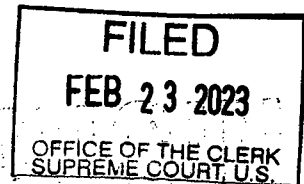


22-7159
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Denzel Simmons #798035 PETITIONER
(Your Name)

vs.

Mike Walczak, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR the 6th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

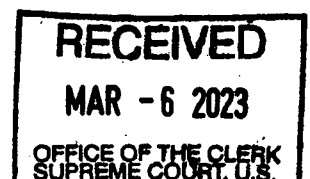
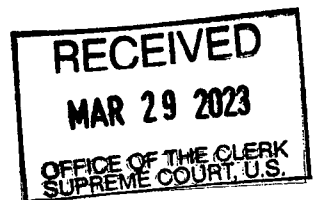
PETITION FOR WRIT OF CERTIORARI

Denzel Simmons #798035
(Your Name)

1727 W. Bluewater Hwy
(Address)

Ironia, MI 48846
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1) Must Mr. Simmons' convictions for assault with intent to murder and felonious assault be vacated because they are not supported by sufficient evidence from which a reasonable trier could determine beyond a reasonable doubt that he possessed the requisite intent to commit those offenses. Insufficient evidence of intent to kill also guilty verdict for one logically exclude guilt on the other?

"Yes."

2) Was Mr. Simmons's mandatory guidelines minimum sentencing range impermissibly increased by judicial fact finding violation of the Sixth Amend?

"Yes."

3) Was prosecutor's misconduct violation of fair trial, fraud on the court, violation of 9th and 14th Amendments?

"Yes."

4) Was ineffective assistance of both trial and appellate counsel violation of 1st, 4th, 6th, 9th, 14th Amendments?

"Yes."

5) Was Mr. Simmons's right to speedy trial violated?

"Yes."

6) Was Mr. Simmons arrested without a warrant and denied counsel at first arraignment?

"Yes."

7) Was Mr. Simmons's convictions in violation of double Jeopardy?

"Yes."

8) Was the jury instructions improper?

"Yes."

9) Was the Detroit Police Department crime report #1207130332.1 Brady material?

"Yes."

QUESTION(S) PRESENTED

10) Did the Detroit crime police report prove fraud on the court?

"Yes."

11) Did the United States Appeal court of the sixth circuit follow FRAP 35(c), 40(a) since decision was mailed to Mr. Simmons, Did they give him additional three days under rule 26(c) for his motion under 59(e), 60(b) with suggestion of rehearing en-banc, and did the court uphold court holidays under MCR 8.112(B) before ruling motion untimely?

"No."

12) Was jurors 8, 9, 13 ~~biased~~ biased?

"Yes."

13) Was the jury given the wrong oath, late?

"Yes."

14) Was all the offenses given the same elements once the court tied all of them together under elements of Aiding and Abetting?

"Yes."

15) Did I have the right to full discovery?

"Yes."

16) Did I have the right to fire my lawyer?

"Yes."

17) Did the Lockridge remand have to follow the Howard standard?

"Yes."

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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(iii)

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 6th circuit; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☒ reported at 6th circuit; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

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

☒ reported at Michigan state court of Appeal; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the MI Supreme court court appears at Appendix D to the petition and is

☒ reported at MI Supreme court; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

Appen'DIX E police crime report

1-A

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 12-13-22.

☒ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1-11-23, and a copy of the order denying rehearing appears at Appendix A § 2.

[] 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. § 1254(1).

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

The date on which the highest state court decided my case was May 4, 2021.
A copy of that decision appears at Appendix C, D.

☒ 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).

Under Rule 13 Review on certiorari 90 Days after entry of the order. Rule 14, Rule 10. See ~~28 U.S.C.~~ Jurisdiction under Article III of the constitution of the United States. See also 28 U.S.C. § 1251 and U.S. Const., Amdt. 11 seeking writ authorize by 28 U.S.C. § 1651(2), § 2241 or 2254(2),

(9,000 words)
Rule 33
40pgs

Rule 13 Review on certiorari: Time for Petitioning filed within 90 Days

The Judge did not follow MCL § 769.8 for conviction for first time felony; entering facts in minutes of court (2) Before or at the time of sentence, the Judge did not ascertain by examining Mr. Simmons under oath, or evidence as can be obtained which facts ~~are~~ to be pertinent.

fixing a minimum and maximum sentence, ~~and recommendation~~ ^{that was invalid because} minimum exceeded one half of maximum is maximum, contrary to Pa Acts 1905, No. 184, since such statute has been superseded by this section People v. Williams, 16 Mich. App. 673, 168 N.W.2d 626, 1969 Mich. App. LEXIS 1463 (Mich. Ct. App. 1969) In re Forscott (1911), 167 Mich. 438, 1442 trial court ~~set~~ minimum length of an indeterminate sentence (Pub Act 1903, 136) and violated the maximum sentence as set by statute and a nunc pro tunc order ~~to~~ ^{correct the maximum} ~~for~~ by the Statute. People v. Mitchell, 175 Mich. App. 83, 437 N.W.2d 304, 1989 Mich. App. LEXIS 84 (Mich. Ct. App. 1989) AS Mr. Simmons's ~~is~~ maximum sentence is nullity. People v. Smith, 35 Mich. App. 349, 192 N.W.2d 626, 1971 Mich. App. LEXIS 1460 (Mich. Ct. App. 1971) In re Pardee, 327 Mich. 13 (1950); People v. Robert A. Smith, 35 Mich. App. 349 (1971)

Post, at 2543-2548

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STATEMENT OF THE CASE

This case arises from a altercation on July 13, 2012 between Wilco Gee and Daniel Torres. They was arguing from opposite sides of the street. [Trial 4/10/13, 9-10] Mr. Gee, Marquis Bell and Raquan Lamb was high on ecstasy and marijuana when the altercation occurred [Trial 4/10/13, 102-103, 136-137] Mr. Gee was not wearing his glasses at the time. [Trial 4/10/13, 103] He testified under a grant of immunity against prosecution for perjury after he said he will not lie and say Mr. Simmons shot him. prosecution knows he knows the truth. [Trial 4/9/13-56; 4/10/13, 79-83, 110-111] Also when he testified Mr. Gee was incarcerated on charges of fleeing and eluding and larceny [Trial 4/10/13, 108-109] Mr. Gee said him and Mr. Simmons had no beef. [Trial 4/10/13, 112] In fact gave eachother a high five and said Mr. Simmons said "he aint got nothing to do with this, we cool. We aint got no problem." [Trial 4/10/13, 92, 146] Mr. Gee saw "little one" pass a silver object to Mr. Torres, as they walked toward Mr. Gee, while Mr. Simmons remained at the store. [Trial 4/10/13, 93-96, 112-113] Mr. Gee asked, "so, is we going to fight or not?" [Trial 4/10/13, 96] Mr. Gee was about 30 feet away from Mr. Simmons at that point. [Trial 4/10/13, 154] Mr. Gee recalled testifying that he did not see who shot him. [Trial 4/10/13, 118] Enijah Lamb accompanied Mr. Gee running with Mr. Bell and did not see Mr. Simmons shoot a gun. [Trial 51, 55, 56] Marquis Bell had and own a .380 handgun and keeps it on his waist, Mr. Bell and Mr. Gee triped over a grabbage can then after knowidish Mr. Gee boxers red on the right side [Trial 4/10/13, 4-23]. Prosecutor said Mr. Gee was shot in the back twice, strich in the leg, recovered four .380 shells, just firing a gun four times is assault with intent to murder. The court instructed the jury "any one who intentionally assising someone in a crime, is guilty as the person who directly committed it, and can be convicted of that crime as an Aider and abetter. Defendant is charged with committing AWIM

MCL 750.83, FA MCL 750.82, AWIGBH MCL 750.84, FF MCL 750.227b, or intentionally assisting someone in committing it can be convicted of these crimes. Prosecutor only have to show (1) that the crime was committed by him or someone else. It don't matter if anyone else had been convicted of the crime. (2) Before or during the crime, the defendant did something to assist in the commission of the crime (3) that defendant must have intended the commission of the crime alleged or known that other person did the crime to show beyond a reasonable doubt. [Trial 4/11/13, 48-49] Officer Robert Brown recovered four .380 casings [Trial 4/10/13, 156] The jury convicted Mr. Simmons on April 11, 2013 of assault with intent to murder and felonious assault, regarding Wilson Gee; assault with intent to commit great bodily harm less than murder, regarding Enyah Lamb; and felony firearm. [Trial 4/11/13, 44-48, 54]. Prosecutor gave 25 points for OVB and for juvenile matter that was dismissed or ten years old on April 26, 2013 sentences: 20 to 40 years for assault with intent to murder (MCL 750.83); 1 to 4 years for felonious Assault (MCL 750.82); and 6 to 10 years for Assault with intent to do great bodily harm less than murder (MCL 750.84), all consecutive to 2 years for felony firearm (MCL 750.227b). The court acknowledge Mr. Simmons sending letters for a new lawyer because Mr. Slametka is not providing effective assistance, there is a breakdown in the relationship, and Mr. Simmons can not proceed with Mr. Slametka as his attorney, still missing transcripts, full discovery, medical records, lawyer don't have my best interest in this case, told him what was missing and the defense Mr. Simmons wanted to go with and Mr. Slametka said he's not getting payed, so he's not doing it. [2/6/13, 4-18] [Trial 4/9/13, 5-12] Explaining to the courts for the 5th or 6th time Mr. Simmons wanted to fire lawyer, still don't have full discovery, medical records, photos of gunshot wounds, to prepare defense. Court once again told Mr. Simmons, he don't have the right to fire his lawyer, and prosecutor told Mr. Simmons to quit asking for discovery, he's not entitled to it period. [Trial 4/9/13, 9]

The jury was selected and not sworn in. [Trial 4/8/13, 168-169]

The jury was sworn in late and given the wrong oath. "raise your right hands, please, you do solemnly swear or affirm that you will answer truthfully all questions put to, touching upon your qualifications to serve as jurors in the cause now pending before this court." [Trial 4/9/13, 14-15]

Juror 8 said he would be biased and more likely not to believe Mr. Simmons.

Juror 9 was unable to give full unbiased yes. Juror 13 said if Mr. Simmons elected not to testify Mr. Simmons was guilty and should tell them he did it.

[Trial 4/9/13, 41-130] The Detroit police Department crime report: 1207130332.1 by officer Roland Brown #3848 identify medical chart #6000000045638 by Dr. Rosh on 7-13-2012 of Wilson Gee never being shot twice in the back, state "in the hip stable condition. Prosecution telling the jury Mr. Gee was shot twice in the back, nearly died. [Trial 4/9/13, 22-25] [Trial Tr. IV, 24-12] [4/9/13, 28-33]

[4/10/13, 100-102] [4/11/13, 7-17] Mr. Simmons file this writ of certiorari as a matter of right. Michigan Appeals denied on Sep 18, 2014 Docket No. 316426. Michigan Supreme court Reverse in part on remand to Wayne circuit court and leave to appeal was denied on October 28, 2015 SC:150299. In the third circuit court, filed motion for relief from judgment. The court said "They will not analyze whether Mr. Simmons have demonstrated actual prejudice" because he didn't meet MCR 6.508(D) denied Dec 12, 2016 case: 12-067320-01-FC. Michigan Appeals court denied ~~2017~~ July 18, 2017 Docket 337087. Michigan supreme court denied February 4, 2019 SC:156403. Michigan Federal court denied habeas corpus 5-2-2022. Docket 2:16-cv-00126-GTQ-my. Denied reconsideration motions 1-5-22, 5-2-22, 12-22-22.

The Sixth circuit United States court of Appeals denied Mr. Simmons application for certificate of appealability 12-13-22, also motion under 59(c), 60(b) with suggestions of rehearing en-banc as untimely on 1-11-23 case: 22-1579

REASONS FOR GRANTING THE PETITION

The Sixth circuit court of appeals has entered decisions in conflict with the decision of another U.S.C of Appeals on the same important matter; with state court has decided an important federal questions of federal laws that has not been, but should be, settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court, or state court and U.S court of Appeal has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power. Administrative orders of the Supreme court and local court rules, superintending control over courts under Const 1963, art 6, 4. All records as defined in MCR 8.119(F) and are keep by the court MCR 8.119(H). Under 8.113 request for investigation of courts as this matter be refered to the supreme court for possible exercise of the supreme court's power of superintending control over the judiciary. Const 1908, art VII, 4 Huff, 352 mich. 402, 91 N.W.2d 613, 1958 mich. LEXIS 457 (1958). MCR 2.119 governs the proceedings on objections and motions CR 8.11b The supreme court has inherent as well as constitutional rule making power re discharge of it's general superintending control over all interior courts. Tomlinson mlinson, 338 mich. 274, 61 N.W.2d 102, 1953 Mich. LEXIS 320 (Mich. 1953). Legislature ot dictate or control the procedures of the circuit court; authority of such nature erved by the constitution to the Supreme court. Darr v. Buckley, 355 mich. 94 N.W.2d 837, 1959 mich. LEXIS 457 (Mich. 1959). under Rule 13 review on of certiorari 90 Days after entry of the order 1-11-23. Rule 14, 10 Jurisdiction r Art, III of the constitution of the United States. see also 28 U.S.C. § 1251 and U.S. const., Amdt. 11 seeking writ authorized by 28 U.S.C § 1651(2), § 2241 or 2254(a). Judges 5th circuit Margaret M Van Houten, state Appeals Deborah A Servitto, Kathleen Jansen, Henry William Saad, Joel P. Hoekstra, Kurtis T. Wilder, Karen M. Fort Hood. U.S.D.C of MI Gordon J. Quist, Sixth circuit Boggs, En Banc coordinator Beverly L. Harris, John S. Pallas, Scott Robert Shimbis. did not uphold MCR 1.105 to avoid the consequences of error that does not

affect substantial rights of the parties. The Bar's Representative Assembly the rules require mandatory discovery. MCR 2.309(A)(2) is intended to draw guidance from federal courts Fed. R. Civ. P. 30 (a)(1), MCR 2.301(B)(4). *Troutman v. Ollis* 134 Mich. App. 332, 351 N.W.2d 301, 1984 Mich. App. LEXIS 2643 (Mich. Ct. App. 1984). Court rules must be read in light of applicable statutes. *Masonite Corp. v. Martin*, 314 Mich. 411, 22 N.W.2d 757, 1946 Mich. LEXIS 419 (Mich. 1946).

The courts misunderstood and misapplied Mr. Simmons's claims, wrongly identified adjudicated claims as new claims, or as not being adjudicated. Used state laws to override federal laws to refuse to uphold or enforce supreme court statute or federal law. Mr. Simmons have overcome the presumption of factual correctness under 28 U.S.C. § 2254(e)(1) and meet requirements of 28 U.S.C. § 2254(e)(2) identified miscarriages of justice as a fundamental defect in due process with a substantial showing of the denial of constitutional rights 28 U.S.C. § 2253(c)(2), address facts found by Appeal court with records and Detroit police Department crime report (APPENDIX E) challenge that finding, offer clear and convincing evidence to contradict it. Mr. Simmons demonstrated errors in the court's assessment. Jurists of reason would agree. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Simmons argued to the district court (1) Insufficient evidence of intent to kill also a guilty verdict for AWTM or felonious assault logically excludes guilt on the other (2) mandatory guidelines minimum sentencing range was impermissibly increased by judicial fact finding. (3) prosecutor misconduct. (4) ineffective assistance of both trial and appellate counsel. (5) Improper jury instructions. (6) speedy trial violation. (7) arrested without a warrant and denied counsel at arraignment. (8) double jeopardy. That allows Simmons to invoke due process to review as an affirmative defense as the court declines and denies to consider Simmons's COA application regarding the above claims. was improper. As the court wrongly identified argument (b) denied right to appear on Lochridge remand before trial court. see *People v. Howard*, 916 N.W.2d 654, 661 (Mich. Ct. App. 2018) as this was in support of

Claim 2 challenging the minimum guidelines range, not a new claim as well as the others stated below. (c) Prosecution withheld police report and medical records in violation of Brady, subornation of perjury goes with claim 3 prosecutor misconduct. (d) The trial court did not comply with state law regarding the administration of oath to jurors and (e) the trial court violated rights by giving jury instructions regarding aiding and abetting for all charges goes with claim 1 and 5, Claim 1 insufficient evidence of intent to kill, Claim 5 improper jury instructions. And mistakenly stated Simmons did not seek COA on these claims. Jurists of reason would agree Simmons presented facts of claims before the district court W.D. Mich. L. Civ R 7.4(a), as the law requires, yet the court do apply two exceptions to the general rule. (1) The proper resolution is beyond doubt, or (2) a plain miscarriage of justice might otherwise result. As Simmons's case meets both standards. Id. (citing *Lepard*, 384 F.3d at 236; *U.S. v. Ninety-Three (93) Firearms*, 330 F.3d 414, 424 (6th Cir. 2003)). If these U.S. Supreme Court laws are not retroactively applied, then a violation of the equal protection clause of the U.S. constitution will result. constitute obstruction of the administration of justice and obstruction of investigation MCL 760.479. Fraud Art 26, art 215 (2) and (3) with a false representation MCLS 570.151, MCL 57.151. Federal statute 11 U.S.C.S 523(a)(4). 18 U.S.C.S 356(d) (1988), Legal wrongs FRCP 12(b), breach of oath MCLS 15.151, MCLS 487.2101.

As to question (1), Jurists of reason would agree that the state did not present sufficient evidence of intent to kill to support the AWIM conviction. According to evidence adjudicated in district court. See (APPENDIX E) the Detroit police crime report: 120713032.1 by officer Roland Brown #3848 identifies, findings of facts never giving to jury, states medical chart #6000000045638 by Dr. Rosh on 7-13-2012 of Wilson Emmanue Gee never being shot twice in the back almost died. The evidence state one time in the hip stable condition. From these facts and Marquis Bell stating he own a .380 hand gun and keeps it on his waist, and was running

with Mr. Gee when they triped over a grabage can, after seen Mr. Gee boxers red on the rightside, a rational jury could reasonably inform that it was a graze, or hit something running, or Mr. Bell shot Mr. Gee when they triped and Simmons did not intend to kill Gee. Jurists of reason would agree that habeas relief was warranted when trial judge told jury the elements can change and at the end of trial gave all charges the same elements as Aider and Abetter, See trial records [Trial 4/11/13, 48-49] showing specific intent to murder was never instructed the requisite language concerning an intent to kill are not harmless. When the court "tie barring" gave them same elements violated the "Blockburger test" US Const Amend. V; const 1963; art 1 § 15. This includes, protection against multiple punishments for same offense. See People v. Smith, 478 mich 292, 299; 733 NW2d 351 (2007). and is sufficient reason for setting it aside.

As to Question (2), As the district courts used "Lockridge" in response to Simmons's improper sentence, Mr. Simmons used the supreme court's standing of "Howard" that "Lockridge" cases have to follow. Jurist of reason would agree that Simmons did seek a COA on this claim and its not the first time the claim is raised or did not forfeited review. The judge did not follow MCL § 769.8 for conviction for first time felony; entering facts in minutes of court, befor or at the time of sentence, did not ascertain by examining Mr. Simmons under oath, or evidence as can be obtained which facts to be pretrinent. fixing a minimum and maximum sentence thats invalid because minimum exceeded one half of maximum in Simmons case is his statute maximum, contrary to Pub Acts 1905, No. 184, since statute has been superseded by this section. "In re forscott (1911), 167 mich 438, 442 [Trial 4/26/13, 10-4] Trial court set minimum length of an indeterminate sentence of 20 years (Pub Act 1903, 136) and violated the maximum sentence as set by Post at 2543-2548 AWIM is entitled to no more than 10 years sentence, and by reason of 6th amendment the bearing upon that entitlement must be found by the jury. The jury was never

giving these facts important to the exercise of the sentencing discretion. Elements requiring submission to jury. Criminal Law § 69 Ip. — 1186 L. Ed. 2d, at 334-335. constitution of the U.S. § 924, P. 657 (Abr. 1833); see also the Federalist No. 83, P. 499 (C. Rossiter ed. 1961) (A. Hamilton) (discussing criminal jury-trial as a protection against "judicial despotism": holding that a judge may not sentence a defendant to more than the jury has authorized properly preserve the jury trial right as a guard against judicial over reaching. Harris v. U.S. (2002) 536 U.S. 545, 122 S. Ct. 2406, 153 L. Ed. 2d 524, 2002 U.S. LEXIS 4652, The supreme court held that judicial fact finding that increases the mandatory minimum sentence for a crime is permissible under the 6th Amend. with the original meaning of the 6th Amend any facts that, by law increase the penalty for a crime is an "element" that must be submitted to the jury and found beyond a reasonable doubt. Was not follow in Mr. Simmons's case, facts that increased Simmons's minimum is an "element" that was not submitted to the jury. The court should order a nunc pro tunc order to correct the minimum of 20 years and maximum of 40 years as provided for by the statute. People v. Mitchell, 175 Mich. App. 83, 437 N.W. 2d 304, 1989 Mich. App. LEXIS 84 (Mich. Ct. App); As Simmons's sentence is nullity.

In re Pardee, 327 Mich 13 (1950); People v. Robert A Smith, 35 Mich App 349 (1971). Judge failed to address the extent of the 40 years upward departure sentence that were imposed and explain why such a departure was warranted. People v. Taylor, — Mich. — (#164596, 10-05-22); MAACS-Robert S. Tomah. This court should vacate the sentence of the Wayne county 3th circuit court, and remand for resentencing. [4/26/13, 10-4] The court errored in assigning 25 points for offense variable OV 1 there was no jury finding on no OV, or any evidences to prove or show a victim was shot on record. OV 2 errored in assigning 5 points mcl 777.32 Just like OV 1 mcl 777.31 there was no evidence that was giving to jury to support these points. OV 3 mcl 777.33, there was no evidence giving to the jury of anyone needing or receiving required medical

treatment on record MCL 777.33(1)(d) therefore no evidence or proof that Bodily injury occurred. So ov 3 should have been at 0. MCL 777.33(1)(f) (formerly mcl 777.33(1)(e)). The court erred in assigning 25 points for ov 13 mcl 777.43 AWIM, and felonious Assault was on Mr. Gee and AWIGBH was on Mr. Bell, as felony firearm is not a crime against a person or property and can not be used in scoring ov 13, See People v. Bonilla-Machado, 489 Mich 412, 415-416, 803 NW2d 217 (2011). mcl 333.7401(2)(a)(i)-(iii) or mcl 333.7403 (2)(a)(i)-(iii). mcl 777.43(1)(e). The PRV's do not satisfy the 10 year gap requirements of mcl 777.50. PRV 6. PRV 7 subsequent or concurrent felony convictions mcl 777.57 Simmons was wrongly giving 20 points of 2 or more subsequent or concurrent felony convictions mcl 777.57(1)(a). As instructions states points under PRV 7 if convicted of multiple felony counts after the sentencing offense was committed mcl 777.57(2)(a). A conviction for felony-firearm may not be counted under PRV 7 777.57(2)(b), mcl 777.57(2)(c), MCL 333.7401, 10 points for PRV 6, 5 points for PRV 5, for Prior Record variable score. The court erred giving Mr. Simmons points for crimes he was never charged for or been over 10 years, as the above PRV's should be at zero. Established good cause and prejudice entitling Simmons to relief from sentence pursuant to MCR 6.508(D) renders the sentence invalid. People v. Hurley, 475 Mich. 858 (2006). As Mr. Simmons meets the "Good cause" requirement of subrule (D)(3)(a) there is a significant proof that he is innocent. Jurists of reason would find the district court's assessment of the challenging guideline range that should have been 51 - 152 not 20 years to 40 years plus 2 years ~~can~~ minimum guideline range constitutional claim debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); People v. Sinclair, (1972)

As to Question (3), Mr. Simmons asserted that prosecutor committed misconducts infected the trial with fraud on the court by arguing statements without presenting evidence that Gee was shot twice in the back, nearly died. See [Trial 4-9-13, 22, 23, 24, 25 [Trial Tr. IV, 24-27] [Trial 4/11/13, 7-17] The court never acknowledge the evidence of the

Detroit police Department crime report: 1207130332.1 (APPENDIX E) that identify medical chart by Dr. Rosh show subornation MCL 750.424 of perjury as for indictment of perjury under 750.426 and 750.427 and medical documents and everything else shall be produced, deemed necessary to be used. The infringement caused actual injury to the assertion of a legal claim and fair trial 1st, 4th, 6th, 8th, 9th, 14th Amendments, evidence that jurists of reason would agree would have a direct effect on the outcome of trial. "Lead directly to admissible evidence" see *Wogenstahl v. Mitchell*, 668 F.3d 307, 375 n.3 (6th cir. 2012); *Sawyer v. Hofbauer*, 299 F.3d 605, 614 (6th cir. 2002); *Ellsworth v. Warden*, 333 F.3d 1, 5 (1st cir. 2003); 6 Wayne R. LaFare et al., *Criminal procedure* § 24.3(b) (3d ed. 2007). "most courts view admissibility as a critical end-product, not the duty information appears likely to lead the defense to discovery of admissible evidence." Brian D. Ginsberg, *always be disclosing: Prosecutor told Mr. Simmons he is not entitled to discovery quit asking*. [Trial 4/9/13, 9] The prosecutor constitutional duty to divulge inadmissible evidence, 110 *West Virginia Law Review* 611, 626-634 (2008); (reviewing Brady and post-Brady supreme court cases and concluding that "the court's opinions in it's Brady line of cases contemplate that constitutional criminal discovery encompasses inadmissible evidences. Jurists of reason would agree that prosecutor's improper and fraud comments that Glee was shot twice in the back and almost died repeatedly all trial to jury was to infect the trial with unfairness as to make the resulting conviction a denial of due process. *Wogenstahl v. Mitchell*, 668 F.3d 307, 327-28 (6th cir. 2012). conduct in Simmons's case was so flagrant as to result in fundamental unfairness as to warrant reversal. Prosecutor may not make statements for the sole purpose of inflaming the jury's passions against Mr. Simmons, were not harmless errors, where the first meddled with the constitutional right to "Prosecution making statements on medical records" but refusing to turn them over. Triggers plain error standard of review. See *People v. Allen*, 299 mich App 205, 210; 829 NW2d 319 (2013). Dr. Rosh not testifying and the second effectively hinted that the prosecutor knew something that the jury did not know in this case. *State v. Hirata* P.3d (10-31-22, WL 16549517). As the evidence presented (attached E)

Detroit police Department crime report 1207130332.1 Date 7-13-2012 show that prosecutor knew of fraud on the court, deliberate falsehood, reckless disregard for the truth violating constitutional rights by Gee also. *Jell v. Mitchell*, 538 F.3d 478, 501 (6th cir. 2008). State deprived Simmons of his constitutional right to confront the witness, because the state did not call Dr. Rosh to testify. The 6th Amendment provides in all criminal prosecutions, the accused shall enjoy the right to be confronted. The infringement caused actual injury to the assertion of a legal claim 1st, 4th Amendments. *People v. Welsh*, Mich. — (#162777, 10-28-22). SADO's Douglas w. Baker. INSTRUCTION. Therefore the convictions must be vacated because it was error to allow a witness to testify about "CONDITIONS" OF MEDICAL CARE with an unavailable witness. The Sixth Amend confrontation clause prohibits the admission of a testimonial statement made by an unavailable witness unless the witness was previously made available for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Limits the admission of hearsay evidence "Gee saying he was shot twice in the back and prosecution saying he almost died" That Simmons proved was a lie and fraud on the court. *State v. Kearns*, 9 Ohio St.3d 228, 229, 9 Ohio B.569, 460 N.E.2d 245 (1984); Review evidence with this motion. *People v. Tyler Allen Sale*, msc No.164339 (COA No.355540), MOAA granted November 4, 2022 Extrinsic evidence under MRE 608(b).

(1) the trial court erred by excluding medical records and Police crime report, extrinsic evidence related to Gee's character for truthfulness or untruthfulness see MRE 608(b); and (2) if so, whether the exclusion of the extrinsic evidence was more likely than not outcome determinative. see *People v. Douglas*, 496 Mich 557 (2014); *People v. Armstrong*, 490 Mich 281 (2011). The only question on habeas review is whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process. "Id. at. 72, *Cupp v. Naughten*, 414 U.S. 141, 147, 94 S.Ct. 396, 38 L.Ed. 2d 368 (1973). Jurors would find the district court's assessment of the constitutional claim directly supported by the evidence in the Police crime report (Attachment E) malicious prosecution, clearly established 4th Amend right to be free from malicious prosecution. *King v. Harwood*,

852 F.3d 568, 582-83 (6th cir 2017) § 1983 Sykes v. Anderson, 625 F.3d 294, 308 (6th cir. 2010) and court's trial records wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

As to Question (4), Mr. Simmons asserted in 2254 petition, that counsel rendered ineffective assistance by failing to object to prosecutor's misconduct, challenge three jurors for bias, failure to object to inconsistent verdicts, raise double jeopardy argument, challenge deficiencies in jurors oath, and the court giving all charges the same elements, judicial fact-finding at sentencing, get full discovery to prove Simmons's innocence, investigate and obtain medical records and Detroit police Department crime report to determine Glee was not actually shot twice in the back, present requested defense that someone else shot Glee or Glee was never shot, 180 Day violation. Jurists of reason would agree that Simmons has made substantial showing that counsel rendered ineffective assistance on the merits on adjudicated claims, according to evidence of the record. See [4/8/13] failing to request to instruct jury on defense of ignorance or mistake. State v. Locquiao, 58 P.3d 1242 (Hawaii 2002); Johnson v. State, 831 So.2d 1111 (Miss. Ct. App. 2002). Model penal code 2.04. [4/8/13, 168-169], [4/9/13, 8-14] [4/9/13, 14-130] [2/6/13, 4-18] [4/9/13, 5-12] [4/9/13, 9] Mr. Simmons provided evidentiary facts support in district court that Glee was not shot at all in the back, demonstrate substantial showing of denial of constitutional rights and show evidence used at trial to convict Simmons constitute fraud on the court. See Kiefer v. Kiefer, Fed. R. Crim. P. 1b(2), Rule 1b(2)(1)(E) of federal rules to preparing a defense by Fed. R. C. P. 1b(2)(1)(E); 6th cir. Bell v. Bell (2006). fully violates brady, calculated misconduct to mislead jury, denial of due process. Denny v. Dechristoforo; Also Berger v. U.S., 295 U.S. 78, 88 (1935). The 14th Amend can not tolerate a state criminal conviction obtained by the use of false evidence as was used in Simmons's case. See Miller v. Pate, 386 U.S. 1, 7 (1967); State v. Keenan (1993). The court declined to consider Simmons's COA claim with supporting arguments above, as claim was argued to district court that allows Simmons to invoke review

as an affirmative defense at the court's declines to consider claim, was improper. Yet the court do apply two exceptions stated above. Mr. Simmons satisfies this standard, has demonstrated, jurists of reason disagree with the district court under 28 USCS 2254(d). Claims adjudicated on the merits in state court proceedings demonstrate there was no reasonable basis for the court to decline review. As the claim is found sufficient, been adjudicated. When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed adjudicated. Therefor intitle Simmons to review of claim. Also Simmons asserted that appellate counsel rendered ineffective assistance by failing to raise the issues stated above. Jurists of reason would agree that appellate counsel had a duty to raise merit claims. See Strickland v. Washington (1984); Baum v. Baum, 20 Mich. App. 68, 173 N.W.2d 744 (1969)

As to Question (5), Mr. Simmons asserted right to a speedy trial by asking for bail activated it, was not brought to trial within 180 Days. Jurists of reason would agree that Simmons was arrested in July 2012, trial did not begin until April 2013, the 10 months was prejudice, by being incarcerated, anxiety, defense was impaired by the no longer availability of witness, with the inability to now locate eye witness again. Lawyer refuse to investigate into defense and Glee's medical treatment or lack there was. Officer Brown. R #3848 did not testify. Substantial showing of Sixth Amend violation occurred.

As to Question (7), Simmons asserted that his three assault convictions were in violation of the prohibition against double jeopardy. Jurists of reason would agree that the violation occurred when the court "TIE BARRING" [Trial 4/11/13, 48-49] all that charges and gave them the same elements violated the "BLOCKBURGER TEST" U.S Const Am V; Const 1963, art 1 § 15. This includes, protection against multiple punishments. See People v. Smith, 478 Mich 292, 299; 733 NW2d 351 (2007). See record stated above state "11) that the alleged crime was actually committed by the defendant

or someone else. It does not matter whether anyone else has been convicted of the crime. (2) that before or during the crime, the defendant did something to assist in the commission of the crime. (3) The defendant must have intended the commission of the crime alleged, or must have known that the other person intended its commission at the time of giving the assistance." Jurists of reason would agree that once the court gave all charges the same elements, is unreasonable application of clearly established federal law. Entitle Simmons to habeas relief on double jeopardy claim. Violated Mr. Simmons's fundamental right of a fair jury trial constitutional violations require automatic reversal. See *People v. Duncan*, 462 Mich. 47 (2000). Violated Simmons's 6th, 7th, 8th, 9th, 14th Amendments rights.

As to Question (8), Mr. Simmons assert jury instruction lack of jury findings for offense variable was sought in COA. See issue (D) Pg 7 as the court mistakenly reviewed this claim as new under (d) the court did not comply with state law regarding the administration of oath to jurors; [Trial 4/8/13, 168-169] [Trial 4/9/13, 14-15] Also the trial court erred by giving jury instructions on [Trial 4/9/13, 20-13] Judge stated "These instructions may change at the end of trial" The new instructions [Trial 4/11/13, 44-49] as stated above. Lowered the requirement to convict me. Gave them all the same elements violate right to a fair trial. The abuse of discretion factors set forth in statutes, court rules, and case laws the resulting legal errors is a per se abuse of discretion. See *People v. Lukity*, 460 Mich 484, 488, 596 NW2d 607 (1999). When court "TIE BARRING" all charges, violated "BLOCKBURGER TEST" U.S. Const. Am V; Const 1963 art 1 § 15, includes protection against multiple punishment for the same offense. *People v. Smith*, 478 Mich 292, 299; 733 NW2d 351 (2007). Mr. Simmons showed this issue is one of law and the inconsistent with substantial justice MCR 2.613 (A), denial of constitutional rights 28 USC 2253 (e)(2). Establish claim was sought on COA and (d)(e) was adjudicated as it was not forfeited for review. Jurists of reason would agree that the court wrongly identified previously

adjudicated claim as new claim, was a miscarriage of justice mcl 769.26, FRCP 37(2), 34. Deprived fair consideration, due consideration, legally sufficient consideration, due process of law and equal protection of law within its jurisdiction. Violated Simmons's 1st, 4th, 6th, 8th, 9th, 14th Amendments rights by declining to review adjudicated claim. under rule 4 2254 the only question on habeas review is whether the ruling instructions by itself so infected the entire trial that the resulting conviction violates due process. Jurists of reason would say yes." *Id.* at 72, *Cupp v. Naughten*, 414 U.S. 141, 147, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973).

As to Question (11), Mr. Simmons contends the U.S. Appeals court of the Sixth circuit did not follow FRAP 35(c), 40(c) since decision was mailed to Simmons, did not give him additional three days coming and going under rule 26(c) for motion under 59(c), 60(b) with suggestion of rehearing en-banc, and the court did not uphold court holidays under mcl 8.112(B) before ruling motion untimely. As order was filed on 12-13-2022, but Simmons did not get notice until 12-19-2022 by SLF MDOC's prison staff at night and the 24 was Christmas eve, 25 X-mas, 31 New year's eve and 1st New years day and under the mailbox rule it was filed on 1-4-23 therefore the 14 days did not start until Mr. Simmons received notice by the court and U.S. holidays are not counted. Also errors by court's denying reconsideration (motion was filed in 12 days of receiving notice) see W.D. Mich. L. Civ. P. 7.4(2) argument that district court abused its discretion by "Allowing deliberate falsehood or reckless disregard for the truth violating constitutional rights. Jurists of reason would agree that arguments are within scope because motions was filed May 4, 2021 (ECF No. 31), January 2022 (ECF No. 37), May 2, 2022 - 6-30-22 (ECF No. 52). Jurists of reason would agree that relief was warranted because Simmons argued claims to district court that allows him to invoke due process to review, making the court decline to consider COA application regarding adjudicated claim was improper, denial of constitutional right 28 USC 2253(c)(2), see *U.S. v. Ninety-Three (93) Firearms*, 330 F.3d 414, 424 (6th Cir 2003)

CONCLUSION

under AEDPA Simmons has establish that "the state court arrive[d] at a conclusion to that reached by [the supreme] court on a question of law and decide[d] a case differently than [the supreme] court has on a set of materially indistinguishable facts. *Metrish v. Lancaster*, 569 U.S. 351, 357 n.2 (2013) (Clause of § 2254(d)(1)). Simmons identified the ~~legal principle from the supreme~~ Court's decisions, [the state court] unreasonably applied that principle to the facts of Simmons's case. *Hill v. Cortin*, 792 F.3d 670, 676 (6th cir. 2015) (en banc) (alteration omitted). That was based on unreasonable determination of the facts in light of the record before the state court 2254(d)(2). The carrier standard, constitutional violation resulted in the conviction of Mr. Simmons, who is actually innocent." 477 U.S. at 496. No reasonable jurors would have convicted Simmons in light of the new evidence of the Police crime report. Shown by clear and convincing evidence that the state court's factual determination was wrong. *Buck v. Davis*, 580 U.S. 100, 137 S.Ct. 759, 777, 197 L.Ed.2d 1 (2017). 28 USC § 2253(c)(2). There is reasonable probability that conviction and sentence was in part because of fraud on the court. A disturbing departure from the basic premise that our criminal law punishes people for what they do, not who they are. That it concerned fraud amplifies the problem. Relying on fraud to impose a criminal sanction "poisons public confidence" in the judicial process, *Davis v. Ayala*, 576 U.S. 250, 285, 135 S.Ct. 2187, 192 L.Ed.2d 323, a concern that supports Rule 60(b)(6) relief. The extraordinary nature of this case is confirmed by the remarkable steps the state itself took, attempts to justify its decision. Therefore petition for a writ of certiorari should be **GRANTED**. 28 USC 1651(e), 14th Amendment.

Respectfully submitted, 2-21-23

Denzel Simmons

