the library, he will be scheduled for two (2) hours of ELL and two (2) hours of Table Time.... |
> | | 3. | ...need for more than four (4) hours.... must be in the form of an official court order.... |

Petitioner is puzzled??? Two hours of Table Time to research **"hard copy"** books [As stated, "Hard Copy" case law books no longer exist in the Library] and 2 hours on ELL, is four true research hours?? That's awfully strange math!! Heaven forbid if a Petitioner needs more than four hours, you have to convince a judge to give you a court order!! And what if (should?) all Michigan indigent incarcerated Pro Se litigants flood the Michigan courts with requests for more time in a prison law library to make a futile attempt to accommodate the "timeliness" requirements of the courts? We know how that would work out!!

Anyway, let's extrapolate the **four hours per week??** allotted to Petitioner by the MDOC during the 14 years after the initial AFLTA he filed in 2008, to the MI S.Ct.: Four hours per week, times 52 weeks, times 14 years, totals 2912 hours. Nobody can spend 2912 straight hours doing research and/or prepare submissions to the court, so divide 2912 hours by 8 hours in a normal workday, which totals **339 DAYS IN 14 YEARS** to do **ALL THE RESEARCH** for **ALL THE SUBMISSIONS** filed in **ALL THE COURTS**. Remember: In all actuality Petitioner **NEVER** was alloted four (4) hours per week on the ELL since it was implemented in 2016 in the "law library", its against the MDOC's PD and TCF's OP!! **NOW FACTOR IN** the 2 years the "law library" was closed because of Covid-19. Is this "fair play" or "equitable to" the unlimited time and finances supplied to trained attorneys the State has to research and prepare an opposing submission against an indigent incarcerated Pro Se litigant (even during the pandemic), and then force an indigent incarcerated Pro Se litigants to comply with the "timeliness rules" that are foisted upon them because they can't afford an attorney? This is nothing short of "invidious discrimination". In other words saying, "You're locked up and can't afford an attorney? We don't care!!!"

McCord v Harderman County Gov't., 2020 U.S. Dist. LEXIS 177501 (WD TN 2020), accurately enumerates the "Equal Protection Clause" regarding invideous discrimination toward indigent incarcerated Pro Se litigants, stating:

> "(The Court is persuaded by defendant's arguments "The Equal Protection Clause of the Fourteenth Amendment 'protects against invidious discrimination among similarly situated individuals or implicating fundamental rights.'" *Davis v Prison Health Services*, 679 F.3d 433, 438 (6th Cir. 2012)(quoting *Scarbrough v Morgan City Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006)); see also *TriHealth Inc. v Bd. of Comm'rs*, 430 F.3d 783, 788 (6th Cir. 2005)(stating that the Equal Protection Clause "prohibits discrimination by government which either burdens a fundamental right, targets a suspect class or intentionally treats one differently than other similarly situated without any rational basis for the difference"). This analysis begins by defining an "identifiable group." *Engquist v Oregon Dep't of Agric.*, 553 U.S. 591, 601; 128 S.Ct. 2146; 170 L.Ed.2d 975 (2008) (quoting *Pers. Adm'r of Mass. v Feeney*, 442 U.S. 256, 279; 99 S.Ct. 2282; 60 L.Ed.2d 870 (1979))." *"McCord"* supra.

Petitioner maintains that he is irreparably harmed by the attitude of the courts toward indigent incarcerated Pro Se litigants.

Another aspect Petitioner presents is that he is only entitled to file one MFRFJ and the "Defender Habeas Book (DHB) 2018-19": pg.28 (APPENDIX Y), published by the Michigan State Appellate Defender Office, states:

> "NOTE: Currently there is no time limit for filing a Motion For Relief From Judgment, and that lack of deadline often fortifies a federal court's decision to dismiss a petition in order to allow the petitioner an opportunity to present those claims to the state court. *See e.g. Wagner v Smith*, 581 F.3d 410 (6th Cir. 2009). However there has been interest in modifying Mich. Ct. R. 6.502 [APPENDIX Z] to impose a one-year statute of limitations on such motions consistent with the statute of limitations in habeas cases. If such a proposal is ever adopted, the time constraints could make developing new claims practically impossible." *DHB*, pg. 28, para. 3.

So when Petitioner filed his MFRFJ in 2018, there was no filing deadline. Now how does timeliness effect his MFRFJ? Does the clock start again, making his appeal to the U.S. District Court (ED MI), timely? Even though Petitioner's Habeas was dismissed on timeliness? Petitioner is more confounded now, than before he filed his Habeas to the U.S. District Court (ED MI). Petitioner asks this Honorable United States Supreme Court to clarify the mess the Michigan Courts created when charging and convicting Petitioner in 2007. Petitioner presented 24 violation issues in his MFRFJ, but that number through research is now well over 30, and Petitioner is still finding more. Please, please; Let Petitioner know how much time he needs as an indigent, incarcerated Pro Se litigant to do research, then develop and perfect a motion/brief with any chance of a successful outcome?

ISSUE IV:

THE RULINGS OF: *BOYKIN v ALABAMA*, SUPRA, AND *PEOPLE v JAWORSKI*, SUPRA, FALL SHORT ON HOW THE COURT IS ALLOWED TO ADVISE A DEFENDANT OF THE THREE MAIN RIGHTS WAIVED WHEN PLEADING GUILTY.

Petitioner contends the *"Boykin"* and *"Jaworski"* rulings are ambiguous (non-specific), and fail to adhere to Fed. R. of Crim. Proc. (F.R.Cr.P) 11(b)(1)(F), by the way these cases allow a court to advise a defendant regarding the three main rights waived when pleading guilty. Even as the concept of/in *"Boykin"* and *"Jaworski"* is necessary, the way the court is allowed to state the wavier is ambiguous, as stated in the "STANDARD OF REVIEW." F.R.Cr.P 11(b)(1)(F), states:

"(b) Considering and Accepting a Guilty Plea or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(F) the defendant's wavier of these trial rights if the court accepts a plea of guilty or nolo contendere;"

Above, F.R.Cr.P 11(b)(1)(F), specifically states that the defendant must be informed (verbally or in writing), that (s)he waives the rights stated in (b)(1)(C) & (E). Just because the court is satisfied, and the prosecution and defense counsel agree, that the wavier warnings mandated in *"Boykin/Jaworski"*, were adhered to, doesn't mean they were, as the case at bar demonstrates [SEE: ISSUE V]. There must be specific wording to mandate the way a defendant is warned about the rights (s)he waives when pleading guilty. *"Boykin"* doee not state how to deliver the warnings, and *"Jaworski"* failed to tell Jaworski that by pleading guilty he waived that right on the two that were mentioned.

Since Petitioner was never specifically told that he waived each of the three main rights by pleading guilty, his plea is **UNKNOWING AND INVOLUNTARY.**

ISSUE V:

THE TRIAL COURT VIOLATED *BOYKIN v ALABAMA* & *PEOPLE v JAWORSKI*, SUPRAS, BY INFORMING PETITIONER OF THE THREE RIGHTS WAIVED BY PLEADING GUILTY BY AMBIGUOUS STATEMENTS, MAKING GUILTY PLEA UNKNOWING AND INVOLUNTARY.

Petitioner contends that the trial court did not comply with the standard enumerated in *"Boykin"*, supra, because of the way the court "supposedly" informed Petitioner of the three main rights waived when pleading guilty. The court stated the following:

THE COURT: You have the constitutional right to have a trial by jury.... Do you underatand that?

DEFENDANT: Yes.

THE COURT: If you would have a trial, you would have the right to be presumed innocent.... Do you understand that?

DEFENDANT: Yes.

THE COURT: If you had a trial.... you'd have the right.... to confront them [witnesses].... Do you understand that?

DEFENDANT: Yes.

THE COURT: And if you had a trial, you'd have the right to remain silent.... Do you understand that, sir?

DEFENDANT: Yes, your Honor.

THE COURT: And if you had a trial, if you were convicted.... you'd have an automatic right to appeal.... If you plead guilty, you will give up that right...

(PT: p.8, lns. 11-25; p.9, lns. 1-23)(APPENDIX Q)

In the above transcript quote, the court did mention all three rights and also mentioned the "right to appeal". But only informed Petitioner that by pleading guilty, waived the "RIGHT TO APPEAL". Regarding the *"Boykin/Jaworski"* rights, the court only stated, "(And) if you had (would have) a trial....", and NEVER SAID, "IF YOU PLEAD GUILTY, YOU WAIVE THAT RIGHT" for the three stated main rights. How, as a first time offender & terrified as a freshly whipped puppy by everything he's going through be expected to understand, he is giving up the: "right to a trial", "right to confront accusers", and "right against self-incrimination" by the ambiguous way the court stated those rights?

With that stated, Petitioner avers, he was not properly informed of all three rights waived pleading guilty, making plea **UNKNOWING AND INVOLUNTARY**.

ISSUE VI:

ALL STATE AND FEDERAL COURTS VIOLATED PETITIONER'S DUE PROCESS RIGHTS UNDER 28 USCS § 1291, BY FAILING TO ADJUDICATE CLAIMS ON THE MERITS.

Petitioner appeals the decisions of the state courts, where no court adjudicated his issues on the merits. The U.S. District Court and the Sixth Circuit both dismissed his submissions on only timeliness without adjudicating the merits presented. But in *Gideon v Wainwright*, 372 U.S. 335; 83 S.Ct. 792; 9 L.Ed.2d 799 (1963), states:

> "When a defendant has been denied due process, his guilt or innocence is irrelevant; he has not been tried by civilized standards, and cannot be punished until he has been. Dissent in *Henderson v Bannan*, (1958, CA6) 256 F.2d 363, 388." *Id.*

Next, *Firestone Tire & rubber Co. v Risjord*, 449 U.S. 368; 101 S.Ct. 669; 66 L.Ed.2d 571 (1981), states:

> "Our decisions recognized, however, a narrow exception to the requirement that all appeals under § 1291 await final judgment on the merits. In *Cohen v Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), we held that a "small class" of orders that did not end the main litigation were nevertheless final and appealable pursuant to § 1291." *"Firestone"*, supra @ 374.

Then there's *Washington v Chapman*, 2020 U.S. App. LEXIS 13417, stating:

> "Because there was no dispute that the state courts failed to review the merits of the claim, it is subject to de novo review in the district court. See *Hudson v Jones*, 351 F.3d 212, 215 (6th Cir. 2003)." *Id.*

And *Budinich v Beckdon Dickinson & Co.*, 486 U.S. 196 (1988), states:

> "**HN4** Under 28 USC § 1291, a "final decision" generally is one that ends the litigation on the merits...." *Id.*
>
> "**HN2** -A judgment is final when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined." *Klever v Seawall*, 65 F. 373 (6th Cir. 1894).
>
> "Courts cannot perform executive duties or treat them as performed when they have been neglected." *United States v McLean*, supra.

Finally, *Brown v Davenport*, 212 L.Ed.2d 463; 142 S.Ct. 1510 (2022), states:

> "...if a state court has not adjudicated the petitioner's claims on the merits, AEDPA falls away." *Id.*

The Sixth Circuit's dismissal was improper, regardless of whether or not the letter sent initiating assignment of case No. 12-1655 was untimely. Timeliness becomes a non-factor when the merits of a case are not adjudicated and Petitioner respectfully asks this Honorable United States Supreme Court to take whatever steps necessary for de novo review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Raymond D Pniewski Jr

Date: March 8, 2023