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In Propria Persona

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA Plaintiff, vs. BRIAN ALLEN WILKINS, Defendant.	No. CR 2008-145947-001 SE PETITION FOR POST-CONVICTION RELIEF

1. Petitioner is now on probation. He was sentenced on March 30, 2009 after an unlawfully induced plea of guilty to one (1) count of disorderly conduct and one (1) count of possession of drug paraphernalia; both "undesignated" offenses. Petitioner was sentenced in the Maricopa County Superior Court SE Division with Judge Theresa Sanders presiding.

2. Petitioner is eligible for relief because of the following:

    a. The denial of the constitutional right to representation by a competent lawyer at every critical stage of the proceeding.

    b. The unconstitutional suppression of evidence by the state.

    c. An unlawfully induced plea of guilty or no contest.

    d. The abridgement of any other right guaranteed by the constitution or the laws of this state, or the constitution of the United States, including the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Article 2 of the Constitution of Arizona.

    e. The obstruction by state officials of the right to appeal.

ATTACHMENT (A) FOR POST-CONVICTION RELIEF PETITION

CR2008-145947-001 SE

I. Sixth Amendment Right violations: denial of competent lawyer at every critical stage of proceedings and unlawfully induced plea of guilty.

a. The Petitioner was taken to the Maricopa County Superior Court in Mesa, AZ from jail on July 29, 2008. It was here he "met" Maricopa County public defender, David Allen Brown, for the first time, after already being incarcerated for more than a week. Brown had been assigned to the case.

b. Brown simply told the Petitioner he should sign a plea agreement for one year in prison. This encounter would last less than 45 seconds. Brown did not know what the Petitioner was being charged with nor any facts of the case, and did not tell the Petitioner his name until being asked several times. Once the Petitioner refused to sign a plea agreement, Brown disappeared and had no subsequent contact with the Petitioner.

c. Brown spoke loudly and clearly in the presence of at least 25 other detainees awaiting counsel from a Maricopa County public defender in the "quiet meeting room" down the hall from the judge's courtroom and displayed an "assembly line" mentality and complete disconnection from the Petitioner.

d. A sheet Maricopa County gives indigent defendants entitled "Instructions to Public Defender Clients," (Exhibit 1) first says "[a public defender] will be visiting you at the earliest possible time" in jail, which never happened. It also says, in bold letters "do not discuss your case with anyone except your lawyer," though Brown and the rest of the public defenders, again, spoke loudly and clearly in the presence of at least 25 detainees about the Petitioner's case. Brown's behavior compromised the Petitioner's privacy (*Const. of Ariz. Art. 2 § 8*), as said instructions further state, "anything you say about your case can be used against you in court."

e. Brown took on at least five new cases that day, speaking to all of his "clients" in a non-private, non-confidential manner, offering them all plea deals. A total of four Maricopa

County public defenders similarly briefed their clients, each taking on at least five new cases that day.

f. Brown's caseload for fiscal 2008 vastly exceeded the standards set by the Arizona Supreme Court (*State v. Joe U. Smith, 140 Ariz. 355, 681 P.2d 1374 [1984])* for public defenders, as Brown, according to Jeanne Hyler, a human resources associate with the Maricopa County Public Defender's Office, has been the attorney of record in 2,630 cases between January 2008 and June 2009 (or 146 cases per month). Brown should have either exercised his ethical duty to decline new cases or withdraw from previous engagements until the caseload became manageable enough to constitutionally represent the Petitioner.

g. Since Brown declined the aforementioned legal and ethical avenues in the Petitioner's case, he had the constitutional obligation to represent the Petitioner with diligence and integrity, while at the same time imposing upon himself a concomitant obligation to control his caseload so that he is in a position to do so.

h. Petitioner attempted several times from the Maricopa County Jail to contact Brown at the Maricopa County Public Defender's Office so a motion to modify release conditions could be filed. Petitioner learned of a supervening indictment – which dropped all the Class 3 and 4 felony charges levied by the Tempe Police - because his preliminary hearing, which is required by state law unless an indictment is issued, was vacated on August 1, 2008. Maricopa County failed completely to provide legal representation for the Petitioner for the arraignment hearing on August 11, 2008.

i. From the point of arraignment, right to counsel is clear and failure to appoint counsel for an indigent defendant asked to enter a plea will bar valid conviction in the absence of a knowing and intelligent waiver *(Johnson v. Zerbst, 304 U.S. 458 (1938) and Gideon v. Wainwright, 372 U.S. 335 (1963)).* Further, even an intelligent waiver of timely offered trial counsel does not cure the constitutional infirmity of deprivation of defendant's right to counsel on arraignment. *See Williams v. Alabama, (5th Cir.) 341 F.2d 777 (1965).*

j. For Sixth Amendment purposes, arraignment is a critical stage, at which the defendant has a right to be represented by appointed counsel. *See Hamilton v. Alabama, 368 U.S. 52, 54-55 n. 4 (1961) (stating that, under federal law, "arraignment is a sine qua non to the trial itself"); Valenzuela-Gonzalez v. United States, 915 F.2d 1276, 1279 (9th Cir.1990).*

k. Maricopa County's failure to provide counsel at this critical stage cannot be construed as harmless error because the charges the Petitioner was arraigned on were significantly different (less serious) than the charges the police brought. Counsel, at the arraignment hearing, could have motioned to the Court, to modify the Petitioner's release conditions, based on the lesser charges and the Petitioner's lack of criminal record, etc., which would have freed the Petitioner from jail so he could investigate the case.

l. Between August 1st and 11th, the Petitioner made at least six attempts to contact Brown by phone without success. The Petitioner left several messages on Brown's voicemail and had the secretary at the Maricopa County public defender's office email Brown as well. The Petitioner asked simply for a letter of acknowledgement to be sent to the Maricopa County Jail or, preferably but not likely, for Brown to visit the Petitioner at said jail.

m. Petitioner would have been released from jail several weeks earlier had Brown done the simple task of filing a motion to modify his release conditions after the indictment was issued. Because Petitioner sat in jail for two months after being arrested on July 22, 2008, he lost out on opportunities to possibly find and interview witnesses who may have seen or heard anything from that night, and Petitioner lost opportunities to gather other pertinent evidence as well.

n. Petitioner then had public defender Michael Ziemba assigned to his case in late August 2008.

o. Ziemba, first, violated the court order of Judge David Udall, who presided over the case from August 11-(*circa*) January 5, 2009, by not scheduling a settlement conference prior to the cut-off date of a plea bargain offered by the State on September 22, 2008. In the

September 22 docket (Exhibit 2), the court ordered that "the trial date shall not be continued unless a written motion to continue is filed at least 5 days before the trial. A Continuance will not be granted unless the motion shows that extraordinary circumstances exist." *(Ariz. R. Crim. P. 8.5[a] & [b]).*

p. In a docket dated October 22, 2008 (Exhibit 3), after the plea agreement expired on that same day, the court ordered "setting this matter for firm trial on 1/20/2009 at 10:30 a.m." with the last day being February 7, 2009.

q. The Petitioner returned to Maricopa County Superior Court nearly three months later, January 12, 2009, for a Trial Management Conference. The Petitioner had expected to be selecting jurors and preparing for trial. Judge David Udall had been transferred to the juvenile division of Maricopa County court, so Judge Emmet Ronan now presided over the case, which was unbeknownst to the Petitioner prior to arrival at court.

r. Judge Ronan allowed the trial scheduled for January 20, 2009 to be vacated in favor of a settlement conference on March 2, 2009 (Exhibit 4). There was no written motion with specific reasons justifying the continuance, in violation of *Ariz. R. of Crim. P. 8.5[a]* and *Article 2, Sec. 24 of the Constitution of Arizona*, by either Ziemba or the State, and the vacating of the trial by Judge Ronan violated the court orders of Judge Udall from September 22 and October 22, stated in the foregoing paragraphs.

s. Prosecutor Lynn Krabbe stated in court on January 12, 2009 that the reason for the continuance of the trial is because "I'm retiring soon" and she did not want the hassle of trial. A continuance of a trial can only be granted if the motion is "in writing", and "so long as it serves the interest of justice," if "extraordinary circumstances exist," and the court must consider the defendant's right to a speedy trial and due process. (*Id 8.5[b]).* The Court must also "state the specific reasons for the continuance on the record" (*Id*). None of this was ever done by Ronan, Krabbe, or Ziemba.

t. Krabbe sent summonses to her two civilian witnesses on December 31, 2008 to appear for trial on January 20, 2009, and the remainder of the people Krabbe said she may call to

the stand were Tempe Police officers, as stated in a discovery docket from September 2008; so no "extraordinary circumstances" or court calendar issues existed to vacate Petitioner's constitutional right to a trial that could not have been addressed in those three months. Regardless, no written motion was filed, which is required to continue or vacate a trial. Ronan, Krabbe, and Ziemba simply, wantonly, and unlawfully took the Petitioner's right to a trial away from him.

u. Petitioner informed Ziemba he wanted to motion to dismiss the case, on grounds that the vacating of trial violated several court orders and criminal procedures, and the Petitioner's right to a fair and speedy trial, and the Petitioner was ready and prepared, and waited for three months, for whatever disposition a jury verdict brought on January 20, 2009. The last day trial could occur without violating the Petitioner's right to a speedy trial was February 7, 2009 and the prosecution must be dismissed if a Defendant's speedy trial rights are violated. *Ariz. R. Crim. P. 8.2 (a)(2).*

v. The arbitrary vacating of the Petitioner's trial, with no reasons or written motion given by the Court or prosecution respectively, prejudiced the outcome of the case, in that Petitioner was forced to sign a plea agreement.

w. If...the State move[d] for a 60-day continuance, granting that continuance is not a violation of the right to speedy trial unless the circumstances of the case are such that further delay would endanger the values the right protects. *Barker vs. Wingo, 407 U.S. 522 (1972).* The State wantonly failed to file a written motion to continue the trial in this case, pursuant to Arizona criminal procedure; it simply took the Petitioner's right to a trial away from him.

x. In light of the policies underlying the right to a speedy trial, dismissal must remain…"the only possible remedy" for deprivation of this constitutional right. *Strunk v. United States, 412 U.S. 434 (1973)(quoting Wingo).*

y. Ziemba told the Petitioner "the speedy trial argument won't work" and that no court orders or procedures were violated. The Petitioner was at the mercy of Ziemba, as

Maricopa County had already denied the Petitioner his right to represent himself in this matter (referenced below).

z. Ziemba continually threatened the Petitioner with "prison" if he did not sign the plea. Ziemba, on January 12, 2009, told the Petitioner that there is no way he could avoid prison if the matter went to trial, even though in the August 29, 2008 motion Ziemba filed (Exhibit 5) to modify the Petitioner's release conditions, he specifically argued, "since [Wilkins] is not likely facing a DOC term either upon conviction at trial or under a plea agreement…[he] is not a flight risk."

aa. Ziemba continued forcibly telling the Petitioner to sign the plea agreement to avoid prison, telling the Petitioner the charges could possibly be designated misdemeanors at sentencing, which was not the end result.

bb. Attorneys are permitted, under the ethical rules of conduct which govern their behavior, to strongly advise a client to accept a plea agreement based upon the likelihood of conviction if the person were to go to trial. An attorney may not, however, present to a client a possible sentencing outcome, which is not possible at all.

cc. Though the Petitioner was told that the charges could be designated misdemeanors at sentencing, a third public defender, William Peterson, whom the Petitioner had never met or spoken to prior to Peterson being assigned to represent the Petitioner during the March 2 settlement conference, told the Petitioner at sentencing on March 30, "the plea is written kind of strange, so the charges will likely be 'undesignated' felonies at sentencing, which can turn to misdemeanors upon completion of probation." Maricopa County probation department was also under the impression the charges could be designated misdemeanors, as it was their recommendation to designate the charges misdemeanors (Exhibit 6).

dd. Ziemba, after the Petitioner vehemently insisted he do so, subpoenaed Sprint Communications (Exhibit 7) on October 7, 2008, to obtain phone records of the Petitioner from the night of July 22, 2008; which would have served as a hard copy of the

extortion and physically threatening text message the State's alleged "victim," Michael Arthur Wood, sent to the Petitioner. Ziemba did not list the Petitioner's correct phone number on the subpoena; the number he listed was not even close to that of the Petitioner's, thus he was re-buffed by Sprint regarding the subpoena, and eliminated potentially exculpatory evidence for the Petitioner, even though Petitioner still has the electronic messages stored on said cell phone. Ziemba never bothered motioning to admit, as evidence, the Petitioner's cell phone instead. Said phone is admissible as evidence pursuant to *Ariz. R. Evid. 401 & 402*.

ee. Ziemba re-sent the subpoena with the correct phone number on January 8, 2009 (Exhibit 8), and told the Petitioner on January 12, 2009 in court, that Sprint could not find any records. Sprint Subpoena Compliance Department, on April 28, 2009, informed the Petitioner it normally takes at least two weeks to get an answer regarding subpoenas of phone records, yet Ziemba insisted he got the records back in 2 days, after the Petitioner inquired about the status of the subpoena.

ff. Ziemba also informed the Petitioner on January 12, 2009, that he interviewed the prosecution's star witness. It is the testimony of this one "witness" in which the prosecution based its entire case against the Petitioner on.

gg. The witness, Linnette Wittman, in a deposition according to Ziemba, changed the story she told Tempe police the night of July 22, 2008. She now confirmed, as the Petitioner had been saying all along, that the State's alleged "victim," Wood, bragged about "choking" and "attacking" the Petitioner in his apartment. This was completely different from what Wittman told the police the night the Petitioner was arrested; when she asserted "[the Petitioner] pointed a gun at Wood's head," and further asserted, "[the Petitioner] said "I love you" to Wood."

hh. The Petitioner thought Ziemba would want a trial with this potentially exculpatory evidence (unreliable and inconsistent testimony of Wittman), and the evidence already in place to cast reasonable doubt on the State's case. The Petitioner also revealed to Ziemba

he had found another witness from the night of July 22, 2008, who will substantiate the Petitioner's claim that three consecutive shots were fired from his legally owned and registered pistol, and not three separate occasion shots, as the State and their witness said. Petitioner informed Ziemba that said witness would only be in the United States through the end of January and that Ziemba needed to act immediately to get a deposition. Said witness is now out of the country and can't be contacted as he is not an American citizen. Ziemba seemed to not want to believe the Petitioner when he told him he found this witness.

ii. Ziemba acted as if he had befriended Wittman, telling the Petitioner, "I don't want to use Wittman's testimony against her because she seems like a nice person who has no stake in the outcome on this case." Ziemba was also afraid to question, on the stand, the conduct of the Tempe Police. Ziemba refused when the Petitioner insisted on a trial.

jj. Petitioner - who was now homeless, unemployed and likely not able to survive physically or emotionally waiting until June or July for another trial date after being denied his January 20, 2009 trial - signed the plea agreement on March 2, 2009, even though the plea expired on October 22, 2008. Ziemba and/or prosecutor Lynn Krabbe, simply crossed out the expiration date with a ball-point pen and wrote in a new one to accommodate the agenda (Exhibit 9). In other words, the Petitioner signed an expired plea agreement. Petitioner simply wanted to get the case dispositioned in the Maricopa County Superior Court so he could proceed in petitioning for federal habeas corpus, as the proceedings to that point had violated several rules of criminal procedure and constitutional rights of the Petitioner, and Petitioner has no reason to believe he could get any sort of fair, impartial proceedings in this court. A U.S. District Judge denied habeas corpus until Rule 32 proceedings are exhausted.

kk. Petitioner alleges the actions of Brown and Ziemba, along with Peterson arbitrarily being "handed" the case by Ziemba, with no proper motion to withdraw being filed, resulted in Petitioner's relinquishment of his right to a fair and speedy trial and in being convicted

and sentenced for crimes he was told could possibly be designated misdemeanors at sentencing.

ll. The outcome of the case - in that the Petitioner would have very likely been acquitted at trial, or because of the forced plea, would have "possibly" been convicted of misdemeanors - would have been completely different had the Maricopa County public defenders done their constitutionally-standardized duties in an effective manner. *Strickland vs. Washington, 466 U.S. 668 (1984).*

II. Unconstitutional Suppression of Evidence By The State

a. It is not stated in any court documents pertaining to the Petitioner's criminal case that Wood, the State's alleged "victim," was on probation at the time of July 22, 2008 (Exhibit 10), for "criminal simulation," after being convicted of counterfeiting money. Maricopa County never violated Wood for this incident, and let him off probation two month early on April 28, 2009, and never took this fact into account, further illustrating the racial overtones of the case. Wood and Wittman are "white"; Petitioner is "black."

b. It is not stated in any court dockets that the Petitioner was extorted for $1000 by the states "victim," Wood, which is still documented in the Petitioner's cellular phone. Wood, who had also assaulted and attempted to rob the Petitioner before the Petitioner was able to grab his pistol, clearly states in text messages "One thousand right now or your done," and continues, "I'm talking to police right now. You best bring me cash right now...nigger." Petitioner will provide the electronic device in which these extortion messages are stored at an evidentiary hearing, pursuant to *Ariz. R. Evid. 401*.

c. The State never disclosed in any documents that the Petitioner's pistol was legally owned and registered in his name.

III. The Obstruction By State Officials Of Petitioner's right to Appeal

a. Petitioner was threatened with "prison" by John Wertsching, a Maricopa County Adult Probation supervisor in Mesa, when the Petitioner informed him he would be appealing said plea agreement. Petitioner had this threat of "prison" and Wertsching stating "I own

your life" and "I make the laws for you" on tape, but Wertsching violated the Petitioner's Fourth Amendment rights, illegally seizing and searching the Petitioner, stealing his recording device, and deleting the recordings, thus destroying the evidence of this encounter.

b. Wertsching then hugged and shook the hand of Judge Theresa Sanders' secretary after trying to persuade her to sign an order to send the Petitioner "to prison" because the Petitioner "recorded audio of him" and he was angry because Petitioner said he would appeal the plea agreement on March 30, 2009. Wertsching lied to Sanders' secretary, telling her the Petitioner recorded his court proceedings as well, which was not true. Arizona is a "one-party notification" state in regards to recording. Judge Sanders was the sentencing judge in the criminal case.

IV. Violations of Petitioner's Sixth Amendment Right to Self-Representation and Violations of Fifth, Eighth and Fourteenth Amendment Rights to Due Process

a. Petitioner learned that between August 8 and August 25, 2008, he was not being represented by any Maricopa County public defender, thus his only remedy was defending himself *in propria persona* against these charges brought by the State while he was being incarcerated in Maricopa County jails.

b. On August 16, 2008, the Petitioner sent a *pro-per* motion to modify his release conditions to Judge David K. Udall, who had been assigned as the trial judge, which was received by the Maricopa County Superior Court on August 19, 2008. (Exhibit 11, page 2).

c. In the motion, the Petitioner explained the circumstances of the night of July 22, 2008; explained he has no criminal record; explained he had to defend himself out of necessity after being assaulted by an assailant yelling several types of "nigger" and "monkey" epithets at the Petitioner; explained he was extorted for money by that same assailant (Wood); explained the police malice and deliberate indifference to his constitutional rights during the arrest; explained the charges against him had changed significantly since the indictment was issued; explained he was one semester shy of graduating from

Arizona State University in December of 2008; explained he didn't hurt anyone, or damage or take any property; that he plans to represent himself in this matter; and motioned to be released on his own recognizance or for a significant bond reduction.

d. Petitioner called the public defender's office again on August 22, 2008 to see what the judge had decided once the facts were presented in the motion. Petitioner was told that he was not allowed to represent himself with motions and that the judge, David K. Udall, declined the motion because it was not filed by an attorney.

e. Petitioner explained to the public defender's office he told the judge in the motion that he plans to represent himself, and he has the constitutional right to self-representation, and the Petitioner was not being represented by a public defender at the time, and thus, by default, had to defend himself in court regardless. The Petitioner also made clear that the public defender who had been assigned to him previously (Brown) was only his attorney because of an operation of law and that "the only way I have any chance of clearing my name is to represent myself." This explanation, and the fact the Petitioner had no representation at all at the time, was insufficient to the Maricopa County Superior Court.

f. "The Sixth Amendment, as made applicable to the States by the Fourteenth Amendment, guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so" (*Faretta vs. California, 422 U.S. 806 [1975]).* Petitioner made clear in his *pro-per* motion that he is "preparing to represent himself" as that is the only way he feels he will be properly represented, being he cannot afford justice, in the form of a high-priced attorney and/or paying the $54,000 bond.

g. To succeed on appeal, [Petitioner] must demonstrate that the trial judge failed to make the proper findings on the record regarding [Petitioner's] capacity to waive his right to assistance of counsel. *Id at 835*. Judge Udall simply discarded the Petitioner's *pro-per* motion and deemed it rejected without any review.

h. Failure to sufficiently establish a defendant's capacity to enter a [motion] is reversible error. *See Young v. State, 626 So. 2d 655 (Fla. 1993); Jones v. State, 658 So. 2d 122 (Fla. 2d DCA 1995); Sager v. Maass, 907 F. Supp. 1412 (D. Or. 1995) (holding trial court's failure to hold a hearing to determine [Petitioner's] capacity to represent himself is reversible error), aff'd, 84 F.3d 1212 (9th Cir. 1996).*

i. Between August 8 and August 25, 2008, the Petitioner did not have representation by a Maricopa County public defender, thus his only remedy was self-representation, regardless of the "Faretta" decision. Petitioner spent another month in jail, waiting for the exact same motion he had already filed, to be filed again by a Maricopa County public defender once the public defender's office decided to assign an attorney to the Petitioner in late August. Regardless of the effects of the Court denying the Petitioner his Sixth Amendment rights, the denial, in-and-of itself, is reversible error.

j. Ziemba filed said aforementioned motion to modify the Petitioner's release conditions on August 29, 2008 (Exhibit 5). Said motion was based almost entirely on the *pro-per* motion the Petitioner filed; almost verbatim. Said motion was granted by Judge Udall on September 16, 2008, and the Petitioner's bond was lowered from the unconstitutional $54,000 to $0.

k. Though there is a record of said *pro-per* motion being received by Maricopa County Court on August 19, 2008, there is no copy of the actual motion in Maricopa County court records for whatever reason. Petitioner does possess several handwritten drafts of said motion he wrote while in jail.

l. Petitioner was forced by Maricopa County to be represented by clearly overworked, incompetent public defenders who were working in league with county prosecutors.

m. Petitioner re-alleges he missed many opportunities to interview witnesses because he was denied his right to self-representation (which is reversible error), thus his motion to modify release conditions was rejected, thus he spent an additional month in jail,

allowing more time to pass since the day he was arrested, and being further subject to the confines of Maricopa County Jail.

n. Maricopa County held the Petitioner on an extremely excessive and unconstitutional $54,000 bond set by Maricopa County Judge/Commissioner Miles Nelson, in violation of the *Constitution of Arizona, Art. 2 Sec. 15* and the *Eighth Amendment of the U.S. Constitution*.

o. The only evidence the State offered at the bond hearing on July 22, 2008 in calculating a $54,000 bail amount was "there was a gun involved." The Petitioner did not hurt anyone, take or damage any property, and had no criminal record. Said Maricopa County judge did not follow any sort of sentencing rules and criminal code matrix when setting the arbitrary $54,000 bond, violating the Petitioner's Fifth, Eighth, and Fourteenth Amendment rights to due process. Petitioner knew a Maricopa County Jail detainee who had a prior criminal record, charged with armed robbery, with a $16,000 bond. Said detainee's name will be provided if necessary. Another Defendant, who was released on his own recognizance by the same Commissioner on the same day Petitioner was given a $54,000 bond, had crashed through someone's house with his car, while intoxicated, and had burglarized another home on that same night.

p. Bail set before trial at a figure higher than an amount reasonably calculated to fulfill the purpose of assuring the presence of the defendant is "excessive" under the Eighth Amendment. *Stack v. Boyle, 342 U.S. 5 (1951).*

q. Prosecutor Lynn Krabbe lied in several court documents to further her case against the Petitioner. She presented to the court in her "pre-sentence investigation" (Exhibit 6) an arbitrary "prior criminal charge" of "obtaining game/fish license by fraud," allegedly committed by the Petitioner on February 18, 2005. The crime/charge was completely fabricated by Krabbe and/or Maricopa County probation. Petitioner had just moved back to Arizona in December of 2004, does not fish, and simply and unequivocally is not the person involved in this allegation.

r. Though the police report from when the Petitioner was arrested is completely frivolous, and the subject of a federal lawsuit (*CV-09-752-PHX-MHM*), even if it were true, Krabbe further lied under oath, in a docket dated September 5, 2008 (Exhibit 12), saying there were "multiple victims" in the alleged "crimes" the Petitioner committed on July 22, 2008, citing *State vs. Tschilar, State vs. Aleman, and State vs. Glassel* as references.

s. None of said cases set a precedent indicating prosecutors have the power to arbitrarily conjure a second alleged victim for purposes of "aggravating factors" when there is clearly only one alleged victim in the case. The police report clearly states only one alleged victim. (Exhibit 14). It was this same docket Krabbe used to allege "aggravating circumstances" to "classify" the Petitioner a "dangerous" individual, and that the Petitioner caused "physical, emotional, and financial harm" to Wood, who extorted and assaulted the Petitioner, and was on probation for counterfeiting money.

t. A.R.S.13-702(C) does not list "multiple victims" as an aggravating factor. Rather, the "multiple victims" aggravating factor for non-capital offenses is a court-created factor that has been held to fall within the "catch-all" provision of A.R.S. § 13-702(C)(17) ("Any other factors which the court may deem appropriate to the ends of justice."). *See State v. Tschilar, 200 Ariz. 427, 434-36, ¶¶ 30-34, 27 P.3d 331, 338-40 (App. 2001).* Krabbe simply conjured the aggravated factor of "multiple victims" to further her case against the Petitioner in trying to make him look like a monster, knowing there was only one alleged victim to the alleged crimes.

u. A prosecutor violates a defendant's due process rights when the prosecutor knowingly presents false testimony. *See, e.g., United States v. Sherlock, 962 F.2d 1349, 1364 (9th Cir.) ("Reversal will be required when the prosecution knowingly presents false testimony."), cert. denied, 113 S.Ct. 419 (1992).* It should also be noted that the U.S. Supreme Court granted certiorari on April 20, 2009, in *Pottawattamie County v. McGhee, 08-1065*, an Iowa case in which two men wrongfully convicted of murder sued the

prosecutors. The court will decide whether qualified immunity extends to clearly malicious conduct of prosecutors.

v. Judge Emmet Ronan, who was not the presiding judge in the Petitioner's criminal case until sometime in January, signed an order for Krabbe on September 16, 2008 (Exhibit 13), allowing her to remove grand jury transcripts from court files for observation, while Judge David Udall was the presiding judge of authority in the case. Coincidentally or otherwise, this was not only the same day (September 16) the Petitioner was released from Maricopa County Jail after 58 days, but also Judge Ronan happened to be the new judge who took over the case in January once Udall moved to the juvenile division. No re-assignment order was ever issued by the Criminal Presiding Judge.

w. As previously alleged, it is not stated in any court documents pertaining to the Petitioner's criminal case that Wood, the State's alleged "victim," was on probation at the time of July 22, 2008, for "criminal simulation," after being convicted of counterfeiting money (Exhibit 10). Maricopa County never violated Wood for this incident, and let him off probation two month early on April 28, 2009, and never took this fact into account, further illustrating the racial overtones of the case. Wood and Wittman are "white"; Petitioner is "black."

x. Maricopa County public defenders, prosecutors, and judges willfully and wantonly violated several court orders, rules of criminal procedure, and Petitioner's constitutional right to due process, as if re-alleging and incorporating each and every allegation set forth herein.

y. Rules of Criminal Procedure, federal and state, are "intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare" *Ariz R. Crim. P. 1.2.* A violation of a criminal procedure is a violation of due process.

z. The only question is “whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction and requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.." *Fahy v. Connecticut, 375 U.S. at 24 (1963).*

aa. Petitioner would have been given his constitutionally granted trial by jury for the crimes alleged by the State of Arizona, and believes he would have been acquitted, or at worst, as public defender Ziemba said in his motion, convicted but “not likely to face any prison time.”

3. Petitioner submits Exhibits 1-14 as follows (in chronological order in two PDF documents):
    1. Maricopa County Public Defender Instructions
    2. September 22 docket
    3. October 22 docket
    4. January 12 docket
    5. Ziemba's motion
    6. Probation/Pre-Sentence Report
    7. Ziemba Subpoena Duce Tecum to Sprint #1
    8. Ziemba Subpoena Duce Tecum to Sprint #2
    9. Plea Agreement
    10. Michael Arthur Wood's Sentencing Docket
    11. Docket List For Petitioner's Case
    12. "Multiple Victims" docket by Krabbe
    13. Judge Ronan's Order For Krabbe (docket)
    14. Tempe Police Report Showing One (1) Alleged Victim

4. The only action Petitioner has taken to secure relief from his convictions or sentences was a Petition for Federal Habeas Corpus in the United States District Court for the District of Arizona. The petition was filed on May 13, 2009, *CV-09-927-MHM-MEA*. Said Petition was dismissed on June 3, 2009 for failure to exhaust Rule 32 Post-Conviction Relief proceedings, though Petitioner argued that circumstances [render] such process ineffective to protect the rights of the [petitioner], *28 U.S.C. § 2254(b)(ii),* since several constitutional rights had been blatantly violated up to that point. Petitioner did not appeal the decision and will simply file a new petition, if needed, once Rule 32 is exhausted.
5. Maricopa County failed to provide counsel for the Petitioner's arraignment on August 11, 2008. Petitioner was represented by David Allen Brown at his initial status conference on July 29, 2008 and apparently should have been the Petitioner's representation at arraignment, which did not happen. Petitioner was forced to be represented by Michael Ziemba in all proceedings from late August 2008 – March 1, 2009. William Peterson represented the Petitioner at the Settlement Conference on March 2, 2009 and Sentencing on March 30, 2009.

6. The issues which are raised in this petition have not been finally decided nor raised before because Petitioner was forced to be represented by public defenders who would not raise the issues, thus this is the first opportunity the Petitioner has had to raise said issues.

Because of the foregoing reasons, the relief which the petitioner desires is:

a. Upon ruling in favor of the Petitioner, the vacating, with prejudice, of judgment rendered March 30, 2009, and dismissal, with prejudice of the prosecution and all charges, pursuant to *Ariz. R. Crim. P. 8.6*, thus vacating as void any and all probation stipulations.

b. The previous judgment in this case, from March 30, 2009, would be vacated as a result of Rule 32 proceedings, not by an appellate court ruling. Rule 32 proceedings are "part of the original criminal action and not a separate action," *Ariz. R. Crim. P. 32.3*, therefore is not subject to the "new trial" provision, pursuant to *Ariz. R. Crim. P. 8.2 (c)*.

c. No exclusions of time, pursuant to *Ariz. R. Crim. P. 8.4*, pertain to this case, and *Ariz. R. Crim. P. 8.3(b)(2)* and *8.3(b)(3)* do not pertain to this case.

7. Petitioner is proceeding in propria persona in these proceeding and would only request standby, advisory counsel for said proceedings.

I swear or affirm that this petition includes all the claims and grounds for post-conviction relief that are known to me, that I understand that no further petitions concerning this conviction may be filed on any ground of which I am aware but do not raise at this time, and that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

/s/_____
Brian A. Wilkins
Petitioner for Post-Conviction Relief

Subscribed and sworn to before me on the 13th day of July, 2009.

Copies of Foregoing Petition and Exhibits 1-14 E-mailed/Delivered to:

N. Victor Cook (State's Attorney)
cookv@mcao.maricopa.gov

Terri DeDecker (Rule 32 Management Unit/Criminal Presiding Judge's Office)
tdedecke@superiorcourt.maricopa.gov

July 13, 2009

/s/_____
Brian A. Wilkins
Petitioner for Post-Conviction Relief