ORIGINAL

22-7242

IN THE SUPREME COURT OF THE UNITED STATES

In re: Henry Jones
Petitioner,

-V-

UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR THE WRIT OF PROHIBITION POURSUNT TO ALL WRITS ACT 28 U.S.C. 1651(a) DIRECT4ED TO CHIEF JUSTICE ROBERTS UNDER SUPREME COURT RULE 22-1 TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Henry Jones respectfully prays that a Writ of Prohibition issue to review the judgment of the United States Court of Appeals for the Fifth Circuit and the Ninth Circuit Court of Appeals.

HENRY JONES
FED. REG. # 46810-112
FEDERAL CORRECTIONAL
INSTITUTION - LA TUNA
P.O. BOX 3000
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QUESTIONS PRESENTED

WHETHER BY REASON OF THE NUMEROUS CONSTITUTIONAL VIOLATIONS COMMITTED BY THE DISTRICT COURT, SUCH AS FALSIFYING THE RECORD OF JONES' TRIAL PROCEEDINGS, CONSTRUCTIVE ADMENDMENT OF THE INDICTMENT, DISQUALIFYING ALL OF JONES' WITNESSES, CONSTRUCTIVE DENIAL OF COUNSEL, SENTENCING ERRORS IMPLICATING TEMPORARY LOSS OF JURISDICTION...ETC. JONES' SUBSEQUENT COLLATERAL ATTACKS ON HIS SENTENCE AND CONVICTION, WERE RENDERED FRUITLESS EXERCISES, BECAUSE THE DISTRICT COURT (S), 9TH AND 5TH CIRCUIT COURT(S) OF APPEAL, NO LESS THE SUPREME COURT OF THE UNITED STATES, ADOPTED THE CERTIFIED, BUT FRAUDULENT STATEMENTS OF THE CASE AND FACTS, FOR WHICH ONLY THE SUPREME COURT CAN REMEDY THROUGH THE ISSUANCE OF THE EXTRAORDINARY WRIT OF PROHIBITION.

LIST OF PARTIES

In re: Henry Jones

-V-

United States of America

THE NAMES OF ALL PARTIES PPEAR IN THE CAPTON OF THE CASE ON THE COVER PAGE
THEE ARE NO ADDITIONAL PARTIES.

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STATEMENT OF JURISDICTION

The Supreme Court of the United States has original jurisdiction over the categories cases. First, the Supreme Court can exercise original jurisdiction over "actions proceeding to which ambassadors, other public ministers, consuls, or vice- consuls of foreign states are parties. "See, Maryland v. Louisiana, 451 U.S. 725, 737 (1981). Second, the Supreme Court also possesses original jurisdiction for "(all)controversies between the United States and a State. "28 U.S.C. Section 1251(b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court, for "all actions or proceedings by a state against the citizens of another state or against aliens." See, e.g.... Oregon v. Mitchell, 400 U.S. 112 (1970), United States v. Louisiana, 339 U.S. 699 (1951), United States v. California, 332 U.S. 19 (1947).

The statute defining the Supreme Court's jurisdiction between "appeal" and "certiorari" as vehicles for appellate review of the decisions of state and lower courts. Where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take and decide the case when appellate review is requested. Where the statute provides for review by "writ of certiorari"" the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes t grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review was virtually entirely eliminated. Now almost all cases come to the Supreme Court by writ o Certiorari. Pub. L. N0. 100-352, 102 Stat.662 (1988).

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C.. SEION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

(A) The Supreme Court and all courts established in aid of their respective jurisdictions, and agreeable to the usages and principles of law.

(b) An alternative writ or rule may be issued by a justice (Chief Justice Roberts) to whom an application to a writ of prohibition is submitted, may refer it to the Court for determination.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In conducting harmless error analysis of constitutional violations, including direct appeals as specially habeas generally, the Supreme Court repeatedly has reaffirmed that "(some constitutional violations...by their very nature cast so much doubt on the fairness of the trial process= that, as a matter of law, they can never be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988), accord Neder v. United States, 527 U.S. 1, 7 (1999)("We have recognized a limited class of fundamental constitutional errors that defy analysis by"Harmless error," standards"...errors of this type are so intrinsically harmful as to require automatic reversal, i.e.. (affect substantial rights) without regard to their effect on the outcome.")

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)"Although most constitutional errors have been held to harmless error analysis, some will always invalidate the conviction"(citations omitted) Id. at 183 (Rehnquist, C.J. concurring); United States v. Olano, 507 U.S. 725, 735 (1993); Rose v. Clark, 478 U.S. 478 U.S. 570, 577-78 (1986)("some constitutional errors require reversal without regard to the evidence in the particular case...because they render a trial fundamentally unfair."). Vasquez v. Hillery, 474 U.S. 254, 283-264 (1986); Chapman v. California, 38618, 23 (1967)("there are some constitutional rights so basic to a fair trial, that their infraction can never be treated as harmless error").

JUDICIAL NOTICE/STATEMENT OF ADJUDICATIVE FACTS PURSUANT TO RULE 201 OF THE FEDERAL RULES OF EVIDENCE

The right to effective assistance of counsel. See, Kyles v. Whitley, 514 U.S. at 435, 436; United States v. Cronic, 466 U.S. 648, 654-57 (1984); Hill v. Lockhart, 28 832, 839 (8th Cir. 1994)("It is unnecessary to add a separate layer of harmless-error analysis to bar evaluation of whether a petitioner has presented a constitutionally significant claim for ineffective assistance of counsel).

INTRODUCTION

Tragically, the record of Petitioner's judicial proceedings in the District Court for the Central District of California were constitutionally dysfunctional. The Prosecutors forgot the lessons of history, and failed to heed what the founders wrote for our "collective learning." A truly "honorable" jurist, Justice Brandeis, pointed the well trod path his honorable predecessors had lighted long ago, in his opinion in Olmstead v. United States, 277 U.S. 433, 485 48 S.Ct. 575 (1928) as follows:

> "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good of for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law, it invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this court should set its face." (emphasis added).

In the case at bar, the Government flagrantly broke the rules. The federal judiciary has many examples of jurists holding a constitutional view toward "The 'peoples rights,'" as in Rachin v. California, 342 U.S. 165, 72 S.Ct. 205 (1952):

> "There is no justification for the knowing and deliberate violation of the rights of individuals."

Petitioner's judicial proceedings in the Central District of California reflects an American nightmare. A Judge disqualifies all of Petitioner's witnesses, appropriates Jurisdiction, and acts in excess of jurisdiction, following the Ninth Circuit accepting Petitioner's Appeal, issuing a time schedule, followed by the Government appealing to the Ninth Circuit Court of Appeals that the latter lacks jurisdiction to entertain the case. Whatever the merits or demerits of the Government's Appeal, the law requires the District

Court must wait for the higher Court to make its ruling because of the temporary loss of jurisdiction. Petitioner was sentenced without jurisdiction. Long after the question of whether the Ninth Circuit Court of Appeals had jurisdiciton, the Ninth Circuit made its ruling when the critical issue had been rendered moot, as there was no longer case or controversy. Because of additional treaty violations, denial of access to the courts, denial of Petitioner's right to effective counsel, a trial conducted primarily on the inadmissible "Lowell Decker Tapes," recorded illegally over several years in violation of California and Federal law, destruction of Petitioner's evidence, suppression of evidence, a defective Indictment, etcetera.

Petitioner was unlawfully charged, tried, and imprisoned - in complete absence of any type of jurisdiction. To add insult to injury, using perjured testimony, the Government recruited the services of national media outlets, namely; NBC, CNBC and Bloomberg to sensationalize the injustice under the premise that the bigger and more brazen the lies (Jones told investors he was brokering 20,000 tons of gold to Israel to sell to the Arabs), a deception that the Government's own Exhibits reveal to be blatantly prejudicial. Out of the misery of the likes of Petitioner Jones, suffering a nightmare of injustice, lives were impacted and destroyed by the Prosecutors and a handful of judges like the Honorable Percy Anderson, stand by their actions, herein indicted. No longer able to conceal their prosecutorial misconduct because sunshine is the greatest disinfectant. Prosecutorial and Judicial immunity protect lawbreaking lawmakers. According to the Declaration of Independence, in Congress July 4, 1776; "For whatsoever things were written aforetime were written for our learning ..." Romans 15:4.

To quote Justice Sutherland in Berger v. United States, 295 U.S. 78, 88 (1935):

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a very peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape nor innocence suffer. He may prosecute with earnestness and vigor - indeed, he should do so. While he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Unfortunately, this quote from 1935 has been nullified by the willful and malicious acts of the Prosecution, aided and abetted by Federal agents and the judicial activism of the Honorable Percy Anderson. Many of the principles of Anglo-American Jurisprudence for which America is envied around the world have been derided.

STATEMENT OF CASE

On September 27, 2007, the Grand Jury for the Central District of California returned an Indictment charging Appellant, Henry Uliomereyon Jones, Arthur Simburg and Robert Jennings with Securities Fraud (15 U.S.C. §78j(b), 789(f)); Contempt of Court, Mail Fraud (18 U.S.C. §1341); Wire Fraud (18 U.S.C. §1343); Aiding and Abetting (18 U.S.C. §1512), and Money Laundering (18 U.S.C. §1857) (E.R. 1). Trial by jury began on June 24, 2009 and ended with a verdict of guilty on July 11, 2008. (E.R. 96). On April 3, 2009, Appellant Jones was sentenced. Aa timely Notice of Appeal was filed on April 7, 2009. (E.R. 102).

STATEMENT OF FACTS

A. THE INDICTMENT

In the Indictment, Appellant, Henry Uliomereyon Jones, Arthur Simburg, and Robert Jennings were charged with conspiracy to commit fraud and other related charges. (E.R. 11). The charged conspiracy had two different parts to it: a coal mine in Kentucky and a gold transaction involving Israel and the United Arab Emirates that were joined together by the involvement of Arthur Simburg in both. The indictment charged that the vast majority of the funds obtained from the investors were diverted to the personal and business accounts of the Defendants for purposes unrelated to the coal mine or the gold transaction.

In addition, the Defendants were charged with Contempt of Court for violating a restraining order obtained by the Securities and Exchange Commission which had prohibited the Defendants from continuing to solicit funds for the coal mine and the gold transaction.

According to the indictment, the potential investors were falsely told

that the mine had over $1,000,000 in coal stockpiles ready to be sold and that the mines were poised to produce tens of thousands of tons of coal which would generate millions of dollars within a few months.

The indictment further charged that during the conference calls, Mr. Jennings and Mr. Simburg would also solicit funds that were allegedly needed to consummate a secret 20,000 ton gold transaction between Israel and the United Arab Emirates. The potential investors were told that funds were needed for storage fees for the gold while the transaction was pending, attorneys' fees for lawyers in Zurich, Dubai, and Washington who were facilitating the transaction, and various administrative expenses. While Jones did not take part in the organization of the conference calls and did not induce anyone to invest, the indictment alleged that from time-to-time he would join the calls to assure investors that the gold transaction was underway and would soon come to fruition.

B. THE INVESTORS

Jane Lord

Jane Lord, a homemaker from Parris, California, met Co-Defendant Robert Jennings through her church, the New Life Fellowship of Parris, where she was a Deaconess and he was a Pastor. (R.T. 385, 389). From time-to-time during monthly meetings of the church leadership, Mr. Jennings would mention investment opportunities in his business, a coal mine. (R.T. 391). Eventually, both Ms. Lord and the Church invested in Mr. Jenning's company. (R.T. 392). Ms. Lord was promised a two-to-one return on her investment in 60 days. (R.T. 395). Ms. Lord never received any return on her investment. (R.T. 406).

Later on, Mr. Jennings told Ms. Lord and her husband about an opportunity to invest in a gold transaction. This time, Mr. Jennings promised a three-to-one

investment return. (R.T. 409). "[W]e were [also] told by Robert Jennings via email, as well as phone conversations that we would also ... in addition to our return on the loan, we would also receive a monthly annuity that would be for the rest of our life." (R.T. 410). Ms. Lord never received a return on this investment either. (R.T. 412).

Although she heard Appellant's name (Jones) mentioned by Mr. Jennings, Ms. Lord never met him, never spoke to him, email or snail. (R.T. 459).

James Ecklund

James Ecklund worked for the Federal Bureau of Prisons, and learned about Tri-Energy from his sister who had faxed him some promotional material. (R.T. 1050). He called Mr. Jennings the next day, and was assured that the coal mine was in production and had coal stockpiled. Mr. Ecklund invested a total of $150,000. He was promised a two-to-one return on his investment, but never received anything. (R.T. 1055-1058, 1068-1069). At some point, he heard Mr. Simburg discuss a financial transaction involving gold. "The first thing I heard Mr. Simburg discuss a financial transaction involving gold, about the amount needed for the monthly storage fee ... (R.T. 1060). There was also much discussion about humanitarian projects that would be funded by the proceeds of the investments." (R.T. 1062-1063).

After he made his investment, Mr. Ecklund recalled hearing a person identified as Henry Jones on the conference call. According to Mr. Ecklund, Mr. Jones was on the call only for a very short time and all he could remember about Mr. Jones participation was that he said "[t]hank you very much, I wouldn't be here if it wasn't for you, the group." (R.T. 1060, 1084). Mr. Ecklund never met, spoke directly to, or received any information about investments from Appellant Jones. (R.T. 1082-1083).

Karle Belfonti

Karle Belfonti, an Associate Warden at the federal prison in Fairton, New Jersey, learned about Tri-Energy from a Mr. Ecklund. "He said Tri-Energy had an investment in some coal property in Kentucky and they were looking for some investors." (R.T. 482). Mr. Belfonti subsequently participated in a conference call of investors led by Mr. Jennings where he was told that there were 20,000 tons of coal stockpiled at the mines, that production was expected to ramp-up to 75,000 tons per month, and that they needed $100,000 for additional equipment and administrative costs. He was told there would be a three-to-one return on his investment within 30 days. (R.T. 483-485, 488).

Belfonti never met, spoke to, or received any mail from Henry Jones. (R.T. 503).

Lowell Decker

The deposition of Lowell Decker was presented and read to the Jury. Like most of the other investors, Mr. Decker first learned of Tri-Energy/ H&J Company from Simburg who, in turn introduced him to Mr. Jennings. As far as Mr. Decker knew, he invested $65,000 in both a gold transaction as well as a coal mine, he received his information about the gold transaction from Mr. Simburg. (R.T. 628-635). Although Mr. Decker testified that he heard Mr. Jones discuss a gold transaction "... where it was going, what it was needed to make sure it continued in the mode that it was moving, in the need for funds, a variety of aspects of the sale of the gold," during the investor coference calls, he never met Mr. Jones in person nor had a direct conversation with him. (R.T. 630, 766-767). Most of what he learned about Mr. Jones came from Mr. Simburg. (R.T. 777). Mr. Decker did not base his decision to invest in Tri-Energy on any statement made by Mr. Jones. (R.T. 814).

David Montierth

David Montierth, a Regional Vice-President for Time Warner Cable first learned about Tri-Energy from his brother, Wesley, and invested approximately $165,000. As he understood it, he was investing in a coal mine that needed a bridge loan to facilitate the purchase of equipment to increase production. "There was a commitment that whatever funds were raised that they would return the money two-to-one within like, four months or so." (R.T. 822-823).

Prior to investing, Mr. Montierth had no contact with Mr. Jones (R.T. 825). On one occasion during a conference call he heard Jones state that the gold transaction was "imminent." (R.T. 830).

Kimberly Rae Flanigan

Kimberly Rae Flanigan learned of Tri-Energy from her mother who apparently was participating in the conference calls. "[S]he was living with us, she was tying up our phone line in the evening for hours at a time." (R.T. 845-846). After her mother told her about the coal mine and the gold transaction, Kimberly Rae Flanigan contacted Mr. Simburg and Mr. Jennings. (R.T. 858). Ms. Flanigan invested $10,000. (R.T. 859).

Roger Sohn

Roger Sohn, a Dentist, learned about Tri-Energy from Mr. Jennings and Mr. Simburg and invested over $30,000. (R.T. 1100). He thought that his investment was going to be used "to bribe those officials in the government in Africa, and thereby they can release certain kinds of papers so they can come through the United States." (R.T. 1110).

His only contact with Mr. Jones was after he had made his investment when Mr. Simburg brought Mr. Jones into the conference calls and Mr. Jones thanked him for his investment. Nothing he heard from Mr. Jones induced him to make his

investment. (R.T. 1112, 1162-1163).

Dr. Sohn never had any one-on-one conversations with Mr. Jones and he learned the details of the gold transaction from Mr. Simburg. All of the requests for money came from Mr. Simburg, not Mr. Jones. (R.T. 1115, 1165).

Angelina Encarnacion

Angelina Encarnacion, a realtor, first heard about Tri-Energy in 2004 from Mr. Simburg. As described to her at the time, the investment opportunity was in a coal mine and she invested over $50,000. (R.T. 1260, 1265). Subsequently, she invested an additional $90,000 to cover storage fees for a gold transaction. (R.T. 1275). She never received a return on her investment. (R.T. 1278). Ms. Encarnacion never met nor spoke directly to Mr. Jones not did she receive any written material from Jones. Her decision to invest was based solely on statements made my Mr. Simburg.

Emad Tawfillis

Emad Tawfillis, a finance business manager for Cisco Systems, learned about Tri-Energy and its coal mines through Mr. Simburg and Mr. Jennings. He made an initial investment of $200,000 and a later contribution of $350,000. The initial $200,000 was returned. (R.T. 1355, 1361). Mr. Tawfillis learned about the gold transaction from statements made by Mr. Jones during the conference calls and he sent in $50,000 to cover storage fees. (R.T. 1374-1375). Mr. Tawfillis obtained Mr. Jones telephone number and had several one-on-one phone calls with him. "We basically talked about the status of the gold transaction, where it was, the ... the need for the funds ... [a]nd he would kind of walk me through the rationale behind the additional need for funds and to make me feel more comfortable about that." (R.T. 1378).

THE GOLD

As part of his job as a gold commodity analyst for the U.S. Geological Survey, Michael George tracked worldwide production of and trade in gold. (R.T. 1014). Mr. George told the Jury that for the time period in question, the total official gold bullion reserves of all the central banks, governments, and international monetary organizations was approximately 32,000 tons, with annual production running at approximately 2,500 tons. The United States government was the single largest holder of gold, with approximately 8,000 tons in its reserves. (R.T. 1019-1021).

Mr. George described a transfer of 20,000 tons of gold from Israel to the United Arab Emirates as being "beyond any scope of reality." (R.T. 1023). According to Mr. George, "a transfer on such would cause the gold market to collapse. The price would bottom out. It would drop below $100 per troy ounce. It's currently at $900 per troy ounce." (R.T. 1024).

MARINA INVESTORS GROUP

In 2001, Melody Lin French was hired by Mr. Jones to work at Marina Investors Group (hereinafter, "MIG"). At the time, MIG was working on preproduction for a film entitled Red Herring; Ms. French was both the lead actress and an associate producer. Mr. Jones was writer, producer, and director. (R.T. 926). Mr. Jones attempted to market Red Herring and subsequent films at various festivals but they were never able to distribute them through movie theaters. (R.T. 931). They were, however, shown on cable television and uploaded onto the inetrnet. (R.T. 1004). Mr. Jones created various websites including "Watchavision," "Bridging the Digital Divide," a religious website, and a modeling website. (R.T. 933).

In 2003, Mr. Jones started a record business called MIG records. "We built recording studios ... We bought duplicating equiptment and hired graphic artists to create art work. I mean just everything that the record business would need to function." (R.T. 936) Various acts were signed including Lethal Consequence, Fantasy Twins, and Nina Shaw. By 2004, there were approximately 50 employees at MIG. (R.T. 937). Ms. French also worked for Global Village Records, another company founded by Mr. Jones, which had its own stable of recording artists. (R.T. 943). In addition, MIG also had a limousine business that transported artists to events and was also used by Mr. Jones. (R.T. 955).

Part of Ms. French's responsibility was to pay vendors and to do the payroll through an account at Bank of America; Ms. French had check signing authority. (R.T. 929, 935). In order to fund the various projects, Ms. French would make "bank runs;" Mr. Jones would sign checks and she would take them to the bank and cash them, give the cash to Mr. Jones, who would disburse it. These runs would involve anywhere between $25-$10,000. (R.T. 957-958). In addition, Mr. Jones would sometimes send wire transfers from MIG accounts to family members who were abroad. (R.T. 959). As far as Ms. French knew, Mr. Jones did not have any personal bank accounts. (R.T. 1011).

Mr. Jones explained to Ms. French that the money that funded the MIG and Global Village enterprises came from his work as a commodities dealer and from foreign currency transactions. (R.T. 973). At some point, Mr. Jones mentioned that he was working with Mr. Simburg in his overseas transactions. (R.T. 976).

SEC

In the spring of 2005, Steven Cohen, an attorney for the Securities and Exchange Commission filed a complaint against the Defendants, Tri-Energy, and

Marina Investors Group alleging that the defendants violated federal securities laws and obtained a restraining order prohibiting the defendants from continuing to solicit investors for the various enterprises. (R.T. 1312-1316). The injunction was served on the defendants. (R.T. 1322, 1325).

THE RECEIVER

As part of the lawsuit filed by the SEC, Richard Weissman, an attorney, was appointed as a receiver for Tri-Energy and Marina Investors Group and ultimately liquidated the assets of both companies. (R.T. 1179). During discussions with Mr. Jones, Mr. Weissman was told by Mr. Jones that his agreement with Tri-Energy was to assist them in raising money for alternative energy sources. (R.T. 1181). According to Mr. Weissman, while he was the receiver, there was no revenue from MIG operations as a record company. (R.T. 1209).

FINANCIAL SUMMARY

David West, a Revenue Agent with the Internal Revenue Service, examined the records of H&J Energy, Tri-Energy, MIG, Global Village, and other miscellaneous accounts to see where the money came from and where it went. (R.T. 1505-1507). He determined that the total investor money deposited in those accounts was approximately $32,000,000. (R.T. 1508). Approximately $1.5 million of investor funds went into H&J Energy accounts, and $2.1 million into Tri-Energy accounts, $8.2 million into MIG accounts, and $2.1 million into Global Village. (R.T. 1544). In addition to moneys that went directly from investors into MIG Global Village, an additional $13 million was transferred from Tri-Energy into those accounts. (R.T. 1545).

Of the monies received by MIG and Global Village, $17.7 million was paid out for expenses related to Mr. Jones's business and the rest went to various personal expenses. (R.T. 1556-1557).

HENRY JONES

Henry Jones is an entrepreneur in the entertainment business, producing both music acts as well as film projects. He produced documentaries describing the plight of the Kurds in northern Iraq, he formed Global Village Records, which sponsored recording artists, and he organized fundraisers.

Mr. Jones met Arthur Simburg in 2001 at the Radisson Hotel where Mr. Jones was hosting the Prime Minister of Burundi. "He showed up with six packages of H&J projects essentially and asked if I - I could pass this on to some of the foreign dignitaries I was acquainted with." (R.T. 1790-1791). Mr. Simburg told Mr. Jones that he was in the coal mining business and was looking to expand into foreign markets. (R.T. 1792). Although Mr. Jones met Mr. Jennings briefly in early 2004, he never formed any business relationship with him. (R.T. 1793). He didn't speak to him over the phone, he didn't e-mail him, he didn't correspond by mail, and he never discussed his role at H&J or Tri-Energy. (R.T. 1793).

Mr. Jones did make a deal with Mr. Simburg; Mr. Simburg would provide seed money for Mr. Jones's enetrtainment business and in return, Mr. Jones would assist in finding international markets for Mr. Simburg's coal. "I was to broker and sell Tri-Energy coal and then pay Tri-Energy $200 million ..." Under the agreement, Mr. Jones was to have no role in the day-to-day operations of the coal mines. (R.T. 1794-1796). Under the terms of their agreeemnt, Mr. Jones had no role in soliciting investors for Tri-Energy and he never actively sought out investors. (R.T. 1799). To his recollection, he never spoke to any

potential Tri-Energy investors prior to their actual investment of money in Tri-Energy. (R.T. 1800, 1825).

Mr. Jones had no role in organizing the conference calls and was not set up to dial in by himself. "I would get a call from Art Simburg. If I'm tied up, I would decline talking to his friends. But if I was available, which I often was, he would announce my arrival, and we'll chitchat." (R.T. 1798).

Mr. Jones explained that he became involved in gold transactions in 2002 when there was speculation that if war broke out between the United States and Iraq, "that would shut down trade between the Arab world and the rest of the civilized world ..." (R.T. 1830).

> "I was approached by some individuals at work before that are part of a Pan-Arab trading group. And their proposal was essentially, '[w]e want to make sure that we'll leverage the situation to our advantage. And we would like to -- to move gold to certain European countries and do some necessary investment.'" (R.T. 1830).

Mr. Jones had had some prior experience with gold transactions and had negotiated, but not consummated, several gold transactions with Celia Starr, who was associated with U.S. Petroleum, including one of 1,000 metric tons. (R.T. 1834) Numerous documents relating to that and other similar gold transactions that Mr. Jones participated in were introduced into evidence. (See e.g., R.T. 1844). Mr. Jones denied that he had ever had a conversation with Mr. Simburg where he told him that he was negotiating a gold transaction for 5,000 or 20,000 metric tons of gold. Mr. Simburg did submit several Letters of Interest regarding a potential gold transaction, but Mr. Jones could not remember the amounts involved. (R.T. 1850).

Some of the fees for storage, insurance, and attorneys' fees for those transactions were paid for by money that came from Mr. Simburg. (R.T. 1851). Those expenses did not show up in the government's analysis of the MIG

accounts because the fees were paid with cashiers checks which were purchased with cash withdrawn from MIG accounts. (R.T. 1854). Mr. Jones explained that if he appeared less than forthcoming when some of the investors asked him questions about the transactions, "I g[o]t hired to do these transactions because I offer two things: security and confidentiality ... I had signed a confidentiality agreement ... [w]ith the principals of the transaction." (R.T. 1857-1858).

Mr. Jones disputed the Government contention that MIG never received revenue from its music and cinematic endeavors. "I had 150 full motion pictures that were sold in the microfilm market, the Cannes Film Festival in Milan, and South African Film Festival." (R.T. 1860).

> "We were the record company of choice for the Republican party. We performed in Washington, and my wife in particular with her group performed for George Bush's second inauguration, and we also performed for the Republican Convention in New York." (R.T. 1861).

THE GRAVAMEN OF PETITIONER JONES'S CONVICTION AND ITS INSUFFICIENCY

Standard

The material part of a grievance, complaint, indictment, charge, cause of action, etcetera. Williamson v. Pacific Greyhound Lines, 67 Cal.App.2d 250, 153 P.2d 990, 991. The burden or gist of a charge, the grievance or injury specially complained of. See, Statement of Case.

Discussion

Petitioner Jones's 'Strictissimi Juris' for the proposition that because of the egregious structural errors inherent in the 'Gravamen,' his conviciton cannot stand by reason of legal impossibility. Firstly, strictissimi juris (according to the strictest law) is a standard applied to review the sufficiency of evidence in a criminal case "only under very special circumstances." United States v. Montour, 944 F.2d 1019, 1024 (2nd Cir. 1991).

Petitioner Jones contends the charged conspiracy with the two distinct parts to it - a bifurcated transaction involving gold and a coal mine in Kentucky falls under the above-referenced "only under very special circumstances."

Strictissimi juris applies only when "the group activity out of which the alleged offense develops can be described as a bifarious undertaking, involving both legal and illegal purposes and conduct, as is within the shadow of the First Amendment." United States v. Dellinger, 472 F.2d 340, 392 (7th Cir. 1972), cert. denied, 410 U.S. 970 (1973) ("... when the ultimate objective of a group, of which the defendant [Jones] is a member, is legal, but the means chosen to accomplish that end involved both legal and illegal activities, a court will apply strictissimi juris to ensure that the defendant was personally involved with the illegal aspects of the group activity ..."). (emphasis added). See, Government Exhibit 100A - SEC (Securities and Exchange Commission) Deposition

of Henry Uliomereyon Jones, May 11, 2005, Los Angeles, California. Case No. ED-CV-05-00351 (VAP), Page 21 of 6 - Pages 18 to 21:

> Q: Mr. Jones, I show you what's being marked as Plaintiff's Exhibit 3. It is a document that appears to be on letterhead with "Tri-Energy, Inc." at the top. It's dated February 4, 2002, to Marina Investors Group re: Capital Infusion Proposal, and it appears to be a proposal or letter addressed to Dr. Jones.

(Plaintiff's Exhibit 3 was marked for identification) See, Lines 7 to 14 of Page 21.

> Q: "Did you enter into a $200 million Capital Infusion Agreeemnt with Tri-Energy?

See, Lines 20-21 of Page 21.

The impact of the above is two-fold. Firstly, the SEC had in its possession in the form of the above Exhibit information that memorializes Jones's business relationship with Tri-Energy. Secondly, in contradistinction to the Government's Criminal Indictment, Jones sent a proposal to Tri-Energy offering it a $200 million Capital Infusion, the reverse infact is the case.

The Capital Infusion contract is a fully legally executed contract initiated by Tri-Energy to Henry Jones. The Government, in the Criminal case, because the SEC information was exculpatory; willingly and maliciously altered the facts, amounting to Prosecutorial Misconduct.

To ask a rhetorical question, what was the true nature of the relationship between Jones and Tri-Energy and/or Arthur Simburg, separate from the Government's uncorroborated vouchings in its indictment and media smear campaign? That relationship is explained in two Exhibits; First, Jones testified to the following during the Trial:

> A: "I was to broker and sell Tri-Energy coal and then pay Tri-Energy $200 million ..." Under the agreement, Mr. Jones was to have no role in the day-to-day operations of the coal mines. (R.T. 1794-1796). Under the terms of their agreement, Mr. Jones had no role in soliciting investors for Tri-Energy and he never actively sought out investors. (R.T. 1799). To

his recollection, he never spoke to any potential Tri-Energy investors prior to their actual investment of money in Tri-Energy." (1800, 1825).

Also see, the following pertinent excerpts from the Government's witness testimony:

Jane Lord

"Although she heard Appellant's name mentioned by Mr. Jennings, Ms. Lord never met him, never spoke to him, and never received any mail from him, email or snail." (R.T. 459).

Karle Belfonti

"Mr. Belfonti never met, spoke to, or received any mail from appellant." (R.T. 503).

Lowell Decker

"Mr. Decker did not base his decision to invest in Tri-Energy on any statement made by Mr. Jones." (R.T. 777).

"Most of what he learned about Mr. Jones came from Simburg." (R.T. 814).

David Montierth

"Prior to investing, Mr. Montierth had no contact with Mr. Jones." (R.T. 825).

Kimberly Rae Flanigan

"... Mr. Simburg and Mr. Jennings told her about the coal mine and the gold transaction." (R.T. 858).

Roger Sohn

"All the requests for money came from Mr. Simburg, not Mr. Jones." (R.T. 1115, 1165).

Angelina Encarnacion

"Ms. Encarnacion never met nor spoke directly with Mr. Jones nor did she receive any written material from Mr. Jones, her decision to invest was based solely on statements made by Simburg." (R.T. 1305).

Thus,

"Under strictissimi juris, a court must satisfy itself that there is sufficient direct or circumstantial evidence of the defendant's own advocacy of an participation in the legal

REASONS FOR GRANTING

As a threshold matter, Petitioner Jones avers that the Writ of prohibition/mandamus, which he is applying for, is an extraordinar Writ under the All Writs Act, 28 U.S.C.1651(a) which in pertinent part states that, "...all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions, and agreeable to the usages and principles of law." Speaking within the context of mandamus, the Supreme Court in Ex Parte Republic of Peru (1943) 318 U.S. 578, 87 L.Ed 1014, 63 S.Ct. 793, emphasized that the writ, in so far as its purpose is to exert the supervisory power of appellate courts over inferior courts, affords an expeditious and effective means of compelling a lower court to exercise its authority to exercise its inherent authority, when it is its duty to do so. See also Roche v. Evaporated Milk Ass., 319 U.S. 21, 26, 87 L.Ed 1185. Jones' case implicates an unconstitutional tril in the District Court, Central District of California, wher th certified rcord of the judicial proceedings was falsified. Steming fromthis falsification, the znint Circuit Court of Appeals from th Ninth Circuit rubesamp3 this unconstitutional trial. Jones suspects the petition for thewrit of certiorari was also dismissed pursuant to this fraud upon the court. When Jones was transfereed to FCI, La Tuna, the district court there and the Fifth Circuit were misled by the both courts invoking the the falsified statement of the case and facts.

As here, Petitioner Jones is asking leave of this Honorable court to exercise its appellate jurisdiction both at common law and ir the federal courts i.e... Court of Appeals for the Ninth Circuit, the Fifth Circuit as well as their respective district courts, to confin them to a lawful exercise of their prescribed jurisdictions for which only the Supreme Court of the United States can so decree. Thus, there is no other means of seeking relief for Petitioner Jones, for te except through this extraordinary writ of Prohibition.

Petitioner Jones is not utilizing the Rule of Equitable Prospective Application or Application for the Writ of Prohibition to only attack a void judgment, Home v. Flora, 557 U.S. 433, 447, 129 S.Ct. 2579, 174 L.Ed.2d 406 (2009). Instead, he is moving this Honorable Court in addition to vacate the judgment in his case by reason of abuse of discretion and the gross departure from the law of the land, which if rendered continued enforcement, is detriment to the public interest. "id". (citing Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992).

Because of the gross, irregular and flagrant errors manifest in Jones" judicial proceedings, (see Appendices) he seeks this extraordinary remedy, which the courts have often used in special circumstances, to avoid a miscarriage of justice. See Henley v. Mun. Ct. 411 U.S. 345, 35 36 L.Ed.2d 294, 93 S.Ct. 1571 (1973). Most of the discussion about the potential expansion of the grounds for the writ actually turns on how egregious the lower courts have sought to usurp judicial power. The fraud of the court, evidenced by a fraudulent certified record of his judicial proceedings, allied with a biased judge, prosecutorial misconduc marked by egregious Brady violations that were prejudicial, ranks very high among the infirmities that undermine the principles of Anglo-American jurisprudence. In spite of it being the only route to cure a lower court's abuse and usurpation of power, the writ is not an ordinary writ, not an appeal by right.. See, Fernandez, 268 U.S. at 312.

For the above reason, the Writ of Prohibition may not be a substitute for the Writ of Certiorari or any other petitions. However, this application is made for the writ of prohibition, primarily because Congress has "bestowed "the courts with broad remedial powers to grant relief." Boumediene v. Bush, 553 U.S. 723, 776, 128 S.Ct. 1119, 171 L.Ed.2d 21 (2008). It is uncontroversial...that this privilege entitles Petitioner Jones, to a meaningful opportunity to demonstrate that he deserves relief and is being held pursuant to "the erroneous application and interpretation of the law. Id at 779, quoting INS v. St. Cyr, 533 U.S 289, 302, 121 S.Ct. 2271, 150.

WHETHER CUMULATIVE CONSTITUTIONAL VIOLATIONS, AS EVIDENT IN THIS BRIEF, INCLUDING A BIASED JUDGE, PROSECUTORIAL MISCONDUCT OUTSIDE THE INDICTMENT PROCESS, CONSTRUCTIVE DENIAL OF COUNSEL AND NUMEROUS OTHER INFIRMITIES, MAY HAVE STRIPPED SUBJECT MATTER JURISDICTION FROM THE COURT(S), LEAVING PETITIONER JONES NO CHOICE BUT TO FILE A MOTION UNDER RULE 12 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

PLEADING STANDARD

Under Rules 12(b)(1) and 12(b)(6), a defendant may move t dismiss an action against him for lack of federal subject matter jurisdiction for failure to state a claim upon which relief can be granted. Benitez-Navarro v. Gonzalez-Aponte, 660 F. Supp. 2d 185, 188 (D.P.R. 2009). Motion to dismiss brought under Rule 12(b)(1) is subject the same standard review as a motion to

dismiss under 12(b)(6).

Rule 12 of the Federal Rules of Criminal Procedure requires defendants to bring all motions to dismiss indictments before trial begins. Fed. R. Crim. P 12(b)(3)(B). However, claims to the Court's jurisdiction and claims that the indictment fails to state an offense, may be brought at any time. See id, see also U.S. v. Cotton, 535 U.S. 625, 630 (2002)(subject matter jurisdiction never forfeited or waived, defects require correction, regardless of whether error raised in district court); see e.g.. U.S. v. Scruggs, 714 F.3d 258, 262 (5th Cir. 2013)(jurisdictional challenge to indictment be raised art any time), U.S. v. Gatewood, 173 F.3d 983, 986 (6th Cir. 1999)(same); U.S. v. Vreeken, 803 F.2d 1085, 1088 (10th Cir. 1986)(same).

Claims that the indictment failed to state an offense can be brought at n time. See Fed. R. Crim. P. 12(b)(3)(B); see e.g. U.S. v. Rosa-Ortiz, 348 F.3d 33, 36 (1st Cir. 2003)(challenge to indictment for failure to charge offense proper when first raised on appeal despite defendant's plea of guilty; U.S. v. Glick, 142 F.3d 520, 523 (2d. Cir. 1998)(challenge to indictment for failure to charge offense proper despite defendant's failure to preserve it for appeal); U.S. v. Moreci, 283 F.3d 293, 296 (5th Cir. 2002).

Failure to raise any other objections to the indictment before the trial date or a court mandated deadline waives the objections. however, courts can still grant a defendant like Jones relief in such instances upon a showing of good cause. See, Federal Rules of Criminal Procedure 12. See e.g.. U.S. v. William, 89 F.3d 165, 167 n.1 (4th Cir. 1996)good cause shown because of inconsistency in charges not apparent before presentation of sufficient evidence at trial. See, APPENDIX 4 in this brief and compare SEC's avowal of the 5, 000 metrics of metric gold, consisting of Hallmark and production gold, as opposed to the government's false amount of 20,000 metric tons which the three panel of Ninth Circuit Judges, deemed outrageous in its affirmation of Jones' Direct Appeal. See, also prejudicial Brady violations.

In conducting Harmless Error analysis of constitutional violations, the Supreme Court has repeatedly reaffirmed that "(s)ome constitutional violations...by their very nature cast so much doubt on the fairness of he trial process that, as a matter of law, can never be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("W)e have recognized a limited class of fundamental constitutional right that defy "harmless error" analysis by 'Harmless error" standards. Errors of this type are so intrinsically harmful as to require automatic reversal,i.e.. (affect substantial rights) without regard to their effect on their outcome.")

In Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), the Supreme Court upheld Twombly and clarified that two underlying principle must guide this court's assessment of he adequacy of a plaintiff's pleadings when evaluating whether a complaint can survive Rule 12(b)(6) motion. First, the tenet that court must accept as true all the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice."Iqbal, 556 U.S. at 678." Second, only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 679. Thus, any non-conclusory factual allegations in the complaint, accepted as true, must be sufficient to give the claim facial plausibility. See Id."A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct."

ACTUAL INNOCENCE - Given the totality of the errors in this pleading, especially his erstwhile Section 2255 petition that was dismissed sua sponte by Hon. Judge Anderson, a strong case can be made that Jones is actually innocent. Actual innocence which Jones has demonsted is an exception to the AEDP's one year limitation period. McQuiggin v. Perkins, 569 U.S. 383, 386, 133 S.Ct. 1924, 185 L.Ed.2d 1019 (2013). To prove actual innocence petitioner like Jones, must convince the Court "that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonably doubt. "McQuiggin, 569 U.S. at 386 (quoting Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d (1995). Thus, Jones contends that his pleading of actual innocence under McQuiggin passes the mustard test of his untimely-filed petition from the A.E.P.D.'s one year limitation period.

In four cases, the Supreme Court has elaborated the meaning of actual innocence. In Sawyer v. Whitley (citations omitted) the issue was what actual innocence meant in the context of challenging a sentence. Jones invokes Herrera v. Collins ((citations omitted) for the proposition that "actual innocence itself is not a constitutional claim, but a gateway through which a habeas petitioner, must pass to have his otherwise barred constitutional claim considered on the merit." See 506 U.S. 390, 404 (1993). Following Herrera v. Collin, the Court decided Schlup v. Delo(citations omitted) the Court held, to prove actual innocence, a petitioner must show he was the victim of a constitutional violation that "probably resulted" in the conviction of one who is actually innocent. 513 U.S. 298, 327 (1995) as in the case at bar.

n House v. Bell, (citations omitted), the Supreme Court found that the requirement for showing actual innocence were met to allow a procedurally defaulted claim of ineffective assistance of counsel to be added. 547 U.S. 518 (2006). Jones further contends, he was prejudiced pursuant to United States v. Frady, where the Supreme Court indicated that "prejudice" could be demonstrated by showing that the results in the case likely would have been different

constitution or federal law. These errors would be to Jones' actual and substantial disadvantage, infecting the entire judicial proceedings with errors of constitutional dimensions, 456 U.S. at 170 (emphasis in original). The results would have been different, but for violation of federal law. See also Murray v. Carrier 477 U.S. 478, 496, (1986). Strickler v. Greene, 527 U.S. 253 (1993).

The principles of res judicata and collateral estoppel generally preclude a party from relitigating a matter already presented to a court and decided upon. But Brown v. Allen, decided in 1953, created an important exception to collateral estoppel and res judicata to habeas petitions. 344 U.S. 443 (1953).

In fact, the Warren Court so valued the importance of the opportunity to relitigate constitutional issues to ensure correct decisions at trial. Kaufman v. United States, 394 U.S. 217 (1969). The court concluded that "the provisions of federal collateral remedy rests...fundamentally upon recognition that adequate protection of constitutional rights...requires the continuing availability of a mechanism for relief. Id at 226.

The Supreme Court's methods of distinushing between trial and structural errors have fluctuated. The pivorl question remains, constitutional errors have a "substantial and injurious effect or influence in determining the jury's verdict. Bretch v. Abrhmason, 507 U.S. 619, 623, 113 S.Ct. 1710, 123 S.Ct. 1710, 123 L.Ed.2d 353 (1993), See also Fry v. Pliler, 551 U.S. 112, 119-120, 127 S.Ct. 2321, 168 L.Ed.2d 16 (2007)(holdig that the Bretch standard applies whether or not the court recognized the error and reviewed it for harmlessness).

WHETHER BY REASON OF THE NUMEROUS CONSTITUTUONAL VIOLATIONS COMMITTED BY THE DISTRICT COURT, SUCH AS FALSIFYING THE RECORD OF HIS TRIAL PROCEEDINGS, CONSTRUCTIVELY AMENDING THE INDICTMENT, DISQUALIFYING ALL OF HIS WITNESSES, CONSTRUCTIVE DENIAL OF COUNSEL... ETC. JONES' SUBSEQUENT COLLATERAL ATTACKS ON HIS SENTENCE AND CONVICTION, WERE RENDERED FRUITLESS EXERCISES, BECAUSE THE COURTS (DISTRICT COURT(S) AND 9TH & 5TH CIRCUIT COURT(S) OF APPEALS, NO LESS THE SUPREME COURT OF THE UNITED STATES, ADOPTED THE FRAUDULENT STATEMENTS OF CASE AND FACTS, AND CERTIFIED RECORD OF HIS TRIAL, FOR WHICH ONLY THE SUPREME COURT CAN REMEDY THE SITUATION AND RIGHT THIS EGREGIOUS WRONG THROUGH THE WRIT OF PROHIBITION.

The use of a petition for writ of prohibition is well settled. It is patently clear from two Supreme Court cases in Dairy Queen Inc., v. Wood, 469 U.S. L.Ed.2d 44 825 S.Ct. 894 (1962), and Beacon Theaters v. Wood, 359 U.S. L.Ed.2d 988, 79 S.Ct. 948 (1959), support the use of the Writ of Prohibition to correct abuse of discretion by the lower courts. Peersonette v. Kennedy) in re Midgard Corp, 204 B.R. 764, 768 (10th Cir. 1997).

Like the case at bar, the District Court "displayed a persistent disregard of the criminal and civil rules of procedure." Moothart v. Bell, 21 F.3d 1499, 1504 (10th Cir., 1994)(quoting McEwan v. City of Norman, 926 F.2d 1539, 1553-54 (10th Cir. 1991); Jennings v. Rivers, 394 F.3d F.3d 850, 854 (10th Cir. 2008)(appellate review of trial court's decision on post judgment set aside voluntary dismissal with prejudice if it was not "free, calculated and deliberate choice."

EFFECT OF ISTRICT COURT'S ABUSE OF DISCRETION - The general rule the mandamus is not proper remedy for controlling lower courts in the exercise of their judicial discretion is subject to the all established limitation the the writ of mandamus may properl7 issue in the exceptional case of where there is a clear abuse of that discretion. In that vein, the Supreme Court expressly recognized that exception. See Bankers Life and Casualty Co. v. Holland (1953) 346 U.S. 379, 98.

Petitioner Jones's trial was seriously infected by the following constitutional infirmities;

(a) the Indictment was hopelessly defective;

(b)there were numerous Brady violations that were prejudicial;

(c) the trial judge was biased and refused to recuse himself in the face of conflicts of interests;

(d) there was constructive denial of trial counsel(s);

(e) violation of the Advocate Witness Rule, that precluded SEC Prosecutor Stephen Cohen from sitting down in open court form the beginning of trial to its conclusion, stepping to the witness box to testify against Jones on how the latter rendered the Securities Violations that was the predecessor of the full blown trial in the Central District of California.

(f) the district court violated a long line of Supreme Court cases, sentencing him on materially INCORRECT INFORMATION that may implicit loss or absence of subject matter jurisdiction. etc.. APPENDIX & D.

See APPENDIX C AND D. See also (Hon. Judge Anderson's Sua Sponte dismissal of Section 2255 petition juxtaposed with court stamped copy of issues raised on Jones' Section 2255 Petition). See, Braunstein v. McCabe, 571 F.3d 108, 120 (1st. Cir. 2009)(giving courts broad discretion in preventing injustice or unfairness).

Given the totality of the claims raised by Jones in this petition, one of the key issues at stake here is one of subject matter jurisdiction. Subject matter jurisdiction also refers to the competency of the court to hear or determine a particular category of cases. Federal district courts have "limited"jurisdiction in that they have no such jurisdiction as is explicitly conferred by federal statute. 3231 et seq.

PIVOTAL QUESTIONS FOR THE HONORABLE SUPREME COURT TO CONSIDER IN DETERMINING LOSS OF JURISDICTION AND THE NINTH CIRCUIT'S SUBSTITUTION OF CASE NO: 09-50004 FOR 09-05101 TO CONCEAL GRAVE

CONSTITUTIONAL VIOLATIONS.

Also, the Honorable Court should determine if the District Court and the Court of Appeals properly exercised the jurisdiction conferred on them by 28 U.S.C. 3231 an 28 U.SS.C. Section 1291 respectively. whether the constitutional prohibition against Double Jeopardy, includes within it, the right of petitioner Jones (but not the state) to plead "collateral estoppel" and thereby preclude proof of some essential element(s) of the state's case found in the defendant's favor. Appendix 4, excerpts of constitutional violations culled from sua sponte Jones' section 28 U.S.C. 2255 petition.

THE NINTH CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION BY SHIRKING ITS CONSTITUIONAL PREROGATIVE OF HAVING JURISDICTION TO DETERMINE ITS OWN JURISDICTION BUT SHIFTED THAT BURDEN TO A SPECIAL CLIENT, THE UNITED STATES ATTORNEY' OFFICE OF THE CENTRAL DISTRICT OF CALIFORNIA, UNDER USA THOMAS O'BRIEN

BACKGROUND OF THIS PLEADING- The pleading filed by Petitioner Jones on December 24, 2008 shows direct mailing to the Ninth Circuit Court of Appeals. According to the Ninth Circuit Notification Form sent to the district court by the Ninth Circuit of Court of Appeals, Jones filed a "Notice of Appeal" on December 24, 2008. This initial filing sought, among other things the following. SEE APPENDIX 5. On January 27, 2009 the Ninth Circuit issued an Order for Time schedule that set January 27, 2009 the date for ordering transcripts and May 7, 2009 as the date for filing of Appellant's Opening Brief. The Ninth Circuit issued its docketing letter on January 7, 2009. The letter reflects that the Ninth Circuit has assigned case number 09-50004 to Appellant Jones December 24, 2008 appeal. The Ninth Circuit docketing sheet lists Michael J. Treman as appointed counsel for Appellant Jones.

On January 6, 2009 Judge Klausner issued a Minute Order, denying the motion to disqualify District Court Judge Anderson. See APPENDIX 5. On January 23, 2009 the government filed a motion to the Ninth Circuit to dismiss Jones's December 24, 2008 appeal on the grounds that the district court's order denying the motion for new trial and was subject to interim appeal. The record would show that the government re-characterized Jones's claims on the record as a motion for new trial (interlocutory appeal) amounting to 'FRAUD UPON THE COURT." Several panels of the Ninth Circuit Court of Appeal subsequently rubberstamped this error, immediately substituting Case No: 09-50004 and assigning Case No- 09-5101. While appointed counsel for Appellant Jones, CJA Counsel Michael Treman provided the appropriate CJA payment forms. Partial transcripts of Jones's trial testimony were received and provided to Jones, before the hearing on February 9, 2009. No other transcript were ever given to Jones after that, and Hon. Judge Anderson may have perjured himself in the Order (see Appendix 6)denying six month continuance by stating that Jones had all the transcripts he needed to prepare for sentencing. See Michael Treman's letter to the Ninth Circuit requesting to be relieved of representation of Jones.

MEMORANDUM OF POINTS AND AUTHORITIES FOR THE PROPOSITION THAT, UPON JONES FILING MOTION TO THE NINTH CIRCUIT COURT OF APPEALS AND INVOKING THE COLLATERAL ORDER DOCTRINE, THE DISTRICT COURT TEMPORARILY LOST JURISDICTION, UNTIL THE CASE WAS REMANDED BACK FROM THE NINTH CIRCUIT, WHICH NEVER HAPPENED. JONES' SENTENCING PROCEEDINGS LASTED LESS THAN TEN MINUTES WITH THE GOVERNMENT UTTERING ONE LACONIC SENTENCE "JONES THINKS HE IS INNOCENT." BECAUSE THE DISTRICT COURT DID NOT REGAIN JURIDICTION BECAUSE THE CASE WAS NEVER REMANDED BACK TO THE DISTRICT COURT, JONES' SENTENCE WAS A VOID JUDGMENT THAT WAS UNCONSTITUTIONALLY IMPOSED. THE ERRORS ARE SO PATENT, BECAUSE IT CANNOT BE CORRECTED ON APPEAL.

United States District Courts have only such jurisdiction as is conferred by an Act of Congress under the constitution U.S.C.A. Const. art 3, sec. 2; 28 U.S.C.A. 1344)(Hubbard v. Ammerman, 465 2d 1169 (5th Cir. 1972)(headnote 2. Courts). .

The United States District Courts are not courts of general jurisdiction. They have no jurisdiction except a prescribed by Congress pursuant t Article 111 of the constitution (many cites omitted).

Graves v. Snead, 541 F.2d 159(6th Cir. 1976)

The question of jurisdiction in the court either over the person, the subject matter or the place here the crimes was committed can be raised at any time in the proceeding. It is never presumed, but must always be proved, and it is never waived by the defendant.

U.. v. Rogers, 23 F.658 (D.C. Ark. 1885)

In criminal proceeding, lack of subject matter jurisdiction cannot be waived and may be asserted at any time by collateral attack.

U.S. v. Gernie, 228 F. Supp. 329 (D.C.N.Y. 1964)

Jurisdiction of the court may be challenged after the conviction and execution by judgment by way of writ of Habeas Corpus.

Mookini et al, v. U.S. 201 (1936)
(emphasis added)

The words 'district court of the United States commonly describe constitution courts created which have long been the court of the territories.

In Longshoremen' an Warehousemen's Union et al, v. Juneau Spruce Corp, 342 U.S. 237 (1952)
(emphasis added)

The phrase 'Court of the United States' without more, means solely courts created by congress under Article 111 of the constitution an not territorial court.

In Longshoremen's and Warehousemen's union et al, v. Wirtz, 170 F.2d 183 (9th Cir. 1948)
(emphasis added)

Peersonette v. Kennedy (in re Midgard Corp.) 204 B.R. 764, 768 (10th Cir. 1997)(order is final under collateral order doctrine, if it (1) conclusively determines a disputed question completely separate from the merits of the action, (2) is effectively unreviewable on appeal from a final judgement, and (3) is too important to be denied review.

Pierce v. Underwood, 487 U.S. 552, 558, 108 S.Ct. 1217, 113 L.Ed.2d 190 (1991).

Stave Regina College v. Russell, 490 U.S. 225, 238, 111 S.Ct. 1217, 113 L.Ed.2d 190 (1991).

Las Vegas Ice & Cold Storage Co. v. Far W. Bank, 893 F.2d 1182, 1185 (10th Cir. 1990)(quoting Le Maire ex rel. LeMaire v. United States, 826 F.2d 949, 953 (10th Cir. 1991).

Warfield v. Allied Signal TBS Holdings, Inc., 267 F.3d 538, 542 (6th Cir. 2001)(court have discretion to set a voluntary dismissa with prejudice if it s not a "free, calculated and deliberate" choice).

Hackett v. Barnhart, 475 F.3d 1166, 1172 (10th Cir. 2007)(quoting Kiowa' Indian Tribe f Oklahoma v. Hoover, 150 F.3d 1163, 1165 (10th Cir. 1998), In re Graves, 609 F.3d 1153, 1156 (10th Cir. 2010).

CONCLUSION

Wherefore Petitioner moves this Honorable Court, premises permitted, to grant the requested relief.

DATE: FEB' 23, 2023

Respectfully Submitted,

Henry Jones

HENRY JONES
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LISA NESBITT
OFFICE OF THE CLERK
UNITED STATES SUPREME COURT
WASHINGTON, D.C.

In Re Henry Jones
Petitioner,

-V-

UNITED STATS OF AMERICA
Respondent.

APPEAL NO:

CORRECTION OF DEFICIENCIES PURSUANT TO THE CLERK OF THE SUPREME COURT'S LETTER DATED MARCH 9, 2023.

Pursuant to the above referenced case, Petitioner Jones respectfully seeks leave of this Honorable Court to entertain his response to cure the deficiencies in his application for the Writ of Prohibition. The petition was returned for the following reasons;

> "The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. 20.1.

The deficiencies highlighted in the Clerk's letter have been duly corrected, sent to the pertinent parties, and memorialized hereunder;

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C. SECTION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

Petitioner Henry Jones respectfully invokes 28 U.S.C. 1651(a) for the proposition that the Supreme Court and all courts established, in aid of their respective jurisdictions and agreeable to the usages and principles of law. Henry Jones further avers that, an alternative writ or law may be issued by a justice (Chief Justice Roberts) to whom an application for a Writ of Prohibition, is submitted may refer it to the Court for determination. As a threshold matter, Henry Jones avers that the Supreme Court has original jurisdiction of a Writ of Prohibition, pursuant to the All Writs Act, 28 U.S.C. 1651(a). An extraordinary Writ under 28 U.S.C.1651(a) may be appropriate to prevent trial court(s) and the Court(s) of Appeals for the Fifth and Ninth Circuits of Appeals from making discretionary decisions where the Statute effectively removes those decisions from the realm of discretion. See In Estelle (1975, CA5) 516 F.2d 480).

PETITIONER JONES' CONTENTION THAT THE ALLEGATIONS HE MAKES, CONSTITUTE "EXCEPTIONAL CIRCUMSTANCES."

CONSTRUCTIVE AMENDMENT OF JONES' INDICTMENT - Jones' indictment and prosecution started with the SEC (Security Exchange Commission), where Jones was charged with brokering 5,000 tons of Production Gold, and Hallmark Bars involving Israel and the United Arab Emirates. See INTRODUCTION AND STATEMENT OF CASE in this brief. At trial, the Government unconstitutionally amended the 5,000 tons to an unwieldy and prejudicial 20,000 tons of gold. When the charging terms of an indictment are changed after its return, by the trial judge and the prosecutor, a constructive amendment or fatal variance occurs. A constructive amendment, in Jones" case is a more extreme form of variance and is prejudicial intrinsically, because it violates the Sixth Amendment and Fifth Amendment Grand Jury Clause, which guarantees an accused the right to be tried on the indictment, returned by the grand jury. Williamson, Supra, United States v. Koen, 31 F.3d 722 (8th Cir. 1994), Fischer supra at 462; United States . Roshko, 969 F.2d 1, 5 (2nd. Cir. 1992)(prosecutor's trial presentation constructively amended the possession with intent to distribute charge by expanding its object; United States v. Kellar, 916 F.2d 628 (11th Cir. 1990), cert. denied, 499 U.S. 978 (1991)(trial judge rewrote the indictment to add facts and theories; United States v. Leisure, 844 F.2d 1347 (8th Cir.)(reversed where judge instructed the jury on elements of crime different from the crime charged in the indictment), cert.. denied, 488 U.S. 932 (1988).

In Jones' case, the reasonable doubt instruction given by the court, which CJA counsel attacked in Jones' Direct Appeal was highly prejudicial and violates the constitution. Excerpts of Jones' Section 2255 motion which Hon. Judge Percy Anderson dismissed sua sponte is included in this Application for the Writ of Prohibition. See APENDIX B, C & D. The excerpt underlines more than anything else, the background of Jones' alleged offense conduct, memorialized by the SEC,the court's disqualification of all the potential witnesses for Jones, Loss of temporary jurisdiction following Jones' appeal under the Collateral Order Doctrine, Brady Violations, Sentencing irregularities, that are on the trial record, with the Government and Probation Officer incorporating materially incorrect information in the Pre-sentencing report, that the Court ignored, including constructive denial of counsel, that not only permeated the trial, but beyond, to programs like "American Greed' and Dateline" where Jones' erstwhile counsel David Kaloyanides, appeared alongside Prosecutor Ruth Pinkel in these programs to marginalize Jones. Sensationalism, outright lies and fabrications were substituted for facts that transpired during Jones" judicial proceedings. To the extent that, before Jones' direct appeal was rendered the judicial well had been poisoned, the three panel of circuit judges that affirmed Jones" conviction quoted from these television programs. The 20,000 tons of gold Jones was supposedly brokering between two middle eastern countries, was fabricated by the government. The actual quantity was on the record was 5,000 tons with roll and extensions. The errors were so prejudicial and outrageous.

ACTS OF CLEAR ERROR, MISTAKES OF LAW AND ABUSE OF DISCRTION. These errors originated with the District Court in the Central District of California where the certified record of Jones' trial was fraudulently changed, with the prejudicial consequence that the Court of Appeals for the Ninth Circuit, the District Court of the Western District of Texas, El Paso Division and later on the Fifth Circuit Court of Appeals and even the Supreme Court of the United States may have adopted the fraudulent Statement of the case, to the detriment of petitioner Jones in his quest to overturn his conviction and sentence, where District Court for the Central District of California not only had a biased judge, who would not follow Supreme Court Precedents and the Constitution, but had the government as a special client. Further, these errors (structural) were committed by the lower courts. Errors the Constitution and the Supreme Court consider to be ministerial acts that compels the lower courts, to the fulfillment of determining, if jurisdiction lies to subject Petitioner Jones to a lawful prosecution. Through application of the Plain Error Standard of Review the Ninth Circuit Court of Appeals, the Supreme Court of the United States, the district court in El Paso Texas, later the Fifth Circuit Court of Appeals, should have discovered the deep seated legal infirmities present in the case, but did not.

WHY ADEQUTE RELIEF CANNOT BE RECEIVED FROM ANY OTHER COURT

Petitioner Jones is not utilizing the Rule of Equitable Prospective Application for the Writ of Prohibition to only attack a void judgment. Home v. Flora, 557 U.S. 433, 447, 129 S.Ct. 2579, 174 L.Ed.2d 406 (2009). Instead, he is moving this Honorable Court, in addition, to vacate the judgment in his case by reason of abuse of discretion and the gross departure from the law of the land, which if rendered continued enforcement, is detriment to the public interest. "Id". (citing Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384, 112 S.Ct. 48, 116 L.Ed.2d 867 (1992).

Because of the gross, irregular and flagrant error manifest in Jones' judicial proceedings (see Appendices) he seeks the extraordinary remedy, which the courts have often used in special circumstances, to avoid a miscarriage of justice. See Henley v. Mun. Ct. 411 U.S. 345, 35, 36 L.Ed.2d 294, 93 S.Ct. 1571 (1973). Most of the discussion about the potential expansion of the grounds for the writ actually turns on how egregious the lower courts have sought to usurp judicial power. The fraud upon the court, evidenced by a fraudulent certified record of Jones' judicial proceedings, allied with a a biased judge, prosecutorial

misconduct, marked by egregious Brady violations that were highly prejudicial, ranks very high among the infirmities that undermine the principles of Anglo-American jurisprudence. In spite of it being the only route to cure a lower court's abuse of discretion and usurpation of power, the writ is not an ordinary writ, not an appeal by right. See, Fernandez, 268 U.S. at 312.

For the above reasons, the Writ of Prohibition may not be a substitute for the Writ of Certiorari or any other petition. However, this application is made for the writ of prohibition. primarily because Congress has 'bestowed the courts with broad remedial powers to grant relief." Boumediene v. Bush, 553 U.S. 723, 776, 128 S.Ct. 1119, 171 L.Ed.2d 21 (2008). It is uncontroversial...that this privilege entitles Petitioner Jones, to a meaningful opportunity to demonstrate that he deserves relief and is being held pursuant to "the erroneous application and interpretation of the law. Id at 779, quoting INS v. St. Cyr, 553 U.S. 289, 302, 121 S.Ct. 2271, 150. This writ would also cover his overall claims including loss of entitlement through laches.

CONCLUSION

The issue of a petition for a Writ of Prohibition is well settled. It is patently clear from two Supreme Court cases in Dairy Queen Inc. v. Wood, 469 U.S. L.Ed.2d 44, 825 S.Ct. 894 (1962), and Beacon Theaters v. Wood, 359 U.S. L.Ed.2d 988, 79 S.Ct. 948 (1959), support the use of he writ of prohibition to correct an abuse of discretion by the lower courts, especially the district court. Peersonette. v. Kennedy); & In re Midgard Corp) 204 B.R. 764, 768 (10th Cir. 1997). In the case at at bar, the lower courts "displayed a persistent disregard of the criminal and civil rules of procedures," Mootharrt v. Bell, 21 F.#d 1499, 1504 (10th Cir. 1994)(quoting McEwan v. City of Norman, 926 F.2d 1539, 1553-54 (10th Cir. 1991); Jennings v. Rivers, 394 F.3d 850, 854 (10th Cir. 2008)(appellate review of trial court's decision on post judgment set aside voluntary dismissal with prejudice if it was not "free, calculated and deliberate choice"); Hackett v. Barnhart, 475 F.3d 1166, 1172 (10th Cir. 2007))quoting Kiowas Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163, 1165 (10th Cir. 1998). In re Graves, 609 F.3d 1153, 1156 (10th Cir. 2010); See Braunstein v. McCabe, 571 F.3d 108, 120 (1st. Cir. 2009)(giving courts broad discretion in preventing injustice or unfairness).

In conducting Harmless Error analysis of constitutional violations such as Jones alleges, the Supreme Court has repeatedly reaffirmed that "(s)ome constitutional violations, ..by their very nature, cast so much doubt on the fairness of the trial process that, as a matter of law, can never be considierd harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("W)e have recognized a limited class of fundamental constitutional rights that defy "harmless error" analysis. Errors of this type are so intrinsically harmful as to require automatic reversal (i.e. "affect substantial rights") without regard to their effect on the outcome.").

DATE: MARCH 13,2023

Respectfully Submitted,

Henry Jones