NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DOMINIC MICHAEL MASON

Petitioner,

v.

CATHERINE S. BAUMAN, Warden,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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The state court and a United States court of appeals have decided an important federal question, regarding the application of Defendant's right to Due Process, in a way that conflicts with relevant decisions of this Court.

QUESTION PRESENTED FOR REVIEW

WHETHER DOMINIC MASON IS ENTITLED TO HABEAS CORPUS RELIEF AND RESENTENCING WHERE HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN THE MICHIGAN TRIAL COURT USED HIS PRE-ARREST SILENCE (AND OTHER ACTIONS THAT HE TOOK IN FURTHERANCE OF HIS RIGHT TO NOT INCULPATE HIMSELF) AGAINST HIM AT HIS SENTENCING HEARING, AND RELIED ON THIS "MISINFORMATION OF A CONSTITUTIONAL MAGNITUDE TO INAPPROPRIATELY SENTENCE HIM BASED ON THIS MISINFORMATION ?

CORPORATE DISCLOSURE STATEMENT

United States Supreme Court No: _____

DOMINIC MICHAEL MASON v CATHERINE S. BAUMAN

(1) The full name of every party or amicus the attorney represents in the case: DOMINC MICHAEL MASON

(2) If such party or amicus is a corporation:

N.A.

i) Its parent corporation, if any; and

N.A.

ii) A list of stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus:

N.A.

(3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court:

LAW OFFICES OF DANA B. CARRON, P.C.

Attorney's Signature: 

Date: 4/01/25

Dana B. Carron

LIST OF PRIOR PROCEEDINGS

1. April 10, 2023, Berrien County Circuit Court, People v. Mason, Case No. 2021-003968-FC, Sentencing

2. August 31, 2023, Michigan Court of Appeals, People v. Mason, Case No. 367003, Denial of Leave to Appeal

3. January 4, 2024, Michigan Supreme Court, People v. Mason, Michigan Supreme Court, Case No. 166071, Denial of Leave to Appeal

4. October 3, 2024, United States District Court for Western District of Michigan, Dominic Michael Mason v. Catherine S. Bauman, Warden, Case No. 1:24-cv-147, Denial of Habeas Corpus Petition

5. March 31, 2025, United States Court of Appeals for the Sixth Circuit, Dominic Michael Mason v. Catherine S. Bauman, Warden, Case No. 24-4949, Denial of Certificate of Appealability

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1. The opinion of the United States court of appeals in *Dominic Michael Mason v. Catherine S. Bauman, Warden*, Case No. 24-4949 (6th Cir)(2025) appears at Appendix E to the petition and is unpublished.

2. The opinion of the United States district court in *Dominic Michael Mason v. Catherine S. Bauman, Warden*, Case No. 1:24-cv-147 (W.D. Mich)(2024) appears at Appendix D to the petition and is unpublished.

3. The opinion of the Michigan Supreme Court appears at Appendix C to the petition and is reported at *People v. Dominic Mason,* 998 N.W.2d 701 (2024).

4. The opinion of the Michigan Court of Appeals in *People v. Mason,* Case No. 367003 (2023) appears at Appendix B to the petition and is unpublished.

STATEMENT OF JURISDICTION

Petitioner seeks review of the March 31, 2025 order of the in Dominic Michael Mason v. Catherine S. Bauman, Warden, United States Court of Appeals for the Sixth Circuit No.24-1949, (March 31, 2025) .

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 4, 2023, Petitioner Dominic Mason pled guilty to Reckless Driving Causing Death; and Reckless Driving Causing Serious Impairment of Body, Habitual 2nd, in the Berrien County Circuit Court in Michigan. At sentencing, he objected to the scoring of 10 points for offense variable (OV) 19, which applies when the defendant "interfered with or attempted to interfere with the administration of justice." Mich. Comp. Laws § 777.49(c). He argued that OV 19 should have been scored at zero because he had not hindered or tried to hinder the administration of justice. In support, he noted that, after the fatal collision, "[h]e went back to the scene on his own accord" and cooperated with the police. (Sentencing Transcript, 4/10/23 p. 7-9) The prosecutor countered that OV 19 has a broad application and was properly scored because Mr. Mason (1) initially left the scene of the collision, (2) did not mention his involvement in that collision when he encountered a police officer at a gas station shortly afterwards, (3) returned to the scene a few hours later in a different vehicle, and (4) falsely told the investigating officers that he was not involved in the collision, that he was not speeding, and that his vehicle never touched

the victim's vehicle. (Sentencing Transcript, 4/10/23, p.7–9.) While, the trial court overruled Mr. Mason's objection, Mr. Mason maintains that all of these actions were in furtherance of his right to assert his innocence and not be required to inculpate himself. He was sentenced to 120 to 270 months in prison.

Mr. Mason applied for leave to appeal, claiming that the trial court incorrectly scored OV 19. The Michigan Court of Appeals denied the application stating only that it was "for lack of merit in the grounds presented." *People v. Mason*, No. 367003 (Mich. Ct. App. Aug. 31, 2023). Mr. Mason applied for leave to appeal to the Michigan Supreme Court, raising these same claims. The Michigan Supreme Court denied leave to appeal on 01/04/24, stating only "because we are not persuaded that the questions presented should be reviewed by this Court. *People v. Mason*, 998 N.W.2d 701 (Mich. 2024).

Mr. Mason then filed a § 2254 petition in the United States District Court for Western District of Michigan, Dominic Michael Mason v. Catherine S. Bauman, Warden, Case No. 1:24-cv-147, raising the claim that the trial court violated his Fifth and Fourteenth Amendment rights by "us[ing] his pre-arrest silence against him at his sentencing

hearing, and inaccurately sentencing him based on this information." The district court denied this claim on the merits on October 3, 2024 and declined to issue a Certificate of Appealability. Mr. Mason then sought a Certificate of Appealability from the United States Court of Appeals for the Sixth Circuit, Dominic Michael Mason v. Catherine S. Bauman, Warden, Case No. 24-4949, which denied relief on March 31, 2025. In each of the federal courts, their denials for relief held that the overt acts which Mr. Mason did, to fail to admit his involvement in the instant offense, could be held against him at the time of his sentencing hearing. (Dominic Michael Mason v. Catherine S. Bauman, Warden, Case No. 1:24-cv-147, R.9, Opinion, p. 9-10); and (United States Court of Appeals for the Sixth Circuit, Dominic Michael Mason v. Catherine S. Bauman, Warden, Case No. 24-4949, R.7, Order, p. 4)

Mr. Mason continues to maintain that his right to Due Process under the Fourteenth Amendment was violated by being punished for taking advantage of his pre-arrest right to remain silent and not inculpate himself under the Fifth Amendment to the United States Constitution.

ARGUMENT

I. DOMINIC MASON IS ENTITLED TO HABEAS CORPUS RELIEF AND RESENTENCING WHERE HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN THE MICHIGAN TRIAL COURT USED HIS PRE-ARREST SILENCE (AND OTHER ACTIONS THAT HE TOOK IN FURTHERANCE OF HIS RIGHT TO NOT INCULPATE HIMSELF) AGAINST HIM AT HIS SENTENCING HEARING, AND RELIED ON THIS "MISINFORMATION OF A CONSTITUTIONAL MAGNITUDE TO INAPPROPRIATELY SENTENCE HIM BASED ON THIS MISINFORMATION. US Const, Ams V, XIV; *Townsend v Burke*, 334 US 736 (1948); *Combs v. Coyle*, 205 F.3d 269 (6th Cir. 2000)

Petitioner Dominic Mason is entitled to habeas relief because his Constitutional rights under both the Fifth Amendment and the Fourteenth Amendment to the United States Constitution were violated when his pre-arrest silence (and actions that he took in furtherance of his right to not inculpate himself) were used against him at his sentencing hearing. This caused him to be sentenced inaccurately based on this misinformation, which was of a constitutional magnitude because it was based on violation of both his Fifth and Fourteenth Amendment rights under the United States Constitution.

LAW

The United States Constitution establishes that a defendant is constitutionally and statutorily entitled to be sentenced based on accurate information, including an accurate sentencing guidelines range. *US Const, Ams V, XIV*; *Townsend v Burke*, 334 US 736 (1948); *Mich Const 1963, Art 1, § 17* Federal habeas corpus relief is warranted where the sentencing court relies upon misinformation of a constitutional magnitude. *United States v. Tucker*, 404 U.S. 443 (1972).

Under both the Fifth and Fourteenth Amendments to the U.S. Constitution, neither the federal government nor state governments may deprive any person "of life, liberty, or property without due process of law." Chief Justice William Howard Taft explained the purpose behind the clauses as follows:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of

> life, liberty, and property, which the Congress or the Legislature may not withhold."
> *Truax v. Corrigan,* 257 US 312, 332 (1921)

The Fifth Amendment

The Fifth Amendment provides that:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation."
> (Emphasis supplied)

The Fifth Amendment guarantees that no person "shall be compelled in any criminal case to be a witness against himself." *US Const, Amend V.* When a defendant exercises the right to remain silent, that silence normally may not be used against him. *People v Avant*, 235 Mich App 499, 509 (1999); *Doyle v Ohio*, 426 US 610, 618-619 (1976). A defendant's silence under such circumstances has little or no probative value since such silence is "is insolubly ambiguous...." *Doyle, supra* at 617.

This clause serves two interrelated interests: the preservation of an accusatorial system of criminal justice,

which goes to the integrity of the judicial system, and the preservation of personal privacy from unwarranted governmental intrusion:

> "[T]he basic purposes that lie behind the privilege against self-incrimination do not relate to protecting the innocent from conviction, but rather to preserving the integrity of a judicial system in which even the guilty are not to be convicted unless the prosecution shoulder[s] the entire load...the Fifth Amendment's privilege against self-incrimination is not an adjunct to the ascertainment of truth. That privilege, like the guarantees of the Fourth Amendment, stands as a protection of quite different constitutional values—values reflecting the concern of our society for the right of each individual to be let alone."
>
> *Tehan v. United States ex rel. Shott*, 382 U.S. 406, 415, 416 (1966); see also *California v. Byers*, 402 U.S. 424, 448–58 (1971) (Harlan, J., concurring); *Schmerber v. California*, 384 U.S. 757, 760–65 (1966); *Miranda v. Arizona*, 384 U.S. 436, 460 (1966).

The Sixth Circuit Court of Appeals has clearly noted that: "[T]he use of a defendant's prearrest silence as substantive evidence of guilt violates the Fifth Amendment's privilege against self-incrimination." *Combs v. Coyle*, 205 F.3d 269, 283 (6th Cir. 2000)

The sole concern [of the privilege] is with the danger to a witness forced to give testimony leading to the infliction of penalties affixed to the criminal acts. *Ullmann v. United States*, 350 U.S. 422, 438–39 (1956)

"The privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute". *Hoffman v. United States*, 341 U.S. 479, 486 (1951); see also *Emspak v. United States*, 349 U.S. 190 (1955)

A witness has traditionally been able to claim the privilege in any proceeding whatsoever in which testimony is legally required when his answer might be used against him in that proceeding or in a future criminal proceeding or when it might be exploited to uncover other evidence against him. *Reina v. United States*, 364 U.S. 507 (1960) Incrimination is not complete once guilt has been adjudicated, and hence the privilege may be asserted during the sentencing phase of trial. *Estelle v. Smith*, 451 U.S. 454, 462–63 (1981)

THE TRIAL COURT'S ERROR

The trial court in this matter improperly assessed 10 points under Offense Variable (OV) 19 of the Michigan Sentencing Guidelines for Interference with the Administration of Justice, and used this against Mr. Mason at

his sentencing hearing. Scoring this variable was not only contrary to Michigan law and statutes, but was also offensive to the concept of fundamental fairness, unconstitutionally penalizing Petitioner for expressing his right to remain silent and not inculpate himself. *Medina v. California*, 505 U.S. 437, 443 (1992); *Combs v. Coyle*, 205 F.3d 269, 283 (6th Cir. 2000)

According to Michigan statutory law, scoring 10 points under Offense Variable (OV) 19 is appropriate where "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice . . . ." MCL 777.49(c). In Michigan, the phrase "administration of justice" is not limited to the judicial process itself and includes the investigation of a crime. *People v Barbee*, 470 Mich 283, 288 (2004). In Michigan, conduct that occurs after an offense is complete may also be considered, because "OV 19 specifically provides for the 'consideration of conduct after completion of the sentencing offense.'" *People v Smith*, 488 Mich 193, 202 (2010) (internal citation omitted).

To be balanced against this Michigan statute, MCL 777.49(c), are three points stated above, that, **1)** "[T]he use of a defendant's prearrest silence as substantive evidence of

guilt violates the Fifth Amendment's privilege against self-incrimination." *Combs v. Coyle*, 205 F.3d 269, 283 (6th Cir. 2000); **2)** "The privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute". *Hoffman v. United States*, 341 U.S. 479, 486 (1951); and **3)** "The sole concern [of the privilege] is with the danger to a witness forced to give testimony leading to the infliction of penalties affixed to the criminal acts. *Ullmann v. United States*, 350 U.S. 422, 438–39 (1956)

Defense counsel had objected to the scoring of OV-19. This variable, OV 19 was scored over defense counsel's objection, despite Defendant having only denied any knowledge about how the relevant accident had occurred, The prosecutor argued that this variable was correctly scored because prior to his arrest, Mr. Mason had "deceived" the police by lying that he had not been involved in the accident. (Sentencing Transcript, 4/10/23 p.10-11)

The trial court judge concluded that this variable was properly scored, stating simply, "I think that the concealments on the part of the defendant was significant

and active on multiple levels. So I do find OV19 was properly scored." (Sentencing Transcript, 4/10/23 p.11)

The facts in this case did not warrant this scoring of ten points under OV 19, and it was unconstitutional for the trial court to base Petitioner's sentence in any part on this error. A defendant is constitutionally and statutorily entitled to be sentenced based on accurate information, including an accurate sentencing guidelines range. US Const, Ams V, XIV; *Townsend v Burke*, 334 US 736 (1948); *Mich Const 1963, Art 1, § 17* "[T]he use of a defendant's prearrest silence as substantive evidence of guilt violates the Fifth Amendment's privilege against self-incrimination." *Combs v. Coyle*, 205 F.3d 269, 283 (6th Cir. 2000)

A significant difference between cases where the scoring of points for OV 19 has been affirmed in Michigan and the instant case, is that those cases involved intentional efforts to thwart investigations. As noted in *People v Hershey*, 303 Mich App 330, 344 (2013), acts that support the scoring of OV 19 include such things as providing a false name to the police, attempting to influence witness testimony, fleeing from police contrary to an order to freeze, attempting to deceive the police during an investigation, and

committing perjury in a court proceeding. These acts are all affirmative. There was clearly an element of intent to hinder an ongoing investigation in these activities. Mr. Mason had no such intent. He simply denied his involvement, and then later entered a guilty plea contrary to that statement. He did not try to lead the officer in a different direction. He did not attempt to influence any witnesses. He did not try to dispose of the evidence. Although the trial court judge labeled Mr. Mason's statements of innocence as "concealments" that were sufficient to justify the scoring of OV19, there is no basis for trial court to support this finding, and there was no indication that his statements played any role in the investigation.

The Fifth Amendment protects against punishing one for maintaining their silence, and guarantees that no person "shall be compelled in any criminal case to be a witness against himself." *US Const, Amend V*. When a defendant exercises the right to remain silent, that silence normally may not be used against him. *People v Avant*, 235 Mich App 499, 509 (1999); *Doyle v Ohio*, 426 US 610, 618-619 (1976). A defendant's silence under such circumstances has little or no

probative value since such silence is "is insolubly ambiguous...." *Doyle, supra* at 617.

The Michigan Supreme Court in *People v Deweerd*, 990 N.W.2d 864 (2023), logically reasoned that **if a 10-point score is warranted under OV 19 for denying culpability because it hinders the administration of justice, "the OV becomes boundless."**

> [W]hile an admission of guilt may expedite a criminal investigation, OV 19 does not contemplate the failure to facilitate a criminal investigation, only the interference or attempted interference with one. **There must be some daylight between attempting to interfere with the administration of justice and simply not assisting in or helping facilitate a criminal investigation.** If a 10-point score is warranted under OV 19 for denying culpability because it hinders the administration of justice, "the OV becomes boundless." *People v Dixon*, 509 Mich 170, 181 (2022).
>
> *People v Deweerd*, 990 N.W.2d 864, 865 (2023)(Emphasis supplied)

To consider Mr. Mason's conduct in the instant case as an attempt to interfere with the administration of justice would be to score OV 19 in any case where a person maintained his innocence, either initially or through disposition of his case. Under this theory, anything a defendant does could warrant scoring OV 19, short of turning

himself into law enforcement and/or making a full confession on the spot. Certainly this would be inappropriate, since the Fifth Amendment protects against anything that would furnish a link in the chain of evidence needed to prosecute. This would defy what the United States Supreme Court says the privilege affords – "The privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute". *Hoffman v. United States*, 341 U.S. 479, 486 (1951)

A sentencing court cannot base a sentence even in part on a defendant's refusal to admit guilt. Basing a defendant's sentence in part on his refusal to admit guilt, (as was done in the instant case), conflicts with the warning given by the United Supreme Court in *Ullmann v. United States* that "The sole concern [of the privilege] is with the danger to a witness forced to give testimony leading to the infliction of penalties affixed to the criminal acts." *Ullmann v. United States*, 350 U.S. 422, 438–39 (1956)

"[T]he use of a defendant's prearrest silence as substantive evidence of guilt violates the Fifth Amendment's privilege against self-incrimination." *Combs v. Coyle*, 205

F.3d 269, 283 (6th Cir. 2000) The Sixth Circuit Court of Appeals has noted particularly that when a defendant exercises the right to remain silent, that silence normally may not be used against him. *People v Avant*, 235 Mich App 499, 509 (1999); *Doyle v Ohio*, 426 US 610, 618-619 (1976). A defendant's silence under such circumstances has little or no probative value since such silence is "is insolubly ambiguous...." *Doyle, supra* at 617.

Mr. Mason's sentencing guidelines were improperly scored by using his pre-arrest silence (and actions that he took to not inculpate himself) against him at the sentencing phase of the trial. He did nothing to derail the investigation by his actions. Using this against him at sentencing was offensive to the concept of fundamental fairness and in violation of both the Fifth and Fourteenth Amendments of the United States Constitution. *US Const, Ams V, XIV*; *Townsend v Burke*, 334 US 736 (1948); *Medina v. California*, 505 U.S. 437 (1992); *Combs v. Coyle*, 205 F.3d 269 (6th Cir. 2000)

The Constitutional Errors were Not Harmless.

Although judges have broad discretion in imposing punishment, their discretion is limited by due process

considerations. *US Const, Ams V, XIV, Mich Const 1963, art 1, § 17*; *Townsend v Burke*, 334 US 736; 68 S Ct 1252; 92 L Ed 2d 1690 (1948). Due process requires that the totality of the circumstances be considered before sentencing any offender. Part of the totality of the circumstances considered by the sentencing court in the instant matter was Petitioner's pre-arrest silence (and the actions that he took to not inculpate himself). Additionally, the trial court was required to consider many other relevant factors, including the myriad of mitigation in this matter. While a proportionality review is not cognizable for habeas review, the mitigating elements (that were previously presented in more detail in all prior appeals) remain relevant to show that the Constitutional violations in this matter were not harmless error:

> Mitigating Factors:
>
> 1. Germain's use of both methamphetamine and fentanyl caused him to act irrationally in many ways and made the instant tragedy much more likely to occur.
>
> 2. The defective car that Germain was driving while he was high on meth and fentanyl, which had "no tire" and "no brakes", significantly made the instant tragedy much more likely to occur.

3. The wet road that Germain chose to speed his defective car on, made the instant tragedy significantly more likely to occur.

4. Germain's choice not to wear a seatbelt, while high on meth and fentanyl, driving without a license, and speeding a defective car down a wet road, made his resulting death significantly more likely to occur.

5. Germain's use of meth, fentanyl, and cocaine slowed down his reaction time, so that he was more likely to lose control of his vehicle and not be able to recover in time to avoid hitting a stationary tree that was well off from the side of the road.

6. The lack of significant damage to Mr. Mason's car indicates that he was not exceptionally aggressive, and much of the fault for the accident was due to the defective vehicle that the drug-impaired Germain was speeding in, during damp weather.

7. Germain's use of meth and fentanyl may have been a contributing factor to his death, as indicated by the fact that the other passengers in his car were able to walk away without life-threatening injuries.

8. A lesser sentence would have made it easier for this youthful offender to reintegrate into society after his release.

9. Mr. Mason acted out of frustration, and took the law into his own hands, because he was not getting legal assistance for the identity theft that Germain committed.

10. Mr. Mason had no prior record of committing violent crimes.

11. The plea bargain is not necessarily indicative of culpability even for what Mr. Mason pled to.

The violation of Petitioner's Constitutional rights cannot be dismissed as being harmless error where despite his trove of mitigation he was still sentenced to serve only 5 months shy of the top of his 50 - 125 month sentencing guidelines range.

II. THE PROBLEM WITH THE OPINIONS OF THE FEDERAL DISTRICT AND CIRCUIT COURTS DENYING HABEAS RELIEF

The 10/3/24 opinion of the District Court judge denying relief in this matter, divided Petitioner's argument into two segments: 1) misinformation of a constitutional magnitude, and 2) violation of the privilege against self-incrimination, and the Circuit Court of Appeals took the same approach in denying a certificate of appealability.

A. MISINFORMATION OF A CONSTITUTIONAL MAGNITUDE

Regarding "Misinformation of a Constitutional Magnitude", the District Court said,

> A sentence may violate due process if it is based upon material "misinformation of constitutional magnitude." *Roberts v. United States*, 445 U.S. 552, 556 (1980); *see also United States v. Tucker*, 404 U.S. 443, 447 (1972); *Townsend v. Burke*, 334 U.S. 736, 741 (1948). To prevail on such a claim, the petitioner must show (1) that the information before the sentencing court was materially false, and (2) that the court relied on the false information in imposing the sentence. *Tucker*, 404 U.S. at 447; *United States v. Stevens*, 851 F.2d 140, 143 (6th Cir. 1988); *United States v. Polselli*, 747 F.2d 356, 358 (6th Cir. 1984).
>
> Petitioner does not identify any "false" information that was before the sentencing court. Rather, he contends that the court erred in applying the statute to the accurate facts. Accordingly, Plaintiff has failed to demonstrate that his sentence was based upon material

> misinformation of constitutional magnitude and, for that reason, violates due process. *See, e.g.*, *Brown v. Rewerts*, No. 19-1771, 2020 WL 8073624, at *2 (6th Cir. Sept. 1, 2020) (noting that "Brown failed to identify any facts found at sentencing that were based on materially false information[; therefore, r]easonable jurists would agree that Brown's claim regarding the trial court's compliance with Michigan's scoring process and the resulting sentencing guidelines calculation asserts only a matter of the application of state sentencing laws"); *Hrrahman v. Rivard*, No. 17-1862, 2017 WL 7036543, at *2 (6th Cir. Dec. 21, 2017) ("The district court correctly determined that Hrrahman did not identify any facts found by the trial court at sentencing that were materially false or based on false information." [Thus,] Hrrahman failed to demonstrate that his sentence violated due process."). Accordingly, Petitioner is not entitled to habeas relief on this ground.
>
> (Opinion, R. 8, Page ID #1093)

While the district court judge wrote that "Petitioner does not identify any 'false' information that was before the sentencing court", and the Circuit Court of Appeals wrote that "Mason failed to present any evidence that the information on which the trial court based his sentence was inaccurate", these lower courts erred in this regard because the trial court did in fact rely on a material falsehood, by basing Mr. Mason's sentence on its misunderstanding that Mr. Mason illegally interfered with the administration of justice by taking advantage of his right not to inculpate himself. The trial court

judge made a mistake in interpreting the law, and by doing so he created a false fact (that Mr. Mason acted to cause interference with the administration of justice), and then used that against Mr. Mason as a basis for determining his sentence.

The district court cited two cases to support denial of relief on this issue, i.e. *Brown v. Rewerts*, No. 19-1771, 2020 WL 8073624, at *2 (6th Cir. Sept. 1, 2020); and *Hrrahman v. Rivard*, No. 17-1862, 2017 WL 7036543, at *2 (6th Cir. Dec. 21, 2017) The proposition which the District Court referred to for both cases was that the defendants did not identify any facts found by the trial court at sentencing which were based on materially false information, and therefore they had failed to demonstrate that their sentences had violated due process. Both cases are entirely distinguishable from Mr. Mason's case for this very reason, because Mr. Mason he did identify a factual material falsehood that the trial court relied on during sentencing - - that being the trial court's conclusion that it was a fact that he acted to interfere with the administration of justice by maintaining his innocence. In the two cases cited by the District Court, those two defendants had not even attempted to raise such a fact at all.

It was incorrect for the District Court and the Circuit Court of Appeals to deny Mr. Mason relief for not having identified any false information before the sentencing court, when in fact he had.

B. VIOLATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION

Regarding "Violation of the Privilege against Self-Incrimination", the District Court said,

> The Fifth Amendment, through the Fourteenth Amendment, does not prevent the state from ever using an accused's words against the accused. Rather, it "secures against state invasion . . . the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will and to suffer no penalty . . . for such silence." *Malloy v. Hogan*, 378 U.S. 1, 8 (1964). The amendments protect a person from compelled self-incrimination. A person may voluntarily incriminate themselves with no constitutional bar. That is what Petitioner did here. **[See a. below]**
>
> The argument and decision regarding OV 19 takes up six pages of the sentencing transcript. (Sentencing Tr., ECF No. 6-10, PageID.753–758.) The prosecutor detailed the series of lies Petitioner told to police at the crime scene. (*Id.*) **[See b. below]** The trial court then concluded "that the concealments on the part of the defendant [were] significant and active on multiple levels[; [s]o I do find OV 19 properly scored at 10." (*Id.*, PageID.758.) In short, based on Petitioner's lies, the trial court concluded that Petitioner had "interfered . . . with the

> administration of justice." Mich. Comp. Laws § 777.49.
>
> (Opinion, R.8, Page ID # 1094)

a. Mr. Mason was <u>Denying Culpability</u>, -- Not Voluntarily Incriminating Himself.

The District Court stated that,

> "The amendments protect a person from compelled self-incrimination. A person may **voluntarily incriminate** themselves with no constitutional bar. **That is what Petitioner did here**." (Emphasis supplied)

The District Court indicated that Mr. Mason voluntarily incriminated himself. The District Court was entirely skewed in this regard, because Mr. Mason's choice to speek was <u>not</u> performed in order to admit guilt (which in that case, no one would argue that his words could <u>not</u> be used to establish culpability), but rather, his choice to speak was only an expression of his <u>denial of guilt</u>, and therefore was an aspect of his protected right to maintain his innocence. Mr. Mason's statements were made to deny culpability and in furtherance of his right to maintain his innocence - - which is completely the opposite of voluntarily self-incriminating.

Voluntary incrimination occurs when an individual freely and knowingly chooses to provide information that could

incriminate themselves. Mr. Mason's actions were a far cry from that.

Mr. Mason did not voluntarily incriminate himself, but rather, contrary to the rule of justice he had his silence and denial of culpability held against him. The right to deny culpability is a fundamental safeguard against injustice. It is a cornerstone of the American legal system and a vital protection for individuals accused of crimes, and this Court is obligated to reverse the injustice that took place against Mr. Mason in this regard.

b. **What the District Court Termed as "Lies" were All Acts or Statements by Mr. Mason Pursuant to His Right to Maintain His Innocence.**

The District Court stated,

> "The prosecutor detailed the **series of lies** Petitioner told to police at the crime scene. (*Id.*)"
>
> (Emphasis supplied)

The prosecution went thru a list of elements which they believed supported a finding that Mr. Mason interfered with the administration of justice:

1. He left the scene of the accident. (Not a lie. and - An offender is not required to remain at the crime scene.)

2. He did not admit to involvement in the accident when he soon thereafter happened upon an officer away from the scene. (Not a lie. and - He had no obligation to admit or imply his own guilt.)

3. He returned to the scene to look for his wallet, using a different car. (Not a lie. and - An offender is not required to step forward and voluntarily present the police with potential evidence against him.)

4. He then told the officers that he was not involved in the accident. (He had a right to maintain his innocence.)

5. He told them that He was far back from the accident. ((He had a right to maintain his innocence.)

6. He told them that his car never touched the other car. ((He had a right to maintain his innocence.)

7. He told them that he was never driving faster than 65 mph. ((He had a right to maintain his innocence in that he had not violated traffic laws.)

(R. 6-10, Sentencing Transcript, Page ID #755–756)

The denial of relief by the Circuit Court of Appeals took the same approach, stating at page 4;

> The record in this case, however, demonstrates that the trial court's scoring of OV 19 was based not on Mason's pre-arrest silence, but on the overt acts that he took on the night in question to conceal his involvement in the fatal collision. Those acts include his leaving the scene after the collision, not reporting the collision, returning to the scene several hours later in another vehicle (presumably to hide the vehicle that caused the collision), and then repeatedly lying to law enforcement about his involvement.

These occurrences, which were categorized by the federal courts below as overt acts of "lies", were all either not statements at all, or were made by Mr. Mason in furtherance of his right to maintain his innocence and not inculpate himself. Was he required to remain at the scene of a crime that committed? "No." Was he required to return to the scene with the weapon/car that he drove? "No." Was he required to admit his in questioned by the police? "No."

It was a violation of Mr. Mason's due process rights for the trial court to frame both his maintaining his innocence, and his actions in furtherance of his right to not incriminate himself, as being a "series of lies" and then using that as a negative element against him at sentencing.

CONCLUSION AND RELIEF SOUGHT

Mr. Mason did not "voluntarily incriminate" himself by denying culpability. He had the right to maintain his innocence. By the trial court reaching the opposite conclusion, and using that misinformation of a Constitutional magnitude against him at sentencing, the judge violated Mr. Mason's due process rights.

The United States Constitution establishes that a defendant has both the right not to be required to inculpate himself both prior to and subsequent to his arrest. Furthermore, he is constitutionally and statutorily entitled to be sentenced based on accurate information, including an accurate sentencing guidelines range. *US Const, Ams V, XIV; Townsend v Burke, 334 US 736 (1948) Mich Const 1963, Art 1, § 17; MCL 769.34(10)*. By scoring Petitioner's sentencing guidelines so as to penalize him for taking advantage of his rights under the Fifth Amendment, the sentencing court improperly relied upon misinformation of a constitutional magnitude. *United States v. Tucker*, 404 U.S. 443 (1972)

This Honorable Court must find in Petitioner's favor in order to preserve both this, and every other future defendant's right to maintain his innocence prior to a conviction (by denying

knowledge about an inculpating event), because otherwise, if simple basic awareness of an event must be acknowledged, then there will be instances when this alone will result in sufficient proof that a defendant is culpable, when no one other than a culpable offender could have been aware of that same information.

The adjudication of this claim in the lower courts resulted in a decision that involved an unreasonable application of the clearly established Federal law. The errors were so egregious that resentencing is mandated in this case. The failure of the lower courts to grant relief, given the errors, demonstrates their clear lack of understanding of the proper application of Federal constitutional law precedents. The prior decisions in this matter were objectively unreasonable and fell below the threshold of "bare rationality". *Coleman v Johnson*, 132 S Ct 2060, 2065; 182 L Ed 2d 978 (2012) Petitioner's conviction must be vacated and a writ of habeas corpus must issue.

Mr. Mason has demonstrated a substantial showing of a denial of a Constitutional right, and reasonable jurists would find the District Court's assessment of the Constitutional claims debatable or wrong. (*Slack v, McDaniel, 529 U.S. 473 (2000)*

WHEREFORE, Petitioner **DOMINIC MICHAEL MASON** respectfully requests that this Court grant this petition, and ultimately after full consideration, relieve Petitioner of the unconstitutional restraint on his liberty and require the State of Michigan to resentence him as this Court determines is appropriate, and/or that this Court grant such other relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

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