

No. _____

In The Supreme Court of the United States

James E. Whitney

Petitioner

V.

State of Arkansas

Respondent

On Petition for a writ of Certiorari to :

The Supreme Court of the State of Arkansas

Case # CR-17-534/ CR-16-964

James E Whitney, Pro Se

Sui Juris In Propria Persona

163817

P.O Box 600

Grady, Ar. 71644-0600

Issues Presented for Review and Consideration

I). Trial Court Lacked The Jurisdiction, Venue and Authority to proceed on in this matter:

A). The Trial Court lacked Jurisdiction as I am under no Contractual obligation to any World -of- Man Government, be they a State, Nation or the like,

B). The Trial Court Lacked Personam Jurisdiction as service was improperly prepared, presented, or verified

C). The Trial Court lacked subject matter Jurisdiction in as much as it did not have Rem Jurisdiction or Personam Jurisdiction but additionally the statute of limitations had elapsed prior to the commencement of the proceedings.

D). As the Prosecution presented material that alleged the use of the internet across state lines to commit the charges offense and the trial allowed these submission, contrary to prevailing Court rules, therefore venue was removed from the state and placed squarely within the venue of the U.S. District Court.

E). Having lack of Rem Jurisdiction, Personam Jurisdiction, subject matter Jurisdiction and being the improper venue, the Trial Court had no authority to proceed, making the verdict, judgment and sentence invalid.

II). Violations of my rights as secured and Protected by the 1st, 5th, 6th, and 14th Amendments to the U.S. Constitution and under article 2 § 1, 2, 6, 8, 9, 10, 15, and 29 of the Constitution of the State of Arkansas.

A). The investigating detective, Detective Schrock, The original Prosecutor Denis Dean, the original Defense counsel, Blake Chancellor withheld exculpatory evidence with malicious afterthought.

B). Lack of evidence integrity- as admitted by Detective Shrock during cross at trial, while the jury was otherwise distracted by the Prosecution.

C) The Trial Court allowed the submission of “Privileged Papers”, that although the Prosecution could not establish that there existed any connection to me, withholding evidence that showed the user name in use while I was in custody, that even if they had been able to establish a connection to me, would have been a violation of my right against self incrimination, Howbeit, in either manner their use in any proceedings is a violation of the protections secured by the 1st, Amendment to the U.S. Constitution and article 2 § 6 of the Constitution of the State of Arkansas

D). The sufficiency of the evidence does not support the offense charged with nor did it merit the case being sent to the jury for rendering of a verdict, judgment or sentence.

E). The Trial Court refused to allow me, The Defendant Proper to be an active participant on the research, preparation, or presentation of the defense in the matter in which I was named the party.

F). When a sentence is death of life imprisonment, The Court must review all errors prejudicial to the appellant, The Courts below did not meet this requirement.

G). The Appellant Court and Supreme Court for the state of Arkansas refused me access to be directly informed concerning the proceedings in the matter in which I was a party.

H). The Appellant Court and the Supreme Court for the State of Arkansas refused to allow me to speak, be heard, or otherwise directly involved in the proceedings before them to which I was the named party.

I). The Arkansas Supreme Court refused to review the proceedings below because my brief was four days late due to prison officials mishandling of legal mail, where brief was

accompanied by Certification of Institutional filing showing it was placed with prison officials prior to deadline and the Court was informed of the issues with the prison legal mail proceedings being followed.

J). Through out the trial and appellant process thus far I have been treated as nothing more than an inanimate piece of property with no rights or voice or value.

III). Violations of my rights as secured and protected by the 8th Amendment to the U. S. Constitution and article 2 § 9 of the Constitution of the state of Arkansas.

A). In the State of Arkansas sentencing is a matter of statute and must be in accordance with the statute in effect at the time of the alleged crime. And the statutes are clear that a sentence of 540 years imprisonment is plain and clear unusual and cruel, not only in the length of time, but through other constraints that are applied due to the illegal sentencing.

IV). Ineffective Assistance of Counsel

That, both the original appointed defense counsel and the appointed replacement defense counsel from the states conflict office, performances fell well below any objective standard of reasonable professional assistance and that these acts and omissions by both counsels are of such deficient performance as to deny the actual and constructive assistance of counsel as to altogether prejudice me, the defendant proper, resulting in an unreliable and fundamentally unfair outcome in the proceedings.

List of Parties

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Petitioner
Defendant Proper

V.
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Respondent
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Other Parties with interest in this matter

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Represented the State of
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Original Circuit Court, Judge
Assigned to
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Hon. Mark Lindsey
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Circuit Court Judge
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Attorney of record on appeal
to Arkansas Court of Appeals
case # Cr-16-964

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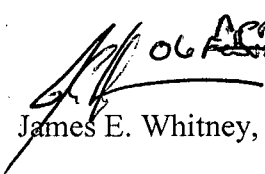
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Statement of Inability to Produce a Complete Record
of the Proceedings below

I have made a Honest and diligent effort to obtain a copy of the trial transcript and record below on at least five(5) separate occasions, twice to the Trial Court, once each to the Appeals Court of Arkansas and the Arkansas Supreme Court and once each to both previous Defense Counselors in order to prepare pleadings, motions and other papers for direct appeal and post conviction relief, however, all three (3) Courts have denied my petitions, and neither of the Defense Counselors responded to my request.

Therefor, what I have been able to provide consist of what has been obtained and pieced together from sources other than those who have a duty and legal responsibility to provide such, and upon my best recollections from the trial conducted on 11-12 May 2016 in the attempt to prepare, construct and perfect my pleadings, motions and other papers to the best comply with such rules as are required by the Courts.

 April 06 February 2018. CE.
James E. Whitney, Pro Se

In the Supreme Court of The United States

Petition for Writ of Certiorari

I, James E. Whitney, a living breathing Sentient Natural Sovereign Mortal, Proceeding Pro Se, do hereby respectfully request that a writ of Certiorari be issued to review the judgments below.

Opinions Below

The opinion of the Highest State Court to review the merits appears at Appendix A, pages 4-7 to this petition and is reported at Whitney v. State, 2017 Ark.App. 341

Jurisdictional Statement

The date on which the Court of Appeals for the State of Arkansas delivered her opinion on my case was 24 May 2017, a copy of that opinion appears at appendix A pages 4-7. A timely petition for rehearing by the Arkansas Supreme Court was there after denied on 09 Nov 2017, a copy of the order denying rehearing appears at Appendix A, pages 1

Therefore, knowing that I have 90 days from the date denying my petition for rehearing in which to file my petition for writ of Certiorari, I pray this Court will render her opinion on the

and by the Compass
square✓when reviewing the Constitution Issues and questions of law which I have raised and brought before this Court.

Further, I invoke the Jurisdiction of this Court Pursuant to 28 U.S.C. § 1257 (a)

Constitutional and Statutory Provisions Involved

I) Trial Courts lack of Jurisdictions, venue and authority

The second paragraph of the Declaration of Independence of 1776, states: "That all men are created equal, That they are endowed by their Creator with certain unalienable rights. That among these are life, liberty, and the Pursuit of happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the Governed, that whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or abolish it". The Declaration goes on further to state: " But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such Government". This is a plain and clear demonstration that those who penned this document

decisively acknowledged that the individual living breathing sentient mortal is by and far the *This Having been Established by my Creator, Lord, and King, YHWH, IN THE BEGINNING,*
Natural Sovereign Superior to any world-of-man Governments known as the United States of *This was found to be so sacred and compelling by the founders*
America and the State of Arkansas,✓to find it also expressed in the preambles of the Constitution of the United States, 17 September 1787 and the Constitution of the United States of Arkansas, as well as the Tenth Amendment to the U.S Constitution and Article 2 § 29 of the Constitution of the State of Arkansas. To that end the Constitutions, statutes , rules and regulations were/are created

and textulized to protect , not subjugate or rule over the living breathing sentient natural mortal, moreover they are, to be controlling and limiting over those individuals employed or serving in Constitutional or legislative created offices and positions^{AS} well as those who contract with these world-of-man Governments- in the attempt, in what has been called the Great Experiment, to put an end to such corruption and abuses of power that had been previously experienced, so that it

should ever be extirpated. *Allowing the Ruling below is akin to failing this founding Documents of the American Republic, Rendering them Null and Void*

The Supreme Court having held on Hale v. Hinkle, 201 U.S. 43 (1905) that since the private man [that is the living breathing sentient natural sovereign mortal] is not named in the statutes and all statutes are for the regulation of business due to the fact that the natural person's rights existed long antecedent to the organization of the "state", he owes no such duty or loyalty to such world-of-man Governments constructs, be they allegedly a state, nation or the like, since he receives nothing therefrom.

I have seen nothing, nor has any evidence or documentation been produced, that would resemble anything that would establish a verified valid document, pre-existing contract, or any information in the public record that would indicate that I have any obligation or liability to the Governments of the United States, or any of the States^{of the} Union or that their Constitutions operate upon me and thereby subject me to their world-of-man enactments, be they statutes, rules, regulations, or the like. If otherwise, please provide such evidence and documentations where I am, as no one has yet been able to do so. Although I may reside within or be held captive and confined to the land or territories of any world-of-man Constructs, be they allegedly a state, nation of the like, I am neither to bend knee to or conform with their ways or practices, Exodus 23:24; Deuteronomy 13:1; Judges 2:2, nor am I bound to any Earthly world-of-man authority.

There is no other authority, Government, Instruction, laws or rules, but as those provided by YHWH and as recorded in the Tanakh, Leviticus 18:4-5; 26:46; Deuteronomy 4:2, My Lord and King, YHWH, is the only being who can and shall judge me. As El Shaddi is the only one who can probe the mind and pierce the heart of mankind to know the Truth of a matter, I do not recognize any pledges, nor any loyalties or allegiances to any such world-of-man constructs. My loyalty and allegiance, as a sovereign, is pledge, In Toto, without reservations, only to the Supreme Sovereign Ruler, YHWH, Leviticus 18:4-5; Deuteronomy 13:5.

I have not contracted my rights, freedoms, liberties or protections away. I have no contracts or agreements with the President/CEO of the United States, Inc., nor any Governors/CEO's of any states that construct the Union. I am not a party to nor signatory of, or knowingly a descendent of any party to or signatory of the Constitutions, contracts or social compacts that have established or comprised the world-of-man Governments of the United States or any of its subdivisions. My rights, freedoms, liberties, and protections are not dependent on any Government benefit or piece of legislation. The Natural People, sovereigns, are the creators of the "Government". My rights, freedoms, liberties, and protections are inherent and non-negotiable, the "Government" can list them and protect them, that is their duty, but they are not theirs to give away, alter, restrict or diminish in any way. See Ninth Amendment to the U.S. Constitution, addendum C. page 10, and article 2 § 29 of the Constitution of the State of Arkansas, addendum D, page 8.

I am a living breathing sentient natural sovereign mortal, not simply because I say I am but by the fact that I was born a sovereign as bestowed upon me by my creator, Lord, and King, YHWH, the source of breath of all flesh, and not by way of any world-of-man Government, and such may not be modified, altered, restricted or diminished but by consent of the sovereign, and ^I have given no such consent or knowingly entered into any agreements with any world-of-man Governments to subjugate me, my rights, or protections addendum I pages 1-12 and 27

II). Violations of my secured and protected rights under the 1st, 4th, 5th, 6th, 8th, and 14th Amendments.

A). Detective Yvette Schrock in collusion with Deputy Prosecutor Denis Dean and Defense Attorney Blake Chancellor did with intent and malice aforethought cause the misplacement and misfiling of exculpatory essential material evidence to conceal its exposure through discovery, addendum K page 41, therefore, eliminating any possibility of investigating any other locations the chat account associated with the YsE-3A and YsE-3B labeled hard drives could be identified to possibly establish who the account actually belonged to. It bears to mention here that the U.S. Marshals service operates an office out of XNA and is a location utilized for internet sting operations, to which Detective Shrock is a known participant in, addendum K page 51-56.

Additionally, original appointed Defense Counsel, Blake Chancellor in collusion with Deputy Prosecutors Denis Dean and Kevin Metcalf did withhold exculpatory evidence in the form of an original report on the contents of the YsE-3A and YsE-3B hard drives, prior to the end case report being returned that showed the files in question to have been on the hard drives but removed from access to the operating system, in other words erased but not over written, and none of the file names contained "Whitney" as part of the file identification. At the time I was presented with this by Blake Chancellor early in the proceedings I requested a copy, he stated I was not allowed access to it while being detained, when asked for it later he claimed to know nothing about it (see addendum J pages 73-74).

In U.S. v. Flyer, 633 F. 3d 911, (9th cir.2011). The court held that the Governments failure to preserve any potentially exculpatory evidence rises to the level of a Due Process violation. U.S. v. Ellis, 121 F.3d 908,(4th cir.1997) goes on to stated that a Prosecutors failure to disclose evidence favorable to the accused violates Due Process where evidence is material either to guilt or innocence irrespective of good or bad faith of the prosecution. Evidence is favorable not only when it could tend to exculpate the accused, but also where it can be used to impeach a Government witness.

The Supreme Court has constantly held Prosecuting Attorneys to high standard as the states attorney acts in a Quasi-judicial capacity, and it is the Prosecutor's duty to use fair, honorable, reasonable, and lawful means to secure a conviction in a fair and impartial trial, to

sum up the statutes and holdings of the courts. The standard in determining errors in a Prosecutor's non disclosure of essential material evidence is ; exculpatory evidence clearly creates a reasonable doubt, or a at least would have in the mind of the fact finder that did not otherwise exist ; therefore, constitutional error has been committed. See addendum J pages 33-42 for specific motivations for retaliatory actions.

B). The integrity of the chain of custody and actual source of the YsE-3A and YsE-3B hard drives submitted to the state crime lab by Detective Shrock are suspect and called into question in that:

1) After being dropped off on Friday, 10 Aug 2012 by Teena Whitney, at the Washington County Sheriff's office, being turned over to Sgt. T. Augustine, addendum K page 30. He was instructed by Detective Shrock to place the computers in her office as opposed to securing them in an evidence locker as per protocol, see testimony at trial by Sgt. T. Augustine; see also rule 15.1, Ark.R.Crim.P., addendum F page3.

2). Between 10 Aug 2012 and 14 Aug 2012, while being stored in Det.Shrock's office, where she had possession, unlimited and unobserved access, she states that she removed hard drives labeled YsE-3A and YsE-3B from a black plexiglass tower, addendum K page 32 and trial transcript. Det. Shrock then returned this black plexiglass tower and one (1) other computer, prior to any forensic examination by the state crime lab on 14 Aug 2012 to Teena Whitney. Addendum K page.34.

While obtaining invalid consents to search. Addendum K page 35-40, see also Rules 10.2 and 11.2 Ark. R.Crim.P., addendum F page 1-2.

Det. Shrock states she removed the hard drives YsE-3A and YsE-3B from the tower to send to the State crime lab due to bulk, however; she sent two (2) other computer towers intact

for forensic examination in the same submission to the State Crime Lab, addendum K page 39 and 49 could it be because hard drives YsE-3A and YsE-3B did not come from any of the computer provided by Teena Whitney?

3). The above two points alone call into question the validity of the actual source of hard drives YsE-3A and YsE-3B, as Det. Shrock had means, opportunity and motive see addendum K pages 56-57, 64, 70, and 76-86, to plant, insert, create, replace, alter and/or tamper with the submission of evidence to the State Crime Lab.

4). It is further suspect and suspicious that of all the computer hard ware examined, eight (8) in all, YsE-3A and YsE-3B, the very one Det. Shrock claims to be removed before submission for forensic examination are the only ones with any criminal activity contained on them, and outside of "Whitney" in eleven (11) of the file names there was no other information on these two (2) hard drives, no e-mail accounts, no bank statements, no correspondences, no other personal data to connect hard drives YsE-3A and YsE-3B to me, see States forensic computer experts testimony at trial.

5). The question must be raised, why when Det. Shrock came into "possession" of the material in early August of 2012, did she not submit it to the State Crime lab until mid February of 2013, A seven (7) month delay. These issues were never able to be developed due to Prosecutorial misconduct in publishing evidence to the jury during defenses cross examination of state's witness Det. Shrock. See trial transcript.

In *Novak v. District of Columbia*, 160 F.2d 588 (D.C. cir. 1947) the court held that a break in the chain of custody (such as in the case) can be serious enough that the trial court may abuse it's discretion in admitting the evidence, see also *McCormick on evidence* § 213(6th Ed. 2006) "If there is some specifically identified risk of misidentification or alteration, the

proponent of the exhibit should produce evidence to overcome this risk or suffer exclusion” .

Even with the presumption that individuals entrusted with grave responsibilities discharge them with care, this presumption may be rebutted with a minimal showing of ill will, bad faith or other evil motivation, see U.S. v. Meja, 597 F.3d 1329 (D.C. cir. 2010).

C). The submission of the Yahoo chats, belonging to whom ever the owner of the screen name “DWMAD001“ is into evidence was a violation of the rights and protections as secured by the clauses of free speech and freedom of the press as expressed on the first Amendment to the U.S. Constitution and article 2 § 6 of the Constitution of the State of Arkansas, as enjoined upon all natural persons to express their thoughts and opinions. Thereby, preventing the use of such writing, no matter how improper, or immoral they may be considered to be, against anyone for or in the matter of criminal or penal charges. This was/ is plain and clear Constitutional error by the Trial Court.

Personally my rights and protections under the fifth amendment to the U.S. Constitution and article 2 § 8 of the Constitution of the State of Arkansas were also violated by the Trial Court in permitting the submission of the Yahoo chats. In that being no connection ever established or sustained that the “chats” or “I.D.” belonged to me, the exculpatory evidence withheld establishing reasonable doubt to this, addendum K page 41 and I attest none exist. These “chats” and “I.D”, howbeit, were introduced and presented to the jury as belonging to me and being submitted in such respect are considered personal/private/privileged papers under Rule 10.2 Ark. R.Crim.P , Rules 103 and 104. Ark.R.Evid. addendum F pages 1 and 18-19. As the Court held in Boyd v. U.S., 651 S.Ct. 524 (1886) . The seizure or compulsory production of a man’s private papers to be used in evidence against him is equivalent to compelling him to be a

witness against himself, and in a prosecution for a crime, penalty, or forfeiture, is equally within the prohibitions of the fifth amendment to the U.S. Constitution. ?

The Yahoo “ chats”were offered as proof that the images in question belonged to me and that I was seeking out such images, however, such is not competent for this purpose, as it was not shown by whom the chat entries were made by, that they were retrieved from suspect evidence, showed no identifying factor and are insufficient to support the element that I knowingly possessed images, see *Steed v. Henry*, 120 Ark. 583 (1915)

The submission of the Yahoo chats throwing no light on guilt or innocence (element of the statute being “knowingly having possession”) can only be considered to have one possible function and the only reason for them to be offered was to arouse the emotions of the jury and cause them to become prejudiced against me. Rules 104, 402, and 403 Ark.R. Evid, addendum F pages20-22. Further Constitutional error was committed in that when presented with a motion for directed verdict the trial court based it’s denial of the motion solely on the submissions of the “Yahoo chats” to determine that the prosecution had met it’s burdens for the matter to be presented to the jury for deliberation. This is of such substantial prejudice to merit a reversal and vacate the trial courts judgment and sentence. *Morris v. State* 358 Ark. 455 (2004).

An individual is entitled to relief if it is found that upon the relevant evidence adduced at trial, no rational trier of fact could have found proof of guilt beyond a reasonable doubt on all elements of a charge, a reasonable trier of fact being one who does not, no matter how strong the need or urge, allow his passions, prejudices, fears, emotions, experiences, repulsive nature of images presented or disgust for the offense to overshadow the presentation, or lack thereof as in this instant case, of relevant evidence to interfere with their ability to determine that nothing presented at trial connects the defendant before them with the offense committed.

The rule being that prejudice is presumed from an error, unless the contrary affirmative appears. Crosby v. State, 154 Ark. 20 (1922)

D). The prosecution failed to provide evidence of the elements of the charged offense forceful enough to compel a conclusion beyond mere suspicion or conjecture, that being beyond a reasonable doubt. Ferrell v. State 325 Ark. 455 (1996). This burden of proof lying with the prosecution to prove all the elements of the offense charged, Sullivan v. Louisiana, 113 S.Ct. 2078 (1993) and consist of two parts, both needing to be met to sustain a conviction, The burden of production and the burden of persuasion, La Fave on Criminal law § 1.8 (4th Ed. 2003); McCormick evidence § 336-337, (6th Ed. 2006).

The burden of production requires that enough evidence must be produced to allow a proper fact finder to determine that the facts in question actually occurred. The two facts of elements to A.C.A. § 5-27-602 (a)(2), addendum E page 19 are :1) “knowingly” which the court in Dixon v. U.S., 176 S.Ct. 2437 (2006) held in the text of criminal statutes to require proof of knowledge of the facts/elements that constitute the offense. the prosecution offered no evidence to establish or sustain this element of A.C.A. § 5-27-602(a)(2); and 2) “possession”, defined by Black’s law dictionary, (7th Ed. 1999) as the fact of having it holding property in ones power, the Exercise of having dominion over property.

In U.S. v. Flyer, 633 F.3d 911, (9th cir. 2011) it was held that to establish possession the prosecution must prove a sufficient connection between the accused and the contraband to support the inference that the accused experienced dominion and control over it. In fact the only person the prosecution could possibly show to have been in possession of hard drives YsE-3A and YsE-3B was Teena Whitney, who delivered them to the Washington County Sheriff’s office, addendum K page 30 and then the prosecution relied on her testimony alone as

to the source of the hard drives during the trial. The State provided no corroboration as the authentication of the source of hard drive YsE-3A and YsE-3B see Rule 901 Ark.R.Evid., addendum F, page 24, in fact the only computers that can be said to have been retrieved from my control or dominion with an intact chain of custody is the lap tops taken into custody by Deputy Fortin on 05 Aug 2012, addendum K page 46, Yet not submitted to the state crime lab until 13 May 2013, addendum K, pages 48-50, These also being the only computers with information contained therein to be identified as belonging to me, however there was no illegal material contained within either unit.

Not with standing, A.C.A § 16-89-111, addendum E page 20,(e)(1)(A) states: A conviction may not be had in any case of a felony upon the testimony of [another] unless corroborated by other evidence [connecting] the Defendant with the commission of the offense. (e)(1)(B) adds: The corroboration under subdivision (e)(1)(A) of this section is not sufficient if it merely shows that the offense was committed and the circumstances of the offense.

The only offering by the Prosecution in any resemblance of what could be considered corroborating or direct evidence to establish that I was ever in possession of hard drives YsE-3A and YsE-3B was in that 11 of the 50 file names, addendum K pages 19-20 contained Whitney in the file name. Whitney is a very common name first, Whitney Houston, and last name as well as used for locations, Whitney Mountain, Benton County, Arkansas, and as attested to by the State Crime lab in response to an F.O.I.A. request, addendum I pages 66-67, it is not uncommon and appears in their system on multiple occasions. The letter series could also be an inference to an anagram as used in many computer file, further , the state never established that any of the 11 files containing Whitney were any part of the 20 images in the counts of the felony information addendum K pages 27-28 and the States Computer Forensic Expert testified,

see trial transcript, that there was no identifying file contained in hard drives YsE-3A and YsE-3B, such as Tax returns, correspondences, bank accounts, etc.. that would normally be found on a hard drive during the course of it's use.

Thereby as the prosecutions only offering to establish the first part, The burden of production, of the beyond a reasonable doubt standard was the circumstantial testimony of Teena Whitney, which was as discussed above is in itself suspect and questionable, that the hard drives YsE3-A and YsE-3B were mine an attempt to imply of not actual possession then constructive possession, which the court held in Newborn v. State, 91 Ark.App. 318 (2005) could be established by circumstantial evidence and maybe implied when contraband is in the joint control of another and the accused. However, the Courts goes on to state that joint occupancy alone is insufficient to establish possession and that when the prosecution relies on constructive possession, it must prove additional facts and circumstances indicating the accused knowledge of and control over the contraband. The State clearly failed to establish such. See also Sales v. State, 347 Ark. 222,(2008); Reese v. State, 371 Ark. (2007).

As it is plain and clear that the State failed to meet the burden of production under standard of beyond a reasonable doubt. The prosecution utilized the tactic to walk the very thin tight line between proper and improper conduct to gain it's conviction with merely part two of the standard, that being the burden of persuasion, the jury not understanding that this was only half of the burden the state was required to meet under the beyond reasonable doubt standard. Although I have never viewed any of the files on YsE-3A or YsE-3B, nor do I care to; I was assured by Mr. Chancellor, who viewed them in unredacted format, that they were that which meet the definition in the text of A.C.A § 5-27-602. Moreover, there being no question that the offering of the 20 images listed in the felony information. Addendum K pages 27-28, would by

necessity elicit an intense and sympathetic emotional response from the jury. However, as a defendant in this instant case I was not allowed to stipulate to the contents of the files, there being no means to shield the jurors from the need to view them, Howbeit, such stipulations are allowed in other cases where images that may be disturbing to view are to be offered onto evidence. In this manner their only function and purpose for the offering them was to arouse and inflame the emotions of the jury and cause them to become prejudicial against me, the accused, to distract the Jury During crucial cross of State's witness, Det. Shrock, and to overcome the state's failure to meet the first part, The burden of production, it being only reasonable, no matter how well instructed otherwise to expect when an individual views such contents, their need to punish someone, anyone, simply for their existence is very overwhelming, and even when there is no actual proof of guilt is presented or established, The accused Before them is the only one present, that they can in any way satisfy their need to punish and all other logic or reasoning is set aside by the prosecution leading the jury to the role of vindicating for the unknown victim rather than their true role of determining guilt or innocence based on facts adjudicated during the trial. See Drayden v. White, 232 F.3d704,(9th cir. 2000). This along with the malicious and vindictive afore thought timing of publishing the images to the jury during a crucial cross examination of State's witness Detective Shrock concerning the integrity of the chain of custody of hard drives Yse-3A and YsE-

3B to distract and inflame the jury are at minimal on the fringe of prosecutorial misconduct and substantially affected my rights and protections and is clearly not a Harmless Error and thereby being of sound basis to reverse and vacate. See State v. Jennings, 10 Ark. 428, (1850). It bears offering here that of the four images with the same dates as the Yahoo chats, none of them are the files containing Whitney in the file name, addendum K page 19-24.

As the conviction is based on circumstantial evidence at best and the courts have held that in order to sustain a conviction on circumstantial evidence, the circumstances must be consistent with the guilt of the accused and inconsistent with the possibility of his innocence and incapable of explanation on any other reasonable hypothesis than that of guilt. See *King v. State*, 100 Ark.App. 2008(2007); *U.S. v. Craighead*, 539 F.3d 1073, (9th cir. 2008). The court in *King supra*, goes on to state that when the prosecutor's case is made entirely of circumstantial evidence. It leaves the fact finder to speculation and conjecture. Then the evidence is insufficient as a matter of law. See *Shatwell v. State*, 2013 Ark.App. 568. *In re Winship*, 90 S.Ct. 1068, (1970) adds that no man shall lose liberty unless the Government has borne the burden of convincing a proper fact finder of his guilt without the use of devious, deceptive, underhanded, misleading or improper tactics. Justice Brennan goes on in his opinion for the court that it is also important in our free society, that every individual going about his ordinary affairs have the confidence that his Government cannot judge him guilty of a criminal offense without convincing a proper fact finder of his guilt with the utmost certainty adhering to the rules of the land.

The Government clearly and plainly did not meet the burden required and the verdict returned by the jury was based entirely on the nature of the images and their aroused inflamed intense and avenging emotional response to them as invoked by the prosecution with the Jury's need that someone, anyone needed to be punished for just their existence, it being my misfortune to be the only one available to them to satisfy this need. Even though there was no evidence offered to place them in my realm of control or dominion. The requirement of proof beyond a reasonable doubt in a criminal case is bottomed on the fundamental value

determination of our society that it is far worse to convict an innocent man, such as in this case, than to let a guilty man go free.

E). The trial court refused to allow me, the Defendant proper, to be an active participant in the research, preparation or presentation of the defense in the matter in which I was the named party, see the trial transcripts at the beginning of the proceeding where I asked to speak to the court before the jury was present and the letter received Justice Lindsay dated 09 June 2016. Addendum B page 1, as examples of this. See also addendum J. pages 68-69. The only time this is permitted is if the Defendant has been ruled to be non compos mentis, further if this is a sua sponte ruling of the court there is to be a stay in the the proceedings until the defendant is deemed fit to proceed by an appropriate facility see A.C.A. § 5-2-301 and 5-2-302 addendum E pages 10-12, this did not occur in my case

The Sixth Amendment does not provide merely that a defense shall be made for the accused but grants to the accused personally the right to make a defense; the right to make ones own defense personally is necessarily implied by the language and spirit of the amendment. and contemplates that counsel, like other defense tools guaranteed ~~by counsel~~ it, shall be an aid to willing defendant and his right to defend himself personally and is not to be an organ of state interposed between the accused and the courts, see Farretta v. California, 95 S.Ct. 2525, (1975).

An individual, unless ruled non compos mentis, is always afforded the right to defend ones self and direct any Defense Presented on his behalf and does not ever relinquish that right, duty or responsibility to counsel whether retained of appointed.

F). Under Rule 4-3(i), Rules of the Supreme Court of Arkansas, addendum F pages 26-27, in accordance with A.C.A § 16-91-113(a), addendum E page 22, when the sentence is death or life imprisonment, the court must review all errors prejudicial to the appellant, a

sentence of 540 years is a defacto if not de jure sentence of life imprisonment, thereby, the Arkansas Court of Appeals and the Supreme Court of Arkansas failed to adhere to their own rules and statutes. This is a clear and plain error and demands a reversal and vacating of the verdict, judgment and sentence.

G). The Appellant Court and the Supreme Court for the State of Arkansas refused me access to be directly informed concerning the proceedings in the matter in which I was a named party, see correspondence from the courts below, addendum B.

H). The Appellant Court and the Supreme Court of Arkansas refused to allow me, the Defendant Proper, to speak, be heard, or otherwise directly involved in the proceedings before them to which I was a named party see judgments and orders from the courts below addendum A pages 1-3, and 8-9, the fundamental of Due Process, as secured by the Constitutions, is the opportunity to speak and be heard and it is an opportunity which must be granted in a meaningful time and in a meaningful manner. Pratt v. Taylor, 101 S.Ct. 1908, (1981).

I). The Arkansas Supreme Court refused to review the proceedings below because my brief was four(4) days late due to prison officials mishandling of legal mail, where brief was submitted to prison officials prior to deadline and accompanied by a certificate of institutional filing, the Court having previous knowledge of the issues of legal mail being mishandled by the Varner/Varner Super max unit of A.D.C. see addendum B pages 14-18 I, pages 32-53, page 50 of addendum I being the specific grievance filed concerning legal mail not being picked up that was the cause of my brief for review by the Arkansas Supreme Court to be four (4) days late.

J). Through out this entire process, from pre-trial to trial the appellant process thus far I have been treated as nothing more than an inanimate piece of property with no rights, protections, liberties, voice, or value.

III). Violations of my rights and protections as secured by the Fifth and Eighth Amendments to the U.S.

Constitution as well as Article Two § Eight and Nine the Constitutions of the State of Arkansas

A). In the State of Arkansas sentencing is a matter of statute and must be in accordance with the statute in effect at the time of the alleged crime. Penal statutes being strictly construed with all doubts to be resolved in favor of the defendant, and nothing is taken as intended which is not clearly expressed, *State v. Scarmardo*, 213 Ark. 396, (1978). *Expressio unius est exclusio alterius*. A circuit court judge may only impose a sentence as authorized by statute, *Harness v. State*, 352 Ark. 335, (2003). As A.C.A. § 5-27-602, enhanced by A.C.A. § 5-4-501(a)(2)(d). The sentencing range consistent with the circumstances of my case is from three(3) to twenty(20) years. The imposed sentence by the trial court of 540 years is a plain and clear deviation from the provisions allowed by statute and clearly legislative in nature, is not allowed and shall not be imposed. See *Bunch v. State* 344 Ark. 730, (2001).

The sentencing on each individual count from the felony information, addendum K, pages 27-28 is improper as counts 1-20 are multiplicitious, being of the same statute, a single course of conduct, with a singular date of offense, see sentencing order addendum A pages 12-21. Individual and separate punishment for each of the counts is clear and plain error by the trial court.

Where indictment are found against an accused [are] alike in all respects, except that each covers a different period of time and the defendant is found guilty on each indictment, the trial court has no jurisdiction to inflict punishment in respect of more than one of the convictions. As the offense is to be regarded as single and entire. See *ex parte Snow* 7 S.Ct. 556,

(1887) distinguished by *Loeblen v. Sormine*, (8th cir.2000); see also *Crepps v. Durden*, Cowp 640, (England)

Under [the] ^{Rule} ~~rule~~ that a man cannot lawfully be punished twice [or multiple times] for the same offense, a party is entitled to entire and complete protection when a second [or subsequent] punishment is proposed in the same court, on the same facts, for the same statutory offense as the first punishment was imposed, *Ex parte Lange*, 85 U.S 163, (1873). If there is anything settled in the jurisprudence in the United States, it is that no man shall be twice punished by Judicial Judgment for the same offense.

With the standard being that a court of review resolves matters of dispute and /or doubt in favor of lenity for the defendant, *Chippis*, 410 F.3d 447, the maximum punishment which the trial court had the authority to impose was 20 years imprisonment. With the improper sentence of 540 years I am being punished 18 times over for one and the same offense and this sentence by the trial court must be reversed and vacated. See also A.C.A §5-1-112, That in *Donald v. State* 370 Ark. 3, (2007) the court has held that for the purpose of review the issue is whether the Circuit Court Judge had the authority to impose the sentence as the standard for determining the legality of the sentence imposed. As shown the trial court plain and clear did not have the authority to impose the sentence of 540 years and was an abuse of discretion, that standard being that the court has a range of choices and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law, *Novus Franchising. Inc. v. Dawson*, 725 F.3d 885, (8th cir. 2013), it is therefore the reviewing courts duty to reverse and dismiss, see also addendum J pages 69-75.

B). The Eighth Amendment to the U.S. Constitution and article 2, § 9 of the state of Arkansas secure protections from cruel and unusual punishments. No static “ Test “ can exist

by which the courts can determine whether conditions are cruel and unusual, for the evolving standards of decency that progress of a maturing society, *Trop v. Dulles*, 78 S.Ct. 590, (1958), However, 8th Amendment Judgments should neither be nor appear to be merely subjective views of Judges, *Rummel v. Estelle*, 100S.Ct. 1133. (1980).

As a society's advancement and maturity are measured and judged by the civility of which it treats its prisoner with, the fact that a plea deal of 20 years with 10 suspended, this making me immediately parole eligible with credit for time as a pre trial detainee ^{Prison} 774 addendum A pages 23, then this offer rescinded before an answer could be given, the prosecution then seeking such an extreme sentence because I chose to invoke my right to trial by jury; an individual may not be punished for exercising a protected statutory or Constitutional rights *U.S v. Goodwin* 102S.Ct. 2485 (1982).

How could a complete and truly Impartial being measure and judge our society on the day I was sentenced?

1). 1993 Arkansas Laws Act 550 (S.B. 363) addendum E. pages 23-30 section (1)(A) "Purpose of sentencing " states: The primary purpose of sentencing a person convicted of a crime are to punish an offender commensurate with the ~~mature~~ ^{value} and extent of harm caused by the offense. A.C.A § 5-27-602 allows for a violation of the statute through the offender gains nothing and injured nobody. Section (1)(A) goes on to state a further purpose of sentencing is to assist an offender toward rehabilitation and restoration to the community as a lawful citizen. It is stated in section (1)(B) that the standards seek to ensure equitable sanctions which provide that offenders similar with respect to sentencing criteria will receive similar sanctions.

2). Section (1)(C) adds: commitment to the Arkansas Department of Corrections is the most severe sanction and due to the finite capacity of the Departments' facilities, it should be

reserved for those convicted of the most serious offenses.....Arkansas law provides for significant intermediate penal sanctions in the community which should be utilized when appropriate. Restrictions on an offenders liberty should only be as restrictive as necessary to fulfill the purpose of sentencing.

3). Taking this into account, a 540 year sentence imposed, the only degree of punishment greater in scale is that of death, with a current parole eligibility date of 16 Oct. 2193, that occurring in what would be my 225th year of life, and a discharge date of 02 April 2554, 586 years old, in and of itself rises to a level of cruel and unusual punishment. Cruel as it is a defacto imprisonment term of life without the possibility of parole, as at the earliest possibility of release on parole being, if I maintain a class one (1) status throughout my entire period of imprisonment, I would be 137 years old. This exceeds the current life expectancy for males by 57 years. Without a divine miracle or, in the very near future, a significant advancement in health and science, it is impossible for there to be any expectations to ever being released and thereby a sentence imposed as “ more than life “ as defined in Claiborne v. State, 319 Ark. 537, (1955). Clearly this is not commensurate with the offense.

4). If the sentence in itself is not cruel enough, one of the criteria for classification within the Arkansas Department of Corrections is length of sentence. The longer a sentence the greater number of points assigned. Total number of points determine many factors, such as which facilities a prisoner may be housed (custody level) the higher the overall points the more restrictive the facility. Having a score of 50 overall points, 25 of them for length of sentence alone. It is required that I be housed in only maximum security facilities.

The total number of points assigned also affect job assignments, what program of improvement are available, the priority to which access is given to programs and access to

further education/activities, thus adding to the cruelty of the imposed sentence, see Arkansas regulation 802, administration directive 12-14, administrative directive 15-17 and Varner Unit policy 18.1.0 addendum G.

5). As to the unusual aspect, it goes without saying that a term of imprisonment of 540 years is not common and is well beyond those imposed in similarly situated circumstances.

6). What constitutes a cruel and unusual punishment has not exactly been decided. In *McDonald v. Massachusetts* 173 Mass. 322, 73 Am.st.Rep. 293, 53 N.E. 874 the court however conceded the possibility that punishment in a state prison for a long term of years might be so disproportionate to the offense as to constitute a cruel and unusual punishment.

8). Justice Field, Justice Harlan and Justice Brewer in *O'neal v. Vermont* 12 Sup. Ct.Rep. 693 were of the opinion that the question of cruel and unusual punishment inhibition was directed not only against punishments which inflict torture, but against all punishments which by their excessive length or severity are greatly disproportionate to the offense charged. See also *Corker v. Georgia*, 97S.Ct. 2861 (1977)

9). The Eighth Amendment ban on inflicting cruel and unusual punishment proscribes those that transgress today's broad and idealistic concepts of dignity, civilized standards, humanity and decency. See *Weems v. U.S* 30 S.Ct.544 (1910)

IV). In Effective Assistance of Counsel

The core purpose of the Counsel Guarantee is to assure” assistance “ at trial, when the accused is confronted with both the intricacies of the law and the advocacy of the Public Prosecutor, if no actual “assistance “ is provided the Constitutional Guarantee has been violated, to hold otherwise, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitutions’ requirements. The guarantee cannot be satisfied by mere formal appointment. The right to effective assistance of counsel and to have a reasonably effective advocate, is recognized, not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. The type of breakdown in the adversarial process that implicates a violation of the 6th Amendment is not limited to Counsels’ performance as a whole, specific errors and omissions maybe the focus of a claim of Ineffective Assistance as well, see U.S. v. Chronic, 104 S.Ct. 2039, (1984). I was denied my Sixth Amendment protection to Effective Assistance of Counsel in that in addition to being denied to actively and directly participate in the preparation and presentation of my defense, initial appointed Defense Counsel. Mr. Blake Chancellor, ABN 2005039, of the Washington County Public Defender’s office, was Ineffective and derelict in his duties in such that he knew or should have known:

- To seek out and investigate material in support of my innocence, addendum K page 41
- To investigate and develop the issues of the Court’s Jurisdiction, venue, and authority addendum I, page 1-12 and 27
- To investigate and develop Detective Shrock’s motivations for creating and bringing the charges addendum K pages 31 44-46, 49, 51-55, 57-60, 65, 70, 76-86

- To investigate and develop the relationship between Teena Whitney and Detective Shrock, addendum K pages 79-85

- To challenge the validity of the consents to search, addendum K pages 34-38, see also Rule 11.2 Ark.R.Crim.P; addendum F page 2.

- To familiarize himself with the complexities and technologies of the case

- To challenge the Bond Revocation and denial of new bond see addendum J pages 66-68

- To challenge the Prosecutor's motions for continuance on 02 Jan 2014 and 28 May 2014, addendum K pages 88-89 the proported reason being that the report was not yet back from the State Crime lab, however the report was returned in 26 Mar 2013 addendum K pages 25 and 39

- To employ an expert in the field of computer forensics

- To not misrepresent to me that he had retained a computer forensics expert and was in consultation with him

- To not misrepresent that he was receiving guidance and assistance from Mr. Scott Parks also of the Washington County Public Defenders office.

- To refrain from excessive use of continuances with no valid purpose, addendum K pages 90-96 see also addendum H

- To upon request provide me with any and all reports, memoranda, investigatory files, discovery or other documents created or on association with the proceedings

- To not be in collusion with the prosecutor to coerce me into taking a plea-deal

- To spend an appropriate amount of time communicating with me

- To fully and faithfully support replacement counsel.

An attorney is negligent if they fail to exercise reasonable diligence and skill on behalf of advocating for their client. Barnes v. Everett, 351 Ark. 479, (2003)

Replacement Counsel, Mr. David Hogue, ABN 2009149, of the North West Arkansas conflict division of the Public Defenders Commission was ineffective and derelict in his duties to be an effective advocate in that such;

Having only been assigned to the case on or about 03 March 2016, addendum K page 98 and only spending approximately 3 hrs. with me, most of it the day before trial ^{was} ~~wa~~ to start, still proceeded.

- He did not independently investigate or develop a defense and depended upon Mr. Chancellors incomplete and insufficient work product.

- Did not seek time to employ or consult with a computer forensic expert
- Did not familiarize himself with the complexities and the technologies of the case
- Did not prepare for, ^{or} prefect raise many of the issues raised herein.

In Goodwin v. Balkcom, 684 F.2d 294, (11th cir.1982). The court held that where Counsel's ineffective assistance was evident by his lack of thorough investigation he deprived the defendant of potential defenses and decisions to raise what could have been credible challenges went unperceived. the objective standard here, as held in Richardson v. State, 314 Ark. 512 , (1993). being only the requirement of the government representative in question to have the expectation to have reasonable knowledge of what the rules require. See addendum H.

A charge of inadequate representation can prevail. If it can be said that what was or was not done by defendant's counsel for his client made the proceedings a farce and a mockery of Justice, shocking to the conscience. See Cardella v. U.S., 375 F.2d 222, (8th cir. 1967).

Reason for Granting the Writ

In the end the question that must be answered after providing the information before is ; “ Why should my Petition be granted?” the simple answer to this is to do otherwise would be a Great Injustice both to me personally and to the Judiciary. However a more extensive response is required and that begins with are there such issues of importance as to require the United States’ Supreme Courts attention?, I content that yes they are and they include;

- Did the trial court possess jurisdiction, venue, or authority to commence and proceed with the indictment.

- Case was allowed to go to jury for deliberation even though the State had not met it’s burden and the Insufficiency did not merit a denial for directed verdict

- Overall manner in which the proceedings below were conducted

- Excessive length and severity of the sentence being Greatly Disproportionate to the alleged offense or similar convictions.

Are there such plain and clear violations of one’s rights, protections, liberties, freedoms, privileges and /or immunities as secured by the Constitutions and statutes as to warrant acknowledgment by the United States Supreme Court and to compel that such actions and corrective measures be taken to Cure? Again I believe there are and include;

- The withholding of exculpatory evidence by the state .

- Refusal of my right and protection to be an active and direct participant in the criminal actions against me

- Denial of a reasonably effective advocate and the assistance of a diligent and effective counsel

- The allowing of protected writings to be presented for evidentiary purposes

- Punishment is in violation of Double Jeopardy Protection
- Sentencing is equivalent to Cruel and Unusual Punishment
- Illegal/ Improper consents to search
- Integrity of evidence.

And finally have the courts below abused their discretion and entered a judgment, sentence, or order that is contrary to the statutes in place at the time of the alleged crime and/or go against previous rulings and precedents of the United States Supreme Court?, Here again I must answer yes, and they are;

- Failure of the Courts below to recognize me as a Living,

Breathing Sentient Natural Sovereign mortal

- Allowing evidence to be submitted with a sever break in the chain of custody/lack of integrity/authentically
- Allowing “ Privileged Papers” to be submitted as evidence.
- Failure of State Appellant and Supreme Court to review all prejudicial errors in a case where life imprisonment was imposed/ “ more than life “
- Failure of State Supreme Court to recognize the “ Institutional mail rule”
- Sentencing outside of the Governing statutes.

Conclusion

Being that a violation of Constitutional rights is never De minimus, A phrase meaning so small or trifling that the law Takes no account of it. The U.S. Supreme Court

explaining the reason for this rule, “ by making deprivation of such Constitutional rights actionable for nominal damages without proof of actual injury. the law recognizes the importance to organized society that those rights be scrupulously observed. *Wilson v. Seiter*, 111 S.Ct. 2321, (1991).

Justice Black in *Chapman v. California*, 87 S.Ct. 824, (1967). stated that before a Federal Constitutional error can be held harmless the reviewing Court must be able to declare a belief that it was harmless beyond a reasonable doubt. The formulation of Authoritative Laws, rules and remedies to protect “the people” from infractions by the state /prosecution of Federal guaranteed rights cannot be left to the states themselves.

Having belief that I have just scratched the surface of but a few of the many issues and am sure to have missed some crucial and significant point or issue and because I am proceeding Pro Se the court, before granting any motion of opposing party or entry of any order or judgment is to review and consider as evidence all of the pro se litigants contentions offered in motions and pleadings, where such contentions are based on personal knowledge, set forth in facts that would be admissible as evidence, and where pro se litigant attested under penalty of perjury to the truth of the contents. *Jones v. Blanas*, 393 F.3d 918, (9th cir.2004)

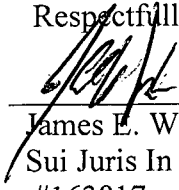
The court having declared in *Taylor v. Kentucky*, 98 S.Ct. 1930, (1978) that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the relevant evidence introduced at trial, and not on the grounds of official suspicion, indictment, continued custody, emotional response, nature of the offense revulsion of any offering by the prosecution or other circumstances not adducted as admissible proof at trial.

The courts having held repeatedly that in matters of practice where decisions of the court were palpably unjust or invalid to the legal rights of the accused they would reverse. State v. Jennings, 10 Ark. 428 (1850).

The forgoing is a prime example and reflects the criminal justice system at its worst, the damnable predisposition to assign guilt first, and interpret the facts to fit it, second, and explains why innocent like me end up serving prison terms and why the public's faith in Due Process has long ago altered to cynicism.

Wherefore, premises considered, having belief that I have at the least raised significate and numerous violations of both State and Federal rules, statutes and Constitutional secured protections it is of my humble opinion and sincere position that after a complete and thorough review of the proceedings below that the only remedy and cure will be a complete dismissal with bar to prosecution and I respectfully request and pray that such orders be issued to affect this and for my immediate release , plus any and all other relief and expiation that may be available just, and proper.

Respectfully submitted,


James L. Whitney, Pro Se
Sui Juris In Propria Persona
#163817

P.O. Box 600
Grady, Ar. 71644-0600

Declaration

I, James E. Whitney, A living breathing sentient Natural Sovereign mortal, Do hereby Declare and Verify, under Penalty of Perjury in Accordance with 28 U.S.C. § 1746 AND 18 U.S.C. § 1621 that the above statements contained herein are true and correct to the best of my knowledge and belief as Executed by my hand this 6th day of April 2018 C.E.

Declarant


James E. Whitney, Pro Se
Sui Juris IN Propria Persona