No. 22-7214

ORIGINAL

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MIGUEL ANGEL BACILIO — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MIGUEL ANGEL BACILIO
(Your Name)

1525 FM 766
(Address)

CUERO, TEXAS 77954
(City, State, Zip Code)

(361) 275-2075 EXT. 1233
(Phone Number)

QUESTION(S) PRESENTED

QUESTION NUMBER ONE

In **JOHNSON v. ZERBST**, 304 US 458, at HN9, this Honorable Court stated: "A court's jurisdiction at the beginning of trial may be lost in the course of the proceedings for failure to complete the court—as **U.S. Const. Amend. VI** requires—if this requirement is not complied with, the court no longer has jurisdiction to proceed." Id.

In a much older case, the same Honorable Court held: "A court having jurisdiction over the subject-matter, but is bound to adopt certain rules in the proceedings, from which it deviates, whereby the proceedings are rendered coram non-judice." **DYNES v. HOOVER, 61 US 65, at Pg. 2.**

In light of these precedents, Petitioner's question is:

(a) Whether the trial court was legally convened and constituted with the provisions of the constitution and statute to remain a "Court of Competent Jurisdiction" after Petitioner was abandoned by his retained trial counsel at the most critical stage of his jury trial? And,

(b) Whether a plea agreement for probation rendered by such court, while Petitioner was without the assistance of his retained trial counsel, is a valid judgment of conviction?

QUESTION NUMBER TWO

In **UNITED STATES v. CRONIC**, 466 US 648, at HN9, Mr. Justice Marshall recognized that, "A trial is unfair if the accused is denied counsel at a critical stage of his trial," and stated that, "It would be Constitutional Error of the first magnitude and no amount of prejudice would cure it."

In addition, the Honorable Scalia emphasized that, "Where the right at stake is the right to counsel of choice, not the right to a fair trial and that right is violated because deprivation of counsel was erroneous; no additional showing of prejudice is required to make a complete constitutional violation." **UNITED STATES v. GONZALEZ-LOPEZ**, 548 US 140, at HN2.

Based on the above principles, the question presented is:

(a) Whether the trial court violated Petitioner's Constitutional Sixth Amendment right when the trial judge permitted the departure of, [or] removed Petitioner's retained trial counsel-of-choice at midtrial? And,

(b) Whether the trial court violated Petitioner's Constitutional Sixth and Fourteenth Amendment rights to a Fair Trial and Due Process of Law by proceeding with the criminal prosecution after Petitioner was abandoned by his retained trial counsel, and was without the assistance of authorized counsel?

QUESTION NUMBER THREE

In a concurring opinion Mr. Justice Black, stated: "In my view, it is a wholly fallacious idea that a judge's sense of what is fundamentally "Fair" or "Unfair" should ever serve as a substitute for the explicit, written provisions of our **BILL OF RIGHTS.** One of these provisions is the Fifth Amendment's prohibition against putting a man twice in jeopardy. On several occassions I have stated my view that the Double Jeopardy Clause bars a State or the Federal Government or the two together from subjecting a defendant to the hazards of trial and possible conviction more than once for the same offense." **ASHE v. SWENSON**, 397 US 436, at Pg. 447.

To that extent, the question presented is:

Whether the trial court violated Petitioner's 5th, 6th, and 14th Amendment Constitutional rights to have his trial completed by the particular jury first selected, when the trial judge without reviewing an alternative course of action, without manifest necessity or even declaring a mistrial, dismissed the deadlocked jury after jeopardy had attached (expending less than an hour deliberating) and put Petitioner twice to jeopardy by imposing and sentencing him under the same indictment to an [unauthorized] probation, while Petitioner was without the assistance of his retained trial counsel?

QUESTION NUMBER FOUR

When a judge has served as an adjudicator for the State in the very same case the court is now asking to advocate, a very serious question arises.

This Honorable Court has repeatedly held that, "An unconstitutional potential for bias exists when the same person serves as both, accuser and adjudicator in a case. This objective risk of bias is reflected on the Due Process Maxim that 'no man can be judge in his own case' and 'no man is permitted to try cases where he has an interest in the outcome." **WILLIAMS v. PENSILVANIA**, 579 US 1, at HN3.

In reference to the above, the question presented is:

(a) Whether the Habeas Court violated Petitioner's Due Process and Equal Protection under the Law Constitutional Rights, when the Habeas Court disregarded the Actual Bias and Conflict of Interest, (reflected on the face of the record) and allowed current District Attorney Sharen Wilson, (former trial judge) to make and filed Findings of Fact and Conclusions of Law in Habeas Proceedings, and represent the State as the Chief Defense Attorney; in the very same case where she also presided as the trial judge?

(b) Whether the Findings of Fact and Conclusions of Law made, drafted, and filed by Sharen Wilson's office are void from inception?

LIST OF PARTIES

PETITIONER:

Miguel Angel Bacilio
TDCJ-ID No. 01912589
Petitioner, Pro - Se
C.N. Stevenson Unit
1525 FM 766
Cuero, Tx. 77954-6300

RESPONDENT:

Court of Criminal Appeals of Texas
P.O. Box 12308, Capital Station
Austin, Texas 78711

ATTORNEY FOR THE STATE :

Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RELATED CASES

WR-86,254-03

Miguel Angel Bacilio

v.

The State of Texas

TABLE OF CONTENTS

REASONS FOR GRANTING THE WRIT

TABLE OF AUTHORITIES CITED

STATE CASES

UNITED STATES CONSTITUTION

FEDERAL CODES, RULES, AND STATUTES

TEXAS CONSTITUTION

TEXAS CODES, RULES, AND STATUTES

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

The opinion of the Court of Criminal Appeals of Texas to review the merits appears at Appendix (H) to the petition and is unpublished.

JURISDICTION

The highest State Criminal Court of Texas decided my case on November 2, 2022. A copy of that decision appears at Appendix (H).

A timely petition for rehearing was thereafter denied on January 6, 2023. A copy of the order denying rehearing appears at Appendix (I).

The Jurisdiction of this court is invoked under 28 U.S.C.S. § 1257(a).

LIBERAL CONSTRUCTION RULE

Pro-Se Petitioner would call the Court's attention to the fact that he is not an attorney, nor a college graduate, and is untrained in the art of law. Therefore, Petitioner humbly invokes HAINES v. KERNER, 404 US 519(1972):

"Pro-Se Pleadings Held To Less Stringent Standards Than Formal Pleadings Draft[ed] By Lawyers."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT

"Congress shall make no law respecting..., or prohibiting..., or abridging..., to petition the Government for redress of grievances."

FIFTH AMENDMENT

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury...; nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life, liberty or property, without due process of law..."

SIXTH AMENDMENT

"In all criminal prosecutions, the accused shall enjoy the right to speedy trial, by an impartial jury..., and to have the assistance of counsel for his defense."

FOURTEENTH AMENDMENT

Section 1,—"... No State shall make or enforce any law which shall abridge the privileges or immunities of the 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 protections of the laws."

28 USCS § 1257(a)—"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari... where any title, right, privilege, or immunity is... claimed under the Constitution, treaties, statutes, or authority exercised under, the United States."

U.S. CONST., ART. III, § 1

"The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time may ordain and establish."

U.S. CONST., ART. VI

"... This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the land; and all judges in every State, shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

TEX. CONST., ART. 1, § 19

"No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disinfranchised except by the due course of the law of the land."

TEX. CONST., ART. 5, § 1

"The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Court of Appeals, in District Courts, in Courts of the Peace, and in such Courts as may be provided by law."

TEX. CONST., ART. 1, § 10

"In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury..., and shall have the right of being heard by counsel."

STATEMENT OF THE CASE

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. ——

° On August, 1996 Petitioner was charged with the criminal offense No. 0630576D, Aggravated Sexual Assault of a Child.

° On December 4, 1996 Attorney Randy S. Myers was [retained] as Attorney of record in Cause No. 0630576D. (See Exhibit (A), Criminal Docket Sheet at Pg. 1).

° On December 12, 1997, trial was held for Cause No. 0630576D. Also, On December 12, 1997 Sharen Wilson (the presiding judge over Petitioner's jury trial permitted the departure of, [or] removed Petitioner's retained trial counsel at midtrial. ("Once counsel has been retained, the court may not unreasonable interfere with the accused's choice of counsel" [HARLING, 387 A.2d 1101, at HN1]). And permitted the court interpreter (who is not a licensed attorney: (1) to act as Petitioner's retained trial counsel, and (2) to give legal advise, coercing Petitioner into an [unauthorized] plea agreement at the jury deliberation stage resulting in an [unauthorized] probation and [unauthorized] sentence.

Subsequently, (not in open court) the trial judge designated an [unauthorized] attorney (who has never given any legal advise to Petitioner) to manufacture and sign fraudulent plea papers. (it is noteworthy to mention that, at the jury deliberation stage there were yet any written plea papers, nor a drafted plea agreement to go over, or to be signed).

The "Fundamental Error" committed by the trial judge is reflected in JOHNSON v. ZERBST, 304 US 458, at HN8—"A court's jurisdic-

tion at the beginning of trial may be lost in the course of the proceedings for failure to complete the court as U.S. Const. Amend. VI requires." Hence, the record of this case reflects that when the verdict against Petitioner was received and the judgment was rendered against him, the court had lost such jurisdiction as it previously possessed; rendering the proceeding a complete nullity. See IN RE NIELSEN, 131 US 176, at 191.

B. ——

Additionally, while Petitioner was awaiting trial in the State of Utah for an unrelated offense, the State of Texas issued a Capias Warrant and Detainer against him. The Capias Warrant and Detainer were issued one hundred and eighteen (118) days before the [unauthorized] probation was to expire. The State of Utah held Petitioner illegally for two (2) years under the guise of the Texas Detainer. Petitioner notified the Texas Court and the Probation Department of the unconstitutional practices of Utah officials. (See Exhibit (A), Docket Sheet, at Pg. 2, (Pro-Se-Letter filed on record on April 28, 2010; copy to probation)). Texas officials ignored Petitioner's letter and outcry for help subjecting him to two (2) years of illegal imprisonment by Utah officials.

TEX, CODE CRIM. PROC., ART. 42.12 § 5(c) provides: "On expiration of a community supervision period under subsection (a) of this section; if the judge has not proceeded to adjudicate guilt, the judge [Shall Dismiss] the proceedings and discharge him."

Similarly, in order for a trial court's jurisdiction to be extended two acts must occur prior to the expiration of the probationer's community supervisions; (1) the State must file a motion to revoke, and (2) a capias must be issued for the probationer's

arrest. TEX. CODE CRIM. PROC. ANN., ART. 42.12 § 21(e). Once the jurisdictional requirements are met, the State must use Due Diligence in executing the capias. ART. 42.12 § 24.

In a unanimous decision, in RIGO MANUFACTURING CO. v. THOMAS, 458 SW.2d 180, at HN2(1970), the Texas Supreme Court held: "The mere filing of a motion will not interrupt or told the running of a statute... To interrupt the statute the use of diligence is required..." (Texas knew the exact whereabouts of Petitioner; it cannot be argued that Petitioner was abscounding at this point, when in fact he was being held illegally by the State of Utah under Texas orders).

It is absolutely clear, that the trial court was divested of "All Jurisdiction" [a second time] for its failure to use Due Diligence in executing the Capias Warrant; and for its failure to adjudicate guilt before the probationary period had expired as required by the Texas Statutes.

C. ——

The TEX. CODE CRIM. PROC., ART. 51.13 § 21 states: "The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. Each warrant issued by the governor [Shall Expire] and be of no force and effect when not executed within one year from the day thereof."

The Utah Board of Pardons and Parole in an ultra vires action stated: "The Board granted you credit for time served from 12/4/2006 until 8/16/2007; however from 8/17/2007 until 8/7/2009 the credit will be applied to your Texas sentence." (See Exhibit (J)).

In **BACILIO v. GARNER, 2018 U.S. DIST. LEXIS 171036**, at 2,-,-,5 the Honorable Justice Clark Waddoups stated in an order issued on

2018. (See Exhibit K)

(C) Provide legal and factual support for the authority of the Board of Pardons and Parole to continue to hold Palintiff in custody after he had served the five years maximum sentence and had been in the primary jurisdiction of the State of Utah upon his arrest by the State of Utah.

(D) Provide legal and factual support for the Board of Pardons and Parole having jurisdiction over Plaintiff once he had served the five year maximum sentence starting with his being in the primary jurisdiction and custody of the State of Utah upon his arrest.

(E) Provide legal and factual support for the Board of Pardons and Parole's authority and jurisdiction to assign credit for time served to the State of Texas when Plaintiff was being held in the primary jurisdiction of the State of Utah.

(F) Provide legal and factual support for assigning time being served within the primary jurisdiction of the State of Utah against a detainer from Texas and address the importance of the fact the detainer had or would expire after 90 days.

(G) Provide legal and factual support for the Board of Pardons and Parole's treatment of an order of probation from Texas court that appears have been completed or expired without a stay or further hearing by the Texas Court.

The order of the Honorable Waddoups was completely ignored by the defendants and the civil action was arbitrarily dismissed by the 10th Cir. Court of Appeals in violation of Constitutional Law.

Furthermore, from August 2007 through August 2009 there was no Texas sentence and the [unauthorized] probation ceased to operate on December 11, 2007. Therefore, it is clear that the trial court failed to execute the warrant of arrest within the one year stipulated by Article 51.13 § 21, thereby divesting the trial court of

for the [third time] of "All Jurisdiction" over Petitioner's Case.

It is undisputably that, the record of this case by speaking for itself reflects that the convicting court was divested not only once, but three times of "All Jurisdiction" over Petitioner's case: (1) when Petitioner's retained trial counsel abandoned his client's cause at the most critical stage of Petitioner's jury trial; (2) when the trial court failed to adjudicate guilt before the probationary period expired as required by Article 42.12 § 5 (c). (Petitioner's [unauthorized] probationary term expired on December 11, 2007); (3) when Petitioner was detained for two years in the State of Utah pursuant to a Texas Detainer, and the State of Texas failed to execute the arrest warrant within the one year as stipulated by Article 51.13 § 21. Which renders Petitioner's judgment of conviction "VOID" in any of the above capacities.

D. ——

On February 18, 2014, almost seven years after the [unauthorized] probation had expired, there was no probation to revoke. Yet, judge Elizabeth Beach (in a clear abuse of discretion) revoked a [Non-Existent] probation and sentenced Petitioner to thirty (30) years imprisonment for a crime that Petitioner did not commit and where a fair and full-blown jury trial could not / did not find him guilty.

By their actions and inactions, it is evident that Texas and Utah tacitly conspired with each other to collect Federal Funds concerning illegally imprisoned inmates sustenance. "All illegally and in direct contravention of the False Claims Act, **Title 18 USCS §§ 286, 287—Conspiracy to Defraud the Government with respect to claims.**

E. ——

In both criminal and civil cases, "A... disqualification arising from constitutional or statutory provision [affects jurisdiction] and renders the proceeding a]nullity]... There can be no waiver of constitutional or statutory disqualification provisions." IN RE K.E.M., 89 SW.3d 814 at HN2(TEX. APP. 2002).

In addition, the U.S. Supreme Court has consistently held that, "Conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden." WITHROW v. LARKIN, 421 US 35, at HN2.

In conformity with the above precedents, it is obvious that (former judge), current District Attorney Sharen Wilson is constitutionally and statutorily disqualified to be sitting as an officer of the court (i.e. Chief Defense Attorney for the State) in this case. Hence, Sharen Wilson had no legal authority to make and filed Findings of Fact and Conclusions of Law in the very same case where she presided as the trial judge.

It logically follows that, if Sharen Wilson had no legal authority to make and filed Findings of Fact and Conclusions of Law in this Habeas Case; the Habeas Court was without jurisdiction to adopt the Findings of Fact and Conclusions of Law from constitutionally and statutorily disqualified Sharen Wilson. (See Exhibit (N)). Which renders the Habeas proceeding a complete nullity.

F. ——

Petitioner's Article III claim was fairly and squarely presented to the highest Texas Criminal Court, and it can be reasonable

inferred that the court passed on the merits of the Article III claim sub-silentio; where the jurisdictional issue was completely ignored by the State Court of last resort.

In L.A. TUCKER TRUCK LINES INC., 344 US 33, at HN4, this court held: "Even to our own judicial power or jurisdiction this court has followed the lead of Chief Justice Marshall, who held that this court is not bound by prior exercise of jurisdiction in a case where it was not questioned and it was passed on sub-silentio."

Accordingly, because the jurisdictional claim was passed on sub-silentio by the highest Texas Criminal Court, the jurisdictional claim is properly before this Honorable Court for its final adjudication.

Petitioner reiterates that, "If the case was tried where jurisdiction was lacking, the jurisdiction of this court is limited to correcting the error of the trial court." DIEFFENBACH v. ATTORNEY GEN. OF VERMONT, 604 F.2d 187, at HN8(U.S. APP. 1979).

Petitioner emphasizes that, the facts presented in his "Factual Background and Procedural History" with its record evidence, cannot be ignored by this court because, not only "Shocks the Conscience," but is a clear "Miscarriage of Justice."

REASONS FOR GRANTING THE PETITION

1. ——

THE STATE HIGHEST COURT, FAILED OR REFUSED TO ADJUDICATE AN ARTICLE III QUESTION BEFORE PROCEEDING TO THE MERITS QUESTION AS REQUIRED BY FEDERAL LAW.

I.

Petitioner's jurisdictional claim before this court involves a constitutional principle resting upon the foundation conferred by U.S. Const. Amend. VI to the right of assistance of counsel in all criminal proceedings, and the right to counsel of choice.

Petitioner has presented his jurisdictional claim to the highest Criminal Court in Texas for its adjudication. State courts have failed or refused to adjudicate, or even to address Petitioner's jurisdictional claim. This Honorable Court has Consistently held that, "this court is not bound by prior exercise of jurisdiction in a case where jurisdiction has not been questioned and it has been passed on sub-silentio." UNITED STATES v. L.A. TUCKER TRUCK LINES INC., 344 US 33, 73 S.CT. 67(1952)-(HN4).

II.

Additionally, Petitioner would like to bring to the attention of the Court that he is not challenging the "Original Jurisdiction" of the trial court at the beginning of trial. Instead, Petitioner contends that, "Since U.S. Const. Amend. VI constitutionally entitles one charged with crime to the assistance of counsel, compliance with this Constitutional Mandate is an essen-

tial prerequisite to a court's authority to deprive an accused of life or liberty." JOHNSON v. ZERBST, 304 US 458, 58 S.CT. 1019, 82 L.Ed 1461(1938)-(HN4).

Furthermore, "The Statutory and (especially) Constitutional elements of jurisdiction are an essential ingredient of 'Separation and Equilibration of Powers,' restraining the courts from acting at certain times and even restraining them from acting permanently regarding certain subjects." STEEL CO. v. CITIZENS FOR BETTER ENV'T, 523 US 83, 188 S.CT. 1003, 140 L.Ed.2d 210 (1998)-(HN16).

In other words, "If the accused, is not represented by counsel and has not competently and intelligently waived his constitutional right— U.S. Const. Amend. VI stands as a jurisdictional bar to a valid conviction and sentence." JOHNSON v. ZERBST, 304 US 458, at HN8.

III.

More than two centuries ago, in CAPRON v. VAN NOORDEN, 6 US 126, 2 CRANCH 126, 2 L.Ed. 225(1804) this Honorable Court held: HN2— "It is the duty of a court to see that it has jurisdiction, for the consent of parties cannot give it."

Almost two centuries later, in STEEL CO. v. CITIZENS FOR A BETTER ENV'T, 523 US 83, at HN[11A], and HN[11B], the court held:

> "On every writ of error or appeal to the united states Supreme Court, the first and fundamental question is that of jurisdiction, first of the Supreme Court and then of the court from which the record comes. The Supreme Court is bound to ask this question and answer

for itself, (1) even when the question is not otherwise suggested, and (2) without respect to the relation of the parties to the question."

The requirement that a federal court's jurisdiction be established as a threshold matter (1) springs from the nature and limits of the judicial power of the United States, and (2) is inflexible and without exception..." STEEL CO., 523 US 83, at HN12.

"When the lower court lacks jurisdiction, the Supreme Court has jurisdiction on appeal, not of the merits, but merely for the purpose of correcting the lower court's error." STEEL CO., 523 US 83, at HN8.

IV.

The reason for the court's "Special Obligation" to inquiry into its own jurisdiction, "and the necessity of its application are stronger and more obvious, when the failure of the jurisdiction of the district court arises, not merely because the record omits the averments necessary to its existence, but because it recites facts which contradict it." MANSFIELD, C. & L.M.R. CO. v. SWAN, 111 US 379, 4 S.Ct. 510, 28 L.Ed 462(1884)-(HN3).

Hence, it follows from the proposition thus far presented, Petitioner's Petition for Writ of Certiorari is squarely resting on the contention that: "When the verdict against him was received and the judgment was rendered against him, the court had lost such jurisdiction as it previously possessed, and the verdict and judgment under which he is being detained is an absolute nullity." IN RE NIELSEN, 131 US 176, 9 S.CT. 672, 33 L.Ed. 118(1889) at Pg. 191.

Whereas, Petitioner alleges that the trial court lost "All Jurisdiction" in the course of the proceedings for failure to complete the court [304 US 458, (as reflected on the face of the record)], this court should take judicial notice that any subsequent judgment resting on a judgment rendered by a court without jurisdiction is limited to correct the lower court's error and set aside the void judgment.

In other words, "It is within the power and it will be the duty of the Supreme Court to order Petitioner's discharge." See EX PARTE BAIN, 121 US 1, 7 S.Ct. 781, 30 L.Ed. 849(1887)-(HN1).

V.

The "Doctrine of Hypotherical Jurisdiction" — under which a federal court, making the assumption that the court has jurisdiction under the federal constitution's article III for deciding the merits of a case, proceeds immediately to the merits question despite jurisdictional objections, at least where, (1) merits question is more readily resolved, and (2) the prevailing party on the merits would be the same as the prevailing party if jurisdiction were denied— carries the courts beyond bounds of authorized judicial action and thus offends fundamental principles of 'Separation of Powers,' as (1) the propositions that the court can reach a merits question when there is no jurisdiction for purposes of Article III opens the door to all sorts of generalized grievances that the constitution leaves for resolution through the political process; (2) hypotherical jurisdiction produces nothing more than an advisory opinion, and (3) the reasons for

allowing merits questions to be resolved before statutory standing questions do not support allowing merits question to be decided before Article III questions. STEEL CO., 523 US 83, at HN9.

Hence, the truistic constraint of the federal judicial power. Then is this: "A court may not decide cases, when it cannot decide cases, and must determine whether it can, before it may." See CROSS-SOUND FERRY SERVICES, INC. v. ICC, 924 F.2d 327(U.S. APP. 1999) at 340.

VI.

In considering the jurisdictional claim before this court, the court must take judicial notice; [first], that the power of Congress over the person or property of a citizen can never be a mere discretionary power under our constitution and form of government; [second], that the rights and privileges of the citizens under it are positive and practical regulations plainly written down and no laws or usages, or reasoning of stateman or jurists upon the powers of the government can take away those rights; and [third], no tribunal acting under the authority of the United States, whether Legislative, Executive, or Judicial has a right to draw such distinction or deny to it the benefit of the provisions and guarantees which have been provided by its constitution for the protection of its citizens. See SCOTT v. SANDFORD, 60 US 393, 15 L.Ed. 691(1857)-(HN12).

VII.

In Sum—, applying jurisdictional jurisprudence to the facts

of Petitioner's jurisdictional claim; where both, the Federal Constitution and Supreme Court precedents are the law of the land, then it is assumed that, "When the trial judge permitted the departure of, [or] removed Petitioner's privately retained trial counsel (at the most critical stage of his jury trial in violation of constitutional, statutory, and Supreme Court Law). The trial judge committed a "Fundamental Error Of The First Magnitude" which divested the trial court of "In Personam Jurisdiction," and subsequently, of "All Jurisdiction" for failure to complete the court as U.S. Const. Amend. VI requires.

In other words, "the trial court was no longer convened, nor constituted with the provisions of the constitution and statute to be a valid court." See ESTATE OF HARSHMAN v. JACKSON HOLE MT. RESORT CORP., 379 F.3d 1161(U.S. APP. 2004)-(HN7).

Accordingly, in light of the preceding Black-Letter precedents, it becomes evident that the trial court in this case did in fact lost "all jurisdiction in the course of the proceedings for failure to complete the court as required by the constitution and statute." Therefore, Petitioner is entitled to relief, because "Without jurisdiction a court cannot proceed at all in any case. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the case." ESTATE OF HARSHMAN, 379.3d 1161, at HN7.

VIII.

2. ——

THE TRIAL COURT WAS WITHOUT LEGAL AUTHORITY TO PROCEED WITH A PLEA BARGAINING OR PLEA HEARING FOR AN UNAUTHORIZED PROBATION WHILE PETITIONER WAS WITHOUT THE ASSISTANCE OF HIS RETAINED TRIAL COUNSEL.

This Honorable Court has made it abundantly clear that, "[A] Defendant is entitled to a lawyer's assistance in choosing whether to plead guilty." WILLIAMS v. KAISER, 323 US 471, 65 S. CT. 363, 89 L.Ed 298(1945) at 476; STRICKLAND v. WASHINGTON, 466 US 668, 104 S.CT. 2052, 80 L.Ed.2d 674(1984).

Additionally, "The constitutional key to validity of a guilty plea is that it be voluntary and intelligently made and if upon advise of an attorney, that counsel be reasonable competent and render effective assistance." McMANN v. RICHARDSON, 397 US 759, 90 S.Ct. 1441, 25 L.Ed.2d 763(1970)-(HN6).

In other words, "The voluntariness of the plea depends on whether counsel's advise was within the range of competence demanded of attorney in criminal cases." HILL v. LOCKHART, 474 US 52, 106 S.Ct. 366, 88 L.Ed.2d 203(1983)(quoting McMANN, 379 US at 771).

In the instant case, the presiding judge over Petitioner's trial, allowed the court interpreter who is not a licensed attorney to give legal advise and coerce Petitioner into an [unauthorized] probation.

TEX. CODE CRIM. PROC., ART. 42.12(d)(2)(A) states: "In all

other cases the judge may grant deferred adjudication unless; the Defendant, is charged with an offense under section 21.11, 22.021, or 22.021 Penal Code, regardless of the age of the victim." (Petitioner was sentenced under TEX. PENAL CODE § 22.021(a)(2)(B), and the trial judge designated an unauthorized attorney to manufacture and sign plea papers).

IX.

Nevertheless, as the old saying goes, "[A]ctions Speak Louder Than Words." Therefore, Petitioner directs the attention of this Court to take judicial notice to the following Exhibits in the Appendix.

(1). Exhibit (B), "Jury Waiver of Defendant-Joined by Attorney," where (unknown) Jill Davis signs as:

>> JILL DAVIS FOR RANDY S. MYERS <<
ATTORNEY FOR DEFENDANT

The above signature, undisputably reveals the absence of trial counsel Randy Myers from the trial court, and further, [unauthorized] attorney Jill Davis states:

> "I have fully reviewed and explained the above and foregoing court admonishments, rights and waivers to the defendant and am satisfied that the defendant is legally competent and has intelligently, knowingly and voluntarily waived his rights and will plead guilty understanding the consequences thereof."

The above statement by Jill Davis is an outright lie. Jill Davis is not Petitioner's trial counsel of record, nor was she present during the coercive plea bargaining to give any legal advise when Benny Martinez induced Petitioner into an [unautho-

rized] plea agreement for probation, nor has Jill Davis ever discussed anything else with Petitioner concerning his case.

(2). Exhibit (C): "Judicial Confession," and "Application for Probation."

Petitioner directs the attention of the court to take judicial notice that in Exhibit (C) Jill Davis signs as —,

>> JILL DAVIS <<
ATTORNEY FOR DEFENDANT

At this point, [unauthorized] Jill Davis has appointed herself (illegally) as Petitioner's trial counsel of record. Ms. Davis had "an affirmative obligation to insure that she was properly enrolled as counsel." CUYOS v. TEXAS MOBILE HEALTH, 10 F.SUPP.2d 750(U.S. Dist. 1998) at 752.

This Honorable Court has held:

> "The Supreme Court, has power, at any stage of the case, to require an attorney, one of its officers, to show his authority to appear. It would be strange, if a court whose right and whose duty it is to superintend to sue or to defend, in the name of another—whether that other is a real or ficticious person— and whether its process is used for the purpose of vexation or fraud, instead of that for which alone it is intended." PUEBLO OF SANTA ROSA v. FALL, 273 US 315, 47 S.CT. 361, 71 L.Ed 658(1927)-(HN1).

X.

Hence, lets review the record in Cause No. 0630576D and let the record speak for itself. The record by speaking by itself is completely silent of the following:

(a) A written notice filed by retained attorney Randy Myers with his client's consent to withdraw at midtrial, or an order from the bench to do so;

(b) A written notice of appearance filed by attorney Jill Davis requesting the trial court's permission to appear as Petitioner's counsel, or an order from the trial court granting permission to Jill Davis to do so;

(c) A hearing to substitute Petitioner's (fully paid) retained trial counsel, or an irreconcilable conflict between Randy Myers and his paying client that warranted substitution of counsel of choice, for an unknown attorney at the most critical stage of the jury trial;

(d) An affidavit of indigence filed by Petitioner for the entitlement of a court appointed counsel, or a written motion filed by Petitioner requesting the substitution of his retained counsel. (See Exhibit A)

XI.

EXHIBITS FILED DURING HABEAS PROCEEDINGS

(3). — Exhibit (E): "Affidavit of Jill Davis."— Petitioner directs the attention of the court to take judicial notice of the fact that the signatures in the next two exhibits are not the signatures of Jill Davis, nor Randy Myers. (Compare signatures of Jill Davis and Randy Myers in exhibits

Pettitioner contends that Exhibits (E) and (D) are another fraudulent scheme of former judge, (current District Attorney) Sharen Wilson, stating that—,

"While the jury was out deliberating during trial, the State offered, for the first time, the Defendant ten years deferred adjudicated probation. Mr. Myers, myself, and Mr. Martinez (interpreter) went over the plea paperwork with Mr. Bacilio. The Defendant agreed to the plea offer."

Petitioner further asks the court, to take judicial notice of the following statements in the affidavit of Jill Davis——

(a).— "Mr. Myers, myself, and Mr. Martinez (interpreter) went over the plea paperwork with Mr. Bacilio."

The above multifaceted statement reflects that the contents of Jill Davis' affidavit is a "prevaricated story" where, (1) on the "Jury Waiver of Defendant-Joined by Attorney" Jill Davis signs as "Jill Davis for Randy Myers" (see Exhibit B) which clearly reflects the absence of Randy Myers from the trial court; (2) reveals that there were no written plea papers to go over on the day in question because, "while the jury was out deliberating, the State offered, for the first time, the Defendant ten years deferred adjudicated probation"; (3) that no timely motion for probation was ever filed by Petitioner's retained trial counsel; (4) that the trial court was not convened nor constituted with the provisions of the constitution and statute, where Petitioner's trial counsel was physically absent from the trial court.

(4).— Exhibit (D): "Affidavit of Randy Myers" stating —

"My name is Randy S. Myers I was the retained trial counsel for Miguel Angel Bacilio.

"At the trial, the State offered ten years deferred adjudicated probation. The Defendant chose to take

the plea. The Defendant signed the plea papers. Ms. Jill Davis handled the actual plea."

The above prevaricated story is also multifaceted where it shows, (a) that Randy Myers was in fact retained by Petitioner; (b) that Randy Myers could not have admonished his paying client of his rights because the record shows that Randy Myers was not present in the trial court otherwise he would have signed the [unauthorized] plea papers himself as required by the FEDERAL RULE CRIM. PROC., rule 11; (c) the falsety of Jill Davis statement where she states—"Mr. Myers, myself, and Mr. Benny Martinez (interpreter) went over the plea paperwork with Mr. Bacilio"; (d) the prevaricated story in Randy Myers' affidavit undisputably contradicts Jill Davis' prevaricated story where Myers states, "Ms. Jill Davis handled the actual plea."

Effectively, the State Criminal Record in this case, by speaking for itself reveals that Randy Myers, Petitioner's retained counsel was physically absent from the trial court at the most critical stage of the criminal proceeding, and further reveals the fraud being committed by State Court Officials to cover up their Ultra Vires actions.

XII.

Petitioner asserts that, there is nothing in the history of this court's precedents that gives legal authority to the court interpreter to substitute for a defendant's retained counsel during jury deliberations, nor any precedents that authorizes the court interpreter to stop a jury trial and coerce a defendant

into an [unauthorized] probation because that jury panel cannot find the defendant guilty (expending less than an hour of deliberation); neither is there any precedents from this court that authorizes the District Attorney to use the court interpreter as legal counsel to mislead a defendant into an [unauthorized] plea agreement at midtrial, because the District Attorney is uneasy that the defendant may be acquitted, and further, while the defendant's retained counsel is not present in the trial court.

This Honorable Court has made it abundantly clear that, "The VI Amend. guarantees a defendant effective assistance of counsel at all critical stages of a criminal proceeding, including when he enters a guilty plea." LEE v. UNITED STATES, 137 S.CT. 1958, 198 L.Ed.2d 476(2017)-(HN1). And, "When deficient counsel causes the loss of an entire proceeding, it will not bend the presumption of prejudice rule simply because a particular defendant seems to have poor prospects." GARZA v. IDAHO, 139 S.CT. 738, 203, L.Ed.2d 77(2019).

XIII.

Furthermore, Benny Martinez induced Petitioner into an unauthorized plea agreement for probation under false pretenses; where Martinez informed Petitioner that he was pleading to Sexual Assault of a Child—[non-aggravated]. Martinez assured Petitioner that if Petitioner violated the term of probation, he would be sentenced to no more than the probationary period "which was ten (10) years." Yet, Petitioner is being held illegally in the Texas Department of Criminal justice with a thirty year sentence for

the same aggravated offense that Petitioner did not commit and where a fair and full-blown jury trial could not / did not find him guilty. Therefore, Petitioner's guilty plea was not the free willing choice of Petitioner, and should be set aside by this court because, "An unkept bargain which has induced a guilty plea is ground for relief." SANTOBELLO v. NEW YORK, 404 US 257, 92 S. CT. 495, 30 L.Ed.2d 427(1971).

XIV.

The law presuposes fairness in securing agreement between an accused and the prosecutor. See FED. R. CRIM. PROC., rule 11. "Plea agreements are not simply contracts, but implicate important constitutional rights; their negotiations and execution require the utmost circumspection on part of government. It is the duty of defense counsel to examine carefully the contours of plea agreement and to advise defendant carefully as to those matters that are governed by agreement and those matters that are not." UNITED STATES v. WILLIAMS, 102 F.3d 923(U.S. App. 1996) at 928.

Similarly, under FED. R. CIV. PROC., rule 11, provides in pertinent part that pleadings and other papers shall be signed by the attorney of record in the attorney's individual name. "It is only the signature in the attorney's individual name which complies with the rule's requirement." PAVELIC & LEFLORE v. MARVEL ENTERTAINMENT GROUP, 493 US 120, 110 S.CT. 456, 107 L.Ed.2d 438 (1989).

Accordingly, Petitioner is entitled to relief because the adjudication of his Application for Habeas relief was based sole-

ly on the merits of an unauthorized probation which, (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; (2) resulted in a decision that was based on an unreasonable determination of the fact in light of the evidence presented in the State Court proceeding. See WILLIAM v. TAYLOR, 529 US 362, 120 S.CT. 1495, 146 L.Ed.2d 389(2000) at 402-03.

XV.

3.——

PETITIONER WAS DENIED THE ASSISTANCE OF HIS OWN RETAINED COUNSEL DURING HIS JURY TRIAL AND DURING THE UNAUTHORIZED PLEA BARGAINING IN VIOLATION OF THE VI AMENDMENT TO THE U.S. CONST.

The presumption that counsel's assistance is essential requires the court to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial. Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of rights under U.S. Const. Amend, VI that makes the adversary process itself presumptively unreliable; no specific showing of prejudice is required because the Petitioner has been denied the right of effective cross-examination which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." UNITED STATES v. CRONIC, 466 US 648, 104 S.CT. 2039, 80 L.Ed.2d 657(1984)-(HN9).

Additionally, the VI Amend. right to counsel of choice commands

not that a trial be fair but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best. The U.S. Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the VI Amendment, including the Counsel Clause. In sum, "Where the right at stake is the right to counsel of choice, not the right to a fair trial, and that right is violated because a deprivation of counsel was erroneous, no additional showing of prejudice is required to make the violation complete." UNITED STATES v. GONZALEZ-LOPEZ, 548 US 140, 126 S.CT. 2557, 165 L.Ed.2d 409(2006)-(HN2).

XVI.

The well-established GONZALEZ-LOPEZ, principle, has been applied by various Texas Courts, most recently, in LOVE v. STATE, 600 SW.3d 460(TEX. APP. 2020) the appeals court stated: "[I]f a trial court unreasonably or arbitrarily interferes with a defendant's right to choose his own counsel, its action rise to the level of a constitutional violation. Thus, in disqualifying defense attorneys, courts must proceed carefully—especially if less serious means would adequately protect the government's interest." (citing GONZALEZ-LOPEZ, supra, at 475-76).

It is clear that, Black-Letter Law—establishes that "the right to counsel of one's choice is guaranteed by the Due Process as well as the VI Amendment. And, "An accused is entitled to assistance of counsel for his defense at all critical stages of a

criminal proceedings." MONTEJO v. LOUSIANA, 556 US 778, 129 S.CT. 2079, 173 L.Ed.2d. 955(2000)-(HN1).

XVII.

In the instant case, the claimed deprivation is an arbitrary infringement on the right to effective assistance of retained counsel at a jury trial and the interference with the attorney—client relationship, by the trial judge Sharen Wilson who allowed retained trial counsel Randy Myers to abandon his paying client at the most critical stage of the criminal proceeding without Petitioner's consent, and in violation of the law. The actions of the trial judge Sharen Wilson indisputably, were well-beyond the judicial and statutory powers of the trial court.

The Sixth Amendment violation in the cause at bar, is not subject to "Harmless-Error" analysis. The erroneous deprivation of Petitioner's right to his own retained counsel of choice "with consequences that are necessarily unquantifiably and indeterminate. Unquestionably qualifies as [S]tructural-Error." See SULLIVAN v. LOUSIANA, 508 US 275, 113 S.CT. 2978, 124 L.Ed.2d 182(1983) at 282. "[I]t defi[es] analysis by 'Harmless-Error' standards because 'it affec[ts] the framework' within which the trial proceeds-rather than simply an error in the trial process itself." See ARIZONA v. FULMINANTE, 499 US 279, 111 S.CT. 1246, 113 L.Ed.2d 302 (1991) at 310.

[W]ithout these basic protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as funda-

mentally fair." ROSE v. CLARK, 478 US 570, 106 S.CT. 3101, 92 L. Ed.2d 460(1986) at 577-78.

XVIII.

In SMITH v. SUPERIOR COURT OF LOS ANGELES COUNTY, 68 CAL. RPTR. at 10; and HARLING v. UNITED STATES, 387 A.2d 1101(D.C. Cir. 1978), both Court of Appeals found the removal of defense counsel unacceptable and stated: "[A]n inviolate attorney-client relationship has been created and should not be arbitrarily disturbed... 'A trial judge does not have inherent power to remove defense counsel." (Emphasis added).

Similarly, in STARNES v. CLINTON, 780 SW.2d 216(TEX. CRIM. APP. 1989) the court held, "[A] trial judge does not have inherent power to remove counsel at court's discretion nor to infringe upon one's constitutional right to counsel of choice, unless there is an actual or serious potential for conflict." Id. at 221-22.

In other words, based on stare decisis precedents of this Honorable Court. "[T]he right to the effective assistance of counsel at trial is a [Bedrock-Principle] in our justice system." MARTINEZ v. RYAN, 566 US 1, 132 S.CT. 1309, 182 L.Ed.2d 272(2012)-(HN8).

Hence, Petitioner is entitled to relief; the trial judge Sharen Wilson's arbitrary infringement on Petitioner's right to effective assistance of his own retained trial counsel, and the judge's interference with the attorney-client relationship, couple with the several Due Process violations during Petitioner's jury trial, (which are clearly reflected on the face of the record) requires

reversal of Petitioner's illegal conviction even without showing of prejudice. (Emphasis throughout).

XIX.

4.——

PETITIONER'S RIGHT TO HAVE HIS TRIAL COMPLETED BY THE PARTICULAR JURY EMPANELED AND SWORN WAS VIOLATED WHEN HE WAS PUT TWICE TO JEOPARDY.

Under traditional standards. "In a jury trial jeopardy attaches when the jury is empaneled and sworn." "In a plea bargaining context jeopardy attaches upon acceptance of the guilty plea." See FRANSAW v. LYNAUGH, 810 F.2d 518(U.S. APP. 1987)-(HN10-11).

Petitioner contends that, even though in the present case, no motion for mistrial was ever filed by Petitioner's retained trial counsel Randy Myers, nor a mistrial was ever declared by the trial judge. It is noteworthy to read Petitioner's Double Jeopardy claim in the interest of justice under the "[M]anifest-Necessity" standard of which the State Record is completely silent. (See Exhibit (A), Criminal Docket Sheet).

While the federal rule as to when jeopardy attaches in a jury trial is not only a settled part of federal constitutional law. It is a rule that both reflects and protects the defendant's interest in retaining a chosen jury, and is an integral part of the Fifth Amendment's guarantee against Double Jeopardy and is binding on the States through the Fourteenth Amendment. See CRIST

v. BRETZ, 437 US 28, 98 S.CT. 2156, 57 L.Ed.2d 24(1978)-(HN[1A], HN[1B]). (See also Exhibit (L) as proof that a jury was empaneled)

The reason for holding that jeopardy attaches when the jury is empaneled and sworn lies in the need to protect the interest of an accused in retaining a chosen jury. "That interest is a defendant's valued right to have his trial completed by a particular tribunal." CRIST v. BRETZ, 437 US 28, at HN5.

XX.

This Honorable Court has emphatically held: "This court can not hold that this rule, so grounded, is only at the periphery of double jeopardy concerns. Those concerns——the finality of judgments, the minimization of harassing exposure to the harrowing experience of a criminal trial, and the valued right to continue with the chosen jury —— have combined to produce the federal law that in a jury trial jeopardy attaches when the jury is empaneled and sworn. The time when jeopardy attaches in a jury trial serves as the lynchpin for all double jeopardy jurisprudence. "[T]he federal rule that jeopardy attaches when the jury is empaneled and sworn is an integral part of the constitutional guarantee against double jeopardy." CRIST v. BRETZ, 437 US 28, at HN7.

Similarly, in accordance with stare decisis under Texas Law, the Texas Double Jeopardy provision, with exceptions, protect a defendant against 'premature' termination of trial. "[T]he trial court's discretion to declare a mistrial based on 'Manifest—Necessity' [a high—degree of necessity] is limited to and must be

justified by '[E]xtraordinary Circumstances.' Which only exist when it is imposible to continue with the trial." EX PARTE CONTRERAS, 640 SW.3d 279(TEX. APP. 2021)-(HN2). Petitioner reemphasizes that the jury in this case deliberated for less than an hour before it was illegally discharged.

"There can be no manifest necessity and subsequently no mistrial without the trial judge first reviewing the alternative courses of action and choosing the one, which, in light of all the circumstances, best preserves the defendant's right to have his trial completed before a particular tribunal." ZAVALA v. STATE, 956 SW.2d 715(TEX. APP. 1997)-(HN5).

"[W]here the trial judge grants a mistrial despite the available option of less drastic alternative there is no manifest necessity and we will find an abuse of discretion." ZAVALA, 956 SW.2d 715, at HN6.

XXI.

Under TEX. CODE CRIM. PROC. ANN., ART. 36.31 — "After a cause is submitted to the jury, it may be discharged when it cannot agree and both parties consent to its discharge, or the court may in its discretion discharge it where it has been kept together for such time as to render it altogether improbable that it cannot agree." Id.

In addition, Texas Courts have held: "[T]he trial court is not required to declare a mistrial 'at the first sign of juros impase.' Rather, the court may instruct a jury to continue its deliberation when the jury indicates that it is unable to reach a

verdict." ROSALES v. STATE, 548 SW.3d 796, at HN3(TEX. APP. 2018); ANDRADE v. STATE, 700 SW.2d 585, at 589(TEX. CRIM. APP. 1985).

On the other hand, in the context of the FEDERAL RULE OF EVIDENCE, 606(b), "Extraneous Influence," has been found to include... "Communications or other contact between juros and third persons, including contact with the trial judge outside the presence of the parties and counsel."

Similarly, under Texas Law, "No communication whatever ought to take place between the judge and the jury, after cause had been committed to them by the charge of the judge, unless is in open court, and, where practicable, in presence of the counsel in the cause." LEE v. HOUSTON ELEC. CO., 152 SW.2d 379(TEX. APP. 1970)-(HN8).

The State may argue, that Petitioner consented to the discharge of the deliberating jury. This argument is without merit because, "[T]here is no constitutional right in Texas to '[H]ybrid—Representation' partially 'Pro-Se' and partially by 'Counsel'. Hybrid representation is disalowed in Texas." LANDERS v. STATE, 550 SW.2d 272, at HN8(TEX. CRIM. APP. 1977).

It is clear that the trial judge on the day in question, had no legal authority to: (a) have any contact with the deliberating jury outside the presence of Petitioner's trial counsel, (b) dismiss the deliberating jury without manifest necessity; after jeopardy had attached, and while Petitioner's trial counsel was absent from the trial court, and (c) proceed with the [unauthorized] plea agreement hearing without a motion for mistrial being

filed by Petitioner's trial counsel, or without even declaring a mistrial.

Petitioner contends that the questions for this court to consider should be: (1) whether the prosecutor engaged in misconduct with the specific intent to avoid an acquittal which the prosecutor believed was likely to occur in the absence of the misconduct? OREGON v. KENNEDY, 455 US 667, at 678-79(1982); (2) whether the intrusion of the trial judge upon the sacred precints of the sitting jury, affected the jury's deliberation and thereby interfered with its verdict? UNITED STATES v. JOHNSON, 2022 US APP. LEXIS 33932; (3) whether the trial judge violated Petitioner's 5th Amend. right to not be put twice to jeopardy for the same offense and further his rights under the 6th and 14th amend. to a fair trial?

Petitioner maintains that he was put twice to jeopardy; once, when the jury was empaneled and sworn; and twice, when the trial court accepted the [unauthorized] plea agreement for probation, and sentenced him under the same indictment to an [unauthorized] sentence. Therefore, Petitioner should be entitled to relief.

XXII.

5.——

THE HABEAS COURT COMMITTED A FUNDAMENTAL— ERROR WHEN THE COURT DISREGARDED THE ACTUAL BIAS AND CONFLICT OF INTEREST REFLECTED ON THE FACE OF THE RECORD AND ALLOWED FORMER JUDGE, —— CURRENT DISTRICT ATTORNEY TO FILE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IN THE VERY SAME CASE WHERE SHE PRESIDED AS THE TRIAL JUDGE. THEREBY VIOLATING PETITIONER'S FEDERAL PROTECTED RIGHT TO A FAIR, AND IMPARTIAL TRIAL.

This Honorable Court has made it abundantly clear that, "Con-

ferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the warrantee of due process is to be adequately implemented. WITHROW v. LARKIN, 421 US 35, 95 S.CT. 1456, 43 L.Ed.2d 712(1975)-(HN2).

Sharen Wilson, (former judge), current District Attorney has refused to recuse or disqualify herself from sitting as an officer of the court in the very same case where she presided as the trial judge. (Six grounds in Petitioner's application for Writ of Habeas Corpus, Article 11.07 are against Sharen Wilson for various constitutional violations committed during Petitioner's jury trial on December 12, 1997. (See Exhibit (M)).

In addition, in WILLIAMS v. PENSILVANIA, 579 US 1, 136 S.CT. 1899, 195 L.Ed.2d 132(2016) at HN3, the court held: "The Due Process guarantee an absence of actual bias on the part of a decision maker. This objective risk of bias is reflected in the Due Process Maxim that no man can be judge in his own case and no man is permitted to try cases where he has an interest in the outcome." Id.

Habeas judge's wholesale adoption of Sharen Wilson's Findings of Fact and Conclusions of Law, violated Petitioner's right to a constitutionally acceptable habeas review. "The minimum requirement of due process include the right to a hearing before a neutral and detached hearing body... and the minimum requirement of due process is applicable both to courts and administrative agen-

cies which are involved in adjudication." JOHNSON v. MORALES, 2017 US DIST., LEXIS 208802(E.D. MICH. 2017).

XXIII.

Furthermore, this court has consistently held that, "No attorney is more integral to the accusatory process than a prosecutor who participates in a major adversary decision. When a judge has served as an adjudicator for the State in the very same case the court is now asked to advocate, a serious question arises as to whether Sharen Wilson (former judge), current District Attorney, even with the most diligent effort, could set aside any personal interest in the outcome of this case. There is, furthermore, a risk that Sharen Wilson "would be so psychological wedded" to her previous position as the presiding judge of this case, that she "would consciously or unconsciously avoid the appearance of having erred or changed position." WITHROW, 421 US at 57.

In addition, Sharen Wilson's "own personal knowledge and impression of the case, acquired through her role as the presiding judge, may carry far more weigth with the habeas court than the facts presented by Petitioner to the court." WILLIAMS, 579 US at 10.

Additionally, this Honorable court has held, that the due process guarantees an absence of actual bias on the part of the decision maker. The precedents apply an objective standard that, in the usual case. Avoids having to determine whether actual bias is present. The court asks not whether, a decision maker harbors an actual bias, but instead whether, as an objective matter, the

average decision maker in his position is likely to be neutral, or whether there is an unconstitutional potential for bias. "[A]n unconstitutional potential for bias exist when the same person serves as both, accuser and adjudicator in a case." WILLIAMS, 579 US at HN3.

Effectively, "Recusal is necessary where the decision maker has an interest in the case's outcome, or because of a conflict arising from his participation in an earlier proceeding." JOHNSON, LEXIS 208802 at HN7.

Undisputably, "We Cannot Hide Elephants In Mouse Holes," and in this case, undisputably, "We Cannot Hide The Actual Bias And Conflict Of Interest Reflected On The Face Of The Record," because is obvious, clear, unmistakable, manifest and plain. Therefore, Petitioner is entitled to relief.

XXIV.

In closing, Petitioner reiterates that the numerous jurisdictional infirmities demonstrated in Petitioner's Petition for Writ of Certiorari, and accompanying Memorandum of Law with its record evidence cannot be ignored; for it has wreaked devastation in Petitioner's life and family since December 12, 1997 the day that a fair and full-blown jury trial, could not / did not find him guilty of the offense for which he is being held illegally in prison with a thirty (30) year sentence.

All torts befalling Petitioner are the result of instruments of law, which purportedly assume their authority from the legally Non-Existent judgment of conviction rendered by the trial judge,

(current District Attorney) Sharen Wilson in State Criminal Cause No. 0630576D on December 12, 1997.

In addition, Petitioner reemphasizes the imperative need for this Honorable Court to take judicial notice that the record in Cause No. 0630576D is completely devoid (see Exhibit (A), Criminal Docket Sheet) of the following:

1. A motion from retained trial counsel Randy Myers, seeking the trial court's permission to withdraw from the case at midtrial, nor is there any order from the trial court granting trial counsel Randy Myers to withdraw from the case at the most crucial stage of the criminal proceeding;

2. A written waiver of Petitioner's right to a jury trial signed by Petitioner, and Petitioner's retained trial counsel Randy Myers;

3. Any evidence that Petitioner ever asked the trial court to substitute his privately retained attorney Randy Myers for unknown attorney Jill Davis, or anyone else;

4. Any motion from Jill Davis to make an appearance as Petitioner's counsel, or any order from the trial court authorizing Jill Davis to appear as Petitioner's trial attorney;

5. Any evidence that Petitioner dismissed his retained trial counsel Randy Myers, or asked the court to allow Petitioner to represent himself;

6. Any evidence of an irreconcilable conflict or a complete breakdown in communication between retained attorney Randy Myers and his paying client that warranted replacement or substitution of retained trial counsel at midtrial;

7. A hearing to substitute counsel, or an order from the trial court to substitute or replace retained trial counsel;

8. Any evidence that Petitioner authorized a layman, Benny Martinez to act as his trial counsel at any time or for any reason;

9. Any motion for mistrial entered into the record by Petitioner's retained trial counsel with Petitioner's consent in writing, or even that the trial court declared a mistrial;

10. A manifest necessity for the court's unlawful actions or a manifest necessity for discharging the deliberating jury after jeopardy had attached and while Petitioner was without the assistance of his retained trial counsel.

The actions of retained trial counsel Randy Myers, unknown attorney Jill Davis, and the trial judge Sharen Wilson was an orchestrated criminal conspiracy against my due process rights in violation of the United States Constitution. Inasmuch, "The action against the private parties accused of conspiring with the judge is not subject to dismissal." DENNIS v. SPARKS, 449 US 24(1980) at [****2].

The Honorable Clark Waddoups has already questioned the jurisdiction of the Texas Court. See BACILIO v. GARNER, 2018 U.S. DIST. LEXIS 171036 at 2,-,-,5.

PRAYER

WHEREFORE, ALL PREMISES CONSIDERED, based on the facts that Petitioner is presenting to the Honorable United States Supreme Court, coupled with the fact that Petitioner was denied the equal protection under the law, pursuant to the 5th, 6th, and 14th Amendments to the U.S. Constitution in Cause No. 0630576D. Petitioner prays that this Honorable Court reverse Petitioner's illegal conviction

and dismiss any further prosecution in this cause.

Petitioner further prays for the appointment of counsel in protection of his due process rights, and for any other relief that this Honorable Court deems proper, including, but not limited to declare void any subsequent action taken based on the void judgment issued by the trial judge Sharen Wilson on December 12, 1997.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MIGUEL ANGEL BACILIO

Date: MARCH 31, 2023