

No. 25-6149

IN THE  
SUPREME COURT OF THE UNITED STATES

~~CERTIORARI~~

Byron Jones — PETITIONER  
(Your Name)

vs.

FILED  
AUG 25 2025  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

People of State Of Michigan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Court Of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Byron Jones  
(Your Name)

4533 W. Industrial Park Drive  
(Address)

Kincheloe, Mi 49788  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

I.

Did The Court Of Appeals Err When It Determined That Mr. Jones Constitutional Rights To A Speedy Trial Were Not Violated When Through No Fault Of His Own He Waited To Go To Trial For More Than Two Years, Is Prejudice Presumed? And Did The Court Fail To Prove That The Delay Has Not Resulted In Any Injury?

Court Of Appeals Answer, "No."

Michigan Supreme Court upheld C.O.A. decision.

Petitioner answer, "Yes."

Respondent Refused to Answer.

II.

Did The Court of Appeals Err In Holding That Mr. Jones WAS NOT DENIED Effective Assistance Of Counsel When Counsel Did Not Raise The Defense Of "Claim of Right"?

Court of Appeals, "No."

Michigan Supreme court upheld C.O.A. decision.

Petitioner answer, "Yes."

Respondent would answer, "No."

III.

Did The Court Of Appeals Err In Holding That The Trial Court Did Not Abused Its Discretion In Denying Petitioner's Motion For Directed Verdict Of Acquittal Based On Insufficient Evidence?

Court of Appeals answer, "No."

Michigan Supreme Court Upheld C.O.A. decision.

Petitioner answer, Yes."

Respondent Refused to Answer.

IV.

Did The Court Of Appeals Err In Making Its Own Independent Assessment Of Facts  
And Law In Scoring Mr. Jones 25 Points for OV-13?

Court of Appeals answer, "No."

Michigan Supreme Court Upheld C.O.A. Decision.

Petitioner answer, "yes."

Respondent would answer, "No."

## LIST OF PARTIES

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

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

## Table Of Contents

Opinions Below .....	1
Jurisdiction .....	2
Constitutional and Statutory Provision .....	3
QUESTION(S) PRESENTED .....	i
Statement Of Facts .....	5
Reasons For Granting The Writ .....	8
I. THE COURT OF APPEALS ERRED WHEN IT DETERMINE THAT MR. JONES CONSTITUTIONAL RIGHTS TO A SPEEDY TRIAL WERE NOT VIOLATED WHEN THROUGH NO FAULT OF HIS OWN HE WAITED TO GO TO TRIAL FOR MORE THAN TWO YEARS PREJUDICE IS PRESUMED AND THE COURT FAILED TO PROVE THAT THE DELAY HAS NOT RESULTED IN ANY INJURY .....	7
Discussion .....	7
II. THE COURT OF APPEALS HAS ERRED IN HOLDING THAT MR. JONES WAS NOT DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL DID NOT RAISE THE DEFENSE OF "CLAIM OF RIGHT" .....	9
Discussion .....	9
III. THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. JONES MOTION FOR DIRECTED VERDICT OF ACQUITTAL BASED ON INSUFFICIENT EVIDENCE OF ARMED ROBBERY .....	12
Discussion .....	13
IV. THE COURT OF APPEALS HAS ERRED IN MAKING ITS OWN INDEPENDENT ASSESSMENT OF FACTS AND LAW IN SCORING MR. JONES 25 POINTS FOR OV 13 .....	14
Discussion .....	15
Conclusion .....	17
Proof Of Service .....	18

## INDEX TO APPENDICES

APPENDIX A: Decision of Michigan Court of Appeals
APPENDIX B: Decision of Michigan Supreme Court Denying review
APPENDIX C: Order of Michigan Court of Appeals Denying Rehearing
APPENDIX D: Order of Michigan Supreme Court Denying Rehearing
APPENDIX E: Jones letter to Trial Counsel
APPENDIX F: Reply to Mr. Jones from the Attorney Grievance Commission
APPENDIX G: Response from DEFENSE Counsel to Attorney Grievance Commission
APPENDIX H: Mr. Jones standard 4 brief
APPENDIX I: Jones letter to Trial Judge
APPENDIX J:

## TABLE OF AUTHORITIES CITED

	Page
CASES	
<b>People v. Cain</b> 238 Mich App 95, 118-119; NW2d 28 (1999) .....	12
<b>People v. Chambers</b> , 277 Mich. App. 1,6, 742 NW2d (2007) .....	14
<b>People v. Effinger</b> , 212 Mich. App. 67, 69; 536 NW2d 809 (1995) .....	10
<b>People v. Fransisco</b> , 474 Mich. 82, 89 at N 6; 711 NW2d (2006) .....	16
<b>People v. Henry</b> , 202 Mich 450, 455; NW2d 534 (1918) .....	11
<b>People v. Lee</b> , 392 Mich 618, 636-637; 218 NW2d 655 (1974) .....	15
<b>People v. Lemmon</b> , 456 Mich 625, 633-634, NW2d 1299 (1998) .....	14
<b>People v. Malkowski</b> , 385 Mich 244; 188 559 (1971) .....	16
<b>People v. Mehall</b> , 454 Mich. 1,6, 557 NW2d (1997) .....	13
<b>People v. Riley</b> , 468 Mich 135; 139-140; 659 NW2d 611 (2003) .....	13
<b>People v. Tommolino</b> , 187 Mich. App. 12. 17; 466 NW2d 315 (1991) .....	10
<b>People v. Walker</b> , 38 Mich 156;.....	10

People v. Williams, 475 Mich 245-261; 616 NW2d 208 (1972) .....	7
People v. Ziegler, 343 Mich. App. 406, 410; 997 NW2d 493 .....	15
Barker v. Wingo, 407 U.S. 514, 92 Sct, 2182; 53 L. 2d 106 (1972) .....	7
Brown v. Romanowski, 845 F. 3d 703, 712 (6th Cir. 2017) .....	9
Cain v. Smith, 686 F. 2d 374, 1982 U.S. App Lexis 17657 .....	8
Commonwealth v. Ansilono 9 Mass.App Ct. 867, 867, 401 NE2d 156 (1980) .....	12
Commonwealth v. Gelpi, 625 NE2d 543 .....	11
Commonwealth vs Marney, 14 Mass. App. Ct. .....	11
Gideon vs Wainwright, 312 US 335, 9 L. Ed2d 799, 83 Sct. 792, 23 Ohio (1963) .....	10
In re Winship, 90 Sct 1068, 25 L ED. 368 (1970) .....	14
Klopfer v. North Carolina, 809 F 2d 1266 Cain, 686 F. 2d at 385 .....	7
Redd v. Sowders, 809 F 2d 1266 Cain, 686 F. 2d at 385 .....	9
Strickland v. Washington, 466 US 668, 687; 104 Sct, 2052, 80 L Ed2d 674 (1984).....	10
State v. Koerner 8 N.D 292; 78 NW 981 .....	11

Townsend v. Burke 334 US 736; 68 Sct 1252; 92 L ED2d (1948) .....	15.
--	-----

#### STATUTES AND RULES

MCL 750.529 .....	13
MCL 750.530(1) .....	14
MCR 2.613(A) .....	16

#### OTHER

28 U.S.C.S 1257(a) .....	2,3
US Const. AM. V .....	3,15
US Const. AM. VI .....	3
US Const. AM XIV .....	3,13,14,15

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

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_

[ ] No petition for rehearing was timely filed in my case.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_A\_\_\_\_\_. D

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

For cases from **state courts**:

The date on which the highest state court decided my case was April 28, 2015.  
A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: June 27, 2015, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_A\_\_\_\_\_. D

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

28 USCS s 1257 State court; Certiorari:

(a) Final judgment or decrees rendered by the highest Court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any state drawn in question or where the validity of a statute of any state is drawn in question on the grounds of its being repugnant to the constitution, treaties, or laws of the United States, or where any title, right privilege, or immunity is specially set up or claimed under constitution or the treaties or statutes, of, or any commission held or authority under, the United States.

U.S. Constitutional Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have previous ascertain by law, and to be informed of the nature and cause of the accusation; to be, confronted with the witness against; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel.

U.S. CONSTITUTIONAL Amendment XIV s 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United 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.

U.S. Constitutional Amendment V.

No person shall be held to answer for a capital, 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 Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense 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.

## STATEMENT OF THE CASE

Mr. Jones remember the day of May 31, 2020, very well. He was hanging out with a bunch of friends on Teppert St. In the city of Detroit. He was with his friend George, Jamal and Lamont. They were riding go-carts, and fixing go-carts. They were all drinking and smoking too. At some point Mr. Jones had to go to the bathroom, so he asked Jamal, whom happens to be Cassandra's nephew, people that Mr. Jones has known for at least 15 years. Jamal indicated to Mr. Jones that he could use the bathroom at the house that they were hanging out in front of, which was 19718 Teppert, Jamal said "go ahead" (T.7-26-22, P.26).

While he was in the house using the restroom he could hear Cassandra outside fussing. He couldn't hear what she was saying but when he went to leave out the front door Cassandra was there and told him to leave. (T. 7-26-22,P.26.) She was lamenting that it was her deceased auntie's house something to that effect, and she seemed very mad about other people going in and out of the house without permission. As Mr. Jones was walking to his car to leave, he said more to himself than to anyone else.".....b\*\*\*, you don't even stay over here no more." (T. 7-26-22, .P.26) That's when Lamont overheard him and got mad at Mr. Jones and decided to assault Mr. Jones by spitting on him. Mr. Jones became very agitated after being yelled at and assaulted, he then grabbed a wrench off of the ground and hit the windows of what he thought was Lamont's car. Thats when Lamont went over to Mr. Jones car windows and Mr. Jones ran after him and the two of them started fighting. They got tired after a while and stopped, they started gathering up there stuff off of the ground which fell out of their pockets during the fight to leave, and that;s when Russell hit Lamont over the head with a gun and it went off, Mr. Jones quickly gathered up all of his belongings and left the area in his car. Right after he

pulled off, he tried to unlock his phone, and the phone would not unlock, that's when he realized he had accidentally picked up Lamont's phone off of the ground after it had fallen out of Lamont's pocket during the fight, and after Lamont went inside. Mr. Jones went to a friends house right around the corner and parked in the garage to just cool off and think for a minute, that's when he decided to walk back to his friends and apologized to everyone what had happened, Mr. Jones accidentally had left Lamont's phone in the garage when he got back to his friends he was ultimately arrested. (T. 7-26-22, P.28)

The jury ended up finding Mr. Jones guilty of unarmed robbery, felonious assault, felon in possession and felony firearm. (T.7-26-22). Mr. Jones was sentence on August 15, 2022, to 15-30 years for unarmed robbery, four to fifteen years for felonious assault, five to twenty years for felony in possession, five years consecutive for felony firearm and six months for MDOC. (T. 8-15-22,). He now petitions in this Court for writ of certiorari of the lower court judgments.

## Reasons For Granting The Writ

Petitioner, Mr. Jones, pursuant to Rule 10-14, ask this Court to grant his petition for the reasons set forth below.

I. The Court of Appeals erred when it determined that Mr. Jones constitutional rights to a speedy trial were not violated when through no fault of his own he waited to go to trial for more than two years. Prejudice was presumed, and the Court failed to prove that the delay has not resulted in any injury.

The Sixth Amendment guarantees in relevant part that "[I]n all criminal prosecutions the accused shall enjoy the right to a speedy and public trial." U.S. Const Amend. VI. The Fourteenth Amendment incorporates the right to a speedy trial against states. *Klopfer v. Carolina*, 386 U.S. 213, 223, 87 Sct. 988, 18 L.Ed (1967).

Michigan courts employ "the Barker standards" articulated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 92 Sct. 2182, 53 L. Ed 101 (1972), to determine whether a speedy-trial violation occurred. See *People v. Williams*, 475 Mich 245, 261; 716 NW2d 208 (1972). Under this standard court's balance the following four factors to determine whether a defendant was denied the right to a speedy trial; (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant. *Id.* at 261-262.

### Discussion

Mr. Jones asserted his rights to a speedy trial July 21, 2020, and again April 20, 2022, also indicating to the trial court and the prosecution that his rights were being trampled upon by the inordinate delay, Appendix (I).

The trial court ignored Mr. Jones assertions. Three years later the court

of appeals addressed his speedy trial violation issue and employed the Barker factor's to the facts of the case. See Appendix (A). p.8. The Court of Appeals began it's evaluation stating: "Defendant was arrested on May 31, 2020, but did not have his trial until July 2022. Since this delay exceeded 18 Months, it was presumptively prejudicial. Id." Appendix (A) p. 8 "Under the second barker factor, the prosecution has offered no reason for the delay. The prosecution failed to file a supplemental brief addressing the issue raised in defendant's standard 4 brief." Appendix (A,H) p.8 and Standard 4 Brief. "(3) Further we note that defendant first asserted his right to a speedy trial on July 21, 2021, nearly 14 months after he was arrested, and one year before his trial." Appendix (A) p.9. "(4) Even if we were to conclude that defendant suffered personal deprivation and anxiety during his incarceration, it is important to note that defendant experienced these feelings because he committed other criminal acts while he was on bond." Appendix (A) p.10.

The Court of Appeals judgment of the Barker factors to the facts of this case was plain error and contrary to clearly established Supreme Court Precedent's. Specifically, their judgment of the Barker factor's (2) and (4). Referring to the second Barker factor "the reason for the delay," The prosecution offered no reason for the delay. The Court in Cain v. SMith, 686 F.2d 374, 1982 U.S. App LEXIS 17651, In remanding a conviction said; "On appeal, the prosecution has the burden of explaining the cause for pre-trial delay." If the burden was appropriately shifted to the prosecution to show a lack of injury due to pre-trial delay the outcome of Mr. Jones appeal would have been different.

Referring to the fourth Barker factor "the prejudice to the defendant ",

It is clear from the record that Mr. Jones languished in pre-trial incarceration, waiting for trial for a total of 14 months. The Court in *Redd v. Sowders*, 809 F.2d 1266 (1987) said: "The 10 month pre-trial incarceration was oppressive and constituted prejudice. See *Cain, v. Smith* F.2d at 385 (defendant languishing in jail for 11 months was oppressive and prejudicial). "Mr. Jones explained to the court his concerns and anxiety the pre-trial incarceration brought upon him. See Appendix (I).

"The purpose of the speedy trial guarantee is to protect the accused against oppressive pre-trial incarceration, the anxiety and concern due to unresolved criminal charges, and the risk that evidence will be lost or memories diminished." *Brown v. Romanowski*, 845 F.3d 703, 712 (6th cir. 2017).

The Court of Appeals had no basis for making any claim at all about Mr. Jones mental or physical health, their rationale falls short of the basis of demonstrating that Mr. Jones has suffered no injury from the delay. Where prejudice is presumed from the pre-trial delay, it is incumbent upon the prosecution to show that the delay has not caused injury. *Williams*, 475 Mich at 262.

As such, all the Barker factor weigh heavily in Mr. Jones favor. The Court of Appeals judgment of Mr. Jones right to a speedy trial was substantial error and affected the outcome of his appeal.

II. The Court of Appeals has erred in holding that Mr. Jones was not denied effective assistance of counsel when counsel did not raise the defense of "claim of right."

This Court has recognized that the Six Amendment right to counsel exist, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it

defines the basic elements of a fair trial largely through the several provision of the Sixth Amendment, including the Counsel Clause." In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." Gideon v. Wainwright, 372 U.S. 335, 9 LED 2d 79, 83 Sct, 792, 23 Ohio ops 2d 258, 93 ALR2d 733 (1963).

To establish a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed by the Sixth Amendment. Strickland v. Washington, 466 U.S. 668, 687; 104 Sct 2052, 80 LED2d 674 (1984). "[D]efendant must overcome the presumption that the challenged action might be considered sound trial strategy." People v. Tommolino, 187 Mich App 12, 17, 466 NW2d 315 (1991). "Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Strickland, 466 U.S. at 687. The general rule is that effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise People v. Effinger, 212 Mich App 67, 69; 536 NW2d 809 (1995).

#### Discussion

The trial Court gave Trial counsel a Motion in Limine cut-off date of May

6, 2022, Mr. Jones wrote a letter to trial counsel making several pretrial request. Specifically, requesting the jury instructions to the claim of right defense. Appendix (E). Trial counsel failed to raise the claim of right defense. Mr. Jones filed a complaint in the Michigan Attorney Grievance Commission office for counsel ineffectiveness but to no avail. Appendix (F).

The Court of Appeals concluded in their judgment that: "Therefore, even if we presume that defense counsel's failure to raise the claim of right defense constituted ineffective assistance of counsel, contrary to his assertions on appeal, the jury believed the testimony offered by Riley and Murray and did not believe the testimony of defendant." Appendix (A) p.7.

The Court of Appeals judgment of Mr. Jones's ineffective assistance of counsel issue was erroneous and contrary to Supreme Court Precedent's. Mr. Jones testified that he mistakenly took Lamont's cell phone after the fight. Even if the evidence showed that he didn't return it, still when he initially took it, he thought it was his. (T. 7-26-22 p.36).

Felonious intent is a requisite element of armed robbery. The Court in *People v. Henry*, 202, Mich 450, 455; 168 NW2d 534 (1918), in reversing a conviction said: "If the defendant in good faith believed that the money which he demanded was his money, and that he was entitled to its possession, he could not be guilty of either robbery or larceny in taking it, because there would be no felonious intent, and if the defendant, for any reason whatever, indulged no such intent, the crime cannot have been committed." *People v. Walker*, 38 Mich 156; *State v. Koerner* 8 N.D. 292; 78 N.W. 981."

The Court in *Commonwealth v. Gelpi*, 625 N.E. 2d 543, in reversing a conviction said: "The armed robbery indictment charge that the defendant did rob and steal." *Commonwealth v. Marney*, 14 Mass. App Ct. The defendant argues

that, based on the evidence tending to prove that he had no intent to steal because he had an honest belief that property was his, the jury should have been instructed, See Commonwealth v. Anslobo, 9 Mass. App Ct. 867-868, 401 N.E.2d 156 (1980), and cases cited. Trial counsel neither requested such an instruction nor objected to the judges failure to give one. The defendant was entitled to have the jury consider this evidence. If they had been properly instructed, and if they had believed the evidence of his honest belief they would have found him not guilty of armed robbery, because the required element of "intent to steal" would have been missing. Counsel's failure in this regard was a serious omission."

A claim of right defense is viable when the record evidence established a dispute over whether the defendant had a felonious intent at the time of the taking or attempted taking. See People v. Cain, 338 Mich App 95, 118-119; 605 NW2d 28 (1999).

It is clear from the record that trial counsel deficient performance was prejudicial to Mr. Jones defense. But for his counsel's failure to advance the claim of right defense on his behalf, he would have had a viable defense to the charge of robbery. It was unreasonable for his counsel not to have advanced such defense, there was a reasonable possibility that inclusion of the claim of right defense would have favorable determine the outcome of this case.

Furthermore, had the court of appeals examined this claim of error in it's entirety, utilizing available record evidence, the outcome on appeal would be different.

III. The Court of Appeals erred in holding that the trial court did not abuse it's discretion in denying Mr. Jones Motion for direct verdict on

acquittal based on insufficient evidence of armed robbery. This court reviews the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond the reasonable doubt."

People v. Riley (After Remand), 468 Mich. 135; 139-140; 659 NW2d 611 (2003)

#### Discussion

After the prosecution presented all the evidence, trial counsel requested a Motion for direct verdict acquittal based on insufficient evidence to the armed robbery charge. (T. 7-26-22 p. 15). During the colloquy regarding Mr. Jones Motion the Court opines "and I can always say about this case, it's not your-and I think the people said this in their opening, it's not your typical, if you will, armed robbery, allegation, if you will, the fact pattern." (T. 7-26-2022 p. 18). At this point the Court also opines that sufficient evidence had not been introduced, it was an abuse of discretion not to enter a judgment of acquittal, U.S. Const. AM. XVI.

In this particular case, the trial court did not deny the directed verdict Motion based on the correct standard. The denial was not based upon the elements of the crime charged but based on testimony instead. (T. 7-26-22. p. 20). The court invaded the province of the jury when it assessed the credibility of the witness. In ruling on a Motion for directed verdict, the trial court may not assess the credibility of the witness, no matter how vague their testimony might be. People v. Mehall, 454 Mich. 1, 6, 557 NW2d (1997). The determination was whether a rational trier of facts could find the essential elements of the crime were proven beyond a reason doubt. The trial court ruling was plain error and contrary to clearly established state and federal law .

The Court of Appeals judgment of the abuse of discretion issue Mr. Jones

presented was plain error and misapplication of law to the facts of the case. The Court basis of their denial was the assault part of MCL 750.529. The court misconstrued MCL 750.529 in their judgment.

MCL 750.529 was amended in 2004 by the Legislature, it states: To obtain a conviction for armed robbery under Michigan law, a prosecutor must prove that (1) the defendant, in the course of committing a larceny of any money or other property that may be subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing a larceny either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was dangerous. *People v. Chambers*, 277 Mich. App. 1, 6, 742 NW2d (2007). MCL 750.530(1).

It is clear from the record that Mr. Jones was not in the course of committing a larceny. At no time in the case did the prosecution establish nor prove the necessary element of Mr. Jones being in the course of a committing a larceny beyond a reasonable doubt.

If the evidence is insufficient to support a conviction, due process requires that the trial court direct a verdict of acquittal. U.S. Const. Am. XIV. *People v. Lemmon*, 456 Mich 625, 633-634, NW2d 1299 (1998).

The federal due process clause protects the accused against conviction except proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charged. *In re Winship*, 397 U.S. 358, 364, 90 Sct. 1086, 25 LEd. 2d 368 (1970).

The trial court ruling caused substantial error to Mr. Jones and the Court of Appeals decision to uphold the trial court ruling was plain error and affected the outcome of his appeal.

IV. The Court Of Appeals has erred in making its own independent assessment of facts and law in scoring Mr. Jones 25 points for of OV-13. The circuit court's factual determination are reviewed for clear error and must be supported by a preponderance of the evidence. *People v. Ziegler*, 343 Mich App 406, 410; 997 NW2d 493 "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, the application of the facts to the law."

#### Discussion

The trial court concluded that after Mr. Jones convictions for unarmed robbery and felonious assault that under OV 13 either, defendant's felony-in-possession or his first degree home invasion charge would be applied to OV 13 for a score of 25 points. The court was not entirely convinced that the felon in possession charge could not be used in scoring OV-13.

The Court of Appeals judgment of the scoring issue Mr. Jones presented was erroneous and misapplication of law to the facts of the case. Mr. Jones argued on appeal that: a) Felon in possession cannot be counted as part of a pattern of felonious criminal activity under OV 13 because it is crime against public safety.

The Court of Appeals simply conceded to the error and states as such "Defendant's assertion on appeal is correct". See Appendix (A). Mr. Jones also presented: b) the charge of first degree home invasion (stemming from another unresolved case) could not be counted under OV 13. The Court of Appeals concluded that " defendant's argument on appeal is correct". Appendix (A). Relief is forthcoming, both state and federal Due Process provisions afford an accused the right to be sentenced based on accurate information and in accordance with the law. U.S. Const. Amends. V, XIV; Const, 1963, art 1, s 17; *Townsend v. Burke*, 344 US 736; 68 S. Ct. 1252; 92 LEd 2d 1690 (1948); *People*

v. Lee, 391 Mich 618, 636-637; 218 NW2d 655 (1974); People v. Malkowski, 385 Mich 244; 188 NW2d 559 (1971). In addition, MCR 2.613(A) requires a sentence to be consistent with "substantial justice", and the Michigan Supreme Court has found that "it is difficult to imagine something more inconsistent with substantial justice than requiring an accused to serve a sentence that is based upon inaccurate information". People v. Fransisco, 474 Mich 82, 89 at n 6; 711 NW2d 49 (2006)(quoting MCR 2.613(A)).

The issue's presented raise legal principles that are very important to Michigan law. The Court of Appeals decision is clearly wrong and has caused material injustice to Mr. Jones. The decision conflicts with established Court precedent, and holdings of law already established by Michigan and federal appellate courts.

For the compelling reasons above Mr. Jones Humbly requests that this Honorable Court grant this petition or grant any other relief that Mr. Jones is entitled to.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bryon Jones

Date: \_\_\_\_\_