03[illegible]

APPEAL NO. _____

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
APR 09 2004
OFFICE OF THE CLERK

IN., RE.,

PETITIONER PRO SE : TONI PAUL CAYTON V. GERALD BERGE – RESPONDENT

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CASE NO. 98CF258

PETITION FOR EXTRAORDINARY WRIT

PURSUANT: 28 U.S.C. 2254(a),(b)1); 28 U.S.C. 2241(a); 28 U.S.C. 2104; 28 U.S.C. 2106; 28 U.S.C. 1651; S.C.R. 20

PETITION FOR WRIT OF HABEAS CORPUS FROM (9/5/03) DECISION DISMISSAL AND (10/8/03) & (10/22/03) DENIAL OF REHEARING OF THE U.S. SEVENTH CIRCUIT COURT OF APPEALS AND FROM 98CF258 CONVICTION AND SENTENCE IMPOSED BY RACINE COUNTY COURT OF WISCONSIN ON (11/6/98) AS INITIALLY DIRECTLY APPEALED AS 98C947 HABEAS MOTION TO PREVENT SENTENCING ON (9/20/98) TO U.S. DISTRICT COURT OF WIS. UNDER "YOUNGER EXCEPTION" AS DISMISSED (9/22/00).

[QUESTION(S) PRESENTED]

I: DOES IT APPEAR HEREIN THAT ALL OF PETITIONER'S PRIOR SOLICITED COURTS OF APPEALS HAVE DENIED REDRESS AND ERRONEOUSLY DEFAULTED HIS SUBMITTED APPEALS WHEREAT ACTUAL "CAUSE AND PREJUDICE" OF A "MISCARRIAGE OF JUSTICE" IS CLEARLY DISPLAYED IN EVIDENCE OF A TRIAL COURT WITHOUT SUBJECT MATTER JURISDICTION TO PROSECUTE SURREPTITIOUSLY ENACTING A SHAM COLLUSIONAL BAD FAITH PROSECUTION DISREGARDING ALL STANDARDS OF FAIR DUE PROCESS AND EVIDENCE PRIVILEGES TO THUS MISLEAD THE JURY TO CONVICT THE PETITIONER? (Id., PGS. 7-13).

II: DOES IT HEREIN APPEAR THAT THE U.S. DISTRICT COURT OF WISCONSIN AS WELL AS 7th CIRCUIT COURT OF APPEALS HAVE TOTALLY DENIED PETITIONER APPELLATE REDRESS BY ASSERTING "ABUSE OF WRIT" FOR PETITIONER'S FAILURE TO FIRST EXHAUST STATE APPEAL REMEDIES AND TO TOTALLY HAVE DENIED A CLEARLY INDIGENT PETITIONER TO PROCEED IN FORMA PAUPERIS IN 28 U.S.C. 2254 AND U.S.C. 2244 HABEAS CORPUS APPEALS APPARENTLY BASED UPON APPLYING 28 U.S.C. 1915(g) THREE STRIKES RULE FROM FORMER DISMISSALS - WITHOUT ALSO REDRESSING THE MERITS OF PETITIONER'S 42 U.S.C. 1983 RETROSPECTIVE RETROACTIVE CIVIL ACTIONS AS WERE EFFICACIOUSLY PREVIOUSLY SUBMITTED UNDER PROTOCOL OF THE "YOUNGER EXCEPTION" OF MITCHUM V. FOSTER 407 U.S. 225, 230 id., YOUNGER V. HARRIS 401 U.S. 37, 56 WITHOUT GIVING ANY REDRESS OR CONSIDERATION TO THAT DOCTORINE AND TANGIBLE SUBMITTED EVIDENCES WARRANTING SUCH EXCEPTION AS BEING APPLICABLE TO THIS CASE WHICH OTHERWISE ANULLS ABUSE OF WRIT? (Id., PGS. 13-39).

III: CAN THE U.S. SUPREME COURT NOW POSSIBLY AT ALL DENY HABEAS CORPUS REVIEW FOR PROSPECTIVE EXTRAORDINARY REDRESS OF THESE ISSUES OF A MIXED QUESTION OF LAW (CRIMINAL AND CIVIL) WITHOUT OTHERWISE VIOLATING IT'S OWN RULE MAKING AUTHORITY AND PETITIONER'S "SUBSTANTIVE RIGHTS" AS WELL AS U.S. CONST. ART. I SEC. 9 THUS TOTALLY MALFEASELY SUSPENDING WRIT OF HABEAS CORPUS AND PETITIONER'S APPEAL RIGHTS IN TOTO? (Id., PGS. 39-40).

[STATEMENT OF THE CASE]

(.I): On I Petitioner's Final Prison Release date (3/16/98) from my former 91cm937/91cm864 seven year misdemeanor sentence I was held and arrested without a warrant for making threats to prison staff for their deliberate stealing of my life savings- Release Account. [See Appnx. Ex.1(d) pg.25-26 complaint & Judgment / See Ex.7(A) pg.54 Newspaper / See Ex.1D(A,b) Account & Reciept pg.60-60(c) / See Ex.6(A) pg.51-53 Release Notice & Judgment]. Consequently, As resulting from A sham collusional trial and bad faith prosecution (9/2/98) I was convicted and sentenced on (11/6/98) to fifteen years prison in case 98CF258 and in 5½ years of state and federal appeals I have not once recieved judicial redress upon the issues presented id., et., seq., The U.S. Supreme Court clerk then erroneously on (3/15/04) disallowed me certiorari review and also (4/9/04) petition for rehearing to stay proceedings due to untimeliness of filing. [See Appnx. Ex.#36 and 36(b) pg.177-181 orders].

(.1) (id., pg.20-26): Firstly I allege that due to the said victim's deliberate act of theft i.e. highway robbery of my release fund- the trial court has absolutely no subject matter jurisdiction to be able to at all prosecute a spoken threat made against them by the accused defendent. Prior to and at trial I did adamantly insist this allegation to be a legal statutory fact (as it in fact is) that multifarious state statutes and codes well display the said release account fund could not be expropriated by prison staff to pay my legal fund debts - not without they first obtaining a court order to do so; otherwise it is an act of theft and technically robbery and I defendent maintains a complete self defense privilege to speak such threat against the culprits -

THE VICTIMS. THE PRESIDING JUDGE AND PROSECUTOR THOUGH REVIEWING SUCH -
-APATHETICALLY PROCEEDED TO IGNORE SUCH PRO SE OBJECTIONS AND MOTIONS
AND REQUEST'S FOR JUDICIAL NOTICE OF SUCH (AS DEFENDENT HAD GREAT DIFFICULTY
FORMULATING DUE TO THEY DENYING HIM ADEQUATE LAW LIBRARY AVAILABLE FACILITY
TO REVIEW SUCH CODES) AND SUBSEQUENTLY AT TRIAL PROCEEDED TO CONCEAL
THESE APPLICABLE LEGAL FACTS FROM THE JURY BY SILENCING THE DEFENDENT WITH
THREE CONTEMPT OF COURT SANCTIONS EVERY INSTANCE I ATTEMPTED TO VOCIFERATE
THESE FORESAID STATUTORY LEGAL FACTS SO AS TO ELUCIDATE THE JURORS.
[SEE APPNX. EX. 13 PGS. 65(G) - 68(A) HEARING (8/31/98) TRANSCRIPT; SEE -
APPNX. EX. 18 PGS. 81(A) - 81(J) TRIAL (9/3/98) TRANCRIPT; SEE APPNX. EX. 11 -
& EX. 22(C) PGS. 111 - 112(H) MOTIONS ADDRESSED; AND EX. 24(A) PG. 117(A) -
117(N) JURY DELIBERATION (9/3/98)]. FURTHERMORE, AT (9/3/98) JURY DELI -
BERATION THE JUDGE, PROSECUTOR, AND APPOINTED DEFENSE COUNSEL CIRCUM -
DICTIVELY COLLUDED TO CONCEAL THESE FORESAID LEGAL FACTS FROM THE JURORS AS
WERE TRIAL EXHIBITS ILLUSTRATING THE VICTIM'S THEFT OF THE RELEASE FUND BY
WITHHOLDING SUCH EXHIBITS FROM JUROR PURVIEW. THE JURORS ARE NEVER AT ALL
INFORMED OF THE SAID THEFT OR SELF DEFENSE PRIVILEGE TO THE THREAT. [SEE
APPNX. EX. 34(A) ALSO PGS. 153 - 167 DEFENSE COUNSEL'S & PROSECUTOR'S
OBJECTIONS TO DEFENDENT'S TESTIMONY (9/3/98)]. FURTHER POIGNANTLY
ILLUSTRATED PLETHORA OF TRIAL COURT ACTUATIONS WELL EXEMPLIFY PRESIDING JUDGE
DENNIS FLYNN, PROSECUTOR MICHAEL NIESKES AND DEFENSE COUNSEL JOHN CABRANES
DID IN FACT COLLUDE TO MISLEAD THE JURY AND DELIBERATELY CONNIVE TO IMPLEMENT
A MALICIOUS, SELECTIVE, BAD FAITH SHAM PROSECUTION UPON I PETITIONER.
(2) (Id., PG. 27): APPOINTED DEFENSE COUNSEL AND PRESIDING
JUDGE AT TRIAL COLLUDED TO DENY I DEFENDENT A JURY INSTRUCTION OF SELF
DEFENSE OF PROPERTY AGAINST THEFT AS HE WAS SO ENTITLED TO INFORM THE

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JURY OF THE APPLICABLE LAW TO THE CASE. [SEE APPNX. EX. 14, 14(A) PGS. 70-72(c) DEFENDENT'S INSTRUCTION REQUEST AS BEING TRIAL EX. #5 AND ALSO APPNX.-EX. 24(A) PGS. 117(i) AND 117(N) AT TRIAL (9/2/98) & (9/3/98); SEE ALSO EX. 19 PG. 82(b)-82(c) STATE 855 INSTRUCTION "PRIVILEGE"]. THIS JURY INSTRUCTION REQUEST WAS SEALED AS EX. #5 BY THE COURT AND NEVER DELIVERED AS PART OF THE COURT RECORD ALTHOUGH CITED AT SUCH. [SEE APPNX. EX. 22(A) PG. 106(b) 00-1013 APPEAL REC.].

(3) (id., PG. 27): RETROSPECTIVELY, AT TRIAL THE PRESIDING JUDGE DELIBERATELY COMMITTED AN ACT OF INSUFFICIENT JURY INSTRUCTION WHEN REDUNDANTLY READING THE THREATS CHARGE INSTRUCTION FOR THE JURY HE OMITS THE WORDS "ANY LAWFUL ACT" OUT OF SUCH SO AS TO FURTHER OBFUSCATE THE JURORS UNDERSTANDING THAT THE THREAT-TO BE PROSECUTABLE-MUST BE MADE AGAINST A LAWFULL ACT OF THE VICTIMS,-THUS FURTHER CONCEALING THE ACT OF THEFT. [SEE APPNX. EX. 16 PG. 78-78(d) TRIAL TRANSCRIPT AND SEE EX. 19 PG. 82-82(A,A,A,) THE 1473b THREAT INSTRUCTION AND STATS. ALSO AT EX. 5 PG. 50, 50(A)].

(4) (id., PG. 27-28, 25): REPREHENSIBLY, AT TRIAL THE RECORD REVEALS THE PROSECUTOR AND DEFENSE COUNSEL COLLUDING AT CIRCUMLOCUTIVELY CONCEALING THE FACT OF STATE'S WITNESSES' PERJURY AND FALSE TESTIMONY THAT I.M.P. #29 SEC. 11(b) PROCEDURE AUTHORIZED HIM TO LAWFULLY EXPROPRIATE I PETITIONER'S RELEASE FUND WHEN IN FACT IT STIPULATED THE EXACT OPPOSITE--THAT SUCH FUND WAS NOT GARNISHABLE WHEREUPON THE JUDGE PROCEEDS TO ENJOIN SUCH SUBTERFUGE BY ADDRESSING IT WITH INSUFFICIENT JURY INSTRUCTION AS SUPRA AT (3). [SEE APPNX. EX. 15 PG. 73-75 PERJURY BY D. JANNIS AND EX. 15(A) PG. 76-78 TRANSCRIPT OF PROSECUTOR & COUNSEL CIRCUMLOCUTION]. [SEE APPNX. EX. 3(A) PG. 42, 43-46 CODES AND TRIAL EX. #3 AT EX. 24(A) P. 117(G)(H)].

(5) (id., PG. 28): OUTRAGEOUSLY, AT TRIAL SAID VICTIMS D. BUCHER AND C. ELLERD ARE REVEALED AS BEING TOTALLY ABSENT AND UNAVAILABLE FOR

DEFENDENT TO CONFRONT, QUESTION, AND EXAMINE - AS WELL AS OTHER POSSIBLE EXCULPATORY WITNESSES MARTINEZ AND GUTTIERREZ - AND NO COURT ENTITIES INVOLVED EVEN SUFFICE TO MENTION OR REMARK AS TO THE PECULARITY OF SUCH ABSENCE? [SEE APPNX. EX. 4(A) PG. 49(b) - 49(G) WITNESS NOTICES AND TRIAL INDEX].

(6) (id., PGS. 28 - 29): ANALOGUOUSLY, CONCERNING THE ABSENCE OF THOSE TWO VICTIMS D. BUCHLER AND C. ELLERD - THERE REMAINS NO EVIDENCE OF RECORD IN OTHER TESTIMONY(S) THAT DISPLAYS ANY THREAT EVER COMMUNICATED UNTO THEM - OR INTENDED TO BE. IT'S MERELY 3RD PERSON HERESAY MULTIPLICITY OF CHARGES AND AT TRIAL THE PROSECUTOR INFERS TO THE JURY SUCH THREAT MAY MERELY BE PRO - SECUTED MALFEASELY UPON HERESAY (EVEN THOUGH) ALL CASES FOUND PREVIOUSLY PROSECUTED AT THE WISCONSIN THREATS STATUTE ARE ONLY UPON 1ST PERSON VERBIAGE AND VERNACULAR FROM CULPRIT TO VICTIM. [SEE APPNX. EX. 24 PG. 116 TRIAL TRANSCRIPT].

(7) (id., PGS. 29): ON (8/31/98) THE RECORD DISPLAYS THE PRESIDING JUDGE D. FLYNN ERRONEDUSLY DENYING I THE DEFENDENT MY REQUEST AND RIGHT TO SELF REPRESENTATION AND WAIVER OF COUNSEL UNDER HIS ASSERTION THAT I WAS INCOMPETENT TO DEFEND MYSELF - EVEN THOUGH - I WAS PREVIOUSLY EVALU - ATED AS MEDICALLY COMPETENT. THIS APPEARS TO BE THE JUDGES ILLICIT STRATAGEM TO SILENCE THE DEFENDENT'S SELFDEFENSE ASSERTIONS AND LEGALLY APPLICABLE STATUTORY ENUNCIATIONS. [SEE APPNX. EX. 13, 13(A) HEARING PG. 65(G) - 69(A) & MED. REPORT].

(8) (id., PGS. 29): DEMONSTRATIVELY, DEFENSE COUNSET IS WELL DISPLAYED AS DELIBERATELY INEFFECTIVE CONCORDANT TO ALL FOREGOING SCENARIOS IF NOT ACTING OUT HIS PART AS A SECOND PROSECUTOR BY ALSO CONSTANTLY MAKING HIGHLY PREJUDICIAL DEROGATORY REMARKS ABOUT HIS CLIENT UNTO THE JURY AS WELL AS HE UNNECESSARILY INTRODUCING HIGHLY INFLAMMATORY MATERIAL OF DEFENDENT'S OCCASSIONAL VULGAR JAIL HOUSE LANGUAGE AS EVEN THE PROSE - CUTOR AVOIDED INTRODUCING. [SEE APPNX. EX. 21 PG. 86 - 101 TRIAL TRANSCRIPT].

OF (140) AND SOME PAGES AT U.S. (EASTERN) DISTRICT COURT OF WISCONSIN. I CLEARLY SHOWED THE COURT IN THIS APPEAL THE CLEAR ERRONEOUSNESS OF IT'S PREVIOUS 98c947 AND ALSO (99c367 MISTAKENLY MISFILED) HABEAS APPEAL DISMISSALS - THAT SUCH COURT STILL YET POSSESSED VIABLE JURISDICTION WITH WHICH TO REDRESS THAT APPEAL PURSUANT CODIFICATIONS OF 28 U.S.C. 2254 RULE (9)(b) AND OTHER GOVERNING RULES U.S.C. 2254(b)(2). YET, THE COURT OTHERWISE RATHER CHOSE TO DENY SUCH APPEAL ON (6/5/03). [SEE APPNX. EX.01 PG.017-020 ORDER; AND EX.35 PG.170-171 U.S.C. 2254 RULES]. THE COURT HAD DISMISSED THIS U.S.C. 2244 SUCCESSIVE HABEAS PETITION UNDER SAME PREMISE AS 98c947 FOR ABUSE OF WRIT AND AS SO DENYING LEAVE TO PROCEED INFORMA PAUPERIS.

(19) (id., PG. 38-39): IN EPILOGUE, I PETITIONER THEN PROCEEDED IN JUNE 2003 TO APPEAL THE (6/5/03) 03c486 DISTRICT COURT DISMISSAL UNTO THE 7th CIRCUIT COURT OF APPEALS FOR ISSUANCE OF 28 U.S.C. 2253 CERTIFICATE OF APPEALABILITY AS THEY DESIGNATED THAT APPEAL #03-2609 AND ISSUED A (6/18/03) BRIEFING ORDER FOR ME TO FILE A JURISDICTIONAL MEMORANDUM WITH ALL PREVIOUS DISTRICT COURT COLLATERAL APPEALS AND COURT DISMISSALS THEREOF ATTACHED. I NOTIFIED THE COURT THIS WOULD REQUIRE AN EXTREMELY EXTENSIVE AMOUNT OF VARIOUS CRIMINAL & CIVIL APPEALS DOCUMENTS AND THEN REQUESTED BY MOTION SUCH APPEAL BE REVIEWED ON THE ORIGINAL EXPANDED LOWER COURT RECORDS AND ALSO REQUESTING THE COURT ISSUE A MORE SPECIFIC BRIEFING ORDER TO MY PRISON WARDEN WHO OTHERWISE REFUSED TO PHOTOCOPY MY APPEAL ON EXTENDED LEGAL LOAN. THE COURT THEN REFUSED MY MOTIONS WHICH RESULTED IN MY HAVING TO FILE MY ONLY ORIGINAL APPEAL DOCUMENTS 98c947/03c486 AND OTHERS WITH THE COURT AS MY ONLY ULTIMATUM TO BE ABLE TO PROCEED IN THIS 03-2609 APPEAL. [SEE APPNX. EX. D, E, F, AND G COURT ORDERS PGS. 04-09; AND EX. H & H.H PG. 010-013 WARDEN'S MEMO, REFUSALS AND SUPPLIES FORM]. THE WARDEN TOLD ME TO HAND COPY THESE EXTENSIVE DOCUMENTS OF (564) PAGE APPENDIX WHICH IS IMPOSSIBLE TO DO ON TEN SHEETS OF CARBON PAPER A WEEK. CONSEQUENTLY, ON (9/5/03) THE COURT - WITHOUT REDRESS - DISMISSED APPEAL 03-2609 AND ON (10/22/03) DENIED REHEARING. [SEE APPNX. EX. A, b AND I PGS. 01-02, 014 ORDERS].

EAI NO. _____

UNITED STATES SUPREME COURT

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IN RE:

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V.

GERALD BERGE - RESPONDENT
WARDEN - WIS. SECURE
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1101 MORRISON DR., P.O. box 1000
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U.S.C.A. No. 03-2609
U.S.D.C. No. 03-C-486

MOTION FOR EXTENSION OF TIME TO FILE PETITION

TO CLERK: HEREBY COMES PETITIONER IN THE ABOVE NAMED HABEAS CORPUS ACTION AND SO REQUESTS EXTENSION BE GIVEN UPON TIME FOR FILING PETITION FOR EXTRAORDINARY WRIT AS ORIGINAL ACTION PURSUANT S.C.R. RULES 30, 17, 20 & 28 U.S.C. 1251 (b) - DUE TO THE FOLLOWING REASONS BELOW ADUMBRATED.

(1): ON SEPTEMBER 5, 2003 THE U.S. SEVENTH CIRCUIT COURT OF APPEALS DISMISSED AND DENIED (IN ONE PARAGRAPH) I PETITIONERS' 28 U.S.C. 2253 FIFTY PAGE JURISDICTIONAL MEMORANDUM AND ACCOMPANYING (564) PAGE APPENDIX REQUESTING HABEAS CORPUS CERTIFICATE OF APPEALIBILITY - WITHOUT AT ALL REDRESSING THE ISSUES AND MERITS SUBMITTED CONCERNING POSSIBLE "CAUSE AND PREJUDICE" OF CONSTITUTIONAL RIGHTS VIOLATIONS WHICH PRECLUDE ANY APPELLATE DEFAULT IN THAT SAID 03-2609 APPEAL. THE COURT - ALTHOUGH WELL SHOWN - IGNORED THE FACT THAT ALL PRIOR STATE AND FEDERAL COURTS PREVIOUSLY ALSO FAILED TO REDRESS THE APPELLATE ISSUES SUBMITTED THUS COMPLETELY DENYING PETITIONER FIRST CONSTNL. AMNDT. REDRESS OF GRIEVANCES AND FIFTH AND 14th AMNDT. EQUAL PROTECTION TO DUE PROCESS AS IT MAY NOT

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