

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
MAR 01 2010	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

1 Brian A. Wilkins
 2 Po Box 50854
 3 Phoenix, AZ 85076
 4 480-529-0964
 5 602-628-4295
 6 brianw@operation-nation.com
 7 In Propria Persona Petitioner

8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brian A. Wilkins,
 Petitioner,
 vs.
 Suzanne Shirleson; Erica Freeman
 Respondents,
 AND
 The Attorney General For State of
 Arizona,
 Additional Respondent

CIV '10 04 4 3 PHX MHM MEA

PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. §
2254 BY A PERSON IN STATE
CUSTODY (ON PROBATION)

1 **INTRODUCTION**

2 Petitioner brings this timely Petition for Writ of Habeas Corpus, pursuant to 28
3 *U.S.C. § 2254* and in conformity with local requirements in accordance with *LRCiv*
4 *3.5(a)*. Petitioner was unconstitutionally convicted in the Maricopa County Superior
5 Court and is currently in the custody of the State of Arizona via probation. Respondents
6 Suzanne Shirleson and Erica Freeman are the persons designated 'probation officer' to
7 the Petitioner.

8 Petitioner has exhausted state remedies to pursue federal habeas corpus (see
9 below). The Petitioner has been and will continue to be restrained by the unlawful
10 conviction in many ways (e.g. right to bear arms, right to serve on a jury, employment,
11 housing, right to vote) even after the "probation" sentence expires on March 30, 2010.
12 Arizona state courts, at every level, all have failed to address the unconstitutional
13 practices employed by Maricopa County which resulted in the unlawful conviction.
14 Petitioner has suffered and will continue to suffer from genuine collateral consequences
15 of the unlawful conviction by the State of Arizona unless federal review is granted.

16 **PETITION**

- 17 1. Judgment was entered against the petitioner on March 30, 2009 in the Maricopa
18 County Superior Court Southeast Division; docket *CR-2008-145947-001 SE*.
- 19 2. Petitioner was convicted on two counts; disorderly conduct, a class 6
20 "undesignated" offense; and possession of drug paraphernalia, a class 6
21 "undesignated" offense.
- 22 3. Petitioner was sentenced to one year of supervised probation on both counts
23 concurrently, 224 hours of community service, "anger management," "alcohol
24 treatment," and thousands of dollars in fines.
- 25 4. Petitioner pleaded guilty to the two counts via a forced plea agreement after
26 being unconstitutionally denied, *inter alia*, a public, speedy trial by jury; his right
27 to effective, competent counsel; and his right to self-representation in Maricopa
28 County Superior Court. Petitioner was sentenced on March 30, 2009, despite the

1 fact said plea agreement entered for judgment had expired on October 22, 2008
2 (Appendix A).

- 3 5. Petitioner filed a Petition for Writ of Habeas Corpus in this Court on May 1, 2009
4 (CV-09-0927-PHX-MHM(MEA)). Several grounds for relief were raised,
5 specifically, *inter alia*, ineffective assistance of counsel, violations of right to self-
6 representation, violations of right to public speedy trial by jury, and several other
7 Sixth, Eighth and Fourteenth Amendment due process violations. The petition
8 argued that state remedies, specifically *Ariz. R. Crim. P. 32* (post-conviction
9 relief) were ineffective and would further violate petitioner's constitutional rights if
10 he was forced to go that route. The habeas petition, however, was dismissed on
11 June 3, 2009 for failure to exhaust said state remedies.
- 12 6. Petitioner subsequently filed a timely, pro-se Notice of Post-Conviction Relief
13 ("PCR"), pursuant to *Ariz. R. Crim. P. 32*, in the trial court on June 19, 2009, and
14 the subsequent petition on July 13, 2009. The PCR raised every ground for relief
15 presented in the aforementioned habeas petition. The State responded on July
16 28, 2009, however the State did not challenge any of the Petitioner's claims for
17 relief in its response, other than the ineffective counsel claim. Petitioner replied to
18 the response on August 2, 2009.
- 19 7. Petitioner filed several motions and requests in support of his PCR, all of which
20 were completely ignored and not ruled upon by the trial court, which further
21 displays Maricopa County's and the State of Arizona's complete, wanton, and
22 deliberate discountenance of pro-se defendants, specifically the Petitioner and
23 his Sixth Amendment right to self-representation; and further put on display
24 egregious violations of the Petitioner's fundamental due process rights in the
25 criminal proceedings. The motions included an of-right request for temporary
26 removal of grand jury transcripts, pursuant to *Ariz. R. Crim P. 12.8(c)*, on June
27 17, 2009; a request for preparation of PCR record on June 19, 2009; a motion for
28 discovery on July 13, 2009; and a motion of clarification on July 13, 2009, asking
the court, *inter alia*, to rule upon all the motions already filed and inquiry

1 regarding standby counsel. The PCR proceedings in their entirety were unlawful
2 and violated the Petitioner's fundamental due process rights, as the trial court,
3 again, failed to rule upon any of these motions, yet ultimately dismissed the PCR
4 without explanation, in a three-sentence minute entry (see below). Petitioner
5 would also file a motion to stay fines imposed at sentencing, during the appeals
6 process, pursuant to *Ariz. R. Crim. P. 31.6*, on November 21, 2009, which was
7 also ignored and never ruled upon by the trial court.

8 8. The trial court, in a July 2, 2009 minute entry, ordered transcripts it specifically
9 selected (not the transcripts the Petitioner requested) be produced by the court
10 reporter by August 31, 2009. Regardless, said transcripts were not produced by
11 the deadline ordered by the trial court. In fact, said transcripts were not produced
12 and made available to the Petitioner until after the PCR had already been
13 dismissed without cause. Petitioner received said transcripts in the mail on
14 September 25, 2009; two days after the PCR was summarily dismissed.

15 9. Further, the trial court failed to rule upon the PCR by the statutory deadline of
16 September 1, 2009. See *13 A.R.S. §§ 4231 & 4236, Ariz. R. Crim. P. 32.6(c)*,
17 and *Constitution of Arizona Art. 2 § 11* ("Justice in all cases shall be administered
18 openly, and **without unnecessary delay**"). The Petitioner's reply to the state's
19 response to the PCR was due by August 12, 2009; fifteen (15) days after he
20 received the State's response. See *Ariz. R. Crim. P. 32.6(b)*. Arizona law clearly
21 says that the trial court then had 20 days from the time Petitioner's reply was
22 due, to disposition the case. *Id.* 32.6(c).

23 10. Petitioner, in a state of judicial limbo because the trial court continually failed to
24 rule upon any of his motions, and his PCR by the statutory deadline, filed a
25 Petition for Special Action in the Arizona Court of Appeals (*CA-SA 09-0210*) on
26 September 14, 2009. The Special Action requested *de novo* review of all the
27 claims in the PCR because the trial court had deliberately failed to adjudicate
28 said PCR as lawfully mandated, thus prolonging inevitable proceedings which the
Petitioner had to exhaust in order to get the case reviewed by a higher court.

1 Special Action was the only remedy available for these continual abuses of
2 discretion by the trial court.

3 11. Shortly after receiving notice of the Special Action, the trial court summarily
4 dismissed the PCR on September 23, 2009 (Exhibit B) in a three-sentence
5 minute entry, again without ever ruling on any of the Petitioner's motions in
6 support of his PCR and without ever producing transcripts it ordered to be
7 produced by August 30, 2009. The Arizona Court of Appeals denied *de novo*
8 review of the PCR Petition on October 2, 2009 (Exhibit C) in a similar three-
9 sentence order.

10 12. Petitioner filed a timely petition for review in the Arizona Supreme Court on
11 October 13, 2009, regarding the appeals court's order declining jurisdiction over
12 the special action; and a timely Petition for Review in the Arizona Court of
13 Appeals on October 8, 2009, regarding the summary dismissal of the PCR by the
14 trial court. The Arizona Supreme Court denied review on February 17, 2010, in
15 yet another similar four-sentence order (Exhibit D).

16 13. All of the appellate decisions rendered in this case failed to address the merits of
17 any of the claims presented; each court simply "denied review" or "dismissed" the
18 petitions. The denial of review by the Supreme Court tells the Petitioner that
19 lower courts in Arizona have permission to break clearly established laws -
20 specifically *13 A.R.S. §§ 4231 & 4236, Ariz. R. Crim. P. 32.6(c), and Constitution*
21 *of Arizona Art. 2 § 11* ("Justice in all cases shall be administered openly, and
22 **without unnecessary delay**") - enacted by the state legislator which put time
23 limits on the Maricopa County Superior Court and other state courts to adjudicate
24 PCR petitions.

25 14. Maricopa County and the State of Arizona continually violated rules of criminal
26 procedure and state laws throughout this prosecution, even though the rules
27 rules of criminal procedure are intended to provide for the just, speedy
28 determination of every criminal proceeding. See *Ariz. R. Crim. P. 1.2*. They shall
be construed to secure simplicity in procedure, fairness in administration, the

1 elimination of unnecessary delay and expense, and to protect the fundamental
2 rights of the individual while preserving the public welfare. *Id.*

3 15. The unnecessary, wanton, deliberate delays by the trial court, along with threats
4 of "prison," forced the unwitting Petitioner into signing a plea agreement which
5 had expired more than four month prior, and is/was thus void from the beginning.
6 The decision by Arizona's highest court has subsequently closed off any state
7 remedy for the Petitioner.

8 16. State remedies have been exhausted because Petitioner "need not appeal an
9 Arizona Court of Appeals' denial of post-conviction relief to the Arizona Supreme
10 Court in order to exhaust their state remedies for federal habeas corpus
11 purposes," *Swoopes v. Sublett*, 196 F.3d 1008 (9th Cir. 1999). However,
12 Petitioner has done so with the Special Action, and there is currently another
13 petition pending in the Arizona Court of Appeals (CA-CR-09 0747 PRPC) which
14 was filed on October 8, 2009. Said petition is a near verbatim replica of the
15 petition the Supreme Court not only denied to review, but denied to consolidate
16 with the petition it dismissed.

17 17. The grounds on which this petition is brought to this court, which are explained in
18 detail herein, include violations of the *Sixth Amendment* and *Constitution of*
19 *Arizona, Art. 2 §§ 23 & 24* right to public, speedy trial by jury; *Sixth Amendment*
20 *ineffective counsel*; *Sixth Amendment* "Faretta" rights violation; *Sixth and*
21 *Fourteenth Amendment* violation by the state not providing counsel at
22 arraignment or standby counsel for PCR proceedings; *Fourteenth Amendment*
23 *due process violation* by the State fabricating and using false evidence against
24 Petitioner; *Eighth and Fourteenth Amendment* and *Constitution of Arizona Art. 2*
25 *§ 15* violations, holding the Petitioner in jail on an unconstitutionally excessive
26 bond; *Fourteenth Amendment* *due process violations* by Maricopa County
27 Superior Court judges Emmet Ronan, Teresa Sanders, Gary Donahoe, and
28 David K. Udall; the State's obstruction of Petitioner's right to appeal; *Fourteenth*
Amendment *due process violation* by sentencing Petitioner pursuant to an

1 expired plea agreement; *Fourteenth Amendment* due process violation by State
2 suppressing evidence; *Fourteenth Amendment* fundamental due process
3 violations in the trial court dismissing said PCR petition without ever ruling on any
4 of Petitioner's motions.

5 **GROUND FOR RELIEF**

6 **I. *Sixth Amendment* and *Constitution of Arizona, Art. 2 §§ 23 & 24* Right To**
7 ***Trial By Jury and Right to Speedy Trial***

8 In the State of Arizona, the only way a criminal trial may be vacated or
9 continued is through a written motion by either State's counsel or the defense,
10 which presents extraordinary circumstances as to why the continuance is
11 necessary. See *Ariz. R. Crim. P. 8.5*. The trial court must then state on the record
12 why it chose to grant a continuance. *Id.* The record clearly shows in this case that
13 the trial court, *sua sponte*, vacated the Petitioner's trial which was supposed to
14 take place on January 20, 2009, without any written motions filed by counsel on
15 either side; without extraordinary circumstances being found; and without
16 reasons given on the record as to why the trial was vacated. The Petitioner, as
17 can be seen from the January 12, 2009 minute entry vacating his trial, never
18 waived his speedy trial rights. Earlier in the prosecution, the trial court, in a
19 September 22, 2008 minute entry, specifically ordered that the trial "shall not be
20 continued unless a written motion is filed at least 5 days before the trial." The trial
21 court, specifically Judge Emmet Ronan, unconstitutionally and unlawfully revoked
22 the Petitioner's Sixth Amendment right to trial by jury and his right to a speedy
23 trial in order to force him into signing a plea agreement.

24 The foregoing was presented in the PCR to the trial court; the Petition for
25 Special Action and the Petition for Review in the appeals court; and the Petition
26 for Review in the Arizona Supreme Court.

27 **II. *Sixth Amendment* Ineffective Assistance of Counsel**

28 Petitioner had a total of three Maricopa County public defenders that he was
forced to be represented by. The first was David Allen Brown, whom the

1 Petitioner spoke to for a total of 45 seconds. On July 29, 2008, after Petitioner
2 had already been in jail for a week, Brown offered him a plea agreement for one
3 year in prison. Brown did not know any of the facts of the case and did not know
4 what the Petitioner was even being charged with. Petitioner was later informed
5 by Maricopa County human resources director Jeanne Hyler, at the public
6 defender's office, that Brown had been the attorney of record in 2,640 cases
7 between January 2008 and June 2009. Brown's caseload for fiscal 2008 vastly
8 exceeded the standards set by the Arizona Supreme Court (*State v. Joe U.*
9 *Smith*, 140 Ariz. 355, 681 P.2d 1374 [1984]) for public defenders and he should
10 have dismissed himself from the case if he had no intentions of diligently
11 representing the Petitioner. When the Petitioner was indicted on August 1, 2008,
12 the serious charges of aggravated assault and possession of drugs during a gun
13 crime were dropped, thus counsel could have and should have filed a motion to
14 modify Petitioner's release conditions. Petitioner attempted to reach Brown by
15 phone at least seven times from jail, leaving a message each time. Though
16 Brown was the Petitioner's attorney, there was no contact at all with him after the
17 45 second encounter in court on July 29, 2008. Brown was supposed to be
18 Petitioner's counsel at arraignment as well, however he did not show up to said
19 arraignment.

20 Michael Ziemba was the second public defender assigned to Petitioner's
21 case. Ziemba was the attorney who allowed the Petitioner's trial to be vacated by
22 the trial court without a written motion filed by the State or the public defender,
23 without reasons given by the Court, and without extraordinary circumstances
24 being presented for the continuance. See *Ariz. R. Crim. P. 8.5*. After trial was
25 unlawfully vacated, Ziemba continually threatened the Petitioner with "prison" if
26 he did not sign the expired plea agreement. Ziemba continually threatened the
27 Petitioner with "prison" if the matter went to trial, even though Ziemba argued in
28 his own motion to modify Petitioner's release conditions, filed on August 29,
2008, that Petitioner was not facing any jail time. Ziemba failed to obtain phone

1 records of the Petitioner from the night he was arrested because he gave Sprint
2 Communication the wrong phone number in a subpoena duce tecum sent on
3 October 8, 2008. The phone number Ziembra gave them did not even contain the
4 correct area code, thus was not just a typographical error, but a gross error which
5 only disconnected counsel would do. Phone records would have provided a hard
6 copy of the extortion notes sent to the Petitioner the night he was arrested by the
7 State's alleged victim, Michael Arthur Wood. And though Petitioner still has the
8 electronic messages in his phone, Ziembra failed to file a motion to admit as
9 evidence the Petitioner's phone which contains the extortion notes. Ziembra then
10 failed to get a deposition from a witness the Petitioner had identified to him. Said
11 witness' testimony would have contradicted the story told by Wood and the
12 State's alleged witness, Linnette Wittman. Ziembra also failed, as ordered by the
13 Court on September 22, 2008, to arrange a settlement conference prior to the
14 expiration date of the plea agreement (expired October 22, 2008) offered by the
15 State.

16 The third public defender, William Peterson, allowed Judge Teresa Sanders
17 to enter the expired plea agreement for judgment and conviction of the Petitioner.
18 As noted, the plea agreement had expired on October 22, 2008. The State
19 simply crossed out the expiration date with a ball-point pen on the day of
20 sentencing and changed it to accommodate their agenda.

21 In the State of Arizona, reinstatement of an expired plea offer must be
22 premised on a showing of ineffective assistance of counsel. *State v. Donald*, 198
23 Ariz. 406, 10 P.3d 1193 (App. 2000). Further, claims of ineffective counsel may
24 only be brought in Arizona in Rule 32 proceedings. See *State ex. rel. Thomas v.*
25 *Raves*, 214 Ariz. 411, 415, ¶ 20, 153 P.3d 1040, 1044 (2007) ("defendant may
26 bring ineffective assistance of counsel claims only in a Rule 32 post-conviction
27 proceeding – not before trial, at trial, or on direct review"). In other words, the
28 plea agreement could not be, and was not, lawfully reinstated and is thus void.

1 Peterson should have and could have recognized this fatal flaw, along with
2 recognizing that Petitioner's right to trial by jury had been violated in January,
3 which led to him to signing an expired plea against his will.

4 Arizona courts are supposed to recognize that a defendant may seek relief
5 from a conviction on the basis that counsel's ineffective assistance induced a
6 guilty plea. See, e.g., *State v. Ysea*, 191 Ariz. 372, 379, ¶¶ 23-24, 956 P.2d 499,
7 506 (1998); *State v. Anderson*, 147 Ariz. 346, 351-52, 710 P.2d 456, 461-62
8 (1985).

9 All of the foregoing was presented in the PCR to the trial court; the Petition for
10 Special Action and the Petition for Review in the appeals court; and the Petition
11 for Review in the Arizona Supreme Court.

12 13 **III. Sixth Amendment "Faretta" rights violation**

14 Defendants have the right to represent themselves in criminal prosecutions
15 when they knowingly and intelligently declare that is how they want to proceed.
16 *Faretta v. California*, 422 U.S. 806 (1975). Petitioner, in an August 19, 2008 *pro-*
17 *se* motion to modify his release conditions, informed the trial court he would be
18 representing himself because of what he had already seen, as far as the
19 performance of public defenders who work for the State that was prosecuting
20 him. Though the Court received the motion on August 19, 2008, said motion was
21 not entered into the court record until after the Petitioner filed his PCR Petition
22 ten months later. Further, even when the trial court did decide to docket the
23 motion, the record erroneously says said motion was received by the trial court
24 on September 23, 2008; more than one month after it actually got there. The date
25 on the motion itself and the postmark on the envelope both show that the motion
26 was sent from the jail on August 16, 2008.

27 The State ultimately conceded, in its response to the pending petition for
28 review in the Arizona Court of Appeals, that the Petitioner did in fact seek self-

1 representation, when it said the Petitioner, "never sought to represent himself,
2 **other than in that one motion.**" (Exhibit E).

3 Petitioner never had a fair chance to present the case in his own way
4 because the trial court failed to hold a hearing on the *pro-se* motion indicating
5 self-representation, and as mentioned above, revoked the Petitioner's right to a
6 public, speedy trial by jury. Thus Petitioner was forced to be represented by
7 counsel he did not want and forced to sign a coerced, expired plea. The trial
8 court completely ignored every *pro-se* motion the Petitioner filed in this case,
9 starting with the August 19, 2008 motion which declared the Petitioner would be
10 representing himself, and every *pro-se* motion and request made during PCR
11 proceedings.

12 The foregoing was presented in the PCR to the trial court; the Petition for
13 Special Action and the Petition for Review in the appeals court; and the Petition
14 for Review in the Arizona Supreme Court.

15 **IV. Sixth and Fourteenth Amendment Fundamental Due Process Violations By**
16 **The State Not Providing Counsel At Arraignment or Standby Counsel**
17 **During PCR Proceedings**

18 Arraignment has been deemed a "critical stage" of a criminal prosecution by
19 the U.S. Supreme Court. When the Petitioner was arraigned on August 11, 2008,
20 the charges he was now facing in the supervening indictment were significantly
21 different than what the Tempe Police tried to charge him with. All of the Class 3
22 and 4 felonies were dropped and Petitioner was now charged with four Class 6
23 felonies. Petitioner was prejudiced by not having counsel at arraignment because
24 his release conditions could have been modified at the arraignment hearing,
25 instead of 35 days after Petitioner first filed a *pro-se* motion to modify release
26 conditions, then state-provided counsel filed another. The State, again in its
27 response to the Petition For Review, argues that Petitioner was not prejudiced
28 because he was given "credit" for the unlawful incarceration at sentencing. It is
the policy of Maricopa County which caused the defendant to attend the

1 arraignment, from jail, via closed-circuit television, without counsel. Public
2 Defender Brown did not show up for said proceeding and Petitioner did not have
3 counsel to converse with at the arraignment.

4 The trial court furthered erred by not ruling on the aforementioned motion for
5 clarification filed on July 13, 2009, which the Petitioner asked about Paul Prato,
6 who was listed as counsel for the Petitioner for PCR proceedings, even though
7 the trial court ruled the Petitioner shall represent himself in said proceedings.
8 Because the trial court failed to rule upon the routine motion, Petitioner was
9 subsequently denied fundamental due process during PCR proceedings, as the
10 trial court indicated availability of standby counsel, yet failed to clarify.

11 Being denied counsel at arraignment, standby counsel during PCR
12 proceedings because of due process violations, as well as being denied a public,
13 speedy trial by jury, regardless of subsequent prejudice, are all fundamental
14 errors and require automatic reversal of conviction. *Neder v. United States*, 527
15 U.S. 1, 8-9 (1999); *State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003); *Rose v.*
16 *Clark*, 478 U.S. 570, 577-78 (1986).

17 The foregoing was presented in the Petition for Special Action and the
18 Petition for Review in the appeals court; and the Petition for Review in the
19 Arizona Supreme Court.

20 **V. Fourteenth Amendment due process violations by the State fabricating and**
21 **using false evidence against Petitioner**

22 Because the Petitioner's right to trial was unconstitutionally and deliberately
23 revoked by the trial court, he was convicted and sentenced based solely on the
24 evidence the State presented. Prosecutor Lynn Krabbe fabricated two key pieces
25 of evidence to present "aggravating factors" which changed the charges the
26 Petitioner was facing to "dangerous" felonies on September 5, 2008 (see court
27 record). She first conjured an arbitrary prior criminal charge of "fraud" allegedly
28 committed by the Petitioner sometime in 2004 (See Pre-Sentencing Report; filed
April 1, 2009). As Petitioner has stated, the person involved in this crime is

1 clearly and unequivocally not him and Petitioner was neither arrested nor
2 convicted for this alleged crime, and the Petitioner did not live in the State of
3 Arizona at the time this crime was allegedly committed. On September 5, 2008,
4 Krabbe filed a brief alleging "multiple victims" involved in the alleged crimes
5 allegedly committed by the Petitioner on July 22, 2008. The police report, clearly
6 and unequivocally, states there was only one alleged victim. (Exhibit F). Krabbe
7 deliberately used this false information to allege "dangerousness" on the crimes
8 Petitioner allegedly committed, thus giving the state leverage in plea
9 negotiations, which the Petitioner never wanted in the first place.

10 A conviction obtained by the knowing use of false evidence is fundamentally
11 unfair. *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959);
12 *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342
13 (1976); *Miller v. Pate*, 386 U.S. 1, 7, 87 S.Ct. 785, 788, 17 L.Ed.2d 690 (1967).
14 The false evidence in this case was used to alleged "dangerousness" on the
15 charges levied against the Petitioner and as aggravating factors for leverage in a
16 plea bargain in favor of the State. The State amended its indictment to alleged
17 "dangerousness" on September 5, 2008 on the same day it alleged the "multiple
18 victims" aggravating factor. This was after the State failed to reveal initial
19 disclosures in a lawful manner, in accordance with *Ariz. R. Crim. P. 15.1*, and the
20 trial court subsequently not sanctioning the State for this error.

21 The foregoing was presented in the PCR; Petition for Special Action; and the
22 Petition for Review in the appeals court; and the Petition for Review in the
23 Arizona Supreme Court.

24 **VI. Eighth and Fourteenth Amendment and Constitution of Arizona Art. 2 § 15**
25 **violations, holding the Petitioner in jail on an unconstitutionally**
26 **excessive bond**

27 Even before the Petitioner was arraigned on August 11, 2008, when the charges
28 he was facing significantly changed, he had no prior criminal history, was a student
at Arizona State University, and had ample motivation to defend himself in Court

1 against the crimes he was charged with. The \$54,000 bond was far higher than
2 bonds given to armed robbers with prior criminal histories and others facing similar
3 charges to the Petitioner. Maricopa County specifically put such a high bond on the
4 Petitioner because local media outlets (ABC15 and azcentral.com) reported on the
5 incident, and sensationalized the "black" Petitioner "attacking" a "white" neighbor.
6 Once the Petitioner was arraigned, he was facing four Class 6 felony charges, yet
7 was held for an additional 35 days on an unconstitutionally high \$54,000 bond. The
8 bond was ultimately dropped to \$0 after the trial court granted a motion by public
9 defender Michael Ziemba to modify release conditions, even though it failed to even
10 consider an almost verbatim motion filed pro-se by the Petitioner 10 days earlier
11 than Ziemba's motion. Petitioner was prejudiced by being incarcerated on an
12 unconstitutionally high bond and missing opportunities to interview witnesses, gather
13 evidence, and have more freedom to aggressively represent himself.

14 The foregoing was presented in the PCR; the Petition for Special Action; and
15 the Petition For Review in the Court of Appeals.

16 **VII. *Fourteenth Amendment* due process violations (Abuse Of Discretion) by**
17 **Superior Court judges Emmet Ronan, Teresa Sanders, David K. Udall,**
18 **and Gary Donahoe**

19 In all cases in Maricopa County courts, when a judge is changed in a case, a
20 reassignment order is handed down by the presiding judge. Judge Emmet Ronan
21 was arbitrarily given this case in early January, 2009, without any reassignment
22 orders issued, after Judge David Udall was transferred to the juvenile division. Not
23 only was it Judge Ronan who ultimately revoked the Petitioner's right to trial, but he
24 also signed orders for prosecutor Lynn Krabbe when he was not the judge presiding
25 over this case, particularly an order in September of 2008, allowing Krabbe to
26 remove grand jury transcripts from the court. Only the judge or commissioner
27 presiding over a particular case may sign orders in said case.

28 Judge Teresa Sanders, on March 30, 2009, sentenced the Petitioner pursuant to
a plea agreement which had expired on October 22, 2008; more than four months

1 prior. Sanders would also dismiss the PCR on September 23, 2009, ruling that the
2 Petitioner, "failed to show any colorable claim for relief pursuant to Rule 32.1 of the
3 Ariz. R. Crim. P." It is clear and unequivocal that all of Petitioner's claims were timely
4 filed and fall under *Ariz. R. Crim. P. 32.1(a)*; violations of the Sixth and Fourteenth
5 Amendment; and several Constitution of Arizona articles.

6 Judge David K. Udall ignored the Petitioner's motion to modify release
7 conditions, proven by the fact the motion was received by the trial court on August
8 19, 2008, but not put on the docket until the summer of 2009. Further, the docket
9 date is still completely wrong, as it states the motion was not received until
10 September 23, 2008; more than a month after it was actually received. This motion
11 also indicated that the Petitioner would be representing himself in court.

12 Judge Gary Donahoe ignored each and every motion the Petitioner filed in
13 support of his PCR and failed to adjudicate the PCR within statutory timelines the
14 state legislature created, pursuant to *13 A.R.S. §§ 4231 & 4236, Ariz. R. Crim. P.*
15 *32.6(c), and Constitution of Arizona Art. 2 § 11*. It was not until after the Petitioner
16 filed a Special Action in the Court of Appeals that Donahoe ordered Judge Sanders
17 to adjudicate the case; 23 days after the statutory time limit had passed. Donahoe
18 ordered the adjudication without ruling on any of the Petitioner's **still-pending**
19 motions filed on June 17, June 19, and July 13, 2009. Sanders dismissed the PCR
20 without ruling on the motion either.

21 The foregoing was presented in the Petition for Special Action and the Petition
22 for Review in the Arizona Supreme Court.

23 **VIII. The State's Obstruction of Petitioner's Right To Appeal**

24 On March 30, 2009, the day the Petitioner was sentenced, he informed probation
25 supervisor John Wertsching that he would be appealing said case. Because
26 Petitioner had heard of malicious acts by Maricopa County probation officers, and
27 because Arizona is a one-party notification state for recording, he also recorded this
28 encounter. Wertsching illegally seized the Petitioner's recording device, which had
caught much of Wertsching malicious declarations on tape. Wertsching, upset that

1 Petitioner recorded him and because Petitioner said he would appeal this case,
2 attempted to talk Judge Teresa Sanders' secretary into signing an order to send the
3 Petitioner "to prison." The illegal and improper conversation between Wertsching
4 and Sanders' secretary included hugging, hand-holding, and various terms of
5 endearment. Judge Sanders' secretary's acts created a conflict of interest, pursuant
6 to *A.R.S. 38-503(b)*, and Judge Sanders should have removed herself from the PCR
7 proceedings, which did not happen. Sander, thus, committed a Class 6 felony by
8 adjudicating the PCR. Again, it was Judge Sanders who summarily dismissed the
9 PCR Petition in a three-sentence minute entry.

10 The foregoing was presented in the Petition for Special Action; the Petition for
11 Review in the Arizona Supreme Court; and the Petition For Review in the Court of
12 Appeals.

13 **IX. Fourteenth Amendment due process violation by sentencing Petitioner**
14 **pursuant to an expired plea agreement**

15 As Petitioner detailed in his PCR and Special Action, the plea agreement entered
16 by Judge Sanders on March 2, 2009, expired on October 22, 2008 (See Appendix A,
17 *supra*). Again, the State simply crossed out the expiration date and wrote in a new
18 one after the plea was signed. Since the plea had expired, the only way it could be
19 re-instated is by a showing of ineffective counsel, which can only be determined in
20 PCR proceedings. See *Donald*, *supra*. Thus, the plea entered for judgment, and the
21 subsequent conviction, are, and have been, void the entire time the Petitioner has
22 suffered the adverse consequences.

23 The foregoing was presented in the PCR; the Petition for Special Action; the
24 Petition For Review in the Arizona Supreme Court; and the Petition for Review in the
25 Court of Appeals.

26 **X. Fourteenth Amendment Due Process Violation By State Suppressing**
27 **Evidence**

28 It can be reasonably surmised that the reason the trial court refused to disclose
grand jury transcripts to the Petitioner – by ignoring his of-right motion filed on June

1 17, 2009, to view them - is because, *inter alia*, the State did not disclose to the grand
2 jury that its alleged victim, Michael Arthur Wood, was on probation at the time he
3 extorted and assaulted the Petitioner, and Wood was intoxicated the night the
4 Petitioner was arrested; all of which are probation violations (Exhibit G). These facts
5 are also not present in any of the State's briefs filed in this case. It is unknown
6 whether or not the State also presented to the grand jury the same false evidence it
7 presented to the trial court mentioned above, because, again, the trial court would
8 not allow Petitioner to review the transcripts.

9 The prosecutor's role before the grand jury is... "minister of justice." Because the
10 defendant has no representative to watch out for his or her interests before the
11 grand jury, the prosecutor has a duty not to take advantage of this role to unfairly
12 influence the grand jury. *Maretick vs. Jarrett*, 204 Ariz. 194, 197 (2003).

13 The State and trial court further suppressed evidence by, again, not ruling on the
14 Petitioner's discovery request and his request for preparation of PCR record

15 The foregoing was presented in the PCR; the Petition for Special Action; the
16 Petition for Review in the Arizona Supreme Court; and the Petition for Review in the
17 Court of Appeals.

18 **ADDITIONAL QUESTIONS ABOUT PETITION**

19 As Petitioner has stated, this Petition for Writ of Habeas Corpus is the second
20 one filed in this court pertaining to this case. The first, filed on May 1, 2009 (CV-09-
21 0927-PHX-MHM(MEA)), was dismissed for failure to exhaust state remedies, and raised
22 all of the same claims. A motion for reconsideration of said habeas petition was denied
23 on December 3, 2009, and Petitioner was ordered to file a new petition if he sought
24 federal review of the case. There is a Petition for Review pending in the Arizona Court
25 of Appeals (filed on October 8, 2009; CA-CR 09 0747 PRPC), regarding the trial court's
26 summary dismissal of the PCR. All claims raised in the PCR and Special Action are
27 raised in said pending appeal.

28 The Petitioner does not have any future sentences to serve in any other cases
and this current petition is filed within the one-year statutory limit.

PRAYER FOR RELIEF

Petitioner requests the Honorable Court order the Arizona Court of Appeals, The Arizona Supreme Court, and/or Maricopa County Superior Court to transmit the entire court record(s) pertaining to this case to the U.S. District Court of Arizona to aid in determining the facts alleged herein.

Upon issuance of Writ of Habeas Corpus, Petitioner requests this Court dismiss with prejudice said case against the Petitioner, and thus discharge the Petitioner from any and all adverse consequences of the conviction and judgment in this case, including complete deletion of the related arrested record, all related felony and/or misdemeanor records, and immediate restoration of any and all civil rights taken away by Maricopa County and the State of Arizona, including but not limited to Petitioner's voting rights, right to serve on juries, and right to bear arms. Petitioner will have already served a one year sentence of probation (will expire on March 30, 2010) by the time the appeals court and/or this Court review the case

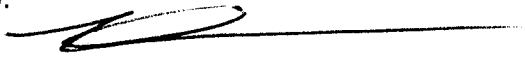
Further, upon issuance of Writ of Habeas Corpus, Petitioner requests declaratory relief, stating that violations of *Ariz. R. Crim. P. 8.5* by the trial court, State's attorneys, and defense counsel are violations to defendants' right to public, speedy trial by jury, pursuant to the Sixth Amendment of the U.S. Constitution, and thus fundamental reversible error.

Further, upon issuance of Writ of Habeas Corpus, Petitioner requests declaratory relief, stating that *13 A.R.S. §§ 4231 & 4236*, *Ariz. R. Crim. P. 32(c)*, and *Constitution of Arizona Art. 2 § 11* require trial courts in Arizona to adjudicate PCR Petitions within 20 days after the Petitioner files a reply to the State's response; and that the appropriate remedy for Defendants when the trial courts fail to abide by this law is Special Action in the Court of Appeals and *de novo* review by said court. The State and trial courts must abide by lawfully mandated timelines just as Defendants must file PCR noticing within 90 days of conviction and federal habeas corpus petitions within one year of conviction, or they lose said right.

1 Further, upon issuance of Writ of Habeas Corpus, Petitioner requests declaratory
2 relief, stating that Maricopa County trial courts must respect Defendants' Sixth
3 Amendment right to self-representation as if said Defendants are represented by
4 counsel. It is difficult enough for a pro-se defendant to navigate his way through a
5 criminal trial; and impossible when the State and trial court do not follow the written
6 court rules. Violations of this fundamental right constitute reversible error.

7 Further, upon issuance of Writ of Habeas Corpus, Petitioner requests declaratory
8 relief, stating that Maricopa County's policy of forcing Petitioner to "attend" arraignment
9 via closed-circuit television without counsel, caused the fundamental error and that
10 arraignments must be held with counsel at the side of defendants.

11
12 I declare under penalty of perjury that the foregoing is true and correct and that
13 two (2) copies of this Petition for Writ of Habeas Corpus was hand-delivered to the U.S.
14 District Court on this 7 day of March, 2010.

15
16
17
18
19
20
21
22
23
24
25
26
27
28


Brian A. Wilkins
PO Box 50854
Phoenix, AZ 85076
480-529-0964
602-628-4295
brianw@operation-nation.com