No. 23-6301

IN THE

SUPREME COURT OF THE UNITED STATES

DELBERT L. OLDHAM,
PETITIONER,

VS.

STATE OF OKLAHOMA,
CASEY HAMILTON, WARDEN,
STEVEN HARPE, DOC DIRECTOR
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OKLAHOMA COURT OF CRIMINAL APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Delbert L. Oldham, #122518
Great Plains Correctional Center
P.O. Box 700
Hinton, Oklahoma 73047
(405) 778-7000

QUESTION(S) PRESENTED

(1). Whether the Court of Appeals erred by applying the doctrine of res judicata to "Petition In Error" because Petitioner raised Constitutional errors that can not be waived or barred.

(2). Whether assuming that the District Court did exceed its authority by imposing a fine punishment, in addition to a prison punishment constituted an abuse of that discretion.

(3). Whether trial court violated Oldham's constitutional rights to due process and to be free from cruel and unusual punishment by imposing a sentence that was not authorized by state Statute.

(4). Whether the Eighth Amendment's Excessive Fines Clause is incorporated against the State's under the Fourteenth Amendment.

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:

Janice P. Dreiling, District Judge of Washington County

Craig D. Corgan, District Attorney of Washington County

L. Wayne Woodyard, Appointed Attorney of Pawhuska, Osage County

Mary S. Bruehl, Appellate Attorney, OIDS, Norman, Oklahoma

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RULES

OTHER

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 **M** 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[ ] is unpublished.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 **M** 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[ ] is unpublished.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

[X] reported at Court of Criminal Appeals; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the District Court of Washington County
Appears at Appendix **C** to the petition and is

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[ ] is unpublished.

JURISDICTION

[ ] For cases form **federal courts:** See **Appendix M** for ALL federal appeals.

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 an including _____(date) on _____ (date) In Application No. _____.

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

[X] For cases from **state courts:** See **Appendix M** for ALL federal appeals.

The date on which the highest state court decided my case was September 13, 2023. A copy of that decision appears at Appendix A

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, 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. _____.

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

The State trial court denied Petitioner's Post-Conviction on March 28, 2023. Petitioner appealed the order to the Court of Criminal Appeals which was denied on September 13, 2023. Now, brings this writ of certiorari, before this Court within the 90 days from the date of the entry of the final judgment.

THESE ARE THE ISSUE'S PETITIONER IS RAISING;

1). The Court of Appeals erred by applying the doctrine of res judicata to The "Petitioner In error" without a review of the merits of the issues Raised "subject matter Jurisdiction." 18 U.S.C.A. §3231; U.S.C.A. Const.Art. 3 § 1

2). Violation of Oklahoma Punishment Sentencing Statute: Title 21 Okl.St. Ann., 1983 §64.

3). Abuse of Discretion by Judge exceeding her authority at sentencing; In violation of 22 Okl.St.Ann., §991a; U.S.C.A. Const.Amend. 4

4). Violation of Due Process of law; Okla.Const.Art. 2 § 7 U.S.C.A. Const.Amend. 5

5). Judgment of a Court lacking Jurisdiction is void on its face: OK St. T. 20 §3001.1; OK Const. 12 §1341

6). Violation of Fundamental error: OK Const.Art. 2 § 20

7). Cruel and unusual punishment; Excessive bail or fines: Ok. Const.Art. 2 § 9; OK St. T. 44 §855; U.S.C.A. Const.Amend. 8

8). Bias and Prejudice Judge: Violation of the Okla.Const.Art. 1 §1; Okla.Const.Article VII, §7.

9). Miscarriage of Justice: Constitutes a substantial violation of a Constitutional right, in violation of a statutory right, "Subject Matter Jurisdiction." 20 Okl.St.Ann., §3001.1; 28 U.S.C.A. §§2254, 2255.

10). Conspriacy: United States Const.Amend. 5, 18 U.S.C.A. §1951(a)

11). Trial and Appellate Counsel provided ineffective assistance by failing to raise The claims alleged in the above propositions thereby violating his Sixth Amendment right to the effective assistance of trial and appellate counsel. U.S.C.A. 6th and 14th Amendment.

PETITIONER ISSUE'S

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved in this case are set forth in the appendix hereto and are the following:

OCCA's Order affirming denial of Post-Conviction Relief Case No. PC-2023-392, stamp filed, September 13, 2023 (Appendix A)

1.This case involves the Eighth Amendment, which provides in relevant part:

Excessive bail shall not be, required, nor excessive fines imposed, nor cruel

And unusual punishment inflicted;

2. The fourteenth Amendment, which provides in relevant part;

"***[N]or shall any state deprive any person of life, liberty, or property, without

Due process of law, ***"

3. The Sixth Amendment, which provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right... to have the

Assistance of counsel for his defense;

Oklahoma Statute 1993: **APPENDIX H**

Title 21 Okl.St.Ann., §64 reads as follows:

"Upon a conviction for any crime punishable by imprisonment in any jail or Prison, in relation to which no fine is herein prescribed, the court may impose A fine on the offender not exceeding Two-Hundred Dollars ($200.00) in Addition to the imprisonment prescribed."

Oklahoma Statute 1993: **APPENDIX I**

Title 21 Okl.St.Ann., §64(A)(B); Chapter 51 H.B. No. 1018:

SECTION 1, AMENDATORY 21 O.S. 1991, section 64, is amended to read as follows:

Section 64. **A**. Upon a conviction for any misdemeanor punishable by imprisonment In any jail, in relation to which no fine is herein prescribed, the court <<+or a jury+>> May impose a fine on the offender not exceeding One Thousand Dollars ($1,000.00) In addition to the imprisonment prescribed.

B. Upon a conviction for any felony punishable by imprisonment in any jail or prison, In relation to which no fine is herein prescribed, the court <<+or a jury+>> may Impose a fine on the offender not exceeding Ten Thousand Dollars ($10,000.00) in Addition to the imprisonment prescribed.

SECTION 2. This act shall become effective September 1, 1993.

STATEMENT OF THE CASE

Delbert Leroy Oldham, pro se (hereafter "Petitioner") had been single for 38 years, came to Oklahoma in 1987, buying a home in Bartlesville, Oklahoma, and started his own lawn service business. Met a 28-year-old lady, name Grace, got married July 3, 1989. Her cousin Ralph was living with a lady who had four children, 3 girls and a boy. We'd go over and visit them, and go out to the lake on weekends, and I'd take my inflatable rubber boat. In 1991 late January I had gone to Florida with a friend of mine for two weeks, Grace stayed home. While I was gone, Ralph, Gloria and her children lost their rental home, so Grace let them stay at our house at 419 S. Wyandotte. I had called my wife from Florida, and she told me they were there, and I said it'll be fine. When I returned from Florida a few days later, it was in the evening, and Grace and I decided to walk down to Phillips 66 to get a soda, and the second oldest girl, Alana asked to come along. On the way back Alana volunteered to tell us a story about what happened to her when she lived in Norman, OK that a guy who was baby setting her had molested her. It got me very upset, so I told my wife to tell her cousin that they had to move out. That made them mad at us, because I didn't tell them the reason why. A few months later, my wife's Mother moved In with us, then her brother Joe and his friend, the house was only two bedroom, so we decided to rent a 3 bedroom house in Oak Park, North of Bartlesville. Ralph and the children never came to that house. On Dec. 26, 1991, the day after Christmas, I had never left that house for anything. Grace, her Mother, brother, and his friend was all there, and the rubber boat was in the back of my car. (This is the day that Alana had said that I had came to her house, and got her mother's permission to take her over to the Wyandotte house to show her my boat in the attic, where she allegedly said I had molested her. See Count 3). A day before Feb. 10, 1991, it was my Mother's birthday, I went to Missouri to visit her for the weekend, Grace decided to stay home. While I was gone Ralph called Grace and asked if her and their mother would come and visit them for the weekend. So, Grace took her radio, and video games and other stuff to play with the children. That evening their eldest's daughter came in with some of her friends, they had been drinking. For some reason she got into an argument with Grace, then it escalated into a fight, and gave Grace a black eye, and ran her off. During the fight Grace heard Alana, say, "I ought to set your husband up," Grace didn't know what she meant. They wouldn't give her radio or video games back to her or her mother. When I came back from Missouri I seen Grace with a black eye, and she told me what happened, and they wouldn't give her stuff back. So, we went over and asked Ralph for Grace's stuff and he said, no. So, we went down and got a detective to get her stuff back. The rent for each home's was too much so we moved back to the Wyandotte house. It was a few weeks after the fight when the police came with a warrant and arrested me.

ALANA's ACCUSATIONS

IN COUNT 1 – Alana alleged that Petitioner had drove to her house on December 26, 1990, in a white car and got her mother's permission to take her to Phillip's 66 to buy her a soda. (In 1990

Petitioner never owned a white car, only a green truck). Alana said that Petitioner, while driving reached over and kissed her and touched her beast, she was 10 years old. She didn't tell anyone at Phillips 66 about the incident. She said nothing happened on the way back. She didn't tell any one about the incident. One time she said she had a bra on, another time she said she didn't.

IN COUNT 2 – Alana alleged that sometime in January 1991 (she didn't remember what day) Petitioner came over to her house and got her mother's permission to walk to a store and buy her something to eat. She said, we went to the store but we didn't go in. she said, that we ran up the railroad tracks to a house at 419 W. 9th St. She said, I had a key to it and we went inside. She said, she had gone into the kitchen and looked in the refrigerator, but didn't get anything to eat. She said, Petitioner took her in the bedroom and had sex with her. Petitioner's attorney asked her if she bled, she said, yes, how long after, she said, about a week later, another time she said, she had sex in the living room. (She didn't even know what room the crime happened in) Petitioner's attorney asks her how to get to the bedroom, she didn't give the proper directions. The attorney put the renter on the stand, and testified that he was the only one with a key to his house, and there was nothing out of place, or disturbed in the house all that month. She said, she didn't tell anyone about that incident.

IN COUNT 3 – Alana alleged that on Dec. 26, 1991, Petitioner drove over to her house and got her mother's permission to take her to the Wyandotte house to show her a rubber boat in the attic. (That she's seen many times) But she changed the story and said, that I came to get her to help me mow lawns. No one was living at the Wyandotte house at this time, we moved almost all the furniture, especially the Washer & Dryer to the Oak Park house. (She didn't know that we had moved) Alana said, that she seen the Washer & Dryer at the bottom of the stairs to the attic. She alleged that I took he up in the attic and molested her. This is the day after Christmas, she Said, her brother and sister were across the street playing with their friends. She said, they came in the Wyandotte house and interrupted us. Then I only took her back to her house, and not her brother and sister. Her brother and sister were never called to testified. She said, the reason why she never told any one is because I was supposed to of said, "that I would kill her if she told."

FACTUAL BACKGROUND

Petitioner had two trials. At the first trial the jury was able to hear all of Petitioner's defense, and the trial resulted in a hung jury, which resulted in a mistrial because the jury failed to reach a verdict. The Court failed to exercise care in such case in granting a mistrial. Petitioner has no idea if his court appointed attorney Wayne Woodyard filed any motion or objected to a new trial. The first trial transcripts were never transcribed so the statements of the victim could be compared to the second trial testimony. Plus, Mr. Woodyard failed to hold an in-camera hearing to determine whether victim's testimony was truthful.

After the first trial, a friend of Petitioner heard Mr. Woodyard talking to Mr. Corgan about his case, and asked, what are we going to do with Mr. Oldham? Mr. Corgan said, "He's going to ~~do~~ go down!"

At the second trial, before the same Judge, Janice P. Dreiling, same District Attorney, Craig D. Corgan, and same appointed attorney, Wayne Woodyard, which was very prejudicial to the out-come of Petitioner's trial, because they all knew all of Petitioner's defense. Petitioner's attorney, Wayne Woodyard failed to bring all of his witnesses to the stand that testified at the first trial, and never did bring the Mother of the victim to the stand to find out why she would give Alana permission to go all alone with Petitioner, without letting the other children go also. Plus, he stipulated on a lot of the witnesses first testimony, because, "I believe there was a conspiracy to get a conviction," because there was no evidence that a crime even happened. No DNA, no medical exam, no physical proof, no eye witness, no evidence whatsoever! The only thing the District Attorney could use against Petitioner was the victim's testimony, which was not corroborated, plus she committed perjury under oath.

But because of the Petitioner's ignorance of the law, he took the stand, and the District Attorney, Mr. Corgan took advantage, and used Petitioner's bad acts against him to manipulate the jury.

STATEMENT

This case arises from the denial of Oldham's application under 22 O.S. 2019, §§1080, 1086 to vacate, set aside or correct the sentence imposed upon him for violation of lewd molestation, and rape laws, on the ground that, under the application statute and the constitution, Oldham has been subjected to multiple punishments for same offense. Miscarriage Of Justice – Actual Innocence

PROCEDURAL BACKGROUND

On November 5, 1992, Petitioner was convicted by the jury, and sentenced, in case No. CRF-1992-189, for the alleged crimes of Count 1, Lewd molestation, 10 years, in addition to a fine of $500.00; Count 2, Rape, first degree, 60 years, in addition to a fine of $500.00; Count 3, Lewd molestation, 30 years, in addition to a fine of $500.00. Petitioner discharged Count 1, Sept. 2, 1998, and discharged Count 2, July 21, 2023. (APPENDIX L)

On February 18, 2022, Petitioner had made the last payment to the Court Clerk of Washington County on all Court Cost and Fines, a total of $4,891.00. (APPENDIX K)

Petitioner was sentenced by the Honorable Janice P. Dreiling (now retired) on December 8, 1992. The sentencing hearing was an abuse of discretion by the sentencing Judge Dreiling who exceeded her authority by imposing a fine penalty, in addition to a prison penalty, in error of the

Oklahoma statutory sentencing guidelines of 21 Okl.St.Ann, 1983 § 64, where Judge Dreiling imposed a fine of $500.00 on all three (3) Counts of Petitioner's sentence that exceeded the $200.00 maximum allowed by statute §64. Also, Petitioner had a jury trial and the jury verdict forms shows that the jury did not impose a fine. In 1992 this was the law in effect at the time of the offense, Statute §64 does not require a jury to impose a fine, and nothing is said about a jury having such authority to impose a fine in addition to imprisonment at sentencing on December 8, 1992. A defendant thus has no right to have a jury decide his guilt and then have a Judge decide his sentence. (APPENDIX H)

Petitioner had previously plead guilty on June 2, 1982, and was convicted of the crime of second-degree Forgery, Case No. CRF-1982-133 and sentenced to 5 years' probation, and 90 days in the County Jail. This after former was used to enhance Petitioner's sentence to a total of 100 years, under Title 21 O.S.Supp. §51.

FEDERAL APPEALS

Petitioner's sentence was affirmed on direct appeal, Oldham v. State, No. F-1993-538 (Okl.Cr.April 24, 1995)(not for publication). Petitioner filed a Petition for Writ of Habeas Corpus in the United States district Court for the Northern District of Oklahoma in Case No. 97-CV-445-B(J), denied July 22, 1999. His appeal to the United States Court of Appeals for the Tenth Circuit Case No. 99-5156, denied Feb. 23, 2000. Petitioner sought authorization to file a second or successive petition for Federal Habeas Relief multiple times, and was denied each time. Order, dated May 14, 2009, United States Court of Appeals for the Tenth Circuit Case No. 09-5060 (Citing a previous denial of authorization entered in Case No. 05-5120 on Sept. 8, 2005). Order, dated Feb. 21, 2020, U.S. Court of Appeals for the Tenth Circuit Case No. 20-5010. (APPENDIX M)

Petitioner filed a Petition for writ of Habeas Corpus in Beckham County Case No. WH-2017-19 on Nov. 9, 2017, it was denied in the Federal Court on August 14, 2019. The OCCA affirmed the federal court's denial of Petition on Oct. 18, 2019, in Case No. HC-2019-695.

STATE POST-CONVICTIONS

Petitioner had filed numerous applications for Post-conviction Relief trying to show the Court his actual innocent claims, and wrongful imprisonment, which have all been denied (See Appendix (M)

Petitioner state's that this is the law in effect at the time of the offense: Title 21 Okl.St.Ann., 1983, §64

Petitioner claim's that this relevant issue was caused by the District Judge, Janice P. Dreiling, showing an abuse of discretion by exceeding her authority to impose a fine punishment in addition of a prison punishment at the sentencing hearing held on December 8, 1992 in violation of Title 21 Okl.St.Ann., 1983, §64.

SUMMARY OF ARGUMENT

Petitioner proceeding pro se, filed an application for Post-Conviction Relief in the district court on March 11, 2019. Due to the fact of ineffective assistance of trial and appellate counsel, this is the first time Petitioner had raised this violation of the State sentencing statute, and the court's have never ruled on the merits of this statute 21 Okl.St.Ann. 1983, §64. (APPENDIX H) In this application the court had ruled on the "wrong Statute." 21 Okl.St.Ann. 1993, §64(B) that had been amended and did not come into effect until after Petitioner was sentenced on December 8, 1992, §64(B) came in effect September 1, 1993. (APPENDIX I) To apply a law enacted after the fact is a violation of the principles of ex post facto U.S.C.A. Const. art. 1 §9, cf. 3, and a violation of a Petitioner's rights, liberty, and protections under the constitution of the United States, IV, V, VI, VIII, XIV. Petitioner claim's that the error on the face of a void and erroneous Judgment and Sentence cannot be corrected by an order nunc pro tunc. The district court denied the application April 12, 2019, reasoning that those propositions were either waived or barred by res judicata.

Petitioner filed an appeal in the Oklahoma Court of Criminal Appeals (OCCA). In the opinion filed Oct. 18, 2019, OCCA rejected Petitioner's claim's and Dismissed the Appeal Oldham v. State, No. PC-2019-340 (Okla.Crim.App. 2019) (APPENDIX G).

Upon further research Petitioner's reasoning that his claims were not procedurally barred discovered that the doctrine of res judicata cannot waive or bar constitutional issues such as subject matter jurisdiction; Abuse of Discretion; Judgment and Sentence void on it face; and Fundamental errors of Miscarriage of Justice, then proceeded to file another application for Post-Conviction Relief in the district court on March 12, 2021 because of the Court's error applying the wrong statute §64(B) (APPENDIX F)

On February 7, 2022, Petitioner filed a "Petitioner's Written Objection to the proposed sanctions." MA-2021-1388. (APPENDIX E) On January 6, 2022 the OCCA filed an Order Denying

Application for Extraordinary Relief. (APPENDIX D) Petitioner filed a Motion for Disposition and Summary Judgment with the District Court that denied it without ruling on the merits. Petitioner appealed to OCCA on March 28, 2023, filed Order Denying Motion For Disposition and Summary Judgment. (APPENDEX C) On May 2, 2023, Petitioner filed the Petition In Error. (APPENDIX B)

In the opinion filed Sept. 13, 2023, OCCA Order Affirming Denial of Post-Conviction Relief. Oldham v. State, No. PC-2023-392 (Okla.Crim.App. 2023) (APPENDIX A). OCCA reasoning that this proposition was either been waived or barred by res judicata. From this opinion Petitioner has exhausted all legal remedies *** to obtain his freedom in the State and Federal Court's. (APPENDIX M)

REASON FOR GRANTING THE PETITION

I. The District Court Judge exceeded the Oklahoma Statute of Title 21 Okl.St.Ann., 1983 §64 Without authority to enter judgment rendered December 8, 1992.

A. The original action was violated by the Honorable Janice P. Dreiling, by exceeding her Authority to impose a $500.00 fine penalty.

B. The original action was an abuse of discretion, and was not authorized by Title 21 Okla. St. Ann., 1983 §64

II. In the Post Conviction Application filed March 11, 2019, Petitioner raised for the first time The violation of Statute Title ***21 Okl.St.Ann., 1983 §64***.

A. The District Court ruled on the Statute improperly by adjudicating the amended Statute Title ***21 Okl.St.Ann., 1993 §64(B).***

B. The amended Statute came into effect September 1, 1993, after Petitioner was Sentenced ***December 8, 1992.***

III. In the Post Conviction Application filed March 12, 2021, Petitioner raised the same Jurisdictional issue concerning the violation of Statute Title 21 Okl.St.Ann., 1983 §64.

A. The Jurisdictional issue was not adjudicated in the previous proceeding.

B. Since the Original Statute was not adjudicated the Judgment entered in that proceeding Is not res judicata of the Jurisdiction of the Court to enter the Order properly.

IV. The Jurisdictional issue; nor the abuse of discretion, had not been litigated in the Court of Criminal Appeals.

ARGUMENT

THE OKLAHOMA COURT OF CRIMINAL APPEALS ERRED BY APPLYING DOCTRINE OF RES JUDICATA TO THE "PETITION IN ERROR" WITHOUT A REVIEW OF THE MERITS OF THE ISSUES RAISED."

Petitioner claim's that OCCA erred by applying the doctrine of res judicata to his Applications for Post-Conviction Relief for the following reasons: (1) the sentence was not authorized by State law because, under Okla.Stat.Tit. 21, §64, [t]he trial court was without jurisdiction to sentence [him] to two penalty punishments (2) Oklahoma's failure to adopt or follow sentencing guidelines "leads to unconstitutionally arbitrary, unreasonable and capricious punishment" in violation of due process, (OklaConst.Art. 2§ 7, U.S.C.A. Const.Amend. 14) (3) protections and prohibitions on cruel and/or unusual punishments, (Okla.Const.Art. 2 9; Ok.St.T.44 § 855; U.S.C.A. Const.Amend. 8) as provided in state and federal constitutions (4) to reverse for abuse of discretion, (22 Okl.St.Ann., § 991a; U.S.C.A. Const.Amend. 4) the Supreme Court must determine that the trial judge made a clearly erroneous conclusion and judgment, against reason and evidence. Petitioner claims that res judicata does not bar Petitioner's review of District Courts discretionary order, because it's not based on a lack of subject-matter jurisdiction under res judicata; rather, it's based on a district court's discretionary decision to decline to exercise its subject-matter jurisdiction. (18 U.S.C.A. § 3231; U.S.C.A. Const. Art. 381).

This case concerns res judicata only, and not the narrower principle of collateral estoppel. Whereas res judicata forecloses all that which might have been litigated previously, collateral estoppel treats as final only those questions actually and necessarily decided in a prior suit. Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979).

Conventional motion of finality of litigation has no place where life or liberty is at stake and infringement of constitutional right is alleged. If government (is) always (to) be accountable to the judiciary for man's imprisonment, Fay v. Nola, Supra, 375 U.S., at 402, 83 S.Ct., at Page 829, access to the courts on habeas must not be thus impeded. The inapplicability of res judicata to habeas, then, is inherent in the very role and function of the writ. Sanders v. United States, 373 U.S. 1, 83 St.Ct. 1068, 10 L.Ed.2d 148.

To overcome the States procedural bar, the Petitioner must demonstrate cause and prejudice or a fundamental miscarriage of justice. Petitioner makes a "substantial showing of the denial of a constitutional right" 28 U.S.C.A. § 2253(2), by demonstrating that the issue he seeks to raise is debatable among jurists, a court could resolve the issue differently, or that the question presented deserves further proceedings. See Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Evidence offered to the court that its authority to enter the order was non-existent under statute.

The Court of Appeals erred in holding that Petitioner's inability to obtain relief upon his Fourth, Fifth, Sixth, and Eighth amendment claim renders the doctrine of res judicata inapplicable to his Jurisdictional claims.

Petitioner will show that the issue of the violation of a sentencing statute should not be barred, and the doctrine of res judicata should not apply. See U.S. v. Lente, 2011 WL 3211506, 647 F.3d 1021, procedural sentencing errors 18 U.S.C.A. §3553(a); Ake v. Oklahoma, 105 S.Ct. 1087 (1985) concerning Fundamental Errors; Wackerly v. State, 2010 OK CR 16 ¶4, 237 P.3d 795, 797 concerning Lack of Jurisdiction; In Re Brewster, 284 P.2d 755, 757 Okla.Crim. 1955, concerning Judgment void on its face.

That the confinement and denial of liberty of Petitioner as foresaid violates his rights as is guaranteed by the Constitution of the United States of America, Const. IV, V, VI, VIII, XIV, and the Constitution of Oklahoma, Article 2, Sec. 6; Article 2 § 7; Article 2 § 20; Article VII, §7; Article 2 § 9, and Article 1, § 1." The Courts of Justice shall be open to every person, and certain remedy afforded for every wrong, and for every injury to person, property, or reputation, and right and justice shall be administered with sale, denial, delay or prejudice."

CONSPIRACY TO CONVICT PETITIONER AT SECOND TRIAL SHOWING INEFFECTIVE ASSISTANCE OF COUNSE AND BIAS AND PREJUDICE JUDGE

Delbert L. Oldham a former citizen of Bartlesville, Oklahoma, claims an unlawful "conviction action" that accrued in the District Court of Washington County by Judge, Janice P. Dreiling; District Attorney, Craig Corgan, and his Court Appointed Attorney, L. Wayne

Woodyard, all acting under color of law, had agreed to a conspiracy to get Petitioner convicted. 42 U.S.C.A. § 1985(3) At the first trial, the jury got to hear all of Petitioner's defense, that proved that there was insufficient evidence, and the trial ended in a hung jury, resulting in a mistrial. Burks v. U.S., 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

While Petitioner was out on bail before the second trial, a friend of his was at the courthouse, setting outside the office of Craig Corgan, and he heard Wayne Woodyard ask Corgan, what are "WE" going to do about Oldham's case? Corgan said, "he's going down!" At the time Petitioner didn't know what to do with this information.

To show this Court the conspiracy scheme between the District Attorney and Woodyard, Petitioner presents facts that Woodyard deliberately failed to call ALL the witnesses to the stand, that were called at the first trial, plus the brother, sister, and Mother, because he was afraid that the jury would believe their scheme, and there might possibly be another hung jury, or an acquittal. Beavers v. Saffle, 216 F.3d 918, 2000 WL 775482. Also, a few years later, Petitioner had found out that L. Wayne Woodyard had been an Assistance District Attorney, for Pawhuska and Osage County. See, State v. Wood, 576 P.2d 1181 (1978); Reed v. State, 589 P.2d 1086 (1979); Childress v. Jordan, 620 P.2d 470 (1980).

Then there's the fact that Woodyard failed to investigate the crime scene, and take picture's that can prove that he was ineffective because the victim testified that she had been in the house at 419 W. 9th Street, but her testimony was false, she explained the wrong directions to the bedroom. Plus, she stated that she was raped in the bedroom, then she stated that it happened in the living room. She didn't know what room it happened in! Plus, she conveniently, intentionally failed to remember the day that something so dramatically happened to her! Woodyard ask the victim if she bled, she said, yes. Then he ask how long after the incident, she said a week or two later. The person renting the house testified that he was the only person who had a key, and that there was nothing out of place, or disturbed in the house all the month of January 1991. Her testimony was false, inconsistent, untruthful, and uncorroborated. The alleged inconsistences in assessing the victim's credibility. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

> Under Jackson, to determine whether the child's testimony was sufficient To convict Oldham, we must decide "whether, after viewing the evidence In the light most favorable to the prosecution, and rational trier of fact could Have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. at 319, 99 S.Ct. 2781. "This...standard gives full play to the responsibility Of the trier of fact fairly to resolve conflicts in the testimony, to weight the Evidence, and to draw reasonable inferences from basic facts to ultimate facts."

At the second trial, Woodyard intentionally failed to transcribe the first trial transcripts to use it to impeach the victims uncorroborated testimony, he only used his notes to impeach only one incident, and that was about if she could remember whether she had a bra on or not, in count one. United States v. Germany, 613 F.2d 262 (1979). Woodyard violated Petitioner's due process of law, Const.Amend. 14th, Perjured testimony. Error was Plain and that it affected his substantial Rights Fed.Rules Cr.Proc., Rule 11 Ch, 52(b) 18 U.S.C.A. Mooney v. Holohan, 294 U.S. 103, U.S.C.A. Const.Amend. 14, 55 S.Ct. 340 (135), and we have often pointed out that a conviction, secured by the use of perjured testimony known to be such by the prosecuting attorney, is a denial of due process. Pyle v State of Kansas, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214.

Then during a break session, there was a juror standing outside the jury room down the hall from the witnesses break room, and over heard a conversation between Oldham and Joe Snow (his brother-in-law) about him being afraid to testify. Petitioner told Woodyard about the incident, but he never did anything about it. He intentionally failed to report it to the Judge or D.A.

Woodyard intentionally failed to tell Petitioner about how much time he could receive in each count if found guilty, either in the first or second trial. Petitioner had no idea that he was looking at a maximum of a life sentence, or even the death sentence. It was a total shock to find out the he received a total of a 100 years. Sate ex rel. Oklahoma Bar Association v. Miller, 461 P.3d 187, 2020 OK 4.

Woodyard did not advise Petitioner of the consequences of taking the stand, especially since this was the second trial, and the Judge, D. A., and his lawyer already knew all his defense. So, when Petitioner took the stand, Corgan took advantage of the situation to use Petitioner's bad acts against him to make him look like a bad person in the eyes of the jury that had nothing

in common with the alleged crime's he was accused of to manipulate the jury to get a conviction. Petitioner claims that this was unfair and prejudicial to the outcome of the trial. There was no physical evidence, no medical evidence, no DNA evidence, nothing to prove that a crime had been committed. The only evidence was the uncorroborated testimony of the victim, which had been impeached. Petitioner claims that this was a miscarriage of justice, showing Actual Innocence. McQuiggin v. Perkins, 569 U.S. 383, 133 S.Ct. 1924, 185 L.Ed. 1019 (2013)

Woodyard failed to call the Mother to the stand to ask her why would she allow her young daughter to go alone with Petitioner? Why didn't the other children go with them? With her testimony it would have shown the jury that these alleged crimes never happened. It would have shown that the reason why they accused Petitioner of these crimes is because they were mad at Petitioner and his wife. U.S. v. Page, 2012 WL 1664129, 480 F.ed.Appx. 902.

Woodyard failed to call her brother and sister to the stand to ask them questions about what they allegedly saw happened at 419 S. Wyandotte on December 26, 1991. (Count 3) Their testimony would have shown that this incident never happened, because Petitioner was at the house in Oak Park all that day and never left. (Three witnesses testified at the first trial). Woodyard new this and intentionally failed to properly defend his client. Strickland v. Washington ,466 U.S. 668, 104 S.Ct. 2052(1984) U.S.C.A. Const. Amend. 6th.

After Petitioner was found guilty, the conspiracy continues with the Honorable Judge Dreiling by improperly imposing an unlawful sentence without an objection from Woodyard or Corgan, 18 U.S.C.A. §1951(a). Where jury's sentencing verdicts did not include a fine, "only imprisonment," after jury trial, but no objection was made to trial court's imposition of a fine at formal sentencing, 21 Okla.Stat.Ann. §§ 1123, 1114, and §1115. Petitioner was sentence by the Honorable Judge Dreiling on December 8, 1992. (APPENDIX L) The fact that she had conspired with the District Attorney, and Woodyard shows her bias and prejudicial attitude towards Petitioner's case. Judge Dreiling has been on the bench for many years, and knows the law. But because of her prejudicial attitude she chose to exceed her authority by imposing a fine of $500.00 on each count, as a harsher punishment in violation of Title 21 Okl.St.Ann. 1983,

§64, consistent with lawful purposes as with alleged unlawful scheme to bring Petitioner to justice. Brown v. State, 1957 OK CR 70, 314 P.2d 362-366.

Thus, the critical inquiry in the present case is whether Petitioner has been subjected to more than one punishment in violation of Oklahoma Statute and establish that the sentencing court of Washington County exceeded its legislative authorization.

While Congress could so fragment a conspiracy that the aggregate punishment becomes cruel and unusual, protection from that action derives from this amendment, not the double jeopardy clause of Amend. 5. U.S. v. Rodriguez, C.A. 5 (Fla.) 1980, 612 F.2d 906.

THE FINES IMPOSED BY THE TRIAL COURT AS ADDITIONAL PUNISHMENT WERE UNAUTHORIZED CRUEL AND UNUSUAL PUNISHMENT-EXCESSIVE FINES ABUSE OF DISCRETION

Petitioner challenges the trial court's imposition of a $500.00 fine as additional punishment on each count at formal sentencing. The record shows the jury was correctly instructed that it could impose on each count an imprisonment punishment. The jury's sentencing verdicts, however, do not include a fine, only imprisonment. (APPENDIX J) No objection was made to the trial court's imposition of a fine at formal sentencing. See Hubbard v. State, 2002 OK CR 8, 7, 45 P.3d 96, 99.

Petitioner complains that the trial court had no authority to impose a fine as additional punishment in light of the jury's sentencing verdict. Petitioner cites 22 O.S. 2011, §926.1 which states:

> In all cases of a verdict of conviction for any offense against any of the laws Of The State of Oklahoma, the jury may, and shall upon the request of the Defendant Assess and declare the punishment in their verdict within the Limitations fixed by law, and the court shall render a judgment according to Such verdict, except as hereinafter provided.

In the present case, the jury assessed and declared Petitioner's sentence at the conclusion of the bifurcated sentencing stage. No objection was made to the jury's sentencing verdict when it was returned. The jury was properly instructed on the range of punishment to

only a term of imprisonment. See 21 O.S. 1992, §51.1(A); 21 O.S. 1983, §64; 21 O.S. 1992, §§ 1114, 1123. Despite this fact, the jury's sentencing verdict Included no fine. (APPENDEX J)

For over forty years, we have interpreted §926.1 in the following way. So long as a jury's sentencing verdict is within statutory limits, and is otherwise legally proper, the trial Judge has the authority to suspend a sentence in whole or part under 22 O.S. 1992, §991a, but the court may not impose a sentence different from that set by the Jury. Howell v. State, 1981 OK CR 82, 9, 632 P.2d 1223, 1225 E.g.; Luker v. State, 1976 OK CR 135, 12, 552 P.2d 715, 719 ([W]here the Jury declare the punishment in their verdict within the limitations fixed by law, the district courts of this State must render a judgment according to such verdict and without authority to modify the punishment assessed by the Jury in pronouncing judgment upon the conviction); White v. State, 2021 OK CR 29, 8, 499 P.3d 762, 767 (section 926.1 vests the Jury with authority to render punishment. Once a defendant elects a Jury trial and the Jury decides punishment within the applicable range of punishment in its verdict, the trial court must impose the Jury's punishment verdict). This interpretation is consistent with neighboring statutes addressing the trial court's duties when the Jury fails to agree, or does not declare, such punishment by their verdict or otherwise sets punishment greater than the highest limit declared by law for the offense. See 22 O.S. 2021, §§ 927.1-928.1.

A defendant thus has no right to have a jury decide his guilt and then have a Judge decide his sentence. Case v. State, 1976 OK CR 250, 25, 555 P.2d 629, 625; Reddell v. State, 1975 OK CR 229, 30, 543 P.2d 574, 581-82.

Brown v. State, 1957 OK CR 70, 314 P.2d 362, 366—Which interpreted the then—existing sentencing statutes and held inter alia that where a defendant is tried and sentenced by the Jury, the court may not impose a fine under §64 because Brown allowed a defendant who pled guilty to be punished more harshly than a defendant who was convicted by a jury.

The trial court imposed an unauthorized $500.00 fine at sentencing. A trial Judge may not impose a sentence different than that set by the Jury, was qn abuse of discretion. 22 Okl.St.Ann., §991a, U.S.C.A. Const.Amend .4 In Mixonv.State, No.F-2017-902, slip op. (Okl.Cr. Nov. 15, 2018)(unpublished) and Coke v. State, No. F-2018-384, slip op. (Okl.Cr. May 23, 2019 (Unpublished)

The present case. The Judge actually imposed a fine that required to be vacated, and set aside, because Petitioner was sentenced illegally by the Judge imposing a fine in addition to an imprisonment punishment. Further, 21 O.S. 1991, §64 (APPENDEX H) was amended after the trial proceedings in Petitioner's sentencing which came into effect Sept. 1, 1993 to authorize either the Court or a Jury to impose a fine not exceeding $10,000.00 in addition to the imprisonment prescribed. (APPENDIX I)

Oklahoma Statute 1993; Title 21 Okl.St.Ann., §64 reads as follows:

> "Upon a conviction for any crime punishable by imprisonment in any jail or Prison, in relation to which no fine is herein prescribed, the court may impose A fine on the offender not exceeding Two -Hundred Dollars ($200.00) in Addition to the imprisonment prescribed."

Oklahoma Statute 1993; Title 21 Okl.St.Ann., §64(B); Chapter 51 H.B. No. 1018:

SECTION 1, AMENDATORY 21 O.S. 1991, section 64, is amended to read as follow:

> Section 64. B. Upon a conviction for any felony punishable by imprisonment in Any jail or prison, in relation to which no fine is herein prescribed, the court <<+or a jury+>> may impose a fine on the offender not exceeding Ten Thousand Dollars ($10.000.00) in Addition to the imprisonment prescribed.

In sentencing by the trial Judge on Dec. 8, 1992, then in effect the Statute 21 O.S. §64 clearly states that the maximum punishment for an offense is a fine of $200.00 to a defendant who pleads guilty (APPENDIX H). Brown v. State, Supra. The fact that Petitioner chose to take his case to Jury trial shows clearly that §64 did not apply. The trial Judge was without statutory authority to impose a $500.00 fine that was much harsher, and excessive to the maximum $200.00 fine. There being no way to separate the excessive portion from the valid portion of these sentences, they were wholly void. Biddle v. Thiele, 11 F.2d 235 (1926). 12 Okl.St.Ann., §1038; Ok.St.T. 20 § 3001.1 In violation of Due process U.S.C.A. Const.Amend. 5 Earles v. Cleveland, 418 F.Supp.3d 879, 2019 WL 4602821. Petitioner claims that 44 Okl.St.Ann., §855; Cruel and Unusual punishments prohibited; and U.S.C.A. Const.Amend. VIII, Excessive Bail, Fines, Punishment.

PETITIONER HAS PAID THE FINES ON ALL THREE COUNTS

On February. 18, 2022, Petitioner had paid in full to the clerk of Washington County the fine imposed upon him of five hundred dollars on all three counts, a total of one thousand, five hundred dollars, and that money having passed into the Treasury of the United States, and beyond the legal control of the court, or anyone else but congress of the United States, and he having also undergone 31 years of the 100 year's imprisonment, all under a valid judgment, can the court vacate that judgment entirely, and without reference to what has been done under it, impose another punishment on the prisoner on that same verdict? To do so is to punish him twice for the same offence. He is not only put in jeopardy twice, but put to actual punishment twice for the same thing. Ex parte Lange, 85 U.S. 163, 1873 WL15958, 21 L.Ed 872, 18 Wall 163.

In Ex parte Lange, Number 6, it states: Hence, when a court has imposed fine and imprisonment, where the statute only conferred power to punish by fine or imprisonment, and the fine has been paid, it cannot, even during the same term, modify the judgment by imposing imprisonment instead of the former sentence. 7. The judgment of the court having been executed so as to be a full satisfaction of one of the alternative penalties of the law, the power of the court as to that offence is at an end. 8. A second judgment on the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he must be discharged.

To reverse for abuse of discretion, 22 Okl.St.Ann, §991a; U.S.C.A. Const.Amend. 4 the court must determine that the trial judge made a clear erroneous conclusion and judgment, against reason and evidence. Trial court was not authorized to impose a fine penalty under statute, governing sentencing. Trial court abused its discretion by imposing a fine penalty that was not authorized by statute.

The plain language of the Statute clearly suggests that the court was unauthorized to impose a fine exceeding $200.00, implementation of the double punishment provision by imposing a $500.00 fine. The question presented is whether Petitioner's sentence was permissible, given that the fine exceeded the $200.00 maximum of the Statute.

Petitioner's double punishment for the court's violation of the sentencing statute subjected him to the violation of the Fifth Amendment due process clause. The question for this court to examine is whether the district court's abuse of discretion to exceed the maximum fine penalty is within the meaning of the constitutional guarantee against double punishment/double jeopardy provision.

The double jeopardy provision precludes double punishment imposed at a single trial. Examination of the contemporaneous history of the Fifth Amendment in the form introduced by Madison in the House of Representatives demonstrates the intention to prohibit double punishment as well as multiple prosecution. This Court's decision in Ex parte Lange, (18 Wall. (85 U.S. 163), in InreSnow, (120 U.S. 274), and United States v. Benz, (282 U.S. 304), give unequivocal recognition to the double punishment application of the double jeopardy prohibition. The dictum in Holiday v. Johnston, (313 U.S. 342) which has been cited to the contrary, cannot be so taken in the light of the previous legislative and judicial history. And this court's subsequent declarations in In re Bradley, (318 U.S. 50), and Francis v. Resweber, (329 U.S. 459), indicate that there has been no impairment of the declaration on the House floor in 1789 concerning the double jeopardy provision that "the humane intention of the clause was to prevent more than one punishment."

The double Jeopardy Clause prohibits multiple punishments for the same offense. United States v. Halper, 490 U.S. 435 (1989). In Halper, this court held that a civil sanction may be punitive under certain circumstances and thus within the scope of the Constitution's double jeopardy prohibition. The court in Halper adopted the following test." A civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment..." 490 U.D. at 448. Last term, this court reaffirmed Halper in Austin v. United States, 113 S.Ct. 2801 (1993)

The court of Washington County violated Due Process when it failed to follow Oklahoma law which entitled Petitioner to be sentenced by a jury.

Petitioner argues that because the District Court exceed its authority by imposing a fine punishment, in addition to a prison punishment under a statute where only a court can assess punishment, and only if the Defendant had plead guilty. Brown v. State, 1957 OK CR 70, 314

P.2d 362-366. The District Court had no authority to impose a fine. Since Petitioner chose a jury trial the initial exercise of sentencing discretion was by jury. Petitioner was thus denied his right to jury sentencing guaranteed by Oklahoma law in 22 O.S. §926, which reads:

> In all cases of a verdict of conviction for any offense against any of the laws Of the State of Oklahoma, the jury may, and shall upon the request of the Defendant, assess and declare the punishment in their verdict within the Limitations fixed by law, and the court shall render a judgment according To such verdict, except as hereinafter provided.

The District Court had no authority to sentence Petitioner to two punishments, "where it is apparent that an injustice has be done," and the sentence is "so excessive as to shock the conscience of the court." Petitioner argues that the Jurisdiction of the court over the case was exhausted upon payment of the fines.

Petitioner contends that by payment of the fines in satisfaction of one of the alternative modes of punishment prescribed by the Statue, Petitioner was not subject to the further order of the court in that jurisdiction of the court over him had ceased.

The court could legally impose the prison punishment, but it did not have jurisdiction to impose the fine punishment. It therefore follows that a satisfaction of the one which the court did not have jurisdiction to impose renders the other alternative excessive and in consequence void. Petitioner had endured imprisonment for 31 years and should be entitled to his discharge, in that he could not be held for additional compliance with the fine which had been imposed. for the same reason having satisfied that part of the judgment imposing fine, he was and is entitled to be discharged because he cannot be compelled to serve the term of imprisonment. Ex parte Lange, 18 Wall. 163 at 174, 21 L.Ed 872 at 878.

The case of Ex parte Lange, supra, is conclusive on the present question. There it was held that a judgment of a court that had been executed so far as to be in full satisfaction of one of the alternative penalties of the law, put an end to the power of the court over the offense. There, as here, the court had imposed fine and imprisonment when it had authority only to imprison; there as here, Petitioner paid the fine; there the court vacated its original order. Here

the court failed to rule on the merits and ordered all the issues waived or res judicata, and failed to up hold Petitioner's Constitutional Fifth Amendment Rights.

INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL

L. Wayne Woodyard, 1221 Lynn Ave., Pawhuska, OK 74056 (918) 287-4466, was Petitioner Court appointed trial attorney. Mary S. Bruehl, P.O. Box 926, Norman, OK 73070, (405) 801-2700 worked for OIDS, and was Petitioner's appellate attorney. These two attorneys' have a college legal training, highly skilled and sophisticated and intelligent in the law, FAILED their professional duty to protect Petitioner's Constitutional Right to a fair trial, sentencing, and appeal, a violation of due process of law. Woodyard failed to object to the sentencing violation of §64 when the Judge imposed the $500.00 fine on each count that exceeded her authority. Even if the Judge could impose a fine the Statute §64 has a maximum fine of $200.00, showing a plain error of an abuse of discretion by the Judge to exceed the maximum fine penalty. On appeal Ms. Bruehl failed to discover this relevant plain error Constitutional issue and raise it in Petitioner's direct appeal. Petitioner claim's that both attorneys were ineffective, this was not a trial strategy, it's a clear violation of professional duty to protect Petitioner's Constitutional Right to due process of law.

Further, if two professional attorney's fails to discover this issue, how can the Court hold Petitioner, a pro se litigate responsible for not discovering it within the reasonable time set by the Court? Petitioner pro se ignorant high school dropout, unskilled and uneducated in the law. This is unfair and violates Petitioner's Constitutional Right to a fair trial and appeal.

In 2006, Petitioner had raised the issue of ineffective assistance of trial and appellate counsel, after he discovered the issue of "Who knowingly and intentionally," the second mandatory element was omitted from Petitioner's Jury Instructions. If professional attorney's fail to discover these fundamental issues, how can you hold a pro se litigate accountable? Petitioner believes that they were prejudice because of the nature of the crimes, that's the reason why these issues were not raised in Petitioner's direct appeal. The fact Petitioner unskilled and uneducated in the law never found this issue until years later, and learning the fact that "Lack of Jurisdiction is never waived," and can be raised at any time brings this

violation of an Oklahoma sentencing Statute by the Trial Judge, Title 21 Okl.St.Ann., 1983, §64 before this court for review.

The question presented, whether, the alleged error," was so grossly prejudicial that it fatally infected the trial and denied the fundamental fairness that is the essence of due process." Hooks, 689 F.3d at 1180 (quoting Revilla v. Gibson, 283 F.3d 1203, 1212 (10th Cir. 2002) Hooks v. Workman, 689 F.3d 1148, 1163 (10th Cir. 2012).

Petitioner demonstrates that appellate counsel provided ineffective assistance in failing to raise either a state law or constitutional challenge to the imposition of fines. In violation of the Six Amendment, which in enumerated situations has been made applicable to the States by reason of the Fourteenth Amendment. See Duncan v. Louisiana, 391 U.S. 145, 159, 88 S.Ct. 1444, 1452, 20 L.Ed.2d 491 (1968); Gideon v. Wright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

A JUDGMENT ENTERED BY A COURT IN EXCESS OF IT'S JURISDICTION IS VOID ON IT'S FACE

The question for determination is whether the trial court, where a jury has returned a verdict assessing an imprisonment penalty, may in its judgment add a fine to such imprisonment under Title 21 Okla.Crim.Ann., 1983 §64. A void sentence must be set aside

> Title 21 O.S. 1971 §1038 provides that "(a) void judgment may be vacated at any time....." (Emphasis supplied) The judgment is void on the face of the judgment roll. (APPENDIX L) The attack on the grounds that the decree is facially void §1038 merely provides that the passage of time does not operate to bar a quest to vacate a facially void judgment (12 Okla.St.Ann., §1083 Limitations)

The law is clear that sentences which are not within the statutorily prescribed range of punishment is void. (APPENDIX H) Ex parte Custer, 88 Okl.Cr. 154, 200 P.2d 781, 783 (1948)(the trial court was without jurisdiction to impose a three year sentence when the maximum provided for by statute was only two years)

Only Judgments or sentences void on their face may be set aside after jeopardy has attached. Id., Campbell v. State, 373 P.2d 844, 847 (Okl.Cr. 1962)(citations omitted(where a defendant has begun to serve his or her judgment and sentence, the trial court is without authority to vacate, modify or suspend the judgment, or increase or diminish the sentence, except to set aside a Judgment that is void on its fact); Tracy v. State, 24 Okl.Cr. 144, 216 P. 941 (1923)

Similarly, if the jury failed to provide both elements of the verdict with the proper degree of specificity – or assessed a punishment in excess of, or different from, that authorized by law – the verdict was rendered invalid in its entirely, and the defendant was entitled to a new trial. Buster v. State, 42 Tex. 315, 320 (1875).

Oklahoma has chosen to have jury sentencing. Under that jury sentencing system, the range of punishment for an offense is set by statute and the jury is entrusted, with proper instructions, to determine what punishment within the provided statutory range is appropriate given the evidence of the defendant's offense. So long as the established statutory range of punishment does not violate the Eighth Amendment prohibition against cruel and unusual punishment, such jury sentencing is constitutional and does not violate due process.

A Judgment entered by a court in excess of its Jurisdiction is void on its face and may be attacked by appeal or by habeas corpus by one illegally restrained of his liberty by reason of such void judgment. Ex parte Thompson, Okl.Crim.App., 94 Okla.Crim. 344, 235 P.2d 955 (1951). Criminal Law 1023(11); Habeas Corpus 446.

Recognizing the applicability of the procedural bar, Petitioner asserted that the procedural bar was not regularly applied in Oklahoma when a sentence is void as a matter of law. See, e.g., Stewart v. State, 989 P.2d 940, 943 (Okla.Crim.App. 1998) and Bumpus v. State, 925 P.2d 1208 (Okla.Crim.App. 1996)

Petitioner argues that when the District Court exceeded it power and imposed a fine that exceed the statutory maximum the court loses jurisdiction over the subject matter, because the District Court lacked authority in light of Ex parte Lange, or In re Brewster, 284 P.2d 755, 757 (1955), to impose a sentence that exceeds the otherwise applicable statutory maximum based on a fact of Title 21 Okla.St.Ann., 1983 §64, the Court committed a "jurisdictional error."

The category of "jurisdictional errors," which always require reversal even if not preserved, is an exceedingly narrow one. A court commits a "jurisdictional error" in that sense only if it acts in the absence of subject matter jurisdiction- an error that, unlike other errors in a criminal prosecution, cannot be waived by the parties in any circumstance. U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002).

In both federal and Oklahoma courts, subject matter jurisdiction can be challenged at any time. See United States v. Cotton, Supra. At 1, *626 ("Because [s]ubject matter Jurisdiction involves a court's power to hear a case, it can never be forfeited or waived.") Wallace v. Oklahoma, 935 P.2d 366, 372, 1997 OK CR 18, ¶ 15, ("[I]ssues of subject matter jurisdiction are never waived...")

The requirement of subject-matter jurisdiction relates directly to the constitutional power of a federal court to entertain a cause of action, for this reason, the question of subject-matter jurisdiction is always open: Courts at every stage of the proceedings are obligated to consider the issue even though the parties have failed to raise it. Blakely v. Washington, 542 U.S. 292. 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

An authentic copy of the Statute §64 document attached as APPENDIX H shows the required maximum fine penalty the Judge was authorized to impose upon Petitioner at sentencing. By exceeding the maximum fine penalty, the sentence inflected a cruel and unusual punishment, by reason of the amount of the fine and the length of the term of imprisonment, and still further, that the fine was greater than that which the statute imposed, all contrary to the Oklahoma statute 21 Okl.St.Ann., 1983 §64. The general rule that a judgment rendered by a Court in a criminal case must conform strictly to the Statute, and that any variation from its provisions, either in character or the extent of punishment inflicted, renders the judgment absolutely void. See, United States v. Pridgeon, 153 U.S. 48, 14 Sup. CT. 746, 38 L.Ed. 631; Weems v. United States, 217 U.S. 349, 30 Sup. Ct. 544 L.Ed. 793, 19 Ann. Cas. 705.

Again, the rule is clearly laid down that a judgment in criminal cases must conform strictly to the provisions of the statute pre scribing punishment and a variation therefrom will render the judgment void. See. In re Bonner, 151 U.S. 242, 14 Sup. Ct. 323, 38 L.Ed. 149.

Petitioner argues that, "this is not a case of mere error, but one in which the district court transcended its powers." Citing Ex parte Lang, 19 Wall, 163, 176; Ex parte Parks, 93 U.S. 18, 23; Ex parte Virginia, 100 U.S. 339, 343; Ex parte Rowland, 104 U.S. 604, 612; and Ex parte Coy, 127 U.S. 731, 738, 8 Sup. Ct. 1263.

The district Judge was not exercising her authority to punish for the alleged crimes under and by virtue of the terms of the Statute which limits the punishment as already indicated. This Statute was ignored, and her action was based on a different proposition and one entirely outside the Statute. Had she been following this Statute; she would have limited the punishment not in excess of $200.00. She, as judge, either really knew what the Statute was or is supposed to have known its contents as well as the construction placed upon it be the limit the Legislature had placed upon it. There is no other conclusion, as I understand the law, but that the judge acted outside and in excess of authority beyond the Statute, and that her action in this matter was not based upon the Statute, but was an assumed power clearly illegal and void.

THEREFORE, showing the fact that the Judge exceeded the statutory authority by imposing an excessive fine is an abuse of discretion and the court lost jurisdiction over the subject matter renders the Judgment and Sentence void on its face. In re Bonner, 151 U.S. 242, 14 S.Ct. 323, 236 L.Ed. 149 (1894) states in part at ***326, "If the court is authorized to impose imprisonment, and exceeds the time prescribed by law, the judgment is void for the excess." Petitioner has asserted a cognizable argument for relief, and the confinement and denial of liberty of this Petitioner as aforesaid violates the Petitioners rights as is guaranteed by the Constitution of the United States of America.

CONCLUSION

WHEREFORE, premises considered, Petitioner respectfully request this Court to review the jurisdictional error caused by the District Judge of Washington County when the Judge committed abuse of discretion by imposing a fine ***and*** imprisonment, which is in violation of a statutory law. Petitioner request this writ of certiorari should be granted.

Respectfully submitted,

Delbert I. Oldham

Date: December 7, 2023