

Johnny E. McMahon #1022589
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
In Proper Person

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF PERSHING

JOHNNY E. McMAHON,
Petitioner,

VS.

THE STATE OF NEVADA,
LAS VEGAS TOWNSHIP
JUSTICE COURT, EIGHTH
JUDICIAL DISTRICT COURT,
CLARK COUNTY DISTRICT
ATTORNEY, LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT, NEVADA
DEPARTMENT OF CORRECTIONS,
AND WARDEN BREITENBACH
REAL PARTY IN INTEREST

Respondents.

"EMERGENCY MOTION UNDER
NRAP 27(e)(2) FOR COURT
TO ARREST PETITION FOR WRIT
OF HABEAS CORPUS"
"IN LESS THAN 14 DAYS"
AND GRANT PETITION FOR WRIT
OF HABEAS CORPUS (POST CONVICTION)
PURSUANT TO 28 U.S.C. § 2254 BY
A PERSON FALSELY IMPRISONED
IN STATE CUSTODY.

COMES NOW, McMahon, Petitioner, pro se, moves this Honorable Court to GRANT the above captioned, "Emergency Motion under NRAP 27(e)(2) for Court to Arrest Petition for Writ of Habeas Corpus," "In Less than 14 days." Based upon attached exhibits and those on file with the Clerks of the Court as well as exhibits on file in Certificate of Service with the State Respondents.

TABLE OF CONTENTS

Page Number

Table of Contents

Table of Authorities

I. STATEMENT OF CASE/FACTS

II. ARGUMENT ONE

LAS VEGAS TOWNSHIP JUSTICE COURT MAGISTRATE, KAREN BENNETT-HARON, ABSENT THE POWER AND AUTHORITY TO ACT, ACCEPTED SUBJECT-MATTER JURISDICTION OF THE CASE AND McMAHON'S PERSON ON DECEMBER 15, 2005 VIOLATING STATE LAW NRS 173.035 AS CLARK COUNTY DISTRICT ATTORNEY'S OFFICE COMMITTED FRAUD UPON THE COURT PURSUANT TO FRCP RULE 60(b) VIOLATING McMAHON'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER FIFTH AND FOURTEENTH AMENDMENTS TO STATE AND UNITED STATES CONSTITUTION.

III. ARGUMENT TWO

A SECOND OR SUCCESSIVE PETITION AND PROCEDURAL DEFAULT UNDER AEDPA PROVISIONS ARE INAPPLICABLE FOR DEFERENTIAL REVIEW TO OVERRIDE SUBJECT-MATTER JURISDICTIONAL FACT INQUIRY.

IV. ARGUMENT THREE

THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, AT TRIAL, ENGAGED IN FRAUDULENT AND DECEPTIVE TACTICS PURSUANT TO BRADY, NAPUE, GIGLIO TO INJECT FAULTY DNA EVIDENCE TO TAINT THE TRUE EVIDENCE, COLOR THE VERDICT AND INTENTIONALLY MISLEAD THE COURT AND INFLAME THE PASSIONS OF THE JURY TO SECURE A CONVICTION RENDERING THE VERDICT WHOLLY UNRELIABLE AND NOT WORTHY OF CONFIDENCE VIOLATING McMAHON'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO A PROCEDURALLY FULL AND FAIR TRIAL.

V. ARGUMENT FOUR

EIGHTH JUDICIAL DISTRICT COURT JUDGE, DAVID BARKER, COMMITTED JUDICIAL BIAS BY FORCING LEGALLY DISCHARGED RETAINED TRIAL ATTORNEY, PAUL WOMMER, BACK ONTO McMAHON'S FIRST-DIRECT APPEAL CREATING A CLEAR CONFLICT OF INTEREST VIOLATING BOTH ABA MODEL RULES OF PROFESSIONAL CONDUCT AND McMAHON'S DUE PROCESS AND EQUAL PROTECTION CLAUSE GUARANTEE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO A PROCEDURALLY FULL AND FAIR FIRST-DIRECT APPEAL.

VI. ARGUMENT FIVE

THE NEVADA SUPREME COURT DENIED THE EMERGENCY WRIT OF HABEAS CORPUS PETITION TO ARREST THE CASE AS THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE WAS ALLOWED TO COMMIT FRAUD UPON THE COURT BY MANUFACTURING A FRAUDULENT APPEAL AND MANIPULATING THE EIGHTH JUDICIAL DISTRICT COURT AND NEVADA DEPARTMENT OF CORRECTIONS NNCC WARDEN, PERRY RUSSELL, ENGAGED IN RETALIATION AND OBSTRUCTION OF JUSTICE TO VIOLATE McMAHON'S FEDERALLY PROTECTED CONSTITUTIONAL RIGHTS TO DENY McMAHON OF A PROCEDURALLY FULL AND FAIR APPEAL.

VII. CLOSING ARGUMENTS

VIII. RELIEF REQUESTED

IX. CERTIFICATE OF MAILING

X. ENCLOSURES

TABLE OF AUTHORITIES

Table of Cases	Page Number
Augustine v United States, 704 F2d 1074, 1077 (9th Cir 1983)	10
Berger v U.S., 295 US 78, 98 (1935)	12
Berk v Illinois, 359 US 121, 124, 125-29 (1959)	11
Bousley, 523 US at 623	3
Brady v Maryland, 373 US 83 (1963)	2, 3, 14
Brown v Barg, 951 F2d 1011 (9th Cir 1991)	9
Brown v Craven, 424 F2d 1168, 1170 (9th Cir 1970)	19
Brown v McDaniel, 331 P3d 867 (2014)	
Chicago Steel and Pickling Company v Citizens for a Better Environment, 533 US 83, 118 Sct 1003 (1998)	1, 2
Castro v United States, 540 US 375, 380-81 (2003)	4, 5
City of Indianapolis v Chase National Bank, 314 US 63, 69, 62 Sct 15-16 (1941)	2
Coleman v Thompson, 501 US 722 (1991)	5
Cooper v Calderon, 274 F3d 1270 (9th Cir 2001)	9
Cooper v Woodford, 358 F3d 1117, 1123 (9th Cir 2004)	7
Crandell v Bunnell, 23 F3d 754 (9th Cir 1984)	20
Cranford v State, 92 Nev 89 (1976)	4
Dickens v Ryan, 740 P3d 1302, 1320-21 (9th Cir 2014)	10, 11
Donnelly v DeChristoforo, 416 US 637, 94 Sct 868 (1974)	9
E.L.Cord v Smith, 370 F2d 418, 423 (9th Cir)	9
England v Doyle, 281 F2d 304, 309 (9th Cir 1960)	10
Eureka v Smith, 126 P 65 (1912)	11
Evitts v Lucey, 469 US 387 (1965)	6

Table of Cases

Page Number

Ex Parte McCordle, 7 Wall 506, 514, 19 LEd 264 (1869)	1
Feratta v California, 397 US 337	7
Frady, 456 US at 163 n 17	11
Gernstein v Pugh, 420 US 103 (1975)	3, 5
Gideon v Wainwright, 372 US 335 (1963)	6
Giglio v United States, 405 US 150, 154 (1959)	13
Harrison v Ollison, 519 F3d 952 (9th Cir 2008)	3
H.J. Inc. v Northwestern Bell Tel. Co., 492 US 229 (1989)	4
Hawkins v Hannigan, 185 F3d 1146, 1152 (10th Cir 1999)	3
Hayes v Brown, 349 F3d 570, 578 (9th Cir 2005)	18
Hazel-Atlas Glass Co. v Hartford Empire Co., 372 US 238 (1944)	2, 11, 13, 14
Hill v State of Alaska, 297 F3d 895, 897-898 (9th Cir 2002)	3
Hockerv Boles, 346 F2d 285-86 (1965)	9
Hoffman v Agrave, 455 F3d 926, 941-42 (9th Cir 2006)	19
Horton v Mayle, 408 F3d 570, 578 (9th Cir 2005)	18
House v Bell, 547 US 518, 536 (2006)	8
In Re Levander, 180 F3d 1114, 1119 (9th Cir 1999)	10
In Re Morris, 328 F3d 739 (5th Cir 2003)	10
In Re Olopade, 403 F3d 159 (3rd Cir 2005)	2, 9
In Re Williams, 330 F3d 277 (9th Cir 2003)	10
In Re Winship, 397 US 358, 364 (1970)	10, 11
Jackson v Virginia, 535 US 625, 630 (2002)	12
Jimenez v State, 112 Nev 610, 618-19 (1997)	14
Johnson v United States, 520 US 461, 468 (1997)	4
Jones v Barnes, 463 US 745 (1933)	21
Kirksey v State, 112 Nev 980 (1996)	6

Table of Cases

Page Number

Lafler v Cooper, 566 US 156 (2012)	5, 6, 7
Lambert v Blodgett, 393 F3d 943, 978 (9th Cir 2004)	20
Lesson v Transamerica Disability Income Plan, 671 F3d 969, 975 n.2 (9th Cir 2016)	10
Martin v State, 80 Nev 307, 393 P2d 141 (1964)	4
Martinez v Ryan, 132 Sct 1309 (2012)	5, 6
Mazzan v Ely State Prison, 116 Nev 48, 66 (2000)	14
McDonald v Brown, _____ US _____ 130 Sct 665 (2010)	13
Melo v U.S., 505 F2d 1026	10
Miller-EL v Cockrell, 537 US 322, 326-327 (2003)	1
Miller v Pate, 386 US 2, 87 Sct 765 (1972)	12
Murphy v State, 170 Nev 794	4
Murray v Carrier, 477 US 478, 488 (1986)	8
Napue v Illinois, 360 US 264, 79 Sct 1173 (1959)	3, 13
Norton v Matthews, 427 US 524, 531, 96 Sct 2271	19
Paige v Schriro, 648 F. Supp 2d 1151 (D. Ariz. 2009)	19
Painero v Archon Corp., 844 F3d 832 (9th Cir 2016)	10
Parsons v 5th Judicial Dist. Ct ex rel County of Nye, 855 P2d 1316 (1994)	4
Pellegrini v State, 117 Nev 860, 873-74, 34 P3d 519, 528 (2001)	19
Plumlee v Sue Del Papa, 426 F3d 1095 (CA9 2005)	15
Rosemond v Lambert, 469 F2d 416	2
Ruesga v Martinez, 534 F2d 1367, 1369 (9th Cir 1976)	17
Sheriff Clark County v Levinson, 95 Nev 436	3
Slack v McDaniel, 529 US 473 (2000)	2
Stalings v U.S., 536 F3d 624, 627 (7th Cir 2008)	7

Table of Cases

Page Number

Stephens, 464 F3d at 898	2
Strickland v Washington, 466 US 668, 692 (1984)	2, 5
Sullivan v Louisiana, 508 US 275, 279 (1993)	4
Townsend v Sain, 334 US 736, 68 Sct 1252 (1998)	20
Trevino v Thaler, 133 Sct 191 (2013)	6
Trillo v Biter, 754 F3d 1085 (9th Cir 2014)	16
Tyler v Cain, 533 US 656, 121 Sct 2478 (2001)	9
United States v Amaral, 468 F2d 1148, 1152 (9th Cir 1973)	10
U.S. v Alvarado-Sandaval, 557 F2d 645 (9th Cir 1977)	
United States v Agurs, 427 US 97, 103 (1976)	18
U.S. v Broadwell, 959 F2d 292 (9th Cir 1992)	9
United States v Brown, 785 F3d 1337 (9th Cir 2015)	5
United States v Colton, 535 US 625, 630 (2002)	12
U.S. v De Marco, 550 F2d 1224, 1227 (9th Cir 1977)	18
U.S. v Del Toro Barboza, 673 Fd3 1136, 1150 (9th Cir 2002)	10
U.S. v Groves, 571 F2d 450 (9th Cir 1978)	17
U.S. v Matos, 905 F2d 30 (CA2 1990)	8
U.S. v Saldevila-Lopez, 17 F3d 480, 486 (1st Cir 1994)	6
Vasquez v Hillary, 429 US 254, 263, 106 Sct 617 (1986)	4

Statutes

NRAP (8)(ii)	20
NRAP (27)(e)(2)	4
NRAP Rule 31	5, 19
NRAP Rule 46(b)	20

Statutes

Page Number

NRS 34.724	12
NRS 34.726	4
NRS 34.810	12
NRS 48.030	4
NRS 171.152	7
NRS 173.035	3, 4, 5
NRS 176.0918(3)(c)	15
NRS 200.366	7, 12

Other Authorities

ABA Model Rules Professional Conduct 3.8, 8.4	16, 20
FRCP 12(b)	2, 10
FRCP 59(e)	10
FRCP 60(b)	12, 1, 2, 8
NV SCT ORDER ADKT #411	14
18 U.S.C.S. § 1028	3
18 U.S.C.S. § 1510	3
18 U.S.C.S. § 1513	3
18 U.S.C.S. § 1961	5

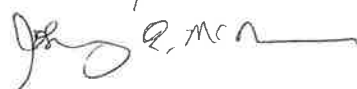
NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities and named respondents, in the instant petition, and are individuals who acted under color of law in their official capacity as described in NRAP 26.1(a) and must be disclosed. These representatives are made in order that the Court may evaluate possible disqualifications or recusal.

- 1). David Rogers, former Clark County District Attorney.
- 2). Steven Wolfson, Clark County District Attorney.
- 3). Jacob Villami, Clark County Chief Deputy District Attorney.
- 4). Glen O'Brien, Clark County Deputy District Attorney.
- 5). Priyanka Sedlock, Clark County Deputy District Attorney.
- 6). Colleen Brown, Clark County Deputy District Attorney.
- 7). Detective Arturo Chavez, Las Vegas Metropolitan Police Department.
- 8). Officer Noel Labfreve, Las Vegas Metropolitan Police Department.
- 9). Magistrate Karen Bennett-Haron, Las Vegas Township Justice Court.
- 10). Judge David Barker, Eighth Judicial District Court.
- 11). Judge William Kephart, Eighth Judicial District Court.
- 12). Judge Susan Johnson, Eighth Judicial District Court.
- 13). Judge Monica Trujillo, Eighth Judicial District Court.
- 14). Steven D. Grierson, Clerk of Eighth Judicial District Court.
- 15). Aaron Ford, Nevada Attorney General.
- 16). Sabrina Clinton, Nevada Deputy Attorney General.
- 17). Nathanjah Breitenbach, Warden Lovelock Correctional Center.
- 18). James Drezendra, State of Nevada Director of Corrections.

vi.

Johnny E. McMahon, Pro se



RELEVANT PROCEDURAL HISTORY

STATEMENT OF CASE/FACTS

1. In October, 2004 McMahon and daughter, RM, traveled out of State. Confessed liar babysitter witness accuser, EH, of (4) four months, accessed McMahon's apartment using her key freely coming and going. EH used McMahon's computer accessing adult sexual chat rooms, falsifying her true age of 15, as being 21.
2. Upon returning McMahon was informed of the computer activity and fired EH. McMahon additionally discovered that EH had a menstrual period discharge on his bedding. Upon driving EH home and inquiring of the nature of two men visiting his apartment? EH informed McMahon that they were FBI agents, one from Phoenix who she was communicating with on the sexual chat rooms and he threatened her with being placed in juvenile home and her mentally challenged mother, LRK, being put in a mental institution, if she did not agree to get McMahon in legal trouble. McMahon confirmed the VIN number and license plate as belonging to the FBI.
3. On the following day, LRK, filed a complaint with LVMPD alleging sexual activity between McMahon and EH. McMahon cooperated with a consensual search of his apartment and confiscation of items, including the bloody menstrual bedding. Det. A.C. lied profusely at the voluntary statement interview claiming he spoke to EH and that she was pregnant. At jury trial Det. A.C. recanted calling the ruse a tactic used by detectives to

3. Cont: to secure a confession, Det. AC. additionally stated that the allegations were not a sexual assault as EH would have complained and contacted the police months earlier.
4. Subsequent to EH's allegations McMahon was traveling to Texas, EH called his cellphone, apologized for lying and recanted the sexual allegations, further informing McMahon that LRK was mad about McMahon refusing to continue financing her "cat bed" venture. EH further informed McMahon that she would contact Det. AC and tell the truth. EH evaded Det. AC. for over a year to provide a voluntary statement interview whereby she admitted to having a menstrual period on McMahon's bedding. See Ex #3 and 5.
5. Over a year passed and no arrest warrant issued.
6. On December 12, 2005 McMahon, RM and a child friend attempted to contact EH at her apartment to follow up on her recantation, McMahon, not receiving a response, noticed the neighbor and inquired about EH, McMahon then asked the neighbor to give EH a belated birthday card, enclosed was McMahon's phone number and a \$20 bill.
7. Shortly thereafter LRK again contacted LVMPD complaining of McMahon's attempt in contacting EH. LVMPD

7. Con't: officer, NL, responded to the distress call. NL, acting outside of his official capacity and in stark contravention of police protocol, requested that EH call McMahon, entrap and set him up by flushing him out into the public to effectuate a warrantless arrest on private property.
8. McMahon was arrested, absent probable cause, as no crime was committed, nor was an arrest warrant in place for McMahon's arrest, for expired license plates on a vehicle not owned or registered to him, a municipal non-moving violation rendering the arrest a case of First Impression in Nevada. (See Ex# 2)
9. McMahon was transported to CCDC and booked into jail for expired license plates and sexual acts in a single booking event.
10. McMahon contacted and retained mentally challenged convicted felon ex-prosecutor attorney, Paul Wommer, paid him \$25,000 and \$5,000 for private investigator, JT, to secure the phone records and exculpatory evidence to impeach EH.
11. During the 72 hour period of unlawful incarceration at CCDC, between December 12-15, 2005, McMahon was not afforded a probable cause Gernstein hearing for the unwarranted arrest within 48 hours as opined by Justice

11. Con't: Court Magistrate, KBH. PW failed to challenge the unwarranted arrest requesting that the Clerk of Court produce an original copy of the document and failed to dismiss the case for want of subject-matter jurisdiction as a probable cause hearing was not conducted or the lawful refiling of the case pursuant to NRS 173.035.
12. On December 15, 2005 at 7:45 a.m., McMahon appeared on a video monitor at CCDC, Magistrate KBH presided on a court monitor, along with PW and a DDA from the Clark County District Attorneys Office. When event number 051212-2137 was called State DDA requested the cause be passed, as a proper charging instrument was not available to establish subject-matter jurisdiction for the State to prosecute, or for the court to hear the cause. Again, PW failed to move the court to dismiss the case by challenging the jurisdictional defect. The court, absent the power and authority ordered McMahon released on O.R. bail, subjecting McMahon to appear at a future date.
13. Some 6 hours later, at 1:34 p.m., Clark County District Attorneys Office faxed over to Justice Court a criminal information - in stark contrast to the controlling authority of NRS 173.035 curative statute which mandates that a prosecutor must properly refile the case before a lawful court of jurisdiction, with the presence of the defendant

13. Con't: and counsel, submitting an affidavit statement from the witness accuser(s) and a declaration warrant/ summons to the court for the consideration of an arrest warrant, or take the matter to a grand jury for indictment. As neither EH or SK, alleging a misdemeanor lewd act at some unknown time.
14. From the period of the unwarranted arrest to the unlawful initial appearance up to the preliminary hearing on March 23, 2006, some 96 days, McMahon was denied a procedurally full and fair probable cause due process hearing pursuant to NRS 173.035. Moreover, McMahon was never legally arraigned or given the opportunity to waive, plead or bail set.
15. On March 23, 2006 during the preliminary hearing State prosecutor, CK, committed fraud upon the court pursuant to Rule 60(b) averring that an arrest warrant was in place for McMahon's arrest, knowing full well that this extrinsic fraud upon the court, a structural error, was belied by the NCLC record and devoid of any such document with the Clerk of the Court. DDA C.K. continued her campaign of fraud asserting that McMahon fled the State and was under some legal obligation to report to a State agency. Again, PW failed to challenge the existence of a valid arrest warrant, Flight, or strike the counts of sexual assault as no evidence of EH's testimony was

15. Con't: presented as to acts against the will of a victim pursuant to NRS 200.366. SK testified that she was not a babysitter for McMahon, yet the state continued to bootstrap her and EH as babysitters. PW additionally failed to sever the independent cases as EH's testimony had nothing to do with SK's and vice versa as neither case was cross-admissible.

16. The justice court in colloquy with CK took judicial notice of the want of subject-matter jurisdiction to warrant dismissal of the case yet bound the case over to the district court and continued McMahon's O.R. release.

17. In July, 2007 DDA G.O. took over the case and presented McMahon with a written plea agreement. The plea agreement would allow McMahon to plead guilty to (1) one count of statutory sexual seduction (category C felony) a probational count based solely upon McMahon's record of no prior convictions. PW continued to inform McMahon that the State had a very weak, "he said, she said" case, based solely on hearsay accusations devoid of any corroborating or supporting evidence for the State to meet their burden of proof standard to convict. PW further stated that should McMahon accept the plea agreement that he could not thereafter appeal the case. See Ex's # 27-28.

18. PW rendered faulty legal advice pursuant to *Lafler v. Cooper* and *Missouri v. Frye* as McMahon's case pre-dated both controlling cases yet in a second and successive petition the 9th Circuit dismissed the claim of a 6th Amendment IAC as *ex post facto* - not retroactive. Again had PW not rendered faulty legal advice McMahon would have exercised his right to enter an Alford plea to avoid prison and preserved his right to appeal and challenge subject-matter jurisdiction and fraud upon the Court grounds of structural error - no more 6th Amendment IAC claims as lawyers are protected by all courts.

19. During the 2½ year period PW failed to have JT secure the computer IT data; Sprint cellphone records; sever the independent cases; subpoena any witnesses including (3) three alibi witnesses and numerous character witnesses; Secure a forensic DNA expert to rebut the States DNA expert; interview witnesses known to EW including her boyfriend Lewis, best friend Sharona, or cousin Chelsea, LRK, SK and her mother DR. The State subpoenaed LRK on (4) four separate occasions. McMahon has chronicled 20+ reversible errors of PW's 6th Amendment IAC at the lower level supported by case law and authority on all 4's with the instant case which should have resulted in a new trial or exoneration.

20. At trial on May 05, 2008 McMahon entered the courtroom on an unlevel playing field, which was the States plan, scheme and design. PW failed to sever the independent cases as now the jury would be of the mindset that prior bad act evidence existed. McMahon was additionally blindsided by PW's deficient performance in failing to put the States case to a meaningful adversarial testing his performance fell below an objective standard of reasonableness. Moreover, McMahon would soon find out that PW's collusion and conspiracy to convict McMahon acting in the capacity as a second prosecutor.

21. In opening statements in voir dire a juror was admonished by the court for not being available or sex cases are too appalling. The court responded "as the defendant sits here today he's guilty until proven innocent" this faux pas was not challenged by PW yet it set the tone for the case.

22. In opening statements to the jury both the State and PW promised that witnesses would be called: the State to support EH's testimony by L.R.K. PW promised that Dr. P.C., A.B. and A.E. would be called.

23. What would occur next - as promised - the States modus operandi to strike foul balls. DDA G.O. introduced States Ex's #32-33 the bloody bedding of the commingled

23. Cont: DNA evidence falsely asserting that a sexual act occurred. PW made no objection to any of the States exhibits nor did he present the available exculpatory evidence to impeach the witnesses.

24. It would be over (4) Four years later when the newly discovered evidence would uncover the truth that States Ex # 32-33 consisted of EH's menstrual period discharge. This fraudulent concealment of exculpatory commingled DNA evidence of Fraud upon the Court is now being challenged as the tainted evidence to color the verdict, inflaming the passions of the jury, denying McMahon of a procedurally full and fair trial. (See Ex # 3.)

25. When States witness Det. A.C. testified to the ruse, in securing McMahon's DNA, he called the lie a tactic used by police in interviews. Det. A.C. then impeached himself and States DDA claiming that he drafted out an arrest warrant, then on re-direct claimed that when McMahon was arrested in Dec. 2005 that a warrant was not in place, which also disqualified the Flight instruction, yet PW failed to strike the evidence and jury instructions or present a curative instruction.

26. When States star witness EH testified, noticeably pregnant, she asserted that she was not being paid as a babysitter, was absent minded and was a liar,

26. Con't: making numerous contradictions consistent with fabricated testimony. However, as to addressing her mothers "Cat Bed" venture EH claimed that LRK was "nuts, crazy and that she hated her guts," which radically changed the States theory on calling LRK as a witness to corroborate EH's TT.
27. When States witness SK testified she asserted that she was not a babysitter for McMahon, rather a child friend of RM and further claimed that McMahon at some unknown time bribed her with a \$20 bill to keep quiet. However, in her PHTT SK claimed that the lewd touching event lasted 2 minutes then at trial she changed her testimony to claim it lasted 20 minutes. When impeached by PW of the time frame discrepancy SK broke down crying and was immediately rescued by a States Victim Assistant with a box of Kleenex, closely followed by the bailiff with more tissue. This orchestrated best supporting actress event did not set well with the jurors staring over at McMahon with skowls, heads shaking in disgust, which was the States objective to bias and prejudice McMahon and enrage the passions of the jury.
28. When States witness DR testified, to dispel her motive for using SK to lie, she claimed that McMahon did not loan her \$1,000 to pursue internet love interest

28. Cont: in New York. However, when States witness RF testified she called SK a thief and a liar for stealing a bra from her and further impeached her best friend, DR, claiming that in fact McMahon did loan DR \$1000 to take SK and herself to NY and further stated that McMahon did not flee the State subsequent to EIt's allegations.

29. States DDA's G.O. and P.S. continued to pound the faulty commingled DNA claiming that according to, RH, the States forensic expert, that the evidence was 1-38,000 against McMahon connecting a sexual act. Again, PW failed to challenge the innocuous DNA or any of the States exhibits, jury instructions, or theories to preserve the record for appeal or protect McMahon's right to a fair trial. McMahon got slaughtered.

30. At sentencing in allocution with the court McMahon fired PW as counsel. The court struck the three counts of statutory sexual seduction in favor of the three sexual assault counts based upon the faulty DNA evidence and sentenced McMahon to (3) three 20 to life sentences for crimes that he did not commit.

31. In post-conviction PW committed fraud upon the court in his filing forms, to both the court and district court, claiming that he was retained as counsel at the

31. Cont: lower level, which was true, but claimed that he was retained at the appellate level, which was false, then in court minutes to the district court motioned the court to re-appoint him to prosecute the first direct appeal because he was close to the case, whereby PW created a clear conflict of interest and constructively hijacked McMahon's first direct appeal to cover up his cumulative errors and omissions on appeal. McMahon put the district court on notice of the clear conflict, yet Judge Barker, and ex-prosecutor friend of PW's in the DA's office, appointed PW back on the case and stayed McMahon's (3) three pro se motions to withdraw PW as counsel based upon a conflict of interest; appoint a conflict-free counsel; or conduct a Ferrati hearing for McMahon to proceed in proper person.

32. McMahon aggressively petitioned Judge Barker in correspondence, filing pro se petitions to the Nevada Supreme Court to no avail, filed complaints with the Nevada Bar Association against PW, and filed a complaint with the State Commission on Judicial Discipline against Judge Barker, all to no avail. It would be a year before PW filed the unauthorized first-direct appeal excluding any of the 20+ errors and omissions he created at the lower level, however he did claim as a ground retroactive misjoinder, which was misapplied, as joinder was never legally proper nor did he preserve the ground

32. Cont: at the lower level for appeal, McMahon wrote PW letters to return his case file and get off the case as he was fired and no longer counsel to represent McMahon's first direct appeal. McMahon additionally put all parties on notice of the Nevada Supreme Courts Rule ADKT #411 which commands that appellate counsel in preparing a defendants first direct appeal shall communicate with the defendant to correct and perfect the appeal. However, rules and controlling mandates do not apply to lawyers and prosecutors who violate the law and fall upon deaf ears to the courts when presented by pro se petitioners. (See Ex's 46-53).

33. The States answer brief was rife with inaccuracies and claims belied by the record. Notwithstanding the fact that in their certificate of service they sent their copy to the law firm of Christall & Saggese and failed to serve a true copy on PW or McMahon which is a clear violation of NRAP and renders their ex parte brief as moot and inoperable which equally attaches to the Nevada Supreme Courts Order of Affirmance. However, again, rules, procedures, mandates do not apply to lawyers and prosecutors only to pro se petitioners. Moreover, these structural errors cannot be corrected according to Nevada State courts to overturn a conviction under ABPA laches of time frame and procedural default even if your lawyer hijacked the appeal.

33. Cont; These very claims were not rebutted by the State in brief and the sole defense of the State, embraced by every district court decision, of procedural default in raising these claims in the first direct appeal is fatally flawed and wholly erroneous when the lawyer-in on the fix-in a conspiracy to convict his client constructively hijacks the first-direct appeal rendering time frame and procedural default in applicable and not the fault of the defendant. Being that the State and PW played "hide'n'seek" with the exculpatory evidence until McMahon finally secured copies of E's menstrual period ruse and relevant evidence in 2012. (See Ex # 57)

34. This newly discovered evidence under Brady would continue to be ignored by the Nevada courts to protect PW and State prosecutors in securing the wrongful conviction and like the bogus documents presented on December 16, 2011 at the evidentiary hearing by States DDAs G.O. and C.B. hoodwinking the court with a copy of Det. A.C. Declaration Warrant / Summons which was never filed with a court and is devoid of a judges signature rendering the innocuous document as having no force and effect legally. The Strickland hearing was equally a farce and sham event over McMahon's motion to recuse Judge Barker so2 sponte overruled by Chief Judge Ritchie. In TT

34. Cont: of the said hearing the record reflects that the court subpoenaed PW from the bench as a witness yet prior to the hearing the State DDA G.O. and C.B. were allowed to load PW's lips and provide him with their versions of the events. This was done absent the courts permission or the presence of appointed counsel R.N. PW's testimony was belied by record, as he claimed that he lost McMahon's File, yet upon the NVS Cts Affirmance returned the partial File back to McMahon. PW couldn't remember McMahon giving him \$ 25,000 for a retainer, or retaining private investigator, J.T. DDA's G.O. and C.B. committed fraud upon the court by injecting (2) two fraudulent documents: (1) An invalid arrest warrant application which they retrieved from Det. A.C. File and faxed over a copy to R.N. and (2) a forged and uttered TCR document with the affixed signature of justice court magistrate KBH running under the pre-printed line form defying science and claiming that a re-booking event occurred which is belied by the original copy presented to McMahon on Dec. 12, 2005 in a single booking event with identical stamped time and dates. Accordingly, no court has inspected or ordered these criminal violations or documents to be inspected, instead has protected the State prosecutors from criminal indictments. See attached and enclosed exhibits on file.

35. In direct examination McMahon set the record straight rebutting the invalid arrest warrant ruse; addressing failure of the State to prove subject-matter jurisdiction; rebutting the States claim of a rebooking process occurred at CCDC on Dec. 12, 2005, reflective of the evidence; and that a probable cause hearing did not occur which repelled the States forged ICR document; that PW and JT were retained reflective of the exhibits; that the State Failed to serve PW a copy of their answer brief denying PW to reply or correct the record in violation of N RAP; and that PW committed fraud upon both the Nevada Supreme Court and district court reflective of his filing forms as he was not retained at the appellate level and constructively hijacked McMahon's first direct appeal to cover up his errors and omissions of pre-trial and trial; and that PW additionally lied to the district court in Minutes that he was appointed counsel at the trial level and that McMahon did not forward a copy to him in a certificate of service about withdrawing from the case which is belied by the exhibits. (See Ex's #11, 62-63) The State refused to cross-examine McMahon after being exposed on record of their criminal misconduct. In the courts order denying the motion judicial bias and evidence of collusion and conspiracy are glaring. See enclosures of exhibits on file in support.

36. Subsequent to R.N.'s appeal to the Nevada Supreme Court of Judge Barker's erroneous order and the NVSC's Affirmance, PW was indicted by the U.S. Attorney's Office for fraud, tax evasion and structuring a money laundering scheme. A 469 page TT is on file reflecting PW's Dr. Jekyll and Hyde persona, as well as his incessant lies and fraud upon the State courts which are in stark contrast to his TT on Dec. 16, 2011 in the Strickland hearing. PW's defense in his criminal trial was "diminished capacity" resulting from a 1991 skiing head injury accident which rendered him impaired and unable to understand the law or make sound decisions. In a bench trial before the Honorable Chief Judge, Gloria M. Navarero, PW's expert witness, Dr. Mortillaro, a neuropsychologist evaluated and diagnosed PW's mental condition, PW was in a coma for several days. Dr. M. testified that PW had impaired decision-making syndrome (reflective of the instant case) poor impulse control and faulty logic due to frontal-lobe brain damage. Dr. M. goes on to assert that attorneys suffering from such mental conditions are incapable of mounting an effective defense.

37. Not only did PW ruin countless lives of similarly situated innocent and wrongfully convicted lives he failed to inform the Nevada Bar Assn. of his mental impairments to surrender his bar license to practice

37. Cont: law pursuant to ABA Model Rules of Professional Conduct. When McMahon retained PW for \$25,000 in Dec. 2005 he did not disclose his mental conditions of "diminished capacity" rendering him unable to competently represent McMahon and mounting a defense to meet the Strickland guidelines of effective assistance of counsel, in a criminal case carrying a life sentence - a de facto death sentence in Nevada to a senior citizen.

38. Chief Judge Navarrow didn't buy PW's line of bullshxx found him guilty on all counts and sentenced him to 41 (forty-one) months in federal prison. PW was finally disbarred and set back the trust and integrity of the attorney/client relationship. Notwithstanding in PW's disbarment proceedings numerous egregious complaints by appointed defendant prisoners were disclosed, complaining of PW's IAC errors and by females who complained of PW's sexual harrassment and requesting money to defend the first-direct appeal after the appointed ~~defendant~~ requested a conflict-free counsel. PW should have been been disbarred 30 years prior. See In Re Discipline of Wommer No. 64253 2013 WL 7162256 at 1 (Nev. Dec. 17, 2013). See Ex#68 and enclosures.

39. An article in the Las Vegas Review-Journal exposed PW and 9 other lawyers chronicling their double billing

39. Cont: scheme to hijack defendants first direct appeal and defraud tax payers for millions of dollars in legal fees - PW was in the middle of these lying lawyers billing over \$400,000. See Ex #68.

40. On the heels of McMahon prevailing in a Writ of Mandamus against NNCC Warden Russell and McMahon's 568 page autobiography "Gentleman Johnny"; going on line by Reno attorney Ned Reed and the screenplay ready for helming, McMahon filed a 1983 civil rights action (the largest personal monetary claim) exceeding \$23 billion dollars to resurrect Flying Saucer Entertainment on the south end of Las Vegas Blvd. abutting Harry Reid airport. The Respondents went into damage control moving McMahon around from prison-to-prison, aka "Diesel Therapy." With the glaring evidence of fraud upon the court, obstruction of justice and criminal forgery Government Gangster, Steven Wolfson, went judge shopping to secure an ex-prosecutor jurist to seal the record of the Clerk of the Court and create ex parte hearings to render McMahon as voiceless. By sealing the record to cover up the fact that an arrest warrant and probable cause documents never existed in the first place. (See Ex's 86-87)

41. When PW entered Butner, N.C. Federal prison a group of prisoners confronted him demanding why he set up McMahon and who else was involved in the fix?

42, McMahon filed a Petition for Writ of Mandamus and Motion for State Respondents to Produce a Valid Arrest Warrant from 2005 and proof of a Probable Cause Gernstein Hearing being conducted within 48 hours of the unwarranted arrest. This court physically inspected the States purported arrest warrant, being a Declaration Warrant/ Summons and declared that the document possessed no legal force and effect and was devoid of a judges signature. In the States Opposition to Petitioner's Motion to Produce a Valid Arrest Warrant from 2005 and Proof of a Probable Cause Hearing, the State claimed that McMahon's motion should be denied, claiming McMahon cited no authority that mandates State [Defendants] sic to produce an arrest warrant and produce proof of a probable cause hearing. Further claiming that the validity of his arrest and subsequent conviction are not contingent on the existence of an arrest warrant and further claiming McMahon's was arrested with probable cause, and concluding the records of the Justice Court demonstrate that McMahon receiving a timely probable cause hearing. Not only are the States claims belied by the record, the State created this campaign of lies and fraud upon the court, not attempting to shift the burden back on McMahon to demonstrate how he was prejudiced by the States lawlessness. First McMahon has cited FRCP Rule 60(b) and the United States Supreme Court controlling case, e.g. Hazel-Atlas, Chicago Pickling, In re Winship etc. Secondly, a court and judge determines probable cause, not some state prosecutor. Thirdly, justice court made no such claim of McMahon receiving a timely probable cause hearing.

Not only is the State unable to present documents, or TT evidence, to support their lies, they are asking this court to rubber stamp and

42. Con't: sponsor their campaign of lies and fraudulent activity without physically inspecting McMahon's prima facie evidence, notwithstanding the fact that the ABA Model Rules of Professional Conduct Rule 3.8 forbids prosecutors from engaging in such conduct and after McMahon exposed the Clark County District Attorney's Office for fraud and forgery of Magistrate KBH's signature affixed to the States TCR DA Government Gangster, Steven Wolfson went judge shopping to secure a protectionist court to seal the record. (See (7)(8) pp. 3-4 Ex #17 and enclosures).

43. McMahon strongly asserts that Judge Barker's order of the evidentiary hearing of Dec. 16, 2011 claiming that Wommer's trial and post-conviction representation was tactic, strategic and proper under Strickland standards and further claiming that the State possessed a valid arrest warrant and proof that a probable cause hearing was timely conducted, which is not only belied by the records, moreover, the court failed to physically inspect the States bogus documents. As such the State continued their campaign of fraud upon the court by successfully hoodwinking Judge Barker with the Declaration Warrant/Summons and the uttered cut and paste TCR with the forged affixed signature of Magistrate KBH, which was designed to prove that a probable cause Gernstein hearing was timely conducted and McMahon subsequently filed a Motion to Justice Court Magistrate, KBH, to verify and authenticate her signature on States TCR, to no avail. (See Ex's 11, 62-64 and 74).

44, The 11th Judicial District Courts Order Filed Oct. 4, 2022 set out the case to be transferred back to the Eighth Judicial District Court in and for the County of Clark. The court additionally ordered the Attorney General's Office provide the petitioner, McMahon, with a copy of the relevant Justice Court proceedings that bound the case over to the Eighth Judicial District Court. However, the court failed to order the State Respondents to produce a valid arrest warrant document and proof of a probable cause hearing being timely conducted to grant the State legal standing pursuant to State law and the United States Supreme Courts controlling standards, which now places the onus on this reviewing court to prove Article III Jurisdiction by physically inspecting the requisite evidence and court minutes from the Clerk of the Court to certify the question of subject-matter jurisdiction and in the chain of custody how this court legally obtained jurisdiction. Outside of that showing as Justice Scalia held in *Chicago Pickling* supra the "hypothetical jurisdiction" cannot survive scrutiny in a Writ of Certiorari. Notwithstanding the courts order to change venue back to the Eighth Judicial District Court was usurped by Clark County District Attorney Government Gangster, Steven Wolfson, manipulating both the Clerk of the Courts Office and the Eighth Judicial District Court reflective of the enclosed exhibits in support for the Clerk to delay filing of the true petition for 27 days, then the Clerk using a 5 year old case number and State Respondent being Warden Isidro Baca, that adjudicated case had nothing to do with the petition for Writ of Habeas Corpus Filed incorrectly on Feb. 27, 2024. (See Enclosure Exhibits # 90-95).

REASONS FOR GRANTING PETITION

ARGUMENT ONE

LAS VEGAS TOWNSHIP JUSTICE COURT MAGISTRATE KAREN BENNETT-HARON, ABSENT THE POWER AND AUTHORITY TO ACT, ACCEPTED SUBJECT-MATTER JURISDICTION OF THE CASE AND McMAHON'S PERSON ON DECEMBER 15, 2005 VIOLATING STATE LAW NRS 173.035 AS CLARK COUNTY DISTRICT ATTORNEY'S OFFICE COMMITTED FRAUD UPON THE COURT PURSUANT TO FRCP RULE 60(b) VIOLATING McMAHON'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER FIFTH AND FOURTEENTH AMENDMENTS TO STATE AND UNITED STATES CONSTITUTION.

United States Supreme Court Justice Douglas eloquently opined: "A lie can travel around the world before the truth can buckle its shoe". The Court as early as 1804 and in *Ex parte Mc Cardle*, 7 Wall 506, 514, 19 LE 264 (1869) has addressed Article III §2 legal standing as to subject-matter jurisdiction holding that until legal standing has been certified by the reviewing court physically inspecting requisite evidence from the Clerk of the Court, the case constitutes as a "constitutional structural error" nullifying AEDPA provisions as: time barrment, procedural default, claim preclusion and second or successive petitions, as an abuse of the writ. No AEDPA provisions supercede.

The Court in *Chicago Steel and Pickling Company v. Citizens for a Better Environment*, 533 US 83, 118 Sct 1003 (1998), Opinion

by Scalia J., joined by Rehnquist Ch.J., O'Connor, Kennedy and Thomas J.J. holding, threshold jurisdictional question had to be resolved before the Supreme Court could proceed on merits. Justice Scalia went on to severely chastise the Ninth Circuit Court of Appeals opining; ("The Ninth Circuit has dominated this practice (of addressing merits prior to proving jurisdiction) which it characterizes as assuming jurisdiction for the purpose of deciding merits" the "doctrine of hypothetical jurisdiction."

McMahon strongly asserts that Nevada courts have taken up this "hypothetical jurisdiction" practice to tacitly accept prosecutors bare naked allegations absent the courts physically inspecting the requisite evidence and documents, which now requires this reviewing court, in a step-by-step process, to first certify the question of subject-matter jurisdiction, prior to addressing the merits or AEDPA provisions. As held in *Rosemond v Lambert*, 469 F2d 416 ("The burden shifts to the court to prove jurisdiction... a court cannot confer jurisdiction where none existed and cannot make void the proceedings". FRCP 12(b) e.g. *City of Indianapolis v Chase National Bank*, 314 US 63, 69, 62 S Ct 15, 16 (1941).

The State respondents, in both open court and in opposition briefs, have steadfastly maintained that they are in possession of an arrest warrant of 2005 for McMahon yet this lie has been shielded by the courts in ordering the state to produce such document knowing full well that the state lacks standing. This arrest warrant ruse goes to the gravamen of the case, as when state prosecutor faxed over to justice court a criminal complaint, absent an

original copy from the clerk of the court and court minutes of a probable cause Gernstein hearing being conducted, notwithstanding McMahon's physical presence to render jurisdiction and legal standing as proper required by NRS 173.035.

It is noteworthy that in legislative notes the State Attorney General's Office pursued the passage of NRS 173.035 as a curative/corrective statute, giving the State another bite at the apple, allowing prosecutors to pursue the lawful prosecution of a criminal case when initial errors, inadvertence, or mistaken clerical errors failed in presenting a proper charging instrument at the initial appearance, with the defendant and counsel, absent the filing of a new complaint in justice court, or taking the matter to a grand jury violates the spirit of the statute.

The Nevada Supreme Court took up this very argument in Sheriff Clark County v. Levinson, 95 Nev 436. (A complaint must be filed forthwith and the peace officer must produce the accused before a magistrate court of proper jurisdiction accompanied by a sworn criminal complaint, or by indictment, to hold the accused to a crime). As such, waiting 96 days until March 23, 2006, at Preliminary Hearing, does not constitute 'forthwith' rendering subject-matter jurisdiction as nugatory.

NRS 173.035 as enacted created the legal process for State prosecutors to properly refile the case protecting civil rights:

- (a) present an affidavit of probable cause arrest warrant application to a court for the consideration of the issuance of an arrest warrant;
- (b) Upon consideration by the reviewing court, should probable cause be found

to exist, an arrest warrant shall issue and the original copy maintained by the Clerk of the Court and a copy issued to the prosecution to exercise an arrest pursuant to NRS 171.178 (In 1979 the State legislature amended NRS 171.178 and provided for a hearing if an arrested person is not brought before a magistrate within 72 hours after arrest); (c) upon arrest of the person present the accused to the court accompanied by a proper charging instrument; or (d) take the matter to a grand jury.

A case on all 4's with the instant case occurred in 1994 in *Parsons v 5th Judicial Dist. Ct., ex rel County of Nye*, 885 P2d 1316 (1994). The Court held that subject-matter jurisdiction did not properly attach to justice court. This is not a discretionary act availing to justice court rather a statutory duty that the Nevada legislature put in place to protect the rights of the accused against arrest and prosecution. As such, no court can grant the state exigency or unfettered right to violate the law. If that were the case what would be the need for any rule of law?

The Nevada Supreme Court went on to hold in *Cranford v Smart*, 92 Nev 89 (The proper way for the State to bring charges against a defendant would have been by filing a proper complaint or by indictment in a timely manner). The Cranford Court found support in *Murphy v State*, 110 Nev 794, and reversed the conviction holding the State improperly circumvented the pre-trial charging process and that NRS 173.035(2) was a device to rectify "egregious errors" and was not a mechanism for safeguarding deficiencies in

evidence. As such what applies to those law of the case equally attaches to the instant case.

Whereas, by virtue of State courts refusing to comply with their own controlling standards and statutory authority constitutes a break in the "chain of authority" between the spirit and the legislative intent. The Nevada courts have long held. (The Constitution prescribes all legal cause and action to be based upon the Statutes of Nevada, and nothing else). There is no exception to this mandate as AEDPA provisions do not supercede Nevada laws, rules and stare decisis case law, which have been applied to the instant case in orders by district court protectionist judges.

What is equally confusing to McMahon, in ferreting out this overt lawlessness, is that magistrate, KBH, knew full well that an arrest warrant was not issued, or part of the clerks file, and that a probable cause Gernstein hearing was not timely conducted within 48 hours of the unwarranted arrest, yet the court failed to dismiss the case with prejudice. Notwithstanding, the fact that the court took judicial notice of the State prosecutors office modus operandi of engaging in such short cut tactics obfuscating the facts and usurping the legal process, acting out in stark defiance of NRS 173.035. At the March 23, 2006 Preliminary Hearing magistrate, KBH, held:

"... there's a reason for those seventy-two hour hearings.

There's a reason for that. You can't just pick your time, file complaints and then decide folks are dangerous. You have to be proactive and diligent on the front end, and I really don't understand if there was so much concern why this wasn't dealt with differently, and I still have yet to find that out

'and this isn't the first-time where this has happened' and I still don't know". See Ex # 17.

In rebuttal DDA C.K. stated that she didn't know why a proper charging instrument was not timely filed as she wasn't involved in the case at that time. Magistrate KBH went on to hold:

"... why did your office make a determination to wait over a month to file a complaint? Which would have automatically resulted in this gentleman being released from custody without any consideration of release could be imposed upon him. That is my question. See Ex # 17.

The Clark County District Attorney's Office began this campaign of lies and fraud upon the court alleging that an arrest warrant from 2005 was in place for McMahon's arrest. Magistrate KBH rebutted:

"... I don't have an arrest warrant in my file. I don't know that one was issued. If it was I don't know who issued it."

DDA CK in rebuttal asserted:

"... he was in arrest warrant status for a year from I believe March until December, so almost a year." See Ex # 17 (a)-(c).

The State respondents knowing full well that Det. AC failed to present the Declaration of Warrant/Summons to any court, at any time, prior to, or subsequent of the unwarranted arrest on December, 12 2005. Moreover, being that the making of a return of arrest warrant

is a ministerial act, to be performed after the warrant is executed and returned to the magistrate court whom a defendant is brought NRS 171.152. The states claim is belied by the record as the Clerk of the Court is devoid of any such document(s).

It is noteworthy that after McMahon filed numerous motions for the State to produce a valid arrest warrant of 2005 for McMahon, the courts knowing full well that no such document exists protected and shielded the Clark County District Attorney's Office from producing the requisite evidence, or correct the record. On May 6, 2008 jury trial Det. AC testified, in respect to the arrest warrant ruse, claiming that he drafted an arrest warrant. The on re-direct of DDA G.O. Det. AC impeached his prior testimony and exposed the states lies testifying:

Q: So in December of 2005 when the defendant was finally arrested, there wasn't a arrest warrant out for him at that point, is that correct?

A: Correct.

(See Ex #8).

Wommer continued to stand mute failing to motion the court in limine for the State to produce a valid arrest warrant from the Clerk of the Court. The State respondents' lies and vindictive tactics snowballed and spiraled out of control at the December 16, 2011 evidentiary hearing when state prosecutor C.B. engaged in fraud upon the court averring that a valid arrest warrant was in place

for McMahon's arrest. DDA C.B. introduced and paraded around Det. AC's innocuous Declaration Warrant/Summons, which she retrieved from Det. AC's file and faxed over to counsel R.N. on July 21, 2011. (See Ex # 62). DDA C.B. went on to suborn perjury and hoodwink the court to assert that the document was a valid arrest warrant. The court failed to inspect the bogus document to certify the validity and probative value as no judges signature is affixed to the document. (It is noteworthy that to date the only court, Judge Shirley, of the 11th Judicial Dist. Ct. has physically inspected the said document claiming that the Declaration Warrant/Summons was not a valid arrest warrant and possessed no legal force or affect).

DDA C.B. then crossed the line to present a TCR document, in stark contrast to the original TCR document issued to McMahon at CCDC, in a single booking event, contrary to the states claim that a re-booking event occurred, which is belied by the prima facie evidence as both documents have identical time stamps of 18:15 hours on December 12, 2005. Moreover, placed in juxtaposition to one another the states TCR document is an uttered cut and paste with glaring white-out overlays of a photocopied forgery of magistrate KBH's signature running underneath the pre-printed signature line, which defys forensic science. This criminal violation by the Clark County District Attorney's Office was designed to overcome the existence of a probable cause Gernstein hearing being conducted within 48 hours of the warrantless arrest. (See Ex # 63-64).

Moreover, after McMahon busted and exposed the Clark County

District Attorney's Office, for engaging in criminal misconduct, government gangster, District Attorney, Steven Wolfson, went judge shopping to secure a protectionist jurist, which was the impetus to suppress the States criminal evidence and seal the record.

Subsequent to this farce and sham hearing McMahon filed a motion back to magistrate, KBH, for the court to authenticate and certify the validity of her signature on States TCR document. However, justice court magistrate, KBH, refused to authenticate and certify her signature as being true and correct or affixed to States TCR, (See Ex #63 and #74 (A)-(E).

The 9th Circuit Court in a long line of venerable cases has addressed subject-matter jurisdiction and fraud upon the court. In *E.L. Cord v. Smith*, 370 F2d 418, 423 (9th Cir). ("There is firmly established in the laws the doctrine confirming the power of the court to set aside at any time any mandate that was procured by effecting a fraud on the court"). The Court went on to hold in *Cooper v. Woodford*, 358 F3d 1117, 1123 (9th Cir 2004), State courts cannot ignore their statutory law and corrective statutes and expect to be granted windfalls for their outrageous conduct. Again, the degree of lawlessness by the Clark County District Attorney's Office runs afoul of McMahon's federally protected rights and further taints the integrity of the system of jurisprudence. The Court in *U.S. v. Broadwell*, 959 F2d 292 (9th Cir 1992), held that without proper jurisdiction a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the case. See also *Norton v. Matthews*, 477 US 524, 531, 96 S Ct 2271.

The Court in *Hocker v Boles*, 346 F2d 285-86 (1965) held, ("No authority need be cited for the proposition that when a court lacks

Subject-matter jurisdiction any judgment rendered by it is void and unenforceable. Once jurisdiction is collaterally challenged the court cannot proceed when it clearly appears to reach merits but rather should dismiss the action"). See also *Melo v US*, 505 F2d 1026 (there is no discretion to ignore subject-matter jurisdiction).

Then the Court went on in *Augustine v United States*, 704 F2d 1074, 1077 (9th Cir. 1983) held ("Lack of subject-matter jurisdiction cannot be waived, and the court is under a continuing duty to dismiss an action whenever it appears that the court lacks jurisdiction"). Fed. R. Civ. P. 12(b)(3) ("If the court determines at anytime that it lacks subject-matter jurisdiction, the court must dismiss the action"). ("Subject-matter jurisdiction can never be forfeited or waived and federal courts have a continuing obligation to determine whether subject-matter jurisdiction exists"). See *Lesson v Transamerica Disability Income Plan*, 671 F3d 969, 975 n.2 (9th Cir 2012). This Court went on in *Painero v Archon Corp.* 844 F3d 832 (9th Cir 2016). ("If a court lacks subject-matter jurisdiction it is obligated to dismiss the case, regardless of how long the litigation has been ongoing. If the court determines that it lacks subject-matter jurisdiction, it is required to dismiss the complaint in its entirety"). McMahon is 74 years of age and will continue to collaterally attack the jurisdictional defect in a Writ of Certiorari, or until he dies, or hell freezes over.

The United States Supreme Court took up these very arguments as to mere assumptions, hearsay and unfounded allegations. In *re Winship*, 397 US 358, 364 (1970). (The burden of proof standard consists of two

prongs: (1) the burden of production; and (2) the burden of persuasion. The Court went on to hold that "evidence asserted must be based upon evidence of fact." Wherefore, this arrest warrant ruse and lack of subject-matter jurisdiction will continue unabated to taint every court opinion and greatly affect McMahon's Due Process and Equal Protection Clause guarantees to a procedurally full and fair hearing, as in *Frady*, 456 US at 163 n.17, (The fundamental good faith application of oath is to eliminate fraud and corruption that taints the integrity of the fair process).

Wherefore, the question of law is: How did the Las Vegas Township Justice Court obtain the power and authority to acquire legal standing to hear the instant case? Again, there is no legal question in dispute that the Nevada State Courts radical departure from precedent, allowing AEDPA provisions to supercede controlling authority, demands specific justification as unless this narrow argument is a case of first impression, no court can look beyond the legislative intent to add construction to its meaning, and no case law exists to support the unfounded theory that AEDPA provisions do not fall within the same category as merits, to do so would lend an illogical conclusion to an abstract principle.

What is equally disturbing is according to the statistical data of the Bureau of Justice the State of Nevada ranks #1 in denying relief to proper person petitioners in post-conviction writs of habeas corpus petitions. The data reflected over 10,000 pro se writs of habeas corpus petitions filed over the past (2) two decades and not a single petitioner was granted relief from custody in the 11 state district courts, court of appeals, and supreme court. The study went on to assert that proper person petitions are clerk driven opinions with affixed judge signatures, calling such practice

the mere appearance of justice and unfortunately these cases were adjudicated in less than two minutes twenty-four seconds, judges when deciding the case took less time considering their life and liberty than it takes to boil an egg. The study concluded that at least 5% of the petitions were vacated in the federal courts involving: faulty DNA evidence, Brady violations, coercive police tactics, prosecutorial misconduct, witness recantations, and IAC claims.

Another study found that only 1% of State habeas petitions result in a win by the prisoner (excluding Nevada) See Federal Habeas Review, Challenging State Court Criminal Convictions, Bureau of Justice Statistics, USDOJ NCJ-155504 September 1995 p. 17. What is equally shocking is when cases are not favorable to lawyers or government the court will deny evidentiary hearings for oral arguments to create a record for appellate review whereby creating ex parte communications rendering the petitioner voiceless.

The United States Supreme Court in *United States v. Cotton*, 535 US 625, 630, 122 S Ct 1781 (2002) went on to hold. ("... defects in subject-matter jurisdiction require correction, regardless of whether the error was raised in District Court..."). The Court went on in *Jackson v. Virginia*, 443 US 307 (1979). ("Federal habeas courts act in their historic capacity - to assure that the habeas petitioner is not being held in violation of federal constitutional rights"), which now triggers the "Savings Clause" of FRCP 60(b) as operable.

Lastly, the campaign of lies, fraud upon the court and continuing disparity of display in exhibits by the Clark County District Attorney's Office and State Attorney General's Office desperate attempts to waiver from one extreme to another, absent presenting a scintilla of supporting

evidence, and citing case law and authority that beats a path to nowhere and points precisely in the opposite direction, this glaring display of fraud upon the court being: (1) Wommer filed (2) two Discovery Requests in Dec. 2005 and Jan. 2006 for the Clark County District Attorney's Office to turn over copies of all relevant documents on file including their purported arrest warrant of 2005 for McMahon. (See Ex #14); (2) In open court on March 23, 2006 DDA, C.K., began this campaign of lies and fraud upon the court, asserting that McMahon was in arrest warrant status from Dec. 2005. (See Ex #17); (3) then in opposition brief the States lies continued to morph claiming that even if an arrest warrant wasn't in place the State had probable cause to arrest McMahon, which is belied by their brief claiming that McMahon was arrested and booked into CCDC for expired license plates, on a vehicle that was not owned or licensed to McMahon on private property, as never before in the annals of a non-moving traffic citation has a citizen been arrested and booked into jail. See Ex #2); (4) the States claim that they had probable cause was not based upon the opinion of a court in a probable cause Gernstein hearing, wherefore is pure conjecture and moot; (5) then the State claimed that McMahon could not be served with the arrest warrant because he was out of the State, which runs afoul of NCIC records and devoid of a warrant number; (6) Then State claims an arrest warrant and probable cause is on file with the Clerk of the Court; (7) Then at trial in May, 2008, Det. A.C. impeaches himself claiming that he drafted out an arrest warrant for McMahon, then on re-direct of DDA G.O. recants to the question, "When McMahon was arrested in December, 2005 was an arrest warrant out for his arrest"? Answered, "No"; (8) Then in a Strickland evidentiary hearing on Dec. 16, 2011 more fraud upon the court

was poked out by DDA's C.B. and G.O. who retrieved the bogus Declaration Warrant/Summons from Det. A.C. file and faxed a copy of the document over to counsel R.N. parading the innocuous document around averring that it was a valid arrest warrant, which the court bought absent any physical inspection of the document, and Wommer also bought the salacious bull shit, however McMahon in TT rebutted the assertions, then the State DDA's continued their campaign of fraud upon the court and criminal forgery injecting an uttered cut and paste TCR document with the forged affixed signature of magistrate, KBH, on the document claiming that a re-booking event occurred, which is belied by McMahon's original TCR and the States uttered TCR as having identical time date stamps. (See Ex's #11 and 63); and (9) In opposition brief of Deputy Attorney General, S.C., she claimed that an arrest warrant was in place and a probable cause determination was made reflective of magistrate, KBH, PHTT, which is belied by the record. (See Ex #17).

McMahon strongly asserts that should this court order these collective prevaricators of the truth, including Wommer, to submit to a polygraph examination they'd break the needle, and again had McMahon or any other citizen lied, suborned perjury, or forged the signature of a sitting judge on a legal document they would be arrested held in contempt of court and criminal forgery serving jail or prison sentences, however the courts protect prosecutors and shield them from tort claim damages as it would also affect a judges malpractice insurance premiums.

Accordingly, magistrate, KBH, exceeded the courts authority and accepted subject-matter jurisdiction of the case absent the power and authority to act to obtain legal standing violating McMahon's federally protected constitutional rights.

REASONS FOR GRANTING PETITION

ARGUMENT TWO

A SECOND OR SUCCESSIVE PETITION AND PROCEDURAL DEFAULT UNDER AEDPA PROVISIONS ARE INAPPLICABLE FOR DEFERENTIAL REVIEW TO OVERRIDE SUBJECT-MATTER JURISDICTIONAL FACT INQUIRY.

The United States Supreme Court in *Magwood v. Patterson*, 561 US 320, 130 S Ct 2786 (2010) defined AEDPA as a "term of art", whereas, not every subsequent petition is classified as "second or successive". The Court went on to hold that an important distinction is that amended judgments can fall outside of the second or successive rule and "the latter of two petitions is not 'second or successive' (2022 US Dist. LEXIS 3) if there is a 'new' judgment intervening between the two habeas petitions". 561 US 341-42.

The instant case is rife with fraud upon the court violations pursuant to FRCP Rule 60(b)(3)(d)(3) and has standing to vacate the judgment to override and trump any second or successive inquiry and procedural default, as well as a (COA) certificate of appealability, as held by the Court in *Ayestas v. Davis*, 138 S Ct 1080, 1088 n.1 (2018), ("We may review the denial of a COA by the lower courts") which also extends to inferior courts. In *Miller-El v. Cockrell*, 537 US 322, 326-327 (2003) holding, "when lower courts deny a COA and we conclude that their reason for doing so was flawed we may reverse and remand so that the

correct legal standard may be applied." See also *Slack v McDaniel*, 529 US 473, 485-486, 489-490 (2000). The Court went on to hold in *Hohn*, 529 US at 238, 252 under 28 U.S.C. § 1259(1) to review the denials of an application for a certificate of appealability (COA) by a circuit judge or panel the Court construed AEDPA broadly, rejecting a literal interpretation that would deprive the court of jurisdiction over denials of a COA.

The U.S. District Courts Order in Case No. 3:24-cv-00292-MMD-CSD erroneously held that the petitioner was denied on the merits in its entirety, which is fatally flawed and belied by the record as in the U.S. District Courts Case No. 2:14-cv-00076-APG-CWH, Federal public defender, JK, addressed only Wommers' 6th amendment IAC grounds, the court failed sua sponte to review the case for subject-matter jurisdiction inquiry, Rule 60(b) fraud upon the court, actual and factual innocence, or Judicial Bias, all "constitutional structural errors" which pursuant to the framers "Savings Clause" to by-pass AEDPA provisions, a petitioner can collaterally attack fraud upon the court under *Hazel-Atlas* supra in perpetuity until the issues are fully adjudicated. Notwithstanding, McMahon's meritorious claims represent a mixed petition and questions of law for this reviewing court to address prior to any AEDPA provisions.

The 3rd Circuit Court took up this narrow argument, *In re Olopade*, 403 F3d 159 (3rd Cir 2005) holding, (A second or successive petition does not possess retroactive force on collateral review). The 9th Circuit Court held a Section 2241 petition is permissible under the "escape hatch" when a petitioner (1) makes a claim of actual innocence, and (2) demonstrates that he has not had an "unobstructed procedural shot" at presenting his claims. *Stephens*, 464 F3d at 898. ("[A] claim of

actual innocence, not mere legal insufficiency." In Bousley, 523 US at 623, the Court held. ("... to demonstrate the absence of an unobstructed shot to raise the claim, the petitioner must show that the claim did not become available until after the exhaustion of a direct appeal and the petitioners first Section 2254 motion. See also 9th Circuits holding in Harrison v Ollison, 519 F3d 952 (9th Cir 2008), which applies to the instant case as further addressed in Argument Four, whereby Wommer and the Clark County District Attorney's Office suppressed and played "hide'n'seek" with the exculpatory evidence and Wommer constructively hijacked McMahon's first-direct appeal by creating a fraud upon the court allowing the State to invoke AEDPA provisions of one year time frame barrment and procedual default to abuse the writ.

The 9th Circuit Court in Hill v. State of Alaska, 297 F3d 895, 897-98 (9th Cir 2002). The petitioner in Hill had filed a habeas petition attacking his conviction and sentence. The Court observed a second habeas petition is not automatically bared as second or successive. Rather a Court should consider whether the petitioner had an opportunity to raise his or her claims in first petition. Unexhausted claims of "structural errors" render AEDPA provisions as moot and inoperable, as until a Jurisdictional Fact Inquiry has been conducted, by a reviewing court, the court is simply getting the cart before the horse and intentionally by-passing the procedural process, which is systemic in Nevada courts granting State prosecutors windfalls when not legally gained. Not only does this erroneous standard conflict with the United States Supreme Courts precedence it rewards rogue prosecutors who conceal Brady evidence and these Napue violations cannot pass constitutional scrutiny in the Federal courts.

The Nevada State courts collectively are stuck on procedural errors

Underpinning *Pellegrini v State*, 117 Nev 860, 873-74, 34 P3d 519, 528 (2001) as one size fits all catchall answer to NRS 34.726-810 as being the plain meaning ignoring the merits, however the court went on to hold, to overcome barments and laches a petitioner must prove that the State Court decision is contrary to, or involved an unreasonable application of clearly established federal law, or it was based upon unreasonable determination of the facts in light of the evidence presented in State Court proceedings. Which based upon external factors of Wommer hijacking McMahon's first-direct appeal certainly meets the litmus test. Firstly, it's IMPOSSIBLE to render such an opinion when State reviewing courts fail to review the merits of the case - this conundrum is simply a play on words to protect the government. The State of Nevada didn't become the most corrupt judicial system in the country by adhering to their own rule of law. Whereas, it takes a concerted effort to render erroneous opinions and using words as time barment and procedural default continues to poison the case and abuse the writ.

McMahon strongly asserts that pro se petitioners are caught up in this "Catch 22" scenerio designed to penalize petitioners in post-conviction denying evidentiary hearings rendering the petitioner as voiceless and further requiring petitioners to exhaust remedies is simply an act of futility to delay, deny and defer vindicating their federal rights until they have completed the arduous process. It's simply a fact that in Nevada jury verdicts are not designed to be overturned on appeal.

The Supreme Court looks to the purposes of AEDPA to further the principles of comity, finality and federalism as well as preserving precious judicial resources. However, Nevada courts have thus,

"resisted an interpretation of the statute that would reduce troublesome results, create procedural anomalies and close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent." See *Castro v United States*, 504 US 375, 380-81, 129 S Ct 786 (2003).

The procedural history of AEDPA stems from the fervor of terrorism in Afghanistan against military installations a congressional committee was formed and ex-prosecutors as Senator Orrin Hatch, et al, dominated the record using the term Antiterrorism to inflame their passions to include riders of the bill to include AEDPA provisions. However, this opportunistic event failed to consider the ramifications of the lives and liberty interests of innocent and wrongfully convicted prisoners battling the courts caught up in this web of Islamaphobe arbitrary and capricious display of legislation. This geo-political ardor was explained by Ayan Hirie Ali for the attacks on 9/11 as their goal was religious and political to wage jihad against their Kin if they didn't accept a literal interpretation of Islam, to denounce Arab governments as corrupt and their western allies as infidels, and ultimately to overthrow the established order in the Middle East and establish a caliphate.

When President Clinton signed the bill into law years later he regretted doing so averring his misgivings claiming: "AEDPA was the worst bill I ever signed into law." Hundreds of thousands of prisoners who languished in prisons across America fighting their case, many died, their families and loved ones would concur that AEDPA was not only abused it was a defacto death sentence. Hopefully President Trump will repeal AEDPA and restore federal rights to redress grievances absent road blocks. Over the past 16 years McMahon has first-hand

Knowledge, in pro se petitions, of how justice is dispensed in criminal cases by close-minded Nevada jurists driven by the likes of vindictive prosecutors as government gangster, Steven Wolfson, to manipulate both the Clerk of the Courts Office and Eighth Judicial District Courts to cover up criminal misconduct, seal the records, striking foul balls, moving the goal posts to create an unlevel playing field to secure convictions as no judge holds these rogue prosecutors, using such fascist tactics, accountable-zero oversight. Whereas, when these government prevaricators are given carte blanche to break the law and profit from such attacks on the constitution citizens should take to the streets expose the parties and revolt demanding justice and reform, as ENJO Nevada court or State Bar Assn. has held these lawbreakers, abusing their power, accountable for their misconduct. As Thomas Jefferson proclaimed in 1826, "A society that will trade a little liberty for a little order will deserve neither and lose both."

McMahon has motioned every court over the past decade to order the State to produce the requisite evidence to prove subject-matter jurisdiction and legal standing, whereas, if the State possessed the evidence they would have waved them in the courts face years ago. As such it's not that you can't trust the government, it's that the government cannot be trusted.

Accordingly, a second or successive petition under AEDPA provisions is inapplicable for deferential review of procedural barrment to override a subject-matter jurisdictional fact inquiry.

REASONS FOR GRANTING PETITION

ARGUMENT THREE

THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, AT TRIAL, ENGAGED IN FRAUDULENT AND DECEPTIVE TACTICS PURSUANT TO BRADY, NAPUE, GIGLIO TO INJECT FAULTY DNA EVIDENCE TO TAINT THE TRUE EVIDENCE, COLOR THE VERDICT AND INTENTIONALLY MISLEAD THE COURT AND INFLAME THE PASSIONS OF THE JURY TO SECURE A CONVICTION RENDERING THE VERDICT WHOLLY UNRELIABLE AND NOT WORTHY OF CONFIDENCE VIOLATING McMAHON'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO A PROCEDURALLY FULL AND FAIR TRIAL.

J. Michael Holler, a criminal defense attorney from Los Angeles in 1962 stated: "There is no client as scary as an innocent man." As professed, the Clark County District Attorney's Office, with malice and aforethought, manufactured a misjoined sex case to prejudice McMahon by securing a conviction using tactics not foreign to the courts. At trial prosecutors G.O. and P.S. paraded States Exhibits #32-33 before the jury asserting that the commingled red blood spots were the result of the initial hymenal tear by McMahon [in June 2004] and the evidence was confiscated on October 4, 2004, some (4) four months later, inferring that McMahon and others slept on bloody bedding for four months. The States forensic witness was flown in from Utah to testify that the commingled DNA evidence was 1-38,000 against McMahon. (See Ex#10).

Wommer stood mute failing to challenge the innocuous DNA evidence, as it would later be discovered that he was in on the fix to convict McMahon at all costs.

It would be several years later in 2012-13 that McMahon would be provided with a copy of the exculpatory evidence of States star witness accuser, EH's voluntary statement of October 4, 2005 (as EH evaded Det. A.C. for a year to give a statement) claiming that in October, 2004 she had a menstrual period discharge on McMahon's bedding, Ex's 32-33. This newly discovered Brady "smoking gun" evidence was intentionally kept from the court and jury by prosecutors. As such, this newly discovered Brady evidence now warrants a reversal of the case. (See Ex #3).

During the timeframe between 2012-13 McMahon's case was pending in the U.S. District Court of Nevada, Case No. 2:14-cv-00076-APG-CWH. Federal Public Defender, JK, was assigned as counsel. McMahon requested that he pursue the prosecutorial misconduct and fraud upon the court ground under FRCP Rule 60(b) as being central to the case, as opposed to chasing Wommer's 6th Amendment IAC claims under Strickland. (See Ex #10).

At trial in May, 2008 state prosecutors and Wommer, in opening statements, promised the jury that EH's mother, LRK, the adult complainant for minor EH would be called to corroborate EH's testimony and Wommer promised the jury that alibi witnesses, Dr P.C., A.B. and A.E. would be called to testify for defense, yet both failed to produce the witnesses. Wommer failed to subpoena a single witness, including ~~any~~ a forensic scientist to impeach the States and DNA evidence, even after McMahon retained a private investigator, JT, to secure the computer IT data and phone records

to impeach E.H. McMahon was further denied the right, under the Confrontation Clause, to confront LRK, as she was the complainant for EH. In furtherance, LRK possessed a motive to get McMahon in trouble as McMahon refused to continue to subsidize and assist her "cat bed" venture. It was the State in 2006 at a pre-trial bail hearing when DDA C.K. declared before Judge Williams that LRK was mentally challenged.

When EH was called to testify, noticeably pregnant, the State asked EH if the baby was McMahon's, knowing full well that McMahon had no contact with EH over the past four years. Again, Wommer stood mute acting in the capacity as a second prosecutor. EH admitted to having no problem lying, when State prosecutors inquired about the "cat bed" venture of her mothers, EH replied, "I don't get involved in her business... she's nuts, crazy and I hate her guts". Which radically changed the States theory to call LRK as a witness to corroborate EH's testimony.

When Det. A.C. was called by the State, after impeaching his prior testimony in regard to drafting out an arrest warrant for McMahon, he also admitted to lying to McMahon at the voluntary statement interview, claiming he had talked to EH and that she claimed that she was pregnant by McMahon, he called the lie a ruse used by detectives to get a confession, as Det A.C. had not talked to EH for a year until October, 2005. Det. AC additionally claimed that when he interviewed McMahon's 4 year old infant child, RM, he claimed she was competent and that she claimed that she witnessed McMahon and EH kissing and having sex, which was taken out of context as RM said they were play wrestling yet Det. AC was allowed to prode and influence RM to say whatever. RM's 26 page statement rife with fantasy and fiction consistent with infant children. RM stated her dad gave her 2 golf balls for Christmas, she had a boyfriend and that TVs can fart.

When RM, now 8 years of age, was called by the State to testify, absent being interviewed by the court outside the presence of the jury for the court to determine just impressions and credibility under NRS 48.030 and Martin v State, 80 Nev 307, 393 P2d 141 (1964) minors under 10 years of age must be examined by the court outside the presence of the jury to determine credibility and just impressions. When examined on direct by G.O. she couldn't recall making the 26 page statement, further claimed that she didn't see McMahon and EH Kiss or have sex, and when asked to read her voluntary statement couldn't read it then began crying. I was so livid watching my daughter being berated I had to restrain myself from attacking G.O. Again, Wommer stood mute as the State excused RM and requested her testimony be held as prior inconsistent statements.

When RF, RM's mother was called by the State to testify, she claimed McMahon did not flee the state as his mother had an accident and he had to go back to Texas to assist her. Yet the State presented a Flight Instruction to the jury claiming McMahon's state of mind was to flee the state immediately after the incident, which was belied by the record as there was no arrest warrant in place, nor was McMahon in any way obligated to check in with any agency, rather McMahon was free to come and go. Wommer again failed to challenge the flight instruction with a curative instruction, moreover, failed to present a single jury instruction in a life sentence case. RF also testified that misdemeanor witness accuser, SK, was a liar and a thief who stole her bra, and RF impeached her best friend, DR, SK's mother, claiming that McMahon loaned DR \$1000 dollars to pursue an internet

love interests in NY dragging SK along, DR failed to repay McMahon the \$1000 loan, and when the short-lived tryst failed miserably DR again requested more money to pursue another internet love relationship in Reno, which equally failed. According to RF, DR was a slot machine junkie and degenerate gambler which led to a breakup with her husband Tom.

When the State flew in DR and SK on two separate occasions, from the State of Washington, putting them up in luxury accommodations with a financial stipend, in a misdemeanor case; based upon SK's original complaint in Henderson, Nevada claiming that at some unknown time McMahon lewdly touched her at RF's apartment in Henderson, Nevada, then later changed her claim to allege that the lewd touching occurred in Las Vegas, Nevada at the home of Dr. P.C. and Dolores Fuller. Wherefore, original jurisdiction lies with the Henderson Justice Court, not Las Vegas.

When DR was called to testify she claimed that McMahon did not loan her \$1000 and further claimed that it wasn't SK who informed her of the lewd event, rather her son Ryan told her. DR went on to testify that McMahon had known her and SK for several years and was shocked to hear of the lewd event. However, like LRK, DR possessed a motive to lie, a free trip back to Las Vegas to gamble, the financial stipend by State, and not repaying McMahon the \$1000.

When SK testified, she claimed that she was not a babysitter for RM, rather a child friend, yet the State intentionally misrepresented the truth to justify a common plan, scheme and design for enjoinder of the cases, as SK's testimony had nothing to do with EH's and vice versa as neither case was cross admissible. SK couldn't recall the

surrounding of Dr. P.C. guest bedroom, yet claimed she used the phone and looked out the window, that the bed was a regular size, and the TV was the size of the court TV monitor. When shown pictures of the bedroom, it revealed that the bed was a King size waterbed, the TV was a bigscreen, and that it was impossible to look out the window as she would have to stand on a chair slide open the shutters to look out and there was no phone in the bedroom, which additionally proved SK was lying as in her complaint and prior testimony she claimed that she picked up the phone in the bedroom to call DR and McMahon bribed her with a \$20 bill not to. When SK was impeached for changing her prior statement and preliminary hearing claiming that the lewd touching event lasted for five minutes, then at trial claimed the event lasted thirty minutes. This triggered a sobbing event by SK and prosecutor G.O. on cue turned around to motion the States Victim Assistant with a box of Kleenex, closely followed by the courts bailiff with a box of tissue. This pre-staged best supporting actress event was designed to prejudice McMahon and inflame the passions of the jury, who were shaking their collective heads and staring at McMahon with SKows of disgust. SK, after the onslaught of attention, regained her composure and was asked why she didn't tell her mother immediately thereafter? And like EH claimed that she didn't tell her mother right away because she didn't want to get into trouble, these canned answers, by the prosecution, are systemic in sex cases, to load the lips of witness accusers. Wommer again failed to motion the court to strike the testimony and dismiss the case based upon the jurisdictional defect or misjoinder as Wommer knew that SK was never in McMahon's apartment and the only time EH and SK were together was at RM's 5th birthday party at Sunset Park.

PW, as an ex-prosecutor, additionally knew that the State would use the \$20 bill theory and babysitter ruse of SK as a basis for a common plan, scheme and design on appeal to prevail on enjoinder.

The final State witness was P.S., from SAINT, a counselor and practicing nurse who interviewed EH months after the alleged events and physically examined EH, testifying that EH's hymenal tear was consistent with a sexual assault - as if Vaginas can talk - this junk science analysis was not confirmed by a medical physician in a second opinion, and was designed to further prejudice McMahon as P.S. was a part-time expert witness for the State to testify favorably over (60) sixty times (which is highly doubtful that she declared her earnings on her income tax). Again, Wommer failed to motion the court to disqualify P.S. as an expert witness or the junk science analysis to preserve the record on appeal. Yet in Wommer's unauthorized first-direct appeal filing he raised the ground as to P.S. qualifications as an expert witness and junk science analysis. Wommer further claimed the States case was a "he said, she said."

When the state rested their case-in-chief they failed to meet their burden of proof standard pursuant to NRS 200.366 sexual assault as none of the essential elements of the crime existed: Force, Violence, Threat, Coercion, and Intimidation, as EH freely came and went from her babysitting job over (4) four months and Det. A.C. informed McMahon that the case was not a sexual assault as EH would have called the police immediately, which is why the State offered McMahon a downgraded probational count of statutory sexual seduction and exactly why the State prosecution falsely concealed the exculpatory DNA evidence from the court and jury to secure a conviction at all costs - the fix was in play. All that was gone.

When the defense was called McMahon was the only witness as Wommer failed to subpoena any of the promised alibi witnesses, forensic expert, or private investigator, J.T., to secure the computer IT data and phone record to impeach EH, as she testified that she didn't access sexual chat rooms on McMahon's computer to falsify her age as being 21 and further claimed that she didn't call McMahon's cell phone from her apt. phone, which the Sprint phone record existed to disprove her testimony and credibility.

The State failed to impeach or discredit McMahon's testimony as to EH informing McMahon that she was sexually active with Lewis, her African-American boyfriend, who was not interviewed by Det. AC, or the State, or Wommer, as neither was EH's best girlfriend, Sharona, and cousin Chelsea who spent the night at McMahon's apartment with EH, when McMahon and RM were in New York in October, 2005. Again, had Wommer not acted in the capacity of a second prosecutor and sanitized the taint, lies, faulty DNA and presented the available exculpatory evidence, plea agreement, and a curative instruction on the sexual assault, flight instruction and presented an affirmative defense, in a winnable close case, McMahon would have been acquitted.

McMahon further testified that he in fact loaned DR \$1000 as testified and corroborated by RF, and that McMahon paid EH \$40 a weekend to babysit RM over the (4) four months while he was attending UNLV (what babysitter have you known (non-relative) to babysit a 4 year old child four months for free? When McMahon, RM and friend Tommy went to EH's apartment over a year later to follow upon EH's recantation and

gave EH's neighbor the belated birthday card with a \$20 bill enclosed from McMahon and RM, that innocuous event was taken out of context by the State to claim the \$20 bill theory of SK and EH was a common plan and scheme to justify enjoinder. McMahon also testified that EH had a menstrual period on his bedding in October, 2004 when he and RM were in New York, and that Det. AC lied to McMahon about calling EH and she claimed that she was pregnant by McMahon to secure a DNA buccal swab. McMahon concluded that the jury heard a case of lies from two witness accusers to point their finger at me and cry on cue. Again, Wommer failed to challenge any meritorious issues.

When the court dismissed the jury to deliberate, McMahon in the hallway requested Wommer join him in the restroom to converse in private, yet he scurried into an open elevator, as I was determined to exact some poetic justice. At home McMahon called RM, who was crying, to settle her down and send my love. I also called Wommer to meet me and a couple associates at his office, he refused. When McMahon returned back to court with Dr. P.C., Wommer had the bailiff stand between us. McMahon was found guilty of all seven counts including statutory sexual seduction counts and sexual assault. As Judge Wyzanski in *Twoomey supra* eloquently opined, ("The defense lawyer tossed his unarmed client into an arena full of gladiators and he got slaughtered").

This Honorable Court in *Brown v Barg*, 951 F2d 1011 (9th Cir 1991) dealt with faulty DNA evidence in denying a defendant of a fair trial holding, ("...the prosecutors failure to notify defense counsel of material exculpatory evidence and arguing false evidence to Merit Granting a writ of habeas corpus"). In *Donnelly v DeChristoforo*, 416 US 637, 94 S Ct 1868 (1974) the Court held, (Prosecutorial misconduct justifies a mistrial where it so infects) the trial

with unfairness as to make the resulting conviction a denial of due process").

This Court went on to address fraud upon the court as a constitutional structural error. The Court in *re Levander*, 180 F3d 1114, 1119 (9th Cir 1999), ("Fraud on the court occurs where it can be demonstrated clear and convincingly that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense").

McMahon strongly asserts that government officials cannot intentionally break the law and profit from such lawlessness. The faulty DNA ruse goes to the gravamen of the case and must be central to the reviewing court's consideration to arrest the case. See also *Dickens v Ryan*, 740 P.3d 1302, 1320-21 (9th Cir 2014). The 9th Circuit went on in *United States v Amaral*, 488 F2d 1148, 1152 (9th Cir 1973). ("Scientific evidence, because it is so technical and complex and has a unique capacity to persuade juries requires close scrutiny by a responsible prosecutor"). This Court went on in *US v Del Toro Barboza*, 673 Fd3 1136, 1150 (9th Cir 2002). (Prosecutorial misconduct is a ground for reversal only if it was so gross as probably to prejudice the defendant and the prejudice has not been neutralized by the trial judge).

The Ninth Circuit Court in *England v Doyle*, 281 F2d 304,

309 (9th Cir 1960) put in place a four prong test similar to Hazel-Atlas as to what constitutes fraud;

First: The power to set aside a judgment exists in every court;
Second; In whichever court the fraud was committed the court should consider the matter;

Third: While parties have the right to file a motion requesting the court set aside a judgment procured by fraud the court may also proceed on its own motion. Indeed one court stated that the facts that had come to its attention not only justify the inquiry but impose upon us the duty to make it even though no party to the original cause should be willing to cooperate, to the ends that the records of the court might be purged of fraud, if any should be found to exist; and

Fourth: Unlike just about every other remedy or claim existing, under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration on the matter. The logic is clear, "[T]he law favors discovery and correctness of corruption of the judicial process even more than it requires an end to lawsuits."

McMahon strongly asserts that he has met all the prongs of cause and prejudice based upon supporting prima facie evidence, as the instant case falls squarely within the class of "constitutional structural error". Whereas, until a whistle-blower, as McMahon uncovers the fraud and exposes the parties, and brings the matter to the

attention of the court, the proceedings cannot be said to have been fair and no court can shield, protect or endorse acts upsetting the judicial machinery that citizens rely upon to render just verdicts, nor grant windfalls to the State.

The Innocence Project has successfully obtained the release of over 500 wrongfully convicted prisoners. According to DNA expert, Barry Scheck, the main culprit is faulty DNA evidence (as in the instant case). Another component of false imprisonment was the courts failure to conduct an evidentiary hearing to ferret out the truth and inspect the requisite DNA evidence used to convict. McMahon strongly asserts that another key ingredient is rogue prosecutors playing "hide'n' seek" with exculpatory evidence, as these fascists consider prisoners as collateral damage, the price of doing business.

A case on all 4s with McMahon's, and a shining example of the State respondents vindictive prosecutorial misconduct in misrepresenting and falsifying DNA evidence before a jury occurred in *Miller v Pate*, 386 US 2, 87 S Ct 765 (1972). In *Miller* the prosecutor knowingly misrepresented a pair of mens under shorts as blood spots. In truth the prosecutor knew that the red stains were paint. Pate was convicted and sentenced to death. 12 years after numerous appeals the Court of Appeals reversed and the United States Supreme Court granted certiorari to consider whether the trial led to the conviction was in fact constitutionally valid. The Court concluded it was not. The Court as far back as 1935 in *Bergerv U.S.*, 295 US 78; 88 (1935). ("Prosecutors may not use 'improper methods' calculated

to produce a wrongful conviction").

The Court went on in *McDonald v Brown*, _____ US _____ 130 S Ct 665 (2010), ("... the evidence must be construed favoring innocence rather than in a manner favoring the prosecution when extrinsic fraud by the government advances and colors the evidence... the light of the prosecution is turned off"). The Court in *Giglio v United States*, 405 US 150, 154, 92 S Ct 1172 (1959), ("[W]here the prosecutor deceived a jury regarding the true nature of evidence reversal is required, if the evidence could in any reasonable likelihood have affected the judgment of the jury"). The Court went on to hold in *Napue*, 360 US at 271-72, ("A conviction obtained through the use of false evidence known to be so by the representatives of the State violates Fourteenth Amendment"). In the Courts litmus test: (1) The testimony was actually false (2) the prosecutor knew it was false, and (3) False testimony was material. Additionally holding, ("[T]he same result obtains when the State, although not soliciting false evidence allows it to go uncorrected when it appears... the root principle is that in a civilized society under a democratic government must always be accountable to the judiciary for a man's imprisonment if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release").

Nearly all of the principles in civil and criminal law that govern a claim of fraud upon the Court came from the Courts decision in *Hazel-Atlas Glass Co. v Hartford Empire Co.*, 322 US 238 (1944). The Court in an opinion by Justice Black held that

a judgment must be vacated. (a claim brought 10 years after the judgment was entered) holding. ("... tampering with the administration of justice in the manner indisputably shown here involves far more than injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public institutions in which fraud cannot complacently be tolerated consistently with the good order of society it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud"). The Court directed the 3rd Circuit to vacate the 1932 judgment (12 years earlier) and to direct court to deny any relief to Hartford.

The Nevada Supreme Court, in a long of venerable cases, has taken up these Brady violations, holding. The State is obligated to disclose evidence favorable to the defense, when the evidence is material to guilt. It is noteworthy that a courts consideration of whether the state adequately disclosed information under Brady requires both factual circumstances and legal issues. In *Mazzan v. Warden Ely State Prison*, 116 Nev 48, 66 (2000), (failures to disclose Brady material is a due process violation regardless of a prosecutors motive. See also *Jimenez v State*, 112 Nev. 610, 618-19 (1997),

In *Mazzan*. ("[T]here are three components to a Brady violation: (1) the evidence at issue is favorable to the accused; (2) the evidence was withheld by the State either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." 116 Nev at 67.

"Where the State fails to provide evidence which the defense did not request or requested generally, it is a constitutional error if the omitted evidence creates a reasonable doubt which did not otherwise exist. In other words, evidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed."

With the alarm of faulty DNA evidence cases in Nevada the legislature responded with NRS 176.0918(3)(c) the type of Genetic Marker Analysis and forensic examination required to add or eliminate faulty DNA; opinions which were operable at trial yet mentally challenged convicted felon attorney, Wommer, who was in on the fix, failed to put the States case to a meaningful adversarial testing. In fact, in Wommer's criminal trial his defense of "diminished capacity" in not knowing or understanding the law was in stark contrast to what he told McMahon when retained for \$25,000, and moreover further contradicted his testimony in the December 16, 2001 evidentiary hearing - before his friend ex-prosecutor judge Barker - boasting about his 30 year resumé as a private attorney and government prosecutor, both State and Federal, possessing knowledge of the law. However, what Wommer failed to mention is the myriad of clients' lives he destroyed and the degree of fraud he exacted on the system to profit. The court found his representation in the instant case as tactical and strategic and the Nevada Supreme Court denied a rehearing contrary to the courts holdings in Mann v State, 118 Nev 351, 353, 46 P3d 1228-29 (2002) warranting a rehearing (See Ex[#] 68).

Wherefore, there is no legal question in dispute that State prosecutors intentionally created and manufactured faulty DNA

evidence to secure a conviction pursuant to Napue, Giglio standards and this newly discovered Brady evidence meets the courts test to set aside the verdict. This farce and sham case is not only an embarrassment to the State of Nevada's criminal justice system, and glaringly reflects an abuse of government, it showcases the dept. and profundity rogue prosecutors will slither to secure the convictions of innocent citizens. The Model Rules of Professional Conduct Rule 3.8: The prosecutor in a criminal case shall; (a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. Prosecutors are subject to constraints and responsibilities that don't apply to other lawyers and have a duty to correct plain error. However, in reality these rules and words are meaningless unless a panel holds the prosecutor accountable and to date [n]o Clark County District Attorney or Deputy has been sanctioned by the bar assn. or courts for violations.

McMahon could string cite decisions by dissenting jurist as to prosecutorial misconduct in all 11 Circuit Courts, however for the sake of motioning the court for an enlargement of pages the 9th Circuit alone has addressed vindictive prosecution. In *Trillo v Biter*, 754 F3d 1085 (9th Cir 2014). Habeas petitions are only granted for prosecutorial misconduct when the misconduct the petitioner, To do that the court looks at: (1) weight of the evidence submitted against a defendant; (2) the prominence of the erroneous comments in the entire trial; (3) whether the prosecution misstated the evidence; (4) whether the judge instructed the jury to disregard the improper comments; (5) whether the prosecutor's improper remarks were invited by improper conduct of defense counsel; and (6) whether there

was curative instructions given to the jury. In the instant case: (1) the evidence was non-existent to corroborate either witness accusers accusations, as the case amounted to a testimonial battle, or as Wommer labeled a "he said, she said" case; (2) the prosecutors continued to mislead the jury parading the faulty DNA evidence; (3) the prosecutors intentionally misled the jury of the commingled blood DNA claiming the evidence was the by-product of a hymenal tear of EH by McMahon, knowing full well that the suppressed true evidence was the by-product of EH's menstrual discharge on McMahon's bedding; (4) the judge failed to suppress the innocuous DNA evidence sua sponte; (5) Wommer, knowing full well that the commingled DNA evidence was bogus, yet failed to motion the court to suppress the evidence and this error greatly prejudiced McMahon; and (6) Wommer had numerous opportunities to protect McMahon's right to a fair trial and present curative instructions to the jury of sexual assault and flight to correct plain error.

The Ninth Circuit has ruled in a number of cases in regard to the apprehension of appearance of prosecutorial vindictiveness is sufficient to warrant a dismissal when a defendant is thwarted in the exercise of his rights. The mere appearance of vindictiveness is enough to place the burden on the prosecution (to show a legitimate motive). See *U.S. v Ruesga Martinez*, 534 F2d 1367, 1369 (9th Cir 1976), in *U.S. v Groves*, 571 F2d 450 (9th Cir 1978), the Court relying on *Jamison* ruled that the government bore the heavy burden of proving that any increase in the severity of the alleged charges was not motivated by a vindictive purpose. This, in addition to mere appearances, this proceeding involves an explicit threat the gravamen of which is an intent to retaliate for the exercise of

of a right. As the Court in *U.S. v DeMarco* so aptly stated, "[t]he day our constitution permits prosecutors to deter defendants from exercising any and all of their guaranteed rights by threatening them with new charges fortunately has not yet arrived." *U.S. v. Alvarado-Sandaval*, 557 F2d 645 (9th Cir 1977). The prosecutorial vindictiveness not vindictiveness itself, is the touchstone, ... " *U.S. v DeMarco*, 550 F2d 1224, 1227 (9th Cir 1977). ("Apprehension of vindictiveness" and the "appearance of vindictiveness" are adequate to bring the case squarely within *Blackledge v. Perry* (citation omitted)).

As Napue reiterated "the principle that a State may not knowingly use false evidence, including false evidence, to obtain a tainted conviction... required a reversal of the petitioner's conviction". It is considered fraud upon the court when it involves, or is suborned by an attorney. See generally *Moore's Federal Practice* supra at §66.21(4)(b)(c). "Involvement of an attorney as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud upon the court." See *Hayes v Brown*, 349 F3d 972, 984 (9th Cir 2005) (en banc). In *United States v Agurs*, 427 US 97, 103, 96 S Ct 2392 (1976). "Under this materiality standard, [t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence".

The Honorable Court in *Horton v Mayle*, 408 F3d 570, 578 (9th Cir 2005) held the governments failure to disclose a leniency deal with a defendant was reversible error. The Court went on to

hold that to establish prejudice from incorrect advice resulting in rejection of a plea offer petitioner "must show that there is a reasonable probability that he would have accepted the plea agreement had he received accurate advice from his attorney. *Hoffman v. Agrave*, 455 F3d 926, 941-42 (9th Cir. 2006). Had Wommer not rendered faulty legal advice for McMahon to reject the downgraded probational plea agreement, McMahon would have instituted an Alford plea avoided prison and retained a competent law firm to appeal the jurisdictional defect and would have prevailed in a void judgment. See Exs 27-28. (See also Exs #2-3, 7-8, 15, 34-39, 42 and 68).

McMahon strongly asserts that Wommer's deficient performance under Strickland standards is a mixed question of fact and law as the cumulative effect of these multiple errors and omissions could have been challenged by a mentally competent defense counsel and the cause and prejudice constituted a constructive denial of the actual assistance of counsel. In *Plumlee v Sue Del Papa*, 426 F3d 1095 (CA9 2005) the Court held, "[N]o... retreat from the principle that the defendant is entitled to an attorney who acted as his advocate, or a rejection of the theory that an attorney-client relationship can so dysfunctional as to render counsel unable to provide the constitutional minimum of adequate representation in the role of an advocate". See *Brown v Craven*, 424 F2d 1166, 1170 (9th Cir 1970).

A *denovo* review for a mixed question of fact and law in a 6th amendment IAC claim is left up to the sound discretion of the court as addressed in *Paige v Schriro*, 648 F. Supp. 2d 1151 (D. Ariz. 2009). The ultimate question of whether counsel was ineffective is a mixed question of law and fact to which AEDPA presumption of correctness does not apply,

28 U.S.C. § 2254(e)(1) "consequently a federal court reviewing a State court conclusion of a mixed issue involving both fact and law must first separate the legal conclusion from the factual determination that underlie it." See also *Lambert v Blodgett*, 393 F3d 943, 978 (9th Cir 2004). At sentencing judge Barker was again given faulty DNA information by DDA G.O. asserting that the sexual assault counts should stand as the DNA evidence against McMahon was 1-38,000 to support a sexual assault conviction. This extrinsic fraud upon the court, coupled with McMahon firing Wommer, in allocution with judge Barker, putting the court on notice of the conflict of interest. The United States Supreme Court in *Townsend v Sain*, 334 US 736, 68 S Ct 1252 (1998) holding, (Sentence information needs to be accurate and due process requires that a convicted person not be sentenced on "materially untrue" assumptions or "misinformation". Moreover, judge Barker had a duty to conduct a Garcia hearing once McMahon put the court on notice of the conflict of interest as prejudice is presumed.

This Honorable Court in *Crandell v Bunnell*, 23 F3d 754 (9th Cir 1984) (per curiam). (A defendant cannot be forced to choose between an incompetent counsel, who was legally discharged of his duties or proceed in proper person, implicated the fundamental fairness and accuracy of the criminal proceedings, a showing of prejudice is therefore required. Under Nevada Rules of Professional Conduct Rule (16) judge Barker created a conflict of interest and under NRAP(8)(ii) directs the court to appoint counsel other than counsel for the defense in the proceeding leading to the conviction to represent defendant in a direct appeal.

Notwithstanding, these Nevada Rules of Professional Conduct equally attached to Wommer as Rule 8.4 Misconduct. It is professional misconduct

For a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects; (c) Engage in conduct that is prejudicial to the administration of justice; (d) a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if; (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyers physical or mental condition impairs the lawyers ability to represent the clients or (3) the lawyer is discharged (d) upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a clients' interests, such as giving notice to the client allowing time for employment of a other counsel and surrounding papers.

Reflective of Wommer's disregard for any Rules of Conduct which in the instant case Wommer broke every Rule known, wherefore rules do not apply to Wommer, or the State prosecutors, only to citizens. As Justice Brennan and Marshall joined in dissent in *Jones v Barnes*, 463 US 745 (1993). (I cannot accept the notion that lawyers are part of the punishment a person receives merely for being accused of a crime).

This extends to the State trial prosecutors in misstating the DNA evidence to the jury. It is considered fraud upon the court when it involves or is suborned by an attorney. See generally *Moore's Federal Practice*, supra at §60.21(4)(b)(c). "Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court." *Great Coastal Express, Inc. v Int'l Bhd of Teamsters*, 675 F2d 1349, 1357 (4th Cir 1982). To prevail on a

Napue claim, Petitioner must show that (1) the testimony was actually false, (2) the prosecution knew, or should have known, that the testimony was false, and (3) the false testimony was material. *Hayes v. Brown*, 399 F3d 972, 984 (9th Cir 2005) (en banc) False testimony is material if there is "any reasonable likelihood that [it] could have affected the judgment of the jury" in which case the conviction must be set aside. *United States v. Agurs*, 427 US 97, 103, 96 S Ct 2392, 49 L Ed 2d 342 (1976). "Under this materiality standard, [t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Hayes*, 399 F3d at 984. The government of a strong and free nation does not need convictions based upon such prosecutorial vindictiveness and misconduct.

At trial prosecutors G.O. and P.S. misstated the true nature of the DNA evidence inferring to the jury that the commingled blood DNA was 1-38,000 and 1-12,000 against McMahon, knowing full well that the true blood spots on States Ex# 32-33 were the by-product of E.H.'s blood menstrual period discharge. In determining if a defendant's due process rights were violated by a prosecutor's remarks during closing argument a reviewing court "must consider the probable effect [of] the prosecutor's [comments] on the jury's ability to judge the evidence fairly." *United States v. Young*, 470 US 1, 12, 105 S Ct 1038 (1985) In *Darden v. Wainwright*, 477 US 168, 181, 106 S Ct 2464 (1986), In *Darden* for example, the Court assessed the fairness of the trial by considering among other circumstances, whether the prosecutor's comments manipulated or misstated the evidence; whether the trial court gave a curative instruction; and the weight of the evidence against the accused, 477 US at 181-82.

Accordingly, the Clark County District Attorney's Office engaged in the fraudulent concealment of faulty DNA evidence and deceptive tactics pursuant to Brady, Napue, Giglio and the suppression of the true evidence, to color the verdict, rendering the trial wholly unreliable and not worthy of confidence violating McMahon's Fifth, sixth and fourteenth amendments to the State and Federal Constitution.

REASONS FOR GRANTING PETITION

ARGUMENT FOUR

EIGHTH JUDICIAL DISTRICT COURT JUDGE, DAVID BARKER, COMMITTED JUDICIAL BIAS BY FORCING LEGALLY DISCHARGED, RETAINED TRIAL ATTORNEY, PAUL WOMMER, BACK ON TO McMAHON'S FIRST-DIRECT APPEAL CREATING A CLEAR CONFLICT OF INTEREST VIOLATING BOTH ABA MODEL RULES OF PROFESSIONAL CONDUCT AND McMAHON'S DUE PROCESS AND EQUAL PROTECTION CLAUSE GUARANTEE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO A PROCEDURALLY FULL AND FAIR FIRST-DIRECT APPEAL.

McMahon strongly asserts that there is no legal question in dispute that a judge cannot force a legally discharged retained trial attorney back on to an unwilling clients criminal case as McMahon put both the court and Wommer on notice filing three separate pro se motions to: (1) Withdraw Wommer as counsel; (2) Appoint a conflict-free counsel; and (3) or conduct a Feratta hearing to proceed pro se. McMahon additionally forwarded correspondence to both judge Barker, complaining of the conflict of interest, and Wommer requesting that he withdraw and return McMahon's case file. (See Ex's # 47 and 51).

McMahon also filed a pro se writ of Mandamus to the Nevada Supreme Court to arrest the case, the Court denied the petition under Rule 46(b) holding the writ was a fugitive document as Wommer was the attorney of record, directing McMahon to contact Wommer to resolve the matter. McMahon additionally filed complaints against Wommer and Judge Barker

with the Nevada Bar Assn. and Commission on Judicial Discipline to no avail. The State Bar Assn. additionally failed to disclose numerous complaints against Wommer by former clients alleging failure to communicate during pre-trial, trial and post-conviction pursuant to NV SCT Rule #ADKT-411, to perfect/correct the direct-appeal, as well as various complaints by females alleging Wommer solicited for sexual favors. In Wommer's disbarment proceedings these complaints were finally disclosed. See In Re Discipline of Wommer No. 64253 2013 WL 716 2256 at 1 (Nev. Dec. 17, 2013). (See Ex's #52-53, 68).

Wommer wasn't finished screwing over McMahon as in his Case Appeal Statement/Notice of Appearance of Counsel claiming that he was retained by McMahon at the appellate level, which is false and belied by the record, and retained at the lower level, which is true, thereby falsifying his claim and committing fraud upon the court. Then Wommer filed a Notice of Appeal and Motion for Appointment of Counsel, in the district court, requesting the court appoint him back onto the case to prosecute McMahon's first-direct appeal, claiming that he was appointed at the lower level, which is false and belied by the record, as McMahon retained Wommer as counsel for \$25,000. Wommer additionally claimed that he was close to the case and the issues involved, which is in stark contrast to Wommer's 30+ errors and omissions acting in the capacity as a second prosecutor. (See Ex's 46-47).

Judge Barker bought Wommer's bullshit lies and appointed him back to McMahon's case to commit more fraud upon the court and to constructively hijack McMahon's first-direct appeal as his central reason was first to profit and second to cover up his errors and

omissions at the lower level, as his modus operandi to profit from direct appeals and defraud Nevada taxpayers of hundreds of thousands of dollars as reported in several articles by the Las Vegas Review-Journal. Judge Barker stayed McMahon's three motions and appointed Wommer back onto the case creating a clear conflict of interest. (See Ex#68).

A year later on May 04, 2009 Wommer finally file the unauthorized first-direct appeal to the Nevada Supreme Court. Reflective of his brief he failed to raise a single ground in respect to his errors and omissions and failed to preserve the record at the lower level for appellate review being: Want of subject-matter jurisdiction; the warrantless arrest and no probable cause Gernstein hearing; State prosecutors fraudulent concealment of exculpatory commingled DNA evidence, yet in his unauthorized first-direct appeal Wommer raised a ground of retroactive joinder, inferring that at some point joinder was proper, then later it was not, which is wholly erroneous and fatally flawed as joinder of the two independent cases was never legally proper and Wommer failed to sever the cases allowing the State prosecutors to infer prior bad act evidence.

In the States answer brief, rife with lies, inaccuracies and more salacious legal fiction, claiming that both EH and SK were babysitters for McMahon and both were bribed with a \$20 dollar bill to justify a common plan, scheme and designed to justify joinder. Claims previously addressed in TT and belied by the facts and record. The States campaign of lies and bullshit was designed on appeal to withstand any rebuttal by Wommer as the States brief was not served on either Wommer or McMahon, as mandated by NRAP Rule (31), instead, by design,

in the States Certificate of Service they intentionally served their brief on the Law Office of Christall & Saggese, to bar any Filing of a Reply Brief by Wommer to rebutt the States campaign of lies and fraud upon the court which the Nevada Supreme Court relied upon to deny Wommer's unauthorized First-direct appeal brief. Moreover, Wommer failed to file an opposition motion back to the Nevada Supreme Court to challenge NRAP (31) and protect McMahon's rights to a procedurally full and fair direct appeal.

There is no legal question in dispute that the States Answer Brief should have been disqualified pursuant to NRAP as procedurally null and void which equally attaches to the Nevada Supreme Courts Order of Affirmance and now requires this reviewing court to correct all plain error under Hazel-Atlas Fraud review as no time frame bars consideration. However, rule violations do not apply to Wommer or rogue prosecutors, only to pro se petitioners.

Judge Barker finally ruled on McMahon's three pro se motions, filed on September 28, 2008, denying the motions. In December, 2009 McMahon finally received correspondence from Wommer, returning McMahon's partial file, absent EH's voluntary statement of the menstrual period discharge on States Ex's 32-33, McMahon's bedding, and reflective of Wommer's handwritten postit notes attached to documents, in stark contrast to his testimony in district court minutes, claiming that he didn't receive McMahon's pro se motions, which further confirms Wommer's incessant lies and fraud upon the court to suborn perjury in open court and in brief filings. (See Ex's # 47 and 65).

Again, what is equally disturbing is Federal Public Defender, J.K., in his post-conviction habeas petition raised one narrow ground of Wommer's

6th Amendment IAC asserting that Wommer constructively hijacked McMahon's first-direct appeal, J.K. possessed McMahon entire case file and failing to challenge either Wommer's multiple errors and omissions which constituted reversible error or the States campaign of lies and claims of possessing an arrest warrant, probable cause and jurisdictional defect, not to mention their fraud upon the court by fraudulent concealment of faulty DNA evidence, all constitutional structural errors which U.S. Dist. Ct. Judge Gordon failed to address and found no fault in any of Wommer's errors or omissions, denying the petition and COA. These eagle eyed lawyers need corrective lens when a pro se petitioner can discover these structural errors, which again, requires this reviewing court to adjudge. (See Ex#10).

The degree of judicial bias in the instant case is glaring as held by the Court in *Sullivan v Louisiana*, 508 US 275, 279, 113 S Ct (1993). (Judicial bias, if proven, requires automatic reversal and is not subject to the harmless error review like most trial errors). The Court went on in *Johnson v United States*, 520 US 461, 468, 117 S Ct 1549 (1997). (A bias judge is a structural error requiring automatic reversal. These holdings came out of the Courts decision in *Vasquez v Hillary*, 429 US 254, 263, 106 S Ct 617 (1986) whereby again the Court held bias is a structural error. ("Bias when it is at work will not announce itself in either the judges rulings or his rationale. When the trial judge is "discovered to have some bias for rendering a biased judgment" his actual motivations are "hidden from view". However, Judge Barker's bias was overt in appointing his friend and ex-prosecutor confident, Wommer back onto McMahon's case to prosecute the first-direct appeal.

At the Dec. 16, 2011 Evidentiary Hearing challenging Wommer's

6th Amendments IAC claims under Strickland Standards, clearly proved that Wommer's representation fell below an objective standard of reasonableness to violate McMahon's right to a competent counsel. The hearing failed to address the fraudulent concealment of faulty DNA evidence as Wommer and the State played "hide'n'seek" with exculpatory evidence of EH's voluntary statement claiming she had a menstrual period discharge on McMahon's bedding to render McMahon's one year timeframe external to the defense. The hearing additionally failed to address the fact that under the "cause and prejudice" test that McMahon cannot be held responsible for failing to timely address the structural errors as the external impediments relation back to Wommer's unauthorized first-direct appeal omissions. See *Coleman v Thompson*, 501 US 722, 111 S Ct 2546, 2566 (1991).

The Ninth Circuit Court in *United States v Brown*, 785 F3d 1337 (9th Cir 2015) held a defendant enjoys a constitutional right to discharge his retained counsel for any reason... the governing question is whether the conflict between counsel and client is so extreme as to constitute a constructive denial of counsel altogether. To determine if the conflict is severe enough to warrant substitution under these circumstances the court considers: (1) the timeliness of the substitution motion and the extent of the resulting inconvenience or delay (2) the adequacy of the district courts' inquiry into the defendants complaint, and (3) whether the conflict was so great that it prevented an adequate defense.

McMahon strongly asserts that not only was Wommer mentally incompetent, as testified in his criminal trial by neuropsychologist Dr. Mortillaro, Wommer's "Diminished Capacity" resulted from a 1991 skiing head injury to his frontal-lobe which rendered him impaired and unable to make sound decisions.

Dr. M. goes on to assert that attorneys, as Wommer, suffering from such mental conditions are incapable of mounting an effective defense. Which is reflective of the numerous errors and omissions in the instant case.

Whereas, the sixth amendment made applicable to the States by way of the Due Process Clause of the fourteenth amendment entitles a criminal defendant to the effective assistance of counsel not only at trial but during his first appeal as of right. See *Gideon v. Wainwright*, 372 US 235 (1963). In *Evitts v. Lucey*, 469 US 887 (1965) the Court held. ("In bringing an appeal as of right from his conviction, a criminal defendant is attempting to demonstrate that the conviction with its consequence drastic loss of liberty, is unlawful... nominal representation at trial does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all. A defendant whose lawyer does not provide him with effective assistance on direct appeal and who is prejudiced by the deprivation is thus entitled to a new appeal.

Whereas, the ultimate question in review by this court is to adjudicate the ignored issues and determine whether, but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different. The Nevada Supreme Court has weighed in on this question in *Kirksey v. State*, 112 Nev 980 (1996) holding ("... in making the determination, a court must review the merit on the omitted claim." The Circuit Courts have additionally addressed post-conviction claims and the lawyer's duty to the client. In *U.S. v. Saldevila-Lopez*, 17 F3d 480, 486 (1st Cir 1994). (I[In] order to show that (1) the lawyer could have pursued a plausible alternative strategy or tactic was inherently in conflict with or not undertaken

due to a lawyer's other interests or loyalties"). In *Stalings v US*, 536 F3d 624, 627 (7th Cir 2008). (In assessing whether an attorney missed a "significant and obvious" issue; if so, the court compares the neglected issues to those actually raised, if the ignored issues were clearly stronger than appellant counsel was deficient; to show prejudice a Petitioner must show that there is a "reasonable probability" the omitted claim(s) would have "altered the outcome" of the appeal had it been raised), In *Hawkins v Hannigan*, 185 F3d 1146, 1152 (10th Cir 1999). (Claim of ineffective assistance on appeal is reviewed to determine whether omitted issue was meritorious; if so, the court must determine whether "counsel's failure to raise the claim on direct appeal was deficient and prejudicial"; Failure to raise a "dead bang winner" on appeal constitutes ineffective assistance)

The American Bar Association has taken the position that "when in the estimate of counsel the decision of the client to press a particular contention on appeal, is incorrect [Counsel (460 US 760) has the professional duty to give to the client fully and forcefully an opinion concerning the case and its probable outcome. Counsel's role, however is to advise. The decision is made by the client." ABA Standards for Criminal Justice p. 21. 3.2. Comment for at 21-42 (2d ed 1980).

The United States Supreme Court has set standards for review in respect to 6th Amendment protections of defendants. Justice Blackman's dissent in *Feratta v California*, 397 US 337 with Justice Brennan concurring id at 334, "To force a lawyer on a defendant can only lead him to believe that the law contrives against him... Personal liberties are not rooted in the law of averages. The right to defend is personal the defendant, and not his lawyer or the State, will bear the consequences of a conviction. It is

the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage... his choice must be honored out of "that respect for the individual which is the lifeblood of the law".

The Court went on to hold in *House v Bell*, 547 US 518, 536 (2006) ("In rare cases the principles of comity and finality that inform the concepts of cause and prejudice" must yield to the imperative of correcting a fundamental unjust incarceration." As such this writ of Prohibition is to be decided if McMahon is falsely imprisoned?

In *Murray v Carrier*, 477 US 478, 488, 106 S Ct 2634, 2645 (1986) the Court advanced the external impediments giving exemption to Rule 60(b) constitutional structural errors which could be the factual basis for a claim which was not available to counsel or that some interference by government officials made compliance impracticable. Ergo, had Wommer and State prosecutors not intentionally withheld and fraudulently concealed the exculpatory evidence of EH's menstrual period on McMahon's bedding from the court and jury rendering McMahon unable to discover the true DNA evidence until copies of the documents were brought to McMahon's attention in 2012, years after the trial and Wommer's unauthorized first-direct appeal, these external impediments fraud upon the court would not have survived the crucible of a guilty verdict, notwithstanding the fact that subject-matter jurisdiction in the court of origin justice court renders this case as null and void.

For the courts for the past 16 years to tacitly accept an attorney, or prosecutors, version of evidence is called "Blind Acceptance of the prosecutor's facts" as addressed in *U.S. v Matos*, 905 F2d 30 (CA2 1990). (As to medical evidence unless a forensic examination has been

Conducted under statutory guidelines a prosecutor's theory constitutes hearsay evidence and should not be relied upon, which equally attaches to the faulty DNA evidence in the instant case.

McMahon strongly asserts that the degree of constitutional structural errors overrides any consideration for McMahon to receive authorization from this Honorable Court, as until subject-matter jurisdiction is proven to exist [no] Court has jurisdiction to mandate any provisions, including permission to obtain a second or successive petition. See *Cooper v. Calderon*, 274 F3d 1270 (9th Cir 2001) holding that district courts lack jurisdiction to consider unauthorized successive petitions). When the court of origin Las Vegas Township Justice Court failed to legally establish subject-matter jurisdiction, and the power and authority to act, due to State errors of warrantless arrest and lack of probable cause hearing; the Eighth Judicial District Court; Court of Appeals; Nevada Supreme Court; U.S. District Court; Ninth Circuit Court of Appeals; or the United States Supreme Court, how did these Courts lawfully obtain legal standing?

The United States Supreme Court in *Tyler v Cain*, 533 US 656, 121 S Ct 2478 (2001) explained the exceptions to the rules of a "second or successive" petition meeting external exclusionary standards. Unless it falls within one of the two narrow exceptions. *Id* at 661-62. Not every subsequent petition is classified as "second or successive." Rather the phrase "second or successive" is not defined by AEDPA and it is a "term of art." See *Magwood v Patterson*, 561 US 320, 130 S Ct 2788 (2010). As held by the Court in *In re Olopade*, 403 F3d 159 (3rd Cir 2005). (A second or successive petition does not possess retroactive force on collateral review.

There is no legal question in dispute that McMahon has presented

prima facie evidence in support of his claims which are not belied by the record. Moreover [n]o court has addressed the constitutional structural errors of: Subject-matter jurisdiction; fraud upon the court; Judicial Bias; or, actual innocence. Rather the focus of all post conviction prose petitions by McMahon are central to AEDPA provisions to completely ignore the merits. Notwithstanding, Wommer's unauthorized first-direct appeal and State prosecutors playing "hide'n'seek" with the exculpatory evidence; under this pretext if any reviewing court believes that McMahon received a procedurally full and fair hearing, the jurist needs to change their medication.

This Honorable Courts en banc review to determine Article III Jurisdiction under the factual predicate of § 2244(3)(i), as the claim has been barred discovery by State respondents and courts, rendering McMahon's exercise of due diligence as inoperable. Again, State prosecutors did not legally obtain a conviction in district court supported by the evidence. Wherefore, under 28 U.S.C. § 2244(b)(3)(c) the Court of Appeals views the definition of prima facie evidence as simply sufficient showing of possible merit to warrant fuller exploration by district court; if in light of documents submitted with application it appears reasonably likely that application satisfied stringent requirement for filing of second or successive petition, court of appeals shall grant application. However, in reality, reflective of the boiler plate 1-2 page denials, no magistrate or judge has reviewed the merits of the petition—more smoking mirrors. See *In re Morris*, 328 F3d 139 (5th Cir 2003).

McMahon has submitted almost 200 documents with State and Federal Courts in support. See also *In re Williams*, 330 F3d 277 (9th Cir 2003). (Fed. R. Civ. P. Rule 60(b) motion to vacate judgment denying habeas

is not second or successive habeas petition and should therefore be treated as any motion under Rule 60(b) constitutional structural error. Moreover, in U.S. District Court Case No: 3:24-cv-00292-MMD-CSD Filed on Oct. 18, 2024 the court claimed that the petition was denied on merits in its entirety is both fatally flawed and factually erroneous as none of the merits were addressed, including subject-matter jurisdiction.

In *Dickens v Ryan*, 790 P3d 1302, 1320-21 (9th Cir 2014) the Court addressed newly discovered faulty DNA evidence. The Court went on to hold a habeas petition may present new evidence to the court where petitioners successfully shows cause to overcome procedural default. Whereas, this newly discovered faulty DNA evidence intentionally suppressed and hidden from the court and jury, by both State prosecutors and Wommer warrants relief where it bears on constitutionality of applicants detention.

FRCP 59(c) Relief From Void Order is operable and an extraordinary writ is the correct vehicle and remedy to arrest the case, as until an evidentiary hearing is conducted and a jurisdictional inquiry is ordered this manifest injustice will continue unabated which directly subverts the judicial process. As held by the Court in *Berk v. Illinois*, 359 US 121, 124, 125-29 (1959) An evidentiary hearing must be held by the reviewing court to make an express finding that the conduct forming the basis for the dismissal was willful or done in bad faith, or was deliberate and in contumacious disregard of the courts authority. Appellate courts do not hesitate to reverse and remand for non-compliance with these requirements which equally extends to Justice Courts failure to adhere to

NRS 34.738 to accept lawful jurisdiction. See also *Eureka v. Smith*, 126 P. 65 (1912).

Whereas, a second question of law is required: How is it constitutionally proper, or legal, for a trial/sentencing judge to force a retained/legally discharged attorney back onto a defendants case to prosecute his first-direct appeal? The last time McMahon requested this court in a Writ of Prohibition to arrest the case based upon this very premise this court held pursuant to Rule 46(b) Wommer was my attorney of record and advised McMahon to contact Wommer to resolve the problem denying my pro se petition.

Accordingly, Judge David Barker committed Judicial Bias and grievous constitutional errors to force attorney Wommer back onto the case to prosecute McMahon's first-direct appeal creating a clear conflict of interest, violating both ABA Model Rules of Professional Conduct allowing Wommer to cover up and conceal his cumulative errors and omissions and McMahon's Due Process and Equal Protection Clause Guarantees under Fifth and Fourteenth Amendments as ENJO court has ever held it lawful or permissible for a judge to force an unwilling attorney who was retained and legal discharged back onto a defendants case to constructively hijack and prosecute the first-direct appeal. This would constitute a case of first impression.

REASONS FOR GRANTING PETITION

ARGUMENT FIVE

THE NEVADA SUPREME COURT DENIED THE EMERGENCY WRIT OF HABEAS CORPUS PETITION TO ARREST THE CASE AS THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE WAS ALLOWED TO COMMIT FRAUD UPON THE COURT BY MANUFACTURING A FRAUDULENT APPEAL AND MANIPULATING THE EIGHTH JUDICIAL DISTRICT COURT AND NEVADA DEPARTMENT OF CORRECTIONS, NNCC WARDEN, PERRY RUSSELL, ENGAGED IN RETALIATION AND OBSTRUCTION OF JUSTICE TO VIOLATE McMAHON'S FEDERALLY PROTECTED CONSTITUTIONAL RIGHTS TO DENY McMAHON OF A PROCEDURALLY FULL AND FAIR APPEAL.

McMahon strongly asserts that the enclosed prima facie evidence clearly supports the fact that the Nevada Supreme Court possessed a ministerial duty, to prose petitioner McMahon, to arrest the case for collusion, conspiracy, fraud upon the court and obstruction of justice on behalf of the Clark County District Attorney's Office, which led McMahon to file the said Emergency Motion under 27(e)(2) on June 11, 2024, accompanied by a Motion for Court to Order State Respondents, Clark County District Attorney's Office to produce a valid copy of Arrest Warrant of 2005 for McMahon, and proof of court minutes that a probable cause Gernstein Hearing was timely conducted in justice court between December 12-15, 2005. This claim is based upon the facts and evidence on file with the Clerk of Nevada Supreme Court in Case No. 88814 and the enclosed exhibits.

RELEVANT PROCEDURAL HISTORY

Justice Brennan of the United States Supreme Court eloquently opined: "The beginning of a case usually indicates the results". What began as a manufactured sex case and McMahon being set up effectuating an unwarranted arrest, false imprisonment and want of a probable cause Gernstein hearing, then retaining mentally challenged incompetent attorney Wommer, who acted in the capacity of a second prosecutor when 96 days later at the Preliminary Hearing Las Vegas Township Justice Court Magistrate, Karen Bennett-Haron failed to dismiss the instant case with prejudice for want of subject-matter jurisdiction. These egregious errors and omissions surmounted, culminating with the Clark County District Attorney's Office, and Wommer's, fraudulent concealment of faulty exculpatory DNA evidence as being their plan, scheme and design to intentionally play "hide'n'seek" with the true evidence from the court and jury, which would have exonerated McMahon at trial.

When Judge Barker engaged in Judicial Bias, in post-conviction, to force legally discharged attorney Wommer back onto the case creating a clear conflict of interest allowing Wommer to constructively hijack McMahon's first-direct appeal, engaging in fraud upon the court to profit from misrepresenting clients' cases and covering up his systemic errors and omissions at the lower level on appeal. Notwithstanding the fact that based upon these egregious acts external to McMahon's actions allowing the State Respondents to profit from AEDPA provisions as time barrment of the one year period; procedural default from bringing new claims to light; claim preclusion from re-addressing the claims; and second or successive petition barring

federal review. None of the AEDPA provisions relate to the instant case barring "constitutional structural errors" which pass through the gateway of the "Savings Clause" under FRCP Rule 60(b). AEDPA has infected and poisoned every petition and erroneous court order to deny McMahon relief from custody for false imprisonment.

McMahon has chronicled the relevant procedural history of this extraordinary rare and exceptional case, as the extra-judicial back stories of this manifest of injustice, whereby the impetus relation- back nearly 50 years with the FBI under Jay Edgar Hoover appointing a Deputy Director of the Western District to apprehend the notorious bank robbery crew "Gentlemen Bandits" who embarrassed the FBI by allegedly robbing 32 bank and armored car netting \$9.5 million dollars. Resulting in the bureau manufacturing a bogus case against McMahon in Arizona and the DOJ scrubbing the record of the Gentlemen Bandits.

Culminating decades later in a conspiracy against McMahon by casino executives, on the south end of Las Vegas Blvd., to keep McMahon from constructing Flying Saucer Resorts and the Rapid Transit System (RTS), beginning in the baggage claim descending down 200' of 10 miles of tunnels from McCarran Airport to 5 Hotel Casinos with 10,000 suites and venues giving FSR exclusivity to 1.5 million guests flying in and out of Las Vegas monthly, giving FSR a logistical advantage abutting the airport property on the east side of LV Blvd., enabling guests to avoid taxi cabs and be in their suite and venues within minutes and constructively choking off the Mandalay Group and MGM hotel casinos destroying their bottom line revenue stream. (See Ex's #86).

Unfortunately, FSR and RTS were not constructed, however under Clark County District Attorney, David Rogers, McMahon was targeted

for a criminal conviction at all costs using the ominous low hanging fruit sex cases, absent a scintilla of real or credible evidence, whereas the surrounding casino executives who greased the wheels to put the conspiracy in play.

When Wommer entered federal prison in Butner, N.C., a group of inmates greeted him with an ultimatum: To explain why he set up Johnny McMahon and who else was in on the fix? Paul "the worm" Wommer spilled his guts disclosing the parties involved in the conspiracy, the trail of money and the FBI scrubbing the record of the Gentlemen Bandits. Finally, the motive to frame Johnny E. McMahon was confirmed and came full circle, and thanks to Jay Sarno, who created and designed Caesars Palace and Circus Circus, enabling McMahon to be tutored in creating and designing themed casino resort ventures and working at Caesars in the 70's taking care of Frank Sinatra and the "Rat Pack" McMahon witnessed first-hand the mob's control of Las Vegas and the phrase was coined: "What happens in Vegas, stays in Vegas."

Decades later, on the heels of McMahon prevailing in a writ of Mandamus, by the Honorable James T. Russell, against NNCC warden Perry Russell, et al, and McMahon's 568 page autobiography, "Gentleman Johnny: The Rise and Fall of a Bank Robber," going on line by Reno, NV. a Horney Ned Reed, and the screenplay, ready for helming, McMahon filed a 1983 civil rights complaint against the State of Nevada, et al (the largest personal monetary claim) exceeding \$23 billion dollars to resurrect Flying Saucer Entertainment and the Rapid Transit System (RTS) on the south end of Las Vegas Blvd., abutting Harry Reid Airport. The State Respondents went into damage control moving McMahon around from prison-to-prison, aka "Diesel Therapy." (See Ex's # 96-99).

As to the continuing Relevant Procedural History being:

- (1) Upon McMahon busting and exposing the Clark County District Attorney's Office of Criminal Violations and Obstruction of Justice, government gangster, DA, Steven Wolfson, went into emergency mode, judge shopping to secure a favorable jurist to seal the record, hiding the truth.
- (2) In 2018 McMahon filed Writs of Habeas Corpus and Prohibition against State Respondents, NNCC Warden, Isidro Baca, in the State District Court, Nevada Supreme Court and 9th Circuit Court of Appeals under Case No: A-19-790328-W, Dept. 9 and Court Ordered State Respondents to Answer the petition filed March 7, 2019. All petitions were adjudicated and denied closing all the cases. (See Ex's 93).
- (3) A Writ of Habeas Corpus was forwarded to Clerk of District Court, Steven Grierson, and received on Febr. 05, 2024. The petition languished in the Clerk's office for (22) twenty-two days without being filed. On Febr. 27, 2024 the petition was finally filed under a five year old captioned case number No: A-19-790328-W, Dept. 3. The petition that was forwarded to the Clerk of the Court on Febr. 05, 2024 is captioned Johnny E. McMahon, Petitioner, vs The State of Nevada, et al and has absolutely

(3) Con't: Nothing to do with the closed case and therefore the Clerk of the Court filed the Writ of Habeas Corpus under the wrong case number, as a new case number was required by law. The Clerk not only delayed the filing but again failed to file the habeas petition and related motions under a new case number as required. This bait and switch tactic is more than inadvertence and the mere appearance of injustice to prejudice McMahon, it's systemic with the ongoing collusion and conspiracy orchestrated by DA, SW. McMahon strongly asserts that this ongoing conspiracy was planned and designed to keep the reviewing court from taking judicial notice of the merits of the claim and accompanying motions and for the State Respondents to author the Order for the Court to Deny the petition and motions using ADEPA's procedural default. All accompanied motions were also filed under the 5 year old adjudicated case number. The habeas petition and accompanied motions were forwarded to Dept. 3., Judge Monica Trujillo, it is highly unlikely that the court even laid eyes on the petition or motions. It is also noteworthy that McMahon requested the Clerk of the Court to file and return a stamped filed copy back to McMahon and neither a copy of the petition or related motions were returned back to McMahon until a couple months later. (See Ex's 90-91).

- (4) McMahon forwarded corresponding motions and habeas petition to both Judge Trujillo and Chief Judge Wiese to arrest the case based upon the Clerk's filing errors and jurisdictional claim, all to no avail. (See Ex[#] 92).
- (5) An Order was directed by Judge Trujillo, for Clark County District Attorney's Office to prepare an Order for Court's signature. The Order Denying habeas petition and related motions was identical to the Order used by Judge Kephart on March 7, 2019. States author, DDA Jacob Villani, again using the adjudicated 5 year old case incorrectly captioned the case as Order Denying [Defendants] (sic) Petition for Writ of Habeas Corpus; Firstly, McMahon is the Petitioner, not Defendant; and Second McMahon's presence was waived by court, as designed, as ex parte hearings, of pro se petitioners, are rendered voiceless allowing the State to dictate the proceedings denying McMahon of a procedurally full and fair hearing to make and correct record. The ~~ominous~~ errors and fraud upon the court continued. The 1½ page boilerplate Order failed to address any of the meritorious grounds including the jurisdictional defect, claiming the case was procedurally barred under AEDPA provisions. The bogus Order was dated some (2) two weeks later on May 9, 2024 signed by Judge Trujillo for Sr. Judge, Michael Cherry, which again it is highly unlikely that either Judge laid eyes on the petition and related motions to review the errors and meritorious claims. (See Ex's[#] 93-94).

(6) McMahon being relentless in his pursuit of justice filed complaints with the Chief Judge of Las Vegas Justice Court Cynthia Cruz to take judicial notice of the jurisdictional errors occurring by magistrate KBH, in justice court as the court of origin. Reflective of the judge's response in regard to ex parte communications, this Code doesn't apply to courts who religiously allow prosecutor's ex parte hearings absent petitioners. McMahon Filed a Notice of Appeal, with Clerk of the Nevada Supreme Court, of the errors by the Clerk of Court and Eighth Judicial District Court as well as petition for Writ of Habeas Corpus and Emergency Motion under Rule 27(e)(2), again all to no avail. (See Exs# 95).

McMahon strongly asserts that the Clerk's filing errors run afoul of the NRAP and alone warrants this court to grant the petition ordering at least a new appeal. This ongoing conspiracy against McMahon is continuing unabated allowing the Clark County District Attorney's Office the unfettered right to manipulate both the Clerk of the Court and Eighth Judicial District Court to cover up their criminal enterprise. This conspiracy under RICO Act Violations 18 U.S.C. § 1961, Section 1028 et seq. requires this reviewing court to Order a Special Counsel be appointed to investigate the instant case.

The 9th Circuit Court of Appeals in *Guerrero v Gates*, 442 F3d 697 (9th Cir 2006) held, (Relationship among predicate acts to prove a pattern of racketeering activity for purpose of RICO Act, plaintiff or prosecutor must show that predicate acts of racketeering activity are

related and that they amount to, or pose a threat of continued criminal activity, it is reasonable to infer that flexible approach is intended and legislative history reveals intent to require showing of continuity plus relationship reveals intent. See also H.S. Inc v Northwestern Bell Tel. Co., 492 US 229, 109 S Ct 2893 (1989).

McMahon strongly asserts that based upon the aforementioned grounds and prima facie evidence in support that McMahon can collaterally attack his conviction and sentence in perpetuity or give this Honorable Court to correct their erroneous opinion of 2024 to adjudge the predicate acts of the Clark County District Attorney's Office to commit fraud upon the courts and obstruction of justice as this continued pattern of racketeering under RICO Act Violations continue to pose an imminent threat to Nevada citizens by both Clark County District Attorney's Office and Eighth Judicial District Court sanctioning this criminal enterprise as their primary interest is to continue to Deny McMahon of the justice owed him and to the case, which again warrants this reviewing Court to appoint a Special Counsel to investigate and indict all responsible parties in this pattern of abuse of the Writ, retaliation and obstruction of justice to run roughshod over McMahon's constitutional rights. There is no legal question in dispute that Nevada taxpayers did not sign up to fund such a criminal enterprise.

McMahon in his Justice for Johnny.com have requested the Las Vegas Review-Journal and Reno Gazette-Journal to investigate and report the events and numerous related cases systemic to the instant case, yet the collective media has steadfastly refused.

The widespread depth and breath of Keeping the public informed and hidden involves government threats and reprisals. The only way to force justice is by open revolt, protests and influential law firms driving the vehicle as opposed to pro se prisoners who are treated like dog shit on a waffle tennis shoe supported by statistics.

Accordingly, Nevada Supreme Court Denied the Emergency Writ of Habeas Corpus Petition to Arrest Case and allowed Clark County District Attorney's Office to manipulate the legal system and this renewed Emergency Writ now warrants this Court to review the case and correct all erroneous opinions and GRANT Relief Requested.

CLOSING ARGUMENTS

Based upon the State Respondents continuous acts to utterly annihilate McMahon's constitutional rights in such a manner to abuse their government power and authority and the courts allowing them to side step the mandated sequence of events from first certifying the question of subject-matter jurisdiction to invoke inapplicable AEDPA provisions to violate the law and disregard controlling standards with the courts sponsoring this fascist and unamerican attack violating McMahon's guaranteed constitutional rights. The degree of collusion, in this overt conspiracy, is not only shocking to the conscience, it required a concerted effort on behalf of all parties to lie, cheat, steal and conceal engaging in acts of criminal misconduct which now requires a procedurally full and

fair investigation as again State citizen tax dollars were not earmarked to fund rogue prosecutors to run roughshod over the civil rights of citizens to secure Criminal convictions.

The State Respondents acts have again placed the onus on this reviewing court to certify the question as to subject-matter jurisdiction first, prior to any consideration of AEDPA Provisions or the merits of the case, and Order the Clerks record Unsealed to physically inspect the requisite documents (or lack thereof) of an valid arrest warrant of 2005 for McMahon and Court Minutes of a probable cause Gernstein hearing being conducted between Dec. 12-15, 2005, absent that showing this court is bound by statutory law and controlling res judicata law of the case to either Grant State Respondents legal standing, or declare the case as a void judgment and Grant the Relief Requested.

As to Ground Two the instant case is rife with constitutional structural errors and based upon a clear showing of actual and factual innocence under *Schlup v. Delo* and *McQuiggin v. Perkins*, which bypass AEDPA provisions to address the merits and under the "Savings Clause" of Rule 60(b) prosecutorial misconduct and fraud upon the court are controlling as held by the United States Supreme Court, which equally attaches to Ground Four Judicial Bias denying McMahon of a procedurally full and fair first-direct appeal. Again, AEDPA provisions have no barment when the case reflects external impediments which are not the fault of a defendant and should this reviewing court feel otherwise it would constitute as a case of first impression requiring this court to cite controlling authority to overrule their own law of

the case under stare decisis, and controlling standards of the Ninth Circuit Court of Appeals and United States Supreme Court giving McMahon and attorneys guidance to pursue a Writ of Certiorari.

Based upon the States proposed plea agreement and McMahon's affidavit in support of Wommer's faulty legal advice, McMahon has never been involved in crimes of sexual aberrations, nor was he some street vagrant, and wasn't elected to the Board of Directors of Venture capital companies because he lacked formal education, trust or integrity, nor wasn't an asset possessing business skills reflective of an array of prominent entrepreneurs and billionaires who supported McMahon and signed merchandising contracts. Notwithstanding, several prominent attorneys were involved in FSR and RTS, as former Clark County District Attorney, E.G. Marshall, who hired former mayor, Oscar Goodman, out of law school, Sam Lionel, Lou Weiner and Bob Massey all put their full faith and trust in McMahon to construct FSR and RTS. (See Ex's #86-87).

McMahon strongly asserts that it is highly unlikely that this court, or any jurist in the modern era, has encountered such a criminal case with backstories and as many cumulative errors and omissions by State government officials' criminal law violations of prosecutorial misconduct; State and Federal Rule and Procedural Violations; Fraud Upon the Court; and a client being shackled to a lying lawyer, as Paul Wommer, who couldn't find his ass with a guide dog.

This overt display of abuse of government power is commensurate with Russia's President Vladimir Putin in wrongfully imprisoning Americans, murdering his Generals and poisoning his adversaries as

Alexia Navalny - so what's next for McMahon, arsenic? Which the Forensic evidence will be destroyed as \$550 dollars is set aside in Trust Two Accounts of all inmates to pay for cremations. As Karl Marx proclaimed: "The Road to Hell is Paved with Good Intentions." Over 60 years ago when McMahon was a boy at Father Flanagan's Boys Town and later in Warren Buffets house in Omaha he told me: "Johnny, if you really want to upset someone get rich and ignore them". As such this case is far from over and is just getting warmed up.

Accordingly, the Nevada Supreme Court has a duty to arrest the case based upon the Emergency Motion under Rule 27(e)(2) as the Clark County District Attorney's Office was allowed to commit fraud upon the court by orchestrating and manufacturing a fraudulent appeal manipulating the Eighth Judicial District Court coupled with the continued retaliation of the Nevada Department of Corrections obstruction of justice to violate McMahon's federally protected constitutional rights to Deny McMahon of a procedurally full and fair appeal. McMahon didn't check his constitutional rights in at the prison gates and for the past 6,300 days of being falsely imprisoned, at the age of 74, with no guarantees of parole in 2028 McMahon's stern language and decorum has eroded with the treatment of the courts systemic with pro se prison petitioners, as such giving the State another bite at the apple would be nothing short of a manifest injustice as there is no cure for structural errors, this may well be this courts first granting relief from custody to a pro se petition Writ of Mandamus, however it's the justice that is owed to McMahon and the case.

RELIEF REQUESTED

McMahon Respectfully Requests this Honorable Court
GRANT the Petition for Writ of Mandamus and
ORDER the following:

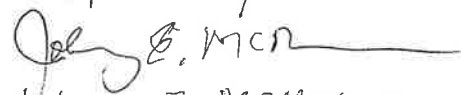
ORDER Judgment of Conviction be Set Aside for
Want of Subject-Matter Jurisdiction and ORDER
McMahon's Immediate Release from Custody; or

ORDER Judgment of Conviction be Set Aside for
Fraud Upon the Court Denying McMahon of a Fair
Trial; or

ORDER Judgment of Conviction be Set Aside for
Judicial Bias and Wommer's Fraud Upon the Court; and

ORDER the Appointment of a Special Counsel to
Investigate the Instant Case; and

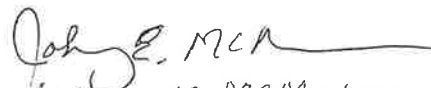
Any other Relief this Court deems Necessary.
IT IS SO PRAYED.

Respectfully submitted,

Johnny E. McMahon
Pro se

VERIFICATION/AFFIRMATION NRS 239.030

McMahon declares under penalty of perjury that the following and foregoing statements, evidence and pleading is true and accurate to the best of his ability and possesses first-hand knowledge of the truth and accuracy of the events and that no documents contain the social security number of anyone.

Dated: day of , 2025.

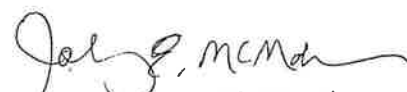

Johnny E. McMahon

CERTIFICATE OF SERVICE

McMahon declares that a true and correct copy of "Emergency Motion Under NRAP 27(c)(2) For Court to Grant Petition for Writ of Mandamus For Want of Subject-Matter Jurisdiction in Less than 14 days" and Declare a Void Judgment Pursuant to NRS 173.035 (absent the exhibits # 3-100 which have been served on the below listed parties on numerous occasions), was placed in U.S. mail postage pre-paid on day of , 2025 to:

Aaron Ford
Attorney General
State of Nevada
100 N. Carson St.
Carson City, NV 89701

Clark County District Attorney's Office
Steven B. Wolfson
200 Lewis Ave.
Las Vegas, NV 89101


Johnny E. McMahon
Pro se