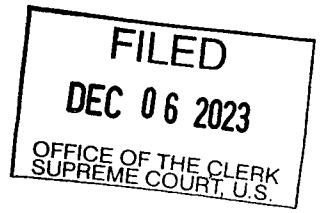


23 - 6563  
No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

*In re Justin Taylor,*  
Petitioner

Versus

Tim Heeper, Warden, et. al,  
Respondent

ON PETITION FOR A DIRECT COLLATERAL WRIT OF CERTIORARI TO  
THE LOUISIANA SUPREME COURT

---

\* The Jefferson Parish case, wherein, pleadings now presented to this Honorable Court for review, unmistakably, in the courts below, challenged State Laws which clearly suffered Federal Preemption by the express prohibitory language of the 14<sup>th</sup> Amendment.

---

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted By:



Justin Taylor #475242  
Main Prison, Ash-4  
Louisiana State Penitentiary  
Angola, Louisiana 70712

## QUESTIONS PRESENTED

I

Whether this Honorable United States Supreme Court 'must" investigate and resolve jurisdiction if raised by one of the petitioning party(ies) to the litigation?

II

Whether when jurisdiction is found wanting in the lower court which seeks to transfer jurisdiction to this Honorable Court, the matter must be remanded back to the last court to have proper jurisdiction?

III

Whether the absence of jurisdiction is sufficient to void all subsequent proceedings?

IV

Whether the open challenge to jurisdiction requires the lower State Court forum to address jurisdiction prior to any other undertakings?

V

Whether the time is ripe in the proceedings for this Honorable United States Supreme Court to impose upon the States the mandatory substantive prohibitions of the 14<sup>th</sup> Amendment?

IV

**PARTIES TO THE PROCEEDINGS**

All Parties appear in the caption of the case on the cover page

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

**PETITIONER:**

1. Justin Taylor #475242  
Main Prison, Cypress-4  
Louisiana State Penitentiary  
Angola, Louisiana 70712

**RESPONDENTS:**

2. Tim Hooper, Warden  
Louisiana State Penitentiary  
Angola, LA 70712
3. Paul Connick, Jr, District Attorney, 24<sup>th</sup> Judicial District Court, Parish of Jefferson  
200 Derbigny, 5<sup>th</sup> Floor  
Gretna, Louisiana 70054

There are no parties to this action within the scope of *Supreme Court Rule 29.1*.

## Table of Contents

QUESTIONS PRESENTED.....	3
PARTIES TO THE PROCEEDINGS.....	4
INDEX OF APPENDICES.....	5
OPINIONS BELOW.....	6
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	7
STATEMENT OF THE CASE.....	7
Here, the overriding truth is that the State of Louisiana lacks standing under the universal <i>Parrens Patriae</i> doctrine.....	8
STANDING TO CHALLENGE SUBJECT-MATTER JURISDICTION.....	9
ISSUES OF LAW.....	9
ARGUMENTS.....	9
REQUEST FOR DECLARATORY JUDGMENT CANNOT BE CONVERTED TO A PCR.....	10
MASTER OF COMPLAINT.....	12
MASTER OF COMPLAINT.....	14
THE TRIAL COURT'S JUDGMENT IS ROOTED IN MISINFORMATION.....	20
CONCLUSION AND PRAYER.....	21
REMEDY SOUGHT.....	22
CERTIFICATE OF SERVICE.....	23
CERTIFICATE/VERIFICATION OF SERVICE.....	24
AFFIDAVIT OF SERVICE.....	25

**INDEX OF APPENDICES**  
**INCLUDING OPINIONS DELIVERED IN THE COURTS BELOW**

**Appendix A →→→ Ruling**

Court: Louisiana Supreme Court  
Docket Number: 2023-KH-00575  
Date Decided: September 19, 2023  
Disposition: Denied

**Appendix B →→→ Brief filed into State Supreme Court**

**Appendix C →→→ Ruling**

Court: 5<sup>th</sup> Circuit Court of Appeal (State Level)  
Docket Number: 23-KH-97  
Date Decided: 03/24/2023  
Judges: Wicker, Johnson, Molaison  
Disposition: Denied

**Appendix D →→→ Brief filed into Court of Appeal**

**Appendix E →→→ Notice of Intent filed back to trial court**

Court: 24<sup>th</sup> Judicial District Court  
Docket Number: 02-3671  
Date Decided: 2/28/2023  
Judges: Lee V. Faulkner  
Disposition: Petitioner given until 4/6/2023 to file Supervisory Writ.

**Appendix F →→→ Ruling**

Court: 24<sup>th</sup> Judicial District Court  
Docket Number: 02-3671  
Date Decided: 3-29-2023  
Judge: Stephen D. Wright  
Disposition: Pleading converted by Court into PCR and denied.

**Appendix G →→→ Brief filed into trial court about/approximately 01/10/2023**

## Table of Authorities

### FEDERAL CONSTITUTION

Fifteenth Amendment.....	11, 22
Fourteenth Amendment.....	21p., 26
Bill of Rights.....	21, 27
Sixth Amendment.....	28

### FEDERAL STATUTES

#### FEDERAL CASES

Apodaca.....	27p.
Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed. 450 (1977).....	20
Hunter.....	
Apodaca v. Oregon, 406 U.S. 404, 92 S.Ct. 1628 (1972).....	27
Duncan v. Louisiana, 391 U.S. 145 (1968).....	28
Herrera v. Oregon, 10-344, (Dec. 2, 2010). pp. 17-20.....	26
Johnson v. Louisiana, 406 U.S. 366, 397 (1972)(Stewart, J., dissenting).....	25
Pierre v. Louisiana, 59 S.Ct. 536, 306 U.S. 354 (U.S. La. 1939), 18 U.S.C.A. § 243.....	11
Strauder v. West Virginia, 100 U.S. 303.....	21p.
U.S. v. Louisiana, 225 F.Supp. 353, id at *374.....	10

### STATE CONSTITUTION

Act of 1805, § 33.....	21
Art. 116, of the 1898 Constitution.....	20
Or. Const. Art. I, §§ 11.....	28
La. Const. Art. I, Sec. 17.....	20
La. Const. Art. VI (1868).....	21
Louisiana Constitution of 1974.....	20
Military Reconstruction Act of 1867.....	21

### STATE STATUTES

La.C.Cr.P. art. 782.....	9, 20
Art. 1 § 17 and La.C.Cr.P. art. 782.....	9

### STATE CASES

State v. Cheatham, 07-272, p. 10 (La. App. 5 Cir. 5/27/08) 986 So.2d 738, 745.....	24
State of Louisiana v. Melvin Cartez Maxie, Docket No.: 13-CR-72522, 11th Judicial District, Parish of Sabine).....	11

OPINIONS BELOW

*State of Louisiana v. Justin Taylor*

La State Supreme Court – Appendix “C”

*State of Louisiana v. Justin Taylor*

Fifth Circuit Court of Appeal (State-Level) - Appendix “A”

*State of Louisiana v. Justin Taylor*

24<sup>th</sup> Judicial District Court, Parish of Jefferson – Appendix “B”

## JURISDICTION

The Supreme Court for the State of Louisiana, erroneously, denied petitioner's clear Federal Preemption of State Law Claim on September 19, 2023. The jurisdiction of this Honorable court is hereby invoked pursuant *28 § 1254(1)* and/or *28 U.S.C. § 1257(a)* and/or *28 U.S.C. § 2101(e)*.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *Declaratory Judgment Act* (DJA) Because the DJA says that federal Courts "may declare the rights and other legal rights and other legal relations of an interested party," (This provides standing for all Article III judges to act in the preservation of the rights of the parties.) Failure to act would deprive the instant petitioner of the substantive protections of the *14<sup>th</sup> Amendment*. "A remedy denoted the means of enforcing a right," and may come in the form of, say, money, damages, an injunction, or a declaratory judgment. *Black's Law Dictionary* 1320 (8<sup>th</sup> Ed. 2004); See also 13 *Oxford English Dictionary* 584-585 (2d ed. 1991)

The *Fifth Amendment* to the United States Constitution provides, in pertinent part:

No person shall .... in any criminal case .... be deprived of life, liberty, or property, without due process of law . . .

The *Fourteenth Amendment* to the United States Constitution provides, in pertinent part:

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

In the court's below, petitioner set out a clear and unquestionable reason for equitable tolling. In constitutional error the courts below failed to honor the mandates of precedents of this Honorable Court granting relief (in the form of equitable tolling) under similar circumstances.

## STATEMENT OF THE CASE

This is a case about three primary issues: Petitioner seeks a declaratory judgment rendered by a competent State Court which interpreted and applied Federal Constitutional Law; subsequent judgments of the State courts have acted in disregard and disparagement of the *14<sup>th</sup> Amendment* of the United States Constitution. Mr. Taylor's issues are:

- 1.) The State is not the real party in interest;
- 2.) Mr. Taylor's actions did not cause the State('s) "injury in fact";
- 3.) The victim of a crime is an indispensable party and must be made party in suit;
- 4.) Standing to sue in *Parens Patriae* cannot be maintained in suits where mover's action did not adversely affect a substantial portion of the inhabitants of the state.

Here, the overriding truth is that the State of Louisiana lacks standing under the universal *Parens Patriae* doctrine.

#### **STANDING TO CHALLENGE SUBJECT-MATTER JURISDICTION**

Objections to subject-matter jurisdiction may be raised at any time; thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction, and indeed, a party may raise such an objection even if the party had previously acknowledged the trial court's jurisdiction. *Henderson v. Shinseki*, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011)

#### **ISSUES OF LAW**

- 1.) The State is not the real party in interest;
- 2.) Mr. Taylor's actions did not cause the State('s) "injury in fact";
- 3.) The victim of a crime is an indispensable party and must be made party in suit;
- 4.) Standing to sue in *Parens Patriae* cannot be maintained in suits where mover's action did not adversely affect a substantial portion of the inhabitants of the state.

In regards to the justiciable claims set forth above, the State of Louisiana (through its representatives) has chosen to circumvent substantive due process by:

*Both the State Court of Appeal and State Supreme Court issued judgments which were unresponsive to the pleading "Petition for Declaratory Judgment" and proceeded in violation of the Federal Constitution by reliance upon Federally-Preempted State Laws. This practice frustrated the exhaustion process with respect to*

the underlying claims as listed in 1-4 on previous page under the title "ISSUES". Federal Preemption of State law calls for a halting of all proceedings until that issue in and of itself is adjudicated. Because that process was not followed, this Honorable Court (under precedent) must remand that matter back to address the jurisdictional lapse now before this Honorable Court.

*Movant continues in his opposition to his pleading (Petitioner for Declaratory Judgment) as being mis-characterized as an Application for Post-Conviction Relief without giving him an opportunity to participate in that decision or make the necessary amendments to conform to the necessities which would have made the pleading a "conforming" Petition for Declaratory Judgment. The trial court never contacted Movant for clarification (if there was confusion), and petitioner should have been provided "notice" of what the court found to reduce his pleading from being a proper Petition for Declaratory Judgment to what it treated as a Post-Conviction Application.*

*If the trial court is free to convert Movant's pleadings in to what it wished to have them be, or the vessel which will make it easiest for the trial court to deny the pleading, is it safe to say that the court (at that precise moment) becomes the master of the pleading and thus, an agent in chief for the Movant? If not, Movant, should have some say in what his pleadings are recognized as before the court.*

*The trial court has issued judgments which are unresponsive to the pleading. The trial court never contacted Movant for clarification (if there was confusion) of what form(s) of relief Movant sought. If the trial court is free to convert Movant's pleading in to what it wishes to have them be just so the trial court can deny the pleading, is it safe to say that the court should have prepared and filed the pleading on petitioner's behalf as the outcome seemed predestined by the actions of the court irrespective of the title. Therefore, the actions of the Louisiana Court's extinguishes the federally recognized doctrine of Master of One's Own Complaint. If not, Movant's, case should be remanded to the State Court forum and the matter treated as it is titled: "Petition for Declaratory Judgment."*

## ARGUMENTS

Pursuant the Supremacy of the United States Constitution and La. Const. Art. X, § 30,

both of which are binding upon all State Judges and Legislators of Louisiana (the Supremacy Clause being Universally binding throughout the country), Movant has an inherent and "birthright" invokable protection to insist upon the recognition and preservation of his substantive constitutional rights without dilution, fail nor squander. *14<sup>th</sup> Amendment*.

#### **REQUEST FOR DECLARATORY JUDGMENT CANNOT BE CONVERTED TO A PCR**

Here we find that the State-level trial court has committedfeat worthy of "magical attributes," otherwise, the court has made manifest, the legally impossible. The instant petitioner has called upon the lower State Trial Court to repeat the declaration already known to be true of American law. The Several States are Semi-Sovereigns, made so by voluntary admittance into the union known as the United States. Each Rebel State found that its re-admittance back into the Union was premised upon the adoption and perpetual enforcement of the *14<sup>th</sup> Amendment*. Louisiana has failed to honor that agreement as the *14<sup>th</sup> Amendment* protections of Citizens of the United States are rarely respected in this State.

The *14<sup>th</sup> Amendment*'s, "No state shall make nor enforce any law which shall abridge the privileges and immunities of the United States nor shall any state make nor enforce any law which shall deprive citizens of equal protection of the law nor due process of law" is truly relevant here. The *14<sup>th</sup> Amendment*, when partnered with the *Supremacy Clause of the United States Constitution* subordinates and in most instances completely voids contrary State-level legislation, laws and ordinances. When the Constitutional restriction imposed upon the State(s) is specific in withholding from a State or the several States a certain power, any legislation the State creates in defiance of that restriction is moot from inception. (See Complete Federal-Preemption of State Law).

The *14<sup>th</sup> Amendment* declares that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and that no State shall deprive any person, of life, liberty, or property without due process of law."

Certainly, *illegal enforcement* of orders for one's confinement which falsely represents that the instant petitioner was dually convicted, are in fact, the precise types of vices which the Constitution of this Country was designed to prevent. The 14<sup>th</sup> Amendment operates as a restraint upon State action. In cases touching upon life or liberty, it becomes the duty of the Court (*La. Const Art. X, § 30 & Art. V. § 25(c)*), once it has jurisdiction of a case, to enforce these restraints for the protection of the citizen where they have been disregarded in the court below, though called to its attention.

What are the privileges and immunities of citizens of the United States which are thus protected? These terms are not idle words to be treated as meaningless, and the inhibition of their abridgment by the several States is the purpose of the *14<sup>th</sup> Amendment*. The words of the *14<sup>th</sup> Amendment* are of momentous import, and the inhibition they impose against the States is a great guaranty to the Citizens of the United States that they need not be concerned of State invasion of those privileges and immunities, for these rights are a birth-right and of paramount importance. All State legislation seeking to nullify or neutralize those birthright protections were nullified by the *14<sup>th</sup> Amendment* and the State's were forbade the capacity to enact and/or execute any such legislation in the future. The instant Movant invokes the Cloak of these protections against infringement, abridgment, and or assault by the States (by all means forbidden) within the "express terms" and "prohibitions" imposed by the *14<sup>th</sup> Amendment* backed by the *Supremacy Clause of the United States Constitution*.

As to the challenged components of Louisiana Law in Movant's Petition for Declaratory

Judgment are both unconstitutional and void as violating *Art. 4, § 2, of the United States Constitution*, which provides that “the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states,” and/or § 1 “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united States; nor shall any state deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws,” or because they violate some provision of the state Constitution. As a conclusive, unassailable fact (by any known authority), Louisiana was (as was all States) stripped (by the Constitution of this Country) of all authority to enact *Laws which would strip away life, liberty and property of Citizens of this Country, absent substantive due process and substantive equal protection of the law*.

#### MASTER OF COMPLAINT

The Moving party of the master of his complaint, therefore, since the Movant is the prosecutor in this pleading and the State the defendant, taking Movant's claims as facially true and generally known or adjudicated fact, the instant Movant is essentially entitled to the presumption of truthfulness and a summary judgment in favor of his petition for declaratory judgment. The State of Louisiana, nor the reasoning of the trial Judge's decision of January 30, 2023, explained away none of what Movant argued. A Motion to Correct An Illegal Sentence is not the equivalent of a PCR, because if the sentence is illegal, it is not sentence at all, and the instant petitioner nor anyone similarly situated would have a right to Post-Conviction Relief under existing law. A PCR can only “legally” be filed after a conviction and sentence have become final through the exhaustion process. Because an illegal sentence is no sentence at all, then, it can never have been legal nor could it legally achieve finality. Therefore, at no point would the instant Movant have qualified for PCR Review or Relief on an illegal sentence. The

State of Louisiana Has a separate procedure independent of the Post-Conviction Procedure for Motions to Correct and Illegal Sentence and any Petition for Declaratory Judgment.

Movant is "stuck" in a State of inability to "legally qualify" for State-level PCR review, due to the absence of a "legally imposed" sentence which could be finalized. And petitioner has never (in regard to these particular proceedings) filed the requisite "Statewide Form-Application for Post-Conviction Relief". This renders MOOT, the judge's attempt to impose procedural bars against Petitioner's Motion to Correct An Illegal Sentence and/or Petition for Declaratory Judgment. Petitioner deliberately by-passed filing for state-level PCR-Relief because he did not qualify for that, jurisdiction of the State Trial Court to proceed was forfeited lack of standing to sue under the doctrine of *Parrens Patriae*. Just as noted by this Honorable Court in *Montgomery v. Louisiana*, "an illegal sentence is no sentence at all." of Movant's Sentence as being illegal. And the imposition of state procedural bars, where they are wholly and constitutionally inapplicable (for a plethora of reasons) is constitutionally prohibited, federal preemption of State Law, Federal Remains Supreme in the face of Express Preemption and Conflict Preemption.

Here, when the Movant DID NOT file a PCR Application, he was under no obligation to allege a "valid claim" reviewable under either criterion pursuant *LSA-C.Cr.P. art. 930.3* or *art. 930.4*. in fact, that provision of law makes it mandatory that any person seeking post conviction relief use the mandatory form for the application and they can attach a Memorandum of Law in Support of the same if they so wish. Here, that did not happen, because no PCR Application was filed, Movant had no obligations nor duties owed to the Honorable State-level Trial Court pursuant the citerias set forth in *LSA-C.Cr.P. art. 930.3* or *art. 930.4*. With that clearly reflected in the record, the trial court decision is not accorded the presumption of correctness.

**DENIAL OF OPPORTUNITY TO AMEND PLEADING  
EFFECTIVELY OVERRULING THE MASTER OF COMPLAINT DOCTRINE**

Here, the Moving party submitted to the court the precise pleading he wished to have the court adjudicate. In a haste to deny the Movant the relief he sought and to deny him the equal application of the law others routinely receive, he was denied the standing of being: Master of his Own Complaint." The trial court, without his consultation nor an opportunity to amend or clarify, took it upon itself to convert petitioner's pleading into something he never filed. This infringes upon petitioner's *1<sup>st</sup> Amendment* right to freedom of Speech and denies to him, the access to the court he seeks and converts it into the type of pleading/access the court is willing to permit to him. This subjective decision making without the input of the moving party infringes upon the most fundamental right known in the judicial system, the right to be heard. In this instance, if the court demanded that Movant file an Application for Post Conviction Relief instead of a Motion to Correct an Illegal Sentence, Movant should have been given "notice" of the deficiency and afforded an opportunity to amend. However, because Movant did not at any point, nor does he wish to convert his pleading into a post-conviction application, the mandate that he be allowed to object and challenge this unauthorized conversion becomes of paramount importance to these proceedings.

In the pleadings presented to the trial court, the trial court found itself in a perplexed position whereby it could not render a decision against Movant, at legal one which would make legal sense in response to the arguments presented so it chose to convert the pleadings into something it could readily deny along procedural lines. The problem is, there was no "notice" of this occurring, nor was their consent to the alteration given. Therefore, the court chose to characterize and mistreat Movant's pleading as something wholly foreign to what he

argued/argues before the court. Movant argued the violation of the legal principles and the legal standing of the State of Louisiana, to institute an action under the following four principles of law:

- 1.) The State is not the real party in interest;
- 2.) Mr. Taylor's actions did not cause the State('s) "injury in fact";
- 3.) The victim of a crime is an indispensable party and must be made party in suit;
- 4.) Standing to sue in *Parsons Patriae* cannot be maintained in suits where mover's action did not adversely affect a substantial portion of the inhabitants of the state.

As previously explained to the trial court, its jurisdiction to adjudicate the questions of law and fact placed before it derived from the Constitution of the United States and the laws enacted in pursuance thereof; locally, the *Louisiana Code of Civil Procedure Article 1871* and *art. 1872*, granted the trial court the necessary jurisdiction to review issues, in proper posture, assailing the unconstitutionality of a statute when specifically plead and grounds particularized.

Movant explained that the State of Louisiana is a Corporation and in certain instances be called a person. See *State v. Time Inc.*, 249 So.2d 328 (La. 1 Cir. 1971). According to statutory law, a corporation is recognized as a juridical person and classified as a public person or a private person. The State and its political subdivisions have dual personalities. At times it acts as a public person in its sovereign capacity and at times it acts as a private person in the capacity of a citizen or private corporation. *La.Civ.Code art. 24*. Despite this, to the extent that the 1<sup>st</sup> Circuit Court of Appeals held:

- State did not have a cause of action
- State could not bring action on behalf of its citizens under doctrine of *parsons patriae*

- “Accepting arguendo, that the State of Louisiana is a corporation and can, in certain instances, be called a person, *81 C.J.S., State, sec. 213, 49 Am.Jur., States Territories and Dependencies, Sec. 80*, and *State of Ohio v. Helvering*, 292 U.S. 360, 54 S.Ct. 725 (78 L.Ed. 1307) (1934), the court cannot accord plaintiff's conclusion that the state is a person for purposes of the law of defamation and libel. It is the opinion of this court that a state constitutes a concept or idea, a sort of intangible sovereignty (which legally speaking \*\*\* cannot be assaulted, slandered, or injured as can an individual with respect to a personality which it does not possess.”) *Id* at *State v. Times, Inc.* at 329.
- *State v. Time Inc.* establishes through quoting from *State of Hawaii v. Standard Oil of Cal.*, 301 F.Supp. 982 (D.Hawaii 1969): 'An analysis of the above cases indicates that if a state is to maintain an action in its *Parents Patriae* capacity, Initially the facts must show that the state has an interest 'independent of and behind the titles of its citizens,' *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 27 S.Ct. 618, 620, 51 L.Ed. 1038) 'has an interest apart from that of the individuals affected,' *Pennsylvania v. West Virginia*, 262 U.S. 553, 43 S.Ct. 658, 67 L.Ed. 1117) 'must show a direct interest of its own and not merely seek recovery for the benefit of individuals who are the real parties in interest, 'Oklahoma v. Cook, 304 U.S. 387, 58 S.Ct. 954, 82 L.Ed. 1416) '(it) must appear that the controversy to be determined is \*\*\* not a controversy in the vindication of grievances of particular individuals,' *Louisiana v. Texas*, 176 U.S. 1, 20 S.Ct. 251, 44 L.ED. 347. Thus the state's *Parents patriae* claim cannot be a disguised attempt to recover damages on behalf of the state's individual citizen-claimants.'

If the State cannot be assaulted, it follows that the State is not a personality which can institute proceedings against a live human being and substitute itself as an indispensable party wherein, the indispensable party would be those persons assaulted.

The Constitution makes clear that government, such as the State of Louisiana, may maintain a cause of action in its sovereign capacity in two (2) instances:

- 1.) to protect its rights, and/or
- 2.) to protect its interests.

However, the State's right to maintain a cause of action under the provisions of the constitution is not boundless. To expound upon this fact of law, in *State v. Time Inc.*, *supra*, the

plaintiff (the State of Louisiana), instituted a suit seeking to recover damages for its allegations against Time Inc. arguing that it had been defamed as a result of the publication of the defendant (Time Inc.,) in regards to an article it published in the April 10, 1970 issue of Life Magazine.

The State argued that *Louisiana Constitution, Article 1, § 22* gave it cause of action against the defendant for defamation. It was Judge Blanche, J., who delivered the opinion of the Court. He did so in these words:

“.... the court cannot accord with plaintiff's conclusion that the State is a person for the purpose of the law of defamation and libel. It is the opinion of this court that a state constitutes a concept or idea, 'a sort of intangible sovereignty which legally speaking cannot be assaulted, slandered, or injured, as can an individual with respect to personality which it does not possess. *State Highway and Public Works Commissioner v. Cobb*, 215 NC 558, 2 S.E.2d 565 (1939). Under the American philosophy of government, the State is a creature of the people and does not exist separate and apart from the people.”

The State is simply the name given to a governmental system designed to maintain an ordered freedom, and this system is not considered distinct from or superior to the people. To accept the argument that the State is capable of being defamed would be to reject the basic American principle that the people are the supreme sovereign and replace it with the antithetical concept that the state is supreme and exists apart from and independently of the people. As long as ultimate sovereignty resides in the people, the state cannot be thought of as having a separate personality and therefore cannot be said to have been defamed.”

The mere fact that a state is a plaintiff is not enough to furnish jurisdiction. *State of Florida v. Melon*, 47 S.Ct. 265, 273 U.S. 12, (U.S. Fla. 1927). In order to bring a case within jurisdiction of the court, it must appear that the State has suffered a wrong furnishing grounds for judicial redress or is asserting a right susceptible of judicial enforcement. Within the boundaries of Louisiana, *Louisiana Constitution, Article 5, § 16*, empowers the

district court with original jurisdiction in all civil and criminal matters. It cannot be inferred from its language, that the Louisiana Constitution gave the District Court original jurisdiction in cases wherein the State elects (of its own volition) to make itself *the proper party plaintiff* on behalf of another who is the real party in interest.

It is a long-settled principal of law in this state that: "Every party who may be affected by a decree must be made a party to the suit. Meaning, all parties must be set forth in the Caption of the Suit. See *State ex rel. Woods v. Register of State Land Office*, 179 So. 38, 189 La. 69 (La. 1938).

This is not a theory the instant Movant has, as in the United States Supreme Court has addressed this very issue in *Oklahoma v. Atchison, Topeka & Santa Fe Railway, Co.*, 220 U.S. 277, 31 S.Ct. 434, 55 L.Ed 465, delivered a stark warning to States implementing this practice.

"we are of the opinion that the words in the constitution conferring original jurisdiction on this court in a suit in which a state shall be made a party are not to be interpreted as conferring such jurisdiction in every case in which the state elects to make itself party plaintiff or record, and seeks not to protect its own property, but only to vindicate the wrongs of some of its people, or to enforce its laws or public policy against wrongdoers generally. A proper analysis of this case indicates that an injury in violation of law, to the property or rights of particular persons through the actions of foreign corporation or citizens of states, could be reached without the intervention of the state, by suits instituted by a person(s) directly or immediately injured."

In the instant case, the trial court has failed to perform its duties pursuant the well-settled principles enunciated in *Vallo v. Gayle Oil Co., Inc.*, 646 So.2d 859 (La. 11/30/94). Movant in the instant matter specifically plead the unconstitutionality of specified provisions and practices within State law. The requirements imposed upon a District Court once a Movant has performed the duty of "Specially Pleading the unconstitutionality of said statutes implies that this notable

Issue will receive a contradictory hearing, wherein parties will be afforded the opportunity to brief and argue the issue. *Cf. LSA-C.C.P. arts. 929(f), 963, 966, 1038, 1871f.*"

To date, the trial court has not performed this fundamental obligation and is thereby depriving Movant of *substantive due process* (State and Federal), *substantive Equal Protection of the Law* (State and Federal) and impeding *access to remedy by way of redress* (1<sup>st</sup> Amendment Violation relative to Access to Courts). The failures of the trial court further violate the *Privileges and Immunities Clause*, the *Due Process Clause* and *Equal Protection Clauses of the 14<sup>th</sup> Amendment* as Movant "cannot be legally discriminated against" in the pursuit of legal redress as a result of his race, color and/or previous condition of servitude, nor because he is seeking remedy to discriminations and deprivations already suffered and currently being endured do to his race, color and/or previous condition of servitude.

Movant seeks to remedy this failure by either having this Honorable Court address the questions of the unconstitutionality of the statutes complained of *de novo*; or if the Court does not see that as a viable option, then it is requested that orders issue remanding the cases back to the trial court for the contradictory hearing and briefing opportunity envision and set forth in *Vallo, supra*.

The plenary Supervisory Jurisdiction of this Honorable Court in this matter would generally derive from the *Rule X*, once the trial court has been divested of jurisdiction by final judgment (in this case that would constitute the imposition of the sentence). Here, the State trial court has not lost nor was it legally capable of transferring jurisdiction. Why? Because the trial court has never acquired legal nor jurisdictional standing to impose a sentence.

Movant proves, using decisions of this Honorable Court (i.e. TimeLife Inc.) and of the United States Supreme Court that, any imposed sentence in this case, to which the state might

refer, is rooted in at least two sets of Louisiana Laws which suffered federal preemption from inception. Any reliance upon state laws which suffer Federal-Preemption are simply rooted in failure and cannot form the legal basis for someone's ordered incarceration. As the Supreme Court held in *Burton v. Stewart*, 549 U.S. 147, 127 S.Ct. 793, 166 L.Ed.2d 628 (2007); *Berman v. U.S.*, 302 U.S. 211, 58 S.Ct 164, 82 L.Ed 204 (1937) that: under federal law, “[f]inal judgment in a criminal case means sentence. The sentence is the judgment. Herein, in maintaining his challenge as a Motion to Correct an Illegal Sentence, Movant urges this Honorable State Supreme Court to maintain it's ruling in *State v. Time Inc.*, 259 La. 761, 252 So.2d 456 (La. September 28, 1971): “Writ denied. The judgment is correct.” With this said, Movant prevails.

#### **THE TRIAL COURT'S JUDGMENT IS ROOTED IN MISINFORMATION**

In the instant case, the trial court was deliberately misled as to the underlying facts of the case. The court was led to believe that the instant petitioner was engaged in a three (3) day crime spree. This was and so remains not true. After thorough review, even the trial court acknowledged that there was no clear nor convincing evidence that a three (3) day crime spree occurred. Despite this, the instant petitioner was treated as though he had been on a three (3) day crime spree based upon material misrepresentations entered into the record by the State. This was the deceptive characterization given to the trial court prior to the imposition of sentence.

“ . . . The defendant's actions during the course of those three days when they went on this crime spree. You know, luckily nobody was killed but we were an inch away from somebody being killed. At their age, I think and considering the nature of their crimes, I think serious time is demanded to meet the ends of justice.” (See page 54 of the Sentencing Transcript)

From this mis-characterization, the court gleaned that Petitioner robbed three (3) different people on three (3) separate days. The actual evidence (without the mis-characterization) proves

something altogether different. The actual evidence establishes:

- 1.) On June 7, 2002, a conspiracy to commit armed robbery occurred.
- 2.) Three (3) days later on June 10, 2002, a separate and independent robbery occurred at AM South Bank wherein a customer and Bank teller were robbed simultaneously.

The State strategically glossed over the fact that these were two separate and independent robberies occurring with several days in between them. Effectively luring the Court, through false representations, into believing that petitioner was engaged in three (3) separate robberies over the course of three days, when in truth, there was one (1) robbery one day, and several days later a robbery of two individuals simultaneously at a single location occurred.

Movant's sentencing is rooted in this misinformation which was constitutionally prohibited, under law, in effect at the time of petitioner's sentencing (as set forth by the United States Supreme Court) in *Townsend v. Burke*, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed.2d 1690 (1948), or if it is founded "in part upon misinformation of constitutional magnitude." *United State v. Tucker*, 404 U.S. 443, 447, 92 S.Ct. 589, 592 (1972). "While not every type of misinformation will justify relief, a sentence cannot stand if it is based on assumptions concerning the defendant's criminal record that are materially false. *Townsend*. *supra*.

Because the Court's imposition of sentence is rooted in material misrepresentations, the instant petitioned is entitled to be relieved from the condemnation which is based upon a methodical misrepresentation of material fact. In other terms of law, this would constitute the false-padding of the factual basis of the court's imposition of sentence. This is both unethical and constitutionally forbidden.

#### CONCLUSION AND PRAYER

Movant contends that the relief he seeks is not novel but one which has been settled for

quite some time. This is a matter with which this Honorable Court is familiar and Movant prays that the Court permits the full operation of law and fairness (Constitutional – State and Federal) due to him as a litigant be required of all parties so associated with this case.

Wherefore, Movant prays for a valid and legal outcome which conforms to the Supremacy of the entire Constitution of the United States and its binding powers upon State Officials.

Petitioner/Movant, seeks to be relieved of the sentence which was imposed as a result of strategic mis-characterization of the underlying facts which would represent sentencing considerations for the judge.

#### **REMEDY SOUGHT**

Movant seeks remand to the trial court for a contradictory and taking of evidence and briefing in the issues in play and/or Movant requests that this Honorable Court resolve the matter *de novo*, in conformity with the *Supremacy of the United States Constitution* being given the full and complete effect of its authority over the disposition of this matter and the particularity of the issues raised herein.

Respectfully submitted



Justin Taylor  
DOC. #475424  
La. State Prison, Main Prison  
Angola, La. 70712