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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA

In re Mr. Tony Gooch, et al)	
<i>Petitioner, pro se</i>)	
)	
Solicitor General Elizabeth B. Prelogar)	
)	
Vs.)	Appeal From: Tennessee Supreme Court
)	<u>Case No. M2022-01395-SC-R8-CO</u>
Appellate Judge Tom Greenholtz)	Appeal From: Court of Criminal Appeal
Appellate Judge James Curwood Witt Jr.)	<u>Case No. M2022-01395-CCA-R3-CD</u>
Appellate Judge Matthew J. Wilson)	Appeal From: State Trial Court
Trial Judge Steve R. Dozier)	<u>Case No. No. 2020-D-2065</u>
)	
Tennessee Board of Judicial Conduct)	
Board Chair G. Andrew Brigham)	
Attorney General Ronald L. Coleman)	
<i>Respondents,</i>)	
)	

“RULE 23 EMERGENCY APPLICATION APPLIED TO JUSTICE SONIA SOTOMAYOR TO STAY EXECUTION”

Comes now the petitioner, Mr. Tony Gooch, *pro se*, pursuant to 28 USC 2106, pursuant to Rule 23 stating that I'm informed and believe upon such pertinent information and belief declares:

(1) There are compelling reasons to grant immediate relief which will have immediate importance far beyond the particular facts and parties involved." The petitioner in this case has been permanently **barred** from presenting an ineffective assistance of counsel claim by the Tennessee Court of Criminal Appeals and State Supreme Court of Tennessee. In other words, the petitioner has been denied the opportunity to collaterally attack his conviction on ineffective assistance grounds.

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(2) The judgment in question resulted in a complete denial of counsel. The petitioner was denied counsel during all three phases of litigation including the pre-trial phase, trial phase, and sentence phase of the criminal justice system. The government's proof was not subjected to adversarial testing, and the petitioner's conviction was racially motivated.

-MOST EXTRAORDINARY CIRCUMSTANCES-

(3) It is argued that the case in question involve allegations of prosecutorial misconduct, fabrication of evidence, official misconduct committed by State Judges, discrimination committed by State-elected officials, and complete denial of counsel, which are structural defects in the Constitution of the trial mechanism. Stated another way, these errors deprived the petitioner of 'basic protections' in which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence... and no criminal punishment may be regarded as fundamentally fair.

(4) These errors have an impact upon the Administration of Justice, and upon the entire conduct of the trial from beginning to end which require automatic reversal. Therefore, if the case in question landed in the United States Supreme Court's office today, this mean that a fundamental "miscarriage of justice" has occurred, and the damage has been done already. The State Courts had approximately (6) years to correct it's own errors, and to prevent any miscarriage of justice. While the court recognize that the petitioner has exhausted his remedies on his Federal claims by giving the Tennessee Supreme Court the opportunity to resolve constitutional errors on two separate occasions in which it denied relief, the Tennessee Court of Criminal Appeals encourages the petitioner to essentially file "repetitive petitions" in the State Supreme Court in which this proposition was rejected by the U.S. Supreme Court.

(5) See *O'Sullivan v. Boerckel*, No. 97-2048, {526 U.S. At *844 } The United States Supreme Court Held: "We have never interpreted the exhaustion requirement to require prisoners to file repetitive petitions". *id.* {526 U.S. At *844 } (**Quoting Justice O'Connor**). See *Brown v. Allen*, 344 U.S. 443, 447, 97 L.ED 469, 73 S Ct 397 (1953) "Holding that a prisoner does not have "to ask the state for collateral relief, based on the same evidence and issues already decided by direct review". Although the petitioner has overly exhausted his Federal claims, the government made it's position clear that it will not seek to correct any error.

(6) Therefore, if a single justice is reading this pleading, it may be too late. The petitioner was left to die in prison as trial counsel stated that the government will not be exposed for any prosecutorial misconduct. See attached exhibits. Attorney errors, incompetence, and lack of objections by previous counsel, resulted in a significant delay in bringing this case to an conclusion Accordingly, for the reasons stated in the petitioner's Affidavit of Criminal Complaint, and for the reasons stated in the petitioner's Extraordinary Writ of Mandamus, and for the reasons stated in this application to **STAY** the judgment, the execution of the lower court judgment shall be **STAYED** and remanded with instructions to indefinitely close the case by entering an judgment of acquittal in favor of the petitioner.

“BRIEF SUMMMARY OF CASE”

(7) The petitioner alleged on direct appeal that he was unconstitutionally denied effective assistance of counsel in the trial court during pre-trial. See Vol. 4 Pre-Trial Transcript. The trial court denied the petitioner relief on his 6th Amendment claims. {Brief Application For Petitioner Pg. 17} Subsequently, during a motion for new trial, the petitioner attempted to re-litigate, and notify the trial judge of his ineffective assistance claims. See Vol. 11 Page 12 Line 14-17. The trial judge stated on the record that issues of ineffective assistance of counsel were not properly before his court because it was deemed a post-conviction issue, and denied the petitioner's motion for new trial. See Vol. 11 Page 12 Line 14-20. The petitioner challenged the trial judge rulings and timely filed an appeal to the Tennessee Court of Criminal Appeal.

(8) On appeal, the petitioner re-argued that he was denied effective assistance of counsel on numerous grounds in the trial court. In addition, the petitioner claimed that the trial court abused it's discretion by denying his judgment of acquittal motion, alleged that his sentence of imprisonment violates the provisions of the double jeopardy clause, and alleged that the Court of Criminal Appeal erred by refusing to allow him to prove his claims of ineffective assistance of counsel. {Brief For Petitioner Application Pg. 23} Like the trial court, the Court of Criminal Appeals ruled that claims of ineffective assistance of counsel were appropriate for post-conviction proceedings and barred the petitioner from presenting his 6th Amendment claims on direct appeal. See *Gooch v. State*, No. M2022-01395-CCA-R3-CD. The petitioner then timely filed an application to the Tennessee Supreme Court alleging that he is now permanently **barred** or was prevented from presenting an ineffective assistance claim by the lower courts. This appeal turns on the meaning of effective assistance of counsel, and whether the petitioner has a constitutional right to present the claim in the lower courts? We shall grant this appeal to consider whether the courts below erred in **barring** the petitioner from presenting an ineffective assistance of counsel claim.

(9) It is claimed on behalf of the petitioner that the crimes charged against him, of which he stands convicted, is void. The trial court had no jurisdiction to try the petitioner, and it's judgment and sentence are illegally void. Accordingly, after reviewing each of petitioner's claims in his application, the Court finds that Petitioner has made a substantial showing of the denial of a constitutional right. On the record before us, we conclude that the trial judge was without jurisdiction or authority to impose the sentence. Because the petitioner's judgment orders and sentence indicate that his two Aggravated Robbery convictions arose from the same transaction, which contained the same elements, the petitioner's sentence violated the express provisions of the Blockburger Test announced in *Blockburger v. United States*, 284 U.S. 299, 304, 76 L. Ed. 306, 52 S. Ct. 180 (1932)). The record reflect that the petitioner's two sentences for his Aggravated robbery conviction are illegal and amounted to **fatal error** because the sentence is in direct contravention of the double jeopardy clause. The petitioner was subjected to multiple convictions for the same offense twice which is **prohibited** by Article 1 Section 10 of the Tennessee Constitution.

“REASON FOR GRANTING REVIEW”

(10) This appeal shall be granted in the interest of justice to address an issue of first impression in the United States Supreme Court.

“ISSUE OF FIRST IMPRESSION”

(11) When the lower courts “**waive**” ineffective assistance claims on direct appeal leaving a defendant no chance to present the claim, the Post-Conviction Procedure Act of Tennessee does not authorize a court, nor provide a defendant adequate remedy to seek relief on “**waived**” claims. Citing *Holland v. State*, No. W2018-01517-SC-R11-PC, {610 S.W.3d at *458}. Therefore, a defendant is permanently **barred** from presenting an ineffective assistance of counsel claim which eliminates the petitioner from presenting the claim, and infringe upon the defendants 6th Amendment rights secured under the State and Federal Constitution.

(12) Consequently, if the petitioner is **barred** from presenting an ineffective assistance claim on direct appeal, and the Tennessee Post-Conviction Procedure Act forecloses the petitioner's “**waived**” claims of ineffective assistance of counsel, the Tennessee Appellate procedure will not provide any appropriate remedy for a petitioner to present his 6th Amendment claims at all. We will deny the petitioner or any petitioner in this scenario the opportunity to collaterally attack his conviction on ineffective assistance grounds. Under Tennessee State law, direct appeal and post-conviction are the only means through which an defendant can collaterally challenge their conviction on appeal.

(13) Therefore, if the court **barred** the petitioner on direct appeal, and post-conviction from raising such claims, the court will deny the petitioner an opportunity to collaterally challenge or deny the petitioner the opportunity to offer any proof to support his claims of ineffective assistance of counsel. There will be no need for a defendant to raise any claim of ineffective assistance of counsel on appeal if we adopted the lower court's approach. Therefore, an issue of first impression before this court is whether the Tennessee Appellate Procedure is inadequate to protect the defendant's constitutional rights when a defendant is denied or barred from presenting their 6th Amendment right to effective assistance of counsel. {Brief For Petitioner Application Pg. 2}. We answer this question affirmatively but remain eager to resolve the matter to prevent any structural or future errors arising from the lower courts on this issue. Although the Petitioner asserted various ineffective-assistance claims together against all three attorneys, and that is how the petitioner addressed them, this Court will separate them for clarity on appeal.

“APPLICABLE STANDARD OF REVIEW”

“ANALYSIS”

(14) We begin our analysis by first reviewing whether the challenged judgment is void when a defendant is denied effective assistance of counsel, as set forth in Tennessee Code Annotated section 40-30-113 (a) (2003): **Specifically, Tennessee Code Annotation section 40-30-111(a) provides, in part:**

“If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable, including a finding that trial counsel was ineffective on direct appeal, the court shall vacate and set aside the judgment or order a delayed appeal as provided in this part and shall enter an appropriate order”. T.C.A. 40-30-113(a). (Quoting *State v. Donald Wallace*, No. M2001-02722-SC-R11-PC, {121 S.W. 3d at *656}. Under Tennessee law, the language codified in statute T.C.A. 40-30-113(a) does not indicate that ineffective assistance claims are barred on direct appeal, nor does the language provided in T.C.A. 40-30-113(a) indicate that claims of ineffective assistance of counsel are appropriate for post-conviction proceedings as the lower courts implied. See {Appellate Court Opinion Pg. 9} T.C.A. 40-30-113(a) .

(15) When the legislature of Tennessee adopted statute T.C.A. 40-30-113(a), we must presume that the General Assembly intended to provide a defendant a remedy for 6th Amendment violations on direct appeal. That is, ineffective assistance of counsel. The language of the statute pertains to first-tier direct appeals, rather than post-conviction, which does not bar a reviewing court from hearing such claims on direct appeal. Citing T.C.A. 40-30-113(a). (Quoting *Kimmelman v. Morrison*, [477 U.S. At *386] The United States Supreme Court elaborated: **“It will generally be appropriate for a reviewing court to assess counsel's overall performance throughout the case in order to determine whether the "identified acts or omissions" overcome the presumption that counsel rendered reasonable professional assistance”.** *Kimmelman* {477 U.S. At *386}. Accordingly, the Court of Criminal Appeal erred by barring review of the petitioner's 6th Amendment claims. Such denial of review infringe upon the petitioner's 6th Amendment rights to present his claims in contravene of T.C.A. 40-30-113(a) .

(16) To the extent that the lower court relied upon *State v. Honeycutt*, 54 S.W. 3d 762, 766 n.3 (Tenn. 2001) for the proposition that ineffective assistance of counsel claims are appropriate for post-conviction proceedings are inaccurate statements of the law, and inconsistent with the rules promulgated in T.C.A. 40-30-113(a). {Appellate Court Opinion Pg. 9}. In any event, we take this time as precaution to note the procedural requirements for allowing a defendant or other party to appeal to this court. The history of significant importance allowing a court of competent jurisdiction to hear a case arises when an error has occurred during the proceedings of an lower court judgment, or because of the abridgment of a defendant's constitutional rights, or when a controversy or resolution will have immediate importance far beyond the particular facts and parties involved."

(17) When the legislature adopted Tenn. Sup. Ct. R. 28, 9(B), the statute provided: “A petitioner shall be entitled to post-conviction relief when petitioner's conviction or sentence is void or voidable because of the violation of any right guaranteed by the state or federal constitution. We described the methodology of the Post-Conviction Procedure Act in *State v. Torrey L. Frazier*, No. E2007-02518-SC-R11-PC, (303 S.W. 3d at *680) The Tennessee Supreme Court Held: “The Post- Conviction Procedure Act provides “a person in custody” under a sentence of a court of this state, Tenn. Code. Ann. 40-30-102(a), with the opportunity to ask either a conviction or sentence be set aside or an appeal be granted on the basis of the denial of a constitutional right”. *id.* *Frazier* (303 S.W. 3d at *680) Tenn. Code. Ann. 40-30-103 (2006). Therefore, if the petitioner is **barred** from presenting an ineffective assistance claim on direct appeal, and the Post-Conviction Procedure Act of Tennessee forecloses the petitioner's “**waived**” claims of ineffective assistance of counsel, the Tennessee Appellate procedure will not provide any appropriate remedy for a petitioner to present his 6th Amendment claims at all. The court will deny the petitioner or any petitioner in this scenario the opportunity to collaterally attack his conviction on ineffective assistance grounds. Accordingly, the petitioner was entitled to present his claims of ineffective assistance of counsel, and the lower courts erred on this issue.

“APPLICABLE STANDARD OF REVIEW”

(18) In *Keough*, the Tennessee Supreme Court found that defendant was deprived of his rights to prove his claims of ineffective assistance of counsel. See *Keough v. State*, 356 S.W.3d 366, 2011 Tenn. LEXIS 1140 (Tenn. Dec. 9, 2011) The Tennessee Supreme Court Held: “The petitioner was deprived of the limited scope of cross-examination provided in Tenn. Sup. Ct. R. 28, ¶ 8(C)(1)(d) where his testimony supporting his claim of ineffective assistance of counsel was critical to his ability to prove the claim by clear and convincing proof”. *id.* 356 S.W. 3d at *373. See *Haines v. Kerner*, No. 70-5025, 404 US 519, 30 L Ed 2d 652, 92 SCT 594, “An Illinois State Penitentiary inmate sued state officials pro se in the United States District Court for the Eastern District of Illinois, seeking damages for a deprivation of his civil rights and alleging (1) a denial of due process.

(19) On Certiorari, the United States Supreme Court reversed. In a per curiam opinion, expressing the unanimous views of the court, it was held that since it did not appear beyond doubt that the inmate could prove no set of facts in support of his claims which would entitle him to relief, he was entitled to an opportunity to offer proof. [404 US at *521]. *Haines v. Kerner*, No. 70-5025, 404 US 519, 30 L Ed 2d 652, 92 SCT 594. In the present case, we cannot say with assurance that under the allegations of petitioner's pro se pleadings, which we hold to less stringent standards than formal pleadings drafted by lawyers, that it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Having determined the proper rule of law, and applying these principles to the case before us, along with the decision applied in *Keough*, the Court finds that the Petitioner has made a substantial showing of the denial of a constitutional right in which the petitioner is entitled to offer proof to support his claims of ineffective assistance of counsel. *Keough v. State*, 356 S.W.3d 366, 2011 Tenn. LEXIS 1140 (Tenn. Dec. 9, 2011)

(20) Because reasonable jurists could not disagree with the correctness of the Court's assessment on these claims, we hold that the petitioner was deprived of his 6th Amendment right. See *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2D 542 (2000)) The United States Supreme Court concluded: "A (COA) Certificate of Appeal should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling". (Quoting *Slack*, {529 U.S. At *484}. If the U.S. Supreme Justices find it **debatable** that the denial of effective assistance of counsel **voids** the judgment pursuant to T.C.A. 40-30-113(a), and satisfied with the court's conclusion that a failure to allow a defendant to prove a claim of ineffective assistance of counsel infringe upon rights secured under the State and Federal Constitution, the application to **STAY** the judgment shall be promptly **GRANTED**.

(21) In the present case, the Petitioner raises several issues in support of his claim that counsel was ineffective, including counsel's failure to file or include particular grounds in a motion to suppress in violation of petitioner's Fourth Amendment rights. {Brief Application For Petitioner Pg. 23} The petitioner further argue that he was **denied** his right to a fair trial when counsel failed to present facts supporting that Judge Dozier and ADA Jennifer Charles falsified public records. {Brief Application For Petitioner Pg. 16, Pg. 34}. In addition, the petitioner asserted by Affidavit of Complaint titled to this court that an three-judge panel allegedly conspired to **defraud** petitioner of his 4th Amendment and 6th Amendment rights. The petitioner further submitted complaints to the Tennessee Board of Judicial Conduct alleging that the judicial process was injured by the appearance of impropriety, and unfair lack of impartiality on the part of the judge's ruling on his appeal. {Petitioner Affidavit of Complaint Pg. 2}. The government does not address nor acknowledge the complaint. Indeed, the government does not attempt to dispute nor deny the petitioner's allegations made in the complaint before this appeal.

(22) The Tennessee Supreme Court's inherent power under the Tennessee Constitution includes the authority to regulate and supervise the practice of law in this State. (Quoting *Manookian v. Bd. Of Pro. Resp. Of the Sup Ct. No. M2022-00075-SC-R3-BP*, {685 S.W.3d at *801}. Therefore, as Judges or Supreme Justices, we are incapable of ignoring the petitioner's complaints. Initially, we are bound to uphold a code of ethics, and professionalism rendering sitting justices bound by the same rules promulgated by this court. Rule 2.15 Responding to Judicial and Lawyer Misconduct Section (A) provides: "A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority. **Section C provides:** "A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action. In this application to STAY the judgment, the petitioner will hereby provide compelling evidence at each stage of litigation that the petitioner was deprived effective assistance of counsel during all three phases. The court will begin it's findings in chronological order starting with the first attorney's representation.

“PRE-TRIAL PHASE” (FIRST ATTORNEY)

“PRELIMINARY COUNSEL GEORGE WAGGONER” FAILURE TO FILE MOTION TO SUPPRESS”

(23) In the case in question, the petitioner was represented by three former attorneys who currently retain their positions as members of the Tennessee bar. Attorney George W. Waggoner, 028755; Attorney Seth T. Norman, 030286; and Attorney Nicholas T. McGregor, 030798; {Original Brief For Petitioner Pg. 3}. It is argued that Attorney George Waggoner was the first attorney assigned to represent the petitioner at an preliminary hearing setting. The petitioner note that preliminary counsel, and trial counsel was ineffective during pre-trial for failing to file a motion to suppress evidence derived from the illegal stop of Mr. Gooch's vehicle. As a result of these findings, the petitioner reported these claims to the Tennessee Board of Professional Responsibility. See Complaint Number: “60436c-5” Attorney Name George W. Waggoner III, See Complaint Number 65792c-5 Attorney Name Seth T. Norman. See Complaint Number : 65791c-5 District Attorney Name Jennifer Charles See Complaint Number: 70130c-5 Attorney Name Nicholas T. McGregor .

(24) To the extent that counsel's failure to present this ground was the result of state action pursuant to T.C.A. 40-30-106 (g)(2), we will consider whether counsel was ineffective in failing to file a motion to suppress on this ground. See *United States v. Albert Thomas Wendfeldt*, No. 3:11-CR-00094-LRH-VPC, 58 F. Supp. 3D 1124. In addition, the petitioner asserts that preliminary counsel was ineffective for failing to timely raise an double jeopardy defense during the preliminary hearing. {Original Brief For Petitioner Pg. 43} {Brief Application For Petitioner Pg. 40}. In this case, victims of an Hotel robbery near the Williamson County's state line gave Mid-town police first responders a vague description of an suspected vehicle and perpetrators believed to be involved in the robbery. Witnesses described the suspects as strangers who were dressed as masked intruders, wearing all black clothing and possibly escaped in an Orange mustang. Eyewitnesses could not provide a tag description of the vehicle, nor provide the officers with any information regarding the direction of travel the vehicle traveled.

(25) In addition, eyewitnesses were unable to confirm with Mid-town officers whether the suspected vehicle had tinted windows at that time. Consequently, no other information about the vehicle of interest was established other than the color of the vehicle. On the basis of such vague eyewitness information, the suspect description, and vehicle description was aired through an police bolo by Midtown first responders employed by the Midtown Police Precinct. Approximately 12 miles away from the original crime scene, the petitioner was driving in a car on Rosa Parks Blvd similar to a car that matched the description of the vehicle seen leaving the scene near the Williamson County State Line. The petitioner was driving in an Yellow mustang with tinted windows in a normal manner accompanied by another individual, violating no road traffic laws when he was pursued by Davidson County North Precinct officers.

(26) When the petitioner pulled into a restaurant parking lot, Davidson County officers acted in reliance upon the information exclusively given in the police bolo provided by Mid-Town, and initiated a traffic stop. Thereafter, North precinct officers arrested the petitioner without an warrant, and impounded Mr. Gooch's vehicle. **Vol. 8 Trial Transcript Page 167 Line 3.** Subsequently, the petitioner along with his passenger were subjected to an identification procedure, and both occupants were transported in separate vehicles to a police station for questioning at custodial interrogation. See Vol.13 Exhibit 21c. Because the petitioner was not seized pursuant to any violations of the law, the stop did not comply with **Tennessee Policy 6.020.030 Section (a)** and the petitioner had an (meritorious claim) on this issue had it not been for preliminary counsel and trial counsel's unprofessional errors. The petitioner was initially seized without probable cause, and the custodial interrogation in this case exceeded the limits of an Terry stop, which is inconsistent with the general laws of the land announced in *Dunaway v. New York*, 442 U.S. 200, 203, 99 S. Ct. 2248, 60 L. Ed. 2D 824 & n.1 (1979).

(27) In *Dunaway*, the United States Supreme Court Held: "Petitioner's conviction for murder was reversed because the police violated the 4th and the 14th Amendment of the constitution when without probable cause, they seized petitioner and transported him to the police station for interrogation". *Dunaway v. New York*, 442 U.S. 200, 203, 99 S. Ct. 2248, 60 L. Ed. 2D 824 & n.1 (1979). Preliminary counsel's failure to file a timely suppression motion at the preliminary hearing based on illegal seizure grounds was objectively unreasonable given the clear state of the laws of the Constitution. Under Tennessee law, it is well-established law and fundamental that motions to suppress illegally seized evidence are appropriate at the preliminary hearing. See Tennessee Rules of Criminal Procedure, 5.1(a) which provides as follows: "Rules excluding evidence from consideration on the ground that it was acquired by unlawful means are applicable". (Quoting *State v. Golden*, 941 S.W. 2d at (*907)).

(28) In the present case, the court finds that preliminary counsel's lack of legal knowledge on this issue, and preliminary counsel's failure to raise a timely objection based on clearly established Federal law as determined by the Supreme Court of the United States was objectively unreasonable, which did not satisfy Tenn Sup. Ct. R. 1.1 Competent representation. See *United States v. Prairie Pharmacy, Inc.* 921 F.2d at (*214)(**9) "Holding that an attorney's failure to verify requirements of the law demonstrates attorney malpractice". See *South Dakota v. Opperman*, [No. 75-76], 428 U.S. At (*383) 376, 96 S. Ct. 3092, 49 L. Ed. 2D 1000 (1976) The United States Supreme Court elaborated: "Inventory searches are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized". {428 US at *383} (Quoted by U.S. Supreme Mr. Justice Powell). According to Oopperman's decision, the police must first have the authority to impound a vehicle and must then follow the procedures outlined in local policy. Therefore, when this court turn to local established police department rules, and policies governing the seizures of automobiles in accordance with Oopperman's decision, we note that any (competent counsel) licensed to practice law in the State of Tennessee, would have timely recognized the law requirements of this state. See **MNPD Policy 6.020.030 Section (a)**

(29) MNPD Policy 6.020.030 Section (A) of Tennessee provides as follows: “The motor vehicle traffic codes of the Metropolitan government specifically authorize employees of the department to impound any vehicle parked or stopped when the vehicle is in violation of any regulation or ordinance of the Metropolitan Government”.

(30) Accordingly, the record in the present case does not support a finding at any time during the petitioner's initial stop by officers that Mr. Gooch's vehicle was in violation of any motor vehicle traffic code authorized by the Metropolitan Government of Tennessee. See Vol 7 Trial Transcript Pg. 134 Line 24. As the court review the record at Vol. 8 Trial Transcript Page 167 Line 3 which reflect the petitioner's vehicle impoundment, we hold that it is **UNDISPUTED** that officers lacked both impoundment authority to seize or tow the petitioner's vehicle in violation of T.C.A. 66-19-103(c). Although trial counsel Nicholas McGregor filed a motion to suppress attacking the search warrant of petitioner's cell phone, we note that trial counsel did not include any grounds to suppress evidence derived from petitioner's false arrest, and illegal stop of petitioner's vehicle. See Vol 3. Suppression Hearing Transcript. Accordingly, as for the reasons discussed below, we properly conclude that these claims collaterally attack the **pre-trial phase** of the proceedings. The failure of preliminary counsel adequately to investigate and failure to file a motion to suppress evidence at the preliminary hearing resulted in prejudice to the petitioner for the reasons set forth herein.

(31) Had preliminary counsel properly filed a motion to suppress evidence obtained from the stop at the preliminary hearing, the bb guns that was allegedly discovered in petitioner's vehicle would have been suppressed which would have **excluded** the use of the firearm-element as defined in T.C.A. 39-13-402 (A)(1) from the government's proof. Therefore, the trial court would not have had jurisdiction to **try** the petitioner on either (count 2) nor (count 3) if counsel filed a timely suppression motion at the preliminary hearing . That is, because the government cannot establish proof of the “Aggravated element” found in T.C. A. 39-13-402 (A)(1) if the court had suppressed the weapons. It follows then that an **essential element** of Aggravated robbery would have been excluded. Generally, the lack of an essential element is enough to establish dismissal of any criminal charges. See Adler v. Wal-Mart Stores, Inc., 144 F.3d at *671 (“Holding the movant need to only show "a lack of evidence" on an essential element”). (Citing State v. Connie Reguli, No. M2022-00143-CCA-R3-CD, 2024 Tenn. Crim. App. LEXIS 102 “Where the State fails to prove an essential element of a charged offense, the only remedy available to the court is the dismissal of the charge”. (Quoted By Appellate Judge Tom Greenholtz). In support of the essential element rule, Appellate Judge Tom Greenholtz and the Reguli Court relied upon State v. Joshua Lynn Parker, No. E2008-02541-SC-R11-CD, 350 S.W.3d at *909 (Tenn. 2011). In State v. Parker, the Tennessee Supreme Court Held: “If the proof does not adequately support each and every element, the defendant is entitled to a reversal of the conviction”. id. {350 S.W.3d at *909}. (Quoting Tennessee Supreme Court).

(32) In the present case, had the preliminary Judge agreed with the defense position, and suppressed the weapons, preliminary counsel could have successfully moved for dismissal of (Count 3) Aggravated robbery on grounds that the serious bodily injury element, and firearm element of T.C.A. 39-13-402 is insufficient for any fact-finder to find all the **essential elements** of Aggravated robbery proven beyond a reasonable doubt on (count 3) for trial. {Brief For Petitioner Application Pg. 27}. Accordingly, we reiterate that had the weapons obtained from petitioner's vehicle properly been suppressed as the fruit of an unlawful seizure, preliminary counsel could have competently or successfully moved for dismissal at the preliminary hearing on grounds that the government cannot meet it's burden of proof in establishing **every element** of the offenses. These are elementary principles of law well known to experienced criminal defense attorneys, and such an argument made of this nature is elementary to this court.

“PRELIMINARY COUNSEL GEORGE WAGGONER FAILURE TO MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS”

(33) Thereafter, preliminary counsel could have successfully moved for dismissal of the other (count 2) on Double Jeopardy grounds at the preliminary hearing because both offenses contain the same elements which derived from the same transaction. **See Brown v. Ohio, [No. 75-6933] Brown, supra, at 166, 53 L Ed 2d 187, 97 S Ct 2221 The United States Supreme Court elaborated: “If application of the Block-Burger test reveals that the offenses have identical statutory elements or that one is a lesser included offense of the other, then the inquiry must cease, and the subsequent prosecution is barred”. id. {432 US at *165} Justice noted: “If two offenses are the same under this test for purposes of barring consecutive sentences at a single trial, they necessarily will be the same for purposes of barring successive prosecutions”. id. {432 US at *165}.**

(34) See State v. Christopher Scottie Itzol-Deleon, No. M2014-02380-SC-R11-CD, {537 S.W.3d at *452} Justice Jeffrey S. Bivins of the Tennessee Supreme Court Held: “If our determination of the threshold inquiry is that the Defendant's two convictions arose from the same act or transaction, we next must consider the statutory elements of the two conviction offenses. "If the elements of the offenses are the same, then we will presume that multiple convictions are not intended by the General Assembly and that multiple convictions violate double jeopardy." (Quoting Justice Jeffrey S. Bivins). **State v. Itzol-Deleon, id. {537 S.W.3d at *452}**. Because preliminary counsel in the present case could have argued these elementary principles of law at the preliminary hearing, we find it was objectively unreasonable for preliminary counsel's failure to do so which did not satisfy Tenn. Sup Ct. R. 1.1 Competent representation. Tennessee Supreme Court Rule 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. We reiterate that a timely double jeopardy defense raised at the preliminary hearing would have (forever) **barred** the government from proceeding on both (count 2) or (count 3) for trial.

(35) Accordingly, having determined the proper rule of law, it follows then that the trial court would have lacked both jurisdiction and authority to try the petitioner, or sentence the petitioner on both (counts 2) and (counts 3) had it not been for preliminary counsel errors of incompetence by failing to file a timely suppression motion, and preliminary counsel's failure to timely raise a double jeopardy defense at the preliminary hearing. {Original Brief For Petitioner Pg. 40-45} {Brief Application For Petitioner Pg. 31-32.} As a general rule, under the principles of double jeopardy, an accused is protected from (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. In *Commonwealth of Puerto Rico vs. Luis M. Sanchez Valle*, No. 15-108, 579 U.S. 59, 136 S. Ct. 1863, 195 L. Ed. 2Dd 179, 2016 U.S. LEXIS 3773, 84 U.S.L.W. 4376, 26 Fla. L. Justice Kagan of the United States Supreme Court recently wrote: "The Double Jeopardy Clause of the Fifth Amendment prohibits more than one prosecution for the same offense", Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. {136 S. Ct. at 1870 579 U.S. At *67}..

(36) Justice Kagan further noted: "Commonwealth prosecutors indicted defendants among other things, for selling a firearm without a permit in violation of the Puerto Rico Arms Act of 2000. While those charges were pending, federal grand juries indicted Sanchez Valle and Jaime Gomez, based on the same transactions, for violations of analogous U. S. gun trafficking statutes. Both defendants pleaded guilty to federal charges. Following their pleas, counsel for defendants Sanchez Valle and Jaime Gomez moved to **dismiss** the pending Commonwealth charges on **double jeopardy grounds**. The prosecutors in both cases opposed those motions, arguing that Puerto Rico and the United States are different sovereigns for double jeopardy purposes, and so could bring successive prosecutions against each of the two defendants. {579 U.S. At *66}. The trial court rejected that view and dismissed the charges. The Puerto Rico Court of Appeals later reversed the trial court decisions and erred by consolidating the two cases. The Supreme Court of Puerto Rico granted review and held that the Court of Appeals erred because Puerto Rico's gun sale prosecutions violated the Double Jeopardy Clause. The government appealed the decision.

(37) The United States Supreme Court granted certiorari, 576 U. S. 1095, 136 S. Ct. 28, 192 L. Ed. 2d 998 (2015), to determine whether {LedHR4}[4] the Double Jeopardy Clause bars the Federal Government and Puerto Rico from successively prosecuting a defendant on the same charges for the same conduct. The U.S. Supreme Court affirmed the Supreme Court of Puerto Rico's decision holding that a person cannot twice be prosecuted for the **same offense** nor subject to the **same offense** to be twice put in jeopardy of life or limb. *Commonwealth of Puerto Rico vs. Luis M. Sanchez Valle*, No. 15-108, 579 U.S. 59, 136 S. Ct. 1863, 195 L. Ed. 2Dd 179, 2016 U.S. LEXIS 3773, 84 U.S.L.W. 4376, 26 Fla. L. Having applied this standard to the case before us, we find that preliminary counsel's representation was deficient which prejudiced the petitioner for the reasons thoroughly set forth herein. Compare *Commonwealth of Puerto Rico* to the present case, preliminary counsel did not move to **dismiss** both counts of Aggravated robbery on double jeopardy grounds despite the fact, the two offenses charged are in law and fact the same offense.

(38) In addressing that inquiry, this court has held, “to determine whether two offenses are the same, a court must look to the offenses elements. *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). (Quoting Christopher Scottie Itzol-Deleon, No. M2014-02380-SC-R11-CD, {537 S.W.3d at *452}. If two offenses are greater and lesser included offenses, the government cannot prosecute them successively. (Quoting *Brown v. Ohio*, 432 U.S. At *169, 97 S. Ct. 2221, 53 L. Ed. 2Dd 187. In the present case, the two Aggravated robbery offenses presented at the preliminary hearing were two greater offenses that arose from the same transaction, and the two statutes were not distinct under *Blockburger's* same element test. In other words, the same evidence is required to sustain both convictions. Therefore, the government could not prosecute the offenses successfully because either under the same element test, or under the two greater offense analysis, both counts are constitutionally prohibited under the clause as the clause speaks of **barring** successive trials for the **same offense**.

(39) Thus, the duration of the crime lasted only (three) minutes during one continuous act which did not separate nor distinguish the commission of the offenses for a separate prosecution. As the Tennessee Supreme Court stated in *State v. Phillips*, 924, S.W. 2D 662 (Tenn. 1996) “A single wrongful act may not furnish the basis for more than one criminal prosecution”. Where time and location did not distinguish the offenses in the present case, both offenses are the same, and constitutionally prohibited under double jeopardy. Therefore, the court finds that preliminary counsel could have **successfully** moved for suppression and dismissal on double jeopardy grounds at the preliminary hearing. In terms of reversible and prejudicial error, we also find it elementary that preliminary counsel could have raised such an (meritorious) defense on the issue of double jeopardy at the preliminary hearing which was an (available remedy) at that time due to the same offenses. As the United States Supreme Court perfectly stated in *Carter v. McClaghry*, [No. 251.] 183 U.S. At *395 “The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense”. *id.* {183 U.S. At *395”}.

(40) Although the petitioner Mr. Gooch was arrested without probable cause in the present case, the preliminary hearing judge issued an “**bind-over order**” for the petitioner Mr. Gooch to be held in further confinement, and submitted the case to an Tennessee grand jury. Preliminary counsel did not raise any objections to dismiss the bind-over order on any of the grounds mentioned herein. {Original Brief for Petitioner Pg. 43}. Subsequently, once the grand-jury returned an indictment, the indictment contained multiple counts for the same offenses presented at the preliminary hearing. See Technical Record Volume 1 Pg. 65 of 204. Again, preliminary counsel did not move to **dismiss** the indictment, nor raised any objections to dismiss the unlawful bind-over order. {Original Brief For Petitioner Pg. 43} It is argued that the defective indictments subsequently issued by the grand jury in Mr. Gooch's case are similar in form to the indictments issued in *Valentine*. See *Valentine v. Konteh*, 395 F.3d 626 (6th Cir. 2005). In *Valentine*, the Sixth Circuit found that “multiple, undifferentiated charges in the indictment for the **same offense** violated *Valentine's* rights to notice and his right to be protected from double jeopardy.” 395 F.3d at *631.

(41) In the present case, because we hold that the petitioner was put in jeopardy for the same offense, any subsequent indictment returned by a grand-jury containing identity of offenses should have been dismissed by preliminary counsel and trial counsel during pre-trial. This objection, had it been properly raised at the preliminary hearing, would have barred the government **forever** from trying the petitioner on either (count 2) or (count 3) in the trial court. Accordingly, it follows then that the trial court would have lacked jurisdiction to try or sentence the petitioner on both counts but for preliminary counsel unprofessional errors. In support of these findings of fact, this court has already determined that if a timely motion to suppress the weapons had been filed at the preliminary hearing, and if that motion had been properly sustained in accordance with law, the government remaining proof could not sufficiently establish the essential element of violence required under *State v. Allen*, No. E1998-00416-SC-R11- CD , nor establish the essential element pertaining to the firearm element as defined in T.C.A. 39-13-402 (A)(1). {Brief Application For Petitioner Pg. 28}.

(42) Therefore, combined with preliminary counsel's failure to file a motion to suppress, along with preliminary counsel's failure to raise an double jeopardy defense, we find that the petitioner was seriously deprived of his 6th Amendment right to effective assistance of counsel. In other words, the petitioner was prejudiced by preliminary counsel errors because the outcome would have been different. The government could not prosecute the offenses successfully given the way Mr. Gooch was indicted and tried upon an vindictive superseding indictment. It would have been incredibly difficult for the trial judge to consider each count on its own absent preliminary counsel errors. As stated in petitioner's brief, it remains the judgment of this court that the preliminary hearing was improperly conducted. {Original Brief For Petitioner Pg. 43-44} {Brief Application For Petitioner Pg. 31-32} (Quoting *Elijah Waugh v. State*, 564 S.W. 2d 654, 1978 Tenn. LEXIS 541. The petitioner was clearly prejudiced due to preliminary counsel's failure to file a timely suppression motion.

(43) See ***Kimmelman v. Morrison*, No. 84-1661, [477 US at *374]** **The United States Supreme Court Held: "While defense counsel's failure to make a timely suppression motion is the primary manifestation of incompetence and source of prejudice advanced by respondent, the two claims are nonetheless distinct, both in nature and in the requisite elements of proof".** **id. [477 US at *374]**. In the present case, the court reiterates that the trial court had no jurisdiction to try the petitioner. "There is a reasonable probability that, but for preliminary counsel's unprofessional errors, the result of the proceeding would have been different. Citing *Strickland v. Washington*, 466 U.S. At *694. As the United States Supreme Court contemplated in *Kimmelman v. Morrison*: "To establish a successful claim of ineffective assistance of counsel based on counsel's failure to file a motion to suppress evidence on Fourth Amendment grounds, the Petitioner must prove: "(1) a suppression motion would have been meritorious; (2) counsel's failure to file such motion was objectively unreasonable; and (3) but for counsel's objectively unreasonable omission, there is a reasonable probability that the verdict would have been different absent the excludable evidence." **id. 477 U.S. At *375.**

(44) (Quoting State v. Phillips, No. W2019-01927-SC-R11-PC, The Tennessee Supreme Court Held: “Kimmelman defines the appropriate standard for prejudice under the circumstances and should be utilized by Tennessee courts moving forward”. *id.* {647 S.W.3d at *403}. Having properly reviewed the clause of double jeopardy, this court is of the opinion that the trial court in the present case would have lacked jurisdiction to **impose** sentences on both counts had the petitioner been afforded protection under the clause of double jeopardy or afforded effective assistance of counsel. Perhaps, even if the government was properly allowed to proceed on (Count 3), which it was not, the judgment shall result in dismissal either way under the circumstances because the lack of the serious bodily injury element under (Count 3) without proof of the Aggravated firearm-element in (Count 2) is insufficient for any trier of fact to find all the essential elements of Aggravated robbery proven beyond a reasonable doubt under Jackson v. Virginia, 443 U.S. 307, 99 S. CT. 2781, 2786-2792, 61 L. Ed. 2D 560 (1979). Accordingly, the petitioner have carried his burden of establishing Strickland's second prong of prejudice as the petitioner has shown by clear and convincing evidence, that there would have been a different outcome absent preliminary counsel errors.

”PRE-TRIAL PHASE” (SECOND ATTORNEY)

TRIAL COUNSEL SETH T. NORMAN FAILURE TO FILE MOTION TO SUPPRESS, AND FAILURE TO MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS”

(45) Despite the complete denial of counsel at the preliminary hearing, the case proceeded forth and was set for trial in the trial court. The petitioner's first attorney George Waggoner was removed from attorney of record. As a result of Attorney George Waggoner's deficiencies and inactions, it is argued that the petitioner privately hired new attorney Seth T. Norman. The petitioner argue that he paid for Attorney Norman's legal representation in hopes to expect for better representation. Initially, we note that trial counsel Seth Norman did not file any suppression motions, nor timely filed any dismissal motions on double jeopardy grounds in this case. As a result of these findings, the petitioner reported these claims to the Tennessee Board of Professional Responsibility. See Complaint Number 65792c-5 Attorney Name Seth T. Norman. See Attached Copy of Board of Professional Responsibility Complaints.

(46) Trial counsel Seth Norman's legal strategy during pre-trial was to sever the petitioner charges, and try the counts separately from petitioner's co-defendant for trial. See Technical Record Volume 1 Pg. 8 of 204 Attorney Norman's Severance Motion. It is obvious however, that the petitioner did not consent to a severance motion which is the reason the petitioner filed a complaint with the Tennessee Board of Professional Responsibility. As previously mentioned, the petitioner notified the Board that trial counsel was ineffective for failing to move for dismissal on double jeopardy grounds. See Complaint Number 65792c-5 Attorney Name Seth T. Norman. See Attached Copy of Board of Professional Responsibility Complaints. Accordingly, as for the reasons discussed herein, we properly conclude that these claims collaterally attack the **pre-trial phase** of the proceedings.

(47) Had trial counsel Norman filed a motion to suppress on 4th Amendment grounds due to petitioner's false arrest and illegal stop, the weapons discovered in petitioner's vehicle would have been suppressed which would have excluded the firearm-element as defined in T.C.A. 39-13-402 (A)(1) from the government's proof. Once the firearm element is properly excluded, trial counsel Norman could have competently ligated or successfully argued in a dismissal motion before trial, that the government remaining proof could not sufficiently establish the “**element of violence**”, such as display of a weapon preceding, or occurring “contemporaneously” in connection with a taking of property as required under State v. Owens, 20 S.W.3d 634, 641 (Tenn. 2000), State v. Swift, 308 S.W.3d 827, 829 (Tenn. 2010) and State v. Allen, No. E1998-00416-SC-R11-CD, 69 S.W. 3d at *186. In other words, if State v. Allen stands for the proposition that pointing a deadly weapon at a victim constitutes violence which satisfy the violence element, the government remaining proof after suppression of the weapons, fall short of meeting the violence element in State v. Allen, No. E1998-00416-SC-R11-CD, 69 S.W. 3d at *186.

(48) Moreover, in order for an robbery to be classified as “Aggravated” under Tennessee Law, as defined in T.C.A. 39-13-401: It must be (1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon. Therefore, if the weapons had properly been suppressed, we note that the government remaining proof cannot establish the use of a weapon element, or display of any article which is the first element of T.C.A. 39-13-401(A)(1). Likewise, if State v. Owens stands for the proposition that violence must precede or be contemporaneous with a taking of property, this mean had the weapons properly been excluded, we reiterate that the state could not have proven nor carried it's burden of establishing that the act of violence such as display of a weapon, “preceded” or contemporaneously ocured in connection with a taking of property. As previously mentioned, we hold that once the court exclude the fruits obtained from the unlawful stop, there remain insufficient evidence in the record under Owens and Swift decisions. {State Supreme Application For Petitioner Pg. 30}. Accordingly, trial counsel Norman's failure to file a motion to suppress on Fourth Amendment grounds resulted in prejudice to the petitioner.

“TRIAL COUNSEL SETH NORMAN FAILURE TO MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS”

(49) Due to the fact that both Aggravated robbery offenses are the same offense, the court particularly find it troublesome that trial counsel Norman did not move for dismissal of (count 2) and (count 3) offenses on double jeopardy grounds. Instead, trial counsel Norman's strategy was solely focused on severance, and trying the counts separately which did not satisfy Tenn Sup Ct. R. 1.1 Competent representation. Had trial counsel Norman had the expertise of legal knowledge or was skilled in law, counsel would have known that any consented severance motion would have foreclosed the petitioner's double jeopardy violations under Currier v. Virginia, No. 16-1348, 585 U.S. 138 S. Ct. 201 L Ed. 2D 650, 2018 U.S. Lexis 3841.

(50) In *Currier*, the United States Supreme Court elaborated: “Where defendant agrees to severance of criminal trials, defendant's trials and conviction on the remaining charges did not violate the Double Jeopardy Clause. With respect to Part III of its opinion, the U.S. Supreme Court stated, “Granting a severance is {201 L. Ed. 2D 664} no small thing. It means a court must expend resources for two trials where the Constitution would have permitted one. {138 S. Ct. at *2156} (Quoting *Currier v. Virginia*, No. 16-1348 . See *Jeffers v. United States*, 432 U.S. 137, 97 S. Ct. 2207, 53 L. Ed. 2D 168 (1977), the defendant sought separate trials on each of the counts against him to reduce the possibility of prejudice. The court granted his request. After the jury convicted the defendant in the first trial of a lesser-included offense, he argued that the prosecution could not later try him for a greater offense.

(51) In any other circumstance, the U.S. Supreme Court stated, the defendant likely would have had a good argument. Historically, courts have treated greater and lesser-included offenses as the same offense for double jeopardy purposes, so a conviction on one normally precludes a later trial on the other. *Id.*, at 150-151, 97 S. Ct. 2207, 53 L. Ed. 2d 168 (plurality opinion); *Brown v. Ohio*, 432 U.S. 161, 168-169, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977) (collecting authorities). But, *Jeffers* concluded, it's different when the defendant consents to two trials where one could have done. {LedHR3}[3] If a single trial on multiple charges would suffice to avoid a double jeopardy complaint, “there is no violation of the Double Jeopardy Clause when [the defendant] elects to have the . . . offenses tried separately and persuades the trial court to honor his election.” {432 U.S., at *152}, 97 S. Ct. 2207, 53 L. Ed. 2D 168. Comparing *Jeffers* and *Currier* to the present case, the petitioner did not consent to severance. Trial counsel alluded to this fact in his motion to withdraw that the petitioner and trial counsel were in disagreement with the legal strategy of the case. See Technical Record Volume 1 Pg. 23 of 204. Specifically, the petitioner elected to invoke and preserve his double jeopardy rights, while counsel Norman elected to try each count separately by severance subjecting the petitioner to multiple trials for the same offense.

(52) The law is clear that Congress did not intend for a defendant to be subjected to multiple charges for the same offense during trial. Therefore, it was objectively unreasonable for trial counsel Norman to pursue a legal strategy to the contrary against his client wishes. We find from an ethical standpoint that trial counsel Norman's representation violated the rules of professional conduct. See Tenn Sup Ct. R. 1.2(a) which provides: “A lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client about the means by which the client's objectives are to be accomplished”. Moreover, it was objectively unreasonable for trial counsel Norman to fail to move for dismissal on double jeopardy grounds. Had trial counsel Norman “timely” moved for dismissal of both counts under double jeopardy before trial, the prosecution would have been **barred** from successfully prosecuting both (count 2) and (count 3) Aggravated robbery offenses at the same time during trial. Therefore, only one count may have been permissible under double jeopardy but as previously mentioned, if a timely suppression motion was filed by trial counsel Norman based upon Mr. Gooch's illegal seizure, the weapons discovered in petitioner's vehicle obtained from the illegal stop would have been suppressed.

(53) Therefore, once the weapon and firearm element of T.C.A. 39-13-401(A)(1) is excluded from the government's proof, the government cannot further prosecute its case successfully in compliance with *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 2786-2792, 61 L. Ed. 2d 560 (1979) because it could not meet its burden of establishing every element of the offenses beyond a reasonable doubt. Consequently, this means if (count 2) is barred under Double Jeopardy, and the other (count 3) is ruled as insufficient evidence, the United States Supreme Court elaborated in *Burks v. United States*, 437 U.S. 1, 10, 57 L. Ed. 2d 1, 98 S. Ct. 2141 (1978) **“The only “just” remedy available for that court is the direction of a judgment of acquittal because a court's evaluation of the evidence as insufficient to convict is equivalent to an acquittal and therefore bars a second prosecution for the same offense”**. (Quoting *Burks v. United States*, No. 76-6528, {437 U.S. At *18}. Moreover, it is elementary in our law that when a conviction is reversed for insufficient evidence, the guarantee against double jeopardy mandates dismissal. See *Burks v. United States*, 437 U.S. 1, 10, 57 L. Ed. 2d 1, 98 S. Ct. 2141 (1978). Accordingly, it remains the judgment of this court that the petitioner was prejudiced by trial counsel Norman's failure to timely raise a double jeopardy defense, and timely suppression motion. We need not reach the merits of any other conclusion.

“TRIAL PHASE/GUILT PHASE” (THIRD ATTORNEY)

“TRIAL COUNSEL NICHOLAS T. MCGREGOR'S” FAILURE TO FILE MOTION TO SUPPRESS BASED ON FALSE ARREST AND ILLEGAL STOP, AND FAILURE TO MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS”

(54) The court take judicial notice of the fact that trial counsel Seth T. Norman filed a motion to withdraw from the petitioner's case which was granted by the trial court. See Technical Record Volume 1 Pg. 23-24. Due to trial counsel Norman's deficiencies, inactions, and failure to meet the desired objectives of pursuing petitioner's legal strategy, the case was assigned to new trial counsel Nicholas T. McGregor. From review of the record, trial counsel McGregor was appointed by the State of Tennessee to represent the petitioner. Specifically, the petitioner asserts on appeal that trial counsel Nicholas Mcgrgeor was ineffective based on: Trial counsel's failure to file a motion to suppress the stop, failure to file a motion to suppress evidence derived from petitioner's false arrest, failure to object to trial court's first severance order, failure to object to prosecutorial misconduct committed by the State, failure to challenge every element of the convicting offenses in a judgment of acquittal motion during trial, failure to challenge the conviction under a specific basis of law applied by the Tennessee Supreme Court in State v. Owens, 20 S.W.3d 634, 641 (Tenn. 2000), State v. Swift, 308 S.W.3d 827, 829 (Tenn. 2010), and trial counsel's failure to move for dismissal on double jeopardy grounds during sentencing phase. {Original Brief For Petitioner Pg. 13} {Brief Application For Petitioner Pg. 26 }. However, because the government failed to establish that the petitioner's initial and resulting detention was justified on any argued grounds, we need not reach all petitioner's claims raised in this appeal.

“TRIAL COUNSEL NICHOLAS MCGREGOR FAILURE TO FILE MOTION TO SUPPRESS UNLAWFUL STOP AND FALSE ARREST”

(55) As previously mentioned, we carefully evaluated the petitioner's claims during all three phases in light of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2D 674 (1984). We thoroughly evaluated the petitioner's claims during the pre-trial phase, trial phase, and sentencing phase. Although trial counsel McGregor filed a motion to suppress challenging the validity of a search warrant obtained from petitioner's cell phone on Fourth Amendment grounds, trial counsel McGregor did not include any grounds to suppress evidence derived from petitioner's false arrest and illegal stop of Mr. Gooch's vehicle. See Vol. 3 Suppression Hearing Transcript. Accordingly, we properly conclude that these claims collaterally attack the **pre-trial phase** of the proceedings. Trial counsel's representation for failure to suppress the stop in this instance was deficient, and objectively unreasonable which prejudiced the petitioner's defense for the reasons previously explained herein. (Quoting *United States v. Wendfeldt*, No. 3:11-CR-00094-LRH-VPC, 58 F. Supp. 3D 1124.

(56) Consequently, the petitioner has shown evidence of a pattern from all attorneys demonstrating that the government's proof was not subjected to adversarial testing. During pre-trial, neither of the petitioner's former attorneys filed a motion to suppress evidence derived from petitioner's arrest without probable cause. Based on these facts, such inaction establish a pattern of attorneys failure to adequately investigate, and attorneys failure to conduct pre-trial discovery into the facts of petitioner's case. Although trial counsel McGregor eventually raised an objection to petitioner's illegal seizure, this late objection came only after trial evidence was produced by the government during petitioner's criminal trial. **See Vol. 9 Trial Transcript Pg. 49 See Line 20. Attorney McGregor Statements: “I did want to highlight the testimony that came out (at trial) about the traffic stop, and all of the testimony that did come out. See Line 9 “One of the things that we did here was about this Mustang and that it was not pulled over for a traffic stop”. “So I would ask that the Court end this right now for him and acquit him of those charges”.**

(57) Trial counsel McGregor's statements made at trial reflect that counsel failed to conduct any pre-trial discovery, or suppression on the issues pertaining to Mr. Gooch's illegal stop, which was not sound strategy. Trial counsel late arguments were unreasonable, along with his failure to “preserve” the errors for direct appeal. Specifically, trial [c]ounsel failed to conduct any meaningful pretrial discovery which deprived the petitioner of an meritorious defense. See {Brief Application For Petitioner Pg. 15}. Accordingly, for the reasons articulated herein, we find that trial counsel's representation were outside the wide range of professionally competent assistance. Had petitioner had (competent counsel) to adequately investigate, timely raise objections, and conducted pre-trial discovery of meritorious claims, (competent counsel) would have timely recognized that the prosecution had initiated criminal charges against the petitioner without probable cause. Thereafter, competent counsel would have timely filed a pre-trial motion to dismiss or timely filed a motion to suppress any evidence seized as a direct or indirect result of petitioner's unlawful detention.

(58) Trial counsel McGregor's incompetence, and lack of objections, resulted in a significant delay in bringing this case to an conclusion. Specifically, trial counsel was assigned to the case in 2020 and waited two years later during the **trial-phase** in 2022 to lodge an objection to the validity of Mr. Gooch's illegal seizure. Trial counsel had been unaware of pre-trial facts that could have or should have been reasonably discovered during pre-trial. Because we find the issues pertaining to petitioner's false arrest, and illegal stop to be **meritorious**, it was objectively unreasonable for trial counsel McGregor's failure to raise the grounds in a timely suppression motion which did not satisfy Tenn. Sup Ct. R. 1.1 Competent representation. Tennessee Supreme Court Rule 1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Based on these facts presented herein, the petitioner did not have conflict-free counsel for his defense, and was prejudiced by trial counsel McGregor's errors on this issue.

"TRIAL PHASE-THIRD ATTORNEY"

"TRIAL COUNSEL NICHOLAS T. MCGREGOR FAILURE TO CHALLENGE EVERY ELEMENT OF CONVICTION AND FAILURE TO CHALLENGE CONVICTION UNDER OWENS AND SWIFT DECISION DURING JUDGMENT OF ACQUITTAL"

(59) The petitioner argue that trial counsel Nicholas McGregor was ineffective for failing to challenge every element of his conviction during his judgment of acquittal motion, and by failing to challenge his conviction under a specific basis of law applied by the Tennessee Supreme Court to all robbery offenses in *State v. Owens*, 20 S.W.3d 634, 641 (Tenn. 2000), and *State v. Swift*, 308 S.W. 3D 827, 829 (Tenn. 2010). Accordingly, we properly conclude that these claims collaterally attack the **trial-phase** of the proceedings. The court reiterate that had the weapons obtained from petitioner's vehicle properly been suppressed as the fruit of an unlawful seizure, the firearm and weapon element of T.C.A. 39-13-401(A)(1) would have been excluded from the government's proof. Thereafter, trial counsel McGregor could have successfully challenged the remaining **elements** of Aggravated robbery as insufficient. Trial counsel did not make such challenge to every element of the offenses.

(60) See *William Boatwright v. State*, No. E2018-02185-CCA-R3-PC, 2020 Tenn. Crim. App. LEXIS 178 "Holding counsel had an obligation to ensure that the State proved beyond a reasonable doubt each element of the offense, and counsel's failure in this regard resulted in deficient performance". During the judgment of acquittal motion, trial counsel's defense theory at trial focused solely on the Petitioner's identity and the especially aggravated kidnapping charge. Specifically, trial counsel made **vague** conclusory assertions during the acquittal motion claiming that the evidence was insufficient under that basis. See Vol. 9 Trial Transcript Dismissal Motion Pg. 48 Line 17. Vol. 9 Trial Transcript Dismissal Motion Pg. 49 Line 17. However, this standard does not challenge every element of the offenses. Instead, it only challenges one aspect of the prosecution's case which is the identity of the perpetrator.

(61) Although it is well established that the identity of the perpetrator is an essential element of any crime. State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006), this theory in itself proves only one element of the government's case. See State v. Thompson, 519 S.W.2d at (**793) (Tenn. 1975)) "Holding identity of the accused is only one element necessary to be proved". In any event, the Tennessee Court of Criminal Appeals has stated, "[t]he issue of whether the evidence is sufficient to establish a defendant's identity as the perpetrator is distinct from whether trial counsel provided deficient performance by failing to challenge a conviction on a specific basis." William Boatwright, 2018 Tenn. Crim. App. LEXIS 397, 2018 WL 2324369, at *8. In the present case, trial counsel did not challenge every element of the charges pertaining to Aggravated robbery. However, nothing prevented trial counsel from challenging every element of the convicting offenses. In any event, this court will not deviate from (Section T.C.A. 39-13- 402) which provides as follows: "Aggravated Robbery is Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; or (2) Where the victim suffers serious bodily injury. "

(62) These are the **elements** of the statute the government was required to prove beyond a reasonable doubt. Trial counsel did not mention those elements in the acquittal motion. Instead, counsel only raised an issue with the evidence being insufficient under identity of the perpetrator. Accordingly, for this reason, trial counsel's representation was deficient. Counsel had a duty to challenge every element of the convicting offenses. Upon initial review, this court has determined that the serious bodily injury element of (Count 3) is insufficient for any trier of fact to find that element proven beyond a reasonable doubt. See {Brief Application For Petitioner Pg. 26-27}. With respect to the firearm and weapon element of T.C.A. 39-13-401(A) (1), this court has also determined that if the court had properly suppressed evidence obtained from the stop, the bb guns obtained from the stop would have been excluded from the government's proof. {State Supreme Application For Petitioner Pg. 31}.

(63) Thereafter, once this court exclude the firearm element, it is argued that the serious bodily injury element and weapon element of T.C.A. 39-13-401 remains insufficient for any trier of fact to find those elements proven beyond a reasonable doubt. It follows then that once the firearm element is excluded, the government cannot prove an Aggravated robbery case under Owens and Swift decisions which require the use or display of a weapon preceding, or occurring "contemporaneously" with a taking of property as required under State v. Owens, 20 S.W.3d 634, 641 (Tenn. 2000), and State v. Swift, 308 S.W.3d 827, 829 (Tenn. 2010). Accordingly, we cannot simply stress enough of how trial counsel's failure to file a timely suppression motion of the stop prejudiced the petitioner in this case. We need not reach the merits of any other conclusion on this issue. See United States v. Wendfeldt, No. 3:11-CR-00094-LRH-VPC, 58 F. Supp. 3D 1124 "Holding given the problems associated with Wendfeldt's initial stop and the unreasonable nature of Trooper Lee's decision to prolong the stop after telling Wendfeldt that he was free to leave, the failure of counsel to file a motion to suppress was objectively unreasonable, which surpassed mere strategy and constituted ineffective assistance of counsel.{58 F. Supp. 3d at *1135}.

“SENTENCE PHASE” (THIRD ATTORNEY)

“TRIAL COUNSEL NICHOLAS T. MCGREGOR FAILURE TO MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS”

(64) Last, the petitioner alleges that his two Aggravated robbery convictions violates the principle of the Double Jeopardy Clause in violation of Article 1 Section 10 of the Tennessee Constitution. Liberally construed, it appears that the petitioner alleges that trial counsel was ineffective at sentencing phase for failing to raise an double jeopardy claim at his sentencing hearing as trial counsel did not raise the same element test applied by Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Accordingly, we properly conclude that these claims collaterally attack the **sentencing phase** of the proceedings. However, we note that the petitioner's judgment is void which is a separate claim from the petitioner's void sentence. As the Tennessee Supreme Court stated in Cantrell, “If we determine that a challenged judgment is void, we must also determine which component of the judgment is void. (Quoting Cantrell v. Easterling, {346 S.W.3d at *455-456}.

(65) [A] void judgment is one which shows upon the face of the record that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired. In other words, habeas corpus relief is available in Tennessee only when "it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered" that a convicting court was without jurisdiction or authority to sentence a defendant. Archer, v. State 851 S.W.2d at *164 (citing Lynch v. State, 166 S.W.2d at 398-99). In the present case, we hold that both the petitioner's judgment and sentences are **VOID**. Accordingly, as for the reasons discussed below, the petitioner's sentence of imprisonment is illegal, and he is entitled to be discharged from the Tennessee Department of Corrections effective immediately.

“ILLEGAL SENTENCES APPLICABLE STANDARD OF REVIEW”

(66) In 1978, the Tennessee Supreme Court recognized that a trial court has the authority to correct an illegal sentence at any time. (Quoting Cantrell v. Easterling, 346 S.W.3d at *453. See State v. Burkhardt, 566 S.W.2d 871, 873 (Tenn. 1978). The Tennessee Supreme Court granted review in Moody v. State, 160 S.W.3d 512, 515 (Tenn. 2005) and began the analysis by affirming the rule announced in Burkhardt-that an allegedly illegal sentence may be challenged at any time. Id. At 516. Having reached this conclusion, we next review, briefly, the types of sentences that should be deemed illegal for purposes of Rule 36.1. Rule 36.1(a) provides that an illegal sentence is "one that is not authorized by the applicable statutes or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1(a). In State v. Wooden, {478 S.W.3d at *595} the Tennessee Supreme Court described “examples of illegal sentences which fall into three categories: Clerical errors, appealable errors, and fatal errors. In the present case, the petitioner argue that his sentences are illegal which amount to fatal error. {Brief Application For Petitioner Pg. 40}

(67) Upon our review, we hold that the petitioner's sentence of imprisonment falls under the category of **fatal error**. Only fatal errors render sentences illegal. Included in this category are errors that are "so profound as to render the sentence illegal and void." This category consists of any sentence "that is not authorized by the applicable statutes, or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1(a); (Quoting *State v. Cantrell*, 346 S.W.3d at *452.

"MULTIPLE CONVICTIONS FOR AGGRAVATED ROBBERY"

(68) In the present case, the petitioner's two sentences for Aggravated robbery are illegal because it is in direct contravention of the Double Jeopardy Clause which contravenes Article 1 Section 10 of the Tennessee Constitution. Both offenses arose from the same transaction, and contain the same elements which is prohibited by State and Federal law. (Quoting *State v. Christopher Scottie Itzol-Deleon*, No. M2014-02380-SC-R11-CD, {537 S.W.3d at *452} **Justice Jeffrey S. Bivins of the Tennessee Supreme Court Held: "If our determination of the threshold inquiry is that the Defendant's two convictions arose from the same act or transaction, we next must consider the statutory elements of the two conviction offenses. "If the elements of the offenses are the same, then we will presume that multiple convictions are not intended by the General Assembly and that multiple convictions violate double jeopardy."** (Quoting Justice Jeffrey S. Bivins). *State v. Itzol-Deleon*, id. {537 S.W.3d at *452}.

(69) The United States and the Tennessee Constitution both require that an indictment: (1) Provide notice to the accused of the offense charged, (2) provide the court with an adequate ground upon which a proper judgment may be entered, and (3) provide the defendant with protection against double jeopardy. *Wyatt v. State*, 24 S.W. 3d 319 (Tenn. 2000). These constitutional requirements are rooted in the Fifth Amendment's Due Process and Double Jeopardy Clause and Sixth Amendment's Notice Clause of the Constitution. In the present case, the government has not shown by review of the record that it afforded the petitioner an opportunity to be protected against double jeopardy. Specifically, the government was allowed to proceed on both Aggravated robbery counts containing the same elements during each phase of the petitioner's criminal process including pre-trial, trial, and sentencing phase which is constitutionally prohibited under the clause.

(70) **As the United States Supreme Court elaborated in *Brown v. Ohio*, [No. 75-6933], *Brown*, supra, at 166, 53 L Ed 2d 187, 97 S Ct 2221 "If application of the Block-Burger test reveals that the offenses have identical statutory elements, then the inquiry must cease, and the subsequent prosecution is barred".** id. {432 US at *165}. Had the government adhered to Block-Burger guidelines, it could not have proceeded on both Aggravated robbery counts during pre-trial, trial, and sentencing phase but for it's violation of that clearly established principle. The law is clearly established under both the State and Federal Constitution that two offenses containing the same elements which arise from the same transaction generally would cease the prosecution from proceeding on both counts.

(71) Therefore, had the government properly followed the law under that clause, the government would have been compelled or put in a position to prosecute only **one count** of Aggravated robbery. Thus, had the petitioner had competent counsel to timely raise an double jeopardy defense during pre-trial on grounds that the law does not permit both offenses or prohibits multiple convictions for the same offense, we find that a motion would have been successfully granted on this ground at that time. Thus, the petitioner has put on proof establishing evidence of a (pattern) as neither attorney objected to the government's proof on double jeopardy grounds. The petitioner was prejudiced by all former attorney errors as the record reflect that trial counsel Mcgregor unprofessional errors **"foreclosed"** the petitioner's double jeopardy violations in this matter.

"TRIAL COUNSEL NICHOLAS T. MCGREGOR'S FRIVOLOUS MOTION FOR NEW TRIAL AND MISTRIAL MOTION FORECLOSED DOUBLE JEOPARDY VIOLATIONS"

(72) Trial counsel Mcgregor filed a motion for new trial and orally requested that a mistrial be granted without the petitioner's consent. **See Vol. 11 Motion For New Trial Transcript. See Technical Record Volume 2 Pg. 153 of 204 Oral Mistrial Motion Denied.** The petitioner notified the Tennessee Court of Criminal Appeals in his supplemental brief that trial counsel Nicholas Mcgregor filed a frivolous motion for new trial without the petitioner's knowledge or consent in violation of double jeopardy principles. **See attached Supplemental Brief Pg. 5.** Moreover, it is argued that trial counsel Mcgregor filed a frivolous direct appeal without allowing the petitioner to raise any claims that Mr. Gooch wished to raise for direct appeal. In addition to these claims, it is further argued that trial counsel did not send the petitioner a copy of the grounds he raised for direct appeal which hampered the clients ability to preserve his double jeopardy claims. It is well established that when appointed counsel believes an appeal has no merit, counsel must furnish his client a brief covering of all arguable grounds for appeal so that the client may "raise any points that he chooses." (Quoting Anders v. California, No. 98, {386 US, at *744} 18 L Ed 2d 493, 87 S Ct 1396.

(73) From an ethical standpoint, we find that counsel's representation in the present case did not satisfy Tenn. Sup Ct. R. 1.4 Communication Representation. **Tennessee Supreme Court Rule 1.4 (A)(1) Provides:** "A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client x s informed consent, as defined in RPC 1.0(e), is required by these Rules, **Tennessee Supreme Court Rule 1.4 (A)(2) provides:** "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished". Specifically, the petitioner argue on appeal that trial counsel's mere filing of the motion for new trial violates Article 1 Section 10 of the Tennessee Constitution which provides "[t]hat no person shall, for the same offence, be twice put in jeopardy of life or limb." Tenn. Const. art I, c 10. At the outer reaches of our double jeopardy jurisprudence, the United States Supreme Court has never sought to regulate the retrial of issues or evidence in the name of the Double Jeopardy Clause which protects an accused against a second prosecution for the same offense after conviction. Brown v. Ohio, supra, at *165, 97 S Ct. 2221, 53 L. Ed. 2D 187.

(74) Therefore, trial counsel's mere filing of the motion for new trial and mistrial motion qualifies as the retrial of the same offense. See *United States v. Dinitz*, 424 U.S. 600, 96 S. Ct. 1075, 47 L. Ed. 2d 267 (1976), the U.S. Supreme Court held that a defendant's mistrial motion implicitly invited a second trial and was enough to foreclose any double jeopardy complaint about it. In reaching this holding, the Court expressly rejected "the contention that the permissibility of a retrial depends on a knowing, voluntary, and intelligent waiver" from the defendant. *Id.*, at 609 n. 11, 96 S. Ct. 1075, 47 L. Ed. 2d 267. Instead, it explained, none of the "prosecutorial or judicial overreaching" forbidden by the Constitution can be found when a second trial follows thanks to the defendant's motion. *Id.* at 607, 96 S. Ct. 1075, 47 L. Ed. 2D 267. See *United States v. Scott*, 437 U.S. 82, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978), the United States Supreme Court likewise held that a defendant's motion effectively invited a retrial of the same offense, and "the Double Jeopardy Clause, which guards against Government oppression, does not relieve a defendant from the consequences of [a] voluntary choice" like that. *Id.*, at 96, 98 S. Ct. 2187, 57 L. Ed. 2D 65;

(75) Comparing *Scotts*, *Dinitz*, and *Currier* to the present case, the record does not establish that the petitioner Mr. Gooch made a voluntary choice to waive his rights, nor waived his rights to be protected against double jeopardy. The record reflect that the petitioner **NOTIFIED** the Tennessee Board of Professional Responsibility that his former trial counsel Seth Norman was ineffective for failing to timely raise a double jeopardy claim. See Complaint Number 65792c-5 Attorney Name Seth T. Norman. See Attached Copy of Board of Professional Responsibility Complaints. The petitioner repeatedly made claims to the Tennessee Board with respect to trial counsel ineffectiveness on double jeopardy grounds. See Complaint Number: "60436c-5" Attorney Name George W. Waggoner III, See Complaint Number 65792c-5 Attorney Name Seth T. Norman. See Complaint Number : 65791c-5 District Attorney Name Jennifer Charles See Complaint Number: 70130c-5 Attorney Name Nicholas T. McGregor. Accordingly, we see no reason to find that the petitioner made a voluntary choice in this case to waive his rights to be protected against double jeopardy violations.

(76) The court also note in *Currier v. Virginia*, the United States Supreme Court held "that where a defendant agrees to severance of criminal trials, defendant's trials and conviction on the remaining charges does not violate the Double Jeopardy Clause under *Currier v. Virginia*, No. 16-1348, 585 U.S. 138 S. Ct. 201 L Ed. 2D 650, 2018 U.S. Lexis 3841. Compare *Currier* to the present case, it is apparent by the petitioner's pro se brief that the petitioner did not consent to the severance motions filed by his previous attorneys. Specifically, this finding is supported by the fact that the petitioner argued in his supplemental brief that trial counsel's motion for new trial in regards to the severance arguments made therein are **frivolous**. See Supplemental Brief for Petitioner Pg. 3, Pg. 10-11. The petitioner further attempted to appeal the validity of the severance rulings arguing in his supplemental brief that the trial court's first severance rulings violated the principles of double jeopardy. See Supplemental Brief for Petitioner Pg. 11.

(77) Accordingly, because the petitioner argue that the trial court's first severance order violates the double jeopardy clause, along with the petitioner submitting complaints against his former attorneys for failing to timely raise a double jeopardy claim, it cannot be said that the petitioner elected to waive his double jeopardy rights, nor consented to a severance motion in this case. The petitioner is clearly appealing to this court the denial of the severance order, and argues that the trial court's first severance ruling in his supplemental brief violates Article 1 Section 10 of the Tennessee Constitution which prohibits double jeopardy. Neither the government nor the Court of Criminal Appeals addressed the petitioner's supplemental arguments. The Court of Criminal Appeal's order dated on October 13th 2023, stated that the court would consider the petitioner's supplemental brief arguments. However, it is argued that the lower court purposefully abandoned the petitioner's supplemental arguments in violation of it's court orders. Based on these findings, the petitioner filed an Affidavit of Criminal Complaint titled to this court. See Affidavit of Complaint For Petitioner. Subsequently, the petitioner framed his arguments on direct appeal under the abuse of discretion standard in which the lower courts misapplied that standard.

(78) The petitioner raised an ineffective assistance claim on the basis that neither of his previous attorneys timely raised an double jeopardy defense at all in this case. Instead, the record established that all former attorneys focused it's defense on a severance motion to try the petitioner's offenses separately which is objectively unreasonable in violation of Article 1 Section 10 of the Tennessee Constitution. Accordingly, in our view, these are not the actions of a client who consented to a severance motion, but rather a defendant who expresses dissatisfaction on appeal with counsels representation for filing a motion to sever the counts when competent counsel would have filed a motion to dismiss on double jeopardy grounds. See *United States v. Prairie Pharmacy, Inc.* 921 F.2d at (*214)(**9) “Holding that an attorney's failure to verify requirements of the law demonstrates attorney malpractice”. In the instant case, such actions reflect a break-down and lack of communication between trial counsel and his client's strategy which can only be attributed to the State of Tennessee. Because the petitioner raised his double jeopardy claim through ineffective assistance of counsel under Tennessee law, this claim is the result of state action which is not waived pursuant to T.C.A. 40-30-106(g)(2).

(79) As stated in petitioner's supplemental brief, the record reflect at the time the “first” severance motion was filed in this matter, the two aggravated robbery offenses violated the protection of the double jeopardy clause because both offenses contain the same elements and arose from the same transaction. In terms of double jeopardy, the trial court admitted in his November 10th 2020 order that the petitioner's criminal offenses which contain identical elements arose from the same transaction which are the same for double jeopardy purposes. See Technical Record Volume 1 Pg. 58 of 204. In the bottom section of the trial court's order to continue the petitioner's jury trial, the trial court stated: **“This matter involves co-defendants who were indicted concurrently for alleged events which transpired at the same time, location, and criminal episode”**. Despite the trial court's November order, the trial court ruled in his severance order that **“Pursuant to Tenn. R. Crim. P. 14(c)(1)(b), the defendants will continue with a joint trial”**.

(80) In any event, a joint trial containing the “same elements” of offenses “unquestionably” violates the Blockburger test. *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Therefore, the trial court committed “reversible error” and applied an incorrect legal standard during the first “severance” motion by concluding that two offenses arising from the “same transaction” were to be joined at Mr. Gooch's trial. Supplemental Brief For Petitioner Pg. 11. Clearly, Congress did not intend for a defendant to be “subjected” to multiple charges for the same offense during trial. See Tenn. Const. Art I, c 10. Based on the trial court's first erroneous severance ruling, the petitioner argued in his supplemental brief that the trial court applied an incorrect legal standard in denying a severance, and that counsel was ineffective for failing to object to the first severance order on those grounds. Consequently, since the petitioner presented an (abuse-of-discretion) argument, and presented an ineffective assistance argument on direct appeal, the reviewing court should have analyzed the petitioner's arguments under the abuse of discretion standards and not the “waiver” standard applied by the Intermediate Appellate Court. {Original Brief For Petitioner Pg. 31}. A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence. *State v. Ostein*, 293 S.W.3d 519, 526 (Tenn. 2009); *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d at 358; Doe 1 ex rel.

“SENTENCE PHASE-SEPARATE CONVICTIONS FOR THE SAME OFFENSE AMOUNT TO FATAL-ERROR”

“TRIAL COURT DID NOT MERGE OFFENSES”

(81) Notwithstanding, the trial court did not merge the charges during sentencing phase but instead entered separate convictions on both counts. Under *Ball* and *Blockburger*, entering both convictions was erroneous and thus, amounted to **fatal-error**. The state appellate court unreasonably determined the facts and ruled contrary to or unreasonably applied clearly established Supreme Court precedent in *United States v. Ball*, 163 U.S. 662, 16 S. Ct. 1192, 41 L. Ed. 300. In the present case, the record reflect that the trial court did not merge (count 2) and (count 3) offenses, but instead ran the sentences concurrently. From review of the record, the petitioner's sentence orders does not specify that (count 2) Aggravated robbery offense merged with (count 3) Aggravated robbery offense but instead reflect separate convictions. See Technical Record 2 Pg. 161 of 204. (Count 2). See Technical Record 2 Pg. 163 of 204. (Count 3). It is well settled under Tennessee law, that the judgment document should indicate in the “Special Conditions” box that the conviction merges with the greater conviction. (Quoting *State v. Marquize Berry*, No. W2014-00785-SC-R11-CD, 503 S.W. 3D at *364, 2015 Tenn. LEXIS 925. To avoid confusion, the merger also should be noted in the “Special Conditions” box on the uniform judgment document for the greater or surviving conviction. *Berry*, 503 S.W. 3d at *364. Under certain circumstances, multiple convictions must merge into a single conviction under Tennessee law. For example, merger is required when a jury returns guilty verdicts on two offenses, one of which is a lesser-included offense of the other offense.

(82) See *State v. Davis*, 466 S.W.3d at 77. Likewise, merger is required when a jury returns guilty verdicts on two counts representing alternative theories of the same offense. See, e.g., *State v. Cribbs*, 967 S.W.2d 773, 788 (Tenn. 1998) (citing *Carter v. State*, 958 S.W.2d 620, 624 n.6 (Tenn. 1997)). This method "maintains the integrity of each of the jury's dual verdicts and accurately reflects the merger for purposes of appellate review and collateral challenges to the conviction under Tennessee law." However, the law is clear that Congress did not intend for a defendant to be subjected to multiple convictions for the same criminal offense. Therefore, the fact that the trial court did not merge the offenses, it was not required to do so in this instance. Initially, before the U.S. Supreme Court ruled in *United States v. Ball*, Merger may have been the appropriate remedy, which has often been cited by the Tennessee Appellate Courts as a basis to remand cases for correction of the judgments. See *State v. Addison*, 973 S.W. 2D at *267. See *State v. Marquize Berry*, No. W2014-00785-SC-R11-CD, 503 {S.W. 3D at *363}

(83) However, it appear that Tennessee Courts lack guidance as to the merger rule which contravene double-jeopardy principles, and violate clearly established Federal law as set forth by the United States Supreme holding in *United States v. Ball*, 163 U.S. 662, 16 S. Ct. 1192, 41 L. Ed. 300. To the extent that Tennessee courts rely upon cases of merging convictions in double jeopardy circumstances, it must be overruled. See *Tenn. Sup. Ct. 18(c)*.

“TENNESSEE LAW OF MERGING CONVICTIONS IN DOUBLE JEOPARDY CASES CONTRAVENE BOTH CONGRESS AND THE UNITED STATES SUPREME COURT HOLDINGS”

(84) Both the Tennessee Supreme Court and the Court of Criminal Appeals expressed the view that the use of a single judgment of conviction avoided a double jeopardy issue. Specifically, we recognize that the Tennessee Supreme Court held in *State v. Marlo Davis*, W2011-01548-SC-R11-CD, 466 S.W. 3D at *77 that no double jeopardy violations occurs when a trial judge merges the conviction into one judgment of conviction. With respect to Justice Jeffrey S. Bivins who wrote the opinion in *Marlo Davis*, we conclude that *State v. Marlo Davis*, and it's prerogative of the Double Jeopardy Clause is an clear departure from Legislature intent of the Historical Block-Burger analysis decided in *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Moreover, *State v. Marlo Davis*, is a departure from *United States v. Ball*, 163 U.S. 662, 16 S. Ct. 1192, 41 L. Ed. 300, and reflects a clear departure from it's own decision rendered in *State v. Nigel Kavic Watkins*, No. M2009-00348-SC-R11-CD. In other words, the Tennessee Supreme Court applied the double jeopardy analysis in a manner that abruptly departed, and conflicted with it's prior interpretations of the double jeopardy rule decided in *State v. Nigel Kavic Watkins*, No. M2009-00348-SC-R11-CD. Accordingly, we respectfully disagree with the Tennessee Supreme Court's holding in *State v. Marlo Davis*, W2011-01548-SC-R11-CD, 466 S.W. 3D at *77 that no double jeopardy violations occurs when a trial judge merges two convictions into one sentence. In *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932) the United States Supreme Court ruled that a defendant must establish two steps in order to establish a double jeopardy violation.

(85) The first step of the Blockburger test is the threshold question of whether the convictions arose from the same act or transaction. If the answer to the first question of the blockburger test is affirmative, then the second step of the Blockburger test require courts to examine the statutory elements of the offenses. If a defendant satisfied both prongs of the analysis, the conviction or proceedings was held to have violated the constitutional protections of the double jeopardy clause. (Quoting Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). However, contrary to Blockburger, the Tennessee Supreme Court held in State v. Davis, that when a trial court later imposes one judgment of conviction resulting in one imposed sentence, it does not violate the double jeopardy clause. (Quoting State v. Marlo Davis, (466 S.W. 3D at *77}). But this analysis misses the mark and undermines the block-burger rule.

(86) When the United States Supreme Court adopted the historical Block-Burger test for double jeopardy purposes, it did not include a third prong nor included that merging two convictions into one sentence prevented a double jeopardy violation. Moreover, when a trial court merge two convictions which arise from the same single offense, and run both sentences concurrently for double jeopardy purposes, the sentence indeed violates clearly established Federal law as set forth by the U.S. Supreme Court. See Ball v. United States, 470 US 856, 861, 864-865, 84 L Ed 2d 740, 105 S Ct. 1668 (1985) The United States Supreme Court stated: **“An accused may not suffer two convictions or sentences on an indictment for a single offense. Chief Justice Burger noted: “The remedy of ordering one of the sentences to be served concurrently with the other cannot be squared with Congress' intention. (470 U.S. At 865). One of the convictions, as well as its concurrent sentence is unauthorized punishment for a separate offense. {470 U.S. At 864}. The second conviction, even it results in no greater sentence, is an impermissible punishment.**

(87) Having concluded that Congress did not intend for a defendant to be subjected to multiple punishments for the same offense, the United States Supreme Court stated, the only remedy consistent with the congressional intent is for the district court to **VACATE** one of the underlying convictions. (Quoting Ball v. United States, (470 U.S. At *864}). Thus, although the trial court in the present case did not merge both offenses during the **sentencing-phase**, we note that even if the trial court had merged both sentences into one judgment of conviction, it does not remove the taint, nor lack of protection the government failed to afford the petitioner under the Double Jeopardy Clause during pre-trial, and trial-phase of the petitioner's criminal proceedings. Consequently, if the court adopted the State's Supreme Court's analogy in State v. Marlo Davis, and the Tennessee Courts prerogative that merging separate convictions which arise from the same criminal offense prevents a double jeopardy violation, there's no need for a defendant to satisfy the prongs of the Block-Burger test. Although one who can succeed in establishing a violation of both prongs of the Block-Burger test, their relief and rights to be protected under the double jeopardy clause is **forfeited** if a lower court merges two convictions into one sentence which should have never arisen from a single offense in the first instance.

(88) This methodology would allow public officials and prosecutors to violate a defendant's right to be free from double jeopardy at any stage of an accused criminal process which will not afford a defendant protection under this standard. Because we do not believe that Congress intended for a defendant to be **subjected** to multiple offenses which arise from the same criminal episode at any stage of an accused criminal process, a defendant shall not lose their rights to be protected from double-jeopardy violations during **sentencing-phase** because a lower court merges two convictions into one sentence. The damage has been done already, and the prosecution has otherwise benefited from two offenses that it should have never been allowed to prosecute at the same time in the first instance. It cannot be said that the prosecutor afforded a defendant protection under these circumstances. To the extent that Tennessee Courts rely upon cases of merging convictions in such double jeopardy circumstances, is inconsistent with *Ball v. United States*, 470 US 856, 861, 864-865, 84 L Ed 2d 740, 105 S Ct. 1668 (1985) which shall be overruled.

(89) Accordingly, for the reasons articulated herein, *State v. Marquize Berry*, No. W2014-00785-SC-R11-CD, 503 {S.W. 3D at *363} and *State v. Marlo Davis*, W2011-01548-SC-R11-CD, 466 S.W. 3D at *77 must be overruled as it conflicts or departs with its prior interpretations of the *Ball* decision rendered in *State v. Nigel L Kavic Watkins*, No. M2009-00348-SC-R11-CD. CORNELIA A. CLARK, C.J., delivered the opinion of the Court, in which JANICE M. HOLDER, GARY R. WADE, WILLIAM C. KOCH, JR., and SHARON G. LEE, JJ., joined in the Footnote Section under # 46 in *State v. Watkins*, No. M2009-00348-SC-R11-CD.

FOOTNOTE SECTION

46 The Tennessee Supreme Court stated: "Where a Court concludes that the legislature does not intend to permit dual convictions under different statutes, the remedy is to set aside one of the convictions, even if concurrent sentences were imposed. *Ball v. United States*, 470 U.S. 856, 864, 105 S. Ct. 1668, 84 L. Ed. 2d 740 (1985) (citing *Hunter*, 459 U.S. at 368). "The second conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored." *Ball*, 470 U.S. At 865. (Quoted by Tennessee Supreme Court in *State v. Wakins*, No. M2009-00348-SC-R11-CD, 362 S.W.3d 530; 2012 Tenn. LEXIS 154. See Footnote Section under #46

(90) We note that the *Ball* decision has been utilized by Tennessee Courts. Moreover, the Federal judge in the present case who presided over the petitioner's federal lawsuit in *Gooch v. Charles*, No. 3:22-CV-00076, has applied the *Ball* decision in double jeopardy cases. See *United States v. Austin*, No. 3:16-cr-00068, 321 F. Supp. 3d at *824-25; 2018 U.S. Dist. LEXIS 119059 In *Austin*, the Federal Chief Judge Waverly D. Crenshaw Jr. of the Tennessee Federal Court adopted *Ball*'s decision, and vacated one of the defendants convictions upon the government request. As a matter of judicial notice, the court note that the presiding judge James Curwood Witt Jr. who ruled in the petitioner's present case before he passed away, criticized the Tennessee Supreme Court in *State v. William Jermaine Stripling*, E2015-01554-CCA-R3-CD, for failing to follow the United States Supreme Court decision rendered in *Ball v. United States*, 470 US 856, 861, 864-865, 84 L Ed 2d 740, 105 S Ct. 1668 (1985).

(91) Judge Curwood stated in his concurring opinion: “Although the November 16 order justifies the imposition of multiple sentences based upon the insertion of a notation of merger, it is conceivable that effective advocacy might convince a state or federal court of competent jurisdiction that the artifice of merely noting merger of offenses is a bit of legerdemain that violates a constitutional constraint suggested in *Rutledge, and Ball v. United States*, 470 U.S. 856, 864, 105 S. Ct. 1668, 84 L. Ed. 2D 740 (1985). I very respectfully urge the Supreme Court to express its views via published opinion in an appropriate case. Preferably one in which the double jeopardy issue can be addressed”. (Quoted by Judge James Curwood Witt Jr. who served as Appellate judge in the instant case involving the petitioner. See *State v. Gooch*, No. M2022-01395-CCA-R3-CD. The court finds that the petitioner's case is the appropriate case to address the *Ball* decision in light of Judge Curwood's concurring opinion rendered in *State v. William Jermaine Stripling*, E2015-01554-CCA-R3-CD.

“SENTENCE PHASE ENHANCEMENT FACTORS AND TRIAL COURT JUDICALLY DETERMINED FACTS”

(92) Because the petitioner's sentence violated the principles of Double Jeopardy, we need not decide whether the trial court erred by applying enhancement factors to increase the petitioner's sentence. However, we find it prudent to address the matter because the trial court sentence considerations is wholly inconsistent with the purpose and principles of local State and Federal law regulations of the Tennessee Sentencing Act. When an accused challenges the length and manner of service of a sentence, this Court reviews the trial court's sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). At the outset, we note that the petitioner's second conviction for the same offense is an impermissible punishment. (Quoting *Ball v. United States*, {470 U.S. At 864} “Holding the second conviction, even it results in no greater sentence, is an impermissible punishment.

(93) As previously mentioned, Congress did not intend for a defendant to be subjected to multiple punishments for the same offense. (Quoting *United States v. Ball*, 470 U.S. At “861 **The United States Supreme Court stated: “Congress court not have intended to allow two convictions for the same conduct, even if sentenced under only one”. {470 U.S. At “861}.** In the present case, the trial court allowed the petitioner's sentence to be enhanced based upon judicially determined facts which was not authorized by the jury. It is argued that, after the jury announced its verdict, the jury was discharged by the trial court from its jury services. See Vol. 9 Trial Transcript Pg. 100 Line 4-9. Based upon the discharge order from the trial court, the jury was not involved in the petitioner's sentence phase process. See Vol. 9 Trial Transcript Pg. 100 Line 4-9. As a result, the trial court relied upon (judicially determined facts) to enhance the petitioner's sentence. At the petitioner's sentence hearing, the trial court stated on the record that he will take the petitioner's sentence issues under his advisement, and issue an order. See Vol. 10 Sentence Hearing Transcript Pg. 25 Line 1-2.

(94) Under the following order, the trial court increased both petitioner's sentence on the basis of two enhancement factors: Their "previous history of criminal convictions or criminal behavior, and (2) upon its determination that the petitioner committed an offense which involved more than one victim. See Technical Record Vol. 2 Pg. 158 T.C.A. 40-35-114(1). T.C.A. 40-35-114(3). Vol. 2 Pg. 158. After applying these enhancement factors, the trial court sentenced the Defendant to the maximum Range I sentence of twelve years for Aggravated robbery. Under the trial court sentence considerations of Technical Record Vol. 2 Pg. 157 of 204, the trial judge relied upon a variety of factors for sentence determination which did not include any findings from a jury verdict. Because the sentence imposed upon the petitioner in this case was not authorized by the jury, but rather based upon the court judicially determined facts, we also find that the petitioner was deprived of his 6th Amendment right to have a jury determine whether enhancement factor T.C.A. § 40-35-114(3) applied.

(95) See *Blakely v. Washington*, 42 U.S. 296, 299, 124 S. Ct. 2531, 159 L. Ed. 2D 403 (2004) The United States Supreme Court Held: "When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts "which the law makes essential to the punishment," and the judge exceeds his proper authority. *id.* {542 U.S. At 303-04}. In *Blakely*, the U.S. Supreme Court determined that the "statutory maximum" sentence for Apprendi purposes is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." 542 U.S. at 303, 124 S. Ct. at 2537. In *Edwin Gomez v. State*, No. M2002-01209-SC-R11-CD, 239 S.W.3d 733; 2007 Tenn. LEXIS 884 the Defendants sought certiorari from the United States Supreme Court regarding this Court's holding on their *Blakely* issue. In due course, that Court vacated the Tennessee Supreme Court decision in *Gomez I* and remanded the matter for further consideration in light of its recent opinion in *Cunningham v. California*, 549 U.S. , 127 S. Ct. 856, 166 L. Ed. 2d 856 (2007). 5 See *Gomez v. Tennessee*, ___ U.S. , 127 S. Ct. 1209, 167 L. Ed. 2d 36 (2007).

(96) Because the trial court sentenced *Cunningham* to the upper term sentence based on judicially determined facts not otherwise reflected by the jury's verdict or admitted by the defendant, the United States Supreme Court held that the sentence violated *Cunningham's* Sixth Amendment rights. Accordingly, we are instructed by *Cunningham*, however, that "[i]f the jury's verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, the Sixth Amendment requirement is not satisfied." 127 S. Ct. at 869. (Quoting *State v. Gomez*, {239 S.W.3d at *740}. Applying *Cunningham*, we conclude that the Reform Act failed to satisfy the Sixth Amendment insofar as it allowed a presumptive sentence to be enhanced based on judicially determined facts. In response to constitutional concerns arising from the United States Supreme Court's *Blakely v. Washington* decision, we recognize that the Tennessee General Assembly amended Tennessee's sentencing statutes to remove presumptive sentences. (Quoting *State v. Carter*, 254 S.W.3d at *343. These changes to the sentencing structure "enabled Tennessee's trial courts to sentence a defendant to any sentence within the applicable range as long as the length of the sentence is 'consistent with the purposes and principles' of the sentencing statutes." *State v. Hester*, 324 S.W.3d at 69 (quoting *State v. Banks*, 271 S.W.3d at 145).

(97) The 2005 amendments to Tennessee's sentencing laws have plainly "increase[d] the amount of discretion a trial court exercises when imposing a sentencing term." State v. Carter, 254 S.W.3d at 344. These changes also eliminated the Blakely constitutional concern with Tennessee trial courts finding the facts necessary to apply enhancement factors. See, e.g., State v. Hester, 324 S.W.3d at 69; State v. Franklin, 308 S.W.3d at 826; State v. Banks, 271 S.W.3d at 144-45; State v. Carter, 254 S.W.3d at 342-44. While we are uncomfortable in the present case with the trial court's decision to impose the maximum sentence on the petitioner based upon judicially determined facts, we find it unnecessary to further rely upon the merits of Blakely's decision. However, the court do hereby declare that the petitioner's sentence is **unconstitutional** because it is unauthorized punishment as Congress did not intend for a defendant to be subjected to multiple punishments, nor multiple convictions arising from the same criminal offense. (Quoting Ball v. United States, 470 US 856, 861, 864-865, 84 L Ed 2d 740, 105 S Ct. 1668 (1985)).

(88) The trial court variety of considerations including the factors to enhance the petitioner's sentence are not consistent with the principles or policies defined by the laws of the land. In other words, we think the trial court departed so far from the Tennessee Sentencing Act as to rebut the presumption of correctness. Citing State v. Carter, 254 S.W.3d at *345 The Tennessee Supreme Court Held: "If the trial court applies inappropriate mitigating and/or enhancement factors or otherwise fails to follow the Sentencing Act, the presumption of correctness fails". id. {254 S.W.3d at *345} Consequently, it remains the opinion of this court that trial counsel in the present case was ineffective during **sentencing-phase** based upon it's failure to timely raise a double jeopardy claim.

(99) Because the petitioner's separate convictions for Aggravated robbery arose from the same transaction, and same criminal offense, the petitioner's sentence contravene the United States Supreme Court decision rendered in Ball v. United States, 470 US 856, 861, 864-865, 84 L Ed 2d 740, 105 S Ct. 1668 (1985). Accordingly, it is without doubt that the petitioner's sentence amounted to **Fatal error** because it is not authorized under the congressional intent. Only fatal errors render sentences illegal. Included in this category are errors that are "so profound as to render the sentence illegal and void." This category consists of any sentence "that is not authorized by the applicable statutes, or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1(a); (Quoting State v. Cantrell, 346 S.W.3d at *452. In United States v. Ball, [470 US at *867] Justice Stevens of the United States Supreme Court shared Justice Marshall's dissent in his concurring opinion stating: "**[T]he entry of two convictions and the imposition of two sentences cannot be justified on the ground that the legislature could have simply created one crime but prescribed harsher punishment for that crime. This argument incorrectly assumes that the total sentence imposed is all that matters, and that the number of convictions that can be obtained is of no relevance to the concerns underlying the Double Jeopardy Clause. "When multiple charges are brought, the defendant is 'put in jeopardy' as to each charge. To retain his freedom, the defendant must obtain an acquittal on all charges; to put the defendant in prison, the prosecution need only obtain a single guilty verdict"**".

(100) “The prosecution's ability to bring multiple charges increases the risk that the defendant will be convicted on one or more of those charges. The very fact that a defendant has been arrested, charged, and brought to trial on several charges may suggest to the jury that he must be guilty [470 US 868] of at least one of those crimes. Moreover, where the prosecution's evidence is weak, its ability to bring multiple charges may substantially enhance the possibility that, even though innocent, the defendant may be found guilty on one or more charges as a result of a compromise verdict. The submission of two charges rather than one gives the prosecution 'the advantage of offering the jury a choice—a situation which is apt to induce a doubtful jury to find the defendant guilty of the less serious offense rather than to continue the debate as to his innocence’”. (Quoted by Justice Stevens of U.S. Supreme Court.

“UNDER TENNESSEE LAW, THE TENNESSEE DEPARTMENT OF CORRECTION LACK AUTHORITY TO CORRECT ILLEGAL SENTENCES”

(101) Accordingly, we conclude that the petitioner has stated colorable claims showing that his judgment and sentence of imprisonment is illegal and void for purposes of Rule 36.1. In this case, Mr. Gooch included in his motion sufficiently specific factual allegations describing the basis of his claim for relief from an allegedly illegal sentence. In addition, Mr. Gooch attached copies of the judgment documents that reflected the sentences he attacked as illegal in this appeal to this court. The allegations in Mr. Gooch's application, and the judgment documents he submitted in support thereof, are sufficient to enable a court to determine whether Mr. Gooch has stated a colorable claim for relief under Rule 36.1. The petitioner has shown that he was denied effective assistance of counsel during all three phases, **pre-trial, trial, and sentence phase** of his criminal proceedings. The judgment resulted in a complete denial of counsel. Neither attorney elected to timely raise an double jeopardy claim, and neither trial attorney McGregor argued that the petitioner's illegal sentence contravene Article 1 Section 10 of the Tennessee Constitution.

(102) Although a defendant can forfeit or waive their double jeopardy rights, we do not think that Mr. Gooch did so here. The petitioner raised these claims with the Tennessee Board of Professional Responsibility with respect to previous counsel ineffectiveness based on double jeopardy grounds. See *United States v. Quintieri*, 306 F.3d at *1229 (“An issue is not considered waived . . . if a party did not, at the time of the purported waiver, have . . . an incentive to raise it before the sentencing court or on appeal.”). The petitioner Mr. Gooch is currently incarcerated in the Tennessee Department of Correction where he is serving a twelve (12) year sentence for the offense of Aggravated robbery. Because the petitioner was deprived of effective assistance of counsel during all three phases of litigation, and the Tennessee Department of Correction lack authority to correct the petitioner's sentence errors, we hold that the petitioner's illegal sentence must be **VACATED**. The Tennessee Supreme Court specifically recognized in *Cantrell* that the Tennessee Department of Correction (“TDOC”) lacked authority to “correct” what it perceived to be errors, clerical or otherwise, in judgment orders and is required to “enforce judgment orders as they are written.” *Cantrell*, 346 S.W.3d at 457;

(103) (Quoting State v. James D. Wooden, No. E2014-01069-SC-R11-CD, {478 S.W.3d at *591} See also State v. Burkhart, 566 S.W.2d at 873 (Recognizing that TDOC "may not alter the judgment of a court, even if that judgment is illegal").

“CONCLUSION”

(104) Accordingly, the petitioner's judgment and sentences are **VOID** and his detention is not authorized by the laws or treaties of the United States of America. Therefore, the petitioner is entitled to **IMMEDIADTE RELEASE** from the Tennessee Department of Corrections effectively immediately. Citing Lynch v. State ex rel. Killebrew, 179 Tenn. 339, 166 S.W.2d 397, 398 (Tenn. 1942) The Supreme Court of Tennessee stated in Lynch v. State, 166 S.W.2d at *398-99) **“Conversely, in every case where the detention is not "authorized by law," as here appears, "the party detained shall" not "be remanded to custody," but discharged”**. Citing Lynch, 166 S.W.2d at *398-99).

(105) Based upon the foregoing reasons articulated herein, and based in accordance with applicable law, the government's request to deny relief is hereby **FRIVOLOUS**. The judgment resulted in a completed denial of counsel during all three phases. Consequently, it is the contention of this court that the petitioner's application to **STAY** the judgment shall be **GRANTED**. The lower court denial of the petitioner's request to stay the judgment shall be **OVERRULED**. Initially, the petitioner originally filed a motion to stay the judgment which was denied by the lower court. See attached order. Hereinafter, the petitioner asserts that he is willing to travel 1000 miles away to Washington D.C. to prove this case if oral argument is necessary. Accordingly, the clerk of court is hereby directed to forward a copy of this opinion to all attorneys who previously represented the petitioner in this matter.

IT IS SO ORDERED .

“CERTIFICATE OF SERVICE”

If executed within the United States, its territories, possessions, or commonwealths: ¶ I declare (or certify, under penalty of perjury that the foregoing is true and correct.

Executed on (10/27/24).

**United States Supreme Court Clerk's Office
1 First St. NE,
Washington, D.C. 20543**

**Tennessee Attorney General Ronald L. Coleman
500 Charlotte Ave
Nashville, Tn 37243**

**Additional material
from this filing is
available in the
Clerk's Office.**