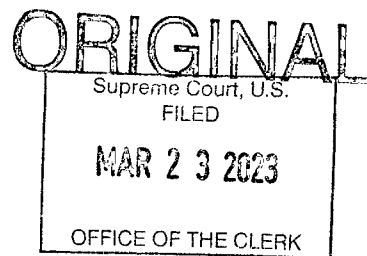


No. 22-7326



IN THE  
SUPREME COURT OF THE UNITED STATES

Quandraiko Hayes — PETITIONER  
(Your Name)

vs.

Mike Brown — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Quandraiko Hayes #22915  
(Your Name)

4533 W. Industrial Park Dr  
(Address)

Kincheloe, Michigan 49798  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

- I. THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT UNREASONABLY DENIED PETITIONER, DUE PROCESS OF LAW AND DUE PROCESS CLAUSE RIGHTS OF THE U.S. CONST. AMENDS V AND XIV AND MICH. CONST. (1963) ART. I § 17 BY AFFIRMING THE U.S. DISTRICT COURTS DECISION TO NOT ISSUE A CERTIFICATE OF APPEALABILITY OF LEGALLY INSUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT QUANDRAIKO HAYES COMMITTED THE OFFENSE OF ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER.
- II. THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT UNREASONABLY DENIED PETITIONER, DUE PROCESS CLAUSE RIGHTS AND RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL OF THE U.S. CONST. AMENDS VI AND XIV AND MICH. CONST. 1963 ART. I § 20 BY AFFIRMING THE U.S. DIST. COURTS DECISION TO NOT ISSUE A CERTIFICATE OF APPEALABILITY BECAUSE QUANDRAIKO HAYES RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL.
- III. THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT UNREASONABLY DENIED PETITIONER, DUE PROCESS CLAUSE RIGHTS AND CRUEL AND UNUSUAL PUNISHMENT RESPECTIVELY OF THE U.S. CONST. AMENDS XIV AND VIII, MICH. CONST. 1963 I § 16 BY AFFIRMING THE U.S. DISTRICT COURT DECISION TO NOT ISSUE A CERTIFICATE OF APPEALABILITY, WHERE QUANDRAIKO HAYES WAS IMPROPERLY ENHANCED IN SENTENCE UNDER MICH. COMPILED LAWS 769.12(1)(a), BECAUSE NOT ALL PRIOR OFFENSES COULD BE USED, RESULTING IN A DISPROPORTIONATE SENTENCE.
- IV. PETITIONER, QUANDRAIKO HAYES HAS DECIDED TO NOT PURSUE THE ISSUE PERTAINING TO U.S. CONST. AMENDS VI AND XIV, MICH. CONST. 1963 I § 20 RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.
- V. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT UNREASONABLY DENIED PETITIONER, U.S. CONST. AND MICH. CONST. 1963 EX POST FACTO CLAUSE RIGHTS ART. I & X, BY AFFIRMING THE U.S. DISTRICT COURT DECISION TO NOT ISSUE A CERTIFICATE OF APPEALABILITY, BY ADMITTING QUANDRAIKO HAYES PRIOR CONVICTIONS OF AMENDED LAWS UNDER MICH. COMPILED LAWS 769.12(1)(a) TO IMPOSE A MANDATORY 25 YEAR SENTENCE.

## TABLE OF CONTENTS

Questions Presented . . . . .	2
Table of Contents . . . . .	3
Table of Authorities . . . . .	5
List of Parties . . . . .	8
Opinion Below . . . . .	9
Jurisdiction . . . . .	12
Statutory and Constitutional Provisions Included . . . . .	13
Statement of the Case . . . . .	17
Reasons for Granting the Writ . . . . .	19
1. Sufficiency Of The Evidence . . . . .	19
I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION	
II. THE SIXTH DECISION IS IN CONFLICT WITH STATE AND FEDERAL OPINIONS	

2. INEFFECTIVE ASSISTANCE OF COUNSEL . . . . .	23
I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION. . . . .	
3. Due Process Violation, Disproportionate Sentence; Cruel and Unusual Punishment. . . . .	25
I. The Sixth Circuit Improperly Deferred To The State Court Decision	
5. Ex Post Facto Violation . . . . .	28
I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION	
CONCLUSION . . . . .	30
Index to Appendices . . . . .	31
Proof of Service . . . . .	33

# TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Alleyne v. United States, 570 U.S. 99; 133 S.Ct. 2151; 186 L.Ed.2d (2013)	27
Bulls v. Jones, 274 F.3d 329 (CA 6, 2001)	21
Calder v. Bull, 3 U.S. 386, 390; 1 L.Ed. 648; 3 Dall 386 (1798)	28
Carmell v. Texas, 529 U.S. 513; 120 S.Ct. 1620; 146 L.Ed.2d 577 (2000)	28
Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 579 589 (1993)	21
Harriington v. Richter, 562 U.S. 86, 100 (2011)	14
Hayes v. Burt, 2018 U.S. Dist. LEXIS 3342 (E.D.Mich. 2018)	22
Hayes v. Burt, 2018 U.S. App. LEXIS 12613 (E.D.Mih. 2018)	22
Hill v. Hofbauer, 337 F.3d 706 (CA 6, 2003)	21
Hohn v. United States, 524 U.S. 236 (1998)	10
House v. Mayo, 324 U.S. 42 (1945)	10
In Re Winship, 397 US.S. 358, 364 (1970)	19
Jackson v. Virginia, 443 U.S. 307, 318 (1974)	19
Miller v. Alabama, 567 U.S. 460; 132 S.Ct. 2455; 183 L.Ed.2d 407 (2012)	26
Miller El v. Cockrell, 537 U.S. 322, 327 (2003)	13
ROmpilla v. Beard, 545 U.S. 374 (2005)	25
Slack v. McDaniel, 529 U.S. 473, 483-84 (2000)	13
Strickland v. Washington, 466 U.S. 668, 687 (1984)	23
United States v. Booker, 543 U.S. 220, 264 (2005)	27
United States v. Scheffer, 523 U.S. 303, 309 (1974)	21
Wiggins v. Smith, 539 U.S. 510 (2003)	25
Williams (Terry) v. Taylor, 529 U.S. 362 (2000)	25

# OTHER

28 U.S.C. 1254(1)	10, 12
28 U.S.C. 2253(c)(2)	13
28 U.S.C. 2254(d)	13, 17, 18

## EX POST FACTO CLAUSE

U.S.C. Article 1 § 10	15, 28
U.S.C. Amends V	14, 19
U.S.C. Amends VI	14, 23
U.S.C. Amends VIII	14, 25
U.S.C. Amends XIV	14, 19
Fed. Rules Evid. 609(c)(1)	15, 29
Fed. Rules Evid. 702	21
Fed. Rules Evid. 802	21
Fed. Rules Evid. 901	21

## MICHIGAN CASES

People v. Cornell, 466 Mich. 335 (2002)	21
People v. Godsey, 54 Mich. App. 316, 319; 220 NW2d 801 (1974)	24
People v. LeBlanc, 465 Mich. 575; 640 NW2d 246 (2002)	26
People v. Lockridge, 498 Mich. 358; 870 NW2d 502 (2015)	26, 27
People v. Milbourn, 435 Mich. 630; 461 NW2d 1 (1990)	26, 27, 28
People v. Parks, 2022 Mich. LEXIS 1483	26
People v. Pippen, 509 Mich. 999, 974 NW2d 241 (2022)	25
People v. Poole, 2022 Mich. LEXIS 1425	26
People v. Roberson, 35 Mich. App. 413 (1974)	21
People v. Romanchuk, 1996 Mich. App. LEXIS 926 Mich. App. LEXIS 926 (1996)	25

People v. Smith, 217 Mich. 669, 1187 NW2d 304 (1922)	20
People v. Snyder, 462 Mich. 38, 45 (2000)	22
People v. Steanhouse, 500 Mich. 453; 902 NW2d 327 (2017)	28
People v. Stevens, 306 Mich. App. 620; 858 NW2d 98 (2014)	20
People v. Stovall, 2022 Mich. LEXIS 1486 (2022)	26
People v. Taylor, 2022 Mich. LEXIS 1484 (2022)	26
OTHER	
MCL 750.227(b)	17
MCL 750.234(b)(4)	17, 27
MCL 750.84	17, 27
MCL 769.12(1)(a)	17, 20, 29
MCL 769.34(10)	26, 27
<del>MCL 777.50</del>	16, 29
MCL 780.972(1)	24
MICH. CONST. 1963, Ex Post Facto Clause Articles 1 §10	15, 28
Mich. Const. 1963, Art. 1 § 16	14, 25
Mich. Const. 1963, Art. 1 § 17	14, 19
Mich. Const. 1963, Art 1 § 20	14, 23
Mich. Rules Evid. 609(c).	15, 29

## LIST OF PARTIES

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

~~X~~

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

WAYNE CIRCUIT COURT L.C. No. 17-001771-01-FC  
People v. Quandraiko Hayes,

PEOPLE V. HAYES, 2018 Mich. App. LEXIS 1528, (Docket No. 339563 4.17.2018).

PEOPLE V. HAYES, 2019 Mich. App. LEXIS 62;  
2019 WL 208023 (1.15.2019) (Docket No. 339563);

PEOPLE V. HAYES, 503 Mich. 1038; 927 N.W.2d 253 (5.28.2019);

HAYES V. HORTON, 2022 U.S. Dist. LEXIS 84961;  
2022 WL 1493507 (E.D. Mich. 5.11.2022).

HAYES V. HORTON, 2022 U.S. Dist. LEXIS 102431;  
2022 WL 2071088 (E.D. Mich. 6.8.2022).

HAYES V. BROWN, 2023 U.S. App. LEXIS 530 (6th Cir. 2023).



No. \_\_\_\_\_

IN THE SUPREME COURT  
OF THE UNITED STATES

---

QUANDRAIKO HAYES,  
  
Petitioner,  
  
vs.  
  
MIKE BROWN [Warden]  
  
Respondent.

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

The Petitioner, Quandraiko Hayes, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States District Court rendered in these proceedings on January 10, 2023. Hayes v. Brown, 2023 U.S. App. LEXIS 530.

OPINION BELOW

The United States District Court Affirmed to deny Petitioner a Certificate of Appealability in it's cause to Case No # Hayes v. Horton, 596 F. Supp. 3d 978; 2022 U.S. District LEXIS 61231 Civil No # 19-13470 (3.31.2022); 2022 WL 989211 (E.D. Mich.)

The proceedings were held in the United States District Court for the Eastern District of Michigan, Northern Division. The opinion is unpublished and is reprinted in the appendix attached to this Petition.

The order of the Sixth Circuit Court of Appeals denying the request for Certificate of Appealability is reprinted to this Petition and located in the Appendix dated (1.10.2023). Hayes v. Brown, 2023 U.S. App. LEXIS 530.

## JURISDICTION

In Hohn v. United States, 524 U.S. 236 the Supreme Court also resolved another issue one that the statute and rule previously had left open: Whether denial of a certificate of appealability are appealable via certiorari to the Supreme Court. Overruling its prior decision in House v. Mayo, the Court held that it has jurisdiction to review denials of Certificate of Appealability by a circuit judge or panel, because those denials were judicial in nature. Under 28 U.S.C. § 1254(1)

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is HAYES V Brown  
2023 U.S. App. Lexis 530 1.10.2023

☒ reported at 22-1527; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is HAYES V HORTON  
596 F. Supp.3d 978 3.31.2022

☒ reported at 2022 U.S. Dist Lexis 61231; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from state courts:

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

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was January 10, 2023

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

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

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

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d) imposes the following standard of review for habeas cases;

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim ---

- (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; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

28 U.S.C. § 2253(c)(2):

A certificate of appealability may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." See Miller - El v. Cockrell, 537 U.S. 322, 327 (2003). The applicant must demonstrate that reasonable jurists would find the district court's assessment of his claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

When a state court previously adjudicated the petitioner's claims on the merits, the district court may not grant habeas relief unless the state court's adjudication result in a "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, "or" a decision that was based on an unreasonable determination of the

facts in light of the evidence presented in state court proceeding." 28 U.S.C. § 2254(d). See Harrington v. Richter, 562 U.S. 86, 100 (2011).

U.S. Const. and Mich. Const. Art I § 17 Amendment V criminal actions provisions concerning - Due process of law and just compensation clauses.

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

U.S. Const. Amend VI; Mich. Const. Art I § 20:

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

U.S. Const. Amend VIII and Mich. Const. Art I § 16:

Bail --- Punishment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. Amend XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Art. I & X Ex Post Facto; 1963 Michigan Constitution  
Art, 1 § 10:

No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

A statute that affects the prosecution or disposition of criminal cases involving crimes committed before the effective date of the statute violates the Ex Post Facto Clauses if it (1) makes punishable that which was not (2) makes an act a more serious criminal offense, (3) increases the punishment or (4) allows the prosecution to convict on less evidence.

The Ex Post Facto Clauses were intended to secure substantial personal rights against arbitrary and oppressive legislation, and not to limit legislative control of remedies and procedures.

Impeachment by evidence of conviction of crime FRE 609(c):

Evidence of a pardon, annulment, or certificate of rehabilitation evidence of a conviction is not admissible if:

- (1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on finding that the person has been rehabilitated and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year.

MRE 609(C) Time Limit: Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction.

Michigan Compiled Law 769.12(1)(a):

- (1) If a person has been convicted of any combination of 3 or more felonies or attempts to commit felonies, whether the convictions occurred in this State or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 12 of this chapter as follows:
- (a) if the subsequent felony is a serious crime or a conspiracy to commit a serious crime, and 1 or more of the prior felony convictions are listed prior felonies, the court shall sentence the person to imprisonment for not less than 25 years, nor more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction for the purpose of this subsection only.

Michigan Compiled Law 777.50 prohibits the use of a conviction more than 10 years old to score prior record variables 1 through 5.



## STATEMENT OF THE CASE

Petitioner, Quandraiko Hayes, hereby comes before this Honorable Court to ask that this court grant a Writ of Certiorari.

Petitioner was convicted by bench trial in the State of Michigan Wayne Circuit Court L.C. No. 17-001771-01-FC of Assault with Intent to do Great Bodily Harm less than Murder (AWIGBH), MCL 750.84, intentional discharge of a firearm in or at a dwelling causing serious impairment, MCL 750.234b(4), and possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b.

The trial court sentenced Petitioner Hayes as a fourth-offense habitual offender, MCL 769.12(1)(a), to concurrent prison terms of 25 to 40 years each for the (AWIGBH) and intentional discharge of a firearm conviction and a consecutive two-year term for the felony firearm conviction. (Appendix H, I)

Petitioner, then filed an appeal of the original conviction and sentence to the Michigan Court of Appeals, who Affirmed the conviction and sentence. People v. Hayes, 2019 Mich. App. LEXIS 62; 2019 WL 208023 (Appendix F).

Petitioner then proceeded to the Michigan Supreme Court, who then denied leave to appeal because they were not persuaded that the question should be reviewed by this court. People v. Hayes, 503 Mich. 1038; 927 NW2d 253 (2019). (Appendix E).

Petitioner Hayes then proceeded to file a Pro Se Application for a writ of Habeas Corpus under 28 U.S.C. § 2254. Petitioner contention was (1) that there was insufficient evidence to convict; (2) that Hayes was denied the effective assistance of counsel; (3) that his sentence violated the Eighth Amendment because it was disproportionate, and (4) that the sentencing court violated the Ex Post Facto Clause by using prior

convictions to impose a mandatory minimum of 25 years' imprisonment on the habitual offender charge. The Application was denied Hayes v. Horton, 596 F. Supp. 3d 978; 2022 U.S. Dist. LEXIS 61231; 2022 WL 989211 (E.D. Mich. 3/31/2022) (Case No. 1:19-cv-13470) (Appendix D).

Petitioner then filed a Rule 59(e) Motion to Alter or Amend Judgment, Motion for Evidentiary Hearing, and Motion for Discovery. This proceeding also ended in a denial. Hayes v. Horton, 2022 U.S. Dist. LEXIS 84961, 2022 WL 1493507 (E.D. Mich. May 11, 2022). (Appendix C).

Petitioner Hayes then filed with the United States Court of Appeals for a Certificate of Appealability of his denial of a Writ of Habeas Corpus 28 U.S.C. § 2254 and for leave to proceed In Forma Pauperis. These proceedings also ended in a denial. Hayes v. Brown, 2023 U.S. App. LEXIS 530 (6th Cir. Jan 10, 2023) (22-1527). (Appendix A).

Petitioner Quandraiko Hayes, now asks that this Honorable Court to review the questions presented and allow that this Writ of Certiorari be GRANTED.

# REASON FOR GRANTING THE WRIT

## Sufficiency of the Evidence

### I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION.

"The due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In Re Winship, 397 U.S. 358, 364 (1970).

In reviewing the Sufficiency of the Evidence to support a criminal conviction the crucial questions is "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 318 (1979); U.S. Const. Amends. V and XIV, Mich. Const. 1963 1 § 17.

The Sixth Circuit opinion misapplied precedence by giving deference to the state courts per curiam as described:

Both witnesses testified that they had been staying with Hayes at his home, but Hayes told them to leave and then retrieved a shotgun. Hayes fired the gun, hitting victim in the arm. The victim, who the trial court found was reluctant to testify at trial, claimed that the shooting was an accident. The victim's girlfriend denied seeing the shot fired and said she was intoxicated at the time. Hayes testified on his own behalf and claimed that the shooting was accidental. The trial, court discredited the testimony indicating that the shooting was accidental and found the testimony offered by the victim's girlfriend unreliable because she was intoxicated. It found beyond a reasonable doubt that Hayes intentionally fired the shotgun at the victim and convicted Hayes of AWIGBH, intentional discharge of a firearm in or at a dwelling causing serious

impairment and felony firearm.

Pursuant to MCL 769.12(1)(a) the trial court sentenced Hayes to mandatory 25 years minimum sentence for the AWIGBH and intentional discharge of a firearms convictions, to be served consecutive to a two-year sentence for the felony-firearm conviction.

The elements of AWIGBH are:

1. An attempt or threat with force or violence to do corporal harm to another (an assault)
2. An intention to do GBH less than murder;
3. The intent to do great bodily harm less than murder is an intent to do serious injury of an aggravated nature.

See e.g., People v. Stevens, 306 Mich. App. 620; 858 NW2d 98 (2014); People v. Smith, 217 Mich. 669; 187 NW2d 304 (1922).

### **Trial Court Evidence**

1. Hayes attempted with force or violence to do corporal harm to the victim by firing a shotgun at him.
2. Hayes intent to do serious injury of an aggravated nature can be inferred from Hayes request that the victim and his girlfriend leave, followed by his conduct of obtaining a shotgun and then discharging the gun while it was pointed toward the victim.
3. The victim girlfriend testified that Hayes told them to "get out" while pointing the shotgun at her, which can be reasonably be interpreted as a threat.
4. Further, Hayes intent can be inferred from his use of a dangerous weapon and victim injury.

## II. THE SIXTH CIRCUIT DECISION IS IN CONFLICT WITH STATE AND FEDERAL OPINIONS

In United States v. Scheffer, 523 U.S. 303, 309; 118 S.Ct. 1261; 140 L.Ed.2d 413 (1998) State and Federal governments unquestionably have a legitimate interest in ensuring that reliable evidence is presented to the trier of fact in criminal trial. "Indeed, the exclusion of unreliable evidence is a principal objective of many evidentiary rules." See e.g., Fed. Rule Evid. 702; Fed. Rule Evid. 802; Fed. Rule Evid. 901; see also, Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 597, 589; 125 L.Ed.2d 469; 113 S.Ct. 2786 (1993).

The beyond a reasonable doubt standard applies to constitutional errors. People v. Roberson, 35 Mich. App. 413 (1974); People v. Cornell, 466 Mich. 335 (2002); Bulls v. Jones, 274 F.3d 329 (CA 6, 2001); Hill v. Hofbauer, 337 F.3d 706 (CA 6, 2003).

In Petitioner Hayes's consolidated appeals the State and Federal courts failed at applying law to the facts of Petitioner cause.

By allowing deference to the trier - of - facts admission into evidence of unreliable and reluctant facts to constitute the elements of the crime in which petitioner was convicted of, Assault With Intent To Do Great Bodily Harm Less Than Murder MCL 750.84.

The complainant Courtney Coburn, who is the victim in this cause testified that the shooting was accidental and the court found this testimony reluctant amazingly while trying to explain

what happened emotional duressed.

The complainant girlfriend Shelia Pulliam who gives testimony that she was intoxicated while given a deposition of the incident to what happened. The trial court found her testimony unreliable.

**ENFORCING, UNRELIABLE AND  
RELUCTANT TESTIMONY TO PROVE GUILT  
VIOLATES DUE PROCESS RIGHTS.**

Intent [is] a necessary ingredient of the offense. Where there is no proof of intent a conviction must be reversed.

Exclusion of impeachment evidence that complainant stated shooting was an accident was error where prosecution's case rested almost entirely on the testimony of the complainant and there was an issue as to her credibility. People v. Snyder, 462 Mich. 38, 4 (2000).

Petitioner also cites: It ordered that the court grant Petitioner a Certificate of Appealability with respect to the following issue only:

WHETHER PETITIONER WAS DEPRIVED A FAIR TRIAL  
WHEN THE TRIAL COURT ADMITTED TESTIMONY THAT A  
KEY WITNESS WAS RELUCTANT TO TESTIFY DUE TO  
THREATS.

Hayes v. Burt, 2018 U.S. Dist. LEXIS 3342, United States District Court Eastern District of Michigan, Southern Division (2018); United States Court of Appeals Hayes v. Burt, 2018 U.S. Dist. LEXIS 12613.

The clerk was directed to issue a briefing schedule on the issue certified by the district court:

PETITIONER ASKS THAT THIS HONORABLE COURT GRANT WITH RESPECT TO THE MERITS A WRIT OF CERTIORARI.

### Ineffective Assistance of Counsel

#### I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION.

To establish ineffective assistance of counsel a defendant must show deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687 (1984); U.S. Constitution Amends VI and XIV; Mich. Const. 1963, 1 § 20.

The Sixth Circuit opinion misapplied Strickland v. Washington, 687 - 88 test for prejudice in two important ways. First, the court flagrantly misstated the record.

Evidence which omitted testimony from Courtney Coburn of how weapon discharged and his previous assaults towards Petitioner Quandraiko Hayes, would have dealt a serious blow to the state's case.

This Court requires, in making the prejudice analysis under Strickland, that the reviewing court consider all the evidence in the record, both that which was admitted at the trial and that which is developed at post conviction stage.

Petitioner Hayes, claims that his counsel failed to provide a firearms expert which would have provided a strategy for the

defense to set forth a qualified opinion of the expert of how the weapon discharged as testified Courtney Coburn and Petitioner Hayes. Defense counsel failed to call any witnesses as to defense, conceding to the state's witness with no further questioning.

Counsel failures include failure to argue self-defense which could have aided in Petitioner Hayes's claim of reasons for obtaining weapon. Courtney Coburn admitted testimony that he has assaulted Hayes many times with weapons including to be bottles, knives, fist-fights.

MCL 780.972(1) clearly states:

An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if  
. . . . .

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

Petitioner Hayes asks that the occupants leave his home. Believes he's in imminent danger due to previous assaults obtains weapon to protect himself and to scare occupants from home. Weapon discharges while in Petitioner Hayes possession causing injury to Courtney Coburn.

### The "Castle" Doctrine:

Retreat is not a factor in one's dwelling. The rule has been defended as arising from "an instinctive feeling that a home is sacred, and that it is improper to require a man to submit to pursuant from room to room in his own house." People v. Godsey,



54 Mich. App. 316, 319; 220 NW2d 801 (1974).

The trial court erred in not instructing on self-defense when there was some evidence to support the theory as a defense to a charge of (AWIGBH). People v. Romanchuk, 1996 Mich. App. LEXIS 926.

Counsel also deprived Petitioner of a meaningful defense by not calling a firearms experts. In People v. Pippen, 509 Mich. 999; 974 NW2d 241 (2022). Defendant was entitled to a new trial because decision to neither investigate nor call a witness was deficient and defendant was prejudiced by that deficiency.

Under this test, it is inappropriate to consider the evidence in the light most favorable to the verdict. Its clear that the Court of Appeals here disregarded this principle. As it has in several other cases, the court began its analysis by setting out the version of facts given by the Michigan Court of Appeals. See e.g., Rompilla v. Beard, 545 U.S. 374 (2005); Wiggins v. Smith, 539 U.S. 510 (2003); Williams (Terry) v. Taylor, 529 U.S. 362 (2000).

PETITIONER ASKS THAT THIS HONORABLE COURT  
GRANT WITH RESPECT TO THE MERITS A WRIT OF  
CERTIORARI.

3. Due Process Violation; Disproportionate Sentence; Cruel and Unusual Punishment U.S. Const. Amends XIV and VIII; Mich. Const. 1963 § 16.

# I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION.

This issue need not be preserved as it is constitutional in nature. This issue was preserved by the filing of a proper motion to remand. MCL 769.34(10).

Preserved constitutional error are reviewed de novo. People v. LeBlanc, 465 Mich. 575; 640 NW2d 246 (2002).

The United States Supreme Court has long held that juvenile offenders are to be treated differently than adult offenders. Miller v. Alabama, 567 U.S. 460; 132 S.Ct. 2455; 183 L.Ed.2d 407 (2012); see also, e.g., People v. Parks, 2022 Mich. LEXIS 1483; People v. Stovall, 2022 Mich. LEXIS 1486; and People v. Taylor, 2022 Mich. LEXIS 1484; People v. Poole, 2022 Mich. LEXIS 1425; (7.28 2022).

In People v. Lockridge, 498 Mich. 358; 870 NW2d 502 (2015); the sentencing guidelines were rendered advisory.

In sentencing Mr. Hayes was given 25 years mandatory minimum the trial court utilized an offense committed when Mr. Hayes was 15 years old. In contention of the use of this conviction resulting in a disproportionate sentence which violates the principles of proportionality as set forth in People v. Milbourn, 435 Mich. 630; 461 NW2d 1 (1990).

In that case the Michigan Supreme Court provided a definition of what constitutes a proportionate sentence. "[A] judge helps to fulfill the overall legislative scheme of criminal punishment by taking care to assure that the sentence imposed across the discretionary range are proportionate to the seriousness of the

matters that come before the court for sentencing. Id. 653-654.

Compelled by the United States Supreme Court decision in Alleyne v. United States, 570 U.S. 99; 133 S.Ct. 2151; 186 L.Ed.2d 314 (2013). This court held that Michigan's system of applying mandatory sentencing guidelines was unconstitutional Lockridge, 498 Mich. at 388, 389.

Next, as a remedy for that unconstitutionality, the court "bookerize[d]" the Michigan guidelines - which is to say, it adopted the remedy chosen by the United States Supreme Court in United States v. Booker, to remedy similar unconstitutionality in the operation of the federal sentencing guidelines. Lockridge, 498 Mich. at 391.

The mandatory minimum sentence imposed on an Assault With Intent to do Great Bodily Harm Less Than Murder MCL 750.84; Discharge of a Firearm Causing Serious Impairment MCL 750.234, was outside the scope of the maximum sentence prescribed by Michigan law.

And therefore exceeded the Michigan Sentencing Guidelines range of "45-75" months. Which constitutes a cruel and unusual sentence and punishment by imposing a 27 year imprisonment sentence.

Trial court had no discretion and failed to articulate the reason and departure from the guidelines. MCL 769.34(10). We repeat our directive from Lockridge, that the guidelines "remain a highly relevant consideration in a trial courts' exercise of sentencing discretion" that trial courts "must consult" and take . . . into account when sentencing." Lockridge, 498 Mich. at 391," quoting Booker, 543 U.S. at 264 and our holding from Milbourn, that "the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines recommended range."

Milbourn, 435 Mich. at 661 (a sentencing court "abuse[s] its discretion in applying the principle of proportionality by failing to provide adequate reasons for the extent of the departure sentence imposed.") People v. Steanhouse, 500 Mich. 453, 475-476; 902 NW2d 327 (2017).

Therefore, Petitioner Hayes, sentence violates the entitled ruling of the principle of proportionality, creating an cruel and unusual sentence whereas he's being constantly reviewed by a juvenile conviction to justify a "mandatory sentence" committed while at the age of 15 years old.

Petitioner asks that this Honorable Court grant with respect to the merits a writ of certiorari.

## 5. EX POST FACTO VIOLATION

U.S. Const. 1 § 10; Michigan Const. 1963, 1 § 10.

### I. THE SIXTH CIRCUIT IMPROPERLY DEFERRED TO THE STATE COURT DECISION ....

An ex post facto law is one that (1) makes criminal an innocent action done before the passing of the law, and punishes such action; (2) makes a crime a greater offense than it was when committed; (3) imposes a greater punishment than the law did at the time the crime was committed or (4) alters the legal rule of evidence so that the defendant can be convicted on lesser evidence. Calder v. Bull, 3 U.S. 386, 390; 1 L.Ed. 648; 3 Dall 386 (1798); Carmell v. Texas, 529 U.S. 513; 120 S.Ct. 1620; 146 L.Ed.2d 577 (2000).

The Sixth Circuit failed to consider all factors listed in the constitution on each ground listed in the ex post facto clause. By using Petitioner Hayes's prior convictions to impose a

greater sentence of amended laws.

Petitioner, prior convictions were obtained in 1989, 1990, and 1993 these convictions were completed before the current conviction in 2017.

Michigan amended its Habitual statute in October of 2012 MCL 769.12(1)(a) without any ramifications to any past conviction, given rise to if you are convicted of any future event you will be subject to a 25 year minimum sentence.

State and federal times limits: Bars the use of convictions being used against a defendants for purpose of evidence and scoring variables.

**MRE 609(c); FRE 609(c)(1); and MCL 777.50.**

These laws are provided an attached given the facts presented on behalf of myself Petitioner ask that this Honorable Court Grant with respect to the merits a writ of certiorari.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Quandriko Hayes # 229115

Date: 3.22.2023

Re-submitted 4.7.2023