24-5954

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

In re Mr.Tony Gooch, et al
Petitioner, pro se

Solicitor General Elizabeth B. Prelogar

Vs.

Tennessee Board of Judicial Conduct
(Current) Board Chair G. Andrew Brigham

Attorney General Ronald L. Coleman
Respondents,

Appeal From: Tennessee Supreme Court
Case No. M2022-01395-SC-R8-CO
Appeal From: Court of Criminal Appeal
Case No. M2022-01395-CCA-R3-CD
Appeal From: State Trial Court
Case No. No. 2020-D-2065
Appeal From: Federal District Court
Case No. 3:22-CV-00076

On Extraordinary Writ of Mandamus to the United States Supreme Court From Tennessee Supreme Court/Court of Criminal Appeal (Arbitrary) denial

"EXTRAORDINARY WRIT OF MANDAMUS"

APPEARANCES OF COUNSEL ARGUING CASE

Mr. Tony Gooch argue the cause for petitioner.

Ronald L. Coleman argue the cause for respondents.

Solicitor General Elizabeth B. Prelogar is invited to argue the cause for the petitioner.

"ORAL ARGUMENT REQUEST"

"QUESTIONS PRESENTED"

I. "Whether a local government or Municipal Corporation could be held liable under 42 U.S.C.S. 1983, or held responsible under Monell Liability, for implementing unconstitutional policies that violate a defendant's constitutional rights"?

II. "When a defendant is denied or barred from presenting their 6th Amendment right to effective assistance of counsel by the State Court of Criminal Appeal and State Supreme Court, does that Appellate procedure amounts to inadequacy to protect the defendant's constitutional rights"?

III. "Whether a defendant can appeal the judgment of a 1983 Civil Suit in the United States Supreme Court by Writ of Mandamus, if there is no other adequate or speedy remedy for challenging the judgment in State and Federal Court?

IV. Whether in the history of our Federal Constitution, Can a convicted defendant be allowed on bail (pending) appeal within the meaning of Title 18 U.S.C. 3143(b)(1)? and if so, whether Hankins v. State, 512 S.W. 2d 591 (Tenn. Crim. App. 1974) should be overruled, when it conflicts with Federal Law?

"LIST OF PARTIES"

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

[x] A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(1) ADA Jennifer M. Charles

(2) Defense Attorney Nicholas T. Mcgregor

(3) Defense Attorney Seth T. Norman

(4) Defense Attorney George W. Waggoner III, Esquire

(5) Judge Steve R. Dozier

(4) Solicitor General Elizabeth B. Prelogar

"RELATED CASES"

- Tony Gooch, v. Jennifer Charles et al., No. 3:22-cv-00076, 2023 U.S. Dist. LEXIS 117796 Judgment entered July 10, 2023
- Tony Gooch, v. Jennifer Charles et al., No. 3:22-cv-00076, 2022 U.S. Dist. LEXIS 100459 Judgment entered June 6, 2022

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CASES

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS

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

OPINIONS BELOW

[x] For cases from **Federal courts:**

The opinion of the United States District Court appears at Appendix A to the petition and is

[ ] reported at _____ or

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

[ ] is unpublished.

[x] For cases from State **courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is listed in the petitioner's exhibits. See attached exhibit/all court orders.

[ ] reported at _____ or

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

[ ] is unpublished.

The opinion of the State Court of Criminal Appeals affirming conviction appears at Appendix D to the petition and is listed in the petitioner's exhibits. See attached exhibits/all court orders.

[x] reported at: No. M2022-01395-CCA-R3-CD

[ ] has been designated for publication but is not yet reported.

"JURISDICTION"

[x] For cases from **Federal courts:** The date on which the United States District Court decided petitioner's case was June 6, 2022.

[x] A motion for rehearing/reconsideration was timely filed in petitioner's case.

[x] A timely petition for reconsideration was denied by the United States District Court on the following date: July 10, 2023, and a copy of the order denying consideration appears at Appendix B.

- **Under a finding of exceptional circumstances invoking this court's jurisdiction under 28 U.S.C. 2106, the petitioner hereby request this court to exercise it's discretion, and vacatur powers pursuant to 28 USC 2106 to VACATE the Tennessee Court of Criminal Appeals judgment, and move this court to REMAND the case back to the lower court with instructions to enter a judgment of acquittal. Following that order of remand, the Court shall "OVERRULE" the lower court's denial of refusing to remand the case to the Federal Court of Appeals under extraordinary circumstances that the State proceedings are conducted in bad-faith. The State-court failure to apply the U.S. Supreme Court precedents that the petitioner briefed to the Court of Criminal Appeals, the three judge panel's decision to omit the U.S. Supreme Court decisions from it's final opinion, it's failure to address the petitioner's Federal claims, when presented with similar facts on it's face, the panel's decision to "purposefully" abandon a reversible/structural error on appeal, and it's decision to waive petitioner's claims of ineffective assistance of counsel set forth substantial claims of "arbitrary" denial of federal protected rights, and denial of due process of law resulting in discrimination of which the Municipal Corporation is liable. Corrective State process is absent or futile for the reasons explained in this Writ of Mandamus.**

Congress has allowed the U.S. Supreme Court to entertain jurisdiction under circumstances involving Municipal liability. Citing Monell v. City of New York, [436 U.S. AT *679] The United States Supreme Court elaborated: "Congress could constitutionally confer jurisdiction on the federal courts to entertain suits seeking to hold municipalities liable for using their authorized powers in violation of the Constitution. As Mr. Justice Brennan, writing for the court, said in Monell v. New York City Dep't. Of Soc. Serv. No. 75-1914 [436 U.S. At *680] "An action would be allowed to be maintained against a municipality in the courts of the United States under the ordinary restrictions as to jurisdiction. [ ] Cases from **State courts:** "The date on which the highest state court decided petitioner's case was July 10, 2023. A copy of that decision appears at Appendix A. A timely petition for rehearing was "arbitrarily" denied on the following date: June 14,2023 and July 10, 2023. The Intermediate Court affirmed conviction was June 3, 2024. See Appendix D.

"CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED"

"STATEMENT OF THE CASE"

The petitioner filed an extraordinary writ of Mandamus under Rule 20 to the United States Supreme Court seeking to reverse the judgment of the Tennessee Supreme Court, Tennessee Federal District Court, Tennessee Trial Court, and Tennessee Intermediate Appellate Court which all denied the petitioner's pleadings and request to be immediately released from state custody during this appeal. The petitioner seeks to **COMPEL** the lower courts by Writ of Mandamus to order his immediate release from State custody effective immediately. The petitioner further seeks to **COMPEL** the State of Tennessee to hold the City of Nashville liable under Monell liability for his (false imprisonment) and for violations of his constitutional rights.

This case arises from an unlawful traffic stop, and fabricated evidence which presents (critical) issues of great importance: (1) Whether the City of Nashville policies contributed to petitioner's 4th Amendment violation as to warrant Monell liability, (2) Whether a defendant can appeal the judgment of a 1983 Civil Suit in the United States Supreme Court by Writ of Mandamus, if there is no other adequate or speedy remedy for challenging the judgment in State or Federal Court, (3) Whether the Intermediate Appellate Court's local rule established in Hankins v. State, 512 S.W. 2d 591 (Tenn. Crim. App. 1974) should be overruled when it conflicts with Federal law on a question of bail pending appeal," and When a defendant is denied or barred from presenting their 6th Amendment claims to effective assistance of counsel by the State Court of Criminal Appeal and State Supreme Court, does that Appellate procedure amounts to inadequacy to protect the defendant's constitutional rights"?

In this case, the petitioner was grossly denied effective assistance of counsel, put on trial without a proper charge where trial counsel was unfamiliar with the rules of evidence, failed to properly preserve errors, failed to conduct any pre-trial discovery, failed to investigate fraud, failed to communicate with his client, and failed to "timely" litigate a meritorious fourth amendment claim which resulted in a finding of malpractice. Counsel lacked both the skill and knowledge adequately to "timely" prepare petitioner's defense leaving the jury, and the Appellate Court nothing to consider but the petitioner's crimes. The Federal allegations raised in petitioner's 1983 civil lawsuit, and now raised before nine justices of the respective U.S. Supreme Court pertains to a state prosecutor, and state Judge falsifying court records. It is argued that Judge Steve R. Dozier acted in the clear absence of jurisdiction by unreasonably delaying petitioner's case, and subsequently "deleted" the delayed court dates thereafter in an effort or attempt to (cover up) the postponement.

A Federal District Judge hearing the cause on review held that the state-judge was absolutely immune from claims arising from his "judicial acts". In support of legal authority, the Tennessee Federal District Court relied upon Briscoe v. LaHue, 460 U.S. 325, 334, 103 S. Ct. 1108, 75 L.Ed. 2d 96 (1983) in determining that a State Judge was absolutely immune for his "judicial acts". The petitioner argue that the lower Federal court reliance upon Briscoe is misplaced, and inapplicable to the facts of the present case. The petitioner's complaint submitted before the Tennessee Federal Court spoke of **"non-judicial"** acts, and **"unofficial acts"** committed by a judge. Specifically, the petitioner's 1983 civil rights complaint submitted before the court properly alleged that a State- court judge Steve R. Dozier acted in the clear absence of jurisdiction by "falsifying" court dockets which is a **"non-judicial"** act in nature.

The petitioner argue that the Tennessee Federal Court committed reversible error by failing to distinguish his 1983 complaint between **"judicial acts"** and **"non judicial"** acts. As a result, the Federal District Court abused it's discretion in this respect. "Absolute immunity" is not available if the alleged wrongful conduct was committed pursuant to a non-judicial act, i.e., one not taken in the judge's judicial capacity. (Citing Forrester v. White, 484 U.S. 219, 229-30, 108 S. Ct. 538, 98 L.Ed. 2D 555 (1988). As Supreme Justice O'Connor, writing for the court, said in Forrester v. White, [No. 86-761], 484 U.S. At (*221) "We conclude that the judge's decisions were not judicial acts for which he should be held absolutely immune". Thus, "it [is] the nature of the function performed, not the identity of the actor who performed it, that informs[ ] [an] immunity analysis." id. 484 U.S. At *229. Moreover, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles v. Waco, 502 U.S. 9, 9-10, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991)). (Quoting Mireles, 502 U.S. at *11-12.

The Petitioner's 1983 civil suit further alleged that the Assistant District Attorney Jennifer M. Charles "tampered" with governmental records, and fabricated legal documents in an attempt to "cover up" petitioner's false arrest in violation of T.C.A. 39-16-503(a) against the peace and dignity of the State of Tennessee. It is argued that once petitioner notified his defense counsel of the allegations in question, former trial counsel Nicholas T. Mcgregor stated via letter that the government would not be (exposed) for engaging in prosecutorial misconduct. On direct review to this court, the petitioner now argue in his Writ of Mandamus that the Tennessee Supreme "arbitrarily" denied him review. Hereinafter, the proof will be briefly summarized for the United States Supreme Court to show that the petitioner was arrested without probable cause. On January 8, 2019 at approximately 3:26 pm, surveillance video of the crime showed (masked intruders) brandishing what appeared to look like handguns during a robbery. Eyewitnesses testified that they did not know what kind of weapons were used or involved in the crime. See Preliminary Transcript pg. 47 Line 11 See Preliminary Transcript Pg. 23 Line 24.

As a result, eyewitnesses were unable to verify information obtained about the weapons used during the attack. Eyewitnesses further informed (Midtown first responders) that the suspects had stole their cell phones, and $350 dollars in cash. In addition, one of the witnesses reported that she had been sexually assaulted.
Shortly thereafter, Midtown officers received additional information from eyewitnesses about the suspect vehicle, and the suspect description. Eyewitnesses testified that they believed the intruders were African American males. Although eyewitnesses indicated that the suspects may have been Black, eyewitnesses testified during two hearings that they did not see any Black suspects or African Americans get inside a particular get-away car. See Prelim Transcript Pg. 40 Line 4. See Vol.7 Trial Transcript Pg. 83 Line 5.

Therefore, prior to the initiation of the stop, radio dispatchers and Midtown Hills Precinct were not informed that any suspects left inside an orange mustang. As the investigation developed, radio dispatch confirmed that eyewitnesses were unable to obtain a tag description of the suspected vehicle. Vol. 7 Pg. 103 Line 24-25. Based upon the vague information gathered from eyewitnesses, Midtown first responders, and surveillance footage of the crime, the Midtown Hills Police department requested for (police assistance), and issued a bolo alert to responding units to be on the lookout for an orange mustang. Once Midtown agency and dispatchers issued the police alert, North precinct officers stationed from a separate district were able to hear the broadcast air over the radio throughout the city of Nashville, Tn. North precinct officer Justin Vaughn testified that him and his partner officer Brian Musgrave were working an unrelated traffic accident on I-65 when they heard the bolo air over the radio and (acted in reliance) upon the bolo alert to (randomly) stop the petitioner's vehicle at a fast-food restaurant.

North precinct Officer Vaughn testified that he did not stop the petitioner's vehicle for investigation of any traffic violations established in the Metropolitan Code of Law. **See Vol 7 Trial Transcript Pg. 134 Line 24 Q. And the blue lights, did those come on as a result of (any type) of traffic violation? Officer Vaughn A. "No".** The petitioner Mr. Gooch, who was subjected to police misconduct, was a driver in a car that was not stopped for any traffic violations. As the United States Supreme Court explained long ago in Arizona v. Johnson, No. 07-1122, the United States Supreme Court elaborated: "We hold that, in a traffic stop setting, the first Terry condition- a lawful investigatory stop- is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. Id. 555 U.S. At *327. In Delaware v. Prouse: The Supreme court held that a random stop of a motorist in the absence of specific and articulable facts to justify the stop by reasonable suspicion that a violation of the law has occurred is constitutionally impermissible and violative of the Fourth and Fourteenth Amendments to the United States Constitution. Quoting Delaware v. Prouse, No. 77-1571, 440 U.S. At *651.

During petitioner's judgment of acquittal motion at trial, the trial court held that petitioner's initial police encounter was reasonable after MNPD officers testified that the initiation of the traffic stop was not supported by any traffic violations. Vol 7. Pg. 134 Line 7. Vol. 9 Pg. 53 Line 1-12 . In light of the United States Supreme Court opinions issued in Delaware v. Prouse, and Arizona v. Johnson, regarding the legality of an investigative stop, we do not hesitate to hold that the trial court abused its discretion in finding that the police stop was justified at its inception.

It is argued that after the petitioner refused the officers consent to search the car, officers ordered the petitioner to step outside the car, placed him in handcuffs, and randomly begin performing unrelated inquiries such as conducting a show-up procedure which was aimed at detecting evidence of ordinary criminal wrong-doing. Indianapolis v. Edmond, 531 U.S. 32, 40-41, 121 S. Ct. 447, 148 L. Ed. 2D 333 (2000). During the initial police stop, officers did not discover any of the victims property in the petitioner's possession or vehicle, and nothing in Mr. Gooch's answers provided the officers with further suspicion to prolong the stop for an identification procedure.

Based upon the conclusion of North precinct's unrelated identification procedure which produced negative identifications, conflicting identifications, and no other leads at the time of the stop, officers made the decision to involuntary transport the petitioner to a police station for further questioning. Officers did not have a warrant, nor probable cause to arrest at that time.

In support of petitioner's claim for Monell liability, the petitioner argue that a local Tennessee policy allowed the City of Nashville authorities to transport the petitioner to a police station-without a warrant or probable cause to arrest him-and interrogate him for matters unrelated to the police stop. Initial Brief For Petitioner Pg. 55. No reasonable prosecutor in ADA Jennifer Charles position would have concluded at 6:45 p.m. on the night in question of the petitioner's interrogation that it had probable cause to bring forth criminal charges absent the petitioner's exercise of his 5th Amendment rights. At that time, no forensic evidence was tested, no fingerprints were collected in the case, See Vol.7 Pg. 116 Line 2-4. Two other (key witnesses) were not able to identify Mr. Gooch as the suspect, none of the victims property were found or traced to Mr. Gooch's possession, one victim cell phone was never recovered, officers had no prior knowledge that the petitioner was armed prior to the stop, and it was unknown what kind of weapons were used in the crime. Therefore, at the time officers transported Mr. Gooch to a police station, it is undisputed that officers did not have sufficient probable cause nor "corroborative information" to believe that Mr. Gooch was guilty of Aggravated robbery.

Because an officer acting under similar circumstances was held to have violated the State and Federal Constitution, we do not hesitate to hold that the custodial interrogation in this case exceeded constitutional requirements. (Citing Dunaway v. NewYork, 442 U.S. 200, 209, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979)) "Holding Rochester police violated the Fourth and Fourteenth Amendments when, without probable cause to arrest, they seized petitioner and transported him to the police station for interrogation". Having now determined that petitioner's initial and resulting detention of his seizure was not supported by articulable reasonable suspicion, the next inquiry is whether the evidence discovered during the unlawful stop should have been suppressed. The trial court abused its discretion in admitting evidence at trial obtained from the stop.

In the present case, the record reflect that the trial court admitted evidence obtained from the stop based upon it's conclusion that officers "responding" to the police bolo had reasonable suspicion to warrant the stop. Vol. 9 Pg. 53 Line 1-12 .We note that the trial court findings on this issue as to the admissibility of the evidence was not only contrary to, but it applied an unreasonable application of clearly established Federal law. The United State Supreme Court elaborated in Hensley v. United States, regarding admissibility of evidence: "When the police make a stop in objective reliance on a flier or bulletin, we hold that the evidence uncovered in the course of the stop is admissible if the police who "issued" the flier or bulletin possessed a reasonable suspicion justifying a stop". Quoting Hensley, id. 469 U.S. at (*233), 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985).

In the context of a police bolo, the proposition in Hensley instructs our lower courts that the court inquiry shall focus upon whether officers who "issued" the police bolo developed probable cause. The trial court failed to consider during the petitioner's judgment of acquittal motion whether officers who "issued the bolo had probable cause to effect an arrest. For this reason, the trial court abused it's discretion by basing its decision on a clearly erroneous assessment of the evidence. Accordingly, we conclude that the (Midtown Hills Precinct) who "issued" the police bolo in the present case, did not have reasonable suspicion nor probable cause to seize the petitioner at the time officers cut on their blue lights. Therefore, the evidence uncovered during the course of the stop was inadmissible and should have been excluded from the petitioner's trial if the agency who "issued" the police alert lacked the necessary reasonable suspicion to warrant the seizure. Quoting Hensley, id. 469 U.S. at (*233). The trial court's decision to admit evidence obtained from the illegal stop was based on the court's "flawed assessment" of two patrol officers "responding" to the bolo alert. Because the trial court analysis was based on such flawed premise, that opinion must be vacated. Subsequently, on January 18, 2019 the petitioner was scheduled in court for a preliminary hearing.

Prosecutor Jennifer M. Charles representing for the State of Tennessee knowingly put on **(fabricated evidence)** during the petitioner's preliminary hearing, and **"corruptly"** used that evidence to (frame) the petitioner. Under Pyle v. Kansas, 317 U.S. 213, 216, 63 S. Ct. 177, 87 L. Ed. 214 (1942), the U.S. Supreme Court held: "The knowing use by the prosecution of perjured testimony in order to secure a criminal conviction violates the Constitution". Moreover, the fifth circuit has concluded that the Fourteenth Amendment guarantees a "due process right not to have police deliberately fabricate evidence and use it to frame, and bring false charges against a person. Cole v. Carson, 802 F.3d at *768-769 (5th Cir. 2015).

In the present case, star witness Anna Biddle testified under oath that she identified Mr. Gooch as the suspect who allegedly committed the offenses. Although these accusations were completely made up, we note that this testimony presented by the lead prosecutor Jennifer Charles was known to be false to the prosecutor. Audio recorded evidence and document files located in the prosecutor's possession pertaining to the show-up identifications were recorded on the day of the crime in which victim Anna Biddle stated that she did not identify Mr. Gooch as the suspect who robbed her. In addition to the audio recorded evidence, show up detective Kimberlin Rothwell documented in her investigative report that Ms. Biddle did not identify Mr. Gooch as the suspect in the case. See Exhibit Documents.

Despite this information contained in the prosecutor files, prosecutor Charles knowingly put the witness on the stand on January 18, 2019 to "falsely" testify that Mr. Gooch committed the crimes despite of evidence to the contrary. A preliminary judge relied on the (fabricated testimony) in finding that probable cause existed to bound the petitioner over for further criminal proceedings. See Preliminary Transcript Pg. 75 Line 1-3.

In addition to offering false testimony, prosecutor Jennifer Charles had reasons to know that the police falsely arrested the petitioner without probable cause, and also had reasons to know that the police arrest time reported at 11:14 pm in the arrest reports on 1/8/2019 were clearly improper. Prosecutor Charles immediately "tampered" with multiple legal documents pertaining to the "radio traffic" which contained the dates, and arrest times relating to the illegal traffic stop. The ADA Jennifer Charles further "tampered" with the supplementary discovery documents relating to when the show-up identifications occured in an attempt to "cover up petitioner's false arrest. See Exhibit Documents.
A reasonable prosecutor would have known that by modifying the actual dates related to it's case file investigation, and changing the times of when the petitioner was arrested, such prosecutor would have known that it was engaging in action taken to conceal a defendant's unlawful arrest.

Citing S.L. v. St. Louis Metro. Police Dep't Bd. of Police Comm'rs, 725 F.3d at (*853) "Holding where a supervising officer has intentionally aided an office in concealing the circumstances surrounding an improper arrest, that officer has reason to "understand" his conduct was "unlawful" and in violation of the arrestee's constitutional rights". The supplementary discovery documents reflect that prosecutor Charles "corruptly" changed the times, and dates of the show-up recordings to the same date the preliminary hearing occurred on January 18, 2019. See attached exhibits. See attached documents.

See United States v. Gonzalez, 906 F.3d at (*795) "Holding a defendant can make false representations both by modifying an existing document in a way that obscures the truth, and by creating a fabricated document". The piece of evidence dated on the documents in question mean that (January 18, 2019) was the last date the prosecutor had "tampered" or modified the documents in question. Prosecutor Jennifer Charles sent the fabricated supplemental discovery documents with an email attached to former defense Attorney Seth Norman who later mistakenly sent the petitioner a copy of the documents. See Exhibit Documents.

Once petitioner examined the documents, and reported to Attorney Norman that the documents were falsified, and complained that the files related to a key-witness show-up identification had mysteriously vanished, Attorney Norman filed a motion to withdraw from the case. The petitioner later reported the misconduct to former trial counsel Nicholas T. Mcgregor who stated that the government would not be (exposed) for engaging in any prosecutorial misconduct. See Exhibit Documents. Based on the claims alleged in the 1983 suit, it is argued that Prosecutor Jennifer Charles engaged in a series of "investigatory acts" prior to, and independent from the "judicial phase of the criminal process" that would prohibit absolute immunity, and qualified immunity from attaching in any suit.

Generally, when a prosecutor functions outside his or her role as an advocate for the people, the shield of [absolute] immunity is absent. Hill v. City of New York, 45 F.3d at *661. As Justice Powell writing for court, said in Harlow v. Fitzgerald, [No. 80-945] 457 U.S. At (*819): "We provide no license to lawless conduct. "Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate, and a person who suffers injury caused by such conduct may have a cause of action". Based on the claims presented herein, the petitioner brought this lawsuit under 42 U.S.C. 1983 against the Tennessee Assistant District Attorney Jennifer M. Charles, Judge Steve R. Dozier, defense attorneys, and (collectively several police officers from the Nashville Police Department) during pre-trial. See Tony Gooch, v. Jennifer Charles, No. 3:22-cv-00076, 2023 U.S. Dist. LEXIS 117796.

The Tennessee Federal District Court denied the petitioner pre-trial relief concluding majority of his claims were untimely. Subsequently, nearly three years later at trial, the government introduced evidence obtained from the illegal stop such as rolled coins, bb guns, and etc. Preliminary counsel George Waggoner, counsel Seth Norman, and Trial counsel Nicholas Mcgregor who failed to conduct any pre-trial discovery, did not move to "timely" suppress the items introduced from the stop because they had been completely "unaware" that the petitioner was arrested without probable cause, and seized during an unlawful traffic stop until the day of trial. In terms of petitioner's unreasonable seizure, the trial judge specifically asked counsel the following questions during pre-trial:

See Vol. 4 Pre-Trial Hearing Transcript. Pg. 13 Line 22 The Court: "From an ethical standpoint, but do you, I know we've had this suppression a year ago that the court issued an order on, but any other suppression motions you think there is a legal basis to file specifically on the stop?

Line 8-10 The Court: "I don't know what happened between 3:42pm and 5:14pm, so is there anything to be filed on his issues about the stop"? Attorney Mcgregor: "No, I don't know if the court wants me to get into the facts". The Court: "No, I'm just asking, you don't think there is a legal basis to file anything"? Attorney Mcgregor: "No, I do not".

"PETITIONER'S JUDGMENT OF ACQUITTAL MOTION AT TRIAL"

See Vol. 9 Trial Transcript Pg. 49 Line 4-25. See Line 20. Attorney Mcgregor: "I did want to highlight the testimony that came out (at trial) about the traffic stop, and all of the testimony that did come out. See Line 9 "One of the things that we did here was about this Mustang and that it was not pulled over for a traffic stop". "So I would ask that the Court end this right now for him and acquit him of those charges". Counsel failure to conduct any pre-trial discovery, or suppression on this issue, was not sound strategy, and his late arguments were unreasonable, along with his failure to "preserve" the errors. The government introduced messages three years later found on the co-defendant's cell phone in which it claimed that the petitioner discussed a robbery. Counsel moved to suppress the messages which was denied by the trial court. Although the government does not contend but indicate that these text messages implicate the petitioner in said crime, the text messages cannot provide a basis for this court to find that officers had probable cause to arrest the petitioner because the officers were not aware of the text messages when they arrested Mr. Gooch. (Quoting United States v. McDow, S2 15 Cr. 233 (PGG), 206 F. Supp. 3d at (*844-845) 2016 U.S. Dist. Lexis 84649 at (*22) "Probable cause to arrest a person is determined on the basis of facts known to the arresting officer at the time of the arrest, and encompasses only the information available to the arresting officer prior to and including the point the seizure was made".

"ARGUMENT"

I. "A City or local government could be held liable under 42 U.S.C.S. 1983, or held responsible under Monell Liability, for implementing unconstitutional policies that violate a defendant's constitutional rights?

In Monell v. New York City Dep't. Of Soc. Serv. No. 75-1914, 436 U.S. At *694-95 the United States Supreme Court concluded: "We conclude, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under 1983". id. 436 U.S. At *694. See Connick v. Thompson, 563 U.S. 51, 60, 131 S. Ct. 1350, 179 L. Ed. 2D 417 (2011) ("A municipality or other local government may be liable under this section [1983] if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation." The instant case present an issue of great importance on the question of liability of an Municipality.

Because the government maliciously argue on appeal that petitioner's Monell claim should be dismissed, Brief For Respondent Pg. 20, and the Intermediate Appellate Court concluded that State Courts lack jurisdiction to consider a Monell claim, the petitioner now seeks to **COMPEL** the government by Writ of Mandamus to hold the State of Tennessee and City of Nashville liable under Monell Liability for creating an unconstitutional interrogation policy that violated his rights under Article 1 Section 8 of the Tennessee Constitution. As Mr. Justice Brennan, writing for the court, said in Monell v. New York City Dep't. Of Soc. Serv. No. 75-1914 436 U.S. At *667 "If a municipality were liable, the judgment against it could be collected by Mandamus, execution, attachment, garnishment, or any other proceeding in aid of execution or applicable to the enforcement or judgments against municipal corporation". id. 436 U.S. At *667.

A. Applicable Legal Standard

Under Article III of the United States Constitution, a plaintiff must have standing to bring their claims. See TransUnion LLC v. Ramirez, 594 U.S. 413, 417, 141 S. Ct. 2190, 210 L. Ed. 2D 568 (2021). To establish Article III standing invoking federal jurisdiction, the United States Supreme Court elaborated: "The plaintiff bears the burden of establishing three elements". (1) The plaintiff must have suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. Spokeo, Inc. v. Robins, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2D 635 (2016). Citing Lujan v. Defenders of Wildlife, {504 U.S. at *560-61}112 S. Ct. 2130, 119 L. Ed. 2D 351 (1992).

In support of petitioner's claim for Monell liability, the petitioner argue that the Metro Nashville policy 15.30.040 allowed the City of Nashville Officials to transport Mr. Gooch to a police station station-without a warrant or probable cause to arrest him-and interrogate him for matters unrelated to the investigation. Initial Brief For Petitioner Pg. 52-59. The petitioner assert when he arrived at the police station, and indicated he wished to assert his (5th Amendment right) by declining to speak with officers, the policy allowed authorities to arrest the petitioner at a police station for exercising his 5th Amendment right. The petitioner has alleged facts establishing that he has suffered an invasion of his Fourth Amendment and 1st Amendment rights meeting the injury-in fact-requirement.

Based on these claims, we conclude that the petitioner raise a viable question of fact as to whether the "policy in question" punishes citizens for exercising their rights which is fairly traceable to the municipal corporation satisfying the "fairly traceable" requirement. **See Interrogation and Interview Policy 15.30.040 Section (A)(4) which provides as follows: "If a suspect indicates they do not wish to speak with police, the suspect will be "arrested" or released".**

In addition, the petitioner argue that the Metro interrogation policy 15.30.040 was the (moving force) behind the petitioner's constitutional violations on January 8, 2019. Initial Brief For Petitioner Pg. 54. To plead a claim for municipal liability under ⊏ 1983, Plaintiff must plausibly allege that his or her constitutional rights were violated and that a policy or custom of Metro was the "moving force" behind the deprivation of Plaintiff's rights. Miller v. Sanilac County, 606 F.3d 240, 254-55 (6th Cir. 2010) (citing Monell, 436 U.S. at 694) (internal citation omitted). There are effectively four ways to establish municipal liability under 1983. Plaintiff can challenge the official action of a municipal legislative body, agency, or board; (2) a policy-making decision by an individual with final decision-making authority; (3) Metro's deliberately indifferent failure to train, screen, or supervise its employees; or (4) Metro's deliberate indifference to a clear and persistent pattern of illegal activity (a "custom") about which Metro policymakers knew or should have known. Monell, 436 U.S. at 694; Pembaur v. City of Cincinnati, 475 U.S. 469, 483-84, 106 S. Ct. 1292, 89 L. Ed. 2D 452 (1986);

In Manuel v. City of Joliet, the United States Supreme Court specified that it looked to the Fourth Amendment to analyze-and uphold-such a claim that a pretrial restraint on liberty is unlawful {197 L. Ed. 2d 321} unless a judge (or grand jury) first makes a reliable finding of probable cause. Quoting Manuel id., at 137 S. Ct. 917-918. See Gerstein v. Pugh, 420 U.S. at 114, 117, n. 19, 95 S. Ct. 854, 43 L. Ed. 2d 54. Two years later after Manuel's decision, the U.S. Supreme Court reinforced the rule in United States v. Hammond, No. 17-1672, concluding only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty". {204 L. Ed. 2d LedHR1, 139 S. Ct. 2369.

Yet, in this case, the State of Tennessee has a local policy that compel law enforcement to arrest a man and send him to jail if he express any intent to assert his 5th Amendment right against self-incrimination. Because we hold that the policy is not only discriminatory, it is unconstitutional under the 4th and 14th Amendment because a pretrial restraint on liberty is unlawful {197 L. Ed. 2d 321} unless a judge (or grand jury) first makes a reliable finding of probable cause. Manuel id. at 137 S. Ct. 917-918. Thus, the local policy violates Article 1 Section 8 of the Tennessee Constitution which provides: "That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life but by the judgment of his peers or the law of the land". Accordingly, we hold that the City of Nashville is liable under 42 U.S.C.S. 1983 for employing an unconstitutional policy that allowed City officials to transport the petitioner to a police station for custodial interrogation, and subsequently punish petitioner for exercising his 5th Amendment right.

It is unconstitutional to punish a person for choosing to exercise their constitutional rights. Citing United States v. Jackson, 390 U.S. 570, 581, 88 S. Ct. 1209, 20 L. Ed. 2d 138 (1968). On April 18, 1871 in the House of Congress, the first conference committee enacted the Sherman amendment which provided as follows: "A cause of action was given to persons injured by "any persons riotously and tumultuously assembled together ... with intent to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous condition of servitude ....". (Quoting Monell, 436 U.S. At *666.

In any event, there was no probable cause to arrest Mr. Gooch, and as explained in detail above, police may not bring citizens to the police station against their will for investigative purposes without probable cause to arrest. See Hayes, 470 U.S. 811, 105 S. Ct. 1643, 84 L. Ed. 2d 705, Dunaway, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824. To do so, is a seizure in violation of the Fourth Amendment. (Quoting Reuben Glass v. City of Philadelphia, No. 99-6320, 455 F. Supp. 2d at *357 "Holding the City of Philadelphia was liable under 42 U.S.C.S. 1983 for employing the unconstitutional custom of involuntarily transporting defendants to a police station without probable cause to arrest, and placing them in a cell for 2 to 3 hours for investigative purposes". Moreover, because a refusal to speak to an law enforcement agent is a constitutional right guaranteed by the 5th Amendment, a reasonable policy maker would have known that by enforcing such a policy would allow government officials to "effectuate" an arrest solely on a defendant's "exercise" of his rights. North Carolina v. Pearce, 395 U.S. 711, 724, 89 S. Ct. 2072, 23 L. Ed. 2D 656 (1969). Based on the reasons articulated herein, the petitioner have carried it's burden of establishing that the challenged conduct is traceable to the municipality which can be redressed by a favorable judicial decision establishing standing.

Accordingly, this court will not hesitate to hold that the policy in question is blatantly unconstitutional on its face. As the petitioner argued on his direct appeal which was rejected by the lower courts, Brief For petitioner Pg. 52 and now re-asserted before the U.S. Supreme Court, trial counsel was ineffective for failing to "timely" raise a Monell liability claim.

"Tennessee Law (Interfere) With U.S. Supreme Court Decisions And Prevents Municipal Corporations From Being Held Liable"

Although the U.S. Supreme Court has ruled that a municipality may be held liable if the execution of a government's policy 'subjects' a person to a deprivation of rights, (Quoting Monell v. New York City Dep't. Of Soc. Serv. 436 U.S. At *694-95 Tennessee law adopted a rule to circumvent or side-step the Monell liability requirement. For example, under Tennessee law, if a government body is sued on the basis of Municipal liability, T.C.A. 29-20-205 provides that: "A municipality has immunity from being held liable if the claims arise out of civil rights violations". Section 29-20-205 of the TGTLA (Tennessee Government Tort Liability Act) provides that a municipality's immunity is retained when injury arises out of "civil rights".

See Teresa Lynn Jackson v. Aaron Thomas, No. M2010-01242-COA-R3-CV The Tennessee Federal Court of Appeals concluded: "Because plaintiff asserts his state law claims against Jackson County in the context of a civil rights case, his alleged injuries arise out of "civil rights", and the governmental entities are entitled to immunity from suit under the TGTLA". Comparing Jackson v. Thomas to the present case, we foresee that if petitioner attempted to sue the City of Nashville in a 1983 suit for violations of Monell requirements, the City can escape liability pursuant to T.C.A. 29-20-205 by contending that it is immune from suit.

Accordingly, based on the reasons explained herein, T.C.A. 29-20-205 must be overruled or declared invalid in the context of an Monell liability claim because the statute is inconsistent or conflicts with the U.S. Supreme Court decisions on a question of Municipal liability. State-law immunities do not override a cause of action under 42 USCS ⊏ 1983, which imposes civil liability on any person who deprives another of his federally protected rights. Citing Monell, Footnotes Section 11(B). The U.S. Supreme Court overruled Monroe v. Pape, 365 US 167, 5 L Ed 2d 492, 81 S Ct 473, insofar as it held that local governments were wholly immune from suit under 1983. Citing Monell, [436 US at *695]. As Mr. Chief Justice Burger writing for the Court, said in Scheuer v. Rhodes, 416 U.S. At *248, 40 L Ed 2d 90, 94 S Ct 1683, 71 Ohio Ops 2d 474 "Local governments sued under 1983 cannot be entitled to an absolute immunity, lest today's decision be drained of meaning".

With respect to the Constitution, we are of the opinion that the U.S. Supreme Court did not create a civil remedy for government entities to be held liable under Monell decision just for it to be circumvented by Tennessee local immunity law. Accordingly, based on the foregoing reason, Section 29-20-205 of the TGTLA (Tennessee Government Tort Liability Act) departed from prior practice on a question of Municipal liability arising from civil rights violations. Therefore, Section 29-20-205 must be declared invalid. See Tenn. Sup. Ct. R. 18(c) which provides as follows:"[A]ny local rule that is inconsistent with a statute or a procedural rule promulgated by the Supreme Court shall be declared invalid".

II. "A defendant who is denied or barred from presenting their 6th Amendment right to effective assistance of counsel by the State Court of Criminal Appeal, and State Supreme Court, results in an inadequate Appellate procedure insufficient to protect the defendant's constitutional rights"?

The petitioner hereby seeks direct federal protection of his fundamental personal 6th Amendment right to effective assistance of counsel which will be stripped of all effects resulting therefrom if the U.S. Supreme Court does not intervene to protect that right. The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair, and the verdict rendered suspect. See Strickland v. Washington, 466 U.S. At 686, 80 L. Ed. 2d 674, 104 S Ct 2052, United States v. Cronic, 466 U.S. 468, 655-657, 80 L Ed 2d 657. In the present case, the State Appellate Court affirmed the petitioner's conviction, and "barred" him from presenting his ineffective assistance claims on direct appeal which represents a fundamental illegality in the appeal process as "suspect". The structure or design of the Tennessee procedures promulgated by the Supreme Court of Tennessee is "inadequate" to protect a defendant's constitutional rights which make it nearly impossible to present an ineffective assistance claim at all.

In the present case, the petitioner raised on direct appeal that he was unconstitutionally denied effective assistance of counsel on various grounds in the trial court. The right of an accused to counsel is beyond question a fundamental right. See Gideon v. Wainwright, [372 US, at *344,] 9 L Ed 2d 799, 83 S Ct 792. One of the grounds petitioner raised on appeal was that his counsel was grossly ineffective for failure to "timely" or competently litigate a "meritorious" Fourth Amendment claim. The State appeals court refused to entertain petitioner's 6th Amendment claims, and affirmed the petitioner's convictions. The court concluded that claims of ineffective assistance of counsel are more appropriate for post-conviction relief, rather than raised on direct appeal as of right. In support of this contrary analogy, the court relied upon State v. Honeycutt, 54 S.W. 3D 762, 766 n.3 (Tenn 2001). The Court of Criminal Appeal analysis is seriously flawed.

This contrary rule encounter multiple issues. First, the United States Supreme Court rejected the theory that a defendant could not vindicate their right to effective assistance of counsel on direct appeal in Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S. Ct. 2574, 91 L. Ed.2d 305 (1986). In Kimmelman, The U.S. Supreme Court concluded: "As we held only last Term, the right to effective assistance of counsel is not confined to trial, but extends also to the first appeal as of right". See (Footnote Section #2). As Mr. Justice Brennan writing for the court said, in Kimmelman: [477 U.S. At 378] "Because collateral review will frequently be the only means through which an accused can effectuate the right to counsel, restricting the litigation of some Sixth Amendment claims to trial and direct review would seriously interfere with an accused right to effective representation". [477 U.S. At *378] "Were we to extend Stone and hold that criminal defendants may not raise ineffective-assistance claims that are based primarily on incompetent handling of Fourth Amendment issues on federal habeas, we would deny most defendants whose trial attorneys performed incompetently in this regard the opportunity to vindicate their right to effective trial counsel". [477 U.S. At 378].

Justice Powell, with whom The Chief Justice and Justice Rehnquist join, concurring in the judgment concluded: [477 U.S. At 393] "Strickland explicitly stated that "[t]he principles governing ineffectiveness claims should apply in federal collateral proceedings as they do on direct appeal or in motions for a new trial." id. 477 U.S. At 393] Citing Strickland [466 US, at 697] 80 L Ed 2d 674, 104 S Ct 2052. The U.S. Supreme Court further ruled: **"A defendant has a valid ineffective-assistance claim whenever he has been denied that opportunity, regardless of the law on which counsel's error is based. (Quoting Kimmelman. id. [477 U.S. At 393].** See Trevino V. Thaler, [569 U.S. AT *432] Chief Justice John Roberts wrote in his Dissenting Opinion concluding: "By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims.' id. [569 U.S. AT *432].

Because the standards articulated by the Supreme Court of the United States today do not require rejection of ineffective assistance claims on direct appeal, the lower court erred in this respect by applying an unreasonable application of clearly established Federal law. Second, the majority opinion is "suspect". The lower court argue on appeal that petitioner's ineffective assistance of counsel claim is deemed waived, and could not be brought on direct appeal because the petitioner didn't raise the claim in his motion for new trial. Although this finding in itself is inaccurate however, the court reached this contrary conclusion despite of it's recent decision rendered in Bernard Woodard v. State, No. M2022-00162-CCA-R3-PC. In Bernard, the court recently held: "A claim asserting an ineffective assistance of counsel claim may be brought even when the underlying substantive issue has been waived or previously determined".

According to Bernard Woodard opinion, if that analysis is correct, there is no reason why the Intermediate Appellate Court couldn't have considered petitioner's 6th Amendment claims on direct appeal other than for some "arbitrary" reason to deny petitioner relief. The opinion in Bernard Woodard case was decided in 2022. Rather than rely upon it's recent 2022 opinion in Woodard to provide relief on petitioner's 6th Amendment claims, the court doubled back in history, and relied upon a previous case from 2016 in State v. Abraham, No. W2016-01497-CCA-R3-CD, 2017 WL 972153, AT *4 (Tenn. Crim. App. Mar. 13, 2017) to deny petitioner relief on his 6th Amendment claim. The court in Abraham held that defendant's failure to raise ineffective assistance of counsel in his motion for a new trial deprived the trial judge of the opportunity to evaluate trial counsel's performance". To the extent that the lower court relied upon Abraham authority for the proposition that the trial judge was deprived of his opportunity to evaluate counsel's performances did not preclude the reviewing court from assessing those errors. Citing Kimmelman v. Morrison, [477 U.S. At *386] The United States Supreme Court elaborated: "It will generally be appropriate for a reviewing court to assess counsel's overall performance throughout the case in order to determine whether the "identified acts or omissions" overcome the presumption that counsel rendered reasonable professional assistance". id. [477 U.S. At *386]

Because the court deviated from its own previous ruling in Bernard Woodard, and departed from well settled principles announced by the U.S. Supreme Court on a question of whether an ineffective assistance claim could be properly adjudicated on direct appeal, any other authority to the contrary is inconsistent with the laws of the land, and must be overruled. Tenn. Sup Ct. 18(c). The intermediate appellate court erred when it denied the petitioner the opportunity to vindicate his right to effective assistance of counsel on direct appeal, and departed from the U.S. Supreme court's decisions by barring the petitioner from presenting his 6th Amendment claim under the notion that the petitioner's claims were waived, and appropriate for a post-conviction hearing.

The panel's decision to deny relief and waive petitioner's 6th Amendment claim is **"suspect".** Under Tennessee law, the Post-Conviction Procedure Act does not authorize a court to grant relief on issues that have been deemed "waived. Nothing in the language of the Act, or our case law interpreting the act provides a court of original jurisdiction to entertain "waived" issues as those issues cannot provide a basis for relief. The Tennessee Supreme Court recently described the methodology of this rule to the presiding panel in the petitioner's case upon remand in Holland v. State, No. W2018-01517-SC-R11-PC, {610 S.W.3d 458} Justice Jeffrey S. Bivins writing for the court said: "This Court has held that the language of the Act controls the scope of issues on review and "expressly prohibits post-conviction consideration of issues deemed 'previously determined' or 'waived". id. {610 S.W.3d 458}.

Upon the State's application for permission to appeal to the State Supreme Court in State v. Holland, the State argued: "The Petitioner's issues relating to his sentences was waived, and could not be a basis for relief under the Post Conviction Procedure Act because it exceeds the scope of review available under the Act . id. {610 S.W.3d at *456}. The Supreme Court concluded: "We agree with the State". "We conclude that the issue was waived and may no longer be a basis for relief. 610 S.W.3d at *459. In the present case, a panel of this Court who affirmed the petitioner's conviction and waived" the ineffective assistance claims on direct appeal after the Supreme Court remanded proceedings to the same court on those issues, would have known that it was "arbitrarily" denying Mr. Gooch relief as he would have no other basis to present his 6th Amendment claims.

For it is through counsel that the accused secures his other rights. Perhaps, of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have. Citing Kimmelman v. Morrison, [477 U.S. At *377]. Therefore, if the petitioner's 6th Amendment claims of ineffective assistance of counsel cannot be considered or addressed during a post-conviction hearing because they were deemed "waived", the issues cannot later be addressed on appeal nor later reviewed through plain error. Holland, {610 S.W.3d at *458} "Holding [I]ssues not addressed in the post-conviction court will generally not be addressed on appeal". The Tennessee Supreme Court concluded: "This court has held that the plain error rule, may not be applied in post conviction proceedings to grounds that would be deemed "waived" or previously determined". id. {610 S.W.3d at *458}

In the present case, whats the point of a defendant raising an ineffective assistance claim at all if they cannot present their claims on direct appeal, nor later present their claims on State collateral view during a post-conviction hearing? The Tennessee procedural system would create significant unfairness. By allowing such a procedure, will deny a defendant his opportunity to vindicate his rights, and the State will indefinitely escape responsibility for that default should it be later held that a defendant was denied his 6th Amendment right to effective assistance of counsel. Citing Murray v. Carrier, post, at 488, 91 L Ed 2d 397, 106 S. Ct 2639 (Where a procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default to be imputed to the state". Accordingly, the lower court erred in holding that the petitioner's 6th Amendment and 4th Amendment claims were waived. Citing Jennings v. Illinois, {342 U.S. At *111} 72 S. Ct. 123, 96 L. Ed. 119, 1951, The U.S. Supreme Court Held: "On remand, the Illinois Supreme Court must decide whether the Post Conviction Act does not provide an appropriate State remedy in this case. If it does not, petitioner may proceed in Federal Court". [342 US at *112].

Under Tennessee law, T.C.A. 40-30-106(g) provides: "A ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented unless:

(1) The claim for relief is based upon a constitutional right not recognized as existing at the time of trial if either the federal or state constitution requires retroactive application of that right; or (2) The failure to present the ground was the result of state action in violation of the federal or state constitution".

In the present case, trial counsel failure to file certain pre-trial motions, failure to properly preserve errors on direct appeal, and counsel's failure to properly communicate with his client resulted in a 6th Amendment violation of the State and Federal Constitution in which that action is imputed to the state. The Sixth Amendment mandates that the State bear the risk of constitutionally deficient assistance of counsel. See Evitts v Lucey, [No. 83-1378] 469 US at 396, 83 L Ed 2d 821, 105 S Ct 830 ("Holding that "the constitutional mandate of effective assistance of counsel is addressed to the action of the State"). Therefore, the petitioner's claims presented in the present matter were not waived pursuant to T.C.A. 40-30-106(g)(2), and the lower court erred on this issue. Thus, it has long been established that where a state obtains a criminal conviction in which the accused is deprived of the effective assistance of counsel, the state unconstitutionally deprives the defendant of his liberty. Citing Kimmelman v. Morrison, [477 U.S. At *383.] U.S. Supreme Justice Brennan noted: "The defendant is then in custody in violation of the Constitution".

The Tennessee procedure makes it virtually impossible for appellate counsel to "adequately" present an ineffective assistance [of trial counsel] claim on direct review. For example, if a defendant presents an ineffective assistance claim in a motion for new trial, the Intermediate Appellate Court may have "waived" the claims under the presumption that these claims are more appropriate for a post-conviction hearing. The majority relies upon State v. Honeycutt, 54 S.W. 3D 762, 766 for the proposition that petitioner's ineffective assistance claims were appropriate for a post-conviction proceeding. As the lower court incorrectly stated in it's opinion, the court concluded: "Our supreme court has recognized that claims of ineffective assistance of counsel are more appropriate for post-conviction relief, rather than raised on direct appeal. The court reliance upon Honeycutt is misplaced. The State Supreme Court decision in Honecutt does not stand for the proposition that an ineffective assistance claim is more appropriate for post-conviction relief. Defendant in Honecutt argued ineffective assistance of counsel in his motion for new trial, and the Intermediate Appellate Court considered the claims on direct appeal but affirmed the convictions. See State v. Honeycutt, C.C.A. NO. M1998-00245-CCA-R3-CD.

The State Supreme Court in Honeycutt reversed the conviction concluding the defendant was denied his 6th Amendment right to counsel. See State v. Honeycutt, No. M1998-00245-SC-R11-CD, {54 S.W.3d at *772}. The language of that opinion in Honeycutt does not specify nor indicate that a defendant 6th Amendment claims could not have been raised on direct appeal, nor did the court conclude that the claims were appropriate for a post-conviction hearing. Again, the lower court has misstated the law. Perhaps, even if the claims are waived and the petitioner is barred from presenting his 6th Amendment claim in state court, nothing in our Federal Constitution prohibits a defendant from presenting an ineffective assistance claim in Federal court. Citing Trevino v. Thaler, 569 U.S. 413, 133 S. Ct. 1911, 185 L. Ed. 2D 1044 (2013) "Holding that a federal court may consider a substantial claim of ineffective assistance of counsel, even if not presented in state court, if the petitioner was effectively barred from asserting that claim until state post conviction proceedings, and the petitioner's counsel in those proceedings was also ineffective".

Accordingly, for the reasons stated herein, the Intermediate Appellate Court erred on waiving majority of petitioner's claims, and unconstitutionally denied the petitioner review of his 6th Amendment claims on direct appeal. The panel in this case deviated from long standing-principles of law, and waived the petitioner's 6th Amendment claims under this unfounded analysis that the petitioner's claims are more appropriate for post-conviction proceedings when the Post-Conviction Procedure Act of Tennessee does not authorize a court to provide relief on issues that have been deemed "waived". Under this basis, the panel would have or should have known that by "waiving" the claims, it would have indefinitely foreclosed the petitioner post-conviction relief in State-court. Citing Holland v. State, No. W2018-01517-SC-R11-PC, {610 S.W.3d at *458}.

For this reason, the Tennessee established appellate review process is insufficient/inadequate to protect or "preserve" a defendant's constitutional rights compromised by ineffective assistance of counsel. For example, if trial counsel "incompetently" failed to raise certain pre-trial motions in the trial court, or failed to properly "preserve" errors, failures to investigate, or failed to properly communicate with his client, and appellate counsel raise those issues on direct appeal as grounds for relief, under the premise that the state proceedings were compromised by ineffective assistance of counsel, and a panel of the Tennessee Appellate Court "waive" those issues on direct appeal, the Post-Conviction Procedure Act promulgated by the Supreme Court of Tennessee forecloses any "waived" claims deriving from ineffective assistance of counsel. By then, attorney errors has "escaped" unpunished, and the defendant has no other way to "adequately" present his 6th Amendment claims. At that point, the defendant may have procedurally defaulted his 6th Amendment claim through no fault of his own if he wishes to raise the claim in Federal Court.

By allowing such a rule to withstand in Tennessee, lower courts and higher state courts could intentionally "waive" a defendant's 6th Amendment claims on purpose by the court knowing that such "meritorious" claims could or would eventually be foreclosed at the post-conviction stage. The primary disadvantage of this inadequate procedure is startling. Prosecutors may then "deliberately" or procedurally default a defendant's claims, if "attorney error" is the result of an "failure to competently" litigate a fourth Amendment violation, if the prosecutor does not correct the error, or acknowledge the error, but instead, uses a defense to convince the court that the claims should be "waived" on appeal as an "escape mechanism" to foreclose a defendant's claims at the post-conviction level will be tantamount to "obstructing" a defendant's relief in which he or she would be entitled to if a defendant wishes to vindicate their rights at that stage.

Litigation would remain endless, and "inadequate" to protect a defendant's 6th Amendment rights under such bizzare procedure established in the Tennessee Appellate review process if the United States Supreme Court does not "intervene" to safeguard the 6th Amendment right or to overrule, or remove restrictions. In Shinn v. Ramirez, No. 20-1009, 142 S. Ct. 1718, The U.S. Supreme Court recently held that state prisoners who sought to excuse procedural default due to post-conviction counsel failure to raise trial counsel claims could not be granted an evidentiary hearing because they did not satisfy the narrow excpetions under 28 U.S.C.S. 2254(e)(2). However, in the present case, should Ramirez decision apply when a State Appellate procedure fails to even allow a defendant to present an ineffective assistance claim at all? and on the basis of the "inadequacy" of that procedure, the petitioner procedurally defaults the claim through no fault of his own?

The petitioner hereby seeks protection of his 6th Amendment right by Writ of Mandamus, to enforce, or vindicate that right, before the right is taken way due to an inability to assert the claim, or before the lower court "intentionally" or procedurally default the claims with ill-will intent to deny or delay justice, by allowing police misconduct to escape accountability through it's inadequate review process. According to the State Appellate Court opinion on June 5, 2024, the court concluded that the petitioner is not entitled to relief as to his pre-trial detention without probable cause, nor entitled to immediate release from custody, because counsel failed to properly preserve the issue. First, the U.S. Supreme Court elaborated in Martinez v. Ryan, No. 10-1001, [566 U.S. At *12] "Effective trial counsel "preserves" claims to be considered on appeal". Second, if the U.S. Supreme Court establish authority prohibiting a government official from engaging in some form of unlawful act such as prohibiting unlawful pre-trial detention without probable cause, as the U.S. Supreme court decided in Manuel v. City of Joliet, No. 14-9496, 580 U.S. 357, that rule is interpreted into our justice system as the "law of the land" which constitutes "binding authority" on both the State and Federal Court.

The Petitioner cited Manuel's authority in his initial brief on direct appeal putting the State court on notice of the existence of his Federal claim. Brief for Petitioner Pg. 51. If language incorporated into that binding precedent further establish that a defendant who has been subjected to such "unfounded" invasion of liberty is entitled to relief, and could appeal to the fourth Amendment's protection, id. Manuel S. Ct. at *918 then, the fact that an Attorney failed to follow some "procedural" rule by failing to file a motion on time, does not somehow remove the relief of which the attorney's "client" is entitled to, as the lower court implied, nor does it give a lower court authority to reach a different conclusion from it's binding precedent when it is bound to reach the same conclusion. Citing Manuel, 137 S. Ct. at *919 ("Holding Manuel stated a fourth Amendment claim when he sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pre-trial detention".

The majority's state-law view reached in the present case, is grounded on such an "erroneous" view of the laws of the land. See Danforth v. Minnesota, No. 06-8273 {552 U.S. At *307} As Chief Justice John Roberts wrote in his dissenting opinion concluding: "A State-court is not free to follow it's own state-law view on a federal question simply because the issues arises in state court". Under Tennessee law, T.C.A. 40-30-103 grounds for relief provides as follows: "Relief under this part shall be granted whenever the conviction is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States. Because the conviction in question is void by virtually the abridgment of petitioner's 6th Amendment right to effective assistance of counsel in which the state proceedings is compromised by ineffective assistance of counsel, it follows that the majority's opinion would contravene T.C.A. 40-30-103. For the reasons just stated, we disagree in the majority's conclusion that Mr. Gooch is not entitled to relief.

"TENNESSEE SUPREME COURT ARBITRARY DENIED REVIEW"

The Intermediate Appellate Court wrote in it's opinion on June 5, 2024 indicating that the petitioner can take further review of it's contrary judgment in State court. Litigants and Courts should not be deceived by such pronouncements. The Tennessee Supreme Court already "denied" the petitioner's 6th Amendment and 4th Amendment claims on two separate occasions in a petition for rehearing concluding that the petitioner was not entitled to any form of relief. See attached court orders/exhibits. Therefore, attempt to obtain relief in state court would be **FUTILE.** The petitioner has past exhaustion or overly exhausted on his Federal claims. See O'Sullivan v. Boerckel, No. 97-2048, [526 U.S. At *839] "Holding that a state prisoner must present his claims to a state supreme court in a petition for rehearing in order to satisfy the exhaustion requirement".

III. "A defendant can appeal the judgment of a 1983 Civil Suit in the United States Supreme Court by Writ of Mandamus, if there is no other adequate or speedy remedy for challenging the judgment in State and Federal Court?

The law of mandamus has been described as "well settled". State ex rel. Weaver v. Ayers, 756 S.W.2d 217, 220 (Tenn. 1988). It is the universally recognized rule that a writ of mandamus is an extraordinary remedy that may be issued where a plaintiff's rights to the relief sought has been clearly established, the defendant has a clear duty to perform the act the plaintiff seeks to compel, and there is no other plain, adequate, and complete method of obtaining the relief to which one is entitled. In this appeal, the petitioner argue that there is no other Adequate or "speedy" remedy for appealing his Federal lawsuit relating to the Tennessee Federal District Court judgment other than a Writ of Mandamus/Certiorari taken to the United States Supreme Court. See T.C.A. 27-8-101.

The petitioner filed a lawsuit during pre-trial in the Tennessee Federal District Court under 42 U.S.C.S. 1983 against state officials for violating his rights to be free from unreasonable seizures. See Tony Gooch, v. Jennifer Charles, No. 3:22-cv-00076, 2023 U.S. Dist. LEXIS 117796. The petitioner's Civil case was assigned to Federal Chief Judge Waverly D. Crenshaw Jr. of the Nashville Middle District of Tennessee. The petitioner argue that the Tennessee Federal District Court erroneously denied him relief during pre-trial. Specifically, the Petitioner attempted to challenge that ruling on direct appeal arguing in his initial brief that the Tennessee Federal District Court erred by dismissing some of his claims as untimely, and by denying his motion for reconsideration. Initial Brief For Petitioner Pg. 46-51. The Tennessee Federal District Court concluded in it's final order that it's judgment on the merits was final, and could not be appealed pursuant to 28 U.S.C. 1915(a)(3).

In addition, the Federal District Court certified by order that any appeal from it's decision would not be taken in good faith. Because the Federal District Court did not issue a certificate of appealability on the above-listed grounds, the petitioner lost the opportunity to appeal the civil decision in the Federal Court of Appeals. Therefore, the petitioner attempted to appeal the Federal District Court order in State court on direct appeal. Initial Brief for Petitioner Pg. 46. The State of Tennessee argue that the petitioner does not have a right to appeal the Federal District Court decision in State Court. Brief For Appellee Pg. 20. Similarly, the Intermediate Appellate Court concluded that State Courts lack jurisdiction to consider a Federal civil suit on appeal. See Appellate Court Opinion Pg. 10-11. During petitioner's State appeal, the petitioner filed a T.R.A.P. 8 motion pursuant to the Tennessee Rules of Appellate Procedure raising issues directly challenging his civil suit judgment. Both the Tennessee Intermediate Appellate Court, and Tennessee Supreme Court denied review.

The petitioner's sole concern is that if he cannot appeal his Federal Civil judgment in State Court, nor Federal Court, there will be no other Adequate or "speedy" remedy for appealing the Federal District Court judgment other than a Writ of Mandamus/Certiorari taken to the United States Supreme Court. See T.C.A. 27-8-101. In the present case, the Federal District Court dismissed the petitioner's false arrest, and retaliatory prosecution claim (with prejudice) on the ground that Mr. Gooch's 1983 claim was filed too late after the applicable one year statute of limitations had ran. Gooch v. Charles, NO. 3:22-cv-00076, 2022 U.S. Dist. LEXIS 100459. Although claims for false imprisonment pursuant to T.C.A. 28-3-104, and it's statute of limitations for such claims is one year, the accrual date of a 1983 cause of action is a question of federal law that is not resolved by reference to state law. (Quoting Wallace v. Kato, 549 U.S. At *388).

As a general matter, the United States Supreme Court reiterated that the statute of limitations regarding accrual for a 1983 suit (begin to run) when the plaintiff has a complete and present cause of action. Quoting Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U. S. 192, 201, 118 S. Ct. 542, 139 L. Ed. 2D 553 (1997). In the instant case, the petitioner did not have a complete and present cause of action at the time he filed his civil suit in Federal court because his criminal case was pending in State court. Because state litigation was pending, and state proceedings were ongoing at the time the petitioner filed his 1983 suit in Federal Court, the Tennessee Federal District Court erred by dismissing the petitioner's false arrest, and retaliatory prosecution counts as untimely. The United States Supreme Court recent decision decided in Reed v. Goertz, No. 21-442, on April 19, 2023 require automatic reversal and remand of the Tennessee Federal District Court Judgment. The United States Supreme Court concluded in Reed that the statute of limitations for a 1983 suit begin to run when State litigation ends".

Justice Kavanaugh wrote: "In Reed's case, the State's alleged failure to provide Reed with a fundamentally fair process was complete when the state litigation ended, and deprived Reed of his asserted liberty interest. Therefore, Reed's ⊏ 1983 claim was timely, and the statute of limitations began to run when the state litigation ended-when the Texas Court of Criminal Appeals denied Reed's motion for rehearing.143 S. Ct. 955; 215 L. Ed. 2d 218; 2023 U.S. LEXIS 1665; 29 Fla. L. Weekly Fed. S 730. Based on Reed's decision, we hold that the Tennessee Federal Court erred by concluding that the petitioner's false arrest, and retaliatory prosecution claims accrued at the time of petitioner's arrest while his State case was pending. Because there is no other adequate remedy for appealing the Federal District Court's decision, we hereby urge this court to remand those portion of proceedings to the Federal District Court. As previously mentioned, the issue presented concerns the jurisdiction of the United States Supreme Court to review the action of the Federal Chief Judge's determination on appeal.

The petitioner further argue that the State Appellate Court lack subject matter jurisdiction to review the Federal Chief's Judge's civil determination due to intervening changes in the law. For example, in Dotson, the Tennessee Supreme Court recently Held: "Based on the statutory authority granted to the chief judge, a determination by the chief judge can only be challenged by seeking reconsideration with the chief judge or by writ of mandamus in the United States Supreme Court. id. (Quoting Dotson, 673 S.W. 3d at *221. In support of it's decision, the Tennessee Supreme Court relied upon the 7th Cir. Court of Appeals holdings in United States v. D'Andrea, No. 77-1063, 77-1073, 77-1087, 612 F.2d 1386, 1387-88 (7th Cir. 1980).

In United States v. D'Andrea, the 7th Circuit Court of Appeal held, "once reconsideration is denied by a Federal District Court, review of the Chief Judge's decision is not available from the appeals court, and concluded any further remedy lies in a mandamus action in the U.S. Supreme Court. id. (Quoting D'Andrea 612 F.2d at *1388) In the present case, the Federal District Court denied the petitioner's Rule 60(b) motion for reconsideration, and denied the petitioner relief during pre-trial. Because the petitioner attempt to appeal the civil judgment entered by Chief Judge Waverly D. Crenshaw Jr. in state court, his only remedy for challenging that decision may only lie by a Writ of Mandamus in the U.S. Supreme Court. (Quoting Dotson, 673 S.W. 3d at *221. Due to the Supreme Court of Tennessee's recent decision in Dotson, the petitioner filed a motion to stay the proceedings for the United States Supreme Court to review petitioner's 1983 civil judgment.

As discussed in Reed v. Goertz, No. 21-442, 598 U.S. 143 S. Ct. 955, 215 L Ed 2d 218, 2023 US Lexis 1665 Justice Kavanaugh writing for the court said: "Even though a state-court decision is not reviewable by lower federal courts, "a statute or rule governing the decision may be challenged in a federal action. (Quoting Reed v. Goertz, No. 21-442, 598 U.S. 143 S. Ct. 955, 215 L Ed 2d 218, 2023 US Lexis 1665. The Federal action brought before this court is petitioner's peremptory writ of Mandamus challenging his civil judgment to enforce his Federal civil rights that were violated at the hands of state actors who sought to deter petitioner or punish him for exercising his rights. In addition, the petitioner further argue that compelling evidence, or deceitful evidence exist upon the record to justify a writ of Mandamus to **COMPEL** a reversal of the Tennessee Federal District Court's judgment holding that a State-judge who "falsified" court records was absolutely immune from these non-judicial actions. Under the PLRA Screening Standard in Tennessee, the Federal Chief Judge in rendering it's civil judgment did not say in it's order that the state-judge did not engage in these non-judicial acts, by deleting "delayed" court dates from the record, nor did the court dismiss the allegations on grounds that the complaint was facially frivolous or malicious. However, the federal judge dismissed the allegations only on grounds that the judge was not liable for his actions.

Liberally construed, if the "fraud" allegations did not have any merit, the court could have dismissed the claims as frivolous. Since that is not the case here, these claims will be re-asserted before the U.S. Supreme Court to determine whether the judge should be held liable for his non-judicial acts. The Federal District Court wrote in the footnote section of it's order that the petitioner asserts that the Court made "substantive mistake[s] of law" when it found that state judges Higgins and Dozier could not be held liable in either their personal or official capacities. (Doc. No. 11 at 3). The lower Federal Court reasoned in it's footnote section that the petitioner failed to show any mistake of law justifying relief from the judgment on liability grounds. In the instant case, the petitioner is now sworn under oath, and do hereby put on proof or state, that there is probable cause to believe that a pattern of "delayed" or "postponed" court dates were corruptly deleted from the trial court docket report which is "fairly traceable" to Judge Steve R. Dozier. The following proof is presented as follows: "All delayed or post-poned" court dates listed below were deleted from court records.

(1) July 12, 2021- Delayed Trial Date- Deleted

(2) August 19, 2021- Post-Poned Status Hearing- Deleted

(3) October 28, 2021- Post-Poned Status Hearing- Deleted

(4) December 9, 2021- Post-Poned Status Hearing- Deleted

"EXHIBIT A"

The trial judge's docket reports consist of a variety of court dates listed in (six) columns which contain the case number of the proceedings, description of the proceedings, the date of the proceedings, location of the proceedings, attendance of the proceedings, and attendance remarks. The docket report is titled: "Davidson County Sheriff's Office Scheduled Court Appearances". When court dates are entered into the record by the trial judge, the public records assessed in Davidson County, Tennessee will reflect a showing of the court dates at the Davidson County Sheriff's office of each court date entered into public records. In this case, it is simple to assess whether the trial judge in fact deleted court records to cover up, or otherwise "defraud" the public of matters pertaining to proceedings conducted in the trial court. Any court dates removed or deleted from the court docket will reflect the deletion as each docket report were updated by the trial judge. On Exhibit A Docket Report: The 6/10/21 court date is listed in the last column on the docket with 7/12/21 court date after the June 10th 2021 court date. Exhibit A docket report ends with 7/12/21 court date. See attached docket report.

"EXHIBIT B"

On Exhibit B Docket Report: The **7/12/21** is permanently deleted from the record. There is no showing of the 7/12/21 court date in the system or that it ever existed. The error here is substantially significant because the 7/12/21 court date was scheduled for a jury trial that was ultimately delayed. The conclusion implies a single inference that any court dates that were postponed or delayed were immediately deleted from the record. On exhibit B docket report, the 8/19/21 court date is listed in the last column before the 7/08/21 court dates.

"EXHIBIT C"

On Exhibit C Docket Report: The **8/19/21** court date is permanently deleted from judge's Dozier's docket report. The error here is substantially significant because the August 19th court date was a "postponed" court date which strengthen the inference that a "pattern" or deletion of postponed court dates were removed from the system. On Exhibit C Docket Deport: The 12/09/21 court date is listed in the last column before the 7/08/21 court date. Thereafter, the **12/09/21** court date is permanently deleted from the record. There is no showing of the 12/09/21 court date on any other docket report. As a careful reminder, the docket report reflected that the 8/19/21 court date appeared after the 7/08/21 court date. The error here is substantially significant because the December 9th 2021 court date was another postponed court date hereby strengthening the inference that the judge knowingly or "intentionally" deleting notations of delays due to postponed court dates.

"EXHIBIT D"

In further support of the petitioner assertions, court documents reflect that a jury trial was scheduled on 11/16/20 at 9:00 a.m. in Judge Dozier's court room. See attached court order/exhibits. As previously mentioned, the error here is "substantially" significant because the 11/16/20 court date was another scheduled jury trial that was ultimately "delayed" in the year of 2020. The 11/16/20 trial date "disappeared" from Judge Dozier's updated docket reports. Because the updated docket reports does not reflect a showing of Mr. Gooch's trial dates that were delayed, reasonable jurors could infer that the November 16th trial date along with other "delayed" court dates were permanently deleted in an effort or attempt to "cover up" any delays that may have resulted in a speedy trial violation.

Exhibit C and Exhibit D docket report sufficiently reflect that 7/12/21, 8/19/21,10/28/21, and 12/09/21 court dates were all permanently deleted from the record. Exhibit C docket doesn't show the 10/28/21 court date. The 10/28/21 court date was the following date that the petitioner was scheduled to appear for a status hearing in court but instead, the petitioner was unlawfully tricked into coming to a psych ward. The proof revealed that after Mr. Gooch was unlawfully admitted into the psych ward, the 10/28/21 court date was permanently deleted from the record.

IV. ***A defendant may be allowed on bail pending appeal when a criminal case involves a substantial question resulting in reversal, order for new trial, or reduced sentence within the meaning of Title U.S.C. 3143(b)(1)(b) and Hankins v. State, 512 S.W. 2d 591 (Tenn. Crim. App. 1974) should be overruled, when it conflicts with Federal law on a question of bail pending appeal***

The issue of release or bail pending appeal by a defendant is now regulated by Title 18 U.S.C. 3143(b). Therefore, we consider the necessity, under 3143(b)(1) in order to justify bail pending appeal, a petitioner must show that the appeal is not for purposes of delay, and "raises a substantial question of law or fact likely to result in reversal, an order for new trial, or a sentence that does not include a term of imprisonment. Citing 18 U.S.C. 3143(b). From 1934 to 1956, Criminal Appeals Rule 6 and Rule 46(a)(2) of the Federal Rules of Criminal Procedure provided for bail pending appeal only if the appeal involved "a substantial question which should be determined by the appellate court.

The substantial questions presented in petitioner's brief to the Court of Criminal Appeals, and now presented before this court is whether Mr. Gooch's constitutional right to the effective assistance of counsel as defined in Strickland v. Washington, 466 U.S. 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984) was violated, and whether the judgment of the trial court refusing to set aside petitioner's sentence "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," within the meaning of 28 USCS 2254(d)(1). Initial Brief for Petitioner Pg. 12. As Mr. Justice Douglas, writing for the Supreme Court, said in Louis E. Wolcher v. United States, 100 LED 1521 "Rule 46(a)(2) authorize me to grant the application for bail only if it appears that the case involves a substantial question which should be determined by the Appellate Court". See Williamson v. United States, 95 LED 1379 Mr. Justice Jackson concluding: "I regard the case as one in which substantial questions are open to review by the Supreme Court, and which I am therefore empowered to grant bail as ordinarily done". In the present case, the petitioner argue that Hankins v. State, should be overruled because it conflicts and interferes with legislative history on the question of the Bail Reform Act adopted by Congress.

The United States Supreme Court held in Wisconsin Public Intervenor v. Ralph Mortier, [No. 89-1905], at *[501 US 604] "Under the Supremacy Clause, US Const, Art VI, cl 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution are invalid". Moreover, under Tennessee Law, Tenn. Sup. Ct. R. 18(c) provides as follows:"[A]ny local rule that is inconsistent with a statute or a procedural rule promulgated by the Supreme Court shall be declared invalid".

Specifically, the petitioner argue that the lower court departed from well settled principles on a question of bail pending appeal announced by the United States Supreme Court. For instance, the petitioner filed a TR.A.P 8 motion notifying the court that he had been "falsely" arrested without probable cause, and requested to be released on bail". Under Tennessee law, T.R.A.P. 8 provides: "Before or after conviction the prosecution or defendant may obtain review of an order entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals granting, denying, setting or ("altering conditions") of defendant's release from custody". On May 25, 2023 and June 16, 2023, the Tennessee Intermediate Appellate Court denied the petitioner's T.R.A.P. 8 request to be released from state custody pending conclusion of this appeal. The Intermediate Appellate Court held that the petitioner was not entitled to bail/release pending appeal solely because the petitioner was "convicted" of Aggravated robbery.

In support thereof, the lower Court relied upon Hankins v. State, 512 S.W. 2d 591 (Tenn. Crim. App. 1974) to deny petitioner's bail pending appeal. In Hankins, the court held that defendants may not pursue habeas corpus relief while an original criminal case or direct appeal is pending involving the same matter of confinement". The petitioner argue that the lower court reliance upon Hankins decision to deny petitioner's bail is misplaced. Defendant in Hankins filed a direct appeal of his burglary conviction. While Hankins appeal was pending, defendant filed a Post-Conviction petition seeking relief in criminal court. In the present case, the petitioner did not file a post-conviction petition, nor filed a habeas corpus petition while his direct appeal was pending. The petitioner filed a T.R.A.P. 8 motion citing T.C.A. 29-21-122(a) in his motion as a basis to be released from custody. T.C.A. 29-21-122(a) provides: "If no sufficient legal cause of detention is shown, the plaintiff shall be discharged". The lower Court misconstrued the legislature intent of the statute, and perceived the petitioner reliance upon the statute as petitioner seeking habeas corpus relief during his direct appeal which is inaccurate. Accordingly, we urge our brethrens and colleagues of the U.S. Supreme Court to overrule the lower court decision to rely upon Hankins v. State, 512 S.W. 2d 591 (Tenn. Crim. App. 1974) as the sole legal basis to hold the petitioner in further confinement upon this misinterpretation of the statute T.C.A. 29-21-122(a). To the extent that the lower court relied upon Hankins authority under the notion that the petitioner sought Habeas corpus relief during his pending appeal is again misplaced, and must be overruled.

Under such flawed analysis, the lower court did not address the issue of whether T.C.A. 29-21-122(a) provided a legal basis for granting petitioner's T.R.A.P. 8 motion on his request for bail/release pending appeal.

"VAGUE STATUTE"

It is further argued that the Intermediate Appellate Court cited statute T.C.A. 40-11-113(b), and T.C.A. 40-26-102 (f), in support of it's position to deny petitioner's bail. Both statutes states in pertinent part: "That a judge shall revoke bail immediately if a defendant is convicted of Aggravated robbery among other felony offenses related to T.C.A. 39-13-402". The plain meaning of the vague statutes relating to T.C.A. 40-26-102 (f), and T.C.A. 40-11-113(b), does not specify any reason for denial of bail other than beyond the mere fact that a defendant was convicted. In other words, it is unclear why Tennessee defendants are denied bail on appeal other than beyond the fact that he or she was convicted of an offense. The court will address the local statute as unconstitutionally vague.

The U.S. Supreme Court did not intend for a defendant to be denied bail solely because a defendant was convicted of an criminal offense. Our conclusion is that under the Constitution and statutes of the United States, and the opinions of the U.S. Supreme Court, persons convicted of an offense during the pendency of their appeals were entitled to the exercise of the fair, judicial discretion of the judges to whom they apply for bail in deciding their applications, and that in ordinary cases they should not be absolutely compelled to serve parts of their sentences or to be confined in prison until (after their conviction is affirmed by the state court of last resort). See Rossi v. United States, 11 F.2d at *266.

Citing Hudson v. Parker, 156 U.S. At *285, 39 L. Ed. 424 U.S. Supreme Justice Gray announced the policy behind the granting of bail pending appeal concluding: **"The statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, not only after arrest and before trial, but after conviction and pending a writ of error".** [156 U.S. At *285]. Tennessee local bail rules conflict with the bail policy announced in Hudson v. Parker. To the extent that the lower court relied upon Hankins v. State, and it's local procedural rules and statutes to deny petitioner's bail pending appeal is inconsistent with the bail rule announced by the U.S. Supreme Court in Hudson v. Parker,156 U.S. At *285. Therefore, Hankins authority must be overruled in this respect. Citing Tenn. Sup. Ct. R. 18(c).

There is no local rules in the State of Tennessee that support or follow guidance of Hudson authority, which render the conclusion that a defendant must not be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, after conviction and pending a writ of error". [156 U.S. At *285]. As contrary to Hudson v. Parker, Tennessee law directly contradict Hudson v. Parker's decision on a question of bail pending appeal. For instance, T.R.A.P. 8(c) provides that: "A defendant may only be admitted to bail on bond when a defendant's conviction is (affirmed by the Court of Criminal Appeals), and pending the filing of an application for permission to appeal to the Supreme Court of Tennessee". T.R.AP. 8(c) is inconsistent or directly **opposite** to Hudson v. Parker. Although Tennessee provisions of T.R.A.P. 8(c) allow for bail pending appeal after a defendant's conviction is (affirmed by the court of criminal appeals), there is no specific rule authorizing whether a defendant may be allowed on bail (pending) an appeal to the Court of Criminal Appeals. In the State of Tennessee, Criminal Courts and Appeal Courts, lack guidance on the question of whether a convicted defendant who files a timely notice of appeal, may be released pending the status quo of the appeal.

In any event, when the United States Supreme Court rendered it's decision in Hudson v. Parker on a question of bail, the language of that ruling indicated "persons accused of crime may be allowed on bail pending appeal, and should not be compelled to undergo imprisonment until after the conviction was affirmed" by the state court of last resort. The Tennessee Appeal Provisions of T.R.A.P.8(c) **contravenes** Hudson's bail policy. For instance, the plain meaning of Hudson v. Parker, does not indicate that if an appeal is taken to the Court of Criminal Appeals, a defendant must be denied bail solely because the defendant is convicted of an offense, yet, if that same defendant appeal the judgment to the state court of last resort, he may then be permitted to bail/release as authorized by T.R.A.P. 8(c) of the Tennessee Appeal Procedures. T.R.A.P.8(c) is inconsistent with Hudson v. Parker.

The fact that the lower court denied petitioner's bail/release during his appeal solely because the petitioner was convicted of an offense misconceives the emphasis of the Bail Reform Act adopted by the United States Supreme Court. It is obvious however, that any defendant applying for bail during appeal is convicted of some sort of an offense. But to deny a defendant's bail solely because of their conviction misses the mark. As the U.S. Supreme Court reiterated: "A defendant who seeks to apply for bail pending appeal must show that the appeal raises a "substantial question of law or fact" likely to result in reversal or a new trial. 18 U.S.C. ⊏ 3143(b). Williamson v. United States, 95 LED 1379. It would appear to be an contradiction in Tennessee for the state court of last resort to allow defendants on bail after their conviction is affirmed, and (pending) appeal pursuant to T.R.AP. 8(c), but yet the lower Court deny defendant's bail pending appeal within the same jurisdiction. We leave this question to be answered by the U.S. Supreme Court.

"REASON FOR GRANTING THE PETITION"

On behalf of the United States Constitution, and government officials who are sworn in to protect and uphold the laws of this country without appearance of impropriety, we ask the United States Supreme Court to grant this writ of Mandamus, to ensure that a defendant's Federal Constitutional rights are legally protected at all stages of litigation when those rights have been infringed upon without any adequate remedy or corrective state process to cure the harm caused by such unfounded invasions of liberty. We ask this court to intervene on behalf of the public interest to ensure that the petitioner who belong to a protected class such as the African-American Community has not been denied equal protection of the law, when he or she is unable to enforce their Federal rights in a court of law based on discrimination of race or religion.

CONCLUSION

This case represents a denial of Federal protected rights involving deceit, dishonesty, corruption, and unequal treatment towards African-American litigants in the State of Tennessee. By virtue of this writ, solidify that the state-proceedings were initially or presently being conducted in bad-faith. As Chief Justice John Roberts writing for the court said in Donald J. Trump v. Vance Jr., No. 19-635, 591 US, 140 S. Ct, 207 L Ed 2d 907, 2020 US LEXIS 3552 **"The policy against federal interference in state criminal proceedings, while strong, allows "intervention in those cases where the District Court properly finds that the state proceedings is conducted in bad faith".**

A grant of this writ of mandamus by the U.S. Supreme Court will Compel the conclusion that it does not condone nor tolerate, or accept, the judgment of the lower courts. The fact that a defendant may be innocent or guilty of an offense is one thing. But to allow a public servant to break the law, commit a criminal act, or engage in some form of trickery, or collusion, to prove a defendant's guilt in a court of law is an unjustifiable overreach that violates the fundamental fairness of the proceedings bringing into question the validity of that judgment. We brought the case here on Mandamus because of the constitutional issues involved that have been disregarded or ignored by the lower State and Federal Courts. It is claimed on behalf of the petitioner that the crimes charged against him, of which he stands convicted, is in violation of the laws of the United States. The two Aggravated robbery offenses contain the same elements, and both convictions arose out of the same incident which violates the double jeopardy clause under the standard set forth by the U.S. Supreme Court in Blockburger v. United States, 284 U.S. 299, 304. At sentencing phase, counsel did not raise the same element test, and to inflict Multiple punishments for the same offense has never been approved by Congress. The lower court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the U.S. Supreme Court supervisory powers.

CERTIFICATE OF COMPLIANCE

In accordance with Supreme Court Rule 33.1(h) the total number of words in this brief exclusive of the Title/Cover page, Table of Contents, Table of Authorities, and this Certificate of Compliance is 16, 911. This word count is based upon the word processing system used to prepare this brief. The writ of Mandamus applied to this court contain only 40 pages which complies with standards of Rule 14. If executed within the United States, its territories, possessions, or commonwealths: ŧ I declare (or certify, under penalty of perjury that the foregoing is true and correct. Executed on (10/27/24).

FOOTNOTES

1. The petitioner requested to **STAY** the proceedings on the basis that the state court of last resort lacked jurisdiction to consider the petitioner's Federal 1983 civil suit. The petitioner argued in his motion to stay the judgment that essentially by law, it is only the U.S. Supreme Court who has "jurisdiction" at this stage of the proceedings to consider the petitioner's Federal civil suit. Despite of these findings, the lower court arbitrary denied the petitioner's request to Stay the judgment for the U.S. Supreme Court review. The court stated in it's June 5th 2024 opinion, that the petitioner can appeal the denial of the lower court judgment to the state-court of last resort. However, the petitioner has already appealed his judgment to the state supreme court on the same issues which was denied.

2. Although the petitioner has exhausted his remedies on his Federal claims by giving the Tennessee Supreme Court the opportunity to resolve constitutional errors on two separate occasions in which it denied relief, the Court encourages the petitioner to essentially file "repetitive petitions" in the State Supreme Court in which this proposition was rejected by the U.S. Supreme Court. See O'Sullivan v. Boerckel, No. 97-2048, {526 U.S. At *844 } The United States Supreme Court Held: "We have never interpreted the exhaustion requirement to require prisoners to file repetitive petitions". id. **{526 U.S. At *844 } (Quoting Justice O'Connor).** See Brown v. Allen, 344 U.S. 443, 447, 97 L.ED 469, 73 S Ct 397 (1953) "Holding that a prisoner does not have "to ask the state for collateral relief, based on the same evidence and issues already decided by direct review".

3. It shall be stated, if there is no protection from incompetent counsel, and no higher court cares to intervene, to ensure that a State does not violate the "Laws of the Land", then the United States Supreme Court precedents has been defeated. As experienced judges, or sitting Justices, we can easily see constitutional violations in a criminal case, and whether to simply close our door, or to turn an blind-eye to racial injustice, will make a mockery of our oath taken as sworn into office that we will uphold and protect the laws of our country. We cannot ignore the violations of the 14th Amendment in this case.