

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Term, 20\_\_\_\_\_

A C JAMES, JR.,

*Petitioner*

v.

WARDEN, RON NEAL,

*Respondent*

**Motion for Leave to Proceed In Forma Pauperis**

The petitioner ask leave to file the attached petitioner for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

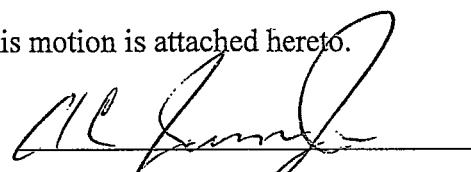
The Petitioner, in accordance with the provisions of Title 28, United States Code, § 1915, and Rule 46 of the Rules of the Supreme Court of the United States, hereby moves the Court for an Order granting Petitioner leave to proceed in forma pauperis in filing and otherwise prosecuting the Petition for Writ of Certiorari filed simultaneously herewith.

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in any other court.

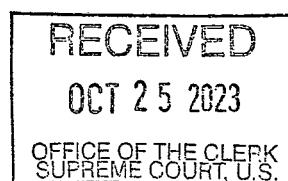
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[] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.



*Petitioner pro se*  
A C James, Jr., DOC# 231845  
Indiana State Prison  
1 Park Row St.  
Michigan City, IN 46360



### Affidavit in Support of Motion Seeking Authorization to Proceed In Forma Pauperis

I, A C JAMES, JR., am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefore; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income Source	Average monthly Amount During the past 12 Months		Amount Expected next Month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ None	\$ 0	\$ N/A
Income from Real Property (Such as Rental Income)	\$ 0	\$ _____	\$ _____	\$ _____
Interest and Dividends	\$ 0	\$ _____	\$ _____	\$ _____
Gifts	\$17.75	\$ _____	\$ _____	\$ _____
Alimony	\$ 0	\$ _____	\$ _____	\$ _____
Child Support	\$ 0	\$ _____	\$ _____	\$ _____
Retirement (Such as Social Security, Pensions, Annuities Insurance)	\$ 0	\$ _____	\$ _____	\$ _____
Disability (Such as Social Security, Insurance Payments)	\$ 0	\$ _____	\$ _____	\$ _____
Unemployment Payments	\$ 0	\$ _____	\$ _____	\$ _____
Public-assistance (Such as Welfare)	\$ 0	\$ _____	\$ _____	\$ _____
Other (Specify):	\$91.88	\$ _____	\$ _____	\$ _____
<b>Total Monthly Income:</b>	<b>\$109.63</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

2. List you employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.) **N/A**
3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.) **N/A**
4. How much cash do you and your spouse have? **None**
5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings. **Re-entry Savings Value \$1715.96**
6. State every person, business, or organization owing you or your spouse money, and the amount owed. **None**
7. State the person who rely on you or your spouse for support. **None**
8. Estimate the average monthly expenses of your and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show that monthly rate. **Have no Spouse.**

	<b>You</b>	<b>Your Spouse</b>
Rent or Home-mortgage Payment (Include Lot Rented for Mobile Home)	\$ 0	\$ None
Are Real Estate Included?	<b>None</b>	

Is Property Insurance Included? **N/A**

Utilities (Electricity, Heating Fuel, Water, Sewer, and “Telephone”)	\$1.66	\$0
Home Maintenance (Repairs and Upkeep)	\$ 0	\$0
Food	\$ 82.07	\$0
Clothing	\$ 0	\$0
Laundry and Dry-cleaning	\$ 0	\$0
Medical and Dental Expenses	\$ 0	\$0

Transportation (Not Including Motor Vehicle Payments)	\$ 0	\$0
Recreation, Entertainment, Newspapers, Magazines, Etc.	\$1.03	\$0
Insurance (Not Deducted from Wages or Included in Mortgage Payments)		
Homeowner's or Renter's	\$ 0	\$0
Life	\$ 0	\$0
Health	\$ 0	\$0
Motor Vehicle	\$ 0	\$0
Other: _____	\$ 0	\$0
Taxes (Not Deducted from Wages or Included in Mortgage Payments)		
(Specify):	\$ 0	\$0
Installments Payments		
Motor Vehicle	\$ 0	\$0
Credit Card(s)	\$ 0	\$0
Department Store(s)	\$ 0	\$0
Other: Re-entry Savings, of 15%	\$12.22	\$0
Alimony, Maintenance, and Support Paid to Others	\$ 0	\$0
Regular Expenses for Operation of Business, Profession, or Farm (Attach Detailed Statement)	\$ 0	\$0
Other(Specify): Hygiene	\$17.81	\$0
<b>Total Monthly Expenses:</b>	<b>\$109.63</b>	<b>\$0</b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?  Yes  No  
If yes, describe on an attached sheet:

10. Have you paid - or will you be paying- an attorney any money for services in connection with this case, including the completion of this form?  Yes  No

if yes, how much?

if yes, state the person's name, address, and telephone number:

11. Have you paid- or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? \_\_\_\_\_

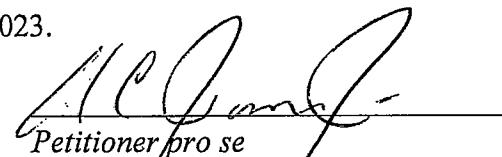
if yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the cost of this case.

I have no other explanation other than I'm a prisoner that earns only State Pay, for work assignment within the prison showing above that would not allow me to necessary cost, in full payment. See attached ISP Resident Activity Report.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted this 13<sup>th</sup> day of October, 2023.

  
Petitioner pro se  
A C James, Jr., DOC#231845,  
Indiana State Prison  
1 Park Row St.  
Michigan City, IN46360

## INDIANA STATE PRISON

## Resident Activity Report

Resident Id: 231845

Run Date: 10/12/2023

Full Name: JAMES JR, A C

From: 10/12/2022

Housing: ISP, ISP, B, B1, 118U

To: 10/12/2023

## Beginning Balances

Account	Balance	Debt
Primary - Trust	\$0.20	\$0.00
Re-entry Savings	\$1567.38	\$0.00
	\$1567.58	\$0.00

## Ending Balances

Account	Balance	Debt
Primary - Trust	\$81.64	\$0.00
Re-entry Savings	\$1715.96	\$0.00
	\$1797.60	\$0.00

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
5229524	10/25/2022 09:06:36	Resident Deposit	September State Pay	ISP State Pay	\$86.00	\$1653.58	\$0.00
			<i>Re-entry Savings</i>			\$12.90	\$0.00
			<i>Primary - Trust</i>			\$73.10	\$0.00
5249426	10/26/2022 16:16:28	Transfer Other Funds	GTL Phone		-\$5.00	\$1648.58	\$0.00
			<i>Primary - Trust</i>			-\$5.00	\$0.00
5274926	10/28/2022 20:30:15	Transfer Other Funds	Fresh Favorites	10/28/2022	-\$18.65	\$1629.93	\$0.00
			<i>Primary - Trust</i>			-\$18.65	\$0.00
5325473	11/02/2022 19:45:02	Resident Deposit	GTL Receipt		\$50.00	\$1679.93	\$0.00
			<i>Primary - Trust</i>			\$50.00	\$0.00
5341741	11/04/2022 07:18:02	Resident Deposit	GTL Receipt		\$50.00	\$1729.93	\$0.00
			<i>Primary - Trust</i>			\$50.00	\$0.00
5347986	11/04/2022 17:50:48	Transfer Other Funds	GTL Phone		-\$5.00	\$1724.93	\$0.00
			<i>Primary - Trust</i>			-\$5.00	\$0.00
5350627	11/04/2022 20:26:51	Transfer Other Funds	Commissary	11/04/2022	-\$11.10	\$1713.83	\$0.00
			<i>Primary - Trust</i>			-\$11.10	\$0.00
5350628	11/04/2022 20:26:51	Transfer Other Funds	Commissary	11/04/2022	-\$80.53	\$1633.30	\$0.00
			<i>Primary - Trust</i>			-\$80.53	\$0.00
5384424	11/08/2022 19:30:24	Transfer Other Funds	Commissary	11/08/2022	\$4.84	\$1638.14	\$0.00
			<i>Primary - Trust</i>			\$4.84	\$0.00

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
5488599	11/18/2022 20:24:59	Transfer Other Funds	Commissary	11/18/2022	-\$17.82	\$1620.32	\$0.00
			<i>Primary - Trust</i>			-\$17.82	\$0.00
5488600	11/18/2022 20:24:59	Transfer Other Funds	Commissary	11/18/2022	-\$39.84	\$1580.48	\$0.00
			<i>Primary - Trust</i>			-\$39.84	\$0.00
5518779	11/22/2022 10:18:30	Resident Deposit	October State Pay	ISP State Pay	\$92.00	\$1672.48	\$0.00
			<i>Re-entry Savings</i>			\$13.80	\$0.00
			<i>Primary - Trust</i>			\$78.20	\$0.00
5524004	11/22/2022 19:30:15	Transfer Other Funds	Commissary	11/22/2022	\$6.58	\$1679.06	\$0.00
			<i>Primary - Trust</i>			\$6.58	\$0.00
5530328	11/23/2022 12:07:24	Transfer Other Funds	GTL Phone		-\$5.00	\$1674.06	\$0.00
			<i>Primary - Trust</i>			-\$5.00	\$0.00
5634680	12/02/2022 20:23:21	Transfer Other Funds	Commissary	12/02/2022	-\$20.20	\$1653.86	\$0.00
			<i>Primary - Trust</i>			-\$20.20	\$0.00
5659681	12/05/2022 09:05:57	Resident Deposit	Holiday Gift		\$3.00	\$1656.86	\$0.00
			<i>Primary - Trust</i>			\$3.00	\$0.00
5680210	12/05/2022 12:13:59	Resident Withdrawal	3:22-CV-70-MGG/#22-3031	7896	-\$55.00	\$1601.86	\$0.00
			<i>Primary - Trust</i>			-\$55.00	\$0.00
5733300	12/09/2022 10:01:32	Resident Charge	LEGAL POST		-\$1.92	\$1599.94	\$0.00
			<i>Primary - Trust</i>			-\$1.92	\$0.00
			<i>Postage</i>			\$0.00	\$0.00
5733310	12/09/2022 10:02:07	Resident Charge	LEGAL POST		-\$2.88	\$1599.08	-\$2.02
			<i>Primary - Trust</i>			-\$0.86	\$0.00
			<i>Postage</i>			\$0.00	-\$2.02
5787895	12/14/2022 14:31:40	Resident Withdrawal	VOID CK 7896 CK RETURNED	7896	\$55.00	\$1654.08	-\$2.02
			<i>Primary - Trust</i>			\$55.00	\$0.00
5798216	12/15/2022 10:10:39	Resident Charge	LEGAL POST		-\$1.14	\$1652.94	-\$2.02
			<i>Primary - Trust</i>			-\$1.14	\$0.00
			<i>Postage</i>			\$0.00	\$0.00
5807925	12/16/2022 10:18:16	Resident Withdrawal	US DISTRICT COURT CLERK	8022	-\$5.00	\$1647.94	-\$2.02

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
						-\$5.00	\$0.00
			<i>Primary - Trust</i>				
5814612	12/16/2022 20:19:41	Transfer Other Funds	Commissary	12/16/2022	-\$6.87	\$1641.07	-\$2.02
			<i>Primary - Trust</i>			-\$6.87	\$0.00
5814613	12/16/2022 20:19:41	Transfer Other Funds	Commissary	12/16/2022	-\$46.94	\$1594.13	-\$2.02
			<i>Primary - Trust</i>			-\$46.94	\$0.00
5861494	12/21/2022 10:42:38	Resident Deposit	November State Pay	ISP State Pay	\$20.00	\$1612.11	\$0.00
			<i>Postage</i>			\$0.00	\$2.02
			<i>Re-entry Savings</i>			\$2.70	\$0.00
			<i>Primary - Trust</i>			\$15.28	\$0.00
5890887	12/23/2022 20:13:52	Transfer Other Funds	Fresh Favorites	12/23/2022	-\$14.50	\$1597.61	\$0.00
			<i>Primary - Trust</i>			-\$14.50	\$0.00
5988495	01/03/2023 09:48:44	Group Withdrawal	DECEMBER POSTAGE	8126	-\$5.94	\$1597.61	\$0.00
			<i>Postage</i>			\$0.00	\$0.00
6236839	01/25/2023 11:16:44	Resident Deposit	December State Pay	ISP State Pay	\$80.00	\$1677.61	\$0.00
			<i>Re-entry Savings</i>			\$12.00	\$0.00
			<i>Primary - Trust</i>			\$68.00	\$0.00
6266182	01/27/2023 20:18:10	Transfer Other Funds	Commissary	01/27/2023	-\$1.64	\$1675.97	\$0.00
			<i>Primary - Trust</i>			-\$1.64	\$0.00
6266183	01/27/2023 20:18:10	Transfer Other Funds	Commissary	01/27/2023	-\$67.06	\$1608.91	\$0.00
			<i>Primary - Trust</i>			-\$67.06	\$0.00
6567341	02/24/2023 15:30:02	Resident Deposit	GTL Receipt		\$20.00	\$1628.91	\$0.00
			<i>Primary - Trust</i>			\$20.00	\$0.00
6592530	02/27/2023 09:48:05	Resident Deposit	January State Pay	ISP State Pay	\$88.50	\$1717.41	\$0.00
			<i>Re-entry Savings</i>			\$13.28	\$0.00
			<i>Primary - Trust</i>			\$75.22	\$0.00
6722834	03/10/2023 20:20:40	Transfer Other Funds	Commissary	03/10/2023	-\$29.48	\$1687.93	\$0.00
			<i>Primary - Trust</i>			-\$29.48	\$0.00
6722835	03/10/2023 20:20:40	Transfer Other Funds	Commissary	03/10/2023	-\$31.87	\$1656.06	\$0.00

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
						-\$31.87	\$0.00
			<i>Primary - Trust</i>				
6869476	03/24/2023 20:19:40	Transfer Other Funds	Commissary	03/24/2023	-\$33.20	\$1622.86	\$0.00
						-\$33.20	\$0.00
			<i>Primary - Trust</i>				
6891916	03/27/2023 14:01:26	Change Housing	Automated Housing Change		\$0.00	\$1622.86	\$0.00
6904297	03/28/2023 11:01:24	Change Housing	Automated Housing Change		\$0.00	\$1622.86	\$0.00
6919712	03/29/2023 11:13:06	Resident Deposit	February State Pay	ISP State Pay	\$90.00	\$1712.86	\$0.00
						\$13.50	\$0.00
			<i>Re-entry Savings</i>			\$76.50	\$0.00
			<i>Primary - Trust</i>				
6952689	03/31/2023 20:19:49	Transfer Other Funds	Commissary	03/31/2023	-\$6.15	\$1706.71	\$0.00
						-\$6.15	\$0.00
			<i>Primary - Trust</i>				
6952690	03/31/2023 20:19:49	Transfer Other Funds	Commissary	03/31/2023	-\$16.60	\$1690.11	\$0.00
						-\$16.60	\$0.00
			<i>Primary - Trust</i>				
6952691	03/31/2023 20:19:49	Transfer Other Funds	Commissary	03/31/2023	-\$5.54	\$1684.57	\$0.00
						-\$5.54	\$0.00
			<i>Primary - Trust</i>				
6978094	04/03/2023 19:32:01	Transfer Other Funds	Commissary	04/03/2023	\$4.10	\$1688.67	\$0.00
						\$4.10	\$0.00
			<i>Primary - Trust</i>				
7092536	04/14/2023 20:17:38	Transfer Other Funds	Commissary	04/14/2023	-\$10.45	\$1678.22	\$0.00
						-\$10.45	\$0.00
			<i>Primary - Trust</i>				
7092537	04/14/2023 20:17:38	Transfer Other Funds	Commissary	04/14/2023	-\$42.56	\$1635.66	\$0.00
						-\$42.56	\$0.00
			<i>Primary - Trust</i>				
7159856	04/20/2023 09:40:56	Resident Deposit	March State Pay	ISP State Pay	\$40.00	\$1675.66	\$0.00
						\$6.00	\$0.00
			<i>Re-entry Savings</i>			\$34.00	\$0.00
			<i>Primary - Trust</i>				
7159857	04/20/2023 09:40:56	Resident Deposit	March State Pay	ISP State Pay	\$92.00	\$1767.66	\$0.00
						\$13.80	\$0.00
			<i>Re-entry Savings</i>			\$78.20	\$0.00
			<i>Primary - Trust</i>				

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
7254274	04/28/2023 20:19:45	Transfer Other Funds	Commissary <i>Primary - Trust</i>	04/28/2023	-\$1.64	\$1766.02	\$0.00
						-\$1.64	\$0.00
7254275	04/28/2023 20:19:45	Transfer Other Funds	Commissary <i>Primary - Trust</i>	04/28/2023	-\$110.60	\$1655.42	\$0.00
						-\$110.60	\$0.00
7277303	05/01/2023 16:47:01	Resident Deposit	GTL Receipt <i>Primary - Trust</i>		\$40.00	\$1695.42	\$0.00
						\$40.00	\$0.00
7390689	05/12/2023 20:19:19	Transfer Other Funds	Commissary <i>Primary - Trust</i>	05/12/2023	-\$10.67	\$1684.75	\$0.00
						-\$10.67	\$0.00
7390690	05/12/2023 20:19:19	Transfer Other Funds	Commissary <i>Primary - Trust</i>	05/12/2023	-\$29.36	\$1655.39	\$0.00
						-\$29.36	\$0.00
7440526	05/17/2023 14:04:45	Resident Deposit	April State Pay <i>Re-entry Savings</i> <i>Primary - Trust</i>	ISP State Pay	\$20.00	\$1675.39	\$0.00
						\$3.00	\$0.00
						\$17.00	\$0.00
7501144	05/22/2023 15:12:08	Change Housing	Automated Housing Change		\$0.00	\$1675.39	\$0.00
7515750	05/23/2023 09:39:43	Resident Charge	LEGAL POST <i>Primary - Trust</i> <i>Postage</i>		-\$0.60	\$1674.79	\$0.00
						-\$0.60	\$0.00
						\$0.00	\$0.00
7529643	05/23/2023 17:01:41	Change Housing	Automated Housing Change		\$0.00	\$1674.79	\$0.00
7575130	05/26/2023 20:16:01	Transfer Other Funds	Commissary <i>Primary - Trust</i>	05/26/2023	-\$4.04	\$1670.75	\$0.00
						-\$4.04	\$0.00
7575131	05/26/2023 20:16:01	Transfer Other Funds	Commissary <i>Primary - Trust</i>	05/26/2023	-\$12.31	\$1658.44	\$0.00
						-\$12.31	\$0.00
7627683	06/01/2023 09:34:08	Group Withdrawal	MAY EOM POSTAGE <i>Postage</i>	9224	-\$0.60	\$1658.44	\$0.00
						\$0.00	\$0.00
8092356	07/21/2023 23:05:23	Resident Deposit	State Pay <i>Re-entry Savings</i> <i>Primary - Trust</i>		\$72.00	\$1730.44	\$0.00
						\$10.80	\$0.00
						\$61.20	\$0.00

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
8188527	07/31/2023 20:20:04	Transfer Other Funds	Fundraisers	07/31/2023	-\$29.00	\$1701.44	\$0.00
		<i>Primary - Trust</i>				-\$29.00	\$0.00
8235188	08/04/2023 20:14:36	Transfer Other Funds	Commissary	08/04/2023	-\$12.18	\$1689.26	\$0.00
		<i>Primary - Trust</i>				-\$12.18	\$0.00
8235189	08/04/2023 20:14:36	Transfer Other Funds	Commissary	08/04/2023	-\$18.32	\$1670.94	\$0.00
		<i>Primary - Trust</i>				-\$18.32	\$0.00
8301144	08/11/2023 09:50:40	Resident Deposit	State Pay		\$126.00	\$1796.94	\$0.00
		<i>Re-entry Savings</i>				\$18.90	\$0.00
		<i>Primary - Trust</i>				\$107.10	\$0.00
8378776	08/18/2023 20:14:13	Transfer Other Funds	Commissary	08/18/2023	-\$10.50	\$1786.44	\$0.00
		<i>Primary - Trust</i>				-\$10.50	\$0.00
8378777	08/18/2023 20:14:13	Transfer Other Funds	Commissary	08/18/2023	-\$39.43	\$1747.01	\$0.00
		<i>Primary - Trust</i>				-\$39.43	\$0.00
8378778	08/18/2023 20:14:13	Transfer Other Funds	Commissary	08/18/2023	-\$7.99	\$1739.02	\$0.00
		<i>Primary - Trust</i>				-\$7.99	\$0.00
8481894	08/29/2023 19:30:31	Transfer Other Funds	Commissary	08/29/2023	\$2.27	\$1741.29	\$0.00
		<i>Primary - Trust</i>				\$2.27	\$0.00
8520131	09/01/2023 20:13:43	Transfer Other Funds	Commissary	09/01/2023	-\$19.30	\$1721.99	\$0.00
		<i>Primary - Trust</i>				-\$19.30	\$0.00
8520132	09/01/2023 20:13:43	Transfer Other Funds	Commissary	09/01/2023	-\$33.93	\$1688.06	\$0.00
		<i>Primary - Trust</i>				-\$33.93	\$0.00
8584052	09/13/2023 08:53:32	Resident Deposit	State Pay		\$84.00	\$1772.06	\$0.00
		<i>Re-entry Savings</i>				\$12.60	\$0.00
		<i>Primary - Trust</i>				\$71.40	\$0.00
8664514	09/15/2023 20:15:30	Transfer Other Funds	Commissary	09/15/2023	-\$24.70	\$1747.36	\$0.00
		<i>Primary - Trust</i>				-\$24.70	\$0.00
8664515	09/15/2023 20:15:30	Transfer Other Funds	Commissary	09/15/2023	-\$46.65	\$1700.71	\$0.00
		<i>Primary - Trust</i>				-\$46.65	\$0.00
8783807	09/29/2023 10:33:33	Resident Deposit	State Pay		\$102.00	\$1802.71	\$0.00
		<i>Re-entry Savings</i>				\$15.30	\$0.00

## Activity

Task #	Date	Type	Comment	Entry #	Amount	Balance	Debt
		<i>Primary - Trust</i>				\$86.70	\$0.00
8814134	09/29/2023 20:15:09	Transfer Other Funds	Commissary	09/29/2023	-\$2.84	\$1799.87	\$0.00
		<i>Primary - Trust</i>				-\$2.84	\$0.00
8814135	09/29/2023 20:15:09	Transfer Other Funds	Commissary	09/29/2023	-\$2.27	\$1797.60	\$0.00
		<i>Primary - Trust</i>				-\$2.27	\$0.00
Ending Balances						\$1797.60	\$0.00

No. \_\_\_\_\_

IN THE  
**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
**Term, 20\_\_\_\_**

**A C JAMES, JR.,**

*Petitioner*

**v.**

**WARDEN, RON NEAL,**

*Respondent*

**ON PETITION FOR WRIT OF CERTIORARI**

**To the U.S. Court of Appeals Seventh Circuit/U.S. District Court Northern Indiana  
South Bend Division**

**PETITION FOR WRIT OF CERTIORARI**

**Petitioner, A C James, Jr., DOC#231845**

**Indiana State Prison  
1 Park Row St.  
Michigan City, Indiana 46360**

## QUESTION(S) PRESENTED

Whether the U.S. Court of Appeals and the District Court along with the State Courts, misinterpreted the issue of petitioner's claim appointed public defender, failure to argue prosecutors forum shopping with commission of dismissal and re-filing procedure in violation, deprived petitioner an impartial judge or impartial decision maker, which is essential under the Due Process Clause and the Equal Protection Clause of the Fourth and Fourteenth Amendment.

Whether the lower courts erred in determined petitioner's claim appointed public defender was not with a conflict of interest and/or collusion, by service of being a pro tempore judge on behalf of the prosecution, as for its witness, wherewith request for continuance that deprived petitioner's right from restrain liberty and fair due process of law, that's exclusive under the Fourth, Fifth, Sixth, and Fourteenth

Whether the lower courts erred in determined petitioner was not denied effective assistance when appointed appellate counsel discarded preserved issue of being denied to impeach the prosecution witness guilty plea of Voluntary Manslaughter reduced from the charge of Murder.

## LIST OF PARTIES

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 of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

## RELATED CASES

James v. State, No. 02D05-1203-MC572, in the Allen County Superior Court 5, Judgment entered March 7, 20012

James v. State, No.02D06-1203-FB-41, in the Allen County Superior Court 6, Judgment entered March 8, 2013

James v. State, No. 02A03-1304-CR-108, in the Court of Appeals of Indiana, Judgment entered November 5, 2013

James v. State, No.02D04-1411-PC-160, in the Allen County Superior Court 4, Judgment entered July 15, 2019

James v. State, No.19A-PC-2311, in the Court of Appeals of Indiana, Judgment entered June 18, 2021

James v. Warden, No. 3:22-CV-70-MGG, in the U.S. District Court Northern District of Indiana, Judgment entered October 14, 2022

James v. Warden Ron Neal, No. 22-3031, in the U.S. Court of Appeals for the Seventh Circuit, Judgment entered April 26, 2023

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## **OTHER**

## PETITION FOR WRIT OF CERTIORARI

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

### OPINIONS BELOW

For cases from **Federal Courts:**

The opinion of the United States Court of Appeals for the Seventh Circuit appears at

Appendix A 1 to the petition and is

reported at Order, denying certificate of appealability /in forma paupers; or,

[ ] has been designated for publication but is not yet reported; or,

is unpublished.

The opinions of the United States District Court appears at Appendix B, 6-28 to the petition and is

reported at 2022 U.S. Lexis 188081; or,

[ ] has been designated for publication but is not yet reported; or,

is unpublished.

cases from **state courts:**

The opinion of the Highest State Court to review the merits appears at Appendix C, 1-14 to the petition and is

reported at 171 N.E. 3d 1064 June 18, 2021; or,

[ ] has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the Indiana Supreme court appears at Appendix E to the petition and is

reported at 2021 Ind. Lexis 706 November 16, 2021; or,

[ ] has been designated for publication but is not yet reported; or,

is unpublished.

## JURISDICTION

For cases from **Federal Courts**:

The date on which the United States Court of Appeals decided my case was April 26, 2023.

No petition for rehearing was timely filed in my case.

a timely petitioner for rehearing was denied by the United States court of Appeals on the following date: \_\_\_\_\_, and a copy of the order deny rehearing appears at Appendix \_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (Date) in Application No. \_\_\_\_ A \_\_\_\_\_.

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

For cases from **State Courts**:

The date on which the highest state court decided my case was June 18, 2021. A copy of that decision appears at Appendix C, 1-14.

a timely Petitioner for Rehearing was thereafter denied on the following date: August 20, 2022/ November 16, 2021, and a copy of the order denying rehearing/transfer appears at Appendix D/ E.

an extension of time to file the petition for writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

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

## **CONSTITUTIONAL, STATUTORY PROVISIONS AND RULES INVOLVED**

### **CONSTITUTION OF THE UNITED STATES**

#### **Amendment 4**

**Unreasonable searches and seizures.** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### **Amendment 5**

**Criminal actions Provisions concerning Due process of law and just compensation clauses.** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### **Amendment 6**

**Rights of the accused.** 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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

#### **Amendment 14**

**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.

### **CONSTITUTION OF STATE OF INDIANA**

**Article 1 § 11. Unreasonable search or seizure.** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated;

and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

**Article 1 § 12. Courts open Due course of law Administration of justice.** All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase, completely, and without denial; speedily, and without delay.

**Article 1 § 13. Rights of accused.** In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

**Article 1 § 17. Bailable offenses.** Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

**Article 1 § 19. Jury in criminal cases Right to determine law and facts.**

In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

**Rules Governing Section 28 U.S.C. 2254 Cases State custody; remedies in Federal courts**

**(a)** The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. **(d)** An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or-(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

## STATEMENT OF THE CASE

Petitioner A C James, Jr., pro se, petition from the United States Court of Appeals for the Seventh Circuit for a certificate of appealability and request to proceed in forma pauperis, which was denied. Where after, James petition from the United States District Court, Northern District of Indiana, South Bend Division, which have also denies a certificate appealability within given the Order and Opinion, that denies petition for habeas corpus relief pursuant to 28 U.S.C.S §. 2254(a) (d).

### *From the beginning*

On March 1, 2012, James was taken into custody and later that day was arrested without a warrant, by Detective Carry M. Young for the charge of Aggravated Battery, given to his investigation of the Incident 12F016223. (Appendix F at 87-109).

The information as to what led to James' arrest by Det. Carry M. Young, for the charge of Aggravated Battery was presented to the Prosecuting Attorney's Office, which formatted the information into an Affidavit for Probable Cause or Probable Cause Affidavit, where Det. Carry M. Young 1621F as Affiant and Deputy Prosecuting Attorney Carl W. Moore W1394 signed off as the Notary Public on the 1<sup>st</sup> day of March, 2012.

The following day, March 2, 2012, the prosecution on behalf of the State of Indiana v. AC James, had filed the Probable Cause Affidavit with the trial court that initiated the beginning of the case called under 02D05-1203-MC-572 in the Allen Superior Court 5, assigned to Judge Gull Frances C. (App. F at 84-86) In given that James was arrested without a warrant the case called for an initial hearing before Magistrate Judge Linsky, Marcia, which she did find probable cause exist for the charge of Aggravated Battery and set bond for the charge. (App. F at 9-13)

Thereafter, being twenty minutes later the case was recalled on behalf of the prosecutors for the State, in requested no bond in order to bring forth additional information for the charge of Murder, which Magistrate Judge Linsky granted to be heard on March 7, 2012. (App. F at 12-13). Meanwhile, on the same day, March 2, 2012, the information that led to James's arrest was also formatted into Search Warrant(s) Affidavit, signed off by Det. Carry M. Young1621F as Affiant, and Jeffery Stineburg Deputy Prosecuting Attorney, and with Magistrate Judge Samuel Keirns signature, whereas executed the search warrant(s) that day. (App. F at 183-86).

On March 7, 2012 what was schedule for a preliminary hearing before Magistrate Judge Linsky to hear additional information for the charge of Murder, yet instead the prosecutors went to Magistrate Judge Robert Ross to dismiss the case as the reason that 72 hours has expired, Magistrate Judge Ross granted request, and in given Judge Gull were the presiding judge at that time, gave final Judgment as Dismissed the case. (App. F at 85,113).

Momentarily, as of March 7, 2012 prosecutors having case dismissed, re-filed the case, filing the same information, Probable Cause Affidavit or Affidavit for Probable Cause, for the charge of Aggravated Battery with the only difference of amended with the charge of Criminal Recklessness in writing it on the information, as went to Judge Surbeck John F. Jr., in the Allen Superior Court 6, where he too found probable cause, and issued warrant(s) for James to be arrested upon Order for bond, while James was still in custody prior to his initial hearing on March 2, 2012. (App. F at 9-14,172-73, App. J at 1, 10).

James was not released from custody until after March 9, 2012, where he was brought before Magistrate Judge Keirns, Samuel, who issued Order for a Public Defender to be appointed and scheduled date for Omnibus Hearing, April 23, 2012. (App. F at 67-68, 78; App. J at 1-19),

where of Judge Surbeck, presided over throughout the remainder of the criminal proceedings for trial/post-conviction court, in called case 02D06-1203-FB-41/02D04-1411-PC-160. (App. F at 57-65/66-83).

On behalf of Public Defender service, Attorney Fisher, Randy, Michael entered his appearance on March 16, 2012. And on behalf of the State, Chief Counsel Prosecuting Attorney Godfrey, Steven Otis and Deputy Prosecuting Attorney, Stineburg, Jeffery Allen, entered their appearance on March 23, 2012. (App. F at 68).

In between these attorneys appearance, a letter dated March 22, 2012, was produced upon the record to acknowledge their conversation on behalf of the State's intention to file the charge of Murder against James, in the following two weeks of the dated letter, (App. F at 182) which did not manifest at the Omnibus Hearing held on April 23, 2012, as four weeks later, where neither attorneys or one on behalf of the State, having not mentioned the matter, to be decided before Magistrate Judge Samuel R. Keirns. (App. F at 16-18).

The only thing that was decided upon that day of April 23, 2012, before Magistrate Judge Keirns, was where public defender Fisher recited pre scheduled three-day jury trial for Judge Surbeck's calendar on August 28, 29 and 30. Whereas Magistrate Judge Keirns scheduled pretrial conference set for July 24, before Judge Surbeck, not knowing James accepted, being totally dependent upon public defender Fisher's professional judgment. (App. F at 18).

As this case progressed towards pretrial conference, July 24, and initial trial August 28, 29 and 30, James was back in custody as of June 13, 2012 on unrelated misdemeanor charge(s), case 02D04-1206-CM-3361, whereas the case ended in one charge dismissed and time served for the other (App. F at 187-89).

Around the same time, the State's primary witnesses/victims also was in custody on unrelated charges, specifically, Michael Lewis for Murder, case number 02D05-1206-MR-2; Andrew Whitt for violation of Probation, (App. F at 116, 117-120) and Albert Smith with Misdemeanor case number 02D06-1207-CM-4016, in which public defender Fisher took part in Smith's case, Fisher's role being the pro tempore judge for the trial court on behalf of the prosecution for the State. (App. G at 1-2). From there, this current case virtually turned to where it was needed more time to investigate, based upon newly discovered evidence (App. F at 190), as public defender Fisher represented, in a motion for continuance of trial on August 24, 2012; (App. F at 128-29).

The motion for continuance of trial brought about the attorneys agreement, as rescheduled trial dates aligned with State v. Kast, causing congestion of the court's calendar which lead James to submit complaint(s), and as then on February 8, 2013, on the eve of rescheduled trial dates of February 12, 13, and 14, prosecutors did bring forth the charge of Murder, before Judge Surbeck. (App. F at 130, 133-136; App. H at 1-5).

On February 13, 2013, James was found guilty of all three (3) counts, Aggravated Battery, Criminal Recklessness and Murder, which Judge Surbeck sentenced James on March 8, 2013. (App. G at 3-4). For direct appeal, James was appointed another public defender, Attorney John C. Bohdan, where he entered his appearance as of March 26, 2013. (App. F at 76).

Appointed appellate counsel Bohdan argued issues within the same manner as public defender Fisher for trial, with the exception of discarded preserved issue at James request for the jury to be informed of Lewis's crime for Murder, reduced to plea of guilty for Voluntary

Manslaughter. (Tr. 14-17; App. F at 140, 192-205).

The State court of appeals affirmed the decision of the trial court, and the State Supreme Court denied transfer. (App. F at 57-65). James petitioned for post-conviction Relief, filed on November 7, 2014, called case under 02D04-1411-PC-160, State public defender Attorney Nicholson, Linda Gail entered her appearance to later withdraw, which left James to proceed pro se, on the claims of being denied effective assistance of counsel. (App. F at 57-65).

Judge Surbeck being the presiding judge of the post-conviction court, James requested that Judge Surbeck recuse himself, which Judge Surbeck refused. Attorney David M. Zent became successor of Judge Surbeck, due to Judge Surbeck's retirement. As of now, Judge Zent being from the same Law Firm as public defender Fisher, denied James petition for post-conviction relief, on July 15, 2019. (App. F at 58, 61, 180, 206-15).

James petitioned the Court of Appeals of Indiana, in called case under 19A-PC-2311, which affirmed the post-conviction court, given a Memorandum Decision, on June 18, 2021. From there, James petition for rehearing, which continued in denied on August 20, 2021. (App. C at 1-14, 15-25, App. D at 1). In following, James petitioned to the Indiana Supreme Court, whereas denied petition to transfer on November 16, 2021. (App. E at 1).

Whereas, in followed James petitioned to U.S. District Court Northern District of Indiana for habeas corpus relief on January 25, 2022, which denied on October 14, 2022. (App. B at 6-28). Wherein, James petition to the U.S. Court of Appeals of the Seventh Circuit, having denied on April 26, 2023, which ensued this petition for writ of certiorari. (App. A at 1).

## REASONS FOR GRANTING THE PETITION

### **The first reason:**

**This Petition should be granted to address if Petitioner was deprived of an impartial judge or impartial decision maker resulting from prosecutors' dismissal and refiling procedure, as being in violation.**

In the findings of fact and conclusions of law, for the trial/post-conviction court, maintain that the dismissal of this case called under 02D05-1203-MC-572, does not preclude the filing under 02D06-1203-FB-41, because under Rule 41(A) of the Indiana Rules of Trial Procedure, a voluntary dismissal of an action is without prejudice. And case law establishes that a criminal charge may be dismissed and refiled. Also, the filing of only an affidavit for probable cause is not a charging document, and all prosecutions of crime in Indiana are initiated by the filing of an indictment or information pursuant to Indiana Code 35-34-1-1(b). Thus indicating that this case called under MC-572 was not a criminal prosecution proceeding (App. F at 210-211), whereas not applicable to Ind. A.C.L. Crim. R. LR02-CR2.2-1 (E) as reads: "Cases dismissed and re-filed shall be filed or assigned to the Judge presiding at the time of the dismissal, regardless of the foregoing rules of assignment."

The State appellate court affirmed this ruling with providing that under Indiana Code§ 35-34-1-13, the prosecuting attorney may move for dismissal of charges at any time prior to sentencing. Also, upon determination, if the State dismisses and refiles an amended information charging the same offense, defendant's substantial rights are not prejudiced, because the defendant can receive a fair trial on the same exact facts and employ the same defense. (App. C at 5-6).

The District Court went along with the state courts determinations stating that it does not matter of which presiding judge was assigned to the case, because Ind. Code § 35-34-1-5(b)

permits late deviations when they do not prejudice the substantial rights of the defendant. In other words relying to the question of whether the defendant had a reasonable opportunity to prepare for and defend against the charges. (App. B at 8-9).

Clearly these foregoing determinations are not only contrary to other rulings of law they are very much unconstitutional. Because first of all the Probable Cause Affidavit or Affidavit for Probable Cause, is a charging instrument, to wit: provide information as to what led to James arrest, that clearly states the word “charge” as listed crime for Aggravated Battery brought in the name of the State of Indiana v. AC James, filed by prosecutors. (App. F at 12, 172-73).

Ind. Code. § 35-34-1-1(a) provides, all prosecutions of crimes shall be brought in the name of the State of Indiana. Any crime may be charged by information or indictment, therefore making the Affidavit for Probable Cause or Probable Cause Affidavit filed in the first instance of this case (App. F at 12) being sufficient to Ind. Code. § 35-34-1-1(a), which marks the beginning of this case criminal proceedings, called under MC-572.

The lower courts has implied that Ind. Code. § 35 -34-1-1(b) “meaning of information is referring to the formal charging information only”, basically resting upon if no formal charges are filed, it is not considered a criminal prosecution. This is in conflict with the meaning of a criminal complaint, which is an “affidavit” filed in support of a crime. In fact, Ind. Code. § 35-34-1-1(b) is vague and is not clear as to what specific information is required.

(A party is charged with a crime when an affidavit is filed), quoting *In re Strauss*, 197 U.S. 324-331-32, 25 S. Ct. 535, 49 L.Ed. 774 (1905); see also, *Rothgery v. Gillespie County*, 554 U.S. 191, 210, 128 S.Ct. 2578, 171 L.Ed. 2d 366 (2008) (holding that an initial appearance following a charge signifies a sufficient commitment to prosecute, regardless of participation,

indictment, information or what the County calls a formal complaint).

The fact that Magistrate Judge Linsky did find probable cause existed for the charge and set bond, made it sufficient to where it was not necessary for filing of formal charging information.

(App. E at 12). In *Emami v. U.S. Dist Ct. for the N. Dist of Cal.*, 834 F.2d 1444, 1448 (9<sup>th</sup> Cir. 1987), where findings of probable cause has been determined for charges (holding that formal filing of charges were not required to show that defendant had been charged).

Also in behalf of the Indiana Administrative Rule 8. Uniform case numbering system.

(A) Application. All trial courts in the State of Indiana shall use the uniform numbering system as set forth under this rule (B) Numbering System. The uniform numbering system shall consist of four groups of characters arranged in the manner to identify the court, the year/month of filing, the case type, and the filing sequence. For reference: 02D05-1203-MC-000572.

(1) Court identifier. 02 Allen County 02D05 Allen Superior Court 5

(2) Year/Month of filing 1203

(3) Case type. Criminal case types, MC Miscellaneous Criminal

(4) Filing Sequence. 000572

In given to this foregoing Ind. Admin. R. 8, also identify this case initial proceedings "MC-572" being a criminal case, whereas mark the beginning of James' criminal prosecution, which makes it applicable to Ind. A.C.L. Crim. R. LR02-CR2.2-1.

Prosecutors representation for dismissal of James' case, on March 7, 2012 on the pretense of the 72 hours had expired was unnecessary. Magistrate Judge Ross was not obligated to hear James case, because Magistrate Judge Linsky had already heard James case and determined probable cause exist for Aggravated Battery and set bond, which made it valid and prosecutors

failure to present additional information, was not necessary for dismissal. (App. F at 12, 113).

Dismissal of a valid indictment was not warranted by the prosecutor's failure to present "substantial exculpatory evidence" to the grand jury, which was not obligated to hear such evidence, and over which the court did not preside. *U.S. v. Williams*, 504 U.S. 36 (1992).

In *Williams v. City of Aurora*, 2022 U.S. Dist. Lexis 129524 citing, *In re Mann* 229 F. 3d 657, 658 (7<sup>th</sup> Cir. 2000). Plaintiff's litigating a claim through an initial motion to dismiss receiving a ruling on it, and then refiling that claim in front of another judge takes on the appearance of judge shopping, which is "a practice that should not be encouraged" See also, *Mallory v. Rush Univ. Med. Ctr.*, 2020 U.S. Dist. LEXIS 194080 (2020) citing *Vaqueria Tres Monjitas, Inc. v. Rivera Cubano*, 230 F.R.D. 278, 279-80 (2005) (explaining that Rule 41(a) should not be used "as a vehicle for judge-shopping").

Ind. A.C.L. Crim. R. LR02-CR.2.2-1, is adopted under the provisions of Ind. Rule of Criminal Procedure 2.2, for "a non-discretionary rule", to which entails for the continued assignment of cases for a Judge, in the event of dismissal. See, *Harris v. State*, 963 N.E.2d 505, 506,507 (2012) (explaining the purpose of criminal assignment rule, to prevent forum shopping ...where held that felony assignment rule violation {by prosecutors} does not require showing prejudice) (citing *Everling v. State*, 929 N.E.2d 1281 (2010) "a criminal defendant has a right to a fair trial before an impartial judge.) Citing *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009)). A judge's impartiality seems less convincing if the prosecution can select the judge before whom it will be heard.

Based upon the timing of refiling the affidavit with added charge of Criminal Recklessness, in went before Judge Surbeck, to have probable cause and issuance of warrant(s), it was within

the same 72 hours' time span of the court's office hours, whereas prosecutors could have presented the added charge of Criminal Recklessness without dismissal, before Magistrate Judge Linsky, which she was available to hear accordingly to her court calendar. (App. I at 1-22).

This Court has interpreted the Fourth Amendment as requiring issuance of warrants solely by neutral and detached magistrates. Johnson v. United States, 333 U.S. 10, 14, 68 S. Ct. 367, 92 L. Ed. 436 (1948),

Basically the prosecutors dismissal of James' case in the first instance was a sleight of hand to circumvent a preliminary hearing that were scheduled to be heard by Magistrate Judge Linsky on March 7, 2012 to assess if probable cause existed for the charge of murder, whereas also to continue to hold James without no bond, which called for additional information or witnesses to infer James was with the intent to kill. (App. F at 13)

Indiana Constitution Article 1 § 17, provides that the State must show evident proof, or a strong presumption, in order for bail to be denied; on the basis of murder. See also, Fry v. State, 990 N.E. 2d 429, 449 (2013). In Giordenello v. United States, 357 U.S. 480 (1958) and Aguilar v. Texas, 378 U.S. 108 (1964), the United States Supreme Court held that finding of probable cause must be made by a "neutral and detached magistrate who assess[es] independently the probability that... [An accused] committed the crime charged." Giordenello, *supra*, at 486-487; and Aguilar, *supra* at 114, the magistrate... must also be informed of some of the underlying circumstances supporting the affiants belief that the accused has committed [t]he crime.

In review of the Affidavit for Probable Cause, Det. Carry M. Young 1621F, the Affiant, does not support the culpability or charging information for Murder, where the presumption of James action was not in a manner of knowingly and/or intentionally to kill anyone. (App. F 172-73).

In also review of the Fort Wayne police Deputy Report for Incident 12F016223, by Det. Carry M. Young 1621F, in interviewed Albert Smith, one of the State's primary witnesses who confronted James about the incident, stated that James reacted as if he did not want anyone to die (App. F at 105).

In interviewed Angelica Brown, James girlfriend at the time, Det. Young himself upon investigation, advised Ms. Brown, "that he did not feel that James had intentionally killed anyone and that there was more to the story." (App. F at 108-09).

Prior to these interviews, Det. Young had received a call from Qulandus Green, who dated the victim, Kyree Ellis, noting their conversation of having the same feelings {it was not of James knowingly and intentionally to kill Kyree} and that Kyree's cousins, primary State's witnesses Whitt and Lewis, were not being forthcoming with information in reference to this case. (App. F at 101).

The prosecutors alone given mere ratification that James knowingly or intentionally, to kill Kyree out of the group, that occupied the vehicle, is not enough information to support the culpability charging information, let alone the conviction for Murder of Kyree. (App. F at 130).

The fact that prosecutors had no one to infer James was with the intent to kill other than themselves is contrary to their duties as prosecutors. "A prosecutor shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause." Gernstein v. Pugh, 420 U.S. 103 (1975).

At the hearing where prosecutors did bring forth the charge of murder, in went to Judge Surbeck, he did not question what additional information does the prosecutors have to infer James was with the knowingly or intentionally to kill, nor made any determination as to whether

probable cause existed for the charge of Murder, based upon the Affidavit prosecutors filed in pursuit of their case against James. (App. F at 135-37,172-73)

It is one function of a prosecuting attorney to make certain that a person is not erroneously charged, it is the other for the trial court with that same obligation. *State v. Gillespie*, 428 N.E.2d 1338, 1339 (1981). In *Kinnaird v. State*, 251 Ind. 506 (1968) citing *Giordenello and Johnson*, where the State Supreme Court, based upon their court's analysis of *Giordenello and Johnson*, in determined that the defendant was improperly convicted, because the affidavit with which he was charged fell far short of requirements of the Fourth Amendment where it did not state facts and circumstances constituting probable cause. *Id.* at 251, Ind. 506.

As was stated by this Court, "the point of the Fourth Amendment, which often is not grasped by zealous officers, is not that denies law enforcement the support of the usual inferences which reasonable men draw from the evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judge by the officer engaged in the often competitive enterprise of ferreting out crime". 333 U.S. 10, 13.

The State of course must provide a trial before an impartial judge, with counsel to help the accused defend against the State's charge. Without these basic protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair. *Rose v. Clark*, 478 U.S. 570 (1986); see also, *Tumey v. Ohio*, 273 U.S. 510 (1927).

The ultimate factor is, if a defendant is denied an impartial judge, it would not matter whether defendant was put on notice or had reasonable opportunity to prepare for and defend against the amended charges, cause the proceedings have taken place before a judge that

accommodates favorable decisions to disregard the prosecutors, is without evidence, witness, and/or information to support the culpability of the amended charges, whereas also with counsel failure to protect.

An accused is entitled to a neutral and detached judge, in the first instance. *Ward v. Monroeville*, 409 U.S. 14, 1972.

Accordingly, Judge Surbeck does not qualify as an impartial judge or a neutral and detached magistrate, in the first instance of James case, resulting from prosecutors dismissal and filing, going from one judge to another to have probable cause and issuance of warrant(s) for arrest, whereto, for Judge Surbeck to preside over, which is not only in violation of their local case assignment rule, it is also in deprivation of James constitutional rights.

**The second reason:**

**To address the duty of a public defender role, and if it is a conflict of interest for a public defender to be service as a pro tempore judge for the very same prosecution against his client.**

The district court describe public defender Fisher role as a pro tempore judge being “minor” on behalf of the prosecution for the State’s primary witness Smith’s case CM-4016, to issue arrest warrant. (App. B at 14, App. G at 1-2). In *Cowell v. Duckworth*, 512 F. Supp. 371 (1981) (held that “a court shall refuse to indulge in nice calculations as to the amount of prejudice attributable to the conflict because the conflict itself demonstrates a denial of the right to have the effective assistance of counsel.”) In *Listecki v. Official Comm. of the Unsecured Creditors*, 780 F.3d 731 (2015), citing *Polk County v. Dodson*, 454 U.S. 312 (1981), “A defense lawyer is not, and by nature of his function cannot be the servant of an administrative superior.” *Id.* at 321.

In Kurowski v. Krajewski, 848 F. 2d 767, 771 (7<sup>th</sup> Cir. 1988) made reference (“Ind. R. Trial P. 63 makes it pellucid that judicial service is not part of a public defender’s duties in Indiana, one can be a public defender but not a judge pro tempore, or a judge pro tempore but not a public defender.”) Public Defender Fisher, at the servant of the prosecution, as judicial service was not opposed to Smith’s case being dismissed, allowing Smith to be free and prep to testify against his client James, leading up to trial. (App. F at 191, App. G at 2)

The fact that public defender Fisher provided service as pro tempore judge, he was operating under a conflict of interest, that altered his decision making in the principle of his duty to the clients who’s unable to pay him in this case it would James. “An attorney is an agent” who is duty bound to act only in the interest of the principal that is the principal of his client. Comm'r v. Banks, m543 U.S. 426 (2005). The agent commits a breach of duty of loyalty to his principal by acting for another in an undertaking which has a substantial tendency to cause him to disregard his duty to serve his principal with only his principal’s purpose in mind. Maples v. Thomas, 565 U.S. 266 (2012).

When public defender Fisher filed the motion for continuance of trial, it served in the interest of the prosecution, which to deprive James fundamental constitutional safeguard for pretrial restraint of liberty, Because as it is the motion clearly stated public defender Fisher action was based on being contacted by deputy prosecuting attorney Stineburg, to which support a cause for delay of trial on the basis of newly discovered evidence. However, the evidence, accordingly the prosecutor report, is information form Incident 11F183313, that pertained to no suspect or latten prints to infer as a suspect, where the investigation took place on 11/24/11 and the date of the incident took place on 12/08/11, which makes it reasonable to believe that the

information as evidence is fraudulent, basically being insignificant information to use as evidence for trial. (App. F at 190). In other words the prosecutors had no intention of using the information as evidence for trial, nor did public defender Fisher, because the prosecutors filed a Motion in Limine to ensure that it was not to be used as evidence for trial, where public defender Fisher agreed. (App. F at 131, 137-38, 190, Vol. 1, Tr. 9). Which made it unnecessary to delay trial (App. F at 128-29), other than the fact to deprive James of the fundamental safeguard of Indiana Rule of Criminal Procedure 4, Discharged for Delay of Trial.

As this Supreme Court recognized in Strickland, “Counsel has a duty to make reasonable decisions that make particular investigations unnecessary”. Id. 466 U.S. at 69.

Although an employee’s full-time employment would be conclusive of State action with respect to the federal constitution’s Fourteenth Amendment for the same purpose, the actions of a defense lawyer who is employed by a county are private with respect to the Fourteenth Amendment, where the lawyer is acting within the scope of the lawyer’s duty as a public defender, for one (1) a public defender does not act on behalf of the State, but rather is the State’s adversary; and (2) the State action doctrine does not convert opponents into virtual agents. Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n, 531 U.S. 288 (2001).

### **The third reason:**

**To address Voluntary Manslaughter is a crime involving moral turpitude as Murder that can be used for impeachment.**

In Webster v. State, 513 N.E. 2d 173513 N.E. 2d 173 (1987), the court concluded that criminal confinement is the very essence of kidnapping, and that the current crime of “criminal confinement” in fact embodies the crime of kidnapping. Not only are their elements extremely similar, but the same moral turpitude involved in the crime of kidnapping resulting in it being

labeled as an “infamous crime” is also involved in the crime of “criminal confinement”.

In accordingly, although public defender Fisher made a deficient offer to prove in this case, not to the analysis under Webster, “that shows a crime equivalent to infamous crime are admissible,” he did preserve the issue of the prosecution witness, plea of guilty to “Voluntary Manslaughter committed with a deadly weapon, {a handgun}, reduced from the charge of Murder,” be allowed to be heard before the jury.

Appointed appellate counsel Bohdan ‘discarded’ to raise it on direct appeal, because Voluntary Manslaughter was not listed as an infamous crime. (App. F at 140)

“The elements of [Murder and Voluntary Manslaughter] are identical. Voluntary manslaughter is simply Murder mitigated by evidence of sudden heat.” Horan v. State, 682 N.E.2d 502, (Ind.1997). “Not only are their elements extremely similar, they also share the same moral turpitude involved in the crime, ‘as a murderous crime, which is listed as an infamous crime.’ See, People v. Parrish, 170 Cal. App. 3d 336 (1985); Franklin v. INS, 72 F.3d 571, (1998). “Voluntary Manslaughter is a crime involving moral turpitude for purposes of witness impeachment.

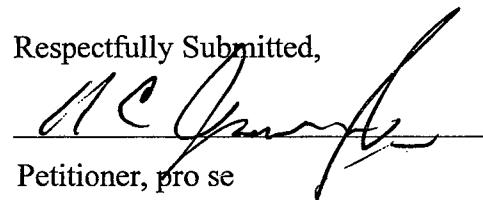
Appointed appellate counsel Bohdan chosen to not raise this issue of [t]hat fact that might have shown to render a witness incompetent that may be shown to affect the credibility of the witness, denied effective assistance of counsel. Because “a witness testimony was the province of the jury to judge the credibility of the witness and to weight the evidence, that may be shown to effect the credibility of the witness.” Id. at 173, 174; ; see also, Sanders v. City Chicago Heights, 2016 U.S. Dist. Lexis 110551. The truthfulness or credibility of witness testimony is the exclusive province of the jury.

## CONCLUSION

WHEREFORE, based upon the foregoing facts and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the lower Court and for all other relief deemed necessary in the premise.

Dated: October 13, 2023

Respectfully Submitted,



Petitioner, pro se

A C James, Jr., DOC# 231845  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
Term, 20 \_\_\_\_\_

**A C JAMES, JR.,**

*Petitioner,*

v.

**WARDEN, RON NEAL,**

*Respondent.*

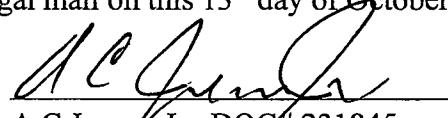
**PROOF OF SERVICE**

I, A C James, Jr., do swear or declare Pursuant to 28 U.S.C. § 1746, that on this date, October 3, 2023, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

I hereby verify under penalty of perjury that a copy of the above and foregoing **WRIT OF CERTIORARI**, has been served upon:

**C/O Deputy Attorney Caroline G. Templeton  
OFFICE OF THE ATTORNEY GENERAL OF INDIANA  
Indiana Government Center South, 5th Floor  
402 West Washington Street  
Indianapolis, IN 46204**

By personally handing the document to the appropriate prison official for placement into the institution's internal mailing system designed for legal mail on this 13<sup>th</sup> day of October, 2023.



A C James, Jr., DOC# 231845  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

# APPENDIX

A

United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

Submitted April 21, 2023  
Decided April 26, 2023

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-3031

A.C. JAMES, JR.,  
*Petitioner-Appellant,*

v.

RON NEAL,  
*Respondent-Appellee.*

Appeal from the United States District  
Court for the Northern District of  
Indiana, South Bend Division.

No. 3:22-CV-70-MGG

Michael G. Gotsch, Sr.,  
*Magistrate Judge.*

ORDER

A.C. James has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. James's request to proceed in forma pauperis is DENIED.

General Docket  
Seventh Circuit Court of Appeals

Court of Appeals Docket #: 22-3031

Docketed: 11/10/2022

Nature of Suit: 3530 Habeas Corpus

Termed: 04/26/2023

A. James, Jr. v. Ron Neal

Appeal From: Northern District of Indiana, South Bend Division

Fee Status: Due

Case Type Information:

- 1) prisoner
- 2) state
- 3) habeasCorpusCaDenied

Originating Court Information:

District: 0755-3 : 3:22-cv-00070-MGG

Trial Judge: Michael G. Gotsch, Sr., Magistrate Judge

Date Filed: 01/25/2022

Date NOA Filed:

10/14/2022

11/09/2022

Prior Cases:

None

Current Cases:

None

A. C. JAMES, JR. (State Prisoner: #231845)  
Petitioner – Appellant

A. C. James, Jr.  
[NTC Pro Se]  
INDIANA STATE PRISON  
One Park Row Street  
Michigan City, IN 46360

v.

RON NEAL  
Respondent – Appellee

Caroline Templeton, Attorney  
Direct: 317-233-1939  
[COR LD NTC Gov't State/Local]  
OFFICE OF THE ATTORNEY GENERAL  
Fifth Floor  
302 W. Washington Street  
Indiana Government Center South  
Indianapolis, IN 46204-2770

A. C. JAMES, JR.,  
Petitioner – Appellant

v.

RON NEAL,  
Respondent – Appellee

11/10/2022	<u>1</u>	State prisoner's habeas corpus case docketed. Certificate of Appealability denied 10/14/2022. Fee due. Transcript information sheet due by 11/25/2022. Docketing Statement due for Appellant A. C. James Jr. by 11/16/2022. Fee or IFP forms due on 11/25/2022 for Appellant A. C. James Jr.. [1] [7272742] [22-3031] (FP) [Entered: 11/10/2022 01:42 PM]
11/23/2022	<u>2</u>	Notification from the District Court that a motion to proceed on appeal in forma pauperis is pending. [2] [7275025] [22-3031] (AD) [Entered: 11/23/2022 10:13 AM]
11/28/2022	<u>3</u>	ORDER: Appellant A. C. James, Jr. is directed to file the overdue Docketing Statement within 14 days from the date of this Rule to Show Cause. Docketing statement response due for Appellant A. C. James Jr. by 12/12/2022. Sent Certified Mail. Receipt Number: 7019 2280 0001 7854 9122. [3] [7275420] [22-3031] (AD) [Entered: 11/28/2022 11:53 AM]
11/29/2022	<u>4</u>	Filed District Court order DENYING Appellant A. C. James, Jr. leave to proceed on appeal in forma pauperis. Date IFP denied: 11/29/2022. Issued Circuit Rule 3(b) 30 day notice for failure to pay the docketing fee. Fee or IFP forms due on 12/29/2022 for Appellant A. C. James Jr. [7275862] [4] [7275862] [22-3031] (AP) [Entered: 11/29/2022 02:57 PM]
11/30/2022	<u>5</u>	Pro se motion filed by Appellant A. C. James, Jr. for certificate of appealability. (Forwarded from the District Court). [5] [7276237] [22-3031] (CAG) [Entered: 11/30/2022 03:47 PM]
11/30/2022	<u>6</u>	Prose motion filed by Appellant A. C. James, Jr. to proceed on appeal in forma pauperis. (Forwarded from the District Court). [6] [7276247] [22-3031] (CAG) [Entered: 11/30/2022 03:57 PM]
12/05/2022	<u>7</u>	Received copy of Pro se motion by Appellant A. C. James, Jr. for certificate of appealability, filed on 11/30/2022. [7] [7277274] [22-3031]—[Edited 12/05/2022 by MAN] (MAN) [Entered: 12/05/2022 03:52 PM]
12/05/2022	<u>8</u>	Received copy of Prose motion by Appellant A. C. James, Jr. to proceed on appeal in forma pauperis, filed on 11/30/2022. [8] [7277279] [22-3031] (MAN) [Entered: 12/05/2022 03:56 PM]
12/12/2022	<u>9</u>	Docketing Statement filed by Appellant A. C. James, Jr.. Prior or Related proceedings: No. [9] [7278831] [22-3031] (CAG) [Entered: 12/12/2022 04:44 PM]
12/22/2022	<u>10</u>	Received partial filing fee from the District Court of \$5.00 from Appellant A. C. James, Jr. on 12/22/2022. [10] [7280871] [22-3031] (CAG) [Entered: 12/22/2022 11:18 AM]
04/26/2023	<u>11</u>	ORDER: The request for a certificate of appealability is DENIED. James's request to proceed in forma pauperis is DENIED. (See order for details) [8] Diane S. Sykes, Chief Judge and Diane P. Wood, Circuit Judge. [11] [7306453] [22-3031] (ER) [Entered: 04/26/2023 02:57 PM]
05/18/2023	<u>12</u>	Mandate issued. No record to be returned. [12] [7311311] [22-3031] (GW) [Entered: 05/18/2023 09:18 AM]
05/18/2023		FOR COURT USE ONLY: Certified copy of 04/26/2023 Final Order with Mandate sent to the District Court Clerk. [7311314-2] [7311314] [22-3031] (GW) [Entered: 05/18/2023 09:21 AM]

**Additional material  
from this filing is  
available in the  
Clerk's Office.**