Supreme Court Of The United States

Bernard Hardrick,
Petitioner,

V.

People of The State of Michigan,
Respondent.

23-6211

ORIGINAL

LC Dock No(s) [illegible]
15-008119-01-FH

FILED
SEP 20 2023
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SUPREME COURT, U.S.

C.O.A. Dock No(s) 348347;
348350

M.S.C. Dock No(s) 163342-3

US Supreme Ct. No.

Petition For Writ Of Certiorari To Michigan Court Of Appeals Decision

Bernard Hardrick
#606507
Baraga Correctional Facility
13924 Wadaga Rd.
Baraga, MI 49908

Questions Presented

I. Did The Trial Court Violate Petitioner's Right To Be Present, Right To Counsel, And Right To Self-Representation When It Improperly Excluded Petitioner From The Trial During Closing Argument When He Was Representing Himself And Then Failed To Give The Jury A Curative Instruction Regarding His Exclusion?

Petitioner: "Yes"
Prosecution: "No"
C.O.A.: Failed To Adjudicate
M.S.C.: Failed To Adjudicate

II. Was The Petitioner's Right To Fair Notice Violated When, After Being Remanded For A New Trial Under Case Number 15-007481-01-FH And 15-008119-01-FH, The Prosecution Neglected To File, And Serve, An Information Pertaining To Case Number 15-008119-01-FH. And, Was The Petitioner's Right To Due Process Violated Under The Fourteenth Amendment When He Was Convicted On Charges Not Filed On A Felony Information In Relations To Case Number 15-008119-01-FH; And Convicted On Complainants Not Charged In Case Number 15-007481-01-FH.?

Petitioner: "Yes"
Prosecution: "No"
C.O.A.: Failed To Adjudicate
M.S.C.: Failed To Adjudicate

III. Was The Evidence Insufficient To Support The Conviction of Criminal Enterprise For False Pretenses In Case Number 15-007481-01-FH When: (1) The Court of Appeals Had Vacated All Counts of Forgery of A Document Which Was The Predicate offense Of The Criminal Enterprise; (2) The People Failed To Produce Any Evidence To Support The Charged Offenses Against Redford Township Who Was The Only Complainant/Victim Charged In The Information; (3) The Petitioner Held A Legal Claim In The Properties He Rented; (4) And The Trial Court Only Entered For one Count of False Pretenses For The Criminal Enterprise In Case Number 15-007481-01-FH.

Petitioner: "Yes"
Prosecution: Never Answered
C.O.A.: "No"
M.S.C.: "No"

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 County Prosecutor's Office
1441 St. Antoine
Detroit, MI 48226

Attorney For Respondant

Bernard Hardrick
Pro Se Petitioner
Baraga Corr. Fac.
13924 Wadaga Rd
Baraga, MI 49908

RELATED CASES

People V. Bernard Hardrick

Third Circuit Court case NO(s) 15-007481-01-FH / 15-008119-01-FH

Michigan Court of Appeals case No(s) 348347 / 348350 (Appendix A)

Michigan Supreme Court case NO(s) 163342 / 163343 (Appendix B)

Judgment for Case NO(s) 15-007481-01-FH and 15-008119-01-FH were entered on March 6, 2019

Court of Appeals upheld conviction on May 27, 2021

Michigan Supreme Court denied relief on August 22, 2023

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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.

[✓] For cases from **state courts**:

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

[ ] reported at Docket No(s) 163342-3; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Michigan Court of Appeals Dock No 348347, 348350 court appears at Appendix A 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 ______________.

[ ] 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 August 22, 2023. A copy of that decision appears at Appendix B.

[ ] 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

Statement Of The Case

Introduction

In the summer of 2015, the Petitioner was paroled from prison on June 16, 2015 where he was assigned to parole agent Ryan Fisher's case load. Between June 16 and July 13, 2015, the Petitioner located numerous properties in Wayne County that appeared to be vacant and/or abandoned and began to exercise the law of Adverse Possession by taking possession and filing quitclaim deeds on the properties at the Wayne County Register of Deeds office.

After filing his adverse claim on the properties, the Petitioner commenced to exercising the powers and privileges of ownership over the properties and began advertising and renting the properties to potential buyers under the good faith belief that his quitclaim deeds and actions were legal under the doctrine of Adverse Possession.

Around July 1, 2015, the Petitioner requested to change his residence and Mr. Fisher went out to the proposed property. (TR, 12/13/18, pgs 45-46). While there, Mr. Fisher noticed multiple deeds to different houses that the Petitioner had obtained on the kitchen table. The Petitioner freely gave the information about the deeds to Mr. Fisher. Mr. Fisher took a mental note of the deeds and suspected that the Petitioner might be in violation of his parole, but did not violate him at that time. Approximately a week later, the Petitioner contacted Mr. Fisher to report a police contact. Someone called the Redford police because the Petitioner was at a property the caller believed was vacant; the Petitioner showed the policed the deed he had to that property which resolved the issue. At that point, Mr. Fisher reached out to a friend of his at the treasury department who directed him to Lindsay Calhoun at the Wayne County Deed And Fraud Task Force. id at 49. After speaking to Ms. Calhoun, Mr. Fisher violated the Petitioner's parole and had him taken into custody.

Procedural History

At his first trial, the People initially charged the Petitioner in two seperate cases: 15-007481-01-FH and 15-008119-01-FH; however, the cases were consolidated for one trial. Case file 15-007481-01-FH originally consisted of the following charges: Count 1 - Criminal Enterprise for ten incidents of 'Forgery of a Document Affecting Real Property' and one count of False Pretenses as the predicate offense. followed by; eight counts each of Forgery of a document, Uttering and Publishing, and Recording Fraudulent Conveyance outside of the Criminal Enterprise charge. (see, Original Information of Charges attached as Appendix E)

Case file 15-008119-01-FH consisted of the following charges: one count 'Forgery of a Document Affecting Real Property', one count Uttering and Publishing, one count Recording Fraudulent Conveyance, and two counts of False Pretenses. (see, Information attached as Appendix F)

The trial court directed verdicts of acquittal for all counts of Recording Fraudulent Conveyance, and the jury convicted the Petitioner of the remaining counts (TR. 3/22/16, pgs. 107-108).

On his first Direct Appeal, the Court of Appeals vacated the Petitioner's convictions of 'Forgery of a Document Affecting Real Property' and 'Uttering and Publishing' on sufficiency grounds. The Court of Appeals further ordered a new trial on the remaining counts of Conducting Criminal Enterprise for one count of False Pretenses relative to case number 15-007481-01-FH, and two counts False Pretenses relative to case number 15-008119-01-FH due to a violation of the Petitioner's right to self-representation. (see, C.O.A. opinion, Appendix C)

Second Trial

On remand for his second trial, the Petitioner requested to exercise his right to self-representation which the trial court granted. (TR. 8/10/18, pg 3-4). At the first Pretrial Hearing, the People filed and served a single "Fourth" Amended Information charging the Petitioner with Conducting Criminal Enterprise for three counts of False Pretenses as the new predicate offense in Count 1, and three counts of False Pretenses outside the body of the Criminal Enterprise as counts 2, 3, and 4 under case 15-007481-01-FH.

The Petitioner objected and filed numerous motions challenging the inaccuracy of the "Fourth" Amended Information noticing the court that the Information included more predicate offenses in the Criminal Enterprise than what he was remanded for and that the People have failed to file and serve an information pertaining to case number 15-008119-01-FH.

The People responded by filing a "Fifth" Amended Information adding two additional counts of False Pretenses in the Count 1 Criminal Enterprise totalling five incidents of False Pretenses as the new predicate offense. The single "Fifth" Amended Information was filed for case number 15-007481-01-FH. (see, Fifth Information, Appendix G).

During a motion hearing, the Petitioner challenged the invalid "Fifth" Amended Information noticing the Court that the Fifth Information added more counts of False Pretenses that he was not remanded for and that he was still unaware of what charges were involved in case number 15-008119-01-FH because the People failed to file an information of charges in said case number. (TR. 10/5/18, pgs 10-17). The Petitioner argued that Redford Township was the only complainant he was charged with and the People admitted to not listing the other witnesses as complainants. (T.R. 12/13/18, pg 71-75).

The Prosecution's Case

To keep it simple, the People's witnesses: Tamika Williams, Dexter Dotsey, Daniel Watson, Falicia Harris, Ansley Harris, Dailena Easley, and Brian Sands all testified that the Petitioner, presenting himself as the owner, collected down payments from them towards purchasing the properties by way of land contract or lease with option to buy contracts. These witnesses were not listed or charged as victims in any Information of charges filed by the People.

Petitioner's Removal From Courtroom

The Petitioner made various objections during the prosecutor's closing argument and the trial court erroneously excluded him from the trial despite the fact that he was representing himself. (TR. 2/7/19, pgs. 12-13, 16-17, 20-21-, 24-25, 26-27). Several of the Petitioner's objections were neither ruled on or addressed by the trial court.

The trial court ordered that he sit in a holding cell and listen to the Prosecutor's closing argument through a speaker. The trial court had the Petitioner brought back out to make a closing argument but cut his previously alloted time in half only allowing him 15 minutes. After giving his closing arguments, the Petitioner was taken back to the holding cell and remained there during the prosecutor's rebuttal and jury instructions. id at 44, 63.

While the Petitioner's standby counsel remained in the courtroom, the trial court never discontinued the Petitioner's right to self-representation or made standby counsel the Petitioner's primary counsel after excluding him from the trial. When the Petitioner returned to the courtroom after missing the People's rebuttal and jury instructions, the Petitioner objected and notified the trial court that he misheard the proceeding because the speaker was "crackly". (TR. 2/7/19, pg 64). The trial court also never gave the jury instructions of any kind regarding the Petitioner's removal from the trial.

Verdict And Sentencing

The jury convicted the Petitioner on all counts. The trial court sentenced the Petitioner to a term of 20 to 35 years for Conducting Criminal Enterprise for one count of False Pretenses in case number 15-007481-01-FH (see, Judgment of Sentence, Appendix I); and concurrently sentenced the Petitioner to a term of 20 to 35 years for two seperate counts of False Pretenses in case number 15-008119-01-FH. (see, Judgment of Sentence, Appendix J).

Direct Appeal

The Petitioner appealled by right his second trial convictions, raising the exact same claims raised herein this Petition for Writ of Certiorari. (see, Excerpts of Appellate Brief and standard-4 Brief in Appendix D). The Court of Appeals affirmed the Petitioner's conviction on May 27, 2021, without addressing all the issues raised on the merits, and conceded that the trial court erred by removing the Petitioner from his trial - without warning - as prescribed by this US Supreme Court. in Illinois v. Allen, but opined that the error was harmless. (C.O.A. Opinion, pg 4, Appendix A)

The Petitioner filed a "Motion For Reconsideration" on June 14, 2021, rebutting the C.O.A.'s decision based on erroneous findings of facts, such as their finding of any "sixth" Amended Information existing, and the C.O.A.'s failure to address some of the claims on the merits. The Motion was denied on June 30, 2021. The Petitioner then filed a timely Leave To Appeal on July 27, 2021, raising the exact same claims raised here in this Petition. (see, Excerpt of Appellant Briefs and Leave To Appeal in Appendices D and L). The Michigan Supreme Court held the Petitioner's Leave To Appeal in abeyance twice on its own accord before denying Leave on August 29, 2023.

I. The Trial Court Violated Petitioner's Right To Be Present, Right To Counsel, And Right To Self-Representation Where It Improperly Excluded Petitioner From The Trial During Closing Argument When He Was Representing Himself And Then Failed To Give The Jury A Curative Instruction Regarding His Exclusion.

Supporting Facts:

At trial, during the ~~Petitioner's~~ beginning course of the Prosecution's closing argument, the Petitioner, while representing himself, was excluded from the courtroom - without warning - for simply raising objections to what he believed were misleading statements made by the Prosecutor, and was forced to sit in the back bull-pin while trial continued without him during the critical stages of summation by the Prosecutor and jury instructions. (See, T.R. 2/7/19, Pgs 26-33) The improper exclusion from the trial without warning and causing the pro se Petitioner to miss two critical stage proceedings violated the Petitioner's right to be present as this Supreme Court has held in Illinois v. Allen, 397 US 337.

The Court of Appeals, in its opinion, conceded that the trial court erred in removing the Petitioner from his trial without warning him first as mandated by the US Supreme Court in Allen, 397 US at 343. However, the C.O.A., relying on an unreasonable determination of facts, found the removal to be proper because the Petitioner allegedly made "10" objections during the Prosecutor's closing argument that were "futile" and without merit and deemed them as being "interruptions" that justified Petitioner's removal from the trial proceedings. (see, C.O.A. opinion, Pg. , Appendix A).

As a result of violating Petitioner's right to be present at trial, it also had the cumalitive effect of violating the Petitioner's right to continue his self-representation in court and his right to have counsel present during trial. On remand of his second trial, the Petitioner requested to represent himself in which the trial court granted. (T.R. 8/10/18, Pgs 3-4) While representing himself with standby counsel, Melonie Bates, as second chair, the Petitioner raised various objections to what he believed were misleading statements of facts by the Prosecutor during the People's closing argument and the trial court excluded him for doing so, without warning. The trial court ordered the Petitioner to sit in a holding cell and listen to the trial through a speaker. (T.R. 2/7/19, Pgs 28,32). The trial court allowed the Petitioner back out to make his closing argument, but after making his closing argument, the Petitioner was taken back to the holding cell where he remained there during the Prosecutor's rebuttal and jury instructions. (T.R. 2/7/19, Pgs. 44, 63).

Note: "T.R." means Trial Record; "C.O.A." means Court of Appeals

While the Petitioner was in the holding cell, stanby counsel Melonie Bates remained in the courtroom, but the trial court never discontinued the Petitioner's right to self-representation nor made standby counsel the Petitioner's primary counsel after excluding him from the trial. When the Petitioner returned to the courtroom after missing the People's rebuttal and jury instructions, the Petitioner objected and notified the trial court that he misheard the proceeding because the speaker was "crackly". (T.R. 2/7/19, pg. 64). The trial court also never gave the jury any instructions of any kind regarding the Petitioner's removal from the court leaving perspective jurors to wonder as to why the Petitioner suddenly decided not to show face.

The C.O.A., while failing to adjudicate the Petitioner's claim on his right to self-representation being violated while also missing the critical stage of jury instructions on the merits, agreed that the trial court should have designated standby counsel as primary counsel, but opined that the errors did not prejudice the Petitioner because he was only absent for a "short period" of time from his trial which only pertained to the Prosecutor's rebuttal and a "small portion" of the Prosecutor's closing argument. The C.O.A. further opined that the Petitioner was not prejudiced while he was absent because he was allegedly able to hear the proceedings over a speaker in another room. (See, C.O.A. opinion, Pg , Appendix A)

A defendant's right to self-representation plainly encompases certain specific right to have his voice heard. The Pro Se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and jury at appropriate points in the trial. (McKaskle v. Wiggins, 465 US 168; 104 S.Ct. 944; 79 L Ed 2d 122 (1984)). The record reveals that the Petitioner was not afforded all of these rights.

The Sixth Amendment guarantees not only the effective assistance of counsel under Strickland but also the presence of counsel at all critical stages of the proceedings under United States v. Cronic, 466 US 648; 104 S.ct. 2039; 80 L Ed 2d 657 (1984). The difference is not of degree but of kind. Bell v. Cone, 535 US 685, 697; 122 S.ct. 843; 152 L Ed 914 (2002). If counsel is absent from a critical stage, prejudice is presumed, and the Sixth Amendment is violated. Cronic.

The Court of Appeals finding that the Petitioner's standby counsel "presumed" the role of primary counsel further lodged the Petitioner's right to self-representation being violated and contradicted this Supreme Court's holding in Wiggins.

In Wiggins, this Supreme Court held: "The Pro Se defendant is entitled to preserve actual control over the case he chooses to present to the jury. If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak instead of the defendant on any matter of importance, the right to self-representation is eroded. McKaskle v. Wiggins, 465 US 168.

Contrary to the Court of Appeals finding, record evidence clearly reveals that the Petitioner was not only absent during the prosecutor's closing argument and rebuttal, but he was also absent during the critical stage proceeding of jury instructions. (T.R. 2/7/19, pgs 46-63)

Furthermore, the Court of Appeals opinion that the petitioner was not prejudiced because he could hear the proceedings over the speaker in another room is contrary to record evidence. The record reveals that the Petitioner raised an objection notifying the Court that he misheard the proceeding due to the speaker being defective. (T.R. 2/7/19, pg 64)

Furthermore, the Court of Appeals, relying on an unreasonable determination of facts, applied a "plain-error" analysis to the properly preserved structual errors raised by assessing that the Petitioner never argued in the trial court that his constitutional rights were violated. (see, C.o.A. Opinion, pg. , App'd A). However, record evidence ~~and~~ clearly reveals that the Petitioner filed a 'Motion For New Trial' on 2/25/19, arguing that his substantial rights were violated while absent because he could not hear "clearly" what was being said in trial nor could he object or raise other objections during the course of trial while he was absent. (The Motion For New Trial was filed in the court on 2/25/19 and it was annexed to Petitioner's Motion For Reconsideration To The C.o.A. as Exhibit 1)

Moreso, the issues raised are structual errors by nature which defies harmless analysis in which the C.O.A. should not have applied in this case.

> "A structual error is a fundamental constitutional error that defies analysis by "harmless error" standards." Nedar v. United States, 527 US 1, 7; 119 S.ct 1827; 144 L Ed 2d 35 (1999).

Due to the Court of Appeals failure to adjudicate on the Key component of Petitioner's right to self-representation being violated during his absents, as well as its failure to assess on how the Petitioner's absents during the critical stage of jury instructions may have affected the framework of the trial, the multifacet question raised remains unanswered.

Direct Appeal of Ground One

The Petitioner raised, in part, the issue of his right to be present and to represent himself being violated in his 'Motion For New Trial' filed in the trial court on 2/25/19 in which the Court never answered. The Petitioner then raised the issue on Direct Appeal in the Court of Appeals exactly how it is raised here in this Petition. (See, pg. 16 of Appellant Brief attached as Appendix D). The C.o.A. denied relief on May 27, 2021, and, noticing that the C.o.A. failed to adjudicate on the merits of the claim, the Petitioner filed a timely 'Motion For Reconsideration' which was denied by the CoA. on June 30, 2021.

The Petitioner then raised the issue in his timely leave to appeal in the Michigan Supreme Court exactly how it is raised in this petition, and was denied on August 22, 2023. The Leave To Appeal was filed on 7/27/21.

II: The Petitioner's Right To Fair Notice Was Violated Where, After Being Remanded For A New Trial Under Both Case Numbers 15-007481-01-FH And 15-008119-01-FH; The Prosecution Neglected To File, And Serve, An Information Pertaining To Case Number 15-008119-01-FH. Additionally, The Petitioner's Right To Due Process Under The Fourteenth Amendment Was Violated Where He Was Convicted On Charges Not Filed On A Felony Information In Relations To Case Number 15-008119-01-FH; And Convicted On Complamants Not Charged In Case Number 15-007481-01-FH,

Supporting Facts:

In the beginning of this entire case, the People filed an original 'Felony Information' charging the Petitioner with: Count 1 - Conducting Criminal Enterprise listing ten incidents of Forgery of A Document Affecting Real Property', and one False Pretense as the predicate offenses; and eight Counts of 'Forgery of A Document', 'Uttering And Publishing', and Recording Fraudulant Conveyance as additional charges outside the scope of the Criminal Enterprise. The Information listed "Township of Redford" as the only victim and was documented in the Court as case number 15-007481-01-FH. (see, Information in Appendix E)

The People then filed a seperate information of charges against the Petitioner for: (1) one Count of Forgery of A Document Affecting Real Property; (2) One Count Uttering And Publishing; (3) One Count Recording Fraudulent Conveyance, and; (4) two counts of False Pretenses. The Information listed "Daniel Watson" and "Bank of America" as the only two victims, and was documented in the trial court as case number 15-008119-01-FH. (See, Information in Appendix F)

The two cases were consolidated for one trial where the Petitioner stood trial representing himself and was acquitted on all counts of Recording Fraudulent conveyance, but was convicted on the remaining charges by the Jury. No Amended Information was ever filed at his first trial.

On his first Direct Appeal, the C.O.A. vacated the Petitioner's convictions of 'Forgery of A Document' and 'Uttering And Publishing' on sufficiency grounds. The C.O.A. further ordered a remand for new trial on the remaining counts of Conducting Criminal Enterprise for one count of 'False Pretenses' as it relates to case number 15-007481-01-FH, and two counts of 'False Pretenses' as it related to case number 15-008119-01-FH. (See, C.O.A. opinion in Appendix C)

On remand for his second trial, during a pretrial hearing held on 8/10/18, the Prosecutor filed, and served Petitioner, a single "Fourth Amended" Information pertaining to case number 15-007481-01-FH. The "Fourth Amended" Information charged the Petitioner with: Count 1 - Conducting Criminal Enterprise for three incidents of False Pretenses as the new predicate offense.

The Petitioner filed a motion in trial court challenging the "Fourth" Information due to it including additional counts of False Pretenses in the Criminal Enterprise charge than what he was convicted of and remanded back for in case file 15-007481-01-FH. The Petitioner also raised the issue of the Prosecutor failing to file and serve an information of charges relative to case number 15-008119-01-FH. (see, T.R. 10/5/18, pgs 42-43)

The Prosecution responded by filing a "Fifth" Amended Information on 9/10/18 and served it to the Petitioner on 9/21/18, at the following Pretrial Hearing. The "Fifth" Information included an additional two counts of False Pretenses in the Criminal Enterprise charge for the total of five False Pretenses. The "Fifth" Information also listed 'Township of Redford' as the only victim, and was filed for case number 15-007481-01-FH. (see, Fifth Amended Information in Appendix G)

Throughout the course of trial, the Petitioner raised an objection as to who was or was not listed or charged as a victim in the Fifth Information; how the information was confusing and did not appise him as to which charges belonged in case number 15-008119-01-FH, and, on multiple occasions, the Court and the People expressed confusion and uncertainty concerning which case numbers the information pertained to. (see, TR 2/7/19, pgs 9-10)

During on Preliminary matter, after the Petitioner raised an objection as to who was or was not the victim listed in the "Fifth" Information besides 'Redford Township', the trial court expressed its own confussion and ~~certainty~~ uncertainty as to whether or not the single Fifth Information included both case files. As stated on record:

> The Court: "My information, fifth amended information says the complainant or victim is Township of Redford. Now I know that we combined two cases and I don't know if this information includes both of the files; does it?"
>
> Ms. Willis (Prosecutor): "It does, but it doesn't list all of the victims because there are a number of victims."
>
> The Court: "Okay. That can be amended. This is something that can be amended."

Though the trial court suggested that the "Fifth" Information could be amended, the trial went on and the People never filed an amended information, nor did they ever file and serve any information pertaining to case number 15-008119-01-FH and the Petitioner was convicted based upon the single "Fifth" Amended Information with only "Redford Township" charged as the victim of five incidents of False Pretenses. (see, Fifth Information, Appendix G)

During the jury instructions, which the Petitioner was not present for, the Court read the "Fifth" Amended Information to the jurors verbatimly as it was written without verbally stating who the the alleged victim was. The trial court merely instructed that the False Pretenses were related to certain properties for the Criminal Enterprise charge. (see, TR 2/7/19, pg 57). However, the trial court submitted verdict forms depicting Tamika Williams, Dexter Dotsey, Daniel Watson, and Falicia Harris as the complainants in both case files despite the fact they were not charged in the "Fifth" Information and no information was filed for case number 15-008119-01-FH. (See, Verdict Forms, Appendix)

As a result, the Petitioner was convicted based upon charges never filed against him as it relates to the People's witnesses Tamika Williams, Dexter Dotsey, Daniel Watson, and Falicia Harris, as well as Ansley Harris, Dalinea Easley, and Brian Sands under case number 15-007481-01-FH; and convicted of two False Pretenses that were not charged, nor served, by way of any written information under case number 15-008119-01-FH upon remand in violation of Petitioner's sheer Due Process rights.

Even though at sentencing, the trial court decided to enter a judgment for Criminal Enterprise for one count False Pretenses in case number 15-007481-01-FH, and a seperate two counts of False Pretenses for case number 15-008119-01-FH (though no information was filed), the Court still erroneously allowed for the People to charge the Petitioner for way more counts of False Pretenses in the "Fifth" Information than what he was remanded for and delivered those additional charges to the jurors to consider for case file 15-007481-01-FH, and delivered charges not filed in any information under case file 15-008119-01-FH. (See, Judgment of Sentences for case number 15-00748-01-FH, Appendix I; and case number 15-008119-01-FH, Appendix J)

In Oregon, this US Supreme Court held that: "Conviction upon a charge not made would be sheer denial of due process." DeJonge v. Oregon, 299 US 353.

In Arkansas, this US supreme Court held that: "A conviction on one ground may not be sustained on grounds that might have been charged but were not. It is as much a violation of Due Process to send an accussed to prison following a conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made." Cole v. Arkansas, 333 US 196.

Even the Michigan Supreme court held that: In Michigan, a prosecution must be based on an information or an indictment. MCR 6.112(B). The word "indictment" includes information, presentment, complaint, warrant, and any other formal written accusation. MCL 750.10; see People v. Grove, 455 Mich. 439, 459, n24; 566 NW2d 547 (1997). The term "indictment" is to be treated as also referring to charges made by the filing of an information. People v. Russo, 439 Mich. 584, 588, n 1, 487 NW2d. 698 (1992); see also MCL 767.2.

The Court Of Appeals Failed To Adjudicate This Claim On Its Merits

The Petitioner then ~~filed~~ appealled by right his second trial conviction. On Direct Appeal, the C.O.A. did not address this issue at matter on its merits how it was raised. Instead, the Court of Appeals "reconstructed" the question raised from how it is phrased here in this Petition, which is exactly how it was phrased in the Petitioner's standard-4 Brief, (see, excerpts from Petitioner's Standard-4 Brief attached as Exhibit), and rephrased it in their opinion as followed:

> "Defendant argues that his right to due process was violated because the information failed to inform him which charged counts were associated with which lower court files and because the information alleged that Redford Township was the only victim". (C.O.A. opinion, pg. 8., Appendix A)

The Court of Appeals omitted the 'Fair Notice' violation, which is the first component raised in this issue, as a dubious attempt to thwart having to adjudicate on the claim concerning the fact that the Prosecutor <u>neglected to file and serve an information of charges pertaining to case number</u> 15-008119-01-FH.

The Court of Appeals stated that it found "no error requiring reversal on account of the information failing to state which count was associated with which lower court file. For one thing, the information does specify - it clearly provides that <u>all four counts are associated with case "8215007481," which presumably relates to LC 15-007481-01-FH.</u>" Further stating: "Plainly, defendant was notified that <u>all the counts were associated with LC 15-007481-01-FH. The accuracy of this is another matter</u>" (see, C.O.A. opinion, pgs 8-9, Appendix A)

First of all, the fact that even the C.O.A. itself inadvertantly questioned the "accuracy" of its own assessment of the facts concerning the inaccuracy of the information only highlights the fact that it relied on an <u>unreasonable determination of facts</u> in making an opinion concerning this issue. Though it is more than clear that the Court of Appeals remanded case number 15-007481-01-FH for a new trial for Criminal Enterprise and <u>one</u> count False Pretenses as clearly ordered in its December 19, 2017, ~~order~~ opinion (Appendix C) and asserted to in its opinion concerning the second trial in headnote "15" (Appendix A, pg. 9), even if, on remand, all "4 counts" were associated with case number 15-007481-01-FH, it still would not explain why the Petitioner was then given a sentence of 20-35 years for two counts of False Pretenses under case 15-008119-01-FH where absolutely no information of charges was ever filed on remand. (See, J.O.S. Appedix J)

Note: "J.O.S. means Judgment of Sentence

The Petitioner contends that this was a dubious attempt made by the Court of Appeals to not have to address the fact that, when it comes to case file 15-008119-01-FH, the People failed to file an Information because they were so busy trying to roll up and conflate the seprate charges under the Criminal Enterprise that, if they would have charged the Petitioner in accordance with the remand order, then the Criminal Enterprise would have only had one predicate offense of False Pretenses in it for case number 15-007481-01-FH requiring for an automatic dismissal of the charge due to insufficient evidence as Criminal Enterprise requires to allege two or more predicate offenses.

Furthermore, the C.O.A also failed to address the other Key component of the Petitioner's claim of being convicted of offenses against Complainants that were not charged in the Information under case number 15-007481-01-FH. Instead of addressing the claim that the Petitioner was convicted of uncharged conduct, the C.O.A. twisted the plot and addressed the issue as though the Petitioner was claiming not to be "informed" of who the complainants were in the information relative to case number 15-007481-01-FH because the information only mentioned Redford Township as the complainant. The C.O.A. adjudicated around the fact that the Petitioner was convicted of uncharged Conduct due to the fact the only alleged victim charged in the "Fifth" Information was "Township of Redford"; and not the People's witnesses produced at trial.

The Court Of Appeals Also Relied On A Unreasonable Determination Of Facts In Its Opinion

In its erroneous opinion, the C.O.A. vitiated the Petitioner's claim that the "Fifth" Information did not charge him with anyone else besides Redford Township by alleging that the People filed a "sixth" Amended Information that named the "other" Victims. The C.O.A. aleged that the Sixth Amended Information was "created after trial" and did not prejudice the Petitioner. (See, C.O.A. opinion, pg. 9, Appendix A)

The Court of Appeals statement that some sixth Amended Information was created after trial is a complete fallacy and unreasonable determination of facts.

Fist, as record evidence reveals, the People never filed nor served a "Sixth" Amended Information upon the court or Petitioner; secondly, the People themselves have not proclaimed to have filed any Sixth Amended Information during the course of trial or in the appeal process of this case; Third, because it was the first time ever that the Petitioner heard of an alleged Sixth Amended Information existing when the Court of Appeals rendered its opinion, the Petitioner filed a motion for Court Documents in the trial court in June of 2021, and the Court sent a response back to the Petitioner in a letter dated June 16, 2021 confirming that it does not see a "Sixth" Amended Information on the record. (See, Court Letter, Appendix K)

The Court of Appeals egregious determination of facts that some "sixth" Amended Information was created after trial naming other individuals as complainants does not alleviate the fact that the Petitioner was tried and convicted on the single 'Fifth' Information filed by the People at trial.

The Court of Appeals itself held that: "Documents are not properly before a court on appeal if they were not presented to the trial court and are, therefore, not part of the record on appeal M.C.R. 7.210(A)(1). People v. Eccles, 206 Mich. App. 379; see also People v. Williams, 241 Mich App. 519, 524, n.1; 616 NW2d 710 (2000)(a party may not enlarge the record on appeal) Only discovery material that was filed or made a record are part of the record on appeal. MCR 2.302(H)(3); MCR 7.210(A)(1).

The C.O.A. improperly expanded the record on appeal when it denied the Petitioner relief on this issue by uttering into existance a "Sixth" Amended Information that is not of record in its opinion.

Direct Appeal Of Ground Two

The Petitioner raised this issue on Direct Appeal in his timely filed Standard-4 Brief in the C.O.A. Which was denied on May 27, 2021. The Petitioner then filed a timely 'Motion For Reconsideration' with the C.O.A. on June 14, 2021, raising the issue of the Appellate Court's failure to adjudicate on the merits of the claim, and it was denied by the C.O.A. on June 30, 2021.

The Petitioner then raised this issue in his timely Leave To Appeal in the Michigan Supreme Court, which was denied on August 22, 2023. The Leave To Appeal was filed on July 27, 2021. The Petitioner then filed a Motion for Reconsideration on August 28, 2023 in the Michigan Supreme Court. (See Standard-4 Brief in Appendix D; and excerpts of Leave To Appeal in Appendix L)

Note: The Petitioner has attached excerpts of his Appellant and Standard-4 Brief in Appendix D, and excerpts of his Leave To Appeal in the Mich. Supreme Court in Appendix L. The Petitioner is unable to afford copies of his entire Briefs due to the fact he is indigent and only allowed to receive $11.00 dollars a month and the whole Briefs would be unnecessarly volumous.

III. The Evidence Was Insufficient To Support The Conviction of Criminal Enterprise For False Pretenses In Case Number 15-007481-01-FH Where: (1) The Court Of Appeals Had Vacated All Counts Of Forgery Of A Document Which Was The Original Predicate Offense Of The Criminal Enterprise; (2) The People Failed To Produce Any Evidence To Support The Charged Offenses Against Redford Township Whose The Only Complainant/Victim Charged In The Information; (3) The Petitioner Held A Legal Claim In The Properties He Rented; (4) The Trial Court Only Entered For One Count Of False Pretenses For The Criminal Enterprise In Case Number 15-007481-01-FH.

[redacted]

Legal Analysis:

The critical inquiry for a court reviewing a claim of insufficient evidence is whether, viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found the charged crime was proven beyond a reasonable doubt. Jackson v. Virginia, 443 US 307; 99 S. Ct. 2781; 61 L Ed 2d 560 (1979).

Jackson held that a reviewing court must find there was "evidence necessary to convince a trier of fact beyond a reasonable doubt of the existance of every element of the offense." Id at 316 (emphasis added) In Re Winship, 397 US 358; 90 S. Ct. 1068; 25 L Ed 2d 368 (1970). A conviction is not supported by sufficient evidence under this standard violates due process of law of the United States Constitution. US Const. Amends. V, XIV. Jackson supra. Thus, if sufficient evidence is not introduced as to each element, due process requires reversal and a judgment of aquital should be entered.

Under this standard, the critical inquiry is:

Whether the <u>record</u> <u>evidence</u> could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to ask itself whether it believes the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is. Whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 US 307, 318-19, 99 S. Ct. 2781; 61 L Ed 2d 560 (1979).

The standard set forth in Jackson <u>must</u> be applied with explicit reference to the substantive elements of the criminal offenses as defined by state law. 443 US at 324.

Supporting Facts:

1. On December 19, 2017, the Court of Appeals vacated all counts of 'Forgery of A Document' which ridded the Criminal Enterprise of its <u>predicate</u> offense leaving only <u>one</u> count of False Pretenses left over in case number 15-007481-01-FH, in which the C.O.A. remanded for new trial the Criminal Enterprise for one count False Pretense as the predicate offense. (see, C.O.A. opinion decided 12/19/17, pg 1, Appendix C; and headnote 15 of C.O.A. opinion dated 5/27/21, in Appendix A)

As shown in the original information of charges (Appendix E), the Petitioner was charged in Count 1 with Criminal Enterprise for ten counts of Forgery of A Document (the predicate offense) and <u>one</u> count of False Pretenses in case number 15-007481-01-FH.

The Statute for Criminal Enterprise, MCL 750.159i, requires that there be <u>two</u> or more offenses charged in the Criminal Enterprise to support the element of "Racketering".
The Petitioner contends that the C.O.A. dismantled the criminal Enterprise charge when it dismissed the predicate offenses of 'Forgery of a Document', and erred when it remanded the criminal Enterprise charge back to the trial court for <u>one</u> count of False Pretenses as the predicate offense in case number 15-007481-01-FH (C.O.A. opinion, Appendix C).

The error of remanding the Criminal Enterprise charge with <u>one</u> count of False Pretenses opened the door for the People to be conniving at the Petitioner's new trial because, had he been charged in accordance with the remand, no rational trier of fact could have legally found Petitioner guilty of Conducting Criminal Enterprise for only one predicate offense to support it. Instead, the Prosecutor <u>extracted</u> the two, <u>wholly seperate</u>, charges of False Pretenses from case number 15-008119-01-FH, and added an additional two False Pretenses that were never originally charged at his first trial, to make it appear as though <u>five</u> incidents of False Pretenses were the original predicate offense of the Criminal Enterprise for case number 15-007481-01-FH, when they never were.

<u>The Court Of Appeals Failed To Address This Component Of The Issue On Its Merits And Based Its Decision On An Unreasonable Determination Of Facts.</u>

In its opinion for the first prong of this issue raised concerning the fact that the C.O.A. vacated the original predicate offense of Forgery of A Document as it relates to the Criminal Enterprise before it fostered the People's Fifth Amended information allowing them to switch the predicate offense to five counts of False Pretenses, the Court of Appeals failed to adjudicate on the issue as it was raised and switched it around to make it appear as though the Petitioner was solely arguing about the Information itself. (see, C.O.A. opinion, pg. 11, Appendix A)

The Court of Appeals does not address the fact that it remanded the Petitioner's case for a new trial for Criminal Enterprise for one count of False Pretenses for case number 15-007481-01-FH, and two - wholly seperate - counts of False Pretenses in case number 15-008119-01-FH, as it even admits in the assessment of its own opinion in headnote "15" which states:

> "This Court stated that defendant was subject to retrial on 'the charges of conducting a criminal enterprise and using false pretenses to obtain money in an amount of $1,000 or more, but less than $20,000." Hardrick, 2017 Mich App. Lexis 2087 at 16. But earlier in its opinion, this Court specified that the conducting-a-criminal-enterprise count was from LC no 15-007481-01-FH. id at 1. The opinion further reflected that one count of false pretenses came from LC no 15-007481-01-FH and two counts of false pretenses came from LC no 15-008119-01-FH." (C.O.A. opinion, headnote 15, pg. 9, Appendix A)

The statute for Criminal Enterprise, MCL 750.159i, provides in pertinent part: "a patern of racketeering is defined, in relevant part, as 'not less than 2 incidents of racketeering,' MCL 750.159(f)(c), where racketeering includes incidents of obtaining money or property through false pretenses, MCL 750.159g(w). (see, C.O.A. opinion, pg. 10, Appendix A)

Instead of the C.O.A. acknowledging its error in remanding case file 15-007481-01-FH for a new trial for Criminal Enterprise based on one count false pretenses, it relies on an unreasonable determination of facts that a "Third Amended Information" was filed at the Petitioner's first trial listing 3 incidents of false pretenses to sustain the Criminal Enterprise charge; however, this was a flagrent assessment of the facts by two ways.

First, there is absolutely no "Third" Amended Information filed on the record at the Petitioner's first trial. The C.O.A. is wholly relying on the Prosecutor's assessment of the case on record at Petitioner's second trial during a preliminary hearing held on 10/5/18 where, after the Petitioner raised motions challenging the "Fifth" Information for containing more incidents of False pretenses than what he was remanded for, the People, for the first time ever, produced a psuedo-Third Information and presented it to the Court and Petitioner arguing that the Third Information charged Petitioner with 3 counts of false pretenses in the Criminal Enterprise charge which is why they were charging 5 incidents in the Fifth Information. The People's and Court of Appeals assessment that the psuedo-Third Information charged more than one incident of False Pretenses is a farce as this Court can see for itself that the Third Amended Information (which was never filed on record) still only charged the Petitioner with one incident of false pretenses in Count 1 - conducting criminal Enterprise charge (see, Third Amend. Information attached as Appendix M)

The Petitioner is only able to provide the first two pages of the psuedo-Third Information that he received for the first time at his second trial as excerpts to show that it still only charge one incident of false pretense in the Crimimal Enterprise, but concedes that, just as the C.o.A. assess in its opinion in <u>headnote 16</u> (Appendix A, pg 9), that there were 3-wholly seperate-counts of false pretenses charged as Count 26, 30, and 31 outside of the criminal Enterprise.

Therefore, despite the fact that no Third Amended Information exists on record, the Court of Appeals still erroneously assessed the matter due to the fact the Third Information still only charged Petitioner with <u>one</u> incident of false pretenses in the Criminal Enterprise charge, and errored in remand the Criminal Enterprise based on a single predicate offense of false pretenses as no reasonable trier of fact could legally find Petitioner guilty of conducting Criminal Enterprise for one predicate offense.

2. The People Also Failed To Introduce Any Evidence To Support The Charged Offenses Against Redford Township Which Is The Only Complaint The People's Information Charged The Petitioner For At Both Trials.

As mentioned, the People's "Fifth" Amended Information - as well as their original - charged the Petitioner with Criminal Enterprise for False Pretenses against the "Township of Redford" (Appendix G). The People have failed to produce any evidence at trial to support the conviction against Redford Township. There was no testimony, no witness, no anything furnished at trial to support the convictiction, or other, charged conduct against the complainant - Redford Township.

<u>The C.o.A. Failed To Adjudicate The Claim On Its Merits How It Was Raised And Relied On An Unreasonable Determination of Facts In Reddering Its Opinion.</u>

In its opinion, as it relates to this component of the issue, the Court of Appeals does not assess the issue based on how it was raised concerning whether or not there was sufficient evidence to support the conviction of the charged offenses against the Petitioner for Redford Township nor has it cited any legal authority in making its decision. Instead, the C.o.A. rebutted that the Petitioner does not dispute the fact that several individuals gave him money on account of his representations of being the owner of the properties, and further erroneously assessed that there was a "Sixth" Amended Information filed that listed the names of indivdual victims. (C.o.A. Opinion, pg 11, Appendix A)

First of all, it would be unreasonable to expect for any Defendant to file an appeal against Victims that they were not charged for as the attempt would be futile and belie any sense.

Secondly, the Petitioner avers that there is absolutely no "sixth" Amended Information thats been filed anywhere on the court record and it only exists in odyssey through the utterance of the Court of Appeals opinion which was based on an unreasonable determination of facts. Record evidence, via Court letter, reveals that no "Sith" Amended Information exists on ~~the~~ court file. (see, Court Letter, Appendix K)

The Petitioner contends that one would not reasonably expect to be subjected to appealling "uncharged" conduct as the so-called individuals listed in the non-existing "sixth" Information was not charged in any information that was filed at either trial. Therefore, the so-called "victims" not charged were not properly presented before the trial court for one to even consider appealling.

3. The Petitioner Also Held A Legal Claim In The Properties That He Rented By Way Of His Legal Quitclaim Deeds That Represented His Possessory Interest He Held In The Properties Protected Under The Fourteenth Amendment.

42 USCS §1982 states: "Property rights of Citizen"

> "All citizens of the United States shall have the same right, in every state and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

This US Supreme Court held: "Property is more than mere thing which persons own; it includes right to acquire, use, and dispose of it; and Constitution, in Fourteenth Amendment, protects those essential attributes." Buchanan v. Warley, 245 US 60, 38 S.ct. 16 (1917)

The Court of Appeals held: "The term "property" as used in the Due Process clause includes <u>not only</u> <u>tittle</u> and <u>possession</u>, but also the rights of acquisition and control, the right to make any legitimate use or dispose of the thing owned, such as to pledge it for debt, or to sell or transfer it, The mere fact that property itself has not been physically taken does not necessarily mean that Due Process clause has not been violated: where value is destroyed by the action of <u>government</u>, or serious injury is inflicted to the property itself, or <u>exclusion of the owner from its enjoyment</u>, it is a taking within the constitution." Butcher v. Detroit, 131 Mich App 698)

The Petitioner contends that when the Court of Appeals vacated all counts of 'Forgery of a Document' and 'Uttering and Publishing', it essentially made the Petitioner's quitclaim deeds legal in the eye of the law again - as they always were.

The Petitioner held a legal dead on title which constituted as a legal claim that represented the <u>ownership interest</u> that he held in the form of <u>Possessory Interest</u>.

During a Preliminary Hearing at trial, the People argued that it remains their position that the Petitioner's quitclaim deeds were not "proper" deeds because no one ~~added~~ deeded the properties over to him (which completely contradicts the law of Adverse Possession). As stated by the Prosecutor:

> MS. Willis: "The counts that were dismissed were counts that indicated that his documents were forgery. It would still be the People's positition that his quitclaim deeds are not proper deeds in that no one ever deeded property over to him and that he never had any ownership interest in the properties." (TR. 12/13/18, pg 12)

The People violated the Petitioner's protected property rights by filing charges on him based on there mere assumption that he had no "interest" in the properties because he did not purchase them. The People's theory, and the Court of Appeals opinion is clearly erroneous and contradicts US Supreme Court precedence as well as the law of Adverse Possession.

The Petitioner contends that the People's own evidence, in conjunction with the Court of Appeals inadvertant admittance to his possessory interest in the properties, supported the fact that the Petitioner held a legal "interest" in the properties he rented by way of his quitclaim deeds that appeared on title searches and testimony by the People's witnesses of Petitioner's possessory interest that was introduced at trial. Such as the case concerning the 3290 Sherbourne, Detroit property in which the Petitioner entered a land contract with the People's witness, Daniel Watson.

Daniel Watson testified, at cross-examination, that he paid for a title search to be conducted by a company called "Greco" which revealed that the Petitioner held an interest in the property by way of Quitclaim deed through his company "Paper Trail Inc." (see, TR. 12/17/18, Pgs. 31-34)

The Court of Appeals, in headnote 21 of its opinion, though in a belittling manner, acknowledges the fact that the Petitioner held a possessory interest, at least at a "minimal" state, stating:

"There should be little question that whatever "<u>possession</u>" defendant had was <u>minimal</u> and fleeting and certainly not open, visible, or notorious, which are required to sustain a claim of adverse possession. (see, Ct. A. opinion, headnote 21, Pg. 11, Appendix A)

Thus, record evidence reveals that the Petitioner held a legal interest in the properties he sold.

4. The Trial Court Entered A Conviction Against The Petitioner For Criminal Enterprise Based On One Count Of False Pretenses As It Relates To Case Number 15-007481-01-FH.

The trial court still decided to only enter a Judgment of Sentense convicting the Petitioner of Criminal Enterprise based on one count of False Pretenses as the predicate offense in case number 15-007481-01-FH. (see, Judgment of Sentence for case 15-007481-01-FH, Appendix I)

As previously stated, the statute for Criminal Enterprise, MCL 750.159j, requires that there be at least two predicate offenses charged to support the element of "Racketeering" in the Criminal Enterprise.

Though the People cunningly switched the predicate offense from 10 incidents of 'Forgery of A Document' at the first trial to five incidents of False Pretenses on remand, the trial court, who is in fact the final decision maker, still chose to only enter a conviction for one count of False Pretenses in the Criminal Enterprise charged under case number 15-007481-01-FH, rendering as insufficient evidence to support the conviction of Criminal Enterprise.

The Court Of Appeals Relied On An Unreasonable Determination of Facts.

The Court of Appeals opinion, as it relates to this component of the issue, is asinine and unreasonable as it opines that the trial court did not enter a Judgment of Sentense for Criminal Enterprise based on one count of False Pretense because the false pretense depicted in the Judgment of Sentence is a "wholly seperate" charge, and that the J.O.S. does not indicate what the underlying conduct was in relation to the conviction. (See, C.O.A. opinion, pg. 12, Appendix A)

The facts are, by clear court record, the trial court signed and entered a Judgment different from what was erroneously submitted on remand by the People in the Fifth Information, and decided to only enter a conviction against the Petitioner for conducting criminal enterprise based on one count of False Pretenses in case file 15-007481-01-FH, and two seperate counts of False Pretenses in case file 15-008119-01-FH, which was not filed or charged in an information on remand.

Direct Appeal Of Ground Three

The Petitioner raised this issue on Direct Appeal in his timely Standard-4 Brief (Appendix D) in the Court of Appeals, which was denied May 27, 2021. The Petitioner filed a 'Motion For Reconsideration' on June 14, 2021 concerning the issue which was also denied by the C.A.A. on June 30, 2021.

The Petitioner then filed a timely Leave To Appeal in the Michigan Supreme Court on July 27, 2021, which was denied on August 22, 2023.

Conclusion And Relief Sought

Wherefore, for all the said reasons, the Petitioner humbly contest that this court must review and grant this Writ, not only to correct the constitutional violations that occured in Petitioner's case, but. also to save the entire Nation from any future similar violations, because if this Court does not address these issues, it will leave open a vortex allowing state courts to grossly violate Defendants constitutional rights and go against this Supreme Courts precedence by:

(1) Excluding Pro Se Defendants from trial - without warning - as mandated by this court, while allowing for "standby" counsel to portray the role of primary counsel during the absents of the Pro Se Defendant in violation of this Supreme Court's holding in Cronic and the VI Amendment;

(2) It will allow the continuance of convictions to be entered based on charges not filed on any written Information document, and for Defendants to be convicted based upon charges against victims that "could have been charged" but were not charged in any Information and allowing Appellate Courts to complete ignore the matter; and (3) It will allow for any and all future Defendants to be convicted and/or remanded for Criminal Enterprise based on a single predicate offense contrary to the two or more predicate offenses required to satisfy the "Racketeering" element of the Criminal Enterprise statute.

Furthermore, to the Petitioner's Knowledge from the extent of his research, this Supreme Court has no controlling precedence regarding whether or not an Information of Charges must list the name of the victim in the document to be considered "charged conduct" for one to be convicted of, and, if whether or not an Information document may conflate two seperate case files into one to satisfy the Notice required and the charges for that case file.

This Court also has no precedence on as to whether or not an Appellate Court may remand a conviction of Criminal Enterprise for new trial based upon one count of false pretense as the predicate offense after vacating the original predicate offenses.

Verification

I, Bernard Hardrick, pursuant to 28 USC 1746, declare under the penalty of perjury, that I have examined this Petition, and declare that the statements made are true and correct and I am competent and willing to testify in court to the truthfulness of the statements made herein.

Dated: September, 15, 2023

Truthfully Submitted,

Bernard Hardrick