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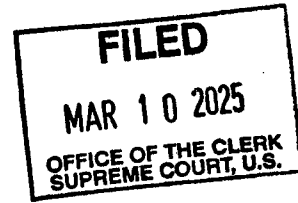
ORIGINAL

GERARD GWEN # 332970

ASPC-KINGMAN-CERBAT

Bldg. 2897, P.O. Box 3009

KINGMAN, AZ. 86402



IN THE UNITED STATES SUPREME COURT

GERARD VAUGHN GWEN,

Petitioner,

vs.

B. SOK, et, al., Themselves

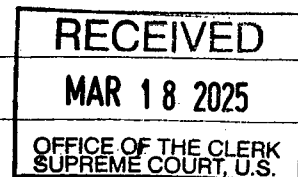
Respondents.

NO.

PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to 28 USC § 2254

(Exceptional Circumstances)



I. QUESTIONS FOR REVIEW

[A] WHETHER THERE EXIST EXCEPTIONAL CIRCUMSTANCES CAUSED BY DISTRICT COURTS DETERMINATION OR LACK THEREOF, WAS THE RESULT OF QUALITY IN JUDGMENT OR A DECISION BEING FULL AND UNCONDITIONAL DETERMINATION, WHERE ABSENCE OF QUALITY CONCLUSIVENESS WHICH MAY BE THE RESULT OF STATUTE OR PROPER REVIEW OF A CONSTITUTIONAL VIOLATION TO BE ENFORCED, IN ITSELF HAS RESULTED IN A DENIAL SUB-PROCESS.

[B] IS IT PROBABLE COURT OF APPEALS UNFAIRLY OVERLOOKED CONSIDERATION OF THE IMPLICATION OF SUPREME COURT DECISION MAKE "CONSTITUTIONAL LAW" BEARING UPON COURT OF APPEALS DETERMINATION TO DENY IT AUTHORIZATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE PETITION RESULTING IN AN IMPEDIMENT REQUIRING SUPREME COURT REVIEW.

[C] IS IT PROBABLE THAT STATUTE OR RULES GOVERNING WRIT OF HABEAS CORPUS ARE INCOMPATIBLE WITH THE FUNDAMENTAL PURPOSE OF CONSTRUCTION OF 'LAW' TO AN END WHERE CONFLICTING REQUIREMENTS IN EACH THAT CANNOT BE TREATED FAIRLY AT THE SAME TIME IS CAUSE FOR EXCEPTIONAL CIRCUMSTANCES REQUIRING SUPREME COURT DISCRETIONARY POWER.

[D] IS IT PROBABLE COURT OF APPEALS, IN THE PERFORMANCE OF ITS DUTY, APPLIED THE CORRECT LAW INCORRECTLY OR INACCURATELY IN SUCH A WAY AS TO DENY PROSE LITIGANT "FAIR CONSIDERATION"; THEREFORE, A DENIAL OF JUSTICE RESULTS IN AN UNREASONABLE IMPEDIMENT TO FILING "FIRST APPLICATION" FOR WRIT OF HABEAS CORPUS.

II. LIST OF PARTIES:

A. PETITIONER, GERRA VAXAN GUSO;

B. RESPONDENTS, ARIZONA ATTORNEY GENERAL, MICHELLE LOGNO, DEPUTY;

C. UNITED STATES COURT OF APPEALS - NINTH CIRCUIT,

J. CLIFFORD WALLACE, SUSAN P. GRABER, PATRICK J. BUMATA.

III. RELATED CASES:

A. SUPREME COURT / STATE OF ARIZONA NO. V1300CR201508451;

NO. V1300CR201708299;

B. UNITED STATES DISTRICT COURT / DISTRICT OF ARIZONA NO. 3:20-CV-08327;

C. UNITED STATES SUPREME COURT, NO. 23-5712 (CERT.);

D. UNITED STATES COURT OF APPEALS / NINTH CIRCUIT NO. 24-3230

IV. BACK FOR REVIEW:

THAT A PERSON BORN UNDER THE CONSTITUTION OF THE UNITED STATES, WHOSE ROLE PURPOSE IS THAT OF SAFEGUARDING LIBERTY AND JUSTICE FOR ALL, NOT BE AT THE MERCY OF THE CAPRICE OF AN INCOMPETENT TRIBUNAL ACTING WITHOUT SUBSTANTIAL CAUSE, WHERE THERE DOES NOT EXIST DISCRETIONARY POWER TO DENY A CONSTITUTIONAL RIGHT OR WHOSE HAS DEMONSTRATED A WILLFUL LACK OF RESPECT FOR SUPREME COURT LAW.

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— CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

28 USC § 2244

28 USC § 2254

U.S. Const. Amend. 6, 14

U.S. Const. Art. I, Sec 9, cl 2

— CITATIONS —

Muniz v. U.S., 236 F3d. 123 ----- 8

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Mooney v. Holohan, 294 U.S. 103 15

Jackson v. Virginia, 443 U.S. 307- 17

In re Winship, 397 U.S. 358, 361 17

Rodgers v. Alabama, 192 U.S. 226 18

VI RULE 20 STATEMENT

USC Sup Ct. Rule 20 DOES NOT Apply.

VII STATEMENT OF THE CASE

1. Petitioner filed his original Application for writ of HABEAS CORPUS pursuant to 28 USC § 2254 in U.S. District Court - District of Arizona, NO. 3:20-CV-08327. The petition was dismissed with prejudice on procedural ground of which one of the grounds was non-exhaustion of state remedies, if true, which have entitled petitioner leave to seek exhaustion in state-court, thus he be able to proceed with second petition in district court. No claim presented were disposed of on the merits, as court order, doc. 60 support, which appears at Appx A. The district court failed to review "de novo" all objections made to magistrate judge's report, also evidenced by district court order, (doc. 60) was ground for reversal of judgment for reversible error.

Petitioner sought COA in the Court of Appeals for the Ninth Circuit, NO. 21-894 dated March 13, 2023 and NO. 15-944. COA was rejected on basis of a court determines technical error without consideration on the merits.

Petitioner sought writ of certiorari in the Supreme Court, NO. 23-5712 filed December 11, 2023. Supreme Court denied certiorari without written explanation on May 01, 2024.

Petitioner sought leave to file a second or successive petition, denied without an adequate written decision, which appears at Appx A; An effort for review was rejected by Court of Appeals, has resulted in a court creates liberty interest sufficient to constitute an exceptional circumstance measurable involving Supreme Court jurisdiction.

1 Supreme Court Supervisory power is needed to address a lower
2 Court denial of a constitutional right or a willfulness to avoid
3 or intentionally disregard a Supreme Court 'rule' involving principle
4 the settlement of which is of importance to public or disting-
5 uished from parties and where there is a real embarrassing
6 conflict between Appellate court action and the authority of
7 this Court.

8 The subject matter is important to the proper and effective func-
9 tioning of the judicial system as a whole, if (1) lower courts are
10 permitted to do as they please, thus weakening the effectiveness of
11 the "law of the land"; (2) the laws are distinguishable in manner
12 which leaves no controversy.

13 It is asserted that of Appellate failure to fairly dispose of a federal
14 question before court, deviated from the usual and accepted course of
15 Appellate practice, which require immediate determination in this
16 court. (2008 § 1201).

17 Supreme Court shall except jurisdiction to hear and decide whether
18 exceptional circumstance warrant exercise of Court discretionary powers
19 or facts in the record fairly supports grant of writ of Habeas Corpus.
20
21
22
23
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28

RULE 20 STATEMENT OF JURISDICTION:

THE JURISDICTION OF SUPREME COURT IS CONTAINED UNDER 28 USC § 1254 (1), 28 USC § 1611 (a), USC SUP. CT. R. 10 AND 28 USC §§ 2241 (c) - 2254 (c).

THE DATE ON WHICH THE COURT OF APPEALS CREATED A LEGAL INTEREST THROUGH ITS IMPELMENT TO FILING A 'FIRST PETITION' WAS ON 12/18/24.

THE DATE ON WHICH COURT OF APPEALS REJECTED HIS PETITION FOR PANEL REHEARING WAS ON 1/7/25.

II. RELIEF SOUGHT:

1. ISSUE ORDER, UPON REMAND TO APPROPRIATE COURT, WITH INSTRUCTIONS FROM SUPREME COURT ON A WRIT OF HABEAS CORPUS TO HAVE PETITIONER BROUGHT BEFORE IT TO THE END THAT HE MAY BE IMMEDIATELY DISCHARGED FROM HIS UNCONSTITUTIONAL CONFINEMENT, RESTRAINT AND SENTENCE;

2. ISSUE ORDER, UPON REMAND TO APPROPRIATE COURT, ORDER THAT DISTRICT COURT JUDGMENT IN PRIOR HABEAS CORPUS PROCEEDING BE VACATED OR SET-ASIDE, ORDER REVERSAL OF HIS CONVICTIONS IN STATE COURT CASE NO. V1300CR20170451 AND NO. V1300CR20170299 AS MOOT FOR 'FAILURE TO APPEAR ON THE AFOREMENTIONED CAUSE';

THE STATE-COURT DO NOT DESERVE THIS COURT DEFERRANCE OR ANY ENTITLEMENT TO A SECOND OPPORTUNITY TO ANSWER OR OTHERWISE DEFEND TO EXTENT THAT STATE DID NOT PREVIOUSLY ANSWER THE ALLEGATIONS ON THE MERITS, THAT WAIVED RIGHT AND IS NOW PRECLUDED FROM DOING SO.

1 EXHAUSTION REQUIREMENT:

2 PETITIONER CERTIFIES THAT ALL CLAIMS PRESENTED IN THE PETITION WERE
3 FAIRLY PRESENTED TO STATE COURT OF APPEALS, STATE SUPREME COURT OR
4 IS A POST-CONVICTION RELIEF PROCEEDING AND ARE CONTAINED IN THE PETITION
5 FOR WRIT OF HABEAS CORPUS, WHICH APPEARS AT APPX

6
7 STATUTE OF LIMITATIONS DO NOT APPLY; TO EXTENT AND TO NO FAULT OF
8 HIS OWN, THE LOWER COURTS HAVE CREATED EXCEPTIONAL CIRCUMSTANCES,
9 WHERE, (1) PETITIONER'S NEW APPLICATION FOR WRIT OF HABEAS CORPUS
10 WAS FILED FROM THE DATE ON WHICH AN IMPRISONMENT BY A FEDERAL
11 COURT CREATED ERROR FOR WHICH VIOLATED A PROVISION OF THE FEDERAL
12 CONSTITUTION OR LAW OF THE UNITED STATES; (2) PETITIONER WAS PREVENTED
13 FROM FILING HIS APPLICATION FOR WRIT OF HABEAS CORPUS IN FEDERAL COURT
14 BY A FORM OR ACTION THAT HIS APPLICATION WOULD HAVE BEEN FILED TIMELY
15 IF COURT OF APPEALS HAD GRANTED LEAVE UNDER 28 USC § 2254 (A), (B) (1) (ii) ON
16 WHEN THE FACTUAL PREDICATE OF HIS NEW APPLICATION BEGINS EXCEPTIONAL
17 ON BASIS THAT CLAIMS PRESENTED UNDER A NEW LAW OR RULE COULD
18 NOT HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE.

19
20 EXCEPTIONAL CIRCUMSTANCES EXIST WHICH REQUIRE SUPREME COURT'S
21 DISCRETIONARY POWER.

22 A NEW APPLICATION FOR WRIT OF HABEAS CORPUS, WHICH APPEARS AT APPX
23 AND THE ACCOMPANYING BRIEF SUPPORTS EXISTENCE OF EXCEPTIONAL CIRCUMSTANCES
24 WHICH WARRANT EXERCISE OF SUPREME COURT'S DISCRETIONARY POWER AND THAT
25 ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY
26 OTHER COURT.

1 A process litigant ought not be at the mercy of the caprice of a
2 Judicial proceeding contingent upon an action which utterly fails to
3 afford an adequate, fair or just process, or one which results in
4 a denial of justice.

5 Petitioner argues there is not a process available which does not under-
6 mine a litigant's opportunity, as of right, to proceed in Federal court
7 with another 'first application' for writ of Habeas corpus where the prior
8 application was denied without disposition of the Habeas corpus proceedings
9 on the merits, that best exception to requirement of 28 USC § 2254(c),
10 or 28 USC § 2244(b); when two or more statutes are in conflict which
11 tend to offer no settlement of a protected right.

12
13 Petitioner believes the rules governing section 2254 cases or statute
14 governing writ of Habeas corpus contain conflicting requirement or are
15 opposite a question of law settled by Supreme court, has resulted in a
16 process with no equitable and favorable to sustaining integrity of the
17 Judiciary as Congress intended.

18 Rule 9 of rules governing section 2254 cases and statutes governing
19 writ of Habeas corpus lack want of harmony between two requirements
20 of an instrument where there exist conflicting requirement in
21 each or the conflict is opposed to the principles and provisions of
22 a constitution; or are in serious disagreement that cannot be
23 treated fairly at the same time.

24
25 Rule 9's requirement that a petitioner must obtain an order,
26 from the appropriate court of appeals as required by 28 USC § 2244(b)
27 (3) and (c).
28

1 WHEREAS, 28 USC § 2244 (c) essentially requires that no circuit court or
2 District court may consider an application for a writ of Habeas
3 Corpus which has been determined on the merits; which directly
4 conflict with rights under 28 USC § 2254 (A), (B)(i)(ii), a claim on a
5 new rule of constitutional law, or where the factual predicate for
6 the claim could not have been discovered previously or a claim
7 which implicates innocence are considered sufficient grounds for a
8 Court of Appeals to authorize a second or successive petition.

9
10 A "petition was not a second or successive petition within the meaning
11 of 28 USC § 2244 (b)(2) (A) since previous petition was not adjudicated on
12 the merits but rather dismissed on procedural grounds"
13 *Muniz v. United States*, 236 F.3d 123, 2001 (CA App. 10th 162d (2001)).

14
15 Under prior laws and revisions, the 1996 Amendment to § 2244 provides
16 "when after an evidentiary hearing on the merits of a material
17 factual issue, or after hearing on the merits of an issue of law,
18 a person in custody pursuant to the judgment of a state court
19 has been denied by a court of the United States ... need not be
20 exhausted unless earlier application on a factual or other issue
21 was not adjudicated on the merits; implies that 28 USC § 2244 (b) do
22 not apply; and once due to Supreme court decision that petition
23 has not yet filed a "first application".

24 The Supreme court has held, the requirement under 28 USC § 2244 (b)
25 "require that a prior determination of the same ground has been
26 on the merits" *Sanders v. United States*, 373 U.S. 1, 101 (1963);
27 *Tyler v. Cain*, 533 U.S. 656, 121 S.Ct. 2478, 150 L.Ed.2d 632.

1 THE DICHOTOMY OF SEPARATE AND CONFLICTING REQUIREMENTS ARE BEST
2 ILLUSTRATED BY EXPLANATION OF THE CURRENT FACTUAL ISSUE.

3 IF, PETITIONER FILES IN DISTRICT COURT A SECOND OR SUCCESSIVE PETITION, AND
4 HE HAS NOT OBTAINED COURT OF APPEALS AUTHORIZATION, THE DISTRICT COURT
5 IS COMPELLED TO DENY THE SECOND PETITION. IF, PETITIONER CLAIMS AN
6 VALID EXCEPTION TO RULE OR STATUTE, WHERE THE PROCESS HAS NOT PROVIDED
7 EQUITABLE OPPORTUNITY TO DO SO, SUCH AS, NEWLY DISCOVERED CONSTITUTIONAL
8 LAW OR ASSERT THAT THE ORIGINAL APPLICATION CONTAINS PLAIN OR REVERSIBLE
9 ERROR OR THAT PRIOR HABEAS CORPUS PROCEEDINGS WERE NOT DISPOSED OF ON THE
10 MERITS, HE HAS NO AVERAGE FOR REVIEW IN LOWER COURT AS AMPLIFIED
11 BY THE TREATMENT OF BOTH DISTRICT COURT AND COURT OF APPEALS.

12 ALTHOUGH HIS REASONS ARE LAWFULLY MADE.

13 WHEN THERE APPEARS TO BE A GENUINE EXCEPTION PROVIDED BY 28 USC § 2244
14 (b) OR § 2254 29'S REQUIREMENT TO PROCEED WITH A 'FIRST PETITION' OR SECOND
15 OR SUCCESSIVE PETITION, THERE IS NOT AN EQUITABLE METHOD AVAILABLE TO
16 LITIGANT FOR ASSESSING SUCH RIGHT PRIOR TO THE SUBMISSION TO THE
17 APPROPRIATE FEDERAL COURT.

18
19 FOR THE SUPREME COURT CONSIDERATION GOVERNING REVIEW WHETHER
20 EXCEPTIONAL CIRCUMSTANCES EXIST THAT WARRANT EXERCISE OF ITS DISCRETIONARY
21 POWER, WHERE IT IS ALLEGED A FEDERAL QUESTION AT ISSUE DETERMINED
22 INCORRECTLY HAS RESULTED IN AN IMPEDIMENT TO JUSTICE AND WERE AGAINST
23 CONSTITUTIONALITY OR COURT OF APPEALS FAILURE TO PERFORM ITS FUNCTION BY
24 DENIAL OF A RIGHT WITHOUT "FAIR CONSIDERATION" ENTERED AN ORDER CONTRARY
25 TO STATUTORY REQUIREMENT WHERE THE FACTS OR FACT WERE NOT TAKEN AS
26 A WHOLE AND THE TREATMENT OF THE QUESTION OF LAW "WHETHER PETITIONER
27 HAS RIGHT TO PROCEED WITH "FIRST PETITION" PURSUANT TO 28 USC § 2254 RESULTED IN
28 A DENIAL OF FUNDAMENTAL PRINCIPLES OF JUSTICE RATHER THAN A SPECIFIC

RULE OF LAW, HAS CALLED FOR THE EXERCISE OF SUPREME COURT
APPELLATE JURISDICTION TO CORRECT MISCARriage OF JUSTICE.

STANDARD FOR REVIEW:

"FAIR CONSIDERATION" GIVES RISE THAT ALL JUDICIAL PROCESSES WILL CON-
FORM AN ADEQUATE, JUST OR CONCLUDE WITH PROPER CONSIDERATION".

RUSE V. LEVY, 43 CDO 96, 896.

"FINALITY OF DETERMINATION": SUPREME COURT HAS CONCLUDED THE 'TERM'
AS USED IN 28 USC §§ 2243-2244 MEANS COURT CONCLUSION,
AFTER EXAMINATION OF APPLICATION WITH SUCH ACCOMPANYING PAPERS
AS COURT DEEMS NECESSARY, THAT HEARING ON MERITS, LEGAL OR
FACTUAL, IS PROPER. BROWN V. ALLEN, 344 US 443, 77 SCL 397, 97 LED
496 (1953).

"DENIAL OF LEAVE TO FILE A PETITION FOR WRIT OF HABEAS CORPUS, OR THE
DENIAL OF WRIT ITSELF, BE ACCOMPANIED BY AN EXPRESSION OF
REASONS FOR THE DENIAL BY INFORMAL MEMORANDUM, BY RECITALS IN
AN ORDER, OR BY FINDINGS." TATUM V. UNITED STATES, 275 F2D 894, 107
U.S. APP LEXIS DC 230, 1960 US APP LEXIS 5235 (DC CIR. 1960).

THE FOLLOWING FACTORS ARE ATTRIBUTED TO EMPLOYEES WHICH PETITIONER
STRONGLY BELIEVES ARE CAUSE FOR EXCEPTIONAL CIRCUMSTANCES.

[A] THE COURT OF APPEALS DID NOT "FAIRLY CONSIDER" THE SUBSTANTIAL
FACTUAL BASIS UPON WHICH THE APPLICATION FOR LEAVE TO FILE A SECOND
OR SUCCESSIVE PETITION RESTS.

1 ~~It~~ was duty of court to clearly indicate basis for its determination
2 by an expression of reasons or by setting forth with accuracy,
3 briefly and clearly the essential grounds that would establish Supreme
4 Court review of a constitutional question, so that it may apply the
5 correct fact review or proper constitutional principle.

6
7 Because Court of Appeals failure to express the reasons with any clarity
8 for denial, has created no unusual problem for review.

9
10 ~~It~~ cannot be argued Appellate courts decision was wrong or contrary
11 to a clearly established federal law to extend, court literal
12 reading of statutes requirement, which fails to inform review-
13 ing court of the fact or facts constituting the whole or a part of
14 the grounds it relied upon, so that Supreme court may revise its
15 own decision in accordance with applicable laws.

16
17 The Ninth circuit court merely make a formal order for the hearing
18 of the matter, was used as a device to deny privilege of right
19 to be heard, a protected right, without justifiable or legal reason for
20 doing so.

21 "Literal reading of statute to authorize denial of Application for leave
22 to file a second or successive petition is proper only when petitioner
23 has already filed a prior motion for successive petition"

24 BENEATH V. UNITED STATES, 119 F.3d. 470, 1997 US App. Lexis 1698 (7th Cir.).

[B]

PETITIONER ARGUES FEDERAL JURISDICTION INCLUDES EVERY ISSUE CAPABLE OF A JUDICIAL DETERMINATION.

IT WAS 'PLAIN ERROR' WHEN NINTH CIRCUIT COURT REFUSED TO "ENTERTAIN" A PETITION FOR PANEL REHEARING, HAS RESULTED IN UNCONSTITUTIONAL SUSPENSION OF THE WRITS PRIVILEGE IN VIOLATION OF ARTICLE III, SEC. 9, CL 2. OF THE UNITED STATES CONSTITUTION, THUS TERMINATING HIS PROTECTED RIGHT TO FILE A SECOND OR SUCCESSIVE PETITION IN FEDERAL COURT.

THE SUPREME COURT CONCLUDED "THE TERM 'ENTERTAIN', AS USED IN 28 USC. § 2243-2244 MEANS COURT CONCLUSION, AFTER EXAMINATION OF APPLICATION WITH SUCH ACCOMPANYING PAPERS AS COURT DEEMED NECESSARY THAT HEARING ON MERIT, LEGAL OR FACTUAL, IS PROPER". *BROWN V. ALLEN*, 344 U.S. 443, 77 S.Ct. 397, 97 LEd 469 (1953).

A PROCESS WHICH CUT-OFF OPPORTUNITIES OR WHICH LIMITS A PERSON'S ABILITY TO CHALLENGE HIS DETENTION ESPECIALLY IN FIRST INSTANCE, WHERE HABEAS CORPUS PROCEEDING DID NOT END WITH DISPOSITION OF CLAIMS ON THE MERITS; AND WHERE 28 USC § 2244(S) "APPLIES TO ANY HABEAS CORPUS PETITION SEEKING RELIEF FROM CUSTODY PURSUANT TO STATE-COURT JUDGMENT". *RITTENBURG V. MORROW*, 468 F.2d 351, 2006 U.S. App. LEXIS 27680 (6th Cir 2006); CONSTITUTES EXCEPTIONAL CIRCUMSTANCES.

[C]

CAN A LOWER COURT BE PERMITTED TO EXERCISE THEIR DISCRETION TO DO AS THEY PLEASE, WITHOUT REGARD TO A PERSON'S PRIVATE RIGHTS.

PETITIONER PROCEEDED WITH HIS ORIGINAL APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE PETITION UNDER 28 U.S.C. § 2254 BECAUSE THAT IS WHAT THE LAW REQUIRES.

THE BASIS FOR APPELLATE COURT ORDER AUTHORIZING LEAVE TO FILE A SECOND OR SUCCESSIVE PETITION RESTS UPON SUPREME COURT DECISIONS THAT "CONSTITUTIONAL LAW" AND THAT "THE FACTUAL PRELIMINARIES FOR THE CLAIM COULD NOT HAVE BEEN DISCOVERED PREVIOUSLY THROUGH THE EXERCISE OF DUE DILIGENCE".

COURT OF APPEALS DISREGARDED THE FACTUAL BASIS FOR PETITION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE PETITION, THEREFORE NEITHER FAIRLY CONSIDERED THE "CONSTITUTIONAL LAW" AS ISSUE, WAS AN ABUSE OF DISCRETION.

SUPREME COURT HAS HELD "PAST SUPREME COURT DECISIONS SHOULD INFORM THE EXERCISE OF DISCRETION" *SLOCHER V. BOARD OF HIGHER EDUCATION*, 350 U.S. 901, SUP. CT. 70 AT 657.

PETITIONER HAS BEEN DENIED HIS CONSTITUTIONAL RIGHT OF DUE-PROCESS OF LAW, WHICH COMPREHENDS THAT ADMINISTRATION OF LAWS EQUALLY APPLICABLE TO ALL UNDER ESTABLISHED RULES WHICH DO NOT VIOLATE FUNDAMENTAL PRINCIPLES OF PRIVATE RIGHT; CONSTITUTES EXCEPTIONAL CIRCUMSTANCE.

THE COURT OF APPEALS DENIAL OF COURT AUTHORIZATION FOR LEAVE VIOLATES CERTAIN IMPORTANT PRINCIPLES, DESCRIBED BY SUPREME COURT AS ONE OF THE BASIC ELEMENTS OF DUE-PROCESS; AND DESERVES RECOGNITION ON APPEAL. "IT CORRESPONDENTLY CONSTITUTES A FAILURE TO OBSERVE THAT FUNDAMENTAL FAIRNESS ESSENTIAL TO VERY CONCEPT OF JUSTICE".

IN RETROSPECT, APPELLATE COURT WILLFUL DISREGARD FOR SUPREME COURT RULE WAS AN ACT DONE WITHOUT GROUND BELIEVING IT WAS LAWFUL, OR CONDUCT MARKED BY CARELESS DISREGARD WHETHER OR NOT ONE HAS THE RIGHT TO ACT, AS WELL KNOWLEDGELY VIOLATE PRINCIPLE OF STARE-DECISIS.

THE GREAT PRINCIPLE OF 'STARE-DECETUS', SO FUNDAMENTAL TO THE PROPER
FUNCTIONING OF OUR JUSTICE SYSTEM, SO CONGENIAL TO LIBERTY, IS
PECULIARLY IMPORTANT TO INTEGRITY OF JUDICIARY.

SUPREME COURT'S AUTHORITY "WHILE EVEN A SINGLE ADJUDICATION OF THE CASE,
UPON A QUESTION PROPOSED BEFORE IT, IS NOT TO BE QUESTIONED OR DE-
REGARDED." SEE, EX PARTE BULLMAN, US. 4 CRANCH, 75, 89 212 554, 559.

CAN A LOWER COURT BE PERMITTED TO SUPERSEDE A SUPREME COURT PRECEDENT
OR DECISION MADE "CONSTITUTIONAL LAW", WHERE WOULD THE UPRIGHTNESS OF
CHARACTER AND SOUNDNESS OF MORAL PRINCIPLE OR INTEGRITY BE IF EVERY
COURT ACTS, NO LONGER AGAINST THE CONSTITUTION, AS IT VERY WELL PLEASES.

REASON WHY SUPREME COURT SHOULD ISSUE WRIT OF HABEAS CORPUS.

ALTHOUGH PETITIONER BELIEVES HE IS ENTITLED TO REVERSAL OF HIS CONVICTION AND
IMMEDIATE DISCHARGE FROM CUSTODY, ON ALL CLAIMS PRESENTED IN HIS ORIGINAL
APPLICATION OR HIS SECOND APPLICATION, WHICH APPEARS AS APPX. C, THE RECORD
ATTACHED TO THE PETITION MAY PROVE THAT FURTHER DEVELOPMENT OR NECESSITY FOR
ADDITIONAL RESPONSE TO NEW APPLICATION FOR WRIT OF HABEAS CORPUS WILL NOT
CAST THE FACTS DIFFERENTLY TO DETER SUPREME COURT FROM REACHING THE
CORRECT AND JUST DETERMINATION ON BASIS OF PROSECUTORIAL MISCONDUCT SUFFICIENT
TO ESTABLISH A VIOLATION OR DENIAL OF A CONSTITUTIONAL RIGHT.

THE RECORD ATTACH TO THE PETITION CLEARLY SUPPORTS THAT PETITIONER'S SIXTH
AMENDMENT RIGHT TO A FAIR AND IMPARTIAL TRIAL WAS VIOLATED THROUGH
UNLAWFUL CONTACT AND THE EVIDENCES ADDUCED AT TRIAL, BY STATE AUTHORITIES
WAS SUFFICIENT TO ESTABLISH EVERY ELEMENT OF THE OFFENCE BEYOND A
REASONABLE DOUBT.

"The Supreme Court has Appellate Jurisdiction not only to correct errors in judgment, but to make such disposition of claim as Justice requires." Quoting: *Honeyman v. Harbo*, 300 U.S. 14, 57 Sct. 350, 81 LEd 476 (1937).

The record attached, Doc. 60 District Court Judgment, clearly shows an order warrant with error which denies petitioner of right to "de novo review"; failure to dispose of all claims on the merits; failure to address particular claim at all, and the failure to reverse a judgment on basis of solely fact that is the state court record, provides a measure upon which the Court could make finding of exceptional circumstances.

Supreme Court may find the limited record attached to the petition sufficient in fact to warrant grant of writ of Habeas Corpus formally or upon remand.

The Supreme Court predecessor has already concluded prosecutorial misconduct demands reversal of a conviction. "It is a requirement that cannot be deemed to be satisfied by mere notice and hearing of a state has contrived a conviction through the pretense of a trial which in truth is but used as a means to deprive a defendant of liberty through a deliberate deception of court and jury..."

Morgan v. Holman, 294 U.S. 103, 55 Sct. 340, 79 LEd 791 (1935);

Jackson v. Scott, 573 U.S. 1067, 1067-70 (1993) ("Prosecutor affirmatively made inconsistent movement as petitioner trial")

1 THE NEW APPLICATION FOR WRIT OF HABEAS CORPUS BROUGHT PURSUANT TO 28-
2 USC§ 2254 CLEARLY ESTABLISHES FACTS SUPPORTING A CONSTITUTIONAL
3 VIOLATION UNDER SUPREME COURT "CONSTITUTIONAL LAW" AS PROSCRIBED IN JACKSON
4 V. VIRGINIA, QUOTING IN RE CONCHAP, THAT PETITIONER WAS CONVICTED UPON
5 INSUFFICIENT EVIDENCE AND WAS OBTAINED AS A RESULT OF PROSECUTORIAL
6 MISCONDUCT IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO A FAIR AND
7 IMPARTIAL TRIAL.

8 THE PROSECUTING ATTORNEY ENGAGED IN A INTENTIONAL DECEPTION AND FRAUD OF
9 COURT AND JURY THROUGH FALSE, INCONSISTENT OR KNOWINGLY MISREPRESENTATION
10 OF LAW AND KNOW AND DISREGARDED FACT THAT HIS ARGUMENT OR COMMENTS
11 WERE NOT FAIRLY SUPPORTED BY EVIDENCE OR TESTIMONY ADMITTED AT THE TRIAL,
12 WAS "CAUSE" FOR "REJECTIONS" REQUIRES A REVERSAL OF THE CONVICTION.

13 THE STATE-COURT RECORD OF THE HEARING DEMONSTRATES MEASURABLE CONDUCT
14 ESTABLISHING PROSECUTORIAL MISCONDUCT, UPON WHICH SUPREME COURT MAY ACT ON.

15 THE PROSECUTOR KNOWINGLY MISREPRESENTED STATE LAW BY FORMALLY RECLASS-
16 IFICATION OF THE OFFENSE OF "THEFT" TO MISLEAD OR CONFUSE JURY, THEREFORE
17 MODIFIED THE INDICTMENT IN SUCH A WAY AS TO RENDER THE TRIAL "FUNDAMENTALLY
18 UNFAIR".

19 THE STATE ACKNOWLEDGED A FAILURE TO PROVE THE ESSENTIAL ELEMENT FOR "THEFT"
20 AS CHARGED IN THE INDICTMENT IN COUNT (4), WHICH APPEARS AT APPX C,
21 "THAT IS NOT A CHARGE ... BECAUSE THERE WAS JUST NO PROOF"; AND
22 YET PETITIONER WAS STILL FOUND GUILTY OF CHARGE OF 'THEFT', CONVICTED AND
23 SENTENCED. THE CHARGE OF "THEFT" AS AMPLIFIED BY STATE PROSECUTOR'S
24 MULTIPLE USE OF TERM "STOLEN CHECKS" AS IT APPEARED THROUGHOUT THE TRIAL,
25 WHICH APPEARS AT APPX C, EXCEPT OF CLOSING COMMENT, TR 9/19/18.

26 THERE IS NO CONTROVERSY OF EVIDENCE THAT MAY BE PRESENTED TO CHALLENGE
27 THAT PETITIONER'S RIGHT TO A FAIR AND IMPARTIAL TRIAL WERE VIOLATED OR
28 THAT HE IS ENTITLED TO RELIEF.

1 CONCLUSION

3 PETITIONER HAS BROUGHT FORTH QUESTIONS ESSENTIAL TO THE EFFECTIVE
4 FUNCTIONING OF JUDICIAL HIERARCHY AFFECTING THE EFFECTIVENESS OF OR
5 COMPOSITION OF THE "LAW OF THE LAND" AS IT EXIST TODAY.

6 WHETHER A PRO SE PRISONER HAS BEEN DENIED SUBSTANTIAL RIGHTS RESULTS IN
7 A DENIAL OF JUSTICE THROUGH APPELLATE COURTS WILLFUL SUSPENSION OF THE
8 WRIT; OR WHETHER APPELLATE COURT KNOWINGLY OR BY EXERCISE OF SOME
9 OTHER UNKNOWN AUTHORITY FAIL TO GIVE DUE RESPECT TO SUPREME COURT
10 PRECEDENT OR A SUPREME COURT DECISION MAKE "CONSTITUTIONAL LAW" TO EFFECT
11 OF ALTERING THE WELL AN ACCEPTED COURSE OF JUDICIAL PROCEEDINGS IN
12 SUCH A MANNER AS TO DISTURB FUNCTION OF THE "LAW OF THE LAND", THUS
13 A VIOLATION IN REGARD FOR THE BODY OF PRINCIPLES WE CALL CONSTITUTION.

15 PETITIONER BELIEVES THE ANSWER TO QUESTIONS ARE OBVIOUS.

17 APPELLATE COURTS DUTY, IN PASSING UPON THE CONSTITUTIONALITY OF STATUTE,
18 TO UPHOLD THEM UNLESS IT CAN REASONABLY BE SAID. (16 AM J2d. 101,
19 1975).

20 THE LEGISLATION BY COURT OF APPEALS TO PROTECT CONSTITUTIONAL RIGHTS CANNOT
21 BE REVERSED WHEN IT IS SHOWN THAT FAIR RESULTS OF DECISION IS TO
22 BE DONE. (SEE, ROBERTS V. ALABAMA, 192 U.S. 226, 24 S.Ct. 257, 48 LEd
23 417. (1904); CONSTITUTES EXCEPTIONAL CIRCUMSTANCES.

25 THE PETITION FOR WRIT OF HABEAS CORPUS AND DISTRICT JUDGE ORDER (PAGE 60)
26 CLEARLY ESTABLISH A DENIAL OF JUSTICE WHEN DISTRICT COURT FAILED TO
27 REVIEW INDEPENDENTLY ALL OBJECTIONS TO MAGISTRATE JUDGE REPORT AND
28 RECOMMENDATIONS; FAILURE TO DEPOSE AT CLAIMS ON THE MERITS, OR

1 ERRORS IN DISMISSAL OF prior petition for writ of habeas corpus, ~~not~~
2 THEY EXIST AT ALL.

3
4 THERE CANNOT BE PRESENT A GREATER PROOF MORE COMPELLING THAN AN
5 OFFICIAL OFFICER OF THE STATE, STATING OFFICIALLY, THAT IT COULD NOT PROVE
6 A CRIME FOR WHICH PETITIONER HAS BEEN ~~arrested~~ AND LATER CONVICTED AND
7 SENTENCED TO PERSUADE JUSTICE OF THE SUPREME COURT TO DO ANYTHING
8 OTHER THAN GRANT WRIT OF HABEAS CORPUS FORMALLY OR IN REMAND.

9
10 PETITIONER'S WRIT OF HABEAS CORPUS IS ENTITLED TO REVIEW ON ITS MERITS, THAT
11 HE MAY BRING AN ACTION IN A COURT OF THE UNITED STATES SEEKING RELIEF
12 OTHER THAN MONEY DAMAGES AND STATING A CLAIM THAT AN AGENCY OR AN
13 OFFICER THEREOF ACTED OR FAILED TO ACT IN AN OFFICIAL CAPACITY OR
14 UNDER COLOR OF LEGAL AUTHORITY SHALL NOT BE DENIED SUCH RELIEF THROUGH
15 DENIAL OR PROTEST SUPREME COURT FROM DISPENSING OF THE MATTER AS LAW AND
16 JUSTICE REQUIRE.

17
18 WHEREFORE, THE CONSTITUTION OF UNITED STATES FAVORS GRANT OF WRIT OF
19 HABEAS CORPUS TO CORRECT A DENIAL OF JUSTICE THROUGH THE MISFEASANCE OF
20 JUSTICE, THE WRIT SHOULD ISSUED WITH ALL HASTE.

21
22
23 Respectfully Submitted this 10th day of March, 2025

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25 21

26 GENE V. GUNN, pro se
27
28