

**PETITION FOR THE
GREAT WRIT OF HABEAS CORPUS AD SUBJICIENDUM**

**28 U.S.C. 2241, PRETRIAL HABEAS
JURISDICTION, DOUBLE JEOPARDY AND
SPEEDY TRIAL VIOLATIONS, 5TH, .6TH
AND 14TH U.S.C. AMENDMENT CUSTODY CHALLENGE**

MEMORANDUM OF LAW IN SUPPORT

MEMORANDUM"OF:LAW

FACT

The State of Louisiana did not find Petitioner guilty after being put in jeopardy pursuant to the First Jury Trial. The Judge cannot unconstitutionally, improperly, illegally discharge a jury. A jury is discharged when; (1) A UNANIMOUS jury finds one guilty by verdict,

1. Once the first witness was sworn in the First Trial, jeopardy is immediately attached (Seay v.Cannon,927F.3d 776.). AFTER CONVICTION and sentence, JEOPARDY CEASED.(Owens v.Trammell;792F3d 1234) Collateral Estoppel

(2) A unanimous jury acquits the defendant (finds the accused "Not Guilty"). (3) After the jury has fully deliberated, the jury does not unanimously agree, which constitutes a "Manifest Necessity" for the judge to declare a mistrial. Therefore, a Non-Unanimous jury verdict, constitutionally, can only be declared a Mistrial. Individuals with (10-2) or (11-1) verdicts who were declared guilty by legislation, not by jury, were defrauded of a mistrial in violation of the 6th and 14th Amendments of the U.S. Constitution. Such a denial is incurable, by any means after (1)-year of being falsely convicted. (La.C.Cr.P. Art 775 (2) and La.C.Cr.P. Art 582) time limitation statute under the Right to a Speedy Trial. See also; State v. Scott, U.S. v. Scott, State v. Revish, 2020, Barker v. Wingo, 407, U.S. §33 (1973). Defrauding African Americans of structured substantive rights constitutes "Government Oppression" relevant to "Racial Animus" State Provasive Statute, which "Deprives the accused of the valued right to a completed trial by a particular tribunal (Jury)", the original (12) jurors who were sworn and seated when jeopardy attached at the First Trial. Absent the declaration of a Mistrial, any re-trial is prohibited/barred by U.S. Const. Double Jeopardy Clause; 5th Amend., La.C.Cr.P. Art 591 incorporated against the state by the 14th U.S. Constitutional Amendment. (See Arizona v. Washington and U.S. v. Green INFRA.)

So you see my friend, the State of Louisiana is having Illegal Re-Trials, a Legal Fiction as a remedy for an unconstitutional Legal Fiction Scheme, to manufacture wrongful convictions against African Americans, Males in particular, not excluding indispensable parties. (See Arizona v. Washington, 98 S.Ct. 824 - Incomplete Trials; Green v. U.S., S.Ct. 221 - Government Oppression.) State v. Maxie, 13-Cr-72522, Sabine.

MEMORANDUM OF LAW

FACT

The new law as written under La. Const. Art. 1, Sec. 17 and La.C.Cr. P. Art 782, both remain unconstitutional, which is unforgivable. It still reads that all offenses prior to January 1, 2019 are valid convictions by (10) out of (12) jurors. Unchanged even after the U.S. Supreme Court has "Stamped" such practice as unconstitutional. All re-trials are based on OFFENSES prior to January 1, 2019 in theory (Legal Fiction, supra., as re-trials of vacated convictions due to "Government Oppression" and not trial error are impermissible, Prohibited.) See Green v. U.S.; U.S. v. Burks,

It matters not what form the attempt to deny a constitutional right may take. It is vain and ineffectual, and must be so declared by the courts; it is the duty of courts to be watchful against any encroachment to the constitutional right of the citizen, and against any stealthy attempts thereon to do. Their motto "obsta principiis" should be; and the power of the United States Supreme Court carries with it the equal power to punish for any disobedience of a mandate of equal protection, due process of law injunction upon the states; and any inquiry as to any question of defiant disobedience, in time and times immemorial again is the "SPECIAL FUNCTION OF THE COURT"; and this is no new technical rule that uncovers unconstitutional state procedures shocking to the universal sense of justice; or/and in the interest of enemies of the United States of America which is The People and the United States Constitution; In Re; Debs, 39 L.ed. 1092 (1895) quoting Mr. Justice Bradley therein Boyd v. U.S., 116 US 616, 635 [29:746, 752].

The remedy of habeas corpus is available whenever it is found that the court in which the petition originated had no jurisdiction to try him; Am Pub. Co., v FISHER, 41 L.ed. 1079 [41 L'ed. 1172] (1897). It must never be forgotten that the Great Writ of Habeas Corpus is the precious safeguard of personal liberty, and against treasonous tyranny; and further that there exists no higher duty than to hold dear to maintain it unimpaired though the La. Leg. has attempted to abridge the right to habeas corpus by 2021 La. Leg. Sess. Act. 104 (S.B. 186) (WEST) et seq. - relator-petitioner is not entitled to file for a relief under La. C. Cr. P. Title XXXI-A / La. C. Cr. P. Art. 351, nor may he appeal, or has done so and the appeal is pending, La/ C. Cr. P. Article 363; U.S. Const. Article I, Section 10. [1] / Amend. XIV; Art. III, sec. 3; cl. 1, U.S.C.A. Const. Art. 3 cl. 2 and 18 USCA §2381; 42 USCA S 1983.

Relator-petitioner has a constitutional due process and equal protection safeguard guaranteed right against any bill of attainder passed by the Louisiana Legislature, U.S. Const. Art. I, §10 conjuncted to U.S. Const. Amend. XIV et seq.; U.S. v. Helmich, 521 F. Supp. 1246 (M.D. FLA. 1981), judgment aff'd, 704 F.2d 547 (11th Cir. 1983); Young v. U.S., 97 U.S. 39, 24 L.ed. 992 (1877); U.S. v. Wiltberger, 18 U.S. 76, 5 L.ed. 37 (1820); Com. v. Lopes, 318 Mass. 453, 61 N.F 2d 849 (1945).

Relator states that; La.Const.1974,Art.I§17/La.C.Cr.P.Art.782 as are related to nonunanimous verdicts of concurrence of ten jurors is unconstitutional as BILLS of Pains and Penalties prohibited by U.S.Constitution,Article I,section 9,cl.3;Article I,section 10,cl. 1;"No State shall...pass any Bill of Attainder...."

"Bill of Attainder.Legislative acts,no matter what their form,that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial....An act is a 'bill of attainder' when the punishment is death and a 'bill of pains and penalties' when the punishment is less severe; both kinds of punishment fall within the scope of the constitutional prohibition." Black's Law Dictionary,8th ed,West(1979); Losier v. Sherman,157 Kan.153,138 P.2d 272;State v.Graves,352 Mo.1102, 182 S.W.2d 46;3 Bl.Comm.402-404;United States v.Brown,14 L.Ed.484;U.S. v.Lovette,90 L.Ed 1252;Cases: Constitutional Law-82.5,C.J.S.Const.Law §§429-431 et seq;death,civil death(life) and/or hard labor illegal.

Relator is a pre-trial detainee in "contemplation of law"presumed innocent;" FACTUAL INNOCENT by conclusive presumption as:

"Any State law authorizing a verdict by the concurrence of less than 12 members of the jurors empaneled violates the constitutional right of trial by jury, by force of the United States Constitution itself, or by acts of Congress as The Supreme Law of The Land. American Publishing Company v.Fisher,41 L.Ed 1079(1897),an illegal jury instruction is none at all,Springville v. Thomas,41 L.Ed (1897) CALLEN v. WILSON,Marshall,etc..32 L.Ed 223 (1888):"...the fact was and Rev.Errol Victor,Sr. was adjudged guilty of crime...,without having been tried by jury, he should have been restored to his liberty."

2. Congressional ratification of La. 1974 Const.Art.I§17 equates to Bill of Attainder prohibited by U.S.Const.Art.I, Section 9, par.3, as authorizing punishment w/o trial by jury of easily ascertainable members of a Black class. Ramos v. La.

Louisiana Const. Art.I§17, sentence 2, denied the right to trial by jury therein applying to easily ascertainable group was a bill of attainder prohibited therein La.Const.1974, Art. I§23/U.S. Const. Art. I, Section 9 par.3.

Callan v. Wilson, Marshal, etc 8 S.Ct. 1301 (1888)
Am. Pub.Co. v. Fisher, 17 S.Ct. 618 (1897)
Springville City v. Thomas et.al. v. Wolf v. Tucker, et.al. 17 S.Ct. 717 (1897)
Art. 1 Sect. 9(3) Supreme LAW of the LAND.

Relator-plaintiff states that;"in general ,the burden of proof is always on the prosecution to establish the guilt of the accused; prove a specific intent, where such intent is essential;but need not prove the motive; that the alleged offense was committed after the passage of legislation making it a crime, and before the indictment was found, and that the prosecution is not barred by the statute of limitations ; and that the alleged crime was committed within the county, parish,or district thereof, in which the prosecution is laid and that the court has jurisdiction; and it is noted that the presumed innocence has not a burden to prove innocence, subject to very limited exceptions known to the prosecution and defence; 22A C.J.S. Crim.Law §§ 682-694 et seq..

Any nonunanimous verdict clearly expresses by 9-3,10-2 or 11-1 a shy record,that the state has not met its burden of proof beyond that reasonable doubt;to the triers of fact,empaneled and sworn,reflecting a pure insufficiency of.the prosecutors case, and MAGNIFIES "INNOCENCE FACTUAL" of the alleged crime charged as well as the lesser included.

As the triers of fact were discharged before any mistrial ever declared or trial de novo empaneled, the prosecution in effect has in every respect conceded to the presumed innocent;the bite at a apple so to speak; this is to say that the only way a nonunanimous verdict can possibly be constitutional is in reflection of total acquittal,in demanding absolution under La.C.Cr.P.art.591 and it is not into the court of public opinion, or the court of appeals jurisdiction to retry the facts and evidence; U.S.Constitution;Amendment V,VI and XIV in conjunction with U.S.Constitution, Article VI [2]-[3] et seq.. Article III,Section II,Clause 3 of the United States Constitution in of itself requires that the trial of all crimes,...shall be by jury. The disturbing element of the case is the failure of the state to seek an easily available, legally provided for , adequate remedy.The state not even requested a "Dynamite-Allen Charge";Allen v.United States,41 L.ed 528(US);THAGGARD v.U.S.,354 F.2d 735(U.S.5th Cir.Ct.App.12-06-1965).

HARD LABOR involuntary servitude has been illegal since Treaty of U.N.-Universal Declaration of Human Rights,Article 4,U.S.Const.,Art.VI, [2],[3],nullifying La.R.S.15:824 C./La.Const.Art.I§3 as punishment for crime. With regard to relator's right to damages,...

THE CASE DUTY RISK ANALYSIS

- A.-The States conduct in question is a substantial factor in bringing about the harm to this citizen and was a cause in fact of the very real loss of liberty and/or property and pursuit of happiness;
- B.-the State owed a duty to this citizen to protect his citizenship rights;
- C.-the State breached;the citizens owed duty inviolate of oath of any allegiance under U.S.Const.Art.VI,cl.[3];
- D.-the State proceeded at its own duty risk peril causing physiological, liberty and/or property losses within the scope of protections which were afforded, protected,and guaranteed under and by the duty that's ongoingly breached due to the negligent malfeasance;

Mart v. Hill, 505 So.2d 1120 (La:1987);

Hill v. Lundin & Associates, Inc., 256 So.2d 620 (La:1972)

Robert v. Benoit, 605 So.2d 1032[605.So.2d 1050,1051](La:1991);

Fowler vs Roberts, 556 So.2d 1/4 (La.1989);

Wilson v. State through D.O.T.D., 576 So.2d 490 (La.1991);

Mundy v. State through D.H.H.R., 620 So.2d 490 (La.1993);

Thomas C.Calligan,Jr., A Primer On The Patterns Of Negligence, 53

La. Law Review 1509,1510 (1993)et seq..

The liability owed at present is indeterminate as the injuries are an ongoing at present, however are Absolute,Civil,Irreparable, Permanent,Personal,Private,Public,Real,Relative,Libel,Slander, and some inparticularly Reparable to some financial degree perhaps of which writer cannot determine if any at all deserved, but even that is ongoing; Plus costs,fees and legal interests,etc.;

Lerner v. Rump Bros., 212 App.Div. 747, 209 N.Y.S. 698,701(NY);

Restatement,Second,Torts,§ 7.

E.-Injuries involved in Bodily,Compensable;Consequential, continual, Continuing,Direct,Injury in Fact,Legal,Malicious,Pecuniary,Permanent, Personal,Physical,Private,Public,Serious Bodily,Grievous and Great Bodily Injury,Willful,Wanton and Indifferent Ill Will Injuries; Disparagement;

James Hadley, Introduction to Roman Law 243 (1881);

R.F.V. Heuston, Salmon on the Law of Torts 13 pp.51-52(17th ed.1977);

R.F.V. Heuston, Salmon on the Law of Torts 12 (17th ed.1977);

Restatement (Second) of Torts §7 cmt.a(1965);

The right of fair, public trial by jury must be scrupulously protected and carefully guarded against abridgement by any state legislative act, and every limitation or incidental burden on the exercise of the right is subject to a very stringent standard of review. Any state practice which presents a threat to those very substances of the guarantees of the United States Constitution is a direct threat to the Union-United itself, must be stricken down by the pen's terrible swift sword.

Terry v. Gassett, 740 P.2d.111(OK);
Walker v. State, 454 N.E. 425 (Ind.App.1 Dist.);
Andres v. Hawaii, 92 L.ed. 1055 (SCOTUS);
Covington v. State, 703 P.2d.436 [711 P.2d.1183], [747 P.2d.550 (AK)];
Solar v. U.S., 86 A.2d.538, Mun.App., (D.C.);
State v. Harris, 152 A.2d.106, 89 R.I.202 (R.I.);
28 USCA, Sections 1345, 1357, 1361, 1362, 1983 and 1988.

DUE TO THE FOREGOING:

- (1.) The court has exceeded its jurisdiction;
- (2.) The original custody was lawful, but by some act, omission or event which has since occurred, the custody has become unlawful;
- (3.) The order for custody is deficient in some legal requisite;
- (4.) The order for custody, although legal in form, imposes an illegal custody;
- (5.) The custodian is not the person allowed by law to detain the person in custody;
- (6.) and/or
- (7.) He is being held in custody prior to trial in violation of due process of law.

The Writ of Habeas Corpus shall be granted to a person for cause under La.C.Cr.P. Art. 362 and 28 U.S.C. 2241 - Pre-trial. The cause and effect cause of action exists hereunder as shown. In other words, "TREASON, it is a breach of allegiance," in referencing Charge to Grand Jury Neutrality Laws and Treason, 30F.Cas.1024, No. 18269-(C.C.D.Mas.1851); everyone is conclusively presumed to know the law of the land, including both common law and statutory law. Consequences of violating such laws inclusively, 22A C.J.S.Crim.Law §§ 682-709. Any lawful pre-trial detainee need not prove his innocence wherein presumed.

WHAT'S INTERESTING ARE TWO FACTORS

(1.) Jurisdiction

(2.) Time of assertion of rights, Speedy Trial Rights-Time Limitation
Which No One Cares to Mention.

HERE'S WHY

The Principal of Continuing Jeopardy (U.S. v. Richardson), which is predicated on "Manifest Necessity", i.e., Mistrials - Simply stated in the event of a judicially declared (proper) mistrial, jeopardy continues, but notice, the Trial Court maintains jurisdiction and the State has a Clean Slate to re-trial.

WHY?

If jeopardy does not end (Continuing Jeopardy), then to convene another Jury cannot constitute double jeopardy, such as in the case of a Mistrial. See U.S. v. Richardson, 104 S.Ct. 3081_____.

HOWEVER,

The state is limited to (1) year to commence a second trial in the same case, cause, issue, absent Time Interruption pursuant to La.C.Cr.P. Art. 579. But it is clear and certain that Only The Defendant Can Interrupt Time, thereby prejudicing himself by A.) Filing motions which extend time, or B.) Failing to appear if out on bond or absconding. Article 579, supra, governs the interpretation of the one year statute to commence re-trial implementation.

CERTAINLY

Considering the foregoing paragraph, Direct Appeals, Post-Conviction, Writs; and/or jurisdiction of higher courts, they are not relevant specifically to this matter, issue or procedure and are of non-effect and moot. There is not Finality establish by mistrial prior to the one year time to commence re-trial except by dismissal.

WHY

District Courts maintain original jurisdiction. Time is not tolled by a mistrial nor by incomplete trials due to improper discharge of Jury. The window for cure remains, if any, (1) year from the discharge of the Jury.

WHAT HAPPENS AFTER ONE YEAR

NO INTERRUPTION OF TIME, NO RE-TRIAL COMMENCE

Once the speedy trial right of the accused is violated (In this instance, Art. 582 - Time of Re-Trial) while accused remains a pretrial detainee, no further prosecution can be instituted against the accused for the same case, cause or issue. Re-Trial is barred. No Clean Slate. See State v. Revish (2020). Also, Barker v. Wingo, 407 U.S.533(1972)

CLEAN SLATE PRINCIPAL

A clean slate can only exist: 1) predicated upon "trial error" pursuant to a unanimous Jury Verdict, reversed; 2) A mistrial due to "Manifest Necessity" after full deliberation properly judicially declared on record. See State v. Graham, 375 So.2d 374(1979)justifies a clean slate. See also, U.S. v. Richardson, supra.

MEMORANDUM OF LAW

An Improperly declared judicial conviction and illegal improper discharge of the original Jurors, (One or Two jurors who found that in a light most favorable to the State, the State's evidence presented was not sufficient to warrant a valid conviction), the State's failure to overcome reasonable doubt substantially mandatory for a State's constitutionally valid conviction, invalidates sentencing the accused to prison and is legally unthinkable. Pains and penalties, a state passed Bill of Attainer unconstitutionally enforced, "True Bill Indictment"

Illegal Sentencing

La. Article 882. Illegal Sentencing occurred due to an unconstitutional, Non-Unanimous, judicially, legislatively declared impermissible, legal-fiction, wrongful conviction. A valid Custody can only be predicated upon a valid sentence. Absent a valid sentence, the accused held captive in the Department of Corrections is falsely imprisoned, human trafficked and legally kidnapped, forced into involuntary servitude, slavery, defacto and non-dejure in violation of the Privileges and Immunities Clause, procedural due process and equal protection of law, 28 U.S.C. 241 and 242 Civil Rights, and human rights pursuant to the Declaration of Human Rights of the United Nations.

Further, inalienable rights as God made sovereign Men and Women.

A judge has a duty to carefully explain to the criminal defendant personally his right to a unanimous verdict if elected trial by a jury franchise and consequences of a waiver; and judge has duty to question defendant directly to determine whether possible waiver is made by him knowingly, understandingly, voluntarily and intelligently, and can never be assumed from a silent record or by fact he has assistance of counsel, Sanchez v. U.S., 782 F.2d.928(C.App.11,Fla.); Jamardo v. U.S., 788 F.2d.1570(US,Ct.App.); Patton v. U.S., 74 L.ed.854 (1930), cited therein: Duncan v. La., 29 L.ed.2d.491-521 (1968), cited therein: McCarthy v. U.S., 22 L.ed.2d.418-432 (1969), cited therein: Halliday v. U.S., 23 L.ed.2d.16-23 (1969), foregoing cited therein: BOYKIN VS State of Alabama, 23 L.ed.2d.274-283 (JUNE 2,1969)+

The court may not ignore a violation of a constitutional right- especially one directly denied by state law, statute or constitution which abridge the privileges or immunities of citizens of the United States stealthy which deny to any person within its jurisdiction the equal protection, due process of law simply because it is relatively not as bad as the crime alleged or the presumed innocent at bar, without an intentional relinquishment of a known right, privilege or immunity; Johnson v. Zerbst, 82 L.ed. 1461,1466 (1938); Courts, §7 Jury, §18 Petitioners was denied the Right to a Mistrial and Time of assertion of Right to an Acquittal.

WHEREFORE, The relator/Petitioner(s), prays that this honorable Court should and ought to issue it's Great Writ of Habeas Corpus ad Subjiciendum directed to the Governor of the State of Louisiana one Jeffery Landry and all defendants et.al.(supra), directing and requiring them to release immediately from custody the relators and every/all aggrieved nonunanimous jury verdict falsely incarcerated victims of the State of Louisiana's " BILL OF ATTAINDER " and racial animus scheme to manufacture wrongful incarcerations of African Americans under the color of Law, without a valid constitutional Trial by Jury.

This Honorable Court should and ought to immediately release from illegal custody Petitioner(s) and/or deliver said relator/petitioner(s) for an evidentiary hearing on this very serious matter. Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 2d. 54 (1975); La. Const. Art. 1, Sec.21; La.C.Cr.P. Art. 354/363, et.seq.

Respectfully Submitted,

Relator/Petitioner(s) reserves the right to enroll attorney(s) and to add indispensable parties....