

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN ROBERT YOUNG — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD CIRCUIT WAYNE COUNTY COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEPHEN ROBERT YOUNG 504625
(Your Name)

Michigan Reformatory 1342 W. Main St.
(Address)

Lenia, Mi. 48846
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1) IS THE SENTENCE OF 10 YEARS FOR MCL 750.227 b IMPROPER, ILLEGAL AND INVALID AND IN VIOLATION OF PETITIONERS CONSTITUTIONAL RIGHTS TO A FAIR SENTENCE PURSUANT TO U.S. CONST AM. VI, PROTECTED BY HIS RIGHTS TO DUE PROCESS AND THE EQUAL PROTECTION OF THE LAW PURSUANT TO U.S. CONST. AM XIV?

SUBSIDIARY QUESTIONS (RULE 14(1)(a))

a) Are Michigan courts erring when using procedural rules to leave improper, illegal and invalid sentences in place in conflict and disregard to federal and constitutional law?

b) Do Michigan courts lack subject matter jurisdiction to impose illegal sentences as well as the authority to leave them in place?

c) Are all state courts bound by federal and constitutional law, prohibiting the imposition and the leaving in place of improper, illegal and invalid sentences?

d) Did the Michigan state courts err, causing a miscarriage of justice by imposing and choosing to leave in place Petitioners improper, illegal and invalid sentence?

e) Are Michigan courts violating federal and constitutional law, causing miscarriages of justice when leaving Michigan citizens illegal sentences in place after becoming aware of the sentencing issues?

LIST OF PARTIES

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

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	17

INDEX TO APPENDICES

APPENDIX A	DECISION OF STATE TRIAL COURT
APPENDIX B	DECISION OF STATE COURT OF APPEALS
APPENDIX C	DECISION OF STATE SUPREME COURT DENYING REVIEW
APPENDIX D	THE STATE SUPREME COURT DENYING REHEARING
APPENDIX E	PROOF OF INCARCERATION
APPENDIX F	

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
Ex Parte Seibold, 100 U.S. 371 (1880)	14
Hogans V. Lavine, 415 U.S. 528 (1974)	15
Main V. Thibout, 448 U.S. 1 (1980)	15
Manville V. Hampton, 266 GA 857,	6
Montgomery V. Louisiana, 136 S. CT. 718 (2016)	14
Paige V. sterling Heights, 476 Mich. 495, 524 (2006)	
People V. Fransisco, 474 Mich 82 (2006)	10,12,13
People V. Kimble 470 Mich 305 (2004)	11,12
People V. Stewart, 441 Mich 89, 93-95 (1992)	9,14
People V. Washington 2017 Mich App. Lexis 1431	6,15
People V. Wilson, 2016 Mich App Lexis 941	
Renshaw V. Norris, 337 Ark 494, 497-498 (1999)	6,15
Robinson V. City of Detroit, 462 Mich 439, 467	11
Strickland V. Washington, 466 U.S. 668 (1984)	15
Wainright V. Goode, 464 U.S. 78, 84	14
Wainright V. Sykes, 433 U.S. 72 (1977)	11,16
Ward V. Kelly, 2016 Ark 471, 5	15
Welch V. United States, 136 S. Ct. 1257 (2016)	14
Williams V. United States, 503 U.S. 193 (1992)	14

STATUTES AND RULES

MCL 750.227 (b) reproduced on pg.3;9,10

MCR 6.508 (D):

the defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal or in the prior motion, and

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that,

(iv) in the case of a challenge to the sentence, the sentence is ~~invalid~~ invalid. 11,12,16

OTHER

Blacks Law Dictionary Tenth Edition 16

Matthew Bender & Company Inc., Federal Habeas Corpus Practice and Procedure Part VI, Procedural Defenses Ch. 23.3 16,17

World Book Encyclopedia L Volume 12 p. 131 Congress Control Number 2001093057 7

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,

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

☐ is unpublished.

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

☐ reported at _____; or,

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

☐ is unpublished.

☒ For cases from **state courts**:

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

☐ reported at _____; or,

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

☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

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

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 9-12-17.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: November 29, 2017, and a copy of the order denying rehearing appears at Appendix D.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

MCL 750.227 b: A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except in violation of 223, 227, 227a, or 230, is guilty of a felony and SHALL be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person SHALL be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person SHALL be punished by imprisonment for 10 years.

U.S. Constitution Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Constitution Amendment VII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Constitution Amendment XIV Sec. 1: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On 6-23-2006 Petitioner was convicted of three counts of Felony Firearm first offence, among other charges, and sentenced to 2 years in prison for the Felony Firearm charges in the Oakland County Circuit Court of Michigan for case no. 06-207074-FH. Petitioner was later convicted of Felony Firearm (MCL 750.227 b) on 5-3-2013 in the State of Michigans Third Circuit Wayne County Court for case number 12-011375-FH which sentence Petitioner is now challenging. On 6-25-2013 Petitioner received a mandatory sentence of 10 years in prison for Felony Firearm 3rd. Petitioner challenged his sentence at sentencing first (See Sentencing Transcripts 6-25-2013 p. 6-8) while represented by substitute appellate counsel that was sent by his retained appellate counsel. Appellate counsel for Petitioner failed to challenge his illegal sentence on direct appeal and Petitioners appeal of right was disposed of by the Michigan Supreme Court when they denied leave to appeal on 6-11-2015. Petitioner filed a Motion For Relief of Judgment in pro-se pursuant to MCR 6.500 seq. on 8-19-2015, where he challenged his illegal sentence within issue 4 and the ineffective assistance of counsel arguments within issues 5 and 6. The Third Circuit Wayne County Court denied Petitioner relief on 11-23-2015, omitting the relevant part of the court rule entitling Petitioner to relief due to prejudice MCR 6.508(D)(3)(b)(iv), also alleging that counsel was not ineffective under Strickland v Washington and MCR 6.508(D)(3)(a) for failing to challenge Petitioners illegal sentence (See November, 23-2015 Court Order, case no. 12-011375).

Petitioner filed for delayed leave to appeal and motioned to remand in the Michigan Court of Appeals on 4-15-2016 that the court denied on 8-3-2016 for failure to establish lower court error (See 8-3-16 C.O.A. Order, case no.332577). On 8-11-2016, Petitioner filed a motion for reconsideration in the Michigan Court of Appeals that was denied on 9-8-2016 with out reason. Petitioner then filed an application for leave to appeal and motion for resentencing in the Michigan Supreme Court on 10-5-2016 that was denied on 9-12-17 for failure to establish entitlement to relief under MCR 6.508 (D)(See Mich S. Ct. 9-12-17 Order, case no. 154539). On 9-25-17 Petitioner then filed a motion for reconsideration in the Michigan Supreme Court that was denied on November 29, 2017.

REASON FOR GRANTING THE PETITION

INTRODUCTION

Petitioner here sets forth facts that show that the Michigan State Court has not only decided an important federal question in a way that conflicts with it's own state court of last resort (Rule 10 b), but that the Michigan State Court has also decided an important federal question in a way that conflicts with relevant decisions of this Court (Rule 10 c).

The Michigan Courts in the present case imposed an improper, illegal, invalid and void sentence upon Petitioner that is twice as long as authorized by statute. The state court first lacked subject matter jurisdiction to even impose such a sentence (See *Renshaw v Norris*, 337 Ark 494, 498; 989 SW 2d 515, 517 (1999) where the court cited *Manville v. Hampton*, 266 Ga 857, 471 S.E. 2d 872, when the court explained that "if the petitioner was confined for a sentence longer than permitted by statute, this would be a denial of liberty with out due process of law" and went on to explain that when a "petitioner alleges that a sentence is void or illegal, we review the matter of the trial courts subject matter jurisdiction".) (Also see *People v Washington*, 2017 Mich App Lexis 1431 at 9-11, the court stated that "Jurisdictional defects may be raised at ANY time" and the court held that 'Regardless of whether the issue was raised in an improperly supported motion, the trial court clearly had the power to consider the jurisdictional issue brought to it's attention'). Petitioner challenged his improper, illegal, invalid sentence at sentencing (See Sentencing Transcripts June 25 2015 p.6-7) making defense/appellate counsel aware of the sentencing issue. Counsel

failed to investigate petitioners charges, as he failed to provide supporting law when requested to by the court (See Sentencing Transcripts June 25 2013 p.7- 8), due to the fact that he was unaware of case law controlling Petitioners charges. Further, appellate counsel that was present at sentencing, failed to raise the issue of Petitioners illegal sentence on direct appeal, though instructed to. Consequently, Petitioner first raised the issue of his improper, illegal, invalid sentence in a Motion For Relief From Judgement pursuant to MCR 6.500 seq. with in issue 4 as well as in the ineffective assistance of counsel argument in issues 5 and 6 of his supporting brief. Petitioners sentencing issue was NEVER addressed on it's merits and the assertion that his sentence is invalid has never been rebutted. The Michigan courts have repeatedly denied Petitioner relief by asserting state procedural rule over substance and Constitutional law causing a miscarriage of justice (See Appx. A-D). This is perplexing since conflicts between a "Constitution and other laws are settled by 'Constitutional law' or U.S. Supreme Court precedent (See World Book Encyclopedia L Volume 12 p.131, Library of Congress Control Number 2001093057). Our Constitution is "a set of rules and principals that define the powers of government and the rights of the people", "Principals outlined in a constitution form the basis of constitutional law" and "The law also includes official rulings on how the principals of a nations constitution are to be interpreted and carried out" (See World Book ID). Petitioner clearly has a Constitutional right to be sentenced in accord with the law and the courts lacked the authority and jurisdiction to impose a sentence in conflict with the law, thus the outcome of this case must be

settled by Constitutional law.

This case is so important to the interest of justice and there is a significant national importance concerning all citizens in Michigan suffering from the imposition of improper, illegal, invalid sentences because the Michigan courts are using and manipulating state procedural rules to overcome Constitutional law and uphold and leave in place such sentences, in conflict with federal law. Many U.S. citizens in Michigan suffer from the imposition of improper, illegal, invalid sentences whether they are due to an abuse of discretion or misinterpreted laws and statutes. Either way, the courts lack the authority and jurisdiction to impose these sentences, the defendants in these cases have the right to due process of the law (U.S. Const. AM XIV), a fair sentence in accord with the law (U.S. Const. AM VI) and the right to be protected from arbitrary punishment (U.S. Const. AM VIII). For these reasons the issue presented reach far beyond the particular fact of this case and the Michigan courts must be made to uphold the Constitution and correct improper, illegal, invalid sentences no matter how or when they are brought to the courts attention as long as they are raised by interested parties. Though many federal cases decided by this Honorable Court explain that an illegal sentence must be corrected by a sentencing court and that a court has NO AUTHORITY to leave in place an illegal sentence, Michigan Courts are manipulating their procedural rules to settle Constitutional law and overcome this courts rule.

IMPROPER, ILLEGAL AND INVALID SENTENCE

According to appellate and controlling precedent at the time of Petitioner's conviction and sentence, he was only eligible to receive a five year sentence, but contrary to law, received an illegal sentence of 10 years. Petitioner was convicted of MCL 750.227(b) Felony Firearm, which carries a 2 year mandatory sentence for the first offence, 5 for the second and 10 for the third. Petitioner was only eligible to be sentenced to 5 years for Felony Firearm second offence in the present case. Though he does indeed have 3 previous Felony Firearm convictions, all 3 of these convictions arose from one incident in February 2006, with one firearm and one victim. The sentencing court in 2006 attached a Felony Firearm charge to each of the three felonies that Petitioner was convicted of (See Proof Of Incarceration Appx. E), though each of these 3 Felony Firearm charges were noted as being Felony Firearm first offence (MCL 750.227 (b)(a)). The controlling precedent at the time of Petitioner's conviction was *People v. Stewart*, 441 Mich 89, 93-95; 490 NW 2d 327 (1992), where the Michigan Supreme Court explained "a person may only be convicted as a 2nd Felony Firearm offender, not as a fourth, when a person has 3 prior convictions arising out of a single criminal transaction" and "A defendant may only be convicted of Felony Firearm 3rd offence, if the third offence is preceded by two convictions of Felony Firearm and both convictions have arisen from separate criminal transactions."

In *People v Wilson*, 2016 Mich App Lexis 941 (unpublished opinion No. 324856) at 17-18, it was explained by the Michigan Court of Appeals that *Stewart* is binding on all Michigan courts when the court

stated "The trial court and the court of appeals are bound to follow Stewart unless and until it is overruled by our supreme court" (Also see Paige v Sterling Heights, 476 Mich 495,524 (2006). Giving effect to the Michigan Supreme Court, the author of the states rules, it is clear that Petitioner was only eligible to be sentenced to 5 years as a Felony Firearm second offender as all of his previous convictions arose from one incident. Further, anything other than a SEPERATE sentence of 2, 5 or 10 years is not a sentence under a subsection of MCL 750.227 b, as the court has no discretion in sentencing under this statute. This can be better understood when reading the plain language of MCL 750.227 b which reads:

A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of 223, 227, 227a or 230 is guilty of a felony and SHALL be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person SHALL be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person SHALL be punished by imprisonment for 10 years.

"SHALL is a mandatory term not a permissive one" People v Francisco, 474 Mich 82, 87 (2006). Thus if a person never received the mandatory 5 year sentence for Felony Firearm second offense, he could not have ever been convicted as a second offender and consequently could not be convicted as a third until he was first convicted as a second and received the mandatory 5 year sentence for such conviction. It is the "words of the statute itself that a citizen first looks to in guidance of directing his actions" (See

Robinson v City of Detroit, 462 Mich 433, 467, and as a citizen, Petitioner asserts that he has a Constitutional reliance on the words in the statute concerning the sentencing scheme and interpretation of convictions. Accordingly, Petitioners sentence is constitutionally improper, illegal invalid and void.

IMPORTANT FEDERAL QUESTION IN CONFLICT WITH IT'S OWN STATE COURT OF LAST RESORT

The important federal question here that the Michigan state courts answered in conflict with their own state court of last resort is; Is Petitioners sentence improper, illegal and invalid, in violation of the U.S. Constitution? which includes the subsidiary question, is Petitioner entitled to relief in the state courts and are the state courts bound to correct his improper, illegal and invalid sentence? The answer is yes, though the Michigan state courts have consistantly denied Petitioner resentencing. Petitioners sentence is clearly improper, illegal and invalid as argued herein. In People v Kimble, 470 Mich 305, 313-314; 684 NW 2d 669 (2004), the Michigan Supreme Court established a controlling precedent that states both 'good cause' is established when a sentence is invalid and counsel fails to challenge it under MCR 6.508 (D) (3) (a), and 'prejudice' is established when a minimum sentence exceeds the maximum sentence under the proper sentencing guideline range under MCR 6.508 (D) (3) (b) (iv), which fulfills entitlement to relief under MCR 6.500 seq.. [MCR 6.500 seq. 'good cause' and prejudice standards are based on and dependent on federal law (See Wainright v Sykes, 433 US 72; 97 S. CT. 2497; 53 L ED 2d 594)]. These standards were percisley fulfilled as

the circumstances in the present case are exactly what the court in Kimble articulated that meet the fulfillment requirements for relief. Petitioner first challenged his sentence at sentencing while represented by appellate counsel (See Sentencing Transcripts June 25, 2013 p.6-8), where counsel failed to produce any supporting law at the courts request due to his failure to investigate the laws of the case, and further failed to challenge this obvious issue entitling Petitioner to relief on direct appeal. Petitioner is clearly entitled to relief under MCR 6.508 (D) as his sentence is invalid, defense/appellate counsel failed to challenge it, and he received a 10 year sentence when he was only eligible to receive 5 years according to the law, yet the state courts denied Petitioner relief and resentencing pursuant to the same court rule in plain error (See Appx B; Court Order 11-25-15). Two years after Kimble, in People v Francisco, 474 Mich 82, 87; 711 NW 2d 44 (2006) the Michigan Supreme Court established controlling precedent stating that "A defendant is entitled to be sentenced in accord with the law, and is entitled to be sentenced by a judge who is acting in conformity with such law." With Petitioners sentence being improper, illegal and invalid due to the trial court imposing a sentence that was twice as long as law prescribed, contrary to controlling law and statute, he was and is entitled to resentencing pursuant to MCR 6.508 (D) and People v Kimble.

IMPORTANT FEDERAL QUESTIONS IN CONFLICT WITH RELEVANT DECISIONS OF THIS COURT

The important federal questions that the Michigan state courts answered in conflict with relevant decisions of this Court are; Is petitioners sentence Constitutionally invalid?; Was defense/appellate counsel Constitutionally ineffective for failing to challenge the issue of Petitioners illegal and invalid sentence?; and. Are all state courts bound to follow federal and constitutional law in the correction of illegal and invalid sentences? The answers to these questions are yes, though the Michigan courts have denied petitioner relief.

Petitioner sentence is clearly improper, illegal, invalid and thus void as established within the previous arguments. According to Williams v United States, 503 US 193, 202-203; 111 S. Ct. 1112; 117 L ED 2d 314 (1992) which was cited by the Michigan Supreme Court in People v Francisco, 474 Mich 82 at 87, "A court of appeals must remand for resentencing if the sentence was imposed as a result of an incorrect application of the guidelines" and "a sentence is imposed as a result of an incorrect application of the guidelines when the error results in the district court selecting a sentence from the wrong guideline range." Petitioners sentence was clearly selected from the wrong guideline range which was the wrong subsection of the Felony Firearm statute in the present case, therefore Michigan appellate courts were bound to remand for resentencing. The state courts refused to remand for resentencing on the false premise that Petitioners counsel was not constitutionally ineffective for failing to challenge his illegal, invalid sentence, contrary to federal law, further stating that "Appellate counsel may legitimately winnow out weaker arguments in order to focus on those arguments more likely to prevail." No

argument though is more likely to prevail than an improper, illegal invalid and void sentence; especially the two unpreserved and one civil issue that Petitioners appellate counsel chose to raise. Additionally, Petitioner as a layman showed with enough clarity that he was prejudiced by arguing that he would have received 5 years instead of 10 years in prison had his counsel raised the issue of his illegal sentence on direct appeal. The state court was bound by this Courts decision in Williams.

In *Wainright v Goode*, 464 US 78, 84; 104 S. Ct. 378; L ED 2d 187 (1983) this Honorable Court held that when a "sentence violated state law" it "was deemed to be an arbitrary punishment under the 8th Amendment." Petitioners current sentence violates both state statute as well as the controlling precedent that was in place when he was convicted and sentenced, making his sentence unconstitutional.

In *Montgomery v Louisiana*, 136 S. Ct. 718, 731; 193 L ED 2d 599 (2016) this Court cited *Ex Parte Seibold*, 100 US 371; 376 25 L ED 717 (1880) explaining that "A conviction that violates a substantive rule is not just erroneous but contrary to law and as a result void. It follows as a general principal that A COURT HAS NO AUTHORITY TO LEAVE IN PLACE A CONVICTION OR SENTENCE THAT VIOLATES A SUBSTANTIVE RULE." "Substantive rules involve statutory interpretation" (See *Welch v US*, 136 S. Ct. 1257, 1269; 194 L ED 2d 287 (2016)). Petitioner asserts that his sentence is invalid due to incorrect statutory interpretation which is in violation of the substantive rule set in *People v Stewart* 441 Mich 89 at 93-95. Michigan courts had no authority to leave in place his sentence.

There is NO presumption in the favor of jurisdiction, for the

jurisdiction must appear on the record, and upon challenge is to be decided (See Main v Thibout, 448 US 1 (1980); Hagane v Lavine, 415 US 528 (1974)). The federal court in Ward v Kelly, 2016 Ark 471, 5; 506 SW 3d 2244; Ark Lexis 382 cited Renshaw v Norris, 337 Ark 494, 497-498 (1999) when stating "Because the imposition of an illegal sentence is viewed as a violation of basic constitutional rights, this court has consistently viewed the issue as being an issue of subject matter jurisdiction." Petitioner did not raise the issue of the trial courts lack of subject matter jurisdiction concerning his illegal sentence until 9-25-17 in the Michigan Supreme Court in a motion for reconsideration of his application for leave to appeal, as he was not aware that this remedy was available until the Michigan Court of Appeals published People v Washington, 2017 Mich App Lexis 1431 on 9-12-17. The Michigan Court of Appeals explained that "Jurisdictional defects may be raised at any time" and that regardless of whether the issue was raised in an improperly supported 6.500 motion, a court clearly has the authority to consider a jurisdictional issue brought to it's attention. Further, the law provides that once state and or federal jurisdiction have been challenged, it MUST be proven (See Main v Thibout, 448 US 1 (100 S. Ct. 2502 (1980)). Thus, even though Petitioner raised the issue in the Michigan Supreme Court in an improperly supported motion, it was due to a case that was just published by the Michigan Court of Appeals making him aware that the issue could be raised, and the court clearly had the authority to hear the jurisdictional issue brought to it's attention.

This Honorable Court established in Strickland v Washington, 466 US 668, 680-682, 698; 104 S Ct 2052 (1984) that "the Sixth Amendment

imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options." The investigation must include "an independent examination of the facts, circumstances, pleadings and LAWS involved." The statutes sentencing guidelines were clearly part of the law involved in the present case and counsel had a duty to know how this law was imposed. Further, pursuing statute guidelines and how they are interpreted and applied was not only necessary but in no way could have been harmful to Petitioners defense and the failure of counsel to investigate this could not have been considered strategy, deprived Petitioner of a complete defense and rendered counsel ineffective with in the meaning of the Sixth Amendment. Petitioner was PREJUDICED by counsels failure to challenge his improper, illegal and invalid sentence by receiving a mandatory sentence of 10 years in prison when he was only supposed to receive a 5 year sentence. Counsels failures clearly effected the fundamental fairness of the proceedings which resulted in an actual and substantial disadvantage to the course of his defense and Petitioner is entitled to resentencing.

Finally, the 'good cause' and 'prejudice' threshold for entitlement to relief under MCR 6.508 (D) (3) is dependent on federal law (ie US Supreme Court precedent), See *Wainright v Sykes*, 433 US 72; 97 S Ct 2497; 53 L ED 2d 594 (1977) and MCR 6.508 Staff Comments.) Blacks Law Dictionary Tenth Edition defined good cause as "A legally sufficient reason." Any state procedural bar dependent on federal law, such as MCR 6.508 (D) can be reviewed de nove by a federal court if the state rule produces a result that is manifestly unjust (See Matthew Bender &

Company Inc. Federal Habeas Corpus Practice and Procedure, Part VI Procedural Defenses, Ch 23.3). Petitioners improper, illegal and invalid sentence is clearly and obviously a manifest injustice and this Honorable Court should order relief.

CONCLUSION

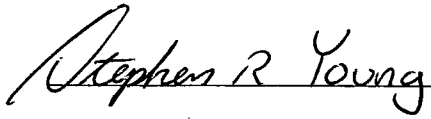
Petitioner here has clearly established that his sentence is improper, illegal, invalid and as a result void, that his appellate counsel was ineffective with ion the meaning of the Sixth Amendment for failing to challenge it and that he is entitled to relief and resentencing. Petitioner has also shown that the Michigan state courts erred in imposing and leaving in place his illegal sentence according to state, federal and constitutional law.

This Honorable Court should hear and decide this case because all U.S. citizens are protected by the United States Constitution against arbitrary punishment (US Const. AM VIII), have the right to a fair sentence in accord with the law (US Const. AM VI) which is protected by the Due Process and Equal Protection of the law clause in the 14th Amendment. Michigan courts are depriving it's citizens of these Constitutional protections by imposing and leaving in place illegal and invalid sentences, which the state courts lack the authority and jurisdiction under the Constitution to even impose, let alone leave in place when brought to their attention, by citing state procedural rules to overcome federal and Constitutional law. It is necessary for this Court to correct the Michigan courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: December 18, 2017