

IN THE  
UNITED STATES SUPREME COURT

NO. 23-7171

STATE OF LOUISIANA, EX REL  
DARRYL PUDERER,

Petitioner

Supreme Court, U.S.  
FILED

MAR 07 2024

VERSUS

OFFICE OF THE CLERK

STATE OF LOUISIANA,

Respondent

---

**APPLICATION FOR WRIT OF CERTIORARI OR REVIEW**

---

**On Application for a Writ of Certiorari**

to review the Ruling of the Louisiana Supreme Court No.'s 2023-KP-0624 and 2023-KO-00494 Vacating the Grant of Petitioner's Out of Time Appeal; and to Review the Rulings of the Honorable CJ. Terri F. Love and JJ. Joy Cossich Lobrano and Karen K. Herman, Louisiana Court of Appeals, Fourth Circuit,

Case No. 2022-KA-0623

Affirming Petitioner's Conviction and Sentence  
Criminal District Court for the Parish of Orleans

Case No. 496-717 "E"

---

**PETITIONER'S PRO-SE APPLICATION FOR WRIT OF CERTIORARI**

---

Darryl Puderer #601803  
General Delivery  
Raymond Laborde Correctional Center  
1630 Prison Road  
Cottonport, LA. 71327

## **QUESTIONS PRESENTED PURSUANT TO RULE 14.1(a)**

1. Did the Louisiana Supreme Court err where it vacated Petitioner's Appeal where the parties and District Court had consented to the appeal and previously granted Petitioner an Out-of-Time Appeal?
2. Did the Louisiana Supreme Court err where Petitioner was denied his fundamental right to equal protection and to the Due Process right to an Appeal of the jurisdictional errors that occurred in his case in violation of his Fifth and Fourteenth Amendments to the United States Constitution where the Court denied further review on the merits and vacated Petitioner's Appeal?
3. Should Garza v. Idaho be held retroactive on collateral review?; if not, should Petitioner have previously been granted relief of an Out-of-Time Appeal where he raised Roe v. Flores-Ortega in a prior application for Post Conviction Relief and where the Louisiana Supreme Court and Fourth Circuit Court of Appeals ruled that Garza was not retroactive on collateral review in the instant case?
4. Did the Louisiana Supreme Court err by not reviewing the merits of Petitioner's jurisdictional claims and by vacating his Out-of-Time Appeal?
5. Did the Louisiana State Trial Court lack jurisdiction to charge and try petitioner where the state did not show that any act or element of the alleged 2008 crime of forcible rape occurred in the Parish of Orleans?
6. Did the Louisiana State Trial Court lack jurisdiction to charge and try petitioner for the alleged 2002 charge of Second-Degree Kidnapping where the state failed to initiate prosecution timely within the statutorily allotted 6-year statute of limitations?
7. Did the Louisiana Courts err where Petitioner was denied his fundamental Due Process rights to "Notice and Fair Waring" when he was not properly advised of the state's sex offender registration and notification requirements as statutorily required in violation of his Fifth and Fourteenth Amendments?
8. Was Petitioner's guilty pléa knowingly and intelligently entered where he unknowingly entered a guilty plea to a time barred charge?

## LIST OF PARTIES

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

## RELATED CASES

State Ex Rel. Puderer v. State, 202 So. 3d 978 (La. 10/17/16)

Puderer v. Vannoy, 2018 WL 1319023, (E.D. La. 1/26/18)

Puderer v. Vannoy, 2018 WL 1287621 (E.D. La. 3/13/18)

Puderer v. Vannoy, 2018 WL 11866564 (5<sup>th</sup> Cir. [La.] 2/12/19)

Puderer v. Vannoy, 140 S.Ct. 238 U.S. (10/7/19)

State v. Puderer, 359 So. 3d 551 (La. App. 4<sup>th</sup> Cir. (3/10/23)

State v. Puderer, 372 So. 3d 800 (La. 11/8/23)

State v. Puderer, 372 So. 3d 801 (La. 11/8/23)

## TABLE OF CONTENTS

Cover Sheet	i
Questions Presented for Review to Rule 14.1(a)	ii
List of Parties/Related Cases	iii
Table of Contents	iv
Appendix	v
Table of Authorities	vi-vii
Opinions Below	1
Statement of Jurisdiction	2
Constitutional and Statutory Provision Involved	3
Concise Statement of the Case	4-6
Reasons for Granting the Writ	7-8
Argument of Law in Support of Questions One thru Four	9-11
Argument of Law in Support of Question Five	12-16
Argument of Law in Support of Question Six	17-18
Argument of Law in Support of Question Seven	19-28
Argument of Law in Support of Question Eight	29
Conclusion	30
Certificate of Service	31

## INDEX TO APPENDICES

(SEE ATTACHED INDEX TO APPENDICES)

**Next Page:**

## **APPENDIX**

### **LOWER COURT RULINGS**

Appendix-A: (Ruling of the Louisiana Supreme Court, November 8, 2023, Case No. 2023-KP-00624 [Petitioner’s “Counseled” Application for Writ of Certiorari]).

Appendix-B: (Ruling of the Louisiana Supreme Court, November 8, 2023, Case No. 2023-KO-00494 [Petitioner’s “Pro-Se” Application for Writ of Certiorari]).

Appendix-C: (Ruling of the Fourth Circuit Court of Appeal, March 10, 2023, Case No. 2022-KA-0623).

Appendix-D: (Dissent of Judge Lobrano, Fourth Circuit Court of Appeal, March 10, 2023, Case No. 2022-KA-0623).

Appendix-E: (Ruling of the State District Court, Parish of Orleans, March 16, 2022.)

### **LOWER COURT PLEADINGS**

Appendix-F: Petitioner’s “Counseled” Application for Writ of Certiorari filed with the Louisiana Supreme Court on April 28, 2023; Case No. 2023-KP-00624

Appendix-G: Petitioner’s “Pro-Se” Application for Writ of Certiorari filed with the Louisiana Supreme Court on May 12, 2023; Case No. 2023-KO-00494.

Appendix-H: Petitioner’s “Counseled” Reply Brief filed with the Louisiana Fourth Circuit Court of Appeals on November 16, 2022; Case No. 2022-KA-0623

Appendix-I: Petitioner’s “Pro-Se” Appellate Brief filed with the Fourth Circuit Court of Appeals on October 20, 2022; Case No. 2022-KA-0623.

Appendix-J: Petitioner’s “Counseled” Appellate Brief filed with the Fourth Circuit Court of Appeals, October 17, 2022, Case No. 2022-KA-0623.

Appendix-K: Petitioner’s “Counseled” Motion for Appeal filed with the State District Court, Parish of Orleans, on April 12, 2022; Case No. 496-717 (E).

Appendix-L: Petitioner’s “Counseled” Memorandum of Law In Support of Application for Second or Successive Post Conviction Relief, filed with the State District Court, Parish of Orleans, on November 4, 2021.

Appendix-M: Petitioner’s “Pro-Se” Application for Second or Successive Post Conviction Relief filed with the State District Court, Parish of Orleans, on March 3, 2020.

## TABLE OF AUTHORITIES

<u>North Carolina v. Alford</u> , 400 U.S. 25 (11/23/70)	8
<u>Garza v. Idaho</u> , 139 S. Ct. 738 (2019)	9-10
<u>Roe v. Flores-Ortega</u> , 528 U.S. 470 (2000)	12
<u>U.S. v. Cotton</u> , 535 U.S. 625, 631 (2002)	12
<u>U.S. v. Prentiss</u> , 256 F.3rd 971, 982 (10 <sup>th</sup> Cir. 2001) (en banc)	12
<u>U.S. v. White</u> , 611 F.2d 531, 534-36 (5 <sup>th</sup> Cir. 1980)	12
<u>Decuir v. Decuir</u> , 105 La [481,] 485, 29 South [932,] 934 [(1901)]	12,13
<u>State of Louisiana v. Nicolosi</u> , 128 La. 836, 846, 55 So. 475, 478 (1911) (on rehearing)	13
<u>State of Louisiana v. Hester</u> , 746 So. 3d 95 (La. App. 5 <sup>th</sup> Cir. 9/28/99)	14
<u>U.S. v. Anderson</u> , 328 U.S. 699, 703, 90 L. Ed. 1529, 66 S. Ct. 1213 (1946)	15
<u>U.S. v. Cabrales</u> , 524 U.S. 1 (1998)	15
<u>U.S. v. Rodriguez-Moreno</u> , 526 U.S. 275, 279, 143 L. Ed. 2D 388, 119 S. Ct. 1239 (1999)	15, 16
<u>Travis v. U.S.</u> , 364 U.S. 631, 635-37, 5 L. Ed. 2D 340, 81 S. Ct. 358 (1961)	15-16
<u>U.S. v. Cores</u> , 356 U.S. 405, 408-09, 2 L. Ed. 2D 873, 78 S. Ct. 875 (1958)	15
<u>U.S. v. Johnson</u> , 323 U.S. 273, 275, 89 L. Ed. 236, 239, 65 S. Ct. 249 (12/18/44)	16
<u>U.S. v. Hansel</u> , 70 F. 3d 6 (C.A. 2, 1995)	17
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984)	18
<u>Hill v. Lockhart</u> , 474 U.S. 52, 58-59 (1985)	18
<u>U.S. v. Freeman</u> , WL 1127170 La. (2016)	18
<u>U.S. v. Bass</u> , 310 F. 3 <sup>rd</sup> 321, 330 (5 <sup>th</sup> Cir. 2002)	18
<u>U.S. v. Gunera</u> , 479 F. 3d 373, 375 (5 <sup>th</sup> Cir. 2007)	18
<u>U.S. v. Wilson</u> , 322 F. Ed. 353, 354-55 (5 <sup>th</sup> Cir. 2003)	18
<u>State of Louisiana v. Dick</u> , 951 So. 2d. 124, 127 (2007)	19-20
<u>State of Louisiana v. Wright</u> , 384 So. 2d. 399, 401 (La. 1980)	19-20

**TABLE OF AUTHORITIES** (cont.)

<u>State of Louisiana v. Narcisse</u> , 426 So. 2d. 11, 130, 131 (La. 1983)	19-20
<u>State of Louisiana v. Sugasti</u> , 820 So. 2d. 518, 520 (La. 6/21/02)	19, 20
<u>Narcisse v. Louisiana</u> , 464 U.S. 865 (1983)	19, 20
<u>State of Louisiana v. Bazile</u> , 206 So. 3d. 560, 563 (La. App. 2D Cir. 9/26/12)	20, 21
<u>Padilla v. Kentucky</u> , 559 U.S. 356 (2010)	23
<u>State of Louisiana v. Naran</u> , 308 So. 3d. 419 (La. App. 5 <sup>th</sup> Cir. 12/23/20)	25, 26
<u>State of Louisiana v. Calhoun</u> , 694 So. 2d. 909 (La. 5/20/97)	26

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

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

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

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

For cases from **state courts**:

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

reported at 372 So.3d 801, La., Nov 08, 2023; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the La. Court of Appeals, Fourth Circuit court appears at Appendix C-D to the petition and is

reported at 359 So.3d 551, La App, 4th Cir, MAR 10, 2023; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## STATEMENT OF JURISDICTION

This Honorable Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) and Rule 12.4. The Louisiana Supreme Court's judgment is final and the judgment was entered on November 8, 2023, vacating the lower court's grant of Petitioner's out-of-time appeal. A copy of that decision appears at Appendix-A (Counseled Petition [2023-KP-00624]) and B (Petitioner's Pro-Se Petition [2023-KO-00494]).

The Louisiana Court of Appeals for the Fourth Circuit affirmed Petitioner's conviction(s) and sentence(s) on March 10, 2023. A copy of that decision appears at Appendix-C with Judge Lobrano's dissent appearing at Appendix-D.

An extension of time to file the petition for writ of certiorari was granted to and including March 7, 2024 on February 12, 2024, in application No. 23-A-743.

On March 6, 2024 Petitioner mailed his completed writ of certiorari to this Honorable Court on March 6, 2024, which was postmarked March 7, 2024, and received by this Honorable Court on March 13, 2024.

On March 20, 2024, Petitioner received this Honorable Court's "Deficiency Letter" dated March 14, 2024, informing Petitioner of the deficiencies, giving him sixty (60) days of the date of the letter to submit the Petition in its corrected form to the Office of the Clerk of Court, for the United States Supreme Court.

## CONSTITUTIONAL PROVISIONS

United States Constitution Fifth and Fourteenth Amendments \_\_\_\_\_ 10, 28

United States Constitution Sixth Amendment \_\_\_\_\_ 24, 27

## STATUTORY PROVISIONS

La. R.S. 14:42.1 \_\_\_\_\_ 12, 13, 15, 16

La. R.S. 14:44.1 \_\_\_\_\_ 17, 18

La. C. Cr. P. Article 572 \_\_\_\_\_ 17

La. R.S. 14:24 (A) (1) \_\_\_\_\_ 14

La. C. Cr. P. Article 559 \_\_\_\_\_ 20

La. R.S. 15:541 \_\_\_\_\_ 24

La. R.S. 15:542 \_\_\_\_\_ 19, 21, 22, 23

La. R.S. 15:543(A) \_\_\_\_\_ 19, 26, 28

La. R.S. 15:543.1 \_\_\_\_\_ 19, 20, 23, 26, 28

La. R.S. 15:542.1 \_\_\_\_\_ 21

La. R.S. 15:543 \_\_\_\_\_ 21

## OTHER REFERENCES

41 A.L.R. 6TH 141 \_\_\_\_\_ 25

## STATEMENT OF THE CASE

### 1. Procedural Posture

Petitioner's procedural history is lengthy.

On May 11, 2010, Petitioner was charged by a Bill of Information in the Parish of Orleans with two counts of Second-Degree Kidnapping (La. R.S. 44.1) and two counts of Forcible Rape (La. R.S. 42.1). On August 7, 2012, Petitioner pleaded guilty as charged to all counts. The state trial court sentenced Appellant that same day to concurrent terms on each count of twenty years in prison at hard labor. On September 3, 2014, Petitioner filed a pro se application for post-conviction relief with the state district court. On September 5, 2014, Petitioner, through private counsel, filed an application for post-conviction relief. The district court denied Petitioner's applications on March 3, 2015, at which time the court denied relief. On June 17, 2015, the Louisiana Fourth Circuit Court of Appeals declined to grant writs, refusing to consider the merits of the matter. *See State ex rel Darryl Puderer v. State*, case no. 2015-K-0468 (La. App 4<sup>th</sup> Cir. June 17, 2015). The Louisiana Supreme Court followed suit on October 17, 2016. *See State ex rel. Puderer v. State*, 202 So. 3d 978 (La. 2016).

On or about February 25, 2020, Petitioner submitted a *pro-se* successive Application for Post-Conviction Relief. Petitioner alleged ineffective assistance of counsel for failing to perfect Petitioner's appeal by not filing a notice of appeal at the close of Petitioner's proceedings. Petitioner cited to the U.S. Supreme Court's recent ruling in *Garza v. Idaho*, 139 S.Ct. 738, \_\_\_\_ U.S \_\_\_, 203 L. Ed. 2d 77 (2019). The State submitted procedural objections on March 5, 2021. Notably, the State "[took] no position on whether *Garza* is retroactive to cases on collateral review. But the State has no objection [to] the Court granting an out-of-time appeal in the interest of justice." On November 4, 2021, Petitioner's retained attorney, Mr. Justin Caine Harrell, filed a counseled Supplemental Memorandum with the district court. On March 16, 2022, the district court granted Petitioner an out-of-

time appeal. After docketing of the appeal, on or about October 17, 2022, Petitioner's retained counsel, Justin Harrell, filed a counseled brief with the Louisiana Fourth Circuit Court of Appeals. On or about October 20, 2022, Petitioner submitted his timely "Pro-Se" Appellate Brief with the Louisiana Fourth Circuit Court of Appeals. On or about April 28, 2023, Petitioner's retained counsel, Justin Harrell, filed a counseled brief with the Louisiana Supreme Court. On or about March 31, 2023, Petitioner filed a Motion for an Extension of Time to file a "Pro-Se" Application for Writ of Certiorari with the Louisiana Supreme Court. On April 21, 2023, the Louisiana Supreme Court granted Petitioner's request for an extension of time to file his *pro-se* Application for Writ of Certiorari, ordering that "IT IS ORDERED that applicant be granted 30 days from the date of this Order to supplement his writ application." On or about May 12, 2023, Petitioner filed a "Pro-Se" Writ of Certiorari with the Louisiana Supreme Court.

## 2. Action(s) of the Lower Court

On or about March 20, 2012, the District Court denied Petitioner's Motion to Quash Count Four of the information. While counsel noticed his intent to seek writs, he did not, nor did he reserve the issue for appeal. Thereafter, on August 7, 2012, the District Court permitted Petitioner to enter a plea of guilty as charged to all offenses, notwithstanding questions regarding the location of the offense charged in Count Four and the fact that the 2002 Second-Degree Kidnapping charged in Count One occurred outside the time limit for prosecution provided by La. C. Cr. P. Article 572. Further, the District Court permitted Petitioner to enter a pleas of guilty specifically, to his 2002 and 2008 sex offenses notwithstanding the fact that the court did not inform Petitioner or ensure that Petitioner's attorney informed Petitioner of the sex offender registration and notification requirements before, or, even after Petitioner's plea(s).

On March 16, 2022, the District Court granted Petitioner an out-of-time appeal without objection from the State. After briefing by both parties, on March 30, 2023, the Clerk of Court for the

Louisiana Fourth Circuit Court of Appeal issued a judgment affirming Petitioner's conviction and sentence. On April 21, 2023, the Louisiana Supreme Court granted Petitioner's request for an extension of time to file his *pro-se* Application for Writ of Certiorari, ordering that "IT IS ORDERED that applicant be granted 30 days from the date of this Order to supplement his writ application." On or about November 28, 2023, The Louisiana Supreme Court entered a Judgment granting Petitioner's Writ of Certiorari, however, vacating petitioner's grant of an out-of-time appeal, stating "Writ granted. The lower court judgments granting an out of time appeal are vacated for the reasons assigned in Judge Lobrano's dissent."

## REASONS FOR GRANTING THE PETITION

In accordance with this court's *Rule 10*, Petitioner presents for his reasons for granting this Petition that:

1. A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; and
2. A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court; and
3. Significant unresolved issues of law are involved in the case presented for review; and
4. The controlling precedent upon which the lower court decision is based should be overruled; and
5. The lower court has erroneously interpreted or applied the relevant law, and;
6. A court of appeal has so far departed from proper judicial proceedings or so abused its powers, or sanctioned such a departure or abuse by a lower court, as to call for an exercise of this court's supervisory authority.

Petitioner respectfully submits that this case is appropriate for review because the Louisiana Supreme Court and the Fourth Circuit Court of Appeals erroneously interpreted or applied the Constitution and the laws of the State of Louisiana, and the United States and the decision will cause material injustice and/or significantly affect the public interests. Specifically, where Petitioner's case is mired by jurisdictional and constitutional errors. Petitioner's appeal was vacated and he was denied his right to further review on appeal of jurisdictional violations, and where Petitioner's plea(s) was not knowingly and intelligently entered due to his mistaken understanding of when he would be eligible for parole and of his eligibility for diminution of sentence. Additionally, as it concerns Petitioner's 2002 and/or 2008 alleged sex offenses, where the Petitioner in violation of the Fifth and Fourteenth Amendments to the United States Constitution, was denied his fundamental due process right to

“Notice and Fair Warning” where neither the trial court or his attorney properly advised him of the sex offender registration and notification requirements as statutorily required in La. R.S. 15:543 in writing, or otherwise prior to or even after Petitioner entered his plea(s), and where Petitioner's plea(s) were unknowing and not intelligently entered. Further, despite Petitioner's attorney's multiple instances of ineffective assistance and deficient performance, and Petitioner's expressed desire to enter an “Alford” plea, as he continually professed his innocence and expressed his specific intent and desire to enter a plea pursuant to North Carolina v. Alford, 400 U.S. 25; 91 S. Ct. 160 (11/23/70), the trial court and Judge denied Petitioner's request to enter an “Alford” plea despite his continual claim of innocence, and accepted Petitioner's unconditional plea(s) of guilty knowing he was still proclaiming his innocence.

Lastly, because of these deficiencies, Petitioner's plea of guilty to both, the 2002 and 2008 offenses was not knowing or voluntarily made. The lower courts' actions threaten to erode public confidence in the administration of justice by accepting an involuntary plea and proscribing subsequent appellate review. Accordingly, Petitioner respectfully prays for the issuance of the Writ of Certiorari and additional review from this Honorable Court.

ARGUMENT OF LAW IN SUPPORT OF PETITIONER'S WRIT

**FIRST AND FOREMOST**, Petitioner avers that his state case is mired with jurisdictional and constitutional errors, and that this Honorable Court has held that a jurisdictional defect can be raised at anytime, anywhere.

NOTICE OF PRO SE FILING

Petitioner is presently incarcerated and proceeding in a Pro-Se capacity. Petitioner humbly requests that this Honorable Court review the instant pleading and any subsequent pleadings, liberally, and in accordance with the rulings of Haines v. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L. Ed. 2d. 652 (1972); State v. Moak, 387 So. 2d. 1108 (La. 1980) (Pro-Se petitioner not held to same stringent standards as a trained lawyer); State v. Egana, 771 So. 2d. 638 (La. 2000) (Less stringent standards than formal pleadings filed by lawyers). Petitioner is a novice and layman of the law and untrained in the ways of filings and pleadings of formal proceedings in this Honorable United States Supreme Court. Alternatively, Pro-Se Petitioner requests an opportunity to correct any deemed deficiencies, and/or the opportunity to amend. Further, if the instant application for Writ of Certiorari is granted by this Honorable Court, Petitioner humbly requests an opportunity for further briefing, and to supplement the record with the full Louisiana State Court's Record on Appeal for any additionally needed pleadings—documents.

ARGUMENT OF LAW IN SUPPORT OF QUESTIONS ONE THROUGH FOUR

Petitioner respectfully argues that the Louisiana Supreme Court erred where it vacated Petitioner's out-of-time appeal that had been previously granted by the state trial court Pursuant to Garza v. Idaho, 139 S. Ct. 738 (2019), where both parties, Petitioner, and the State of Louisiana, agreed to the appeal. Petitioner had filed a Writ of Certiorari to review the rulings and denial of Petitioner's Appeal that was issued in the Louisiana Fourth Circuit Court of

Appeals' ruling on the merits of Petitioner's claims. However, the Louisiana Supreme Court failed to issue a ruling on the merits of Petitioner's jurisdictional error claims, and adopted the dissenting opinion of Judge Lobrano of the Fourth Circuit (Appendix \_\_\_\_\_), vacating the lower court's grant of an out of time appeal to Petitioner, arguing that Garza was not retroactive on collateral review and was just a reaffirmation of Roe v. Flores-Ortega, 528 U.S. 470 (2000).

Petitioner argues that he was denied the Due Process of Law in violation of his Fifth and Fourteenth Amendments to the United States Constitution where he was denied his fundamental right to an appeal of the jurisdictional and constitutional violations which occurred in his case. Petitioner avers that his case is mired with jurisdictional and constitutional violations, and he was denied his right to an appeal of these violations. Petitioner had raised Roe v. Flores-Ortega in his First Application for Post Conviction Relief which was denied by the state courts, where the district court opined that he waived his right to an appeal by pleading guilty, and the Louisiana Supreme Court adopted the district court's opinion. However, Plaintiff then raised the issue again in a second Post Conviction Relief Application in the state district court after this Honorable Court's ruling in Garza which, specifically, ruled that an appeal waiver does not waive jurisdictional errors. The district court granted Petitioner an out-of-time appeal that was subsequently vacated by the Louisiana Supreme Court. Petitioner argues that the vacating of his appeal was an error by the Louisiana Supreme Court, where somewhere down the line he should have been able to have his jurisdictional claims reviewed on the merits on appeal, however, he was not. This Honorable Court ruled in Garza that an appeal waiver does not waive jurisdictional errors, and Petitioner in the instant case should have been allowed a full review of those claims on appeal when he raised Flores-

Ortega in his first PCR, or when he raised Garza in his recent second PCR that was granted, but then vacated by the Louisiana Supreme Court.

Thus far, the rulings of the Louisiana State Courts have so far departed from the rulings of this Honorable Court and the Federal Constitution itself, the grant of Certiorari and review of Petitioner's case and claims is warranted and ripe for review by this Honorable United States Supreme Court.

## ARGUMENT OF LAW IN SUPPORT OF QUESTION FIVE

This Honorable Court has held that a jurisdictional defect can be raised at anytime, anywhere. This court's decision in United States v. Cotton, 535 U.S. 625, 631 (2002), was that appellants who challenged their indictments/bills of information for lack of jurisdiction did not waive their claims by failing to object before trial; however, such appellants received only plain error review when they raised that argument for first time on appeal, and to extent that United States v. Prentiss, 256 F.3d 971, 982 (10th Cir. 2001) (*en banc*), held otherwise, it was overruled by Cotton. Based on those decisions, the petitioner now contends that because this claim relates to a jurisdictional violation that is made evident on the face of the state court record, it is ripe for review by this Honorable Court.

The petitioner avers, and the state court record will reflect, that the offense of which he was charged and convicted of was alleged to have occurred within the geographical boundaries of the parish of Jefferson, state of Louisiana. However, that judicial district never chose to institute prosecution in the matter. Instead, the 41<sup>st</sup> Judicial District Court, which has jurisdiction over offenses alleged to have occurred in the parish of Orleans, instituted prosecution.

The Fifth Circuit Court of Appeals has previously held that the state must show by a preponderance of the evidence that the trial is in the same district as part of the criminal offense. United States v. White, 611 F.2d 531, 534-36 (5th Cir. 1980). Because the state did not show that any element of the crime of forcible rape was committed in Orleans Parish, petitioner's conviction must be reversed.

It has long been established that lack of jurisdiction is a defect fatal to a criminal prosecution. The Louisiana Supreme Court has previously held:

*"And, so far as nullity resulting from absence of jurisdiction is concerned, why that is a matter which in the words of this court in the case of Decuir v. Decuir, 105 La.*

[481,] 485, 29 South. [932,] 934 [(1901)], "may be invoked by any one at anytime and anywhere." State v. Nicolosi, 128 LA. 836, 846, 55 So. 475, 478 (1911) (on rehearing)."

Throughout the state trial court proceedings, petitioner's attorney argued that no prosecution could occur where neither the state, nor law enforcement, could show that any sexual assault occurred within the geographical boundaries of Orleans Parish. At a preliminary hearing Detective Corey Lymous testified that the petitioner drove the victim to "a desolate area unknown to the alleged victim." Detective Lymous also admitted to never determining whether the crime of forcible rape was alleged to have occurred in Orleans or Jefferson parish, as is made evident in this portion of the state court transcripts:

*Q: So did you ever determine the physical location of the alleged sexual assault?*

*A: No, sir.*

*Q: And you have some belief that it may have occurred in Jefferson Parish?*

*A: There's a possibility, yes.*

*Q: And why do you say it's a possibility?*

*A: Just some of the – it was something that was said in the victim's statement. She believed it may have been west of New Orleans, going toward the airport.*

*Q: Did she indicate that she was ever going on I-10?*

*A: I believe so.*

*Q: Did she remember an exit or anything that-*

*A: We never got concrete landmarks.*

*Q: So as far as you know – let me ask you this question, do you have any concrete evidence that when she woke up in the vehicle, the vehicle was located in Orleans Parish?*

*A: No sir."*

Defense counsel even filed a motion to quash the 2008 charge relating to forcible rape, arguing that the state could not adduce any discernible reason to conclude that any rape had occurred within the geographical boundaries of Orleans Parish. At an evidentiary hearing scheduled for the Motion to Quash, the court stated:

"And I think that the law is clear, Mr. Mordock. It says that – even in the Louisiana Constitution it says that a person shall be tried in the venue where the offense or element of the

offense occurred. And the law is very clear that if the acts or the elements constituting the crime took place in more than one place or more than one parish, then the case may be brought in any parish where any of those acts occurred.”

In the state’s denial of this claim, the trial court stated:

*“Here the evidence shows that the elements of threats and/or without the lawful consent were present from the onset of kidnapping in New Orleans and relevant when the victim was later prevented from resisting the rape. Thus, the act or element of forcible rape occurred in Orleans Parish. And that’s State v. Hester. Thus, the court did not err in finding it had subject matter jurisdiction over count four of the bill of information.”*

However, the petitioner avers that the usage of the Louisiana Supreme Court’s holding in State v. Hester was misleading as the circumstances of that case are distinctly different from those in the petitioner’s case. In this case, no evidence was presented to indicate that the petitioner threatened the accuser in Orleans Parish. In fact, according to the accuser’s version of events, she was drinking at the Bourbon Street Bar one moment and awake in petitioners’ vehicle west of the city the next. There were no allegations or evidence that the petitioner compelled the accuser to enter his vehicle “by force or threats of physical violence.” *La. R. S. 14:24(A)(1)*. At the most, petitioner was accused of making remarks viewed by the accuser as threatening. However, it has not been disputed that these comments were made after the vehicle came to a stop at an unknown and desolate area most likely near the New Orleans Airport in Jefferson Parish, which is still not within the geographical boundaries of Orleans Parish.

The elements found in Hester, “threats and/or without the lawful consent” were not made evident in the present case during the state court proceedings. There was no evidence presented to prove that the accuser entered the vehicle without her lawful consent. Indeed, petitioner’s charge of Second Degree Kidnapping is illustrative as it included an element that the accuser was “enticed or persuaded...” to go from one place to another, a recognition that force or threats are not

necessary for Second Degree Kidnapping and therefore were not necessarily present when the accuser is said to have entered petitioner's vehicle in Orleans Parish.

*Art. II of the United States Constitution* provides that "the trial of all crimes . . . shall be held in the State where the said Crimes shall have been committed." Likewise, the Sixth Amendment requires that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

The *locus delicti* of the charged offense "must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *Cabrales*, 524 U.S. at 6-7 (quoting United States v. Anderson, 328 U.S. 699, 703, 90 L. Ed. 1529, 66 S. Ct. 1213 (1946)). In effectuating this inquiry, a court must first identify the conduct of the offense and then discern the location of the commission of the criminal acts. United States v. Rodriguez-Moreno, 526 U.S. 275, 279, 143 L. Ed. 2d 388, 119 S. Ct. 1239 (1999); see *Cabrales*, 524 U.S. at 6-7; Travis v. United States, 364 U.S. 631, 635-37, 5 L. Ed. 2d 340, 81 S. Ct. 358 (1961); United States v. Cores, 356 U.S. 405, 408-09, 2 L. Ed. 2d 873, 78 S. Ct. 875 (1958).

In the case *sub judice*, no element of the offense of forcible rape was alleged to have occurred within the geographical boundaries of the Parish of Orleans. In fact, the accuser herself told police during her interview that she didn't know where they were at when the alleged rape occurred. Evidence adduced at trial, which was even testified to by a key state witness, Detective Lymous, proved beyond a reasonable doubt that neither the witness nor the state could discern if the alleged rape took place in Orleans Parish. In fact, testimony and evidence presented in this case pointed towards the alleged rape taking place near the New Orleans Airport, which is in Jefferson Parish, not Orleans, which would make the venue for that crime rest in the 24<sup>th</sup> Judicial District.

The petitioner's case is distinctly similar to the circumstances in United States v. Travis, where defense counsel in Travis filed a motion to dismiss the indictment against him because venue was improperly laid in Colorado when the crime itself occurred in the District of Columbia. The trial court denied that motion under the premise that the offense charged began in Colorado, but was completed in the District of Columbia. The court of appeals reversed and remanded on other grounds, but specifically held that venue was proper in Colorado. However, this honorable court held:

"...venue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of "a tribunal favorable" to it. United States v Johnson, 323 US 273, 275, 89 L. Ed 236, 239, 65 S Ct 249. We therefore begin our inquiry from the premise that questions of venue are more than matters of mere procedure. "They raise deep issues of public policy in the light of which legislation must be construed." United States v Johnson, supra (323 US 276)."

The Supreme Court ruled in *Travis* that because a distinct part (element) of the crime charged indicated the crime itself occurred in the District of Columbia that venue was proper there and not in Colorado, where the alleged criminal activity began.

In the present case, similarly to the circumstances in *Travis, supra*, the petitioner allegedly met the victim in Orleans Parish. This fact was never in dispute throughout the state court proceedings. However, no evidence was presented alleging that any element for the crime of forcible rape either began or commenced within Orleans Parish. Therefore, because it was never proven that a rape took place in Orleans Parish, then venue cannot be proper in that jurisdiction and no bill of information could legally be filed by that judicial district. For these reasons, the petitioner moves this court to vacate his conviction and sentence and remand the matter back for further proceedings.

## ARGUMENT OF LAW IN SUPPORT OF QUESTION SIX

In the case *sub judice*, the state failed to institute prosecution within the six year statute of limitations set forth in *La. C. Cr. P. Art. 572*, which provides that the state has only (6) years to institute prosecution on a crime punishable by imprisonment at hard labor. The record in this case will clearly show that the events that led to the institution of prosecution in this matter were alleged to have occurred on February 9, 2002. However, the state did not commence prosecution until May 11, 2010, more than (8) years after the crime was alleged to have taken place.

The petitioner raised this claim in his application for post-conviction relief, but the state courts denied this claim stating "the court finds that the defendant's claim should have been raised in the court prior to the conviction and the defendant's reasons for failing to raise the claim prior to his application for post-conviction relief is inexcusable." The petitioner explained to the court that his failure to raise this claim rested solely through the ineffectiveness of his trial counsel, who never advised him of the statute of time limitations for the institution of prosecution. Counsel was ineffective for failing to investigate the timeliness claim when it was clear on the face of the record that institution of prosecution in this matter did not occur until well beyond the six year statute of time limitations. Petitioner respectfully argues that once the statute of limitations had expired, the state was without authority, and the court lacked jurisdiction to conduct any proceedings in the matter.

Petitioner now directs this court's attention to United States v. Hansel, 70 F. 3d 6 (C.A. 2, 1995), where the court held:

*"Hansel's counsel's failure to object to the time barred counts is unaccountable in the circumstances, and cannot be considered sound trial strategy. Strickland, 104 S. Ct. 2064. In particular, counsel's decision cannot be justified by considerations related to the negotiation of a plea agreement. Hansel's counsel's prejudice is that he pled guilty to two time barred counts that would have been dismissed, if his attorney had acted competently."*

The statutes of limitations is an affirmative defense that must be raised to be preserved...ordinarily a defendant cannot raise the issue of limitations after pleading guilty to the offense in question. However, Hansel was allowed to raise it indirectly. See: Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); and also see a recent case from the United States Court of Appeals for the Fifth Circuit, in United States v. Freeman, (2016 WL 1127170 La. 2016), where the defendant asserted a claim of ineffective assistance of counsel because counsel did not file a motion to dismiss on statute of limitations grounds. The court found that Freeman's counsel was deficient by not filing a motion to dismiss count three, and said that counsel was required to perform adequate research which would have disclosed that the statute of limitations had expired. See: United States v. Bass, 310 F. 3d 321, 330 (5<sup>th</sup> Cir. 2002). The Freeman court also said: "there is a reasonable probability that, but for counsel's failure to move to dismiss count three, the result of the proceeding would have been different because count three would have likely been dismissed and the government could not have re-indicted Freeman on that count." Strickland, 466 U. S. at 694; see also United States v. Gunera, 479 F. 3d 373, 375 (5<sup>th</sup> Cir. 2007) (*reversing conviction and dismissing indictment as barred by statute of limitations*); United States v. Wilson, 322 F. 3d 353, 354-55 (5<sup>th</sup> Cir. 2003) (*same*). But because Freeman's counsel did not move to dismiss count three, his criminal history reflects a conviction on a crime that should not have been part of his trial.

It is respectfully argued that in the present case, that petitioner's trial counsel, Craig Mordock, failed to research the law, and that the research would have revealed that the statute of limitations had expired on the 2002 charge, and Mordock's failure to file a motion to dismiss on this ground was deficient performance prejudicial to petitioner's case.

## ARGUMENT OF LAW IN SUPPORT OF QUESTION SEVEN

Petitioner avers that the Louisiana Fourth Circuit Court of Appeals erred in their denial of this claim. Petitioner contends that the state trial court's failure to advise him in writing, or otherwise, of the sex offender registration and notification requirements of La. R.S. 15:542 prior to the entry of his guilty plea rendered them unknowing and unintelligent; therefore, making them involuntarily entered. Petitioner contends that this error requires his plea(s) to be set aside or, alternatively, requires him to have the opportunity to withdraw his plea(s). Petitioner argues that his guilty plea(s) are infirm.

Petitioner avers that at the time of his alleged instant offenses,<sup>1</sup> that occurred in 2002, La. R.S. 15:543(A)<sup>2</sup> provided: “[t]he court shall provide written notification to any defendant “charged with” a sex offense of the registration requirements of La. R.S. 15:542. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to defendant.” In the instant matter, Petitioner avers that at the time he was sentenced on August 7, 2012, Louisiana Revised Statute (La. R.S. 15:543[A]) required that “The trial court shall provide written notification to any person “convicted of” a sex offense and a criminal offense against a victim who is a minor of the registration requirements and the notification requirements of this chapter; and, that the court shall use the form contained in R.S. 15:543.1 and shall provide a copy of the registration and notification statutes to the offender. Furthermore, such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant, and the entry shall be made in the court minutes stating that the written notification was provided to such offenders.” In the instant matter, Petitioner argues that “Notice,” written, or otherwise, after a guilty plea has been entered and accepted by the court amounts to untimely notice under the statute and sentencing provisions which were in

---

1 In State v. Dick, 951 So. 2d 124, 127 (La. 2007), the LA. Supreme Court stated “that the law in effect at the time of the commission of the offense is determinative of the penalty which the accused must suffer, State v. Wright, 384 So. 2d 399, 401 ((La. 1980), and that a defendant must be sentenced according to the sentencing provisions in effect at the time of the commission of the offense. State v. Narcisse, 426 So. 2d 118, 130-131 (La. 1983), cert. denied, Narcisse v. Louisiana, 464 U.S. 865, 104 S.Ct. 202, 78 L. Ed. 2d 176 (1983); [State v.] Sugasti, 01-3407 [(La. 6/21/02)], 820 So. 2d [518,] 520.”

2 La. R.S. 15:543 was amended by acts 2007, No. 460, § 2, eff Jan. 1, 2008; Acts 2008, No. 816, § 1; and, most recently, Acts 2013, No. 408, § 1, effective August 1, 2013.

effect at the time of his alleged 2002 offense(s), especially since a defendant has no absolute right at the district court level to withdraw a previously entered plea of guilty under La. C. Cr. P. Article 559, which allows the withdrawal of a guilty plea only before sentencing. Petitioner avers that in his case, he was not provided any "Notice" of the registration and notification requirements at all; not prior to or after his guilty plea, and he was also not provided anything in writing as required by statute. La. R.S. 15:543(A) requires that "written notification" be provided, and that it be provided on the statutory form located in (La. R.S. 15:543.1), and it was not. Petitioner avers that if the trial court would have followed these express directives of the statute(s), he would have been placed "*On Notice*," and would have been informed and aware of the requirements — provisions of sex offender registration and notification, and not just of an obligation to register prior to having to make a determination of whether or not to plead guilty.

Furthermore, Petitioner argues that the court should have followed the sentencing provisions of La. R.S. 15:543(A), which were in effect at the time of Petitioner's alleged 2002 offenses, and not at the time he was convicted and sentenced. Petitioner avers that the Fourth Circuit Court of Appeals totally overlooked or ignored his argument as it relates to the rulings of the La. Supreme Court in State v. Dick, 951 So. 2d 124, 127 (La. 2007), where the court stated ("that the law in effect at the time of the commission of the offense is determinative of the penalty which the accused must suffer); State v. Wright, 384 So. 2d 399, 401 (La. 1980), and that a defendant must be sentenced according to the sentencing provisions in effect at the time of the commission of the offense. State v. Narcisse, 426 So. 2d 118, 130-131 (La. 1983), cert. denied, Narcisse v. Louisiana, 464 U.S. 865, 104 S.Ct. 202, 78 L. Ed. 2d 176 (1983); [State v.] Sugasti, 01-3407 [(La. 6/21/02)], 820 So. 2d [518,] 520.")

In denying Petitioner's claim, the Louisiana Fourth Circuit Court of Appeals cited and relies on State v. Bazile, 47, 412, p. 6 (La. App. 2<sup>nd</sup> Cir. 9/26/12), 206 So. 3d 560, 563, where the Louisiana Second Circuit Court of Appeals stated:

"The trial court was not required to give notice to Defendant of

the sex offender registration requirements prior to accepting his guilty plea, but rather, upon his conviction.”

However, Petitioner avers that in the instant matter, the Louisiana Fourth Circuit’s reliance on the rulings in Bazile are incorrect and misplaced for, at least, the following two (2) reasons: 1) In Bazile, the Defendant was charged with a sex offense that was alleged to have occurred on July 8, 2009, which was after the statute (La. R.S. 15:543) was modified in 2007 and the Defendant in Bazile, was in fact, correctly sentenced in accordance to the sentencing provisions that were in effect at the time of his commission of offense that occurred in 2009 after the change in statute<sup>3</sup>, which was markedly different from Petitioner’s case. In Petitioner’s case, he was charged with an alleged sex offense that occurred in 2002, and was charged in accordance to the sentencing provisions that were in effect at the time of his guilty plea and conviction in 2012, and not at the time of his alleged offense that occurred in 2002; and, 2) The Defendant in Bazile, at the very least, was advised by the trial court that, “. . . he was subject to the requirements for sex offender registration, and the Defendant affirmed that defense counsel had reviewed the sex offender notification forms with him, and he had initialed and signed the forms.” However, and in contrast, in Petitioner’s case, the trial court never advised him prior to, or even after his guilty plea, that he was subject to any requirements for sex offender registration, or of any of the notification requirements contained within La. R.S. 15:542, including La. R.S. 15:542.1 (Notification of sex offenders and child predators), which requires that a defendant convicted of a sex offense, provide specific notifications as listed and/or defined in the provisions of (La. R.S. 15:542.1). Petitioner was only advised of an obligation to register, and he never received a copy nor afforded an opportunity to review any “Sex Offender Notification Forms” or statutes to be placed on “Notice” as to and of any requirements — provisions, as it relates to sex offender registration and notification forewhich he would be required to abide by as a consequence of his guilty plea.

At the time of Petitioner’s alleged 2002 offenses, La. R.S. 15:543(A) expressly directed the district

---

<sup>3</sup> La. R.S. 15:543 was modified by acts 2007, No. 460 § 2. Prior to this change, the trial court was required to provide written notification to any person charged with a sex offense of the registration and notification requirements. The modification changed the requirement so that any person convicted of a sex offense must receive notification.

court to provide written notice to any defendant who is “charged with” – not “convicted of” – a sex offense. The use of the words “charged with” was not accidental. The purposeful use of these words reflects a legislative acknowledgment of the severity of the registration provisions to ensure that any defendant who might be subjected to these severe registration provisions be fully informed of the possibility early on in the process-ideally, when “charged,” but at the very least, prior to the defendant’s entering a guilty plea. La. R.S. 15:543(A) also requires that written notification of the registration requirements appear “on any guilty plea forms.” This additional mandate also reflects the Legislature’s intent to ensure that a defendant be forewarned of the registration requirements, especially before a defendant enters his plea. In the instant case, despite these directives in La. R.S. 15:543(A), the district court judge failed to provide Petitioner any notice, written or otherwise, and he was not forewarned of any of the registration and notification requirements prior to or after the acceptance of his guilty plea. Petitioner was only advised of his obligation to register, and not the requirements — consequences of registration to enable him to make an informed and intelligent decision of whether or not to plead guilty. Petitioner avers that he was unaware of the requirements — provisions of sex offender registration and notification and did not make an informed and intelligent decision.

Contrary to the Fourth Circuit’s opinion, Petitioner respectfully argues that the record supports his contention that he clearly did not receive proper notice, written or otherwise, of the registration and notification requirements of La. R.S. 15:542 as required by La. R.S. 15:543(A) before, or, even after the entering of his guilty plea(s). In denying this claim, the Louisiana Fourth Circuit Court of Appeals stated that “. . . *The record clearly rebuts Defendant’s argument that he was not notified regarding the sex offender notification and registration requirements prior to entering his guilty plea. Accordingly, these assignments of error are meritless.*”<sup>4</sup> However, despite this assertion by the Fourth Circuit, the court clearly contradicts its own statement where it later states that “. . . *Nevertheless, in this matter, Defendant was notified of his ‘requirement’ to register as a sex offender prior to entering his plea.*” As

<sup>4</sup> Petitioner also raised the issue that his attorney was ineffective for failing to properly notify him as to the notification, registration, and other numerous restrictions as consequences of his guilty plea.

the Fourth Circuit clearly stated, Petitioner was notified of his “requirement” to register as a sex offender. However, Petitioner avers that he was not notified of the “requirements” of registration and notification, as the statute (La. R.S. 15:543[A]) expressly directs. Petitioner avers that the lower court’s error is clear, in that the trial court was required to inform him of the sex offender registration and notification “requirements,” plural, and not just of his obligation to register. Additionally, the Fourth Circuit totally ignored the fact that the trial court failed to provide Petitioner with the required “*written notification*” of the sex offender notification and registration requirements of La. R.S. 15:542, as required by statute.

La. R.S. 15:543(A) requires that a Defendant be provided written notice as follows: “*Notification must be given on the statutorily required form contained in La. R.S. 15:543.1 and, the court shall provide a copy of the registration and notification statutes to the offender. Furthermore, such notice will be included on any guilty plea forms and judgment and sentence forms provided to the defendant, and the entry shall be made in the court minutes stating that the written notification was provided to such offenders.*” Petitioner avers that the trial court never provided him the “written notice” of the registration and notification requirements on the statutorily required form (La. R.S. 15:543.1) as required by La. R.S. 15:543(A), nor was he provided a copy of the registration and notification statutes. Moreover, Petitioner avers that a simple examination of the district court’s record, will clearly show that the court failed to place the entry on the court’s record that “*Written Notification*” was provided to Petitioner as required by statute, which further supports Petitioner’s contention, that he did not receive any notice, written, or otherwise, of the requirements — provisions of sex offender registration and notification. Petitioner was totally unaware of the consequences of his guilty plea(s) where he was not advised of any of the numerous sex offender registration consequences or other restrictions that would apply as a direct consequence of his guilty plea by the court or his attorney. Petitioner argues that sex offender registration and notification is a direct consequence of a guilty plea, similar to deportation, which requires the court and attorneys to properly inform and explain the requirements to a defendant when entering a plea. Cf. Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), where counsel was

deficient in failing to advise of deportation. In the instant matter, Petitioner respectfully argues that his attorney, Craig Mordock, provided ineffective assistance in violation of his Sixth Amendment to the United States Constitution, by failing to fully explain the state's sex offender registration and notification requirements forewhich Petitioner would be required to abide and other restrictions which were a direct consequence of Petitioner's plea. Petitioner avers that sex offender registration, notification, and consequences thereof, is a direct result or consequence of a guilty plea for a sex offense as numerated in La. R.S. 15:541, and Petitioner respectfully argues that it was an error by the trial court to not fully admonish him as to the consequences of his plea forewhich he was not aware; or, to not ensure that his trial attorney, Craig Mordock, advised him of the same prior to pleading guilty. Petitioner was only shown a single sheet of paper (Waiver of Rights Form) and told to sign and initial while speaking to his attorney in court for less than ten minutes. Petitioner's attorney did not go over any form(s) with him.

Petitioner avers that had he been properly informed of the numerous restrictive provisions involved in the sex offender registration and notification processes, the consequences of his plea, he would not have pleaded guilty, and would have insisted on proceeding to trial. Petitioner asserts that none of these requirements which are mandated by statute, were adhered to by the court; he was not given a written sex offender notification form to sign, or a copy of the registration and notification statutes as required in La. R.S. 15:543(A), nor was he informed by the trial court or his attorney of the requirements — provisions contained within the sex offender registration or notification statutes and process. The plea agreement (Waiver of Rights [Guilty Plea] form) which the Petitioner signed, only indicates that he has to register with the Orleans Parish Sheriff's Office or New Orleans Police Department.<sup>5</sup> Therefore, and consequently, only informing the Petitioner of a single obligation or requirement of registering, and not any of the numerous requirements — provisions of registration and notification as required by statute. Furthermore, the Petitioner's sentencing transcript and court minutes do not reflect that "written

---

5 See Petitioner's "Pro-Se" Appellate Brief (Appendix G,I) "G" and "I"

notification" was provided to the Petitioner as statutorily required in La. 15:543(A).<sup>6</sup> The only mention of Petitioner's obligations, was that he "*must register with the criminal sheriff's office and/or the New Orleans Police Department and/or the police in any jurisdiction when you are released, and that this is a lifetime registration as a sexual offender.*" In the instant matter, the Petitioner was not given a copy of the notification or registration statutes, or advised of the statutes' numerous restrictions and/or provisions such as community notification, travel restrictions, certain business ownership prohibitions, certain business license restrictions, residence – housing restrictions, repetitive 'in-person' reporting and address updates, required re-occurring fees, and etcetera.

In order for a guilty plea to be voluntary and intelligently entered, the Defendant must be advised about the consequences of a guilty plea. The issue arises as to a court's duty to advise sex offenders as to sex offender registration consequences or other restrictions arising from a plea of guilty, or to determine that the offender is advised thereof. 41 A.L.R. 6TH 141. In the instant matter, Petitioner avers that he was not advised of any of the sex offender registration consequences or other restrictions by the court or his attorney prior to, or even after he pled guilty. Petitioner avers that he was only informed of his obligation to register, and not of the requirements — provisions of registration or other restrictions which were a direct consequence of his plea. Petitioner was not informed of "ANY" of the requirements of sex offender registration or notification, as described and required in La. R.S. 15:542 which he would have to abide as a direct result or consequence of his plea. Cf. State v. Naran, 308 So. 3d 419 (La. App. 5<sup>th</sup> Cir. 12/23/20), where the court provided sufficient information to allow the Defendant in "Naran," to make an informed and intelligent decision to plead guilty. In Naran, the court provided the defendant with forms that set forth the requirements for sex offender registration, the defendant acknowledged receiving copies of the sex offender registration and notification statutes, and had signed a written acknowledgment that he had received copies of the statute, reviewed the notification form which included the requirements with his attorney, and understood that by pleading guilty, he was agreeing to abide by the registration and

---

<sup>6</sup> See Petitioner's "Pro-Se" Appellate Brief (Appendix *G&I*) "G" and "I"

notification requirements. In contrast, and in the instant case as argued above, Petitioner was not provided the necessary sex offender registration and notification requirements to allow him to make an informed and intelligent decision to plead guilty. In Petitioner's case, the trial court never provided him with any forms setting forth the requirements for sex offender registration, he did not acknowledge receiving any copies of the sex offender registration and notification statutes, and did not sign a written acknowledgment that he had received copies of the statute, or that he reviewed any notification form which included the requirements with his attorney and understood that by pleading guilty, was agreeing to abide by the registration and notification requirements. Petitioner was not afforded any of those opportunities as was the defendant in Naran.

Petitioner avers that when a defendant pleads guilty to a sex offense, La. R.S. 15:543(A) requires the court to provide "written notification" of the registration and notification requirements, and Petitioner argues that this requirement that the court provide written notification to a defendant, is to ensure that he is properly informed of the said requirements, to enable him or her to make an informed and intelligent decision and determination of whether or not to enter a plea of guilty. In fact, the statutorily required form ("Notification to Sex Offender" in La. R.S. 15:543.1) that the Defendant in Naran was afforded the opportunity to read and sign, and the Petitioner was not, states that "*the court has the duty to provide defendant with the information necessary for awareness of sex offender registration requirements.*" Petitioner relies on State v. Calhoun, 694 So. 2d 909 (La. 5/20/97), where the Louisiana Supreme Court held that: "*Failure to advise a defendant of the requirements of registration and notification is a factor that may undercut the voluntary nature of a guilty plea.*" In Calhoun, the court refused to set out a blanket rule that failure to notify of these requirements nullifies a guilty plea. Rather, the court considered the totality of circumstances under which the pleas were made, including counsel's unpreparedness. The Calhoun trial court did not inform the defendant of the registration and notification requirements until his sentencing hearing more than two months after his guilty plea. The defendant "at the least, implicitly stated that he would not have pled guilty had he been informed of the registration

requirements. He also raised the issue in a timely-filed motion to withdraw guilty plea prior to sentencing. The Louisiana Supreme Court held, under the circumstances, the trial court's failure to advise the defendant of the registration requirements prior to accepting the guilty plea undercut the voluntariness of that plea." Id.

In the instant case, Petitioner avers that he did not benefit from a plea bargain, where he pled guilty as charged to *all offenses* and his bill of information was not amended. Petitioner was never informed of the registration and notification requirements by the trial court or his attorney. Petitioner was only advised by the court of his obligation to register, and not of the consequences of registration by neither the court or his attorney. Furthermore, Petitioner avers that he had also attempted to file a Motion to Withdraw his guilty plea(s) after learning of the numerous restrictions — provisions pertaining to sex offender registration, by writing his attorney at the time, Mr. Craig J. Mordock, multiple letters, requesting that Mr. Mordock, file a Motion to Withdraw Guilty Plea, and to file his Notice of Intent to Appeal.<sup>7</sup> However, Petitioner was abandoned by his attorney, and his letters were ignored. Petitioner would also like this Honorable Court to please note, that he is also claiming that his trial attorney, Mr. Craig Mordock, provided ineffective assistance in violation of his Sixth Amendment to the United States Constitution by not advising him of the sex offender statute(s), and of the requirements — provisions, including his failure to fully explain the "Consequences" of sex offender registration. Further, Petitioner argues that in the light of the totality of the circumstances under which he pled guilty, and considering his attorneys' multiple instances of ineffective assistance in Petitioner's case, including his attorney's failure to file a "Notice of Intent to Appeal," which consequently, has led to the instant "out-of-time" appeal, renders his guilty plea(s) infirm. Petitioner's attorney did not: (1) inform Petitioner of the consequences of the mandatory sex offender registration and notification requirements and other restrictions; (2) Was unprepared for trial where he advised his client to plead guilty and enter a "Best-Interest" plea because he "couldn't win at trial;" (3) Failed to file a Motion to Quash on Statute of Limitations grounds; (4) Miss-

<sup>7</sup> It should be noted that Mr. Mordock's failure to file Petitioner's direct appeal as requested verbally and in writing, is what has led to Petitioner being granted the instant "Out-of-Time" Appeal.

advised Petitioner as to his eligibility for parole and diminution of sentence; (5) Petitioner had steadfastly maintained his innocence, where he requested to enter an “Alford” plea, but his request was denied by the court – judge; and (6) Any other reasons found by your Honor(s); and, since the trial court also failed to adhere to the rules of La. 15:543(A), as to a signed copy of the sex offender notification and registration (La. R.S. 15:543.1) form, nor provide Petitioner with a copy of the registration and notification statutes or any mention of the requirements in Defendant’s plea – sentencing “Boykin” colloquy, or to make sure that his attorney properly advised his client, Petitioner, of the consequences of sex offender registration. The record clearly indicates in this case, that the Petitioner was not put on notice as to and of the registration and notification requirements by the court or his attorney before, or even after his guilty plea. The trial court did not provide the necessary registration and notification requirements to Petitioner to allow him to make an informed and intelligent decision to plead guilty. Furthermore, Petitioner argues that for the above and foregoing mentioned reasons, he was also denied due process in violation of his Fifth and Fourteenth Amendments to the United States Constitution and the Louisiana State Constitution. Accordingly, Petitioner’s plea(s) was not knowingly and intelligently entered. Petitioner’s guilty plea(s) should be set aside, his conviction(s) reversed, and his sentence(s) vacated. Alternatively, Petitioner requests that a full evidentiary hearing be ordered and conducted in this matter.

ARGUMENT OF LAW IN SUPPORT OF QUESTION EIGHT

(SEE ARGUMENTS IN SUPPORT OF QUESTIONS 5-7)

CONCLUSION AND PRAYER

THEREFORE, for the above and foregoing mentioned reasons, Petitioner avers that the Louisiana State Supreme Court and/or the Louisiana Fourth Circuit Court of Appeals erred, and a Writ of Certiorari is warranted and should be issued to the Louisiana Supreme Court, vacating Petitioner's conviction(s) and sentence(s). Alternatively, Petitioner avers that a remand should be ordered with instructions in accordance with this Honorable Court's findings.

WHEREFORE, for the above and foregoing mentioned reasons, Petitioner prays that this Honorable Court will "**GRANT**" and issue a Writ of Certiorari to the Louisiana Supreme Court, vacating Petitioner's conviction(s) and sentence(s). Alternatively, Petitioner prays that a remand will be ordered with instructions in accordance with this Honorable Court's findings.

Respectfully submitted on this 27<sup>th</sup> day of March, 2024

  
Darryl Puderer #601803  
General Delivery  
1630 Prison Road  
Cottonport, LA. 71327