

## Index of Appendices

### I. Appendix A

1. District Court Order (Doc. 60) Case 3:20-cv-08327-JAT
2. Except Magistrate Judge Report and Recommendation (Doc. 56)  
Case 3:20-cv-08327-JAT.
3. Court of Appeals Order 12-18-24 No. 24-3230
4. Court of Appeals Order 1-07-25 No. 24-3230

### II. Appendix B

1. Copy of Original Habeas Corpus Petition - 12-07-20.
2. Copy of New 'First Petition' not properly filed.

### III. Appendix C

1. Copy of Writ of Habeas Corpus - State of Arizona Sup. Ct. V13000201550451
2. Except of RT 9-19-15

# **APPENDIX**

## **A**

# **EXHIBIT**

# **A**

1 WO

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 Gerald Vaughn Gwen,  
10 Petitioner,

11 v.

12 Attorney General of the State of Arizona, et  
13 al.,

14 Respondents.

No. CV-20-08327-PCT-JAT  
ORDER

15 Pending before this Court is Petitioner's Petition for Writ of Habeas Corpus filed  
16 pursuant to 28 U.S.C. § 2254 ("Petition"). The Magistrate Judge to whom this case was  
17 assigned issue a Report and Recommendation ("R&R") recommending that the Petition be  
18 denied. (Doc. 56). Petitioner filed objections to the R&R. (Doc. 57). Respondent replied  
19 to the objections. (Doc. 58).

20 I. Review of R&R

21 This Court "may accept, reject, or modify, in whole or in part, the findings or  
22 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). It is "clear that  
23 the district judge must review the magistrate judge's findings and recommendations *de*  
24 *novo if objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d  
25 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*) (emphasis in original); *Schmidt v. Johnstone*, 263  
26 F.Supp.2d 1219, 1226 (D. Ariz. 2003) ("Following *Reyna-Tapia*, this Court concludes that  
27 *de novo* review of factual and legal issues is required if objections are made, 'but not  
28 otherwise.'"); *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d

1 1027, 1032 (9th Cir. 2009) (the district court “must review de novo the portions of the  
2 [Magistrate Judge’s] recommendations to which the parties object.”). District courts are  
3 not required to conduct “any review at all . . . of any issue that is not the subject of an  
4 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (emphasis added); *see also* 28 U.S.C.  
5 § 636(b)(1) (“the court shall make a *de novo* determination of those portions of the [report  
6 and recommendation] to which objection is made.”).<sup>1</sup>

7 Accordingly, the Court will review the portions of the R&R to which there is a  
8 specific objection de novo. The Court notes that at page 2 of his objections Petitioner states  
9 that he objects to the entirety of the R&R. The Court is not obligated to review every word  
10 of the 53-page R&R de novo based on this global objection. *Accord Martin v. Ryan*, 2014  
11 WL 5432133, \*2 (D. Ariz. October 24, 2014) (“...when a petitioner raises a general  
12 objection to an R&R, rather than specific objections, the Court is relieved of any obligation  
13 to review it.”) (collecting cases); *Warling v. Ryan*, 2013 WL 5276367, \*2 (D. Ariz.  
14 September 19, 2013) (“A general objection has the same effect as would a failure to  
15 object”) (internal quotations and citation omitted). Thus, Petitioner’s general objection  
16 cannot overcome this Circuit’s *en banc* case law that this Court need only review de novo  
17 factual and legal issues to which there is a specific objection. *See Reyna-Tapia*, 328 F.3d  
18 at 1121. As a result, this general objection is overruled and the Court will turn to  
19 Petitioner’s specific objections where the Court can discern them.

## 20 II. Default

21 The R&R concludes that Respondents have not failed to defend this action;  
22 therefore, Petitioner is not entitled to default or default judgment. (Doc. 56 at 9-10).

23  
24 <sup>1</sup> The Court notes that the Notes of the Advisory Committee on Rules appear to  
25 suggest a clear error standard of review under Federal Rule of Civil Procedure 72(b), citing  
26 *Campbell*. Fed. R. Civ. P. 72(b), NOTES OF ADVISORY COMMITTEE ON RULES—  
27 1983 citing *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert.*  
28 *denied*, 419 U.S. 879 (The court “need only satisfy itself that there is no clear error on the  
face of the record in order to accept the recommendation.”). The court in *Campbell*,  
however, appears to delineate a standard of review specific to magistrate judge findings in  
the motion to suppress context. *See Campbell*, 501 F.2d at 206–207. Because this case is  
not within this limited context, this Court follows the Ninth Circuit’s *en banc* decision in  
*Reyna-Tapia* on the standard of review for an R&R.

1 Petitioner objects to this recommendation. (Doc. 57 at 9). The Court has reviewed the  
2 relevant filings in this case and agrees with the R&R that Petitioner is not entitled to default.  
3 This objection is overruled.

### 4 **III. Factual Background**

5 The R&R summarized the history of this case in state court. (Doc. 56 at 1-5). While  
6 Petitioner objects to the accuracy of the state court's recounting of its own proceedings and  
7 findings, Petitioner does not specifically object to the R&R's summary of what transpired  
8 in state court. (*See* Doc. 57). This Court accepts and adopts the R&R's recounting of the  
9 state court proceedings.

10 In short summary, Petitioner proceeded to a jury trial, pro se with advisory counsel,  
11 and was convicted of identity theft, credit card theft, theft, fraud and forgery. (Doc. 56 at  
12 2-3). Petitioner was sentenced to 5 years incarceration. (*Id.*). It appears Petitioner has  
13 completed his sentence, but no one argues the Petition is moot.

### 14 **IV. Habeas Petition**

15 The R&R quoted the claims raised in the habeas petition. (Doc. 56 at 5-7). The  
16 R&R then endeavored to summarize that narrative into grounds for relief. (Doc. 56 at 7-  
17 8). The R&R summarized Petitioner's claims/ground as follows:

- 18 - Ground 1A – use of perjured testimony at grand jury
- 19 - Ground 1B – insufficient evidence at grand jury<sup>2</sup>
- 20 - Ground 2A – improper vacating of preliminary hearing
- 21 - Ground 2B – inadequate notice and right to counsel at grand jury
- 22 - Ground 3 – search and seizure upon arrest
- 23 - Ground 4 – search and seizure of car, residence and truck
- 24 - Ground 5A – procedural defects of (1) insufficient indictment, (2)  
prosecutorial misconduct in arguments, (3) variance from the indictment, (4)  
verdict not unanimous, and (5) denial of access to exculpatory evidence
- 25 - Ground 5B – insufficient evidence of (1) theft and negotiation of  
checks, and (2) certified proof of loss from credit card
- 26 - Ground 6A – admission of false evidence, unauthenticated records,  
incorrect legal decisions and denial of evidentiary hearing
- 27 - Ground 7A – evidence tampering
- 28 - Ground 7B – *Brady* violations
- Ground 8 – denial of substitute counsel
- Ground 9A – judicial bias on relationship
- Ground 9B – judicial bias based on rulings on: (1) March 19, 2018  
order on motion to dismiss/suppress; (2) unauthenticated computer records;  
(3) filing of motions for a change of judge; (4) failure to disclose; (5) check  
records; (6) prosecution's improper arguments; and (7) Petitioner's motion  
for acquittal.

1 (*Id.*).

2 Petitioner objected to some of this summary, which will be discussed more fully  
3 below. Otherwise, the Court accepts the R&R's characterization of the claims in this case.

4 **V. Unexhausted and Procedurally Defaulted Claims**

5 The R&R concludes that Grounds 1B, 5A(4), and 9 are unexhausted and defaulted,  
6 without excuse, and must be dismissed with prejudice. (Doc. 56 at 16, 19, 21-22, 24).  
7 Petitioner generally objects and states that he exhausted all his claims. (Doc. 57 at 9).  
8 However, Petitioner does not offer any specifics as to when in state court he presented  
9 these claims in a procedurally correct manner. (Doc. 57 at 9-11). The Court agrees with  
10 the R&R that these claims are unexhausted and this Court cannot consider their merits  
11 unless Petitioner shows cause and prejudice or a fundamental miscarriage of justice/actual  
12 innocence to overcome his failure to exhaust. The Court finds the R&R correctly stated  
13 the law governing these exceptions to the exhaustion requirement (Doc. 56 at 22-24) and  
14 Petitioner's objection (Doc. 57 at 14) that the R&R incorrectly stated the governing law is  
15 overruled.

16 The R&R concludes that Petitioner has not shown cause and prejudice or a  
17 fundamental miscarriage of justice. (Doc. 56 at 24). Petitioner objects to the R&R's  
18 reliance on the state court record/decisions. (Doc. 57 at 9). Petitioner argues that the state  
19 court's decisions do not reflect what actually transpired in state court. (*Id.*). Under 28  
20 U.S.C. § 2254, this Court cannot review the state court's record or decisions de novo, nor  
21 could the Magistrate Judge in preparing the R&R. Thus, the R&R's reliance on and citation  
22 to the state court's decisions was appropriate and this objection is overruled.

23 The Court accepts the R&R's determination that Grounds 1B, 5A(4), and 9 are  
24 unexhausted and defaulted, without excuse, and must be dismissed with prejudice.<sup>2</sup>

25 <sup>2</sup> Petitioner objects to the R&R's characterization of Ground 9 as judicial bias;  
26 Petitioner indicates he intended to argue an inappropriate exercise of judicial power. (Doc.  
27 57 at 13-14). First, the Court agrees with the R&R that the closest legal theory to the words  
28 Petitioner is using (notably Petitioner offers no citation to any law discussing judicial use  
of power as a cognizable theory) is judicial bias. But regardless of how Petitioner intended  
to cast this claim, this Court's conclusion that the claim is unexhausted without excuse is  
unchanged. Thus, this objection is overruled as irrelevant to the decision.

1 **VI. Remaining Claims**

2 With respect to any claims that Petitioner exhausted before the state courts, under  
3 28 U.S.C. §§ 2254(d)(1) and (2) this Court must deny the Petition on those claims unless  
4 “a state court decision is contrary to, or involved an unreasonable application of, clearly  
5 established Federal law”<sup>3</sup> or was based on an unreasonable determination of the facts. *See*  
6 *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003). Additionally, “[a]n application for a writ of  
7 habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to  
8 exhaust the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(2).

9 At this point, Petitioner makes two additional global objections. (Doc. 57 at 13).  
10 First, Petitioner argues that the R&R subcategorizing his claims violates his due process  
11 rights. (*Id.*). As discussed in footnote 2, the Magistrate Judge in preparing the R&R  
12 attempted to analyze Petitioner’s words as legal claims. The claims in Petitioner’s Petition  
13 span 10 pages, but only ground six contains a legal citation, and it is to a state case not a  
14 federal one. (Doc. 1 at 6-15). By Petitioner failing to offer any legal support for his  
15 arguments, the Court must either deny relief with no analysis, or determine whether there  
16 is any legal support for the factual theories presented. There is no due process violation in  
17 the Court researching the claims to the best of its ability. Moreover, in his objections,  
18 Petitioner offers no alternative legal theory to support his factual allegations. For all of  
19 these reasons, this objection is overruled.

20 Next, Petitioner argues that it is inconsistent for the R&R to determine that some  
21 claims were exhausted and some claims remain unexhausted, but procedurally defaulted,  
22 in state court. (Doc. 57 at 15-16). The R&R is legally correct that some claims may have  
23 been exhausted in state court while other claims have not been exhausted in state court.  
24 *See, e.g., Bradford v. Davis*, 923 F.3d 599 (9th Cir. 2019) (finding some claims exhausted  
25 and some claims unexhausted). Accordingly, this objection is overruled.

26 At pages 24–51, the R&R discusses the merits of the remaining grounds in the

27  
28 <sup>3</sup> Further, in applying “Federal law” the state courts only need to act in accordance  
with Supreme Court case law. *See Carey v. Musladin*, 549 U.S. 70, 74 (2006).



1 Petition. (Doc. 56 at 24–51). The R&R reviews certain grounds de novo. (*See e.g.*, Doc.  
2 56 at 27). Ultimately as to all remaining grounds, the R&R determines that they are either  
3 without merit or that the state court decision was not contrary to or an unreasonable  
4 application of clearly established federal law or an unreasonable determination of the facts.  
5 Petitioner makes no specific objections to this portion of the R&R and the Court accepts  
6 pages 24–51 and the conclusions therein.

7 **VII. Conclusion**

8 Based on the foregoing,

9 **IT IS ORDERED** that the Report and Recommendation (Doc. 56) is accepted and  
10 adopted. The objections (Doc. 57) are overruled. Grounds 1B, 5A(4) and 9 of the Petition  
11 are dismissed with prejudice; the remaining Grounds of the Petition are denied with  
12 prejudice; the Clerk of the Court shall enter judgment accordingly.

13 **IT IS FURTHER ORDERED** that pursuant to Rule 11 of the Rules Governing  
14 Section 2254 Cases, in the event Petitioner files an appeal, the Court denies issuance of a  
15 certificate of appealability because dismissal of portions of the Petition is based on a plain  
16 procedural bar and jurists of reason would not find this Court's procedural ruling debatable,  
17 *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000), and Petitioner has not made a substantial  
18 showing of the denial of a constitutional right, *see* 28 U.S.C. § 2253(c)(2).

19 Dated this 15th day of June, 2022.

20  
21  
22  
23  
24  
25  
26  
27  
28

  
James A. Tallroth  
Senior United States District Judge

1 Appeals observed:

2 Gwen asserts that he was unable to timely challenge the grand jury  
3 determination of probable cause because he was not provided a  
4 transcript of the grand jury proceeding until May 2017. But Gwen  
5 admits that the transcript was provided to his original public  
6 defender- and ultimately provided to him- and he fails to explain why  
7 he did not seek relief by special action once he received the transcript.

8 (Exh. GG, Mem. Dec. 1/14/20 at ¶ 8, n. 1.) Petitioner proffers nothing beyond his bare  
9 assertions to overcome the presumption of correctness that attaches to the conclusion that  
10 the required special action was not filed. See 28 U.S.C. § 2254(e). Consequently, the  
11 undersigned finds it was not.

12 Moreover, Petitioner makes no assertion that the applied procedural bar was not  
13 independent and adequate, let alone offering "specific factual allegations" and "citation to  
14 authority" to support such assertions. See *Bennett*, 322 F.3d 584-585.

15 Accordingly, the undersigned concludes Ground 1B was procedurally barred on an  
16 independent and adequate ground.

17 **b. Ground 5A(2) – Prosecutor Misconduct re Arguments**

18 **Claims Adequately Raised** - Petitioner claims in Ground 5A(2) that the prosecutor  
19 engaged in misconduct during opening and closing arguments. In the Petition, Petitioner  
20 identifies one incident of misconduct. He complains that the prosecutor made "ambiguous  
21 remarks" and asserts that in closing arguments the prosecutor argued "'the state cannot  
22 prove charge of theft...we are not charging that the defendant stole check.'" (Petition,  
23 Doc. 1 at 9(A), 9(B).) This references the following portions of closing argument:

24 One of the things I want to clarify is the defendant is not  
25 charged with stealing the checks. That is not a charge. He wasn't  
26 charged because there was just no proof. You heard Mr. Dimler  
27 indicate he didn't know when the checks were stolen.

28 It's a reasonable inference that -- that he stole the checks, the  
defendant stole those checks, 'cause he had access to those checks by  
his own testimony. It came out in the testimony that he was there and  
had access to the corporate office, to the restaurant's offices both  
night and day. He shared those offices.

But don't be misled or find that confusing. He's not charged  
with the theft of those checks. He's charged with using those stolen  
checks.

1 (Exh. QQ, R.T. 9/19/18 (Day 5) at 29-30.) Petitioner's argument fairly raises a claim of  
2 prosecutorial misconduct based on these comments.

3 Petitioner's bare assertions of other misconduct in arguments is not sufficient to  
4 state a claim on such bases. Conclusory allegations that are not supported by specific facts  
5 do not merit habeas relief. *James v. Borg*, 24 F.3d 20, 26 (9th Cir.), *cert. denied, sub. nom.*  
6 *James v. White*, 513 U.S.935 (1994).

7 In his Reply, Petitioner makes reference to his Appendix A to his Supplemental  
8 Brief (Exh. FF) on direct appeal when arguing the prosecutor's "comments were  
9 improper," which (Reply, Doc. 43 at 51) In that Appendix, Petitioner listed a variety of  
10 comments in opening statements and closing arguments. But Petitioner cannot use his  
11 Reply to amend his Petition. *Cacoperdo*, 37 F.3d at 507.

12 Accordingly, the undersigned addresses only the one supported claim of  
13 prosecutorial misconduct.

14 **Procedural Default** - Respondents argue Petitioner did not properly exhaust his  
15 claim in Ground 5A(2). Respondents provide no argument on the nature of the deficiency  
16 in Petitioner's presentation of this claim. (Answer, Doc. 23 at 25.) Petitioner proffers  
17 nothing to show his fair presentation. Nonetheless, the undersigned concludes the claim  
18 was fairly presented.

19 In his Supplemental Brief on direct appeal, Petitioner raised claims of prosecutorial  
20 misconduct. (See Exh. FF, Supp. Brief, Doc. 23-1 at 296 *et seq.*) And he argued  
21 prosecutorial misconduct occurs when the prosecution "improperly argues inferences in  
22 its opening statement," "implies or present[s] conflicting or false facts in his comments,"  
23 and "unprofessionally makes ad hominem arguments[sic] directed towards Defendant in  
24 the presence of jurors." (*Id.* at 296-297.) He argued that the prosecution "failed to include  
25 legal grounds in his arguments," "made unfounded insinuations, fraudulent and misleading  
26 comments, comments not supported by trial proof, and hides behind insufficient legal  
27 theory," "unfairly planted cancerous material." (*Id.* at 297-301.) In Appendix A  
28 ("Prosecutor Comments") to his Supplemental Brief, Petitioner provided a litany of

# **EXHIBIT**

## **C**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

DEC 18 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GERALD VAUGHN GWEN,

Applicant,

v.

BRUNO STOLC,

Respondent.

No. 24-3230

ORDER

Before: WALLACE, GRABER, and BUMATAY, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C.

§ 2254 habeas corpus petition in the district court is denied. The applicant has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Any pending motions are denied as moot.

No further filings will be entertained in this case.

The clerk will serve this order and Form 12 on the applicant.

**DENIED.**

# **EXHIBIT**

## **D**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JAN 7 2025

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GERALD VAUGHN GWEN,

Applicant,

v.

BRUNO STOLC,

Respondent.

No. 24-3230

ORDER

The applicant has filed at Docket Entry No. 7 a petition for panel rehearing. The applicant is informed that the court's December 18, 2024, order, stated: "No further filings will be entertained in this case." The court, therefore, will not take any action on the applicant's filing.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

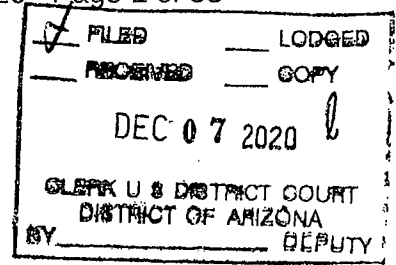


# **APPENDIX**

## **B**

# **EXHIBIT**

## **E**



GERALD V. GWEN # 045528  
Name and Prisoner/Booking Number

YAVAPAI COUNTY DETENTION CTR.  
Place of Confinement

2830 W. COMMONWEALTH DR, STE 105  
Mailing Address

CAMP VERDE, AZ. 86322  
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

GERALD VAUGHN GWEN,  
(Full Name of Petitioner)

Petitioner,

v.

SCOTT MASHKEZ, SITERIFF,  
(Name of the Director of the Department of  
Corrections, Jailor or authorized person having custody  
of Petitioner),

Respondent,  
and

The Attorney General of the State of ARIZONA,

Additional Respondent.

THIS DOCUMENT IS IN PROPER FORM ACCORDING  
TO FEDERAL AND/OR LOCAL RULES AND PRACTICES  
AND IS SUBJECT TO REJECTION BY THE COURT.

REFERENCE LRCP 5.4  
(Rule Number/Section)

CASE NO. CV20-08327-PCT-JAT-JFM  
(To be supplied by the Clerk)

**PETITION UNDER 28 U.S.C. § 2254  
FOR A WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY  
(NON-DEATH PENALTY)**

(Excluded Record)

### PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: YAVAPAI COUNTY SUPERIOR COURT
- (b) Criminal docket or case number: U1300CEZ01580451
- Date of judgment of conviction: September 19, 2018
- In this case, were you convicted on more than one count or crime? Yes ☒ No ☐

4. Identify all counts and crimes for which you were convicted and sentenced in this case: (1) THEFT OF A CREDIT CARD, (2) TAKING THE IDENTITY OF ANOTHER, (3) FRAUDULENT Schemes AND ACT. FICT, (4) THEFT, (5) Falsify
5. Length of sentence for each count or crime for which you were convicted in this case: 2.5, 1.5, 5, 3.5, 2.5 years - RUN CONCURRENT FOR A TOTAL OF FIVE YEARS.
6. (a) What was your plea?
- |                              |                                     |
|------------------------------|-------------------------------------|
| Not guilty                   | <input checked="" type="checkbox"/> |
| Guilty                       | <input type="checkbox"/>            |
| Nolo contendere (no contest) | <input type="checkbox"/>            |
- (b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details: \_\_\_\_\_
- (c) If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐
7. Did you testify at the trial? Yes ☐ No ☒
8. Did you file a direct appeal to the Arizona Court of Appeals from the judgment of conviction? Yes ☒ No ☐

If yes, answer the following:

- (a) Date you filed: NOTICE FILED OCTOBER 1, 2018 Brief Filed AUGUST 19, 2019
- (b) Docket or case number: 1-CA-CR-18-0775
- (c) Result: CONVICTION AFFIRMED
- (d) Date of result: JANUARY 14, 2020
- (e) Grounds raised: MALEFICIOUS PROSECUTION, ILLEGAL ARREST, ILLEGAL SEARCH AND SEIZURE, PROCEDURAL DUE PROCESS, DUE PROCESS OF THE LAW, DEFECTIVE INSTRUCTIONS, TAMPERING, Brady violations, SUFFICIENCY OF EVIDENCE, ADMISSIBILITY OF EVIDENCE, RIGHT TO COUNSEL, FAIR TRIAL, JUDICIAL MISCONDUCT, PERJURY, SUBORN PERJURY,

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

9. Did you appeal to the Arizona Supreme Court? Yes ☒ No ☐

If yes, answer the following:

- (a) Date you filed: FEBRUARY 20, 2020
- (b) Docket or case number: CR-20-0068-PR
- (c) Result: Affirmed
- (d) Date of result: Affirmed - July 28, 2020
- (e) Grounds raised: Appellate Court Abuse of discretion, defective indictment, due process right to preliminary hearing, illegal arrest, illegal search and seizure, sufficiency of evidence, Brady law, admissibility of evidence, tampering, right to counsel, judicial misconduct, prosecutorial misconduct

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

10. Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

- (a) Date you filed: \_\_\_\_\_
- (b) Docket or case number: \_\_\_\_\_
- (c) Result: \_\_\_\_\_
- (d) Date of result: \_\_\_\_\_
- (e) Grounds raised: \_\_\_\_\_

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

11. Other than the direct appeals listed above, have you filed any other petitions, applications or motions concerning this judgment of conviction in any state court? Yes ☐ No ☒

If yes, answer the following:

(a) First Petition. N/A

- (1) Date you filed: \_\_\_\_\_
- (2) Name of court: \_\_\_\_\_
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): \_\_\_\_\_
- (4) Docket or case number: \_\_\_\_\_
- (5) Result: \_\_\_\_\_
- (6) Date of result: \_\_\_\_\_
- (7) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Second Petition. N/A

- (1) Date you filed: \_\_\_\_\_
- (2) Name of court: \_\_\_\_\_
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): \_\_\_\_\_
- (4) Docket or case number: \_\_\_\_\_
- (5) Result: \_\_\_\_\_
- (6) Date of result: \_\_\_\_\_
- (7) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) Third Petition. N/A

- (1) Date you filed: \_\_\_\_\_
- (2) Name of court: \_\_\_\_\_
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): \_\_\_\_\_
- (4) Docket or case number: \_\_\_\_\_
- (5) Result: \_\_\_\_\_
- (6) Date of result: \_\_\_\_\_
- (7) Grounds raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(d) Did you appeal the action taken on your petition, application, or motion to the:

- |                      | <u>Arizona Court of Appeals:</u>        |                             | <u>Arizona Supreme Court:</u>           |                             |
|----------------------|---|-----------------------------|---|-----------------------------|
| (1) First petition:  | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (2) Second petition: | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> |
| (3) Third petition:  | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> |

(e) If you did not appeal to the Arizona Court of Appeals, explain why you did not: \_\_\_\_\_

Review denied to Supreme Court to reconsider its decision; not reviewable  
(Decision affirmed)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: MALICIOUS PROSECUTION, DEFECTIVE INDICTMENT IN VIOLATION OF PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHT.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

ON OR ABOUT SEPTEMBER 25, 2015 THE STATE PROSECUTIVE ATTORNEY BROUGHT A FRAUDULENT CASE BEFORE THE GRAND JURY. THE PETITIONER ALLEGES THAT THE INDICTMENT WAS INSUFFICIENT FOR THE GRAND JURY TO RETURN AN INDICTMENT, THE PROCEEDING WAS PLAGUED WITH LARGE ASSIGNMENT OF PERJURY AND THE PROSECUTIVE ATTORNEY PRESENTING THIS CASE TO THE GRAND JURY SUBVENED TESTIMONY. THE PROSECUTOR BUILT A CASE ON LAWFULNESS TO INDICT CUSTOMARY TO CONSTITUTIONAL STANDARDS OF A PERPETRANCE OF EVIDENCE SUFFICIENT TO DETERMINE PROBABLY CAUSE. ON THIS DATE THE PROSECUTIVE ATTORNEY PREMATURELY PRESENTED A INFORMATION TO A GRAND JURY BEFORE HE DETERMINED PROBABLE CAUSE. BY JUDICIAL ADMISSION, THROUGH A MOTION FILED IN SUPREME COURT ON 3-18-19, WITH A DECLARATION THAT THE STATE DID NOT PRESENT ANY EVIDENCE TO THE GRAND JURY CORROBORATING THE ALLEGED OFFENSES CHARGED IN THE COMPLAINT. IT IS FACT, SUPPORTED BY THE RECORD, THAT THE PROSECUTING ATTORNEY PREPARING THE CASE FOR THE GRAND JURY INSERTED FALSE FACTS TO UNFAIRLY INFLUENCE THE DELIBERATION TO INDICT. THE INDICTMENT WAS UNCONSTITUTIONAL IN VIOLATION OF PETITIONER'S GRAND JURY GUARANTEE ACCORDED HIM BY THE FIFTH AMENDMENT AND OF DUE PROCESS SECURED BY THE FOURTEENTH AMENDMENT TO THE US CONSTITUTION. THE INDICTMENT SIMPLY LACKS PROBABLE CAUSE AND THERE WAS NO EVIDENCE TO SUPPORT OF THE ALLEGATIONS.

(b) Did you present the issue raised in Ground One to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

- Direct appeal ☒
- First petition ☒
- Second petition ☐
- Third petition ☐

(d) If you did not present the issue in Ground One to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground One to the Arizona Supreme Court? Yes ☒ No ☐



**GROUND THREE:** Petitioner was illegally arrested without warrant and without probable cause in violation of the Fourth and Fourteenth Amendments to the US. Const.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

THE PETITIONER ALLEGES THAT ON SEPTEMBER 18, 2015 HE WAS ILLEGALLY DETAINED AND ARRESTED WITHOUT WARRANT AND WITHOUT PROBABLE CAUSE.

ON THIS DATE THE PETITIONER WAS STOPPED AND DETAINED UNDER FALSE PRETEXTS BY AN OFFICER FROM THE DEPARTMENT OF PUBLIC SAFETY (DPS). THE RECORDS DEMONSTRATE THAT THE OFFICER WAS CONTACTED BY THE YAVAPAI COUNTY SHERIFF'S OFFICE WITH SPECIFIC INSTRUCTIONS TO STOP THE PETITIONER AND DETAIN UNTIL AN OFFICER COULD RESPOND FROM THE YAVAPAI COUNTY SHERIFF OFFICE.

AN OFFICER ARRIVED AND IMMEDIATELY PLACED PETITIONER IN HAND RESTRAINTS, CONDUCTED A BODY SEARCH AND PLACED THE PETITIONER IN THE BACK OF HIS POLICE VEHICLE WITHOUT A WARRANT AND WITHOUT STATING THE GROUNDS FOR AFFIRMING AN ARREST.

LATER THE PETITIONER WAS TRANSPORTED TO A POLICE STATION FOR INTERVIEW.

(b) Did you present the issue raised in Ground Three to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

Direct appeal ☒  
First petition ☐  
Second petition ☐  
Third petition ☐

(d) If you did not present the issue in Ground Three to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground Three to the Arizona Supreme Court? Yes ☒ No ☐

GROUND FOUR: petitioner property, papers were illegally searched and seized  
prior to law enforcement obtaining a valid search warrant, in violation  
of the fourth Amendment to the U.S. Constitution.

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
- THE petition ALLEGES that petitioners property, papers were illegally searched  
AND seized by YAVAPAI COUNTY Sheriff deputies prior to obtaining a valid  
SEARCH WARRANT.
- THE property SEARCH AND seized included, Petitioners Vehicle, Residence AND  
A UHAI Rental truck in his possession.
- THE search took place BETWEEN September 18, 2015 AND September 20, 2015.  
A valid search warrant was not obtained for ANY of the property OR locations  
where the property was stored until September 24, 2015.  
(SEE WARRANT: V300SW201580040; V300SW2015580029).
- THE petition further ALLEGES that police officers AND the prosecuting Attorney  
unlawfully participated in a coverup of the illegal searches.
- THE RECORD & EVIDENCE clearly supports that police searched the petitioner  
property prior to obtaining a valid search warrant, through concealment AND  
suppression of evidence, and violation of his 4th rights. AND deprive  
petitioner of due process of law.

(b) Did you present the issue raised in Ground Four to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

- Direct appeal ☒  
First petition ☐  
Second petition ☐  
Third petition ☐

(d) If you did not present the issue in Ground Four to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground Four to the Arizona Supreme Court? Yes ☒ No ☐

**GROUND TWO:** DUE PROCESS, PROCEDURAL DUE PROCESS, RISK TO COUNSEL RESULTING FROM DEPRIVATION OF PRELIMINARY HEARING, IMPROPERLY VACATED BY A FORM NOT AUTHORIZED BY LAW, AND THE COURT AND STATES MISUSE OF A GRAND JURY EXEMPTION TO DENY A PETITIONER WHEN THE STATE FAILS TO PROVIDE SUFFICIENT NOTICE OF GRAND JURY PROCEEDINGS, THUS PREVENTING PETITIONER FROM REQUESTING REPRESENTATION BEFORE THE GRAND JURY; IN VIOLATION OF THE 5TH AND 14TH AMENDMENTS AND 6TH ARTICLE

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):  
Grand Jury Proceedings / Preliminary Hearing.

THE PETITIONER ALLEGES THAT HIS PRELIMINARY HEARING WAS VACATED BY A FORM NOT AUTHORIZED BY LAW. IT IS FURTHER ALLEGED THAT THE GRAND JURY PROCEEDINGS WERE NOT CONDUCTED IN GOOD FAITH AND PETITIONER WAS NOT PROVIDED SUFFICIENT NOTICE AND THEREFORE UNABLE TO REQUEST REPRESENTATION BEFORE THE GRAND JURY.

ON SEPTEMBER 24, 2015 PETITIONER DEMANDED THAT A PRELIMINARY HEARING BE HELD PURSUANT TO ARIZ. R. CRIM. P. R. 5.1(S)(2). THIS HEARING WAS VACATED AND PETITIONER WAS NEITHER NOTICED OR ISSUED A COURT MINUTE ENTRY AUTHORIZING THE VACATION. THE STATE PROSECUTING AGENCY, IN BAD FAITH HELD A GRAND JURY HEARING ON THE MORNING OF SEPTEMBER 25, 2015 WHEN HE KNEW THAT THE PETITIONER HAD REQUESTED A PRELIMINARY HEARING. THE PROSECUTING AGENCY WITHHELD NOTICE WHICH MUST BE ACCESSED BY LAW DEPRIVING PETITIONER OF DUE PROCESS. AS A RESULT OF NO NOTICE GIVEN TO PETITIONER HE WAS DEPRIVED HIS RIGHT TO REPRESENTATION OR TO REQUEST REPRESENTATION BEFORE A GRAND JURY.

IT IS NOTED THAT PETITIONER'S PRELIMINARY HEARING WAS SET FOR SEPTEMBER 25, 2015 AT 4:00 PM IN SUPERIOR COURT, YAVAPAI COUNTY AND THE STATE PROSECUTING AGENCY WAS AWARE OF THIS FACT AND IN BAD FAITH CONTINUED ON WITH AN ACTION HE KNEW WOULD VIOLATE THE CONSTITUTION.

(b) Did you present the issue raised in Ground Two to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

Direct appeal ☒  
First petition ☐  
Second petition ☐  
Third petition ☐

(d) If you did not present the issue in Ground Two to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground Two to the Arizona Supreme Court? Yes ☒ No ☐

- COUNT FIVE -

- SUFFICIENCY OF EVIDENCE ADDUCED AT TRIAL,

THE PETITIONER ALLEGES HIS CONVICTION WAS UNCONSTITUTIONAL BECAUSE HIS GUILT WAS NOT DETERMINED FROM EVIDENCE PRESENTED AT HIS TRIAL. THERE WAS NO EVIDENCE ON THE RECORD SUFFICIENT ENOUGH TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT.

THE TRIAL COURT FAILED TO OBSERVE THE FUNDAMENTAL PRINCIPLES ESSENTIAL TO THE VERY CONCEPT OF JUSTICE, IT OFFERED NO SAFE GUARDS. THE TRIAL COURT ALLOWED THE PROSECUTOR'S COMMENTS TO PROCEED UNCHALLENGED AND THERE WERE NO CORRECTIVE OR DISAPPROVING INSTRUCTIONS TO PROSECUTOR'S AMBIGUOUS REMARKS DURING OPENING AND CLOSING ARGUMENTS.

FROM THE ONSET OF THIS PROSECUTION THE INDICTMENT WAS INSUFFICIENT AS A MATTER OF LAW AND LACKED PROBABLE CAUSE.

"DUE PROCESS REQUIRES THAT NO PERSON BE MADE TO SUFFER THE DROSS OF A CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF, DEFINED AS EVIDENCE NECESSARY TO CONVINCE A TRIER OF FACT BEYOND A REASONABLE DOUBT .... 20. RE. JACKSON V. VIRGINIA, 397 U.S. 358, 90 S.Ct. 1028, 25 L.Ed. 2d 368.

IN THE INSTANT CASE THE STATE FAILED TO PROVE A SINGLE ELEMENT, THE TRIAL PROOF DOES NOT CORRESPOND TO THE ALLEGED CONDUCT OF THE INDICTMENT AND THERE WERE CHARGES NOT TRIED.

V. THE OFFENSES OF FRAUDULENT SCHEME AND ACTIVITY, THEFT OF A CREDIT CARD AND FORGERY WERE NEVER TRIED AT TRIAL. WHEN A STATE FAILS TO PERSUE AN OFFENSE AT TRIAL THE ACCUSED IS ENTITLED TO A JUDGMENT OF "NOO-PRO" AGAINST THE STATE. IN ADDITION TO CHARGE NOT TRIED, DURING THE PROSECUTOR'S CLOSING ARGUMENTS, ABNAGATES THE CHARGE OF "THEFT". HE UNEQUIVOCALLY STATES THAT "THE STATE CANNOT PROVE THE CHARGE OF THEFT. .... WE ARE NOT CHARGING THAT THE DEFENDANT STOLE CHECK. .... (UNQUOTE)" THE ADMISSION OF NOT BEING ABLE TO PROVE THE MOST IMPORTANT ELEMENT OF THE ENTIRE INDICTMENT CAST REASONABLE DOUBT AS TO THE CONDUCT ALLEGED IN ALL OTHER COUNTS. WITHOUT THIS CENTRAL OFFENSE OR ELEMENT PROVEN THERE ARE NO RATIONAL BASIS FOR SUPPORT OF THE OTHER OFFENSES.

THE JURY VERDICT WAS NOT UNANIMOUS AS A FACT OF LAW. WITH THE ADMISSION BY THE STATE'S PROSECUTING ATTORNEY THE TRIAL COURT DID NOT ADMONISH OR ISSUE A DISAPPROVING INSTRUCTION THAT WOULD HAVE DIMINISHED THE RISK OF A NON-UNANIMOUS JURY VERDICT.

IN ADDITION THE THE SUFFICIENCY OF EVIDENCE THE STATE AND THE TRIAL COURT IMPEDED, HINDERED, OBSTRUCTED, AND DEFEATED THE PETITIONERS ACCESS TO PERCUPTORY EVIDENCE. UNDER BRADY LAW THE COURT FAIL TO EXERCISE ITS JUDICIAL AUTHORITY TO REQUIRE THE STATE TO PRODUCE LEGITIMATE PROOF OF LOSS. PROOF OF THE EXISTENCE OF STOLEN BUSINESS CHECKS, USE OF A CREDIT CARD UNAUTHORIZED OR THAT A PARTICULAR BUSINESS CHECK WAS NEGOTIATED AT A CHECK CASHING CENTER

Without legitimate certified records showing that a crime had been committed leaves the record void of evidence necessary to sustain a conviction. The Plaintiff's conviction was the result of deception of Court and Jury, presumption and unreasonable inference from facts not in evidence.

- COURT VII -

Admissibility of evidence, The Plaintiff alleges that the trial court admitted evidence of forged or fabricated evidence contrary to clearly established state law and in violation of provisions fourteen Amendment to the US. Constitution.

The state law, ARS. 13-110(f), ARIZ. R. Crim. Procedure, 901, 902(b) requires authenticity. A computer generated copy must be accompanied by a certificate of authenticity. This requirement was affirmed by the state court of appeals in, STATE V.

JOHNSON, 184 ARIZ. 521, 911 P2d. 527 (1994)

The Plaintiff was deprived due process because the trial court made incorrect legal conclusions and because the court deprived Plaintiff of his right to hold an evidentiary hearing, pursuant to ARS. 13-4238.

- COURT VII -

TAMPERING, CONCEALMENT, SUPPRESSION OF EVIDENCE IN VIOLATION OF THE FOURTEENTH AMENDMENT AND ACTUALLY UNDER STATE LAW.

THE PETITIONER ALLEGES THE TRIAL WAS UNFAIR HE WAS DEPRIVED OF DUE PROCESS WHEN THE TRIAL COURT ALLOWED ALLEGATIONS OF MISCONDUCT AND TAMPERING TO PROCEED UNCHALLENGED, CHALLENGED, AND WITHOUT AN INVESTIGATION.

THE FOLLOWING ACTIVITY TOOK PLACE PRIOR TO TRIAL AND THE RECORD HAS UNDISPUTABLE AND DEMONSTRABLE PROOF TO SUPPORT THE ALLEGATIONS. (1) THE POLICE INTENTIONALLY PLANTED EVIDENCE IN THE ACCUSED VEHICLE AND AMONG HIS PERSONAL PROPERTY; (2) THE PROSECUTION ALTERED OFFICERS BODY-CAMERA RECORDINGS; (3) THE PROSECUTION WITHHELD PHOTOGRAPHS, ELECTRONIC FILES FROM FIREARMS DRIVES WERE LOST OR DESTROYED, SUBPOENA INFORMATION FROM SUSPECTS COMMUNICATIONS, INTERVIEW TAPES OF WITNESSES, POLICE RADIO AND DISPATCH LOGS OR TAPES.

COURT VIII RIGHT TO COUNSEL

THE PETITIONER ALLEGES THAT THE TRIAL COURT FAILED TO HOLD A HEARING ON TWO SEPARATE INCIDENTS WHEN ACCUSED REQUESTED SUBSTITUTE COUNSEL. ON OCTOBER 30, 2017 PETITIONER PREPARED TO ATTEMPT TO SUBMIT A TORRES MOTION. THE TRIAL COURT ABUSED ITS DISCRETIONARY AUTHORITY WHEN IT SUPPRESSED THE ISSUE AND STEERED THE PETITIONER TOWARDS SELF REPRESENTATION DEPRIVING PETITIONER OF HIS SIXTH AMENDMENT RIGHT TO COUNSEL IN A CRIMINAL PROSECUTION.

- COURT IX -

Judicial Impropriety that violated petitioner's Fourteenth Amendment to the U.S. Constitution.

The writ of HABEAS CORPUS AND RELIEF ALLEGES THAT THE TRIAL COURT ACTING UNDER COLOR OF STATE LAW DISCHARGED ITS DUTIES IN A WAY THAT WAS KNOWN TO HIM TO VIOLATE THE CONSTITUTION. FIRST, THE TRIAL JUDGE ACCEPTED JURISDICTION TO PRESIDE OVER A CASE WHICH HE HAD A KNOWN RELATIONSHIP WITH THE ALLEGED VICTIM IN THIS CASE.

THIS RESULTING FACTS DEMONSTRATE A PATTERNS OF CONDUCT WHERE THE TRIAL COURT ACTIONS WERE BEYOND THE PLAIN LIMITS OF HIS AUTHORITY AND DISCRETION. THE PETITIONER WAS PREJUDICED BY HIS ACTIONS WHICH WERE BIAS AND GROSSLY, AND CONTRARY TO CLEARLY ESTABLISHED STATE LAWS. THE TREATMENT OF AN AFRICAN-AMERICAN, WHO IS PART OF A PROTECTED CLASS, WHOSE PETITION WAS SO OBVIOUSLY OFFENSIVE PETITIONER COULD NOT HAVE POSSIBLY RECEIVED A FAIR TRIAL.

(1) THE TRIAL COURT DENIED SEVERAL PRE-TRIAL MOTIONS ON MARCH 19, 2020 WITHOUT THE BENEFIT OF EVIDENTIARY HEARINGS AND WITHOUT DUE PROCESS; (2) THE TRIAL COURT ALLOWED ADM. HOURS OF COMPUTER GENERATED COPIES ABOVE DEFENSE OBJECTION AND CONTRARY TO STATUTE, ARS. 13-110(F), WHICH REQUIRES A CERTIFICATE OF AUTHENTICITY; (3) THE TRIAL COURT UNLAWFULLY IMPEDED, HINDERED, OBSTRUCTED AND DEFEATED ACCUSED'S RIGHT TO FILE UNIMPEDED HIS MOTION REQUESTING FOR A CHANGE OF JUDGE. THIS ACTION ALSO INVOLVES THE VIOLATION OF U.S. MAIL ACTIONABLE UNDER FEDERAL CODE; (4) THE TRIAL COURT EXCES THE HEAVY BURDEN OF PROOF OF THE STATE WHEN



He denied or decided that the prosecutor was compliant with disclosure request, that the record clearly shows where never presented to the defense; when the trial court failed to exercise its judicial authority to require the state to produce legitimate banking records to validate the alleged victims claims of loss; when the trial court allowed prosecuter's unambiguous remarks to go unchallenge, or did not issue any instruction to correct or admonish the prosecuter's comments, and lastly, when the trial court made incorrect legal conclusions on defense motion for additional upon the states case in chief had rested. His decision included an admission that the case lacked direct evidence, but went further to say "A jury could infer your guilt". This conclusion is well beyond the plain limits of the statute which requires that at the end of the states presentation of its case in chief that the court make a determination on the evidence sufficient enough to satisfy reasonable doubt.

## Please answer these additional questions about this petition:

13. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:

(1) CV-18-08186, Dismiss w/out prejudice August 24, 2018 \$2254  
 (2) CV-18-08097, Dismiss w/out prejudice MAY 22, 2019 \$2254  
 (3) CV-18-08098, Dismiss w/out prejudice MAY 23, 2019 \$2254  
 (4) CV-20-08039, Dismiss w/out prejudice February 26, 2020 \$2254  
 5 3:20-cv-08225 JAT-JFM DENIED \$1983

14. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes ☐ No ☒

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

15. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging? Yes ☐ No ☒

If yes, answer the following:

(a) Name and location of the court that imposed the sentence to be served in the future:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) Date that the other sentence was imposed: \_\_\_\_\_

(c) Length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition challenging the judgment or sentence to be served in the future? Yes ☐ No ☐ UNKNOWN AT THIS TIME SUPERIOR COURT CASE NO.

V130022201280290 IS PENDING.

16. TIMELINESS OF PETITION: If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations in 28 U.S.C. § 2244(d) does not bar your petition.\*

THE PETITIONER FILED HIS LATEST PETITION FOR RELIEF UNDER 28 U.S.C. § 2254 WHICH THE US. DISTRICT COURT DISMISSED WITHOUT PREJUDICE, AND WITHOUT A WRITING SETTING OUT ITS CONCLUSIONS OF LAW AS IT RELATES TO EACH CLAIM PRESENTED. SEE CV-20-08039 - FEBRUARY 26, 2020

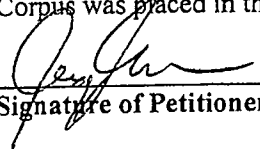
\*Section 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of:
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

17. Petitioner asks that the Court grant the following relief: DECLARATORY RELIEF, SPEEDY AND  
EMERGENCY RELEASE FROM CONFINEMENT, REMOVAL OF CONVICTIONS, CERTIFICATE  
OF JUDGMENT. (SEE ATTACHED IIA)

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on DECEMBER 2, 2020 (month, day, year).

  
\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Signature of attorney, if any

\_\_\_\_\_  
Date

17. THE PETITIONER ASKS THAT THE COURT GRANT THE FOLLOWING RELIEF:

A) DECLARATORY JUDGMENT STATING THE FOLLOWING:

- PETITIONER WAS MALICIOUSLY PROSECUTED WITHOUT PROBABLE CAUSE.
- PETITIONER WAS DEPRIVED FAIRNESS IN THE PROCEEDINGS.
- PETITIONER WAS DEPRIVED PROCEDURAL DUE PROCESS, DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AT CRITICAL JUNCTURES IN THE PROCESS.
- THE TRIAL COURT IMPROPERLY INFECTED THE ENTIRE TRIAL PROCESS
- THE PROSECUTOR ENGAGED IN CONDUCT HE KNEW TO VIOLATE THE CONSTITUTION.

B.) ISSUE A CERTIFICATE OF INNOCENCE.

C) IMMEDIATE REVERSAL OF PETITIONER'S CONVICTION.

D) IMMEDIATE RELEASE FROM CUSTODY.

E) DISMISSAL OF YAVAPAI COUNTY SUPERIOR COURT CASE NO. V1300CRZ01780299, AS MOOT RELATED TO A FAILURE TO APPEAR CHARGE IN CONNECTION TO V1300CRZ01580451.

Exhibit 1

Judgment of Guilt and Sentence

Exhibit 1

---

# EXHIBIT

## F

GERALD GWEN #332910  
Name and Prisoner/Booking Number

ASPC-RED ROCK CORRECTIONAL CTR.  
Place of Confinement

1750 EAST ARICA ROAD  
Mailing Address

ELY, ARIZONA 85131  
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

GERALD VAUGHN GWEN,  
(Full Name of Petitioner)

Petitioner,

v.

CASE NO. \_\_\_\_\_  
(To be supplied by the Clerk)

RYAN THORNTON, et al.,  
(Name of the Director of the Department of  
Corrections, Jailor or authorized person having custody  
of Petitioner),

Respondent,  
and

The Attorney General of the State of \_\_\_\_\_,

Additional Respondent.

PETITION UNDER 28 U.S.C. § 2254  
FOR A WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY  
(NON-DEATH PENALTY)

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: ARIZONA SUPERIOR COURT, YAVAPAI COUNTY,  
CAMP VERDE, AZ.
- (b) Criminal docket or case number: V1300CR20150451
2. Date of judgment of conviction: SEPTEMBER 19, 2018
3. In this case, were you convicted on more than one count or crime? Yes ☒ No ☐

4. Identify all counts and crimes for which you were convicted and sentenced in this case: 1) THEFT OF A CREDIT CARD, (2) IDENTITY THEFT, (3) FRAUDULENT SCHEMES, (4) THEFT, (5) FORGERY

5. Length of sentence for each count or crime for which you were convicted in this case: 2.5; 1.5; 5; 3.5; 2.5 YEARS IN CONTEST TO COUNT III.

6. (a) What was your plea?

Not guilty ☒

Guilty ☐

Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details: \_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at the trial? Yes ☐ No ☒

8. Did you file a direct appeal to the Arizona Court of Appeals from the judgment of conviction?  
Yes ☒ No ☐

If yes, answer the following:

(a) Date you filed: NOTES OF APPEAL FILED 10/01/18; BRIEF FILED 8/19/19

(b) Docket or case number: 1-CA-CR-18-0775

(c) Result: CONVICTION AFFIRMED BY APPELLATE COURT.

(d) Date of result: 01/14/2020

(e) Grounds raised: MALICIOUS PROSECUTION; DEFENSIVE ENJOINMENT; ILLEGAL ARREST, ILLEGAL SEARCH AND SEIZURES; PROSECUTORIAL MISFEASANCE, PROSECUTORIAL VIOLATIONS; TAMPERING WITH EVIDENCE; SUFFICIENCY OF THE EVIDENCE SUBMITTED AT TRIAL; ADMISSIBILITY OF EVIDENCE; RIGHT TO COUNSEL; FAIR TRIAL; PROSECUTORIAL MISCONDUCT, JUDICIAL MISCONDUCT.

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.



9. Did you appeal to the Arizona Supreme Court? Yes ☒ No ☐

If yes, answer the following:

(a) Date you filed: 2/20/20

(b) Docket or case number: CR-20-0008-PZ

(c) Result: Review Denied

(d) Date of result: 7/28/20

(e) Grounds raised: Appellate court Abuse of discretion, All grounds raised no direct support.

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

10. Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If yes, answer the following:

(a) Date you filed: 7/26/23

(b) Docket or case number: 23-5712

(c) Result: NO EXPLANATION

(d) Date of result: 12-11-23

(e) Grounds raised: Defective indictment, Absolute Privileges, mandatory federal evidentiary hearing; Denial of COA; Ineffective Denovo Review; Fair Trial

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

11. Other than the direct appeals listed above, have you filed any other petitions, applications or motions concerning this judgment of conviction in any state court? Yes ☒ No ☐

If yes, answer the following:

(a) First Petition.

- (1) Date you filed: 10/24/18
- (2) Name of court: Arizona Superior Court, Yavapai County
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): Rule 24.2 Vets. Judgment
- (4) Docket or case number: VI3002201580451
- (5) Result: NO RESPONSE
- (6) Date of result: \_\_\_\_\_
- (7) Grounds raised: Rule 20 Denial, insufficient assistance of counsel, latent misstatement, prosecutive misstatement, sufficiency of evidence, defective judgment

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Second Petition.

- (1) Date you filed: 5/20/21
- (2) Name of court: U.S. Court of Appeals for the Ninth Circuit
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): Habeas - Appeal
- (4) Docket or case number: 21-15894 ; related 21-15821 ; 22-15944
- (5) Result: (1) Denial Jurisdiction; (2) Denial Rule 42-1
- (6) Date of result: 7/16/21 + 8/17/21
- (7) Grounds raised: Denial of COA; Technical Error.

Circuit Court Denial Action without Briefing on any issue.

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) Third Petition.

- (1) Date you filed: \_\_\_\_\_
- (2) Name of court: \_\_\_\_\_
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): \_\_\_\_\_
- (4) Docket or case number: \_\_\_\_\_
- (5) Result: \_\_\_\_\_
- (6) Date of result: \_\_\_\_\_
- (7) Grounds raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(d) Did you appeal the action taken on your petition, application, or motion to the:

Arizona Court of Appeals:

Arizona Supreme Court:

- |                      |   |                             |   |                             |
|----------------------|---|-----------------------------|---|-----------------------------|
| (1) First petition:  | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (2) Second petition: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (3) Third petition   | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> |

(e) If you did not appeal to the Arizona Court of Appeals, explain why you did not: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Alleges unfair presentation before a Grand Jury in violation of Petitioner's Fifth Amendment right.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):  
Petitioner's Application for second writ of Habeas Corpus relief alleges state-court and state officials never established constitutional standard of probable cause for seeking an indictment as proscribed by Fifth Amendment Grand Jury coverage. Where petitioner was denied constitutional right to "fair presentation of all exculpatory evidence" before Grand Jury determination of probable cause, and that the indictment was obtained by fraud violates his Fifth Amendment right under due process clause.

Supporting facts:

(1) The Arizona Supreme Court ruled a defendant under investigation by an Arizona Grand Jury has constitutional due process right to a fair and impartial presentation of the evidence. (Ariz. Juv. RAE v. Ariz. Superior Court/Pima County).

(2) The prosecution, presenting before Grand Jury, admitted to not presenting any evidence in Grand Jury hearings in stated motion dated 3/18/19; which clearly supports allegation of not presenting all, clear, exculpatory evidence state has in its possession or was aware of at the time; that would deter it from finding the existence of probable cause;

(3) Prosecution, presenting before Grand Jury, knowingly suborned false testimony or inserted false facts known to be untrue as were such falsehoods not found later to be supported by evidence or testimony admitted at the trial.

(b) Did you present the issue raised in Ground One to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

Direct appeal ☒  
First petition ☒  
Second petition ☒  
Third petition ☒

(d) If you did not present the issue in Ground One to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground One to the Arizona Supreme Court? Yes ☒ No ☐

(4) Petitioner was deprived right to fair and impartial presentation when prosecution knowingly misled Grand Jury into believing the possession of a knife constituted offense of 'Prohibited possession'; despite his knowledge that a knife is not a prohibited weapon under ARS. § 13-105 and possession of a knife is a protected right under Arizona law. ARS. § 13-1320(c) "The state shall not enact any ordinance, rule or tax relating to the design, licensing, registration or use of a knife or knife making components in the state;" (5) State knowingly suborns false testimony implicating a second credit card not related to the charges filed by complaint; aimed at passing the indictment to create prejudice; (6) State knowingly withholds exculpatory evidence of obtained through subpoenaed banking subscriber information on IP address or possible location within a transaction originating from which state has alleged petitioner made an unauthorized purchase online; (7) State knowingly commits fraud to jury when they presented information which alleged petitioner committed forgery by incorrectly answering questions posed on a Jail Questionnaire form, and was done so before state had reasonable cause to believe that act was unlawful. While the charge was later dismissed for lack of proof, but that already been submitted to Grand Jury for indictment; (8) State prosecutes knowingly suborns false testimony of the person involved in the alleged online purchase of a mountain bike, proven at trial to be a false statement, §, which prosecution attempted to enter at trial violated the law of the case because he had duty to notify the trial court of false statement made before a Grand Jury that would have required a dismissal of the indictment at the time.

**GROUND TWO:** Petitioner Alleges his 14th Amendment rights were violated when State Case-in-Chief did not meet constitutional standard of efficiency necessary to prove every element of offense as charged in indictment beyond a reasonable doubt, that but for constitutional error no reasonable person could have found him guilty on basis of the evidence admitted at the trial.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

(1) "Constitutional law" as a new rule decided by Supreme Court imposes upon District Courts "must determine the conviction upon sufficient proof to convince a Federal Judge that trier of fact could have found the essential elements of the crime beyond a reasonable doubt by taking evidence anew".

(2) In count one of the indictment - taking the property of another on entry and in count two - Theft of a credit card, State did not meet its burden of proving essential elements as pled in indictment.

(3) The State - could readily establish alleged victim in case voluntarily providing petitioner with a credit card number in the normal course of performing his duties. The prosecution relies heavily upon hypothesis that a person in possession of credit card information could complete a sales transaction was not sufficient proof establishing a criminal offense as charged.

(b) Did you present the issue raised in Ground Two to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

Direct appeal ☒  
First petition ☒  
Second petition ☒  
Third petition ☒

(d) If you did not present the issue in Ground Two to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground Two to the Arizona Supreme Court? Yes ☒ No ☐

(4) THE trial proof fails to meet standards for burden of proof constituting an offense for 'THEFT OF A CREDIT CARD' OR IDENTITY THEFT OF A PERSON OR ENTITY'. THERE EXISTS NO PROOF PETITIONER ACTUALLY STOLE COMPANY CREDIT CARD OR USED A COMPANY CREDIT CARD WITHOUT AUTHORIZATION OR MADE AN UNAUTHORIZED PURCHASE OR DID USE ANOTHER PERSON'S IDENTITY OR ENTITY; (5) THE STATE'S CASE FAILED TO PRODUCE ANY DOCUMENTATION BY CREDIT CARD RECEIPT, CREDIT CARD VOUCHER, OR CREDIT CARD STATEMENT SHOWING THE UNAUTHORIZED USE OF A CREDIT CARD BELONGING TO DAHL RESTAURANT GROUP (CERTAINLY) OR A PERSON EMPLOYED BY DAHL RESTAURANT GROUP; (6) UNDER TEXAS LAW, PETITIONER SIGHT THROUGH POLICE, DRAWING, MEANS TO COMPEL FOR STATE TO PRODUCE PROOF THAT THE ELEMENTS ALLEGED IN INDICATE ACTUALLY TOOK PLACE; (7) TESTIMONY GIVEN AT TRIAL ESTABLISHES THAT THE CREDIT CARD NUMBERS WERE PROVIDED TO DEFENDANT, VOLUNTARILY, BY CFO DIMITRI; (8) "IF NOT THE CREDIT CARD THE NUMBER ITSELF" DISPOSES ALLEGATIONS OF THEFT OF A CREDIT CARD; (9) THE TRIAL PROOF ESTABLISHES THAT THE ALLEGED ONLINE TRANSACTIONS WERE NEVER EMPLOYED TO PURCHASE AN ALLEGED MOUNTAIN BIKE, THEREFORE THERE WAS NO LOSS INCURRED BY ALLEGED VICTIMS, AND THERE WAS NO LIABILITY FOR CRIMINAL IDENTITY THEFT OF A PERSON OR ENTITY BECAUSE THE PERSON WHO INITIATED THE ONLINE TRANSACTIONS USED PETITIONER'S FULL AND LEGAL NAME AS THE PERSON PLACING THE ORDER AND USED PETITIONER'S MAILING ADDRESS AS THE PLACE PRODUCT WERE TO BE SENT, THEREFORE THERE EXISTS NOT IDENTITY THEFT; (10) THE ALLEGED VOUCHER IN CASE IGNORED SUBPOENA DUKES-TECUM, WHICH COMPELLED THEM TO PRODUCE BANK STATEMENTS, CREDIT CARD STATEMENTS OR ANY OTHER TANGIBLE OBJECTS WHICH WOULD TEND TO ESTABLISH UNDISPUTED PROOF THAT THE FACTS ALLEGED IN THE CHARGING INSTRUMENT SIMPLY DO NOT EXIST.

(11) COUNT THREE of indictment 'Fraudulent Billions and Artifice', State failed to establish proof of each element asserted in the indictment. That Petitioner knowingly obtained a benefit from DASH Restaurant Group, China Bank, OR OXENBARK JEEP, by means of fraudulent pretenses, representations, promises or material omissions; (12) THERE WAS NO PROOF THAT PETITIONER PASSED A FORGED RESTAURANT OR STORED CHECK TO A CHINA BANKING CENTRE, WHERE THE TRIAL PROOF ESTABLISHED THAT PETITIONER HAS A VAIR ACCOUNT AND A RIGHT TO BE AT THE BANK ON THE DATE AND TIME POLICE ACQUIRED A PHOTOGRAPH OF HIM STANDING AT A TELLER KIOSK. (13) THE TRIAL PROOF FAILS TO ESTABLISH THAT A SPECIFIC CHECK, WHICH POLICE SAY WAS A STORED CHECK, WAS PRESENT AT A CHINA BANKING CENTRE AND CASHED BY PETITIONER; (14) THE TRIAL PROOF DID NOT SUPPORT THAT PETITIONER USED FALSE PRETEXT OR REPRESENTATION KNOWINGLY ATTEMPTING TO DEFEND OXENBARK JEEP THROUGH PURCHASE OF A NEW VEHICLE. THE TRIAL TESTIMONY FROM THE SALES MANAGER TESTIFY TO THE TOMACADO BOY MENTAL, WHOSE PETITIONER PRESENTED DEMONSTRATING STANDING HIS TOWNS AND CURRENT NAME ALONG WITH HIS INSURANCE PAPERS BEARING THE SAME FULL AND LEGAL NAME AND PAID A DOWN PAYMENT WITH A CREDIT CARD CHECK, HE HAS NO REASON TO BELIEVE A THE TOMACADO WAS ANYTHING BUT NORMAL COURSE OF BUSINESS; (15) THERE WAS NO PROOF OF PHYSICAL EVIDENCE OR TESTIMONY ESTABLISHING PETITIONER OBTAINED A BENEFIT FROM DASH RESTAURANT GROUP OR ON ABOUT SEPT. 10, 2015. (16) THE CFO, DIMICK, TESTIFIED HE COULD NOT FIND ANY CHECKS IN THE POSSESSION OF COMPANY BOOKKEEPER, LOCATION OF CUCINA ROSTA RESTAURANT OR AT THEIR CORPORATE OFFICE WITH MATCHED THE SEQUENCE OF ALLEGED STORED CHECK; (17) DIMICK ALSO TESTIFIED TO BEING CERTAIN THE CHECKS WERE STORED FROM THE LOCATION OF CUCINA ROSTA RESTAURANT, BUT LATER GAVE INCONSISTENT TESTIMONY THAT CHECKS WERE STORED FROM ANOTHER LOCATION; (18) DIMICK ALSO STATED IN HIS TESTIMONY THAT HE NEVER CHECKED THE CHECKBOOK AT THE LOCATION OF THE RESTAURANT, "WHERE WOULD BE THE POINT"; (19) PROSECUTOR AT TRIAL SUBMITTED FALSE TESTIMONY THAT THE CHECKS CAME FROM A LOCK DRAWER LOCATED AT THE CORPORATE OFFICE AND GIVE CROSS-EXAMINATION



1 of same witness, He changed his testimony of never actually seeing the  
2 checks removed from a sock drawer; (20) The Trial just demonstrated  
3 State was unable to prove the lawful acquisition of evidence or chain  
4 of custody related to 'stolen checks', Police say was provided to them from  
5 alleged victim representative Mr. Yimla, was printed from the internet.  
6 No State representative checked the evidence as it was created nor did  
7 Police follow-up to obtain original checks or state a reason why the  
8 originals were unavailable; (21) Some 22 months later than what  
9 is required under Applicable disclosure rules, State disclosed two computer  
10 generated copies of checks on July 14, 2017 and August 17, 2017;  
11 (22) The State failed to establish which of the alleged stolen checks were  
12 cashed, which they say was on 9/9/15, at a Chase Bank in Cottonwood, AZ.  
13 (23) Police somewhere state they were told by Bank manager of Chase that  
14 one check was cashed in Cottonwood, AZ, and another somewhere in California  
15 on the same day, but fails to determine the location; (24) The sufficiency  
16 of evidence necessary to establish that every element of the offense was non-  
17 existent, The alleged victim is case required upon to provide proof of loss,  
18 Existence of check or that checks were actually cashed at a Chase banking  
19 center or that any testimony given pertained to the same 'checks' if they  
20 existed at all; (25) The Jury will not have found Defendant guilty beyond  
21 a reasonable doubt on basis of Prosecution comments, About improper, stating  
22 the State had no proof of charge- of theft of checks;  
23 (26) The sufficiency of evidence needs to establish every element constituting  
24 charge of forgery in count-five was never tried at trial. The State did  
25 not attempt to prove by evidence or trial testimony that Defendant presented or  
26 made a forged instrument, to wit he presented a forged instrument to a  
27 Chase Banking center or that he completed a forged instrument. The charge  
28 was non-pros at the trial and no Jury will have found him guilty without proof;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**GROUND THREE:** Petitioner alleges his Sixth Amendment right to a fair and impartial trial were violated by judicial misconduct, prosecutorial misconduct and cumulative errors of the trial type resulting reversal of the conviction.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

Summary of claims constituting Sixth Amendment violations:

(1) STATE intentionally withheld or suppressed exculpatory evidence;

(2) STATE unlawfully Attorney Officer when deny-camera footage;

(3) Prosecution makes improper remarks to jury during closing argument, constitutes reversible error;

(4) Trial Court permitted State to commit an error not similar to the trial above defense objection;

(5) Petitioner was denied right to challenge the legality of search warrants and search warrant Affidavit;

(6) Trial Judge intentionally obstructed Petitioner right to file motion for change of Judge;

(7) Petitioner was deprived his right to present a full and complete defense;

(8) Trial Court permitted prosecution to modify the indictment by cumulative Petitioner was not charged with threat of business checks.

(b) Did you present the issue raised in Ground Three to the Arizona Court of Appeals? Yes ☒ No ☐

(c) If yes, did you present the issue in a:

Direct appeal ☐  
First petition ☒  
Second petition ☒  
Third petition ☒

(d) If you did not present the issue in Ground Three to the Arizona Court of Appeals, explain why: \_\_\_\_\_

(e) Did you present the issue raised in Ground Three to the Arizona Supreme Court? Yes ☒ No ☐

## Supporting facts:

(A) THE STATE KNOWINGLY CONCEALED, SUPPRESSED OR OBSTRUCTED PETITIONER'S ACCESS TO EXCULPATORY EVIDENCE DEPRIVED HIM RIGHT TO FAIR AND IMPARTIAL TRIAL; WHEN (1) KNOWINGLY FAIL TO DISCLOSE PHOTOGRAPHS AND BODY CAMERA FOOTAGE FROM 9/18/15 OF PETITIONER VEHICLE DURING HIS ARREST, WHICH TENDS TO SHOW ILLEGAL SEARCH OF HIS VEHICLE OR TENDS TO ESTABLISH THE PROMPT SEARCH OF HIS APARTMENT CONDUCTED ON THE SAME DAY; (2) THE STATE INTENTIONALLY SUPPRESSED NAMES OF 8 FIRM WHICH THEY SAY WERE RECOVERED FROM THUMB DRIVE TAKEN FROM PETITIONER'S PERSONAL PROPERTY, WHICH TENDS TO SHOW EXPENSE REPORTS ESTABLISHING PETITIONER USED HIS PERSONAL CREDIT CARD TO MAKE SMALL PURCHASES OF OFFICE SUPPLIES TO USE IN THE PERFORMANCE OF HIS WORK; (3) STATE INTENTIONALLY SUPPRESSED THE RETURN INFORMATION IT HAS RECEIVED FROM SUBPOENA DURE TOLSON SENDS ON SUBPOENA COMMUNICATIONS, WHICH TENDS TO SHOW THE SUB-SCRIBER/OWNER OF IP ADDRESS USED TO TRANSACT PURCHASE OF A MOUNTAIN BIKE ONLINE;

(B) THE STATE INTENTIONALLY ALTERED OFFICER WUEN BODY-CAM FOOTAGE, WHICH TENDS TO SHOW (1) OFFICER NOT READING HIM HIS MARIANA WARNINGS, BUT LATER SUBSTITUTED THE EVIDENCE TO SHOW DEPUTY READING HIM HIS MARIANA WARNINGS AFTER PETITIONER HAS FILED A MOTION TO PRECLUDE HIS PRIOR STATEMENTS; (2) STATE ALTERED OFFICER WUEN BODY-CAM FOOTAGE OMITTING DEPUTY HARRIS ARRIVAL TO THE SCENE OF HIS ARREST AND THE ILLEGAL SEARCH OF HIS VEHICLE PRIOR TO OBTAINING A VALID SEARCH WARRANT.

(C) THE TRIAL JUDGE OVERRULED DEFENSE OBJECTIONS TO PROSECUTOR'S CLOSING REMARKS.

(D) PROSECUTOR CALLED DEFENDANT A LIAR IN FRONT OF JURY; THE PROSECUTOR IMPROPERLY MODIFIED CHARGING INSTRUMENT BY TELLING JURY DEFENDANT IS NOT BEING CHARGED WITH "THEFT", "HE IS BEING CHARGED WITH CARRYING THOSE CHECKS - THE STATE CANNOT PROVE A CHARGE OF THEFT OF CHECKS".

(D) THE TRIAL JUDGE OBSTRUCTS, IMPEDES, OR OTHERWISE INTERFERES WITH PETITIONER'S RIGHT TO PETITION FOR CHANGE OF JUDGE PURSUANT TO ARIZONA RULES OF CRIMINAL PROCEDURE, 10.1; "A JUDGE BEING CHALLENGED SHALL TAKE NO FURTHER ACTION IN CASE UNTIL MATTER IS RESOLVED BY PRESIDING JUDGE FOR THE COUNTY."

PETITIONER HAS FILED A TOTAL OF FIVE DIFFERENT PLEASURES FOR CHANGE OF JUDGE, THREE SENT BY U.S. MAIL, WITH THE CAPTION OF PLEASING CLEARLY ADDRESSED TO THE PRESIDING JUDGE ALONG WITH THE COURT SINKING. THE TRIAL JUDGE, EITHER, PERSONALLY OR HAS CONVEYED TO HIS PERSON EACH MOTION FILED, WHICH WERE TAKEN FROM U.S. MAIL IN VIOLATION OF FEDERAL CODE. THREE TIMES TRIAL JUDGE ENTERED A JUDGMENT ON PETITIONER MOTION IN VIOLATION OF DUE PROCESS PROTECTIONS.

(E) THE TRIAL JUDGE INTENTIONALLY IMPEDES PETITIONER'S RIGHT TO PRESENT A COMPLETE DEFENSE WHEN COURT, (1) RULED AGAINST ALL MOTIONS COMPELLING STATE TO PROVIDE EXCULPATORY EVIDENCE IN THEIR POSSESSION OR CONTROL; (2) WHEN COURT AVOIDS ANY EVIDENTIARY PROCEDURE TO AUTHENTICATE EVIDENCE; (3) WHEN COURT DENIED MOTION TO CONTEST HIS ILLEGAL ARREST AND ILLEGAL SEARCH AND SEIZURE OR AFFIDAVIT, WITHOUT A FULL AND FAIR OPPORTUNITY FOR A HEARING; WHEN THE COURT DISALLOWED PETITIONER FROM PURSUING, AT TRIAL, THE LEGALITY OF HIS ARREST OR SEARCH AND SEIZURE OF HIS PAPERS AND PROPERTY; (4) WHEN COURT OVERRULED AND ADMONISHED PETITIONER FROM SUMMARIZING EVIDENCE ADMITTED AT TRIAL AND MAKING REASONABLE INFERENCE FROM THE EVIDENCE TAKEN.

(F) STATES, OVER OBJECTION WAS PERMITTED TO COMMIT OF HYPOTHETICAL THAT PETITIONER COULD HAVE USED AN ATM OR ONLINE BANK TO CASH AN ALLEGED STOLEN CHECK, WHEN THERE WAS NO EVIDENCE PRESENT OR ADMITTED AT THE TRIAL.

(J) Petitioner's trial was prejudiced by Prosecutorial misconduct, where State knowingly altered official video body-camera footage admitted as evidence, which would tend to show police conducted an illegal search of his vehicle prior to obtaining a valid search warrant; State intentionally withheld an instant photograph of police taking photos of his vehicle on Sept. 18, 2015 (date of his arrest) which would tend to show that police used the same camera to photograph his apartment on the same date as prior to obtaining a valid search warrant.

(K) Petitioner's trial was prejudiced by Prosecutorial misconduct where prosecution violated "the law of the case"; to wit he improperly modified the charging instrument through his comment that Petitioner was not charged with "first" as pled as Court found of second, "that is not a charge"; (L) over objection prosecution was permitted to make derogatory comment aimed at prejudicial effect of portraying Petitioner as "a liar"; (M) Prosecution was permitted to comment on evidence not testified to at trial and was not admitted as evidence; (N) Petitioner's right to fair trial was prejudiced by the admission of evidence without preliminary questions resolved, where evidence of copies of checks were admitted that police say were provided to them by alleged victim who downloaded the evidence from the internet.

(O) The trial proceedings were prejudiced by improper judicial conduct, where the trial judge knowingly and intentionally obstructed or interfered with Petitioner's right to fully timely hear motions for change of judge. Where trial judge knowingly intercepted or mail on that or mail conveyed to his person; to wit judge took action dismissing motions for change of judge on several attempts by Petitioner to do so, where the motions were addressed to another judge in another court, at separate location from trial judge court. Violates his right to due process and equal protection of the law; (P) Petitioner's right to present a full and complete defense was prejudiced by trial court's interference not allowing him to comment on marks resulting inference from evidence admitted at the trial and testified to by witnesses.

(G) STATE SUPPRESSED, LOST, DESTROYED OR FAILS TO DISCLOSE EXCULPATORY EVIDENCE

RELATED TO OR HAVING BEARING UPON GUILT OR INNOCENCE WHEN STATE DID NOT  
PROVIDE DEFENSE WITH COPIES OF ALIBI VOUCHER CREDIT CARD RECEIPTS, SIGNED CREDIT  
CARD VOUCHERS, CREDIT CARD STATEMENT OR CHASE BANK STATEMENT WHICH WOULD TEND  
TO PROVE OR DISPROVE UNAUTHORIZED USE OF A CREDIT CARD BELONGING TO A PERSON OR  
BUT AT LEAST TO PROVE OR DISPROVE THAT BUSINESS CHECKS ALLEGED AS STOLEN CHECKS,  
WERE ACTUALLY CASHED OR WHETHER THEY EVER EXISTED AS ALLEGED;

(H) STATE SUPPRESSED, LOST OR DESTROYED OR INTENTIONALLY WITHHELD SPECIFIC  
FILMS BY WHICH IT DISCLOSED AS BEING SEIZED FROM PETITIONER'S THUMB DRIVE  
TAKEN FROM PETITIONER'S PERSONAL PROPERTY; THAT WERE ONLY LOST WHEN STATE'S  
DISCLOSURE AS (B) FILM, WHICH WOULD TEND TO ESTABLISH PETITIONER USED HIS OWN  
PERSONAL CREDIT CARD AND SUBMITTED MONTHLY EXPENSE REPORTS; STATE SUPPRESSED,  
LOST OR DESTROYED CHECK STUBS SEIZED FROM AMONG HIS PROPERTY AND PAPERS,  
WHICH WOULD TEND TO SHOW THAT DAVID REYNOLDS (EMPLOYEE), HAS REIMBURSED HIM  
FOR MONTHLY EXPENSES OF ITEMS PURCHASED WITH HIS PERSONAL CREDIT CARD;  
STATE SUPPRESSED OR INTENTIONALLY FAILED TO DISCLOSE RETURN INFORMATION OF ACCOUNT  
STATE SUBPOENA SUBPOENA COMMUNICATOR, WHICH TENDS TO ESTABLISH THE  
SUBSCRIBER, ITS ADDRESS AND POSSIBLE LOCATION FROM WHICH POLICE IDENTIFIED AS  
THE PLACE OR LOCATION WHERE THE ONLINE TRANSACTION WAS INITIATED.

(I) PETITIONER WAS PREJUDICED BY TRIAL COURT IMPOSITION OR OBSTRUCTION IN HIS  
RIGHT TO PRESENT A FULL AND COMPLETE DEFENSE IN VIOLATION OF HIS 6<sup>TH</sup> AMENDMENT  
RIGHT. WHERE TRIAL COURT RULED ADVERSELY TO MOTION REGARDING RELEVANT MATERIAL  
WHICH WAS IN THE CONTROL OR POSSESSION OF STATE; TO NOT ALLOW FAILURE TO  
OBTAIN OR EVEN MAKE PROPER REQUEST FOR ORIGINAL CHECKS, SURVEILLANCE REC-  
ORDS. SHOW PETITIONER PURCHASES GOODS AT A WALMART AMOUNTS TO AN  
INCOMPLETE INVESTIGATION WHICH DID NOT ALLOW PETITIONER TO PRESENT HIS OWN  
EVIDENCE BASED ON THE ISSUE.

GROUND FOUR: Fourth Amendment Exclusionary Rule.

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):  
PETITIONER Application for Successful writ of HABEAS CORPUS RELIEF ALLEGES THE STATE  
COURTS VIOLATED HIS FOURTH AMENDMENT RIGHTS UNDER EXCLUSIONARY RULE, WITHIN TRIAL  
COURTS FAILURE TO AFFORD THE OPPORTUNITY FOR FULL AND FAIR HEARING ON HIS CLAIM  
HIS PROPERTY AND PAPERS, APARTMENT, VEHICLE AND A UHAWI TRUCK HE HAS RENTED WERE ALL  
ILLEGALLY SEARCHED PER TO POLICE OBTAINING A VALID SEARCH WARRANT AND THAT THE SEARCH  
WARRANT AFFIDAVIT CONTAINS LARGE ASSIGNMENT OF FALSE HOODS; WHERE AN EVIDENCE OBTAINED  
BY SUCH CONDUCT IS PRECLUDED UNDER 4TH AMENDMENT EXCLUSIONARY RULE.

Supporting Facts:

- (1) 4th Amendment exclusionary rule ARE COGNIZABLE IN HABEAS CORPUS PROCEEDINGS  
WHERE PETITIONER WAS DENIED AN OPPORTUNITY FOR A FULL AND FAIR LITIGATION  
OF THE CLAIM.  
(2) ON FEBRUARY 10, 2018 PETITIONER FILED MOTION TO EXCLUDE EVIDENCE ON  
BASE OF ILLEGAL SEARCH AND SEIZURE AND SEARCH WARRANT WHICH CONTAINS FALSE STATE-  
MENTS.  
(3) THE TRIAL COURT DENIED MOTION TO SUPPRESS SEARCH-WARRANT(S) ON MARCH 19,  
2018 WITHOUT A HEARING MANDATORY UNDER SUPREME COURT DECISION, FRANKS V. DELAWARE;  
STANIS V. FURBER.  
(4) YAVAPAI COUNTY SHERIFF OFFICE OBTAINED A SEARCH WARRANT COVERING PETITIONER'S  
APARTMENT AND A UHAWI TRUCK RENTED ON 9/24/15 NO. V1300SW201580040.

- (b) Did you present the issue raised in Ground Four to the Arizona Court of Appeals? Yes ☒ No ☐

- (c) If yes, did you present the issue in a:

Direct appeal ☒  
First petition ☒  
Second petition ☒  
Third petition ☐

- (d) If you did not present the issue in Ground Four to the Arizona Court of Appeals, explain why: \_\_\_\_\_

- (e) Did you present the issue raised in Ground Four to the Arizona Supreme Court? Yes ☒ No ☐



(5) YAVAPAI COUNTY Sheriff Office obtained A SEARCH WARRANT COVERING PETITIONER VEHICLE AND PERSONAL PROPERTY KEPT AT THE JAIL ON 9/23/15, NO. V1300SW201580039.

#### (6) Apartment Search:

THE EVIDENCE IN THE RECORD DEMONSTRATES SEARCH OF HIS Apartment took place ON 9/18/15 PRIOR TO OBTAINING VALID SEARCH WARRANT. DETECTIVE SHILLING, YAVAPAI COUNTY Sheriff Office, TESTIFIED HE SEARCHED THE Apartment ON EVENING OF 9/23/15 AND LEFT BECAUSE IT WAS GETTING DARK. THE RETURN SEARCH WARRANT Supplement contains A RECORDS TIME OF 16:25 WHEN EVIDENCE WAS FOUND INSIDE OF THE Apartment, HAS TAKEN WITH PHOTOGRAPHS OF Apartment AT THE TIME OF SEARCH CLEARLY SHOW PORTIONS OF Apartment IN FULL SUNLIGHT. THE LANDLADY CAROL THORNS, TESTIFIED THAT SHE ARRIVED AT THE Apartment ON 9/25/15 AROUND 5pm TO LET POLICE INTO THE Apartment, BUT WHEN SHE ARRIVED "THEY WERE ALREADY INSIDE" AND IDENTIFIED DETECTIVE SHILLING IN THE COURTROOM. THE POLICE REPORT FAIL TO STATE ALL PARTICIPANTS IN THE SEARCH OF THE Apartment.

#### (7) Vehicle Search:

POLICE SEARCH PETITIONER VEHICLE ON 9/18/15 AND HAD OPPORTUNITY TO CONTINUE SEARCH PRIOR TO OBTAINING VALID SEARCH WARRANT.

DEPUTY HARPER DESCRIBES IN DETAIL THE SEARCH OF PETITIONER VEHICLE CONDUCTED ON 9/18/15 IN HIS POLICE REPORT.

THE STATE INTENTIONALLY WITHHELD OR SUPPRESSED PHOTOGRAPHS OF THE VEHICLE'S INTERIOR TAKEN ON 9/18/15 DURING THE SEARCH.

THE STATE UNLAWFULLY ALLEGED OFFICER BOAL-CAM FOOTAGE ON-HING DEPUTY HARPER AND DEPUTY SHREVE SEARCHING THE VEHICLE ON 9/18/15.

THE VEHICLE WAS REMOVED AWAY FROM THE SCENE OF THE ARREST BY A CIVILIAN EMPLOYEE FROM ANIMAL CONTROL AND NOT BY AN AUTHORIZED POLICE TOW SERVICE WHICH IS THE USUAL COURSE.

Police report, Air Dispatch, and Radio Logs demonstrate the vehicle was at one time parked behind the Sheriff Sub Station in Camp Verde, and some time between 9/18/15 and 9/21/15 was moved to an unsecured location identified as fleet yard for the county.

The police cannot demonstrate when the vehicle was moved, by whom or for what circumstance was the vehicle moved or who authorized its movement.

The vehicle was picked up for tow by an independent tow service on Sunday, 9/21/15 with intent to deliver the vehicle to the Yavapai County Evidence facility located in Prescott, AZ.

The Prescott facility is not open for business on Saturday or Sunday.

Police records show the vehicle was not delivered to Prescott facility until Monday 9/22/15 approximately 07:04 hrs. The vehicle was unaccounted for, in the possession of an unknown civilian, for a period of 18 hours. The Prescott facility records showed that they took custody of the vehicle on 9/23/15 at 11:55 AM by Officer Levy # 5723, which is an additional 12 hours in gap of chain of custody.

#### (8) SEARCH OF UHAUL TRUCK:

The evidence in the record demonstrates the search of a Uhaul truck rented by petitioner was search on or about 9/20/15 prior to obtaining a valid search warrant.

At trial prosecution asked Det. Shilling if he searched the Uhaul truck on September 28, 2015. Det Shilling response was corrective, he answers "no" the Uhaul was searched on September 20, 2015."

The Arizona Court of Appeal disregarded the evidence and ruled without simply make an error. Give weight to his testimony or simply vouching for Police testimony.

1 Det. Shilling further testified he searched the Uhaul truck with one  
2 other person, evidence technician Boyle. The photographic evidence  
3 disclosed by the state clearly show limbs of two males searching  
4 the back interior of the truck.

5 The state disclosed two separate libraries of photographs of the  
6 Uhaul truck during search.

7 The first set of photographs were taken of the interior of the back  
8 of truck with no pictures of the exterior or surroundings.

9 The first set of photographs clearly show limbs of two male officers,  
10 one of which is identified as Deputy Harper by his wrist watch, of whom  
11 lied under oath that he did not search the Uhaul truck.

12 These facts renders the change in testimony by Det. Shilling false, when he  
13 claimed his testimony that he searched the Uhaul on 9/28/15 with one other  
14 female evidence technician.

15 The set of photographs depict officers opening boxes that were previously  
16 secured by packing tape and other boxes not yet open can be seen sealed  
17 shut.

18 The second set of photographs took pictures of the interior and exterior  
19 near the surrounding area is visible.

20 The second set of photographs clearly shows the purposeful movement  
21 of furniture and boxes from the right side and stacked to the left,  
22 and clearly shows boxes now opened or the boxes flaps folded inward  
23 overlapping different from the first set of photographs indicating a second  
24 search taking place.

25 The evidence in the record demonstrates Police discussed a Uhaul key inside  
26 Petitioner's Apartment on 9/18/15.

27 On or about 9/20/15 the Uhaul truck was driven or moved to a location  
28 identified by Police record as "CARE CARS" located in the village of Oak Creek.

1 Deputy Harper Police report Statement And Affidavit in support of a  
2 Search Warrant that He discovered the Uhaul on the "Backside of the mall".  
3 Detective Shillings testimony And Affidavit Statement said He discovered the  
4 Uhaul truck After listening to Jail House telephone recording between Petitioner  
5 And Uhaul Rental company. THE RECORDING WERE NOT DISCLOSED BY STATE.  
6 THE Police Dispatch LogS And Radio LogS demonstrate the Uhaul truck WERE  
7 picked-up from the front of the mall, East corner And not the "Backside"  
8 of the mall where it WAS originally parked.

### 9 Affidavit

10 (2) THE SEARCH WARRANT AFFIDAVIT(S) CONTAINED LARGE NUMBER OF FALSE  
11 STATEMENTS, RENDERING THE VALIDITY OF OBTAINING THEM A VIOLATION OF  
12 THE PROCESS UNDER FRANK V. DELAWARE AND STATE V. DOWELL.

13 THE SAME AFFIDAVIT WAS ATTACHED TO BOTH SEARCH WARRANTS; 'PETITIONER  
14 ORDERED A \$4300 MOUNTAIN BIKE online'; 'DAVID DIMLER FOUND A TOTAL  
15 OF THREE CUCINA RUCKA BUSINESS CHECKS THAT HAD BEEN WRITTEN BY  
16 JERRY (CRITICIZED); 'PETITIONER WENT TO CHASE BANK LOCATED IN COTTOWOOD,  
17 AZ AND CASHED ONE OF THE STOLEN CHECKS'; 'PETITIONER WENT TO AN  
18 (UNDISCOVERED) CHASE BANK SOMEWHERE IN CALIFORNIA AND CASHED A CHECK  
19 ON THE SAME DAY'; 'DET. SHILLINGS DISCOVERED THE RENTAL UHAUL TRUCK  
20 THROUGH LISTENING TO JAIL HOUSE TELEPHONE RECORDING'.

21  
22 NONE OF THESE STATEMENTS WERE TRUE, AND WERE NOT SUPPORTED BY  
23 TRIAL EVIDENCE OR TESTIMONY ADMITTED AT THE TRIAL, CONSTITUTES A BREACH  
24 OF OATH OR AFFIDAVIT REQUIRING WARRANT TO BE INVALIDATED.

25 THE SEARCH WARRANTS CONTAINED DETAILED INFORMATION, SUCH AS SERIAL NUM-  
26 BER OF PRODUCT OR OTHER DATA OR DESCRIPTION THAT COULD ONLY HAVE  
27 BEEN OBTAINED BY POSSESSION OF ITEM, INDICATES SEARCH PRIOR TO OBTAINING  
28 A VALID SEARCH WARRANT.

GROUND FIVE

PETITIONER'S APPLICATION FOR SUCCESSIVE UNIT OF MARICOPA COUNTY RELIEF ALLEGES HE WAS DENIED DUE PROCESS AND EQUAL PROTECTIONS OF THE 14TH CONSTITUTION BY FURTHERING THE AMENDMENT, WHEN SUPERIOR COURT OF ARIZONA DENIED HIM A "PROCESS DUE" BY VACATING SET PRELIMINARY HEARING BY A FORM NOT AUTHORIZED BY LAW.

FACTS IN SUPPORT OF CLAIM

(1) THE ARIZONA CONSTITUTION ART. II, § 30 SET FORTH STATUTORILY - MANDATES PRELIMINARY HEARING THAT CAN ONLY BE DISMISSED BY PERSONAL WAIVER, "NO PERSON SHALL BE PROSECUTED FOR FELONY FOR INFORMATION WITHOUT HAS A PRELIMINARY EXAMINATION BEFORE A MAGISTRATE OR WAIVING WAIVES SUCH PRELIMINARY EXAMINATION."

PETITIONER DID NOT WAIVE RIGHT TO PRELIMINARY HEARING.

(2) ARIZONA RULES OF CRIMINAL PROCEDURE, RULE 5.1 AND ITS SUB-CHAPTERS, PROVIDES THE PROCEDURES BY WHICH THAT RIGHT MAY BE WAIVED.

(3) PETITIONER WAS CHARGED BY INFORMATION BY YAVAPAI COUNTY ATTORNEY.

(4) ARIZONA RULES OF CRIMINAL PROCEDURE, RULE 4.2(B)(5)(1) DESCRIBES A PROCESS DUE BY WHICH MAGISTRATE JUDGE MUST INFORM DEFENDANT OF HIS RIGHT TO A PRELIMINARY HEARING AND SET A DATE FOR SUCH HEARING BEFORE DEFENDANT INITIAL APPEARS.

(5) PETITIONER'S INITIAL APPEARANCE WAS HELD ON 9/19/15 VIA VIDEO CONFERENCE WITHOUT ANY NOTIFICATION OF RIGHT TO HAVE HEAR A PRELIMINARY HEARING OR WAIVING SUCH HEARING.

(6) IT WAS NOT UNTIL 9/21/15 BUREAU CHIEF OF COURT TELL EARLY DR-POSITION HEARING THAT PETITIONER HAS OPPORTUNITY TO EXERCISE HIS RIGHT AND DEMAND A PRELIMINARY HEARING.

1 THE trial court set 9/25/15 at 4:00pm for Preliminary Hearing.

2 (7) Petitioner Court Appointed Attorney informed him on Monday, 9/  
3 28/15 his preliminary Hearing was not held because he had been so-  
4 Dicted by Supervising Detachment.

5 (8) Arizona Rules of Criminal Procedure R.7, now repealed, provided that  
6 Supervising Detachment may issue in lieu of a Summons or Complaint.

7 THE rule did not authorize substitution for preliminary Hearing; IN  
8 CONTRAST to FEDERAL rule 5.0, which clearly states a preliminary Hearing may  
9 be vacated if Accused is Substituted by Grand Jury. THE STATE LAW provide  
10 NO SUCH provision.

11 (9) THE STATE COURT RECORD HAS intentionally omitted all records, made  
12 AVAILABLE, of proceedings which took place prior to September 25, 2015;  
13 WHICH includes but not limited to Initial Appearance, Arrangement and any  
14 ORDER setting or vacating the preliminary Hearing.

**Please answer these additional questions about this petition:**

13. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available: Writ of Habeas Corpus - p 2254

U.S District Court, District of Arizona

NO. 3:20-cv-05327 (PHR - JAT)

filed: 12-7-2020

14. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes ☐ No ☒

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: \_\_\_\_\_

15. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging? Yes ☒ No ☐

If yes, answer the following:

(a) Name and location of the court that imposed the sentence to be served in the future:

Arizona Superior Court in the San Juan County - Camp Verde - Arizona

(b) Date that the other sentence was imposed: February 26, 2021

(c) Length of the other sentence: 12 years

(d) Have you filed, or do you plan to file, any petition challenging the judgment or sentence to be served in the future? Yes ☒ No ☐

16. TIMELINESS OF PETITION: If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations in 28 U.S.C. § 2244(d) does not bar your petition.\*

---

---

---

---

---

---

---

---

---

---

\*Section 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

17. Petitioner asks that the Court grant the following relief: \_\_\_\_\_

---

---

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, day, year).

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Signature of attorney, if any

\_\_\_\_\_  
Date



# **APPENDIX**

## **C**

### **APPENDIX C**

# **EXHIBIT**

# **G**

**FILED**  
O'Clock P.M.

SEP 25 2015 ✓

## IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

DONNA McQUALITY, Clerk  
By: LAURA CROW

## IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,  
Plaintiff,

vs.

GERALD VAUGHN GWEN,  
Defendant.Superior Court No. V1300CR20158 0451

Grand Jury No. 191-GJ-212415

Division 7

## INDICTMENT

The grand jurors of Yavapai County, Arizona, accuse **GERALD VAUGHN GWEN**, charging that in Verde Valley Precinct, Yavapai County, State of Arizona:

**COUNT 1****TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY**

On or about September 7, 2015, **GERALD VAUGHN GWEN**, knowingly took, purchased, manufactured, recorded, possessed or used any personal identifying information or entity identifying information of the Dahl Restaurant Group, without consent of the Dahl Restaurant Group, with the intent to obtain or use the Dahl Restaurant Group's identity for any unlawful purpose or to cause loss to the Dahl Restaurant Group, in violation of A.R.S. §13-2008, a class 4 felony.

**COUNT 2****THEFT OF A CREDIT CARD**

On or about September 7, 2015, **GERALD VAUGHN GWEN**, controlled a credit card, to-wit: Chase Bank debit card ending in 0429 in the name of David Dimler/Dahl Jones Foods, LLC, without the consent of the cardholder, through conduct defined in A.R.S. §13-1802 or §13-1804, in violation of A.R.S. §13-2102, a class 5 felony.

**COUNT 3****FRAUDULENT SCHEMES AND ARTIFICES**

On or about or between September 8, 2015, and September 9, 2015, **GERALD VAUGHN GWEN**, pursuant to scheme or artifice to defraud, knowingly obtained a benefit from the Dahl Restaurant Group, Chase Bank, and/or Oxendale Chrysler Dodge Jeep, by means of fraudulent pretenses, representations, promises or material omissions, in violation of A.R.S. §13-2310, a class 2 felony.

**COUNT 4****THEFT**

On or about or between September 8, 2015, and September 9, 2015, **GERALD VAUGHN GWEN**, knowingly controlled property of the Dahl Restaurant Group and/or Chase Bank, to-wit: stolen Cucina Rustica (Dahl Restaurant Group) checks and U.S. currency, of a value of \$4,000.00 or more but less than \$25,000.00, with the intent to deprive the Dahl Restaurant Group and/or Chase Bank of such property, in violation of A.R.S. §13-1802, a class 3 felony.

**CONTINUED ON NEXT PAGE**

**COUNT 5**  
**FORGERY**

On or about September 8, 2015, **GERALD VAUGHN GWEN**, with intent to defraud, offered or presented to Chase Bank a forged instrument or one which contained false information, to-wit: Cucina Rustica (Dahl Restaurant Group) check, in violation of A.R.S. §13-2002, a class 4 felony.

**COUNT 6**  
**FORGERY**

On or about September 18, 2015, **GERALD VAUGHN GWEN**, with intent to defraud, falsely made, completed or altered a written instrument, to-wit: Release Questionnaire, in violation of A.R.S. §13-2002, a class 4 felony.

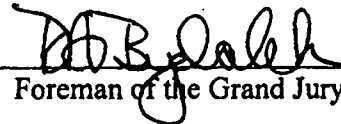
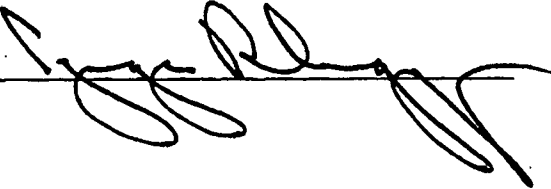
SHEILA SULLIVAN POLK  
Yavapai County Attorney

9/25/2015

A. True Bill

(Foreman writes "A True Bill")

By

  
Foreman of the Grand Jury

# EXHIBIT

## H

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

GERALD VAUGHN GWEN.

Defendant.

ARIZONA COURT OF APPEALS  
NUMBER: 1 CA-CR 18-0775

YAVAPAI COUNTY SUPERIOR COURT  
CASE NUMBER:  
V1300CR201580451

BEFORE: THE HONORABLE MICHAEL R. BLUFF  
JUDGE OF THE SUPERIOR COURT, DIVISION SEVEN  
JURY TRIAL - DAY FIVE

Camp Verde, Arizona  
September 19, 2018  
8:50 o'clock a.m.

PREPARED BY:

M. LISA EDGAR, R.P.R., C.P.  
ARIZONA CERTIFIED REPORTER  
ARIZONA C.S.R. NUMBER 50273

PREPARED FOR:

MR. TONY GONZALES, ESQ.  
Attorney at Law  
Record on Appeal  
COPY

## I N D E X

PAGE

## CLOSING STATEMENT

By Mr. Rodriguez.....19

By Mr. Gwen.....39

By Mr. Rodriguez.....66

1 parties have agreed that my court reporter does not have to  
2 report my reading of the final jury instructions. So you can  
3 read along with me or sit back and let me to read to you.

4 (Jury instructions were read by the Court and not  
5 reported by the court reporter.)

6 THE COURT: Mr. Rodriguez, any additions or  
7 corrections to the Court's reading of the final jury  
8 instructions?

9 MR. RODRIGUEZ: No, Your Honor.

10 THE COURT: Mr. Gwen?

11 MR. GWEN: No, Your Honor.

12 THE COURT: Okay. Mr. Rodriguez, are you ready  
13 with a closing?

14 MR. RODRIGUEZ: State is ready.

15 THE COURT: Closing argument I should say. I'm  
16 sorry.

17 You may proceed.

18 MR. RODRIGUEZ: Duty, honor, trust; those are the  
19 words the defendant used yesterday in an attempt to describe  
20 his qualities and traits. He is a con man, a liar. Those are  
21 his qualities and traits.

22 MR. GWEN: Objection, Your Honor.

23 MR. RODRIGUEZ: Don't be fooled --

24 THE COURT: Overruled.

25 MR. RODRIGUEZ: -- by what he says.



1 information. That instrument was the stolen check and the  
2 State believes it has certainly met that element. He was on  
3 video. We have photographs of him cashing that stolen check.

4 I'd like to draw your attention to page four, and  
5 specifically letter C where it starts with proof beyond a  
6 reasonable doubt. It's the State's burden to prove the  
7 defendant -- prove to you, the jurors, prove beyond a  
8 reasonable doubt the defendant is guilty.

9 The definition for proof beyond a reasonable doubt  
10 is there for you. Proof beyond a reasonable doubt is proof  
11 that leaves you firmly convinced of the defendant's guilt and  
12 it recognizes as part of this definition that -- if you just  
13 read a little further it says: There are very few things in  
14 this world that we know with absolute certainty, and in  
15 criminal cases the law -- law does not require -- require proof  
16 that overcomes every doubt. If, based on your consideration of  
17 the evidence, you're firmly convinced the defendant is guilty  
18 of the crimes charged, you must find the defendant guilty.

19 It's okay to have doubt. Doubt is okay. But if  
20 you have doubt, it needs to be able to -- it needs to make  
21 sense.

22 One of the things I want to clarify is the  
23 defendant is not charged with stealing the checks. That is not  
24 a charge. He wasn't charged because there was just no proof.  
25 You heard Mr. Dimler indicate he didn't know when the checks

13:10

13:55

FWSE  
Comments

1 were stolen.

2 It's a reasonable inference that -- that he stole  
3 the checks, the defendant stole those checks, 'cause he had  
4 access to those checks by his own testimony. It came out in  
5 the testimony that he was there and had access to the corporate  
6 office, to the restaurant's offices both night and day. He  
7 shared those offices.

8 But don't be misled or find that confusing. He's  
9 not charged with the theft of those checks. He's charged with  
10 using those stolen checks.

11 MR. GWEN: Objection

12 THE COURT: Approach.

13 (The following bench conference between the Court,  
14 counsel and Mr. Gwen was held out of the hearing of the jury.)

15 MR. GWEN: Count 4 of the Indictment is -- Count 4  
16 is theft and -- and the -- the derogatory statements just made,  
17 the prosecution is saying he's not charged with theft, but the  
18 checks here, it's stated in the complaint.

19 THE COURT: Mr. Rodriguez.

20 MR. RODRIGUEZ: Your Honor, he's not charged with  
21 burglary of the checks. That's the correct terminology. It's  
22 not necessary. We didn't charge him with physically of going  
23 in there and stealing the checks, theft of the checks.

24 Okay. Mr. Gwen, is that clarified now?

25 MR. GWEN: I will object to him using a new

*Fifth  
Amendment*

14:50

*Objection*

15:43

1 charge. He can't throw out a charge of burglary.

2 THE COURT: He is not throwing out a charge of  
3 burglary.

4 MR. GWEN: He is saying he is not charged with  
5 burglary which implies that the defendant could have broken  
6 into the restaurant, broken into an office.

7 THE COURT: Okay. I will let -- I will disagree  
8 with that. I'm going to let Mr. Rodriguez clarify the issue  
9 about the theft.

10 (The following proceedings were held within the  
11 hearing of the jury panel.)

12 MR. RODRIGUEZ: I'd like to clarify; I just may  
13 have said he was not charged with theft. Don't be confused by  
14 the theft of the checks. The State is not alleging that he  
15 burglarized the Dahl Group restaurant and physically stole  
16 those checks.

17 The State's charge of theft is that the defendant  
18 possessed the stolen checks and used those stolen checks which  
19 caused a financial loss to the Dahl Restaurant Group.

20 As indicated, proof beyond a reasonable doubt  
21 indicates proof that leaves you firmly convinced. What are the  
22 facts in this case that should leave you firmly convinced of  
23 the defendant's guilt? The defendant is on video cashing a  
24 stolen check; one. Two: Defendant admits on body camera to  
25 cashing the stolen check.

false

BIAS

16:46

PREVIOUS  
JURY

17:29

1 Three: The defendant admits to using money from  
2 the stolen checks to buy a 2015 Jeep. Four: Chase Bank  
3 received stolen checks from the defendant, two of them, and  
4 suffered a loss of six -- \$10,626.12. Number five: Oxendale  
5 was made aware that the defendant bought a Jeep with stolen  
6 check funds.

7 The Dahl-Jones Restaurant Group suffered an  
8 economic loss of \$11,443.00 as a result of the two stolen  
9 checks as well as \$823.00. The defendant had an iPad in his  
10 car and Beats headphones when he's stopped. The defendant has  
11 a Walmart receipt in a U-Haul truck dated September 8th, 2015,  
12 for \$823.74. The serial number on that receipt for the iPad is  
13 identical to the iPad found in the defendant's possession in  
14 his vehicle.

15 Number nine: Check number 35940 was cashed at the  
16 Prescott Valley Walmart on September 8th, 2015, in the amount  
17 of \$823.74. Number 10: The mountain bike the defendant  
18 ordered was to be delivered to his home address. Eleven:  
19 Defendant possessed the David Dimler/Dahl-Jones credit card  
20 information, the entire information necessary to place an  
21 on-line order.

22 Twelve: Mr. Dimler testified the stolen checks,  
23 the two stolen checks in the amount of \$5,313.06, the date on  
24 the checks were dated to coincide with the company's payroll  
25 date. Also the defendant hoped that those checks would be

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  

C E R T I F I C A T E

STATE OF ARIZONA }  
COUNTY OF YAVAPAI }

I, M. Lisa Edgar, certify that I am an Official Reporter for the Superior Court of Yavapai County, State of Arizona; that I was present and took down in shorthand all proceedings had in the above-entitled matter, and that the foregoing pages contain a full, true and correct transcript of my shorthand notes so taken, all done to the best of my skill and ability.

DATED at Camp Verde, Arizona, this 29th day of November, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
M. LISA EDGAR, R.P.R., C.P.  
Certified Reporter  
Arizona License Number 50273