No. 23-5695

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Stephen Michael Michuda — PETITIONER
(Your Name)

vs.

State of Minnesota — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Minnesota Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stephen Michuda OID 182739
(Your Name)
MCF-Rush City
7600 525TH Street
(Address)

Rush City, MN 55069
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. Is it unconstitutional for the State of Minnesota to block all avenues for indigent ineffective-assistance-of-counsel-claims against public defenders?
2. Is it unconstitutional for the State of Minnesota to time-bar and/or procedurally-bar indigent parties that were denied the effective assistance of counsel at trial and/or review stages?

LIST OF PARTIES

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

LIST OF PROCEEDINGS DIRECTLY RELATED

1. *Minnesota v. Michuda*, Case No. 27-CR-94-004164, Hennepin County District Court; Initial arrest 1/17/94; dismissed 1/26/94.
2. *Minnesota v. Michuda*, Case No. 27-CR-94-006534, Hennepin County District Court; Re-arrest 1/26/94; plea 5/9/94; sentenced 6/30/94; postconviction denied 7/24/96; Conviction expired 10/15/96.
3. *Minnesota v. Michuda*, Case No. 19-K4-07-636, Dakota County District Court; Initial arrest 2/13/07; plea 10/16/07; sentenced 3/21/08 (The expired 1994 conviction was used to double/enhance a current 2008 sentence).
   - *Michuda v. Minnesota*, Case No. A08-1037, Minnesota Court of Appeals; Ineffective assistance Complaint 11/5/08 (no response from MN App. Ct.).
   - *Id.*, Minnesota Court of Appeals; Direct Appeal; Judgment entered 7/28/09.
   - *Id.*, Minnesota Supreme Court, Judge Alan Page; Ineffective assistance Complaint; complaint returned 8/3/09.

- *Id.*, Minnesota Supreme Court; Review denied 10/20/09.

4. *Michuda v. Minnesota Board of Public Defense, et al.*, Case No. [*Not Assigned*], Minnesota Supreme Court; Complaint; complaints returned 9/11/09.
5. *Michuda v. Minnesota*, Case No. [*Not Assigned*], Minnesota Court of Appeals; Petition for Declaratory Judgment and Petition for Writ of Certiorari; items returned 12/1/09.
    - *Id.*, Minnesota Supreme Court; Pet. for Declaratory Judgment dismissed, Rule 8(b) cannot be challenged; Pet. for Writ of Cert. not accepted 1/21/10.
6. *Michuda v. Minnesota, et al.*; Case Nos. 11-CV-1028-ADM, 11-CV-1029-ADM, and 11-CV-1030-ADM, U.S. District Court, 8th Circuit; three [joined] §2254 Petitions for Writ of Habeas Corpus; petitions denied/dismissed with prejudice 6/17/11.
    - *Id.*, U.S. District Court, 8th Circuit; In Forma Pauperis granted, Certificate of Appealability denied 8/26/11.
    - *Michuda v. Minnesota*, Case Nos. 11-2865, 11-2867, and 11-2868; U.S. Court of Appeals, 8th Circuit; Certificate of Appealability denied, appeals dismissed 10/11/11.
    - *Id.*, U.S. Court of Appeals, 8th Circuit; Rehearing denied 11/22/11.
    - *Michuda v. Minnesota*, [combined] Case No. 11-8951, U.S. Supreme Court; Certiorari denied 4/23/12.
7. *Michuda v. Minnesota Board of Public Defense, et al.*, Case No. 11-CV-1031-ADM, U.S. District Court, 8th Circuit; Complaint for Violation of Civil Rights under 42 USC §1983; dismissed with prejudice 8/11/11.
    - *Michuda v. Bd. Pub. Def.*, Case No. 11-3261; U.S. Court of Appeals, 8th Circuit; Judgment entered 11/16/11.

- *Michuda v. Bd. Pub. Def.*, Case No. 11-8950, U.S. Supreme Court; Certiorari denied 4/23/12.

8. *Michuda v. Minnesota Board of Public Defense, et al.*, Case No. 13-CV-11-1259, Chisago County District Court, Complaint for Attorney Malpractice; In forma pauperis denied, public defenders immune 1/17/12.
   - *Michuda v. Bd. Pub. Def.*, Case No. A12-0451; Minnesota Court of Appeals; affirmed district court order 12/11/12.
   - *Id.*, Minnesota Supreme Court; In Forma Pauperis granted, review denied 2/20/13.
   - *Michuda v. Bd. Pub. Def.*, Case No. 12-10454; U.S. Supreme Court; Certiorari denied 10/7/13.
   - *Id.*, U.S. Sup. Ct.; Rehearing denied 1/13/14.
9. *Michuda v. Minnesota Board of Public Defense, et al.*, Case No. [*Not Assigned*], Hennepin County District Court, Complaint for Attorney Malpractice; In Forma Pauperis denied by Judge James T. Swenson 1/27/12 (further action was not possible because no case number assigned, no record of any filing could be found).
10. *Michuda v. Minnesota Board of Public Defense, et al.*, Case No. 19-HA-CV-11-6190, Dakota County District Court, Complaint for Attorney Malpractice; action dismissed, public defenders immune 6/12/12.
    - *Michuda v. Bd. Pub. Def.*, Case No. A12-1181; Minnesota Court of Appeals; affirmed district court order 9/11/12.
    - *Id.*, Minnesota Supreme Court; In Forma Pauperis granted, review denied 10/24/12.
    - *Michuda v. Bd. Pub. Def.*, Case No. 12-7745; U.S. Supreme Court; Certiorari denied 2/19/13.

11. *Michuda v. Minnesota*, Case No. 19-K4-07-636, Dakota County District Court, Petition for Post-Conviction Relief; denied 7/9/14 (Dist. Ct. failed to inform/serve Michuda with the order denying his petition; Michuda has never received the order).

- *Michuda v. Minnesota*, Case No. A15-1370; Minnesota Court of Appeals; dismissed as untimely filed 9/2/15.
- *Id.*, Minnesota Supreme Court; Review denied 10/20/15.

12. *Michuda v. Minnesota*, Case No. 27-CR-94-006534, Hennepin County District Court, [Second] Petition for Postconviction Relief, Motion for Order Compelling Discovery, and Objection to State Public Defender Refusal to Assist [Request Other Counsel be Appointed]; Judgment entered 3/7/16.

- *Michuda v. Minnesota*, Case No. A16-0779; Minnesota Court of Appeals; affirmed district court order 12/8/16.
- *Id.*, Minnesota Supreme Court; review denied 2/14/17.
- *Michuda v. Minnesota*, Case No. 16-9315; U.S. Supreme Court; Certiorari denied 10/2/17.

13. *Michuda v. Benson, et al.*, Case No. 13-CV-16-270; Chisago County District Court, Pet. for Habeas Corpus and Motion for Relief; Judgment entered 5/17/16.

- *Id.*, Chisago County District Court; In Forma Pauperis granted in MN Court of Appeals 7/18/16.
- *Michuda v. Benson*, Case No. A16-1082; Minnesota Court of Appeals; affirmed district court order 1/11/17.
- *Id.*, Minnesota Supreme Court; In Forma Pauperis granted, review denied 3/28/17.
- *Michuda v. Benson*, Case No. 17-5561; U.S. Supreme Court; Certiorari denied 10/16/17.

14. *Michuda v. Minnesota*, Case No. 27-CR-94-006534; Hennepin County District Court, Motion for Declaratory Judgment and Motion from Relief from Judgment (construed together as a [third] post-conviction petition); Judgment entered 7/29/22 (in a separate Order the court denied Michuda's motion to join the State Public Defenders Office as a party).

- *Michuda v. Minnesota*, Case No. A22-1383; Minnesota Court of Appeals; affirmed district court order 3/27/23.
- *Id.*, Minnesota Supreme Court; review denied 6/20/23.
- *Michuda v. Minnesota*, Case No. [_____]; U.S. Supreme Court;...pending.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix _____ 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 United States district 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.

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

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

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

The opinion of the Hennepin County District court appears at Appendix B to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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).

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

The date on which the highest state court decided my case was June 20, 2023. A copy of that decision appears at Appendix C.

Not Allowed — [ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Minn. Stat. §590.01, Subd. 4, Time limit; Time-bars (added 8/1/05).
2. *State v. Knaffla*, 243 N.W. 2d 737 (Minn.1976); Procedural-bars.
3. *State v. Knaffla*, 243 NW2d 737, 741 (Minn.1976); **"the salient feature of Minn. Stat. c. 590 in coordination with *Case v. Nebraska*, 381 U.S. 336, 85 S. Ct. 1486, 14 L. Ed. 2d 422 (1965), is that a convicted defendant is entitled to at least one right of review by an appellate or postconviction court."**
4. *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963) [etc., other decisions that followed] guaranteeing indigent persons the 6th Amendment right to [the effective assistance of] counsel.
5. United States Constitution, 6th Amendment right to the effective assistance of counsel.
6. *Deegan v. State*, 711 NW2d 89, 98 (Minn.2006); **MN Sup. Ct. ruled that State Public Defender's refusal to assist at postconviction stage is unconstitutional, that a "defendant's right to the assistance of counsel under Art. 1, §6 of the State Constitution extends to one review of a criminal conviction, whether by direct appeal or a first review by post-conviction proceeding."**
7. Minnesota Constitution, Art. I, §6; defendant's right to at least one review of conviction with the effective assistance of counsel.
8. Minn. Stat. §611.14 *to* §611.19 Right to representation *to* Waiver of counsel; and *State v. Seifert*, 423 NW2d 368 (Minn.1988); and *State v. Garibaldi*, 726 N.W.2d 823 (2007); defendant could decide to proceed *pro se* if he made a knowing, voluntary, and intelligent waiver; must have adequate on-the-record examination on the waiver of such right.

9. Minn. Stat. §609.3455 Double/enhanced Sentencing and Conditional Release; and *State v. Dorsey*, 701 NW2d 238, 253 (Minn.2005); also, *Greene v. United States*, 880 F.2d 1299 (11th Cir.1879), as a general matter, convictions obtained in proceedings in which a criminal defendant lacked the effective representation of counsel cannot be used to enhance punishment upon a subsequent conviction.

10. *Spann v. State*, 704 NW2d 486, 492 (Minn.2005), the Eighth Circuit has concluded that claims involving an illegal sentence, a sentence in violation of the terms of the agreement, and claims asserting ineffective assistance of counsel are not waivable; other courts have also included prosecutorial misconduct among claims that a defendant cannot waive; Michuda further asserts that if such cannot be waived or forfeited, then the same cannot be blocked or barred; also, *State v, Maurstad*, 733 NW2d 141 (Minn.2007), defendant cannot waive or forfeit review of an illegal sentence.

11. *Fontaine v. United States*, 411 U.S. 213 (1973); defendant's plea was not voluntary when appointed Defender used coercion in obtaining plea.

12. *Jones v. State*, 2016 Minn.App.Unpub.Lexis 680, citing *State v. Camacho*, 561 NW2d 160, 171 (Minn.1997), citing *Flanagan v. United States*, 465 U.S. 259, 268, 79 L.Ed.2d 288, 104 S.Ct. 1051 (1984), reaching the merits of the timeliness issue is not warranted because structural error does not require a showing of prejudice to obtain reversal.

STATEMENT OF THE CASE

Statement of facts necessary to an understanding of the issues presented:

a) This appeal involves Michuda's 3/29/22 motion to the Hennepin County District Court to declare the rights, status, and other legal relations of Michuda concerning his expired [invalid/illegal] 1994 conviction for 2nd degree criminal sexual conduct. The court construed Michuda's motion(s) as his third post-conviction petition.[1] The State Public Defenders Office has unconstitutionally refused to assist Michuda on all requests for review of this conviction. The State Defender has a history of refusing to assist on indigent-ineffective-assistance-claims since 1992.

b) Michuda is currently in custody for the 1994 judgment because it was used to initially increase his current 2008 sentence, *then* used to enhance *and* double the 2008 sentence again, *and then* used to add lifetime registration *and* conditional release periods *after* the 2008 sentence expires where Michuda could *again* be incarcerated for the rest of his life for the same expired conviction(s); multiple jeopardy violations.

c) Michuda was initially arrested on 1/17/94 for a 5th degree domestic, case no. 27-CR-94-004164. There was [apparently] confusion on the part of the Hennepin County Attorney's Office as to *who* was the victim/accuser/complainant. Michuda was never provided a complaint for this arrest; the misdemeanor was dropped and Michuda was charged with the felony ten days after arrest.

d) The prosecutor had apparently been reprimanded by the Hennepin County Attorney's Office not long before being assigned to this case; the prosecutor also apparently had been

[1] Judge Ann L. Alton, 1994 trial judge and 1996 post-conviction judge; Judge William H. Koch, 2016 and 2022 post-conviction judge whose order is subject of this current proceeding.

unauthorized to practice law for 7+ years at the time as well.[2] Michuda's 1994 conviction was obtained by use of a prosecutor that was eventually found to be unauthorized to practice law for more than 20 years.[3] Overall:

a. Michuda did not commit the crime which he was accused.

b. The [unauthorized] prosecutor in this case should never have been in a courtroom, this case should never have been prosecuted.

c. Michuda was held illegally (ten days) while the victim was coerced to change her allegations. The [unauthorized] prosecutor either coerced the victim or knew of the coercion. No one informed Michuda that the allegations had changed or that he was being held illegally.

d. Michuda's trial defender was aware the victim's statements had changed but did not inform Michuda; the defender never provided Michuda with *any* statements. After months without communication, Michuda was coerced, under duress, to plead guilty by his own counsel. Michuda was again coerced, under duress, into reaffirming guilt at sentencing; counsel was ineffective.

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[2] In 1993, Gemma Graham received a stern verbal reprimand for failing to charge a number of domestic/family cases for over a year, *9/15/09 Hennepin County Attorney Administration Memorandum* (available at Henn. Co. Atty. Office). This was an early sign in a disturbing pattern of misconduct and dereliction of Graham's duties and responsibilities as a prosecutor where Graham's license status likely should have been discovered, but the County Attorney's Office failed to report Graham's serious misconduct to the OLPR Director. See also *In Re (Discipline) Graham*, 744 N.W. 2d 19 (Minn.2008).

[3] *State v. Ali*, 752 NW2d 98, 108 (Minn.Ct.App.2008), A prosecutor, unauthorized to practice law, that coerced a victim to change their statement, or was otherwise aware of such coercion, and uses such statement to unjustly convict a defendant, then structural error occurred and "prejudice resulted from the fact that [Michuda] was prosecuted by an attorney whose license to practice law was on restricted status"; and Minn.R.Prof.Conduct, Rule 3.4(b), a lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited,.

e. The court record raises some doubt as to Michuda's competency to enter pleas in this case. Michuda's "lack of affect" was stated by multiple professionals 1994-95 and 2008.[4]

f. There was never a meaningful review of this case because the State Defender's Office unconstitutionally refused to assist.[5] In at least ten letters, from 10/9/95 to 8/7/96, the Defender refused to pursue Michuda's postconviction claims of coercion to plead guilty and ineffective assistance of counsel, and then kept pushing Michuda to waive his right to counsel. Michuda did not, nor did he ever intend to, waive his right to counsel. Any perceived waiver is forcefully misconstrued.

g. This case should never have been used to enhance Michuda's current conviction.[6]

h. Prosecutor's discipline coincided with Michuda's 2007-08 conviction and likely was a cause of continuances and long absences of Michuda's counsel.[7]

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[4] Part of court records in 1994 Henn. Co. conviction, as well as 2008 Dakota Co. conviction, each cited in [Henn.Co. Dist.Ct.—*Michuda v. State*, No. 27-CR-94-006534] (2015) *Petition for Post-Conviction Relief*, Appendix p.79.

[5] *Deegan v. State*, 711 NW2d 89, 98 (Minn.2006), MN Sup. Ct. ruled that State Public Defender's refusal to assist at postconviction stage is unconstitutional. The State Defender was already obligated to assist under *State v. Myers*, 273 NW2d 656 (Minn.1978), a defendant is entitled to at least one state correction process by direct appeal or post-conviction proceeding; and *State v. Seifert*, 423 NW2d 368 (Minn.1988), State Defender could not refuse to represent an indigent defendant on appeal [or post-conviction] who applied for representation. *Deegan* supposedly made the obligation "crystal-clear".

[6] Minn.Stat. §609.3455 Double/enhanced Sentencing and Conditional Release; and *State v. Dorsey*, 701 NW2d 238, 253 (Minn.2005); also, *Greene v. United States*, 880 F.2d 1299 (11th Cir.1879), as a general matter, convictions obtained in proceedings in which a criminal defendant lacked the effective representation of counsel cannot be used to enhance punishment upon a subsequent conviction.

[7] After 4-month absence, 2007-08 trial defender met with Michuda 13 days after Graham's 2/1/08 discipline; this meeting caused Michuda to send a letter to the judge, which resulted in a 2/20/08 Special Hearing, concerning issues between Michuda and his defender. Defender failed to follow Judge McManus' verbal order to meet with Michuda, discuss issues, and deliver Michuda's written answer to judge. Defender, judge, and State moved forward as if there were no issues to resolve, taking full advantage that Michuda was not able to speak for himself.

i. Prosecutor's disciplinary proceedings was likely known to all Minnesota public defenders, courts, and county attorneys; it was big news; and because the 1994 conviction was being used to enhance Michuda's 2008 sentence, the court, the defender, and the State likely knew that Graham *was* the 1994 prosecutor and that her discipline action could greatly affect that enhancement, yet everyone kept the information from Michuda.

j. Michuda had no access to newspapers or T.V. news, he was isolated on observation status in county jail; he discovered Graham's discipline on 7/14/14 while researching the lack of public defender disciplinary actions.

e) Overall, the State Public Defenders Office (1995-96):

a. Did not have all the information necessary to make the decision that Michuda's case "was without merit", nor did the defender ever inform the court that his claims lacked merit.

b. Made no attempt to assist in any research to support Michuda's arguments or advise him on how to proceed.

c. Refused to prepare a post-conviction petition on behalf of Michuda, and refused to look over the petition he prepared.

d. Failed to, and simply just did not want to, represent Michuda's best interests, nor act aggressively on his behalf.

f) While the State Defenders Office was refusing to assist Michuda on his ineffective assistance claims, State Defender John Stuart submitted a statement in *Kennedy v. Carlson*, 544 N.W. 2d 1 (1996), stating there were no active complaints or malpractice suits against public defenders. Since 1992, the State Defenders Office and the Board of Public Defense had already made it standard practice that Public Defender Offices will not assist on indigent ineffective assistance claims against any public defender.

g) Without proper representation, Michuda was not able to present his claims to the court effectively. Michuda's first post-conviction petition was erroneously dismissed because he was entitled to the *effective* assistance of a public defender. What Michuda got was a combative Defender that refused to assist on ineffective-assistance-claims because that was, and still is, the standard of practice; lawyers do not sue lawyers and the indigent have no avenue to complain. Because Michuda felt like he was never fairly heard,[8] he tried again and again, each of which he was time-barred[9] and *Knaffla*-barred.

h) Note: Time-bars, the *Deegan* decision and prosecutor's unauthorized practice all became effective at least a decade after Michuda's conviction expired. Michuda really had no way of knowing if/when/how to apply these issues to his case, especially if his counsel is ineffective and not acting in Michuda's best interests.

REASONS FOR GRANTING THE PETITION

I. The constitutional mandate of *Gideon* has been ignored by the states for decades.

The right to the effective assistance of counsel is a myth. Innocent until proven guilty? Hah! Indigent defendants are presumed guilty until they are walked down the path to a guilty plea.[10] The indigent have to fend for themselves, even *force* their defenders to *defend* them or they will not prevail on any issue. Then, though the defendant is supposed to have a say in his defense,

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[8] *Spann v. State*, 704 NW2d 486, 492 (Minn.2005), the Eighth Circuit has concluded that claims involving an illegal sentence, a sentence in violation of the terms of the agreement, and claims asserting ineffective assistance of counsel are not waivable; other courts have also included prosecutorial misconduct among claims that a defendant cannot waive; Michuda further asserts that if such cannot be waived or forfeited, then the same cannot be blocked or barred; also, *State v. Maurstad*, 733 NW2d 141 (Minn.2007), Michuda cannot waive or forfeit review of an illegal sentence.

[9] 8/1/05, "Subd.4. Time Limit" was added to *Minn.Stat.§590.01* establishing a 2-year time limit, and exceptions to the time limit, for filing post-conviction petitions.

[10] *Fontaine v. United States*, 411 U.S. 213 (1973); Consider that Michuda's plea was not voluntary when trial defender used coercion in obtaining plea.

public defenders become combative. Public defenders have their own agendas, they do not have the time or patience to represent their indigent clients' interests, perhaps are not even allowed to challenge prosecutors or the State's convictions.[11] Public defenders have to move on to the next case, and quick disposition of cases is their priority,[12] perhaps even receive incentives to clear as many cases as they can. "A defendant in a criminal case should receive diligent and skillful representation. The validity of the adversary system is said to depend on it, and a lawyer is legally and ethically obliged to provide it."[13] In Minnesota, the indigent are left without an enforceable right to effective representation.

The indigent have no voice in the courts. It is widely known that public defenders are underfunded and handle excessive caseloads, that the indigent are under-represented. In Minnesota, trial defenders are often ineffective, appellate defenders refuse to assist on indigent-ineffective-assistance-claims, and *pro se* indigent-ineffective-assistance-claims are usually dismissed for some flaw or another. Public defenders are protected from their own ineffectiveness. It seems everyone knows the judicial system is broken, the playing field is not level, but no one dares to do anything about it because they do not want to look bad. Legislature easily increases the budget for prosecutors, but public defense must beg for funding, even work

[11] For example, on about 7/11/20, [then] Hennepin Co. Chief Defender, Mary Moriarty, publicly stated she is considering a lawsuit against the Hennepin County Attorney; in light of events concerning forced plea deals despite evidence of a State Trooper's misconduct, Moriarty wanted to know how long the County Attorney had been withholding evidence favorable to defendants. It seems Moriarty was shunned into silence, demoted, and the lawsuit was never mentioned again—Moriarty is now the Hennepin County Attorney.

[12] February 2010, Office of the Legislative Auditor, Evaluation Report, p.40, Quality of Representation; district court judges said that high caseloads were harming the quality of representation.

[13] *Remedying Ineffective Representation*, 59 Va. L. Rev. 927 (1973).

under constant fear of budget cuts. At one point, Minnesota public defenders were also partially funded through lawyer registration fees.

[Former] MN Attorney General, Walter F. Mondale, is generally credited with leading and organizing a carefully orchestrated and doggedly persistent campaign to urge fellow attorney generals to sign on in support of *Gideon.*[14] Since then, Minnesota has long underfunded and repeatedly cut the budget of the Defender System. The right to the effective assistance of counsel is an idea that sounds good on paper, but has never truly been embraced. On the 60th anniversary of *Gideon*, many states in the United States do not provide the indigent with the Constitutionally required effective assistance of counsel. Without the basic protections of the right to *effective* counsel, "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair."[15]

[Former] U.S. Attorney General, Janet Reno, observed that if justice is available only to those who can pay for a lawyer, "that's not justice, and that does not give people confidence in the justice system".[16] Yet little is being done to remedy this denial of equal justice. There has long been and continues to be resistance and indifference to fulfilling the constitutional mandate of *Gideon.* Even in the absence of such resistance, most state and local governments have been more concerned with keeping costs low than with providing quality defense services or with ensuring fair trials.[17]

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[14] *Gideon v. Wainwright and the Right to Counsel*, by Paul B. Wice, p.54; see also *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).
[15] *State v. Dorsey*, 701 NW2d 238 (Minn.2005), citing *Arizona v. Fulminante*, 499 U.S. at 310, citing *Rose v. Clark*, 478 U.S. 570, 577-78 (1986).
[16] 1997 Ann. Surv.Am.L. 783, citing Janet Reno, Address to the American Bar Association Criminal Justice Section 6 (8/2/97).
[17] *Id.*, at 787.

Representative Jamie Becker-Finn (DFL-Roseville, MN) recently sponsored a bill to boost public defender funding, stating "[HF90] funds something that we as a state are constitutionally required to fund, but we have failed to do adequately for decades."[18] In a supporting article it is stated that, "public defenders have been severely underfunded and overworked for decades." "The public defender system is collapsing, and we need resources and an ongoing commitment to fully fund our system. We are in a unique moment when public defenders, judges, prosecutors, law enforcement, legislators and the news are all in agreement—public defenders need more resources to provide a true adequate defense."[19] ***Note:*** *Funding now does not resolve previous decades of inadequacy.*

II. In Minnesota, all avenues for indigent-ineffective-assistance-of-counsel claims are unconstitutionally blocked.[20]

Minnesota underfunds its public defender system, creating an atmosphere ripe for ineffective assistance of counsel. Public defenders are then protected from complaints because all avenues for complaint against public defenders have been unconstitutionally blocked since the early 1990's. The purpose of disciplinary sanctions for professional misconduct is not to punish the attorney, but rather to protect the public, safeguard the judicial system, and deter future misconduct by the disciplined attorney and other attorneys.

Anyone can file a complaint against their attorney, except the indigent because the Office of Lawyers Professional Responsibility (OLPR) summarily dismiss indigent-ineffective-assistance-

[18] *MN House Passes HF90* 2/6/23, Session Daily, MN House of Representatives.
[19] 2/19/23 Star Tribune, Opinion Exchange, Brian Aldes, secretary-treasurer and principle officer, Teamsters Local 320; and Chelsea Reinartz, assistant public defender in Ramsey County, MN.
[20] Though raised, each lower State court has failed to address this issue.

claims against public defenders without investigation.[21] OLPR summarily dismisses about 48 indigent-ineffective-assistance-claims per year.[22] Indigent complaints can only be referred to OLPR by a judge in the matter.[23] There is no record of any judge referring such to OLPR, or records are not kept due to rareness of occurrence.[24]

Anyone can sue their attorney for malpractice, except the indigent because public defenders are immune from liability for malpractice in Minnesota.[25] Public defenders are also not liable in a Complaint for Violation of Civil Rights under 42 USC 1983 because they are not "State Actors"[26] [even if immune for malpractice?].

Everyone that has been convicted of a crime in Minnesota has a right to at least one review on appeal or postconviction,[27] except the indigent claiming ineffective assistance of a public defender because the State Public Defenders Office refuses to assist on such claims on appeal and postconviction. The Board of Public Defense and the State Public Defender (as a person appointed by the Board) have made it standard practice that Public Defender Offices will not assist on indigent-ineffective-assistance-claims against any public defender.[28]

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[21] Per Rule 8(b), Minn. R. Law. Prof. Resp., enacted in 1991. Also Rule 8(e), not appealable.
[22] OLPR summarily dismissed 48 claims in 2015, and 49 claims in 2016; numbers of complaints are relatively unchanged each year according to the OLPR's annual reports.
[23] Also per Rule 8(b).
[24] Based on letter responses from OLPR, multiple district court chief judges, district court administrators, a public defender office, and research of LexisNexis showing lack of public defenders being disciplined.
[25] *Dziubak v. Mott*, 503 N.W.2d 771 (Minn. 1993), began 1991/concluded 1993.
[26] *Michuda v. Minnesota Board of Public Defense, et al.*, Case No. 11-CV-1031-ADM, U.S. District Court, 8th Circuit, 8/11/11.
[27] Art. I, §6 of MN Constitution; see *Deegan v. State*, at 98, and *Spann v. State*, at 491, quoting *State v. Knaffla*, at 741, citing Minn. Stat. §244.11, subd.1 (2004); Minn. R. Crim. P.28.02.
[28] Minn. Stat. §611.215, Subd. 3, Limitation: In no event shall the Board or its members interfere with the discretion, judgment or zealous advocacy of counsel in their handling of individual cases as a part of the judicial branch of government.

Based on research, beginning sometime after William Kennedy filed his initial suit in April 1992,[29] it becomes apparent that indigent-ineffective-assistance-claims start being raised only *pro se* in appeal supplemental briefs and postconviction petitions, rather than by the State Defender on behalf of the indigent. The proof is in the trend itself, in the research of cases. Before *Kennedy* began Defenders did assist on indigent-ineffective-assistance-claims,[30] but after the suit began Defenders simply stopped assisting on that particular claim and it appears evident thereafter that such claims are, for the most part, only brought *pro se* in an appeal supplemental brief or a postconviction petition.[31]

The State Defender refuses to assist on indigent-ineffective-assistance-claims under the guise of the blanket statement that the claim has no merit and/or it is frivolous, therefore they are not obligated to assist.[32] Maybe *some* claims are without merit and/or are frivolous, but it is unconstitutional and unfair for the Board and the State Defender to take the position that *all* indigent-ineffective-assistance-claims are without merit and/or are frivolous. *Pro se* indigent-ineffective-assistance-claims raised in an appeal supplemental brief or a postconviction petition are usually dismissed due to some error that would not exist had a State Defender assisted.[33]

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[29] *Kennedy v. Carlson*, 544 N.W.2d 1 (1996); Kennedy was the Chief Public Defender of Hennepin County. [**note:** State Audit of Defender System is dated Feb. 1992/update Dec. 1993].
[30] For example: *State v. Goodroad*, Minn. App. Lexis 475 (1992); *State v. LaDoucer*, 477 N.W.2d 905 (Minn. App. 1991); *State v. Mason*, Minn. App. Lexis 840 (1989); *Brodell v. State*, 393 N.W.2d 674 (Minn. App. 1986).
[31] For example: *State v. Hines*, Minn. App. Lexis 947 (2015); *State v. Larson*, Minn. App. Lexis 276 (2014); *State v. Welton*, Minn. App. Lexis 130 (2014); *Maddox v. State*, Minn. App. Lexis 149 (2005); *State v. Porter*, Minn. App. Lexis 657 (2004); *State v. Al-Naseer*, 678 N.W.2d 679, 697 (Minn. App. 2004); *State v. Casperson*, Minn. App. Lexis 734 (1995); *State v. Salitros*, Minn. App. Lexis 994 (1994); *State v. Wanli*, Minn. App. Lexis 939 (1994).
[32] i.e. *Nunn v. State*, 753 NW2d 657, 661 (Minn.2008), counsel does not act unreasonably by excluding claims that counsel could have legitimately concluded would not prevail.
[33] Minnesota courts have repeatedly stated that postconviction is more appropriate avenue to raise ineffective-assistance-of-trial-counsel-claims, which would leave indigent without counsel

Habeas petitions in U.S District Court typically fail for the same reasons the claims failed in lower courts.

Research of cases in LexisNexis shows more than 1,300 *pro se* ineffective assistance cases from 1984 to 2022, with a steady increase in cases from 1984 to 2010.[34]

Additional research of cases in LexisNexis shows only one full-time public defender disciplined in the history of the Minnesota Public Defender system, one other fired but not disciplined; and five part-timers disciplined from their actions in private practice.[35] With the lack of public defenders being disciplined in Minnesota, only two assumptions can be made: either public defenders are without flaw or they are protected from their flaws.[36]

Per the Minnesota Board of Public Defense, as of 4/28/11 Kevin Shea, Asst. Dakota County Public Defender (Michuda's 2007-08 trial defender), has had 8 complaints filed against him, none resulting in discipline. Later, the Defender Board was less forthcoming with information concerning Shea or any other Defender associated with Michuda's cases, perhaps because the information shows a very damning trend. It would not be surprising if most defenders have 2 or

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on such claims if a State Defender assisted on appeal because defenders are only obligated to assist on appeal or postconviction, not both.

[34] The number of *pro se* ineffective assistance claims begin to increase dramatically in the mid-90's; from only about 4 to 11 claims per year (1984-93); to avg. 24 claims per year (1994-99); to avg. 44 claims per year (2000-07); with a peak of 70 claims for each year (2008-09); then avg. 49 claims per year (2010-20); and avg. of 34 claims for each year (2021-22). Minn.App.Lexis.

[35] See *In Re Aitkin*, 787 N.W.2d 152 (Minn.2010) (full-time Defender referred to OLPR by his supervisor); *In Re Onorato*, 794 N.W.2d 371 (Minn.2011) (acts as private attorney which followed into her start as a Defender); *In Re Fru*, 829 N.W.2d 379 (Minn.2013); *In Re DeSmidt*, 782 N.W.2d 252 (Minn.2010); *In Re Varrianno*, 755 N.W.2d 282 (Minn.2008); *In Re Ostroot*, 551 N.W.2d 231 (Minn.1996); also *LeBaron v. MN Bd. of Pub. Defense*, 499 N.W.2d 39 (Minn.App.1993) (full-time Defender fired in June 1991 for multiple infractions but no disciplinary action found).

[36] Compare to at least 15 judges disciplined 1978-2015; LexisNexis research shows prosecutors face constant barrage of claims of prosecutorial misconduct; at least 6 prosecutors disciplined 1988-2009, but there may be more because prosecutors are usually not referred to as "prosecutor" or "county attorney" when disciplined.

more complaints in their files, or even that many had 8 or more complaints, and all were summarily dismissed. All avenues for complaint against Defenders are unconstitutionally blocked.

An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover;[37] but the "pattern of misconduct" of MN public defenders remain unknown or hidden because all avenues for complaints are blocked.

Trial defenders are underfunded and often ineffective. Since 1992, State [appellate] defenders typically refuse to assist on indigent-ineffective-assistance-of-counsel-claims under the unreasonable guise that such claims are without merit. The *pro se* indigent are then required to prove ineffective-assistance-of-*trial*-counsel-claims in order to prove ineffective-assistance-of-*review*-counsel-claims.[38] State Defenders know the *pro se* indigent likely will not win, thereby, the defender system is protected from its own ineffectiveness simply by failing and then refusing to assist.

The OLPR's use of Rule 8(b), the decisions in *Dziubak*, and *Kennedy*, along with a State underfunded PD system, *all* likely played a role in the Board's and State Defender's policy not to pursue such claims against public defenders. In Michuda's personal experience the State Defender has *always* refused to assist him, especially on his claims of ineffective assistance of a public defender.

III. Minnesota unconstitutionally time-bars and procedurally-bars the indigent that were denied the effective assistance of counsel at trial and/or review stages.

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[37] Minn.R.Prof.Conduct 8.3, Comment [1] (2005).

[38] *Fields v. State*, 733 NW2d 465, 468 (Minn.2007), citing *Zenanko v. State*, 688 NW2d 861, 865 (Minn.2004), citing *Sullivan v. State*, 585 NW2d 782, 784 (Minn.1998).

Michuda asked the Hennepin County District Court to declare what are his rights, because it simply seems like he has had no discernable rights. What can Michuda do if his trial public defender is ineffective, and coerced him to plead guilty to coerced allegations? What can Michuda do if the State Public Defender repeatedly refused to assist him on postconviction, especially on ineffective-assistance-of-counsel-claims? What can Michuda do if the prosecutor was found to have been unauthorized to practice law for 20^{+} years?

The most ridiculous standard is that, after public defenders refuse/fail to assist, the courts expect the indigent to be aware of caselaw as soon as it is posted, as if the indigent are downloadable devices, and then *know* and *understand* all applicable rules, standards, etc., like an educated lawyer. Since at least 1992, the Minnesota Public Defender System has shrewdly practiced shifting the burden entirely onto the indigent's shoulders simply by refusing/failing to assist, especially indigent-ineffective-assistance-of-counsel-claims; the indigent usually do not succeed. An indigent that was denied *effective* counsel at trial and/or review stages cannot be expected to know he could challenge such denial years later when the State Supreme Court decided the State Public Defender could not refuse to assist on review. Likewise, the same indigent cannot be expected to know he could challenge prosecutorial misconduct years later when the prosecutor was eventually disciplined.

There is no meaningful review once appointed counsel refuses to assist, all remedies thereafter are blocked. The whole purpose behind the right to *effective* counsel is because the indigent are ignorant of *Law*, and the Judicial process. The indigent are being barred from access to the courts when public defenders refuse/fail to assist; and then still barred from access to the courts due to their p*ro se* ignorant fumbling of motions, petitions, standards, rules, exceptions, merit, burden of proof, etc. The indigent have no voice to speak for them, and when they try to

speak for themselves, they are shut down "for failure to state a claim" or lacks merit, missed deadline, or *Knaffla*-barred, failed to raise an exception...the list goes on. An indigent cannot "show merit" or "state a claim" or "argue an exception", etc., if he does not *truly* understand the meaning or process.

The State of Minnesota has blocked all avenues for complaint against public defenders, then time- and procedurally-bars the indigent after being denied the effective assistance of counsel and their *pro se* claims fail.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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