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MIED (Rev 1/31/05) Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus

DET 124139

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court

Case:5:19-cv-12153
 Judge: Levy, Judith E.
 MJ: Davis, Stephanie Dawkins
 Filed: 07-22-2019 At 10:51 AM
 HC MACLEOD V. BRAMAN (DA)

Name (under which you were convicted):

DUSTIN L. MACLEOD

Place of confinement: Parnall Correctional Facility
 1790 E. Parnall Rd.
 Jackson, Michigan 49201

Prisoner No.: 956261

Petitioner (include the name under which you were convicted)

Respondent (authorized person having custody of petitioner)

DUSTIN L. MACLEOD

v.

MELINDA K. BRAMAN

The Attorney General of the State of Michigan

PETITION

1.	(a)	Name and location of court that entered the judgment of conviction you are challenging:	
		Cheboygan County Circuit Court	
	(b)	Docket or case number (if you know):	14-004961-FC-P
2.	(a)	Date of judgment of conviction (if you know):	February 20, 2015
	(b)	Date of sentencing:	April 2, 2015
3.	Length of sentence:	5 years to 25 years in prison	
4.	In this case, were you convicted on more than one count or of more than one crime?		
	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/> No
5.	Identify all crimes of which you were convicted and sentenced in this case:		
	CS-Del/Mfg 5-45 Kilograms – 333.74012D11 Weapons-Firearms-Possession – 750.224F Cntr Sub Del/Manuf – 333.74012D3 Harboring Felons – 750.1993 Felony Firearms – 750.227B-A Habitual Offender 4 th Conviction – 769.12		
6.	(a)	What was your plea? (Check one)	
	<input checked="" type="checkbox"/>	Not guilty	Nolo contendere (no contest)
	<input type="checkbox"/>	Guilty	Insanity plea
	(b)	If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? n/a	
(c)	If you went to trial, what kind of trial did you have? (Check one)		
	<input checked="" type="checkbox"/>	Jury	<input type="checkbox"/> Judge only

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7.	Did you testify at a pretrial hearing, trial, or post-trial hearing?		
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	At the <i>Walker</i> hearing in the trial court.
8.	Did you appeal from the judgment of conviction?		
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
9.	If you did appeal, answer the following:		
(a)	Name of court:	Michigan Court of Appeals	
(b)	Docket or case number (if you know):	326950	
(c)	Result:	Affirmed lower court's decision	
(d)	Date of result (if you know):	July 14, 2016	
(e)	Citation to the case (if you know):	unpublished	
(f)	Grounds raised:		
	<p>Grounds raised in Brief on Appeal:</p> <p>I. The trial court reversibly erred when it denied Defendant-Appellant's motion to dismiss which was based on the State of Michigan's lack of jurisdiction to prosecute Defendant-Appellant, a member of the Sault Ste. Marie Tribe of Chippewa Indians who was gathering as allowed by the 2007 Inland Consent Decree and which also reserved Federal or Tribal jurisdiction for Consent Decree disputes occurring in the defined portions of the territory ceded to the United States in the 1836 Treaty of the United States with the Ottawa and Chippewa nations of Indians.</p> <p>II. The trial court erred when it failed to grant a mistrial when the prosecution failed to produce endorsed witnesses and denied Defendant-Appellant his Sixth Amendment right of confrontation.</p> <p>III. The trial court reversibly erred when it granted the prosecution's motion in limine to forbid the defense to mention Defendant-Appellant's Native American heritage and denied him his Due Process right to present a defense.</p> <p>IV. Defendant-Appellant was denied the effective assistance of counsel guaranteed by the federal and state constitutions (U.S. Const. Am. VI; Mich. Const. 1963, Art. 1, § 20) where trial counsel (1) failed to procedurally obtain interlocutory appeal relief, (2) failed to procedurally obtain relief in federal court, (3) failed to challenge the initial stop of Defendant-Appellant, (4) failed procedurally to bring a Section 8 defense pretrial, (5) failed to bring a Section 4 defense during trial, (6) failed to challenge the inclusion of the clones in the total number of "plants" seized, (7) failed to challenge the search warrant that was based on absent confidential informants and illogical electrical bills, (8) failed to move to dismiss Megan MacLeod's "felony" arrest warrant, (9) failed to object to 404b evidence or request a limiting instruction, and (10) failed to subpoena Shawn Spohn, Jamie Lee Richards, and Detective Varoni.</p> <p>Grounds raised in Standard -4 Supplemental Brief</p> <p>I. The trial court reversibly erred and abused its discretion by refusing to recognize the Treaty and Constitutional rights of the Defendant-Appellant, a member of the Sault Ste. Marie Tribe of Chippewa Indians, who was exercising his "usual privileges of occupancy" rights as recognized by the 1836 Treaty of Washington when arrested.</p> <p>II. The trial court reversibly erred when it abused its discretion by refusing to recognize its jurisdictional limits as established by statute and precedent.</p> <p>III. The trial court reversibly erred when it adjudicated this case with a wanton disregard for the Defendant-Appellant's Constitutional and Treaty-protected rights, including the Indian Civil Rights Act? The Indian Civil Rights Act of 1968 (ICRA), 26 U.S.C. §§ 1301-1304.</p>		
(g)	Did you seek further review by a higher state court?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, answer the following:		
(1)	Name of court:	Michigan Supreme Court	
(2)	Docket or case number (if you know):	No. 154305	
(3)	Result:	Leave for Appeal Denied – not persuaded questions should be reviewed	

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(4)	Date of result (if you know):	March 7, 2017
(5)	Citation to the case (if you know):	500 Mich. 9467, 890 N.W.2d 368 (2017)
(6)	Grounds raised:	

Grounds raised in Brief on Appeal:

- I. The trial court reversibly erred when it denied Defendant-Appellant's motion to dismiss which was based on the State of Michigan's lack of jurisdiction to prosecute Defendant-Appellant, a member of the Sault Ste. Marie Tribe of Chippewa Indians who was gathering as allowed by the 2007 Inland Consent Decree and which also reserved Federal or Tribal jurisdiction for Consent Decree disputes occurring in the defined portions of the territory ceded to the United States in the 1836 Treaty of the United States with the Ottawa and Chippewa nations of Indians.
- II. The trial court erred when it failed to grant a mistrial when the prosecution failed to produce endorsed witnesses and denied Defendant-Appellant his Sixth Amendment right of confrontation.
- III. Defendant-Appellant was denied the effective assistance of counsel guaranteed by the federal and state constitutions (U.S. Const. Am. VI; Mich. Const. 1963, ART 1, § 20) where trial counsel (1) failed to procedurally obtain interlocutory appeal relief, (2) failed to procedurally obtain relief in federal court, (3) failed to challenge the initial stop of Defendant-Appellant, (4) failed procedurally to bring a Section 8 defense pretrial, (5) failed to bring a Section 4 defense during trial, (6) failed to challenge the inclusion of the clones in the total number of "plants" seized, (7) failed to challenge the search warrant that was based on absent confidential informants and illogical electrical bills, (8) failed to move to dismiss Megan MacLeod's "felony" arrest warrant, (9) failed to object to 404b evidence or request a limiting instruction, and (10) failed to subpoena Shawn Spohn, Jamie Lee J, and Detective Varoni.

Grounds raised in Standard -4 Supplemental Brief

- I. None were raised because of ineffective assistance of appellate counsel.

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, answer the following:

(1)	Docket or case number (if you know):	
(2)	Result:	
(3)	Date of result (if you know):	
(4)	Citation to the case (if you know):	

10. Other than the direct appeal listed above, have you previously filed any other petitions, applications, or motions for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules concerning this judgment of conviction in any state court?

X Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a)	(1)	Name of court:	53 rd Circuit Court of Cheboygan County
	(2)	Docket or case number (if you know):	14-004961-FC-P
	(3)	Date of result (if you know):	February 8, 2018
	(4)	Nature of the proceeding:	Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)
	(5)	Grounds raised:	

- I. Defendant Dustin MacLeod's conviction, judgment, and sentence for Felony Firearm, Felon in Possession of a Firearm and Delivery-Manufacturing Marijuana/Possession with Intent to Deliver under both Mich. Comp. Laws 333.7401(2)(d)(iii) and Mich. Comp. Laws 333.7401(2)(d)(ii) are void *ab initio* where the trial court lacked res and personam jurisdiction, in violation of the US Constitution, Article VI, Clause 2, Supremacy Clause because MacLeod's Native American sovereign rights created an immunity to prosecution under the 1836 Treaty of Washington, the 2007 consent decree (where §§ 1.3, 5(a)-(d), 6.2, 20.1, 24.3 were breached), Federal Law 25 U.S.C. § 5123(g)(h) [construed in pari materia] and the legal principle of the US Supreme Court in *United States v. Shoshone Tribe*, 304 U.S. 111, 58 S. Ct. 794 (1938) *et al* (regarding construction of Indian Treaties) where the same provisions (including crops of all varieties, especially for medicinal purposes) while in Indian County, as defined by and referred to in 18 U.S.C. §§ 1151-1153(a)(b), 62(a)-(c) when those Native

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- American sovereignty rights were infringed [at the instigation of the Department of Natural Resources (DNR)] by the State of Michigan.
- II. The trial court was without authority and jurisdiction to sentence Defendant MacLeod as a 4th degree habitual offender, in violation of the U.S. Constitution XIV Amendment and the legal principle of the U.S. Supreme Court in *Oyler v. Boles*, 368 U.S. 448, 82 S. Ct. 501 (1962) when the prosecution failed to properly file the 4th degree habitual offender notice with the Mich. Ct. R. 6.112(F); Mich. Comp. Laws 769.13 21 days strict time limitations period.
 - III. Defendant MacLeod's convictions for Delivery-Manufacture of 5-45 Kilograms of Marijuana Possession with Intent to Deliver 20 Marijuana Plants or More, but Less than 200 plants, contrary to Mich. Comp. Laws 333.7401(2)(d)(ii) and Delivery-Manufacture Marijuana Possession with Intent to Deliver Marijuana, contrary to Mich. Comp. Laws 333.7401(2)(d)(iii) is a violation of the U.S. Constitution V Amendment and the legal principle of the U.S. Supreme Court in *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180 (1932) [based on the felony information's language] for the same offense because Mich. Comp. Laws 333.7401(2)(d)(iii) is a Mich. Comp. Laws 768.32 necessarily lesser included offense of the greater offense Mich. Comp. Laws 333.7401(2)(d)(ii).
 - IV. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments and the legal principle of the U.S. Supreme Court in *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986) when the prosecution deliberately used a peremptory challenge to remove the only Native American juror (Timothy Lince) because he might have empathized with Defendant MacLeod (a Native American) when that peremptory challenge was based on the race of Juror Lince (a Native American) despite the spurious prosecutorial façade to the contrary.
 - V. Defendant MacLeod was denied due process of law and equal protection of the law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in *Duren v. Missouri*, 439 U.S. 357, 99 S. Ct. 664 (1979) when due to the Cheboygan County irregular jury empanelment procedure, the distinctive Native American, Hispanic American and Afro-American groups of Cheboygan County community are systematically excluded from the jury selection process and are not fairly represented in the venire, resulting in an under representation of the Native American, the Hispanic American and Afro-American during the jury selection process.
 - VI. Defendant MacLeod was denied due process of law in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 due to egregious and reprehensible law enforcement misconduct in the form of collusive perjury or false testimony to the degree that MacLeod's conviction, judgment, and sentence should be reversed and the case dismissed with prejudice.
 - VII. Defendant MacLeod was denied due process of law in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in *Smith v. Massachusetts*, 543 U.S. 462, 125 S. Ct. 1129 (2005); *Bunkley v. Florida*, 538 U.S. 838, 123 S. Ct. 2020 (2003) because there was insufficient evidence to sustain his conviction for felony firearm.
 - VIII. MacLeod was denied due process of law, in violation of the U.S. Constitution VI XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in the *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979) line of cases when his conviction for harboring a fugitive who had a felony warrant pursuant to Mich. Comp. Laws 750.199 was based on insufficient evidence to prove Megan MacLeod wasn't exempt from a felony warrant due to the applicability of the Mich. Comp. Laws 801.251; 750.195(3) and U.S. Supreme Court's doctrine of in pari materia was totally ignored by the State of Michigan.
 - IX. MacLeod was denied due process of law, in violation of the U.S. Constitution VI XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984) and *Cronic v. United States*, 466 U.S. 648, 104 S. Ct. 2039 (1984) due to multiple incompetent acts (whether by omission or commission) by trial counsel Gilbert alphabetized A-W that were prejudicial to the defense of MacLeod.
 - X. MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963 Article 1 § 20 and the legal principle of the U.S. Supreme

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- Court in *Berger v. U.S.*, 295 U.S. 78, 55 S. Ct. 629 (1935) due to cumulative prosecutorial misconduct alphabetized A-G.
- XI. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004) when MacLeod was prevented from cross-examining and impeaching Jason Varoni when Patrick Holt was allowed to testify in Varoni's place and interpret Varoni's interview report with MacLeod.
- XII. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Olden v. Kentucky*, 488 U.S. 227, 109 S. Ct. 480 (1988); *Davis v. Alaska*, 418 U.S. 308, 94 S. Ct. 1105 (1974) when MacLeod was not allowed to impeach alleged confidential informant Shawn Spohn with his motive, interest and bias to entrap and dupe MacLeod into deviating from MMMA parameters, by acting under the pretext of being a Native American (similar to MacLeod) in need of medical marijuana to ease debilitating illness and with his criminal history, where he was made unavailable for trial by police and prosecution under the rule in *Reynold v. United States*, 98 U.S. 145, 158-59, 25 L. Ed. 244, 8 Otto 145 (1879).
- XIII. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004) when the trial court abused its discretion by allowing Karen Brooks to testify to a lab report prepared by an unnamed MSP lab analyst (according to the felony information) when the lab report was suppressed by the prosecution, in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1197 (1963) and Mich. Ct. R. 6.201(A)(B) to the surprise of the defense when the defense was prevented from pre-trial interview, investigating the unknown or unnamed MSP lab analyst and from impeaching the State Witness with the lab report's contents.
- XIV. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Michelsohn v. United States*, 335 U.S. 469, 69 S. Ct. 213 (1949) when PX 1, PX 5, PX 6 (hearsay) were admitted into evidence for their prejudicial impact or proving that MacLeod had previously committed the same crimes (but not charged with) for which he was on trial for, thereby tainting juror minds with bad man character and other uncharged similar act crimes evidence.
- XV. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Hering v. New York*, 422 U.S. 853, 95 S. Ct. 2550 (1975) when the trial court abused its discretion by precluding trial counsel from arguing Spohn's Native American ruse to convince MacLeod to violate MMMA provisions by presenting to MacLeod a MMMA registered, qualified patient card.
- XVI. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 when the trial court allowed the prosecution and police officers to first influence the juror minds with their prejudicial interpretations of what the erroneously admitted PX 1, PX 5, PX 6 and PX 31 (hearsay evidence) said and meant, thereby invading the province of the jury instead of allowing the tape discs to play out in open court on the record to allow the jury to make their own independent determination of what the tape discs said and meant.
- XVII. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038 (1973) when the trial court abused its discretion by denying the Defendant a late endorsement of defense witnesses Jason Varoni, Shawn Spohn and Jamie Richards because a mere CJ12d 5:12 instruction was inadequate to protect MacLeod's right to call and examine witnesses favorable to the defense.
- XVIII. Defendant MacLeod was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in *Cupp v. Naughten*, 414 U.S. 141, 94 S. Ct. 396 (1974) when the trial court

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- improperly instructed the jury in regards to the elements of Felony Firearm in the preliminary and final jury instructions.
- XIX. Defendant MacLeod's conviction and sentence for Delivery-Manufacturing Marijuana Possession with Intent to Deliver under both Mich. Comp. Laws 333.7401(2)(d)(iii) and Mich. Comp. Laws 333.7401(2)(d)(ii) obtained in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1, §§ 17, 20 and the U.S. Supreme Court's clearly established law *U.S. v. Russell*, 411 U.S. 423; 93 S. Ct. 1637 (1973) when the conviction and sentence was based on police and law enforcement entrapment when the police agent posed as a Native American to induce MacLeod to violate the Michigan Medical Marijuana law per Mich. Comp. Laws 333.26421 *et. seq.*, resulting in a violation of the Health Code law pursuant to Mich. Comp. Laws 333.7401(2)(d)(ii)(iii) out of sympathy and empathy for a fellow Native American when without such Native American ruse, MacLeod would not have violated Mich. Comp. Laws 333.7401(2)(d)(ii)(iii).
- XX. Defendant MacLeod was denied the U.S. Constitution XIV Amendment due process and equal protection of the law clauses during an appeal of right to have accurate and verbatim transcripts of the entire proceedings when the court reporter failed to comply with the language of Mich. Comp. Laws 8.108(B)(1)(a)-(d) consistent with 28 U.S.C. § 753(b)(1) when the court in the form of the illegally admitted hearsay evidence PX 1, PX 5, PX 6 and PX 31 where such omissions interferes with the appellate court's ability to make an accurate and independent determination of what the tape disc conversations between MacLeod and CI Shawn Spohn and MacLeod and Officer Varoni actually said or meant.
- XXI. Defendant MacLeod was denied the effective assistance of appellate counsel during direct appeal in violation of the U.S. Constitution XIV Amendment and the legal principles of the U.S. Supreme Court in *Anders v. California*, 386 U.S. 738; 87 S. Ct. 1396 (1967) when appellate counsel failed to raise the exact arguments contained in arguments I-XX because those issues were significant, meritorious and obvious issues to raise during direct appeal when there is a reasonable likelihood that had arguments I-XX been raised on direct appeal, Defendant MacLeod's conviction, judgment, and sentence would have been reversed.

(6)	Did you receive a hearing where evidence was given on your petition, application, or motion?	Yes	<input checked="" type="checkbox"/>	No
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(7)	Result:	Motion Denied
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(8)	Date of result (if you know):	February 8, 2018
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(b) If you filed any second petition, application, or motion, give the same information:

(1)	Name of court:	Court of Appeals of Michigan
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(2)	Docket or case number (if you know):	unknown
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(3)	Date of filing (if you know):	February 17, 2014
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(4)	Nature of the proceeding:	Interlocutory appeal to the Court of Appeals of Michigan
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(5)	Grounds raised:	<p>I. The Plaintiff may not use state power to compel and continue jurisdiction and adjudication of this cause of action when Plaintiff's claim was wrongful without showing and standing that it has a valid legal claim that is supported by any admissible evidence that its interest can be validated over that of the claims of federal law, the treaties and consent decree that their claims outweigh the rule of law.</p> <p>II. The Plaintiff may not compel the withholding of evidence of fact via motion in Limine that denies heritage and status of caregiver for medical marijuana when clearly defendant is an Indian in Indian Country and is guaranteed the usual privileges of occupancy as an affirmative defense when plaintiff has made false statements even presenting correct jurisdictional evidence to the court.</p> <p>III. The Plaintiff submitted case law showing federal jurisdiction to the court verbally mislead the court with Indian County agreed to not being within Indian Country and public land Attachment "A" Royce Map includes Cheboygan County within the exterior boundaries of "Indian County."</p> <p>IV. A public figure plaintiff and the court are not excused from following the Acts of Congress or Federal Law as codified in the Title 18 U.S.C. Part I Chapter 53 or 18 U.S.C. § 1162 and the prosecutor is not excused from the actual malice</p>
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		for misleading the courts standing to prosecute in violation of federal law regarding Indians and Indian Country where jurisdiction is clearly absent the State.			
(6) Did you receive a hearing where evidence was given on your petition, application, or motion?					
		Yes	<input checked="" type="checkbox"/>	No	
(7)	Result:	Application for leave to appeal was dismissed for failure to pursue the case in conformity with the rules. A defect in the filing of the case was noticed and not corrected in a timely manner. The dismissal was without prejudice to any other relief.			
(8)	Date of result (if you know):	May 13, 2015			
(c) If you filed any third petition, application, or motion, give the same information:					
(1)	Name of court:	United States District Court for the Eastern District of Michigan, Northern Division			
(2)	Docket or case number (if you know):	Unknown			
(3)	Date of filing (if you know):	February 18, 2015			
(4)	Nature of the proceeding:	Notice of Removal			
(5)	Grounds raised:	Unknown			
(6) Did you receive a hearing where evidence was given on your petition, application, or motion?					
		Yes	<input checked="" type="checkbox"/>	No	
(7)	Result:	The notice was deemed substantively defective as well as procedurally defective and the case was remanded back to the state trial court.			
(8)	Date of result (if you know):				
(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?					
(1)	First petition:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
(2)	Second petition:	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
(3)	Third petition:	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:					
On my second and third petition (interlocutory appeal and notice of removal) my trial attorney decided that it was best to not pursue appeals. The issues raised in the interlocutory appeal and notice of removal are not being raised in the instant petition for writ of habeas corpus.					
12.	For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.				
CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.					
GROUND ONE:		The trial court reversibly erred when it denied Petitioner's motion to dismiss which was based on the State of Michigan's lack of jurisdiction to prosecute Petitioner, a member of the Sault Ste. Marie Tribe of Chippewa Indians who was gathering as allowed by the 2007 Inland Consent Decree and which also reserved Federal or Tribal jurisdiction for Consent Decree disputes occurring in the defined portions of the territory ceded to the United States in the 1836 Treaty of the United States with the Ottawa and Chippewa nations of Indians.			
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):				
Petitioner, Dustin MacLeod, is a registered member of the Sault Ste. Marie Tribe of Chippewa Indians. The actions which lead to the criminal charges against Petitioner occurred on Indian-owned land. The 2007 Inland Consent Decree states that any dispute that falls outside of Mich. Comp. Laws 750.1 to Mich. Comp. Laws 750.563 should be handled under Federal or Tribal jurisdiction. Michigan did not have jurisdiction to try the marijuana and gun charges against Petitioner.					
(b)	If you did not exhaust your state remedies on Ground One, explain why:				
All remedies exhausted.					
(c)	Direct Appeal of Ground One:				
(1)	If you appealed from the judgment of conviction, did you raise this issue?				

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	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:	
(d) Post-Conviction Proceedings:		
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?	
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state:	
	Type of motion or petition:	
	Name and location of the court where the motion or petition was filed:	
	Docket or case number (if you know):	
	Date of the court's decision:	
	Result (attach a copy of the court's opinion or order, if available):	
(3)	Did you receive a hearing on your motion or petition?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state:	
	Name and location of the court where the appeal was filed:	
	Docket or case number (if you know):	
	Date of court's decision:	
	Result (attach a copy of the court's opinion or order, if available):	
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:	
(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:		

GROUND TWO: The trial court erred when it failed to grant a mistrial when the prosecution failed to produce endorsed witnesses and denied Petitioner his Sixth Amendment right of confrontation.

(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):	
	Two confidential informants, Shawn Spohn and Jamie Lee Richards assisted Detective Douglas Nedo by conducting "controlled buys" with Petitioner. However, these two confidential informants were not produced at trial. Their testimony was essential for defense counsel to challenge the testimony of the officers regarding the controlled buys. While defense counsel was not allowed to cross-examine them, their testimonial statements were allowed in as evidence and they were endorsed but not produced as witnesses for trial.	
(b)	If you did not exhaust your state remedies on Ground Two, explain why:	
	All remedies exhausted.	
(c) Direct Appeal of Ground Two:		
(1)	If you appealed from the judgment of conviction, did you raise this issue?	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:	
(d) Post-Conviction Proceedings:		
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?	
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state:	
	Type of motion or petition:	

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Name and location of the court where the motion or petition was filed:			
Docket or case number (if you know):			
Date of the court's decision:			
Result (attach a copy of the court's opinion or order, if available):			
(3)	Did you receive a hearing on your motion or petition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?		
	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
(6)	If your answer to Question (d)(4) is "Yes," state:		
	Name and location of the court where the appeal was filed:		
	Docket or case number (if you know):		
	Date of the court's decision:		
	Result (attach a copy of the court's opinion or order, if available):		
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:		
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:		

GROUND THREE:	The trial court reversibly erred when it granted the prosecution's motion in limine to forbid the defense to mention Petitioner's Native American heritage and denied him his Due Process right to present a defense.
(a)	<p>Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):</p> <p>The prosecution brought before the trial court a motion in limine requesting that no reference could be made to Petitioner's Native American heritage. The trial court granted the motion and stated "being Native American is not a defense." While that may be true, Petitioner's Native American status was an essential element to his defense. As Petitioner has argued elsewhere in this petition, this case should have been prosecuted in Federal or Tribal Court, not in State Court because of the State of Michigan does not have jurisdiction to settle any dispute reserved pursuant to the 2007 Inland Consent Decree other than those between Mich. Comp. Laws 750.1 and Mich. Comp. Laws 750.563. The trial court readily recognized Petitioner as a Native American and a member of a federally recognized tribe.</p>
(b)	<p>If you did not exhaust your state remedies on Ground Three, explain why:</p> <p>Petitioner intended on exhausting his state remedies on this issue and, until he was preparing his Petition for Writ of Habeas Corpus, thought that he'd do so. Unfortunately, because of ineffective assistance of his appellate counsel who volunteered to take his appeal up to the Supreme Court of Michigan, Petitioner did not raise this issue in that court. Please see the accompanying Memorandum of Law in the section entitled Statement Regarding Exhaustion for a further explanation of this issue.</p>
(c)	Direct Appeal of Ground Three:
(1)	If you appealed from the judgment of conviction, did you raise this issue?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?

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	Yes	<input checked="" type="checkbox"/>	No
(2)	If your answer to Question (d)(1) is "Yes," state:		
	Type of motion or petition:		
	Name and location of the court where the motion or petition was filed:		
	Docket or case number (if you know):		
	Date of the court's decision:		
	Result (attach a copy of the court's opinion or order, if available):		
(3)	Did you receive a hearing on your motion or petition?	<input type="checkbox"/>	Yes
		<input type="checkbox"/>	No
(4)	Did you appeal from the denial of your motion or petition?	<input type="checkbox"/>	Yes
		<input type="checkbox"/>	No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?		
	Yes	<input type="checkbox"/>	No
(6)	If your answer to Question (d)(4) is "Yes," state:		
	Name and location of the court where the appeal was filed:		
	Docket or case number (if you know):		
	Date of the court's decision:		
	Result (attach a copy of the court's opinion or order, if available):		
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:		
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:		

GROUND FOUR:	Petitioner was denied the effective assistance of counsel guaranteed by the federal and state constitutions (U.S. Const. Am. VI; Mich. Const. 1963, Art 1, § 20) where trial counsel (1) failed to procedurally obtain interlocutory appeal relief, (2) failed to procedurally obtain relief in federal court, (3) failed to challenge the initial stop of Petitioner, (4) failed procedurally to bring a Section 8 defense pretrial, (5) failed to bring a Section 4 defense during trial, (6) failed to challenge the inclusion of the clones in the total number of "plants" seized, (7) failed to challenge the search warrant that was based on absent confidential informants and illogical electrical bills, (8) failed to move to dismiss Megan MacLeod's "felony" arrest warrant, (9) failed to object to 404b evidence or request a limiting instruction, and (10) failed to subpoena Shawn Spohn, Jamie Lee Richards, and Detective Varoni.
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(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	<p>Petitioner's trial counsel was ineffective for the following reasons:</p> <ol style="list-style-type: none"> 1) Trial counsel attempted to obtain an interlocutory appeal by presenting four issues to the Court of Appeals of Michigan. However, Judge Michael J. Talbot, Chief Judge, ordered that the appeal be dismissed because trial counsel did not follow the rules of the court. Specifically, trial counsel did not follow Mich. Ct. R. 7.201(B)(3) and Mich. Ct. R. 7.216(A)(10). Trial counsel was provided a notice of this defect by the Clerk of the Court and trial counsel did not correct the defect by providing the Court of Appeals of Michigan with three additional copies of all filings. 2) Trial counsel filed a "Notice of Removal" to remove this case to federal court. However, just 5 days later, the federal court summarily remanded the case back to Cheboygan County Circuit Court because trial counsel: a) didn't make a showing that his notice of removal was timely, b) did not cite any of the authorized, substantive grounds for removal of a criminal prosecution. Trial counsel should have used sections 1442, 1442a, or 1443 for the remove but instead used the <i>civil</i> removal statute section 1446. 3) Petitioner was detained outside of his home while a search was executed on his home. Trial counsel should have objected to this initial stop of Petitioner so that it would have been suppressed. There

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- was no probable cause to stop or detain Petitioner while the search warrant was being executed on his home. If this stop was suppressed, then the “fruits of the poisonous tree” – Petitioner’s guns and marijuana in the truck along with the interview with Detective Varoni – would have also been suppressed.
- 4) Trial counsel should have raised a pre-trial motion to pursue a Section 8 (Mich. Comp. Laws 333.26428) claim that would have shown that Petitioner had an amount of medicine reasonably necessary to ensure the uninterrupted availability for his patients.
 - 5) Under Mich. Comp. Law, 333.26424, a caregiver can possess 2.5 ounces of usable marijuana per registered patient, no more than 12 plants per patient in a closed locked facility, and any incidental amount of seeds, stalks, and unusable roots. However, trial counsel failed to investigate this possibility and didn’t even object when the prosecutor referred to “in my opinion, a large, large amount of marijuana.”
 - 6) Detective Halleck testified that 122 plants were seized that included 92 clones. There was some question as to whether or not these clones were viable plants that included root balls. Trial counsel failed to challenge the inclusions of these additional “plants” that shouldn’t have been included. Had this been challenged, Petitioner would have had only 30 actual “plants” and would have been in compliance with section 4(b)(2) (Mich. Comp. Laws 333.26424)
 - 7) The warrant affidavit in this case was devoid of probable cause and trial counsel never raised that issue or investigated the warrant affidavit. Trial counsel failed to investigate the informants no challenge the veracity or credibility of these two informants. The marijuana allegedly purchased was never entered into evidence – nor the money use to purchase it. There were numerous other problems with the warrant affidavit that will be brought up in Petitioner’s Memorandum of Law.
 - 8) Trial counsel should have moved to quash the felony charges for Megan MacLeod based on the language of Mich. Comp. Laws 750.195(3) thus Petitioner could not have been guilty of harboring a felon.
 - 9) The prosecution in this case conceded that he offered the audio recordings of the controlled buys to show that Petitioner committed the controlled buys. The prosecutor stated, on the record, “... as far as the controlled buys go, Your Honor, I believe that there was sufficient testimony in the recordings to establish that the defense had – or Petitioner has been making these sales.” This only shows a propensity that Petitioner did commit the crime, not that he actually did commit the crime. Trial counsel should have objected to use of the audio tapes of the controlled buys. At least, he should have asked for a limiting instruction.
 - 10) There were important witnesses, Shawn Spohn, Jamie Lee Richards, and Detective Varoni, that should have been subpoenaed to testify at trial. They did not appear pursuant to the prosecution’s witness list and trial counsel was too late when he moved for a mistrial.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?

Yes No

(2) If your answer to Question (d)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

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	Docket or case number (if you know):			
	Date of the court's decision:			
	Result (attach a copy of the court's opinion or order, if available):			
(3)	Did you receive a hearing on your motion or petition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
(4)	Did you appeal from the denial of your motion or petition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?			
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
(6)	If your answer to Question (d)(4) is "Yes," state:			
	Name and location of the court where the appeal was filed:			
	Docket or case number (if you know):			
	Date of the court's decision:			
	Result (attach a copy of the court's opinion or order, if available):			
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:			
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:			

GROUND FIVE:	The trial court reversibly erred and abused its discretion by refusing to recognize the Treaty and Constitutional rights of the Petitioner, a member of the Sault Ste. Marie Tribe of Chippewa Indians, who was exercising his "usual privileges of occupancy" rights as recognized by the 1836 Treaty of Washington when arrested.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	<ol style="list-style-type: none"> 1) Petitioner is an enrolled member of the Sault Ste. Marie Tribe of Chippewa Indians. During his trial, he claimed the "usual privileges of occupancy" as detailed in <i>Johnson & Graham's Lessee v. McIntosh</i>, 21 U.S. 543, 8 Wheat, 543 (1832) Additionally, the 2007 Inland Consent Decree also recognizes the exclusive right of the federal courts to resolve disputes arising under the Decree. Because of both of these federal cases, the Cheboygan County Circuit Court did not have jurisdiction over Petitioner or his acts. Jurisdiction instead should have been with the federal or tribal courts. 2) The 2007 Inland Consent Decree, section 6.2(a) states that the activity Petitioner engaged in and is the subject of his criminal charges is protected. The Decree states that "Tribal members: (i) may Hunt, Fish, Trap, and Gather natural resources without limitation as to the species (including non-native and artificially propagated species) targeted for harvest, the season or method of harvest, or the use of the resource harvested; [and] (ii) may engage in other historically traditional activities (such as the construction and use of sweat lodges)." Because Petitioner was engaging in these protected activities, he should not have been prosecuted by the State of Michigan in the Cheboygan County Circuit Court. 3) The trial court erred when they ignored the long standing precedent concerning the application of "usual privileges of occupancy" to members of the "Chippewa Nation." Petitioner is an enrolled member of the Sault Ste. Marie Tribe of Chippewa. In accordance with the 1836 Treaty of Washington, Petitioner has the right to engage in the "usual privileges of occupancy." Among those privileges, is the right to make a modest living from the exercise of Petitioner's community-recognized role of Traditional Healer. Because both Petitioner and the confidential informant in this case are American Indians, this case should have been within the jurisdiction of the tribal court. 4) Because the events that led up to Petitioner being charged with a State crime involved members of the tribe, Petitioner's tribe (Sault Ste. Marie Tribe of Chippewa Indians) has inherent sovereign authority to prosecute its members for the alleged violations, not the State of Michigan. 5) The trial court abused its discretion when it denied him the right to claim his Native American status as part of his defense.

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(b)	If you did not exhaust your state remedies on Ground Five, explain why:	Petitioner intended on exhausting his state remedies on this issue and, until he was preparing his Petition for Writ of Habeas Corpus, thought that he'd do so. Unfortunately, because of ineffective assistance of his appellate counsel who volunteered to take his appeal up to the Supreme Court of Michigan, Petitioner did not raise this issue in that court. Please see the accompanying Memorandum of Law in the section entitled Statement Regarding Exhaustion for a further explanation of this issue.
(c) Direct Appeal of Ground Five:		
(1)	If you appealed from the judgment of conviction, did you raise this issue?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:	
(d) Post-Conviction Proceedings:		
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state:	Type of motion or petition: _____ Name and location of the court where the motion or petition was filed: _____ _____ Docket or case number (if you know): _____ Date of the court's decision: _____ Result (attach a copy of the court's opinion or order, if available): _____
(3)	Did you receive a hearing on your motion or petition?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state:	Name and location of the court where the appeal was filed: _____ _____ Docket or case number (if you know): _____ Date of the court's decision: _____ Result (attach a copy of the court's opinion or order, if available): _____
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:	
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Five:	

GROUND SIX:	The trial court reversibly erred when it abused its discretion by refusing to recognize its jurisdictional limits as established by statute and precedent.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): The 2007 Inland Consent Decree (2007 U.S. Dist. Lexis 82027) controlled whether Petitioner should be charged in State court or rather in Tribal or Federal Court. The trial court ignored this a denied Petitioner's motion to have this case handled in Tribal or Federal Court
(b)	If you did not exhaust your state remedies on Ground Six, explain why:

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Petitioner intended on exhausting his state remedies on this issue and, until he was preparing his Petition for Writ of Habeas Corpus, thought that he'd do so. Unfortunately, because of ineffective assistance of his appellate counsel who volunteered to take his appeal up to the Supreme Court of Michigan, Petitioner did not raise this issue in that court. Please see the accompanying Memorandum of Law in the section entitled Statement Regarding Exhaustion for a further explanation of this issue.	
(c)	Direct Appeal of Ground Six:
(1)	If you appealed from the judgment of conviction, did you raise this issue? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: _____ Name and location of the court where the motion or petition was filed: _____ Docket or case number (if you know): _____ Date of the court's decision: _____ Result (attach a copy of the court's opinion or order, if available): _____
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition? <input type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <input type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: _____ Docket or case number (if you know): _____ Date of the court's decision: _____ Result (attach a copy of the court's opinion or order, if available): _____
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Six:

GROUND SEVEN:	The trial court reversibly erred when it adjudicated this case with a wanton disregard for the Petitioner's Constitutional and Treaty-protected rights, including the Indian Civil Rights Act. The Indian Civil Rights Act of 1968 (ICRA), 26 U.S.C. §§ 1301-1304.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): The trial court readily admitted that Petitioner is an American Indian. However, Petitioner, as an American Indian, claiming treaty rights, was entitled to have his case removed to the Tribal or federal court. This was not allowed by the trial court. The trial court also denied Petitioner his protections to religious freedom because Petitioner had a treaty-protected right to practice his religion and the prosecution against him in state court violated that

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protection.

Petitioner was charged as a “Felon in Possession” of a firearm but this charge should not have been brought against him because his rights to possess a firearm had been restored and he had been exercising these rights to possess and use a firearm for many years prior to being charged in this case.

The home and “grown facility” of Petitioner were searched without a valid search warrant. While the officers were actively searching the home of Petitioner, they did not have a valid search warrant to do so. There was also a number of months delay between the time of the FLIR fly-over (May 2014) and the issuance of the active search on both the Petitioner’s home and his State-permitted Medical Marijuana grow facility.

Some of the items removed from Petitioner’s home were Sacred items related to the practice of his religion. These items were never returned to him and their seizure violated Petitioner’s fifth amendment right to illegal search and seizure as well as violated his Religious Freedom Rights.

Petitioner was not allowed to confront the witnesses against him as protected by the sixth amendment. These issues have been address elsewhere in this petition. Additionally, Petitioner’s case should have been heard in tribal court, not in state court.

(b) If you did not exhaust your state remedies on Ground Seven, explain why:

Petitioner intended on exhausting his state remedies on this issue and, until he was preparing his Petition for Writ of Habeas Corpus, thought that he’d do so. Unfortunately, because of ineffective assistance of his appellate counsel who volunteered to take his appeal up to the Supreme Court of Michigan, Petitioner did not raise this issue in that court. Please see the accompanying Memorandum of Law in the section entitled Statement Regarding Exhaustion for a further explanation of this issue.

(c) **Direct Appeal of Ground Seven:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?

Yes No

(2) If your answer to Question (d)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

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Date of the court's decision:	
Result (attach a copy of the court's opinion or order, if available):	
(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:	
(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Seven:	

GROUND EIGHT: Petitioner Dustin MacLeod's conviction, judgment, and sentence for Felony Firearm, Felon in Possession of a Firearm and Delivery-Manufacturing Marijuana/Possession with Intent to Deliver under both Mich. Comp. Laws 333.7401(2)(d)(iii) and Mich. Comp. Laws 333.7401(2)(d)(ii) are void *ab initio* where the trial court lacked res and personam jurisdiction, in violation of the US Constitution, Article VI, Clause 2, Supremacy Clause because MacLeod's Native American sovereign rights created an immunity to prosecution under the 1836 Treaty of Washington, the 2007 consent decree (where §§ 1.3, 5(a)-(d), 6.2, 20.1, 24.3 were breached), Federal Law 25 U.S.C. § 5123(g)(h) [construed in pari materia] and the legal principle of the US Supreme Court in *United States v. Shoshone Tribe*, 304 U.S. 111, 58 S. Ct. 794 (1938) *et al* (regarding construction of Indian Treaties) where the same provisions (including crops of all varieties, especially for medicinal purposes) while in Indian County, as defined by and referred to in 18 U.S.C. §§ 1151-1153(a)(b), 62(a)-(c) when those Native American sovereignty rights were infringed [at the instigation of the Department of Natural Resources (DNR)] by the State of Michigan.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):	The trial court took jurisdiction in the criminal case against Petitioner in contradiction to the explicit provision of the 2007 Inland Consent Decree (2007 U.S. Dist. Lexis 82027). This case should have been prosecuted in Federal or Tribal Court.
(b) If you did not exhaust your state remedies on Ground Eight, explain why:	
(c) Direct Appeal of Ground Eight:	
(1) If you appealed from the judgment of conviction, did you raise this issue?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2) If you did <u>not</u> raise this issue in your direct appeal, explain why:	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d) Post-Conviction Proceedings:	
(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?	X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2) If your answer to Question (d)(1) is "Yes," state:	Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2018 Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3) Did you receive a hearing on your motion or petition?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4) Did you appeal from the denial of your motion or petition?	X Yes <input type="checkbox"/> No <input type="checkbox"/>

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(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state:
	Name and location of the court where the appeal was filed:
	Court of Appeals of Michigan
	Docket or case number (if you know): 342615
	Date of the court's decision: August 22, 2018
	Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
	n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Eight:

GROUND NINE:	The trial court was without authority and jurisdiction to sentence Petitioner as a 4 th degree habitual offender, in violation of the U.S. Constitution XIV Amendment and the legal principle of the U.S. Supreme Court in <i>Oyler v. Boles</i> , 368 U.S. 448, 82 S. Ct. 501 (1962) when the prosecution failed to properly file the 4 th degree habitual offender notice with the Mich. Ct. R. 6.112(F); Mich. Comp. Laws 769.13 21 days strict time limitations period.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	The prosecutor did not file the notice of habitual offender within the required 21 days as is outlined in Mich. Comp. Laws 769.13. Additionally, the prosecutor did not have the required three prior felony convictions in order for the court to find Petitioner guilty of 4 th habitual offender.
(b)	If you did not exhaust your state remedies on Ground Nine, explain why:
(c)	Direct Appeal of Ground Nine:
(1)	If you appealed from the judgment of conviction, did you raise this issue?
	Yes <input checked="" type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state:
	Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)
	Name and location of the court where the motion or petition was filed:
	Cheboygan County Circuit Court
	Docket or case number (if you know): 14-4961
	Date of the court's decision: February 8, 2018
	Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition?
	Yes <input checked="" type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Nine:

GROUND TEN:	Petitioner's convictions for Delivery-Manufacture of 5-45 Kilograms of Marijuana Possession with Intent to Deliver 20 Marijuana Plants or More, but Less than 200 plants, contrary to Mich. Comp. Laws 333.7401(2)(d)(ii) and Delivery-Manufacture Marijuana Possession with Intent to Deliver Marijuana, contrary to Mich. Comp. Laws 333.7401(2)(d)(iii) is a violation of the U.S. Constitution V Amendment and the legal principle of the U.S. Supreme Court in <i>Blockburger v. United States</i> , 284 U.S. 299, 52 S. Ct. 180 (1932) [based on the felony information's language] for the same offense because Mich. Comp. Laws 333.7401(2)(d)(iii) is a Mich. Comp. Laws 768.32 necessarily lesser included offense of the greater offense Mich. Comp. Laws 333.7401(2)(d)(ii).
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(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): Petitioner was charged with two counts of Mich. Comp. Laws 333.7401 but was only involved in one incident related to the charge. Petitioner contends that Mich. Comp. Laws 333.7401(2)(d)(iii) is a necessarily lesser included offense of the greater offense of Mich. Comp. Laws 333.7401(2)(d)(ii). Petitioner should have been convicted only on one of these offenses.
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(b)	If you did not exhaust your state remedies on Ground Ten, explain why:
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(c)	Direct Appeal of Ground Ten:
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(1)	If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
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(d)	Post-Conviction Proceedings:
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(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/>
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(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2918 Result (attach a copy of the court's opinion or order, if available): Motion Denied
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(3)	Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/>

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(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state:
	Name and location of the court where the appeal was filed:
	Court of Appeals of Michigan
	Docket or case number (if you know): 342615
	Date of the court's decision: August 22, 2018
	Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
	n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Ten:

GROUND ELEVEN:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments and the legal principle of the U.S. Supreme Court in <i>Batson v. Kentucky</i> , 476 U.S. 79, 106 S. Ct. 1712 (1986) when the prosecution deliberately used a peremptory challenge to remove the <u>only</u> Native American juror (Timothy Lince) because he might have empathized with Petitioner (a Native American) when that peremptory challenge was based on the race of Juror Lince (a Native American) despite the spurious prosecutorial façade to the contrary.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	A juror, Timothy Lince, was peremptorily challenged by the prosecutor during voir dire. This juror was a Native American (like Petitioner). The prosecutor gave no race-neutral reason for excusing the juror. Finally, the prosecutor made a false statement that he did not know that the juror was a Native American. Because the jury questionnaire contained the race of any potential juror, the prosecutor's statement was false.
(b)	If you did not exhaust your state remedies on Ground Eleven, explain why:
(c)	Direct Appeal of Ground Eleven:
(1)	If you appealed from the judgment of conviction, did you raise this issue?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state:
	Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)
	Name and location of the court where the motion or petition was filed:
	Cheboygan County Circuit Court
	Docket or case number (if you know): 14-4961
	Date of the court's decision: February 8, 2018
	Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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(4)	Did you appeal from the denial of your motion or petition?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?		
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
(6)	If your answer to Question (d)(4) is "Yes," state:		
	Name and location of the court where the appeal was filed:		
	Court of Appeals of Michigan		
	Docket or case number (if you know): 342615		
	Date of the court's decision: August 22, 2018		
	Result (attach a copy of the court's opinion or order, if available): Application Denied		
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:		
	n/a		
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Eleven:		

GROUND TWELVE:	Petitioner was denied due process of law and equal protection of the law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in <i>Duren v. Missouri</i> , 439 U.S. 357, 99 S. Ct. 664 (1979) when due to the Cheboygan County irregular jury empanelment procedure, the distinctive Native American, Hispanic American and Afro-American groups of Cheboygan County community are systematically excluded from the jury selection process and are not fairly represented in the venire, resulting in an under representation of the Native American, the Hispanic American and Afro-American during the jury selection process.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	The empanelment procedure for Cheboygan County is irregular. It is irregular because the Native Americans comprise approximately 12% of the citizens of Cheboygan County. But, in the venires of Cheboygan County, the Native American comprises only about 0.1%. Petitioner was denied his right to a fair trial before an impartial trier of fact because of the skewed venire of the jury.
(b)	If you did not exhaust your state remedies on Ground Twelve, explain why:
(c)	Direct Appeal of Ground Twelve:
(1)	If you appealed from the judgment of conviction, did you raise this issue?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state:
	Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)
	Name and location of the court where the motion or petition was filed:
	Cheboygan County Circuit Court
	Docket or case number (if you know): 14-4961
	Date of the court's decision: February 8, 2018
	Result (attach a copy of the court's opinion or order, if available): Motion Denied

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(3)	Did you receive a hearing on your motion or petition?	Yes	<input checked="" type="checkbox"/>	No
(4)	Did you appeal from the denial of your motion or petition?	<input checked="" type="checkbox"/>	Yes	No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?			
	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
(6)	If your answer to Question (d)(4) is "Yes," state:			
	Name and location of the court where the appeal was filed:			
	Court of Appeals of Michigan			
	Docket or case number (if you know): 342615			
	Date of the court's decision: August 22, 2018			
	Result (attach a copy of the court's opinion or order): Application Denied			
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:			
	n/a			
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twelve:			

GROUND THIRTEEN:	Petitioner was denied due process of law in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 due to egregious and reprehensible law enforcement misconduct in the form of collusive perjury or false testimony to the degree that Petitioner's conviction, judgment, and sentence should be reversed and the case dismissed with prejudice.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	<p>During the testimony of Police Officers Douglas Nedo, Bryan Jarema, and Jess Halleck, they each testified that there were controlled buys which adhered to the proper procedures for a controlled buy. These controlled buys were between the confidential informant, Shawn Spohn and Petitioner. There are several inconsistencies with the testimony of these three officers. The inconsistencies are:</p> <ol style="list-style-type: none"> 1) Jess Halleck admitted that the police were not operating the recording device when it was in the possession of Shawn Spohn. This contradicts what Douglas Nedo and Bryan Jarema testified to when they said they were in full control of the recording device on Shawn Spohn. Bryan Jarema even testified that he could see the informant inside talking with Petitioner. 2) Douglas Nedo, Bryan Jarema, and Jess Halleck each testified that they had in their possession the search warrant for Petitioner's home and grow facility when Petitioner was arrested while hunting in the woods. However, that conflicts with the testimony of Patrick Holt. He testified that Straits Area Narcotics Enforcement (SANE) was already executing the search warrant when he arrived at Petitioner's Michigan Medical Marijuana Act facility and home. Holt also testified that SANE did not have a search warrant with them but only a notification over the radio that the search warrant had been signed.
(b)	If you did not exhaust your state remedies on Ground Thirteen, explain why:
(c)	Direct Appeal of Ground Thirteen:
(1)	If you appealed from the judgment of conviction, did you raise this issue?
	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.

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(d) Post-Conviction Proceedings:	
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: <u>Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)</u> Name and location of the court where the motion or petition was filed: <u>Cheboygan County Circuit Court</u> Docket or case number (if you know): <u>14-4961</u> Date of the court's decision: <u>February 8, 2018</u> Result (attach a copy of the court's opinion or order, if available): <u>Motion Denied</u>
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: <u>Court of Appeals of Michigan</u> Docket or case number (if you know): <u>342615</u> Date of the court's decision: <u>August 22, 2018</u> Result (attach a copy of the court's opinion or order, if available): <u>Application Denied</u>
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: <u>n/a</u>
(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Thirteen: _____ _____	

GROUND FOURTEEN:	Petitioner was denied due process of law in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in <i>Smith v. Massachusetts</i> , 543U.S. 462, 125 S. Ct. 1129 (2005); <i>Bunkley v. Florida</i> , 538 U.S. 838, 123 S. Ct. 2020 (2003) because there was insufficient evidence to sustain his conviction for felony firearm.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): Petitioner is was in the woods hunting with his legally possessed firearms at the time of his arrest. All of the firearms in Petitioner's possession were either under lock and key or with Petitioner while he was hunting in the woods. Mich. Comp. Laws 750.227b, however, states that a crime has occurred when a person carries or possesses a firearm when he commits or attempts to commit a felony. During the alleged commission of any and all of the other crimes for which Petitioner was charged and convicted of, Petitioner did not carry or have in his possession a firearm during the controlled buys.
(b)	If you did not exhaust your state remedies on Ground Fourteen, explain why: _____
(c) Direct Appeal of Ground Fourteen:	
(1)	If you appealed from the judgment of conviction, did you raise this issue? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.

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(d) Post-Conviction Proceedings:	
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: <u>Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)</u> Name and location of the court where the motion or petition was filed: <u>Cheboygan County Circuit Court</u> Docket or case number (if you know): <u>14-4961</u> Date of the court's decision: <u>February 8, 2918</u> Result (attach a copy of the court's opinion or order, if available): <u>Motion Denied</u>
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: <u>Court of Appeals of Michigan</u> Docket or case number (if you know): <u>342615</u> Date of the court's decision: <u>August 22, 2018</u> Result (attach a copy of the court's opinion or order, if available): <u>Application Denied</u>
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: <u>n/a</u>
(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Fourteen: _____ _____	

GROUND FIFTEEN:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in the <i>Jackson v. Virginia</i> , 443 U.S. 307, 99 S. Ct. 2781 (1979) line of cases when his conviction for harboring a fugitive who had a felony warrant pursuant to Mich. Comp. Laws 750.199 was based on insufficient evidence to prove Megan MacLeod wasn't exempt from a felony warrant due to the applicability of the Mich. Comp. Laws 801.251; 750.195(3) and U.S. Supreme Court's doctrine of in pari materia was totally ignored by the State of Michigan.
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(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): Megan MacLeod, Petitioner's sister, was charged under Mich. Comp. Laws 750.195(1) because she had not reported back from a medical furlough from her time in the local county jail. However, Mich. Comp. Laws 801.251(3) gave her the permission to be away from the jail and, at the least; she should have been only charged with a misdemeanor for not reporting back to jail. If Megan MacLeod was only charged with a misdemeanor under Mich. Comp. Laws 750.195(1) then Petitioner would also have only been charged with a misdemeanor for allegedly harboring her not returning to jail.
(b)	If you did not exhaust your state remedies on Ground Fifteen, explain why: _____ _____
(c) Direct Appeal of Ground Fifteen:	
(1)	If you appealed from the judgment of conviction, did you raise this issue? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2018 Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(4)	Did you appeal from the denial of your motion or petition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Fifteen:

GROUND SIXTEEN:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle of the U.S. Supreme Court in <i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052 (1984) and <i>Cronic v. United States</i> , 466 U.S. 648, 104 S. Ct. 2039 (1984) due to multiple incompetent acts (whether by omission or commission) by trial counsel Gilbert numbered 1-21 that were prejudicial to the defense of Petitioner.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): Petitioner's trial counsel, Mr. Gilbert, was ineffective for not filing the following motions: 1) Trial counsel failed to file a Motion to Quash the charge of Harboring a Fugitive because Petitioner should not have been charged with a felony. Petitioner should not have been charged with felony because the elements of Mich. Comp. Laws 750.199(3) require that the person being concealed or harbored has an arrest warrant for a felony. The person in question, Megan MacLeod, did not or should not have had an arrest warrant for a felony. 2) The arrest warrant used to arrest Petitioner was obtained by the use of an untruthful affidavit. Officer Halleck knew that Petitioner as a Michigan Medical Marijuana Primary Caregiver under Mich. Comp. Laws 333.26421 contrary to what he testified to in his affidavit. Additionally, Officer Halleck's testimony in his affidavit that the confidential informants made controlled buys under proper procedures was also a false statement. Trial counsel should have filed a motion for a <i>Franks</i>

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hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978).

- 3) The search warrant issued by the magistrate was without authority because it was to be executed in Indian Country. The alleged controlled buys were conducted in January, February and April of 2014 but the search warrant wasn't issued until October 14, 2014. Trial counsel should have filed a motion to suppress the evidence found as a result of this illegal warrant.
- 4) Because of the inconsistencies of the testimony of Police Officers Douglas Nedo, Bryan Jarema, and Jess Halleck (see Ground Thirteen above), trial counsel should have filed a motion to dismiss the case due to police misconduct.
- 5) The confidential informant, Shawn Spohn, was encouraged by the police to engage in an attempt to obtain Medical Marijuana from a Primary Caregiver in order to convince Petitioner to violate the Michigan Medical Marijuana Act provisions. Trial counsel should have filed a motion to suppress based upon entrapment.
- 6) Jury Tricia St. Pierre returned to the jury room after her voir dire and before she was peremptorily challenged by defense counsel. This ran the risk of her extra-judicial narrated facts contaminating the jury. Trial counsel should have moved for a mistrial because of this.
- 7) Trial did not sever the Felon in Possession charged. This necessarily puts before the jury evidence of prior convictions and "bad man" character evidence. Mich. Ct. R. 6.120(B)(C) allows for a severance motion. Trial counsel should have filed a motion to sever the Felon in Possession charge.
- 8) Officer Halleck's testimony about the number of plants and if they had viable root systems should have been rebutted by a Michigan Medical Marijuana Act, Horticulture, or Marijuana expert. Trial counsel should have, at the State's expense, procured an expert to refute Officer Halleck's testimony.
- 9) When witnesses Shawn Spohn, Detective Varoni, Jamie Lee Richards, and Joe Medicine were not available to testify, trial counsel should have moved for a continuance so that he could compel their appearance to testify.
- 10) Because there was a reasonable argument that Petitioner should not have been convicted on count IV (Harboring a Fugitive with a Felony Warrant) and count V (Felony Firearm), trial counsel should have moved for a directed verdict after the conviction.
- 11) In his chambers, the judge for this case, Judge Pavlich, expressed his contempt for Native American Indians with abasing, traducing and snide remarks about bows and arrows. Trial counsel knew that Judge Pavlich was biased against Native Americans. Trial counsel should have moved to have Judge Pavlich recuse himself because of these comments.
- 12) Trial counsel failed to introduce any evidence that count II, Felon in Possession of a Firearm should have been dismissed. Petitioner had an implied presumption that his hunting rights in Indian County were protected by the 1836 Treaty and the 2007 Inland Consent Decree. Additionally, Mich. Comp. Laws 750.224f states that there is either a 3 or 5 year period after which Petitioner would get his gun rights back after a previous felony conviction including incarceration and parole. Trial counsel should have offered this exculpatory and/or mitigating evidence in this case.

Petitioner's trial counsel, Mr. Gilbert, was ineffective for not objecting to the following:

- 13) As outlined in Ground Seventeen of this petition, the prosecutor made a number of mistakes that were detrimental to Petitioner. Trial counsel should have objected to this prosecutorial misconduct at the time the misconduct occurred.
- 14) As outlined in Ground Twelve of this petition, the irregular jury empanelment process in Cheboygan

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County skewed the jury panel. Trial counsel should have objected to this process.

- 15) As outlined in Grounds Eleven, Thirteen, and Twenty-Seven of this petition, the trial court allowed into evidence PX 1, PX 5, and PX 6 when this evidence was hearsay and could not be authenticated. Trial counsel should have objected to this evidence being allowed in to the case.
- 16) As outlined in Ground XX, during the jury instructions, the jury was instructed that because Petitioner had a hunting rifle while hunting in the woods and hunting rifles under lock and key constituted a felony firearm conviction. This is contrary to the legislative intent of Mich. Comp. Laws 750.227b which is to discourage the use of a firearm to aid in the commission of a felony.
- 17) As outlined in Ground Nine, the trial court lacked jurisdiction to charge Petitioner with 4th Habitual Offender because it was not filed within the required deadline. Trial counsel should have objected to this.
- 18) Trial counsel failed to object to the incorrect calculation of Offense Variable (OV) 14 and Prior Record Variable (PRV) 5 and PRV 7. Additionally, trial counsel failed to object to the use of the habitual offender grid. The as claimed above, the habitual offender was improperly noticed and the court erred in relying on it for sentencing purposes.

Petitioner’s trial counsel, Mr. Gilbert, was ineffective for by committing errors evidenced by the following:

- 19) During opening statements, defense counsel conceded to Petitioner’s guilt to some of the offenses with which he was charged. Petitioner pled not guilty to each of the charges and trial counsel should not have conceded to Petitioner’s guilt against the expressed position of Petitioner.
- 20) Trial counsel simply did not know the law as it pertained to Petitioner’s case. Trial counsel should have, but did not, research the U.S. Constitution Article VI, clause 2; 1836 Treaty of Washington; 2007 Inland Consent Decree; 25 U.S.C. §§ 348-349; 25 U.S.C. § 5123(g)(h); 18 U.S.C. §§ 1151-1153; Mich. Comp. Laws 333.26424(e)(f); Mich. Ct. R. 2.112(F); Mich. Ct. R. 2.615(A)-(C).
- 21) Trial counsel failed to present any evidence related to Mich. Comp. Laws 333.26424(e)(f). This law allows a Primary Caregiver to recover compensation for costs associated with assisting a registered Qualified Patient in the medical use of marijuana. Any such compensation does not constitute the sale of controlled substances. Petitioner is a Primary Caregiver and a Qualified Patient simultaneously. His actions amounted to nothing more than the transfer of marijuana between patients and any money received was simply compensation for the costs of producing the marijuana. Trial counsel should have presented this defense.

(b) If you did not exhaust your state remedies on Ground Sixteen, explain why:

(c) **Direct Appeal of Ground Sixteen:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
 Yes No

(2) If you did not raise this issue in your direct appeal, explain why:
 Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?

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	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
(2)	If your answer to Question (d)(1) is "Yes," state:			
	Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)			
	Name and location of the court where the motion or petition was filed:			
	Cheboygan County Circuit Court			
	Docket or case number (if you know): 14-4961			
	Date of the court's decision: February 8, 2018			
	Result (attach a copy of the court's opinion or order, if available): Motion Denied			
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
(4)	Did you appeal from the denial of your motion or petition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?			
	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
(6)	If your answer to Question (d)(4) is "Yes," state:			
	Name and location of the court where the appeal was filed:			
	Court of Appeals of Michigan			
	Docket or case number (if you know): 342615			
	Date of the court's decision: August 22, 2018			
	Result (attach a copy of the court's opinion or order, if available): Application Denied			
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:			
	n/a			
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Sixteen:			

GROUND SEVENTEEN:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963 Article 1 § 20 and the legal principle of the U.S. Supreme Court in <i>Berger v. U.S.</i> , 295 U.S. 78, 55 S. Ct. 629 (1935) due to cumulative prosecutorial misconduct numbered 1-8
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(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	<p>The prosecutor committed misconduct and denied Petitioner a fair trial by doing the following:</p> <ol style="list-style-type: none"> 1) The prosecutor abused his discretion by charging Petitioner with a violation of Mich. Comp. Laws 750.199(3) and Mich. Comp. Laws 750.227b. The prosecutor additionally abused his discretion by charging Petitioner as a habitual offender in an untimely fashion and by charging Petitioner with both Mich. Comp. Laws 333.7401(d)(2)(ii) and Mich. Comp. Laws 333.7401(d)(2)(iii) in violation of the double jeopardy principle. This overcharging of offenses is also outlined in Grounds Nine, Ten and Fifteen of this petition. 2) As outlined in Ground Eleven of this petition, witnesses Halleck, Jarema and Nedo committed perjury when they testified. Specifically, Detective Nedo testified that confidential informant Shawn Spohn had no incentive or motive to set up Petitioner by acting like he made illegal marijuana purchases from Petitioner. Yet, Detective Halleck testified that Shawn Spohn was promised leniency for his girlfriend (Jamie Richards) in her retail fraud case if he'd convince Petitioner to sell him marijuana by pretending he was Native American. 3) As outlined in Ground Two of this petition, the trial court erred when it failed to grant a mistrial after the prosecutor failed to produce endorsed, res gestae witnesses. The prosecutor also committed misconduct when he instructed Shawn Spohn and Detective Richards not to talk to the defense and then arrange for them to not be present for the trial. 4) The prosecutor used PX 1, PX 5, and PX 6 throughout the trial proceedings when this evidence

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	should have been deemed inadmissible for trial because it was evidence of similar act crimes.						
	5) The prosecutor promoted perjury and false evidence when he argued that Patrick Holt's deliberate misrepresentation of Jason Varoni's tape recording with Petitioner. A review of PX 31 makes it clear that Patrick Holt is deliberately committing perjury during his testimony.						
(b)	If you did not exhaust your state remedies on Ground Seventeen, explain why:						
(c)	Direct Appeal of Ground Seventeen:						
(1)	If you appealed from the judgment of conviction, did you raise this issue? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%;"></td> <td style="border: none; width: 10%; text-align: center;">Yes</td> <td style="border: none; width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">No</td> <td style="border: none; width: 55%;"></td> </tr> </table>		Yes	<input checked="" type="checkbox"/>	No		
	Yes	<input checked="" type="checkbox"/>	No				
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.						
(d)	Post-Conviction Proceedings:						
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%;"></td> <td style="border: none; width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">Yes</td> <td style="border: none; width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">No</td> <td style="border: none; width: 55%;"></td> </tr> </table>		<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: <u>Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)</u> Name and location of the court where the motion or petition was filed: <u>Cheboygan County Circuit Court</u> Docket or case number (if you know): <u>14-4961</u> Date of the court's decision: <u>February 8, 2018</u> Result (attach a copy of the court's opinion or order, if available): <u>Motion Denied</u>						
(3)	Did you receive a hearing on your motion or petition? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%;"></td> <td style="border: none; width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">Yes</td> <td style="border: none; width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">No</td> <td style="border: none; width: 55%;"></td> </tr> </table>		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	
	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No			
(4)	Did you appeal from the denial of your motion or petition? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%;"></td> <td style="border: none; width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">Yes</td> <td style="border: none; width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">No</td> <td style="border: none; width: 55%;"></td> </tr> </table>		<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%;"></td> <td style="border: none; width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">Yes</td> <td style="border: none; width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="border: none; width: 10%; text-align: center;">No</td> <td style="border: none; width: 55%;"></td> </tr> </table>		<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: <u>Court of Appeals of Michigan</u> Docket or case number (if you know): <u>342615</u> Date of the court's decision: <u>August 22, 2018</u> Result (attach a copy of the court's opinion or order, if available): <u>Application Denied</u>						
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a						
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Seventeen:						

GROUND EIGHTEEN:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Crawford v. Washington</i> , 541 U.S. 36, 124 S. Ct. 1354 (2004) when Petitioner was prevented from cross-examining and impeaching Jason Varoni when Patrick Holt was allowed to testify in Varoni's place and interpret Varoni's interview report with MacLeod.
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(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
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	Instead of having Jason Varoni testify about the report he prepared as part of the investigation in this case, the court allowed Patrick Holt to testify in his place.					
(b)	If you did not exhaust your state remedies on Ground Eighteen, explain why:					
(c)	Direct Appeal of Ground Eighteen:					
(1)	If you appealed from the judgment of conviction, did you raise this issue? <table style="width: 100%; border: none;"> <tr> <td style="width: 20%; border: none;"></td> <td style="width: 10%; border: none; text-align: center;">Yes</td> <td style="width: 10%; border: none; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 10%; border: none; text-align: center;">No</td> <td style="width: 50%; border: none;"></td> </tr> </table>		Yes	<input checked="" type="checkbox"/>	No	
	Yes	<input checked="" type="checkbox"/>	No			
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.					
(d)	Post-Conviction Proceedings:					
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <table style="width: 100%; border: none;"> <tr> <td style="width: 20%; border: none;"><input checked="" type="checkbox"/></td> <td style="width: 10%; border: none; text-align: center;">Yes</td> <td style="width: 10%; border: none; text-align: center;"><input type="checkbox"/></td> <td style="width: 10%; border: none; text-align: center;">No</td> <td style="width: 50%; border: none;"></td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2018 Result (attach a copy of the court's opinion or order, if available): Motion Denied					
(3)	Did you receive a hearing on your motion or petition? <table style="width: 100%; border: none;"><tr><td style="width: 20%; border: none;"></td><td style="width: 10%; border: none; text-align: center;">Yes</td><td style="width: 10%; border: none; text-align: center;"><input checked="" type="checkbox"/></td><td style="width: 10%; border: none; text-align: center;">No</td><td style="width: 50%; border: none;"></td></tr></table>		Yes	<input checked="" type="checkbox"/>	No	
	Yes	<input checked="" type="checkbox"/>	No			
(4)	Did you appeal from the denial of your motion or petition? <table style="width: 100%; border: none;"><tr><td style="width: 20%; border: none;"><input checked="" type="checkbox"/></td><td style="width: 10%; border: none; text-align: center;">Yes</td><td style="width: 10%; border: none; text-align: center;"><input type="checkbox"/></td><td style="width: 10%; border: none; text-align: center;">No</td><td style="width: 50%; border: none;"></td></tr></table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <table style="width: 100%; border: none;"> <tr> <td style="width: 20%; border: none;"><input checked="" type="checkbox"/></td> <td style="width: 10%; border: none; text-align: center;">Yes</td> <td style="width: 10%; border: none; text-align: center;"><input type="checkbox"/></td> <td style="width: 10%; border: none; text-align: center;">No</td> <td style="width: 50%; border: none;"></td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied					
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a					
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Eighteen:					

GROUND NINETEEN:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Olden v. Kentucky</i> , 488 U.S. 227, 109 S. Ct. 480 (1988); <i>Davis v. Alaska</i> , 418 U.S. 308, 94 S. Ct. 1105 (1974) when MacLeod was not allowed to impeach alleged confidential informant Shawn Spohn with his motive, interest and bias to entrap and dupe Petitioner into deviating from MMMA parameters, by acting under the pretext of being a Native American (similar to Petitioner) in need of medical marijuana to ease debilitating illness and with his criminal history, where he was made unavailable for trial by police and prosecution under the rule in <i>Reynold v. United States</i> , 98 U.S. 145, 158-59, 25 L. Ed. 244, 8 Otto 145 (1879).
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

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	Petitioner was not allowed to impeach the testimony of Shawn Spohn because he was deliberately prevented from coming to the trial due to prosecutorial wrong doing. This prevented Petitioner from impeaching and cross-examining Shawn Spohn with his motive to manufacture a crime against Petitioner.					
(b)	If you did not exhaust your state remedies on Ground Nineteen, explain why:					
(c)	Direct Appeal of Ground Nineteen:					
(1)	If you appealed from the judgment of conviction, did you raise this issue? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%;"></td> <td style="border: none; width: 15%; text-align: center;">Yes</td> <td style="border: none; width: 15%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 15%; text-align: center;">No</td> <td style="border: none; width: 40%;"></td> </tr> </table>		Yes	<input checked="" type="checkbox"/>	No	
	Yes	<input checked="" type="checkbox"/>	No			
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.					
(d)	Post-Conviction Proceedings:					
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 15%; text-align: center;">Yes</td> <td style="border: none; width: 15%; text-align: center;"><input type="checkbox"/></td> <td style="border: none; width: 15%; text-align: center;">No</td> <td style="border: none; width: 40%;"></td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2918 Result (attach a copy of the court's opinion or order, if available): Motion Denied					
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
(4)	Did you appeal from the denial of your motion or petition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 15%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="border: none; width: 15%; text-align: center;">Yes</td> <td style="border: none; width: 15%; text-align: center;"><input type="checkbox"/></td> <td style="border: none; width: 15%; text-align: center;">No</td> <td style="border: none; width: 40%;"></td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No			
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied					
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a					
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Nineteen:					

GROUND TWENTY:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Crawford v. Washington</i> , 541 U.S. 36, 124 S. Ct. 1354 (2004) when the trial court abused its discretion by allowing Karen Brooks to testify to a lab report prepared by an unnamed MSP lab analyst (according to the felony information) when the lab report was suppressed by the prosecution, in violation of <i>Brady v. Maryland</i> , 373 U.S. 83, 83 S. Ct. 1197 (1963) and Mich. Ct. R. 6.201(A)(B) to the surprise of the defense when the defense
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	was prevented from pre-trial interview, investigating the unknown or unnamed MSP lab analyst and from impeaching the State Witness with the lab report's contents.
(a)	<p>Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):</p> <p>A laboratory report from the Michigan State Police lab was allowed into evidence when it was improperly authenticated by Karen Brooks. Karen Brooks was not the one to prepare the report. Additionally, this report was only disclosed to the Petitioner and his trial attorney at the start of trial and Petitioner had no opportunity to prepare a defense, through his trial attorney, to defend against this evidence.</p>
(b)	<p>If you did not exhaust your state remedies on Ground Twenty, explain why:</p>
(c)	<p>Direct Appeal of Ground Twenty:</p> <p>(1) If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(2) If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.</p>
(d)	<p>Post-Conviction Proceedings:</p> <p>(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(2) If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2918 Result (attach a copy of the court's opinion or order, if available): Motion Denied</p> <p>(3) Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(4) Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? X Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(6) If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied</p> <p>(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a</p>
(e)	<p>Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty:</p>

GROUND TWENTY-ONE:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Michelson v. United States</i> , 335 U.S. 469, 69 S. Ct. 213 (1949) when PX 1, PX 5,
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MIED (Rev 1/31/05) Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus

	PX 6 (hearsay) were admitted into evidence for their prejudicial impact or proving that MacLeod had previously committed the same crimes (but not charged with) for which he was on trial for, thereby tainting juror minds with bad man character and other uncharged similar act crimes evidence.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
	PX 1, PX 5, and PX 6 were admitted into evidence but should have not been admitted. See Ground Eighteen in this petition. They should have been denied admittance into evidence because they were hearsay and they were admitted to prove the truth of matters asserted. However, these exhibits were used to show uncharged criminal conduct as a substantive evidence of guilt. This improperly prejudiced Petitioner.
(b)	If you did not exhaust your state remedies on Ground Twenty-One, explain why:
(c)	Direct Appeal of Ground Twenty-One:
(1)	If you appealed from the judgment of conviction, did you raise this issue?
	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why:
	Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?
	X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2)	If your answer to Question (d)(1) is "Yes," state:
	Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)
	Name and location of the court where the motion or petition was filed:
	Cheboygan County Circuit Court
	Docket or case number (if you know): 14-4961
	Date of the court's decision: February 8, 2918
	Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?
	X Yes <input type="checkbox"/> No <input type="checkbox"/>
(6)	If your answer to Question (d)(4) is "Yes," state:
	Name and location of the court where the appeal was filed:
	Court of Appeals of Michigan
	Docket or case number (if you know): 342615
	Date of the court's decision: August 22, 2018
	Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
	n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-One:

GROUND	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV
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TWENTY-TWO:	Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Hering v. New York</i> , 422 U.S. 853, 95 S. Ct. 2550 (1975) when the trial court abused its discretion by precluding trial counsel from arguing Spohn’s Native American ruse to convince Petitioner to violate MMMA provisions by presenting to MacLeod a MMMA registered, qualified patient card.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): During trial, Petitioner’s trial counsel was prevented from arguing before the jury that Petitioner was entrapped into the circumstances of the underlying charges (Mich. Comp. Laws 333.7401(2)(d)(ii)-(iii). The entrapment was committed by Shawn Spohn representing himself to Petitioner as a fellow Native American with an MMMA registered qualified Patient card.
(b)	If you did not exhaust your state remedies on Ground Twenty-Two, explain why:
(c)	Direct Appeal of Ground Twenty-Two:
(1)	If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2)	If your answer to Question (d)(1) is “Yes,” state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court’s decision: February 8, 2918 Result (attach a copy of the court’s opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(5)	If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(6)	If your answer to Question (d)(4) is “Yes,” state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court’s decision: August 22, 2018 Result (attach a copy of the court’s opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is “No,” explain why you did not raise this issue: n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Two:

GROUND	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV
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TWENTY-THREE:	Amendments; Mich. Const. 1963, Article 1 § 20 when the trial court allowed the prosecution and police officers to first influence the juror minds with their prejudicial interpretations of what the erroneously admitted PX 1, PX 5, PX 6 and PX 31 (hearsay evidence) said and meant, thereby invading the province of the jury instead of allowing the tape discs to play out in open court on the record to allow the jury to make their own independent determination of what the tape discs said and meant.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): During the first day of trial (TT I, p. 81, 97, 133), certain witnesses testified as lay witnesses as to what was on an audio disc, who was speaking and what they were speaking about. Instead of having these lay witnesses interpret the audio disc, the disc should have been played in open court for the jury to make any determination as to what they heard or any interpretation.
(b)	If you did not exhaust your state remedies on Ground Twenty-Three, explain why:
(c)	Direct Appeal of Ground Twenty-Three:
(1)	If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket and case number (if you know): 14-4961 Date of the court's decision: February 8, 2918 Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Three:

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GROUND TWENTY-FOUR:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Chambers v. Mississippi</i> , 410 U.S. 284, 93 S. Ct. 1038 (1973) when the trial court abused its discretion by denying the Petitioner a late endorsement of defense witnesses Jason Varoni, Shawn Spohn and Jamie Richards because a mere CJI2d 5:12 instruction was inadequate to protect Petitioner’s right to call and examine witnesses favorable to the defense.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): The trial court refused to compel the prosecution to produce Shawn Spohn, Jamie Lee Richards, and Detective Jason Varoni. This denied Petitioner the right to present a defense. The CJI2d 5:12 instruction was inadequate to ensure Petitioner’s right to due process.
(b)	If you did not exhaust your state remedies on Ground Twenty-Four, explain why:
(c)	Direct Appeal of Ground Twenty-Four:
(1)	If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2)	If your answer to Question (d)(1) is “Yes,” state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court’s decision: February 8, 2918 Result (attach a copy of the court’s opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(5)	If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(6)	If your answer to Question (d)(4) is “Yes,” state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court’s decision: August 22, 2018 Result (attach a copy of the court’s opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is “No,” explain why you did not raise this issue: n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Four:

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GROUND TWENTY-FIVE:	Petitioner was denied due process of law, in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1 § 20 and the legal principle in the U.S. Supreme Court in <i>Cupp v. Naughten</i> , 414 U.S. 141, 94 S. Ct. 396 (1974) when the trial court improperly instructed the jury in regards to the elements of Felony Firearm in the preliminary and final jury instructions.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): Petitioner refers this Honorable Court to the argument in Ground Sixteen, subparagraph 16 and states that the court's preliminary and final jury instructions were a denial of due process when the court improperly instructed the jury on the elements of felony firearm.
(b)	If you did not exhaust your state remedies on Ground Twenty-Five, explain why:
(c)	Direct Appeal of Ground Twenty-Five:
(1)	If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2918 Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Five:

GROUND TWENTY-SIX:	Petitioner's conviction and sentence for Delivery-Manufacturing Marijuana Possession with Intent to Deliver under both Mich. Comp. Laws 333.7401(2)(d)(iii) and Mich. Comp. Laws
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333.7401(2)(d)(ii) was obtained in violation of the U.S. Constitution VI, XIV Amendments; Mich. Const. 1963, Article 1, §§ 17, 20 and the U.S. Supreme Court's clearly established law *U.S. v. Russell*, 411 U.S. 423; 93 S. Ct. 1637 (1973) when the conviction and sentence was based on police and law enforcement entrapment when the police agent posed as a Native American to induce MacLeod to violate the Michigan Medical Marijuana law per Mich. Comp. Laws 333.26421 *et. seq.*, resulting in a violation of the Health Code law pursuant to Mich. Comp. Laws 333.7401(2)(d)(ii)(iii) out of sympathy and empathy for a fellow Native American when without such Native American ruse, Petitioner would not have violated Mich. Comp. Laws 333.7401(2)(d)(ii)(iii).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Shawn Spohn was at all times when he had contact with Petitioner, acting under the control and direction of law enforcement. Petitioner was the target of law enforcement when they sent Shawn Spohn, posing as a Native American, to entice Petitioner to violate MMMA parameters. Law enforcement knew that Petitioner was a legitimate MMMA primary caregiver. This was the reason that Shawn Spohn was told to pretend to be a Native American when he was sent to Petitioner. Shawn Spohn actually presented a MMMA registered, qualified patient ID card to Petitioner. Petitioner was entrapped by law enforcement to commit his crime and would not have done so except for law enforcement sending their agent, Shawn Spohn to entice Petitioner to commit this crime.

(b) If you did not exhaust your state remedies on Ground Twenty-Six, explain why:

(c) **Direct Appeal of Ground Twenty-Six:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?

X Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)

Name and location of the court where the motion or petition was filed:

Cheboygan County Circuit Court

Docket or case number (if you know): 14-4961

Date of the court's decision: February 8, 2918

Result (attach a copy of the court's opinion or order, if available): Motion Denied

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? X Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

X Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Court of Appeals of Michigan

Docket or case number (if you know): 342615

Date of the court's decision: August 22, 2018

Result (attach a copy of the court's opinion or order, if available): Application Denied

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(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: n/a
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Six:

GROUND TWENTY-SEVEN:	Petitioner was denied the U.S. Constitution XIV Amendment due process and equal protection of the law clauses during an appeal of right to have accurate and verbatim transcripts of the entire proceedings when the court reporter failed to comply with the language of Mich. Ct. R. 8.108(B)(1)(a)-(d) consistent with 28 U.S.C. § 753(b)(1) when the court in the form of the illegally admitted hearsay evidence PX 1, PX 5, PX 6 and PX 31 where such omissions interferes with the appellate court's ability to make an accurate and independent determination of what the tape disc conversations between MacLeod and CI Shawn Spohn and MacLeod and Officer Varoni actually said or meant.
(a)	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): The four audio discs that were entered into evidence and a number of them were played in open court were not made part of the transcripts of the trial proceedings. This prevented appellate counsel (and Petitioner) from bringing up issues related to the content of these audio discs.
(b)	If you did not exhaust your state remedies on Ground Twenty-Seven, explain why:
(c)	Direct Appeal of Ground Twenty-Seven:
(1)	If you appealed from the judgment of conviction, did you raise this issue? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(2)	If you did <u>not</u> raise this issue in your direct appeal, explain why: Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.
(d)	Post-Conviction Proceedings:*
(1)	Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(2)	If your answer to Question (d)(1) is "Yes," state: Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq) Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court Docket or case number (if you know): 14-4961 Date of the court's decision: February 8, 2018 Result (attach a copy of the court's opinion or order, if available): Motion Denied
(3)	Did you receive a hearing on your motion or petition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
(4)	Did you appeal from the denial of your motion or petition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
(5)	If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? X Yes <input type="checkbox"/> No <input type="checkbox"/>
(6)	If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Court of Appeals of Michigan Docket or case number (if you know): 342615 Date of the court's decision: August 22, 2018 Result (attach a copy of the court's opinion or order, if available): Application Denied

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
n/a

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Seven:

GROUND TWENTY-EIGHT: Petitioner was denied the effective assistance of appellate counsel during direct appeal in violation of the U.S. Constitution XIV Amendment and the legal principles of the U.S. Supreme Court in *Anders v. California*, 386 U.S. 738; 87 S. Ct. 1396 (1967) when appellate counsel failed to raise the exact arguments contained in grounds eight through twenty-eight because those issues were significant, meritorious and obvious issues to raise during direct appeal when there is a reasonable likelihood that had arguments I-XX been raised on direct appeal, Petitioner MacLeod's conviction, judgment, and sentence would have been reversed.

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim):
Petitioner's appellate attorney should have raised during his direct appeal the issues he raised in his Motion for Relief from Judgment pursuant to Mich. Ct. R. 6.500 *et. seq.*

(b) If you did not exhaust your state remedies on Ground Twenty-Eight, explain why:

(c) **Direct Appeal of Ground Twenty-Eight:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
 Yes No

(2) If you did not raise this issue in your direct appeal, explain why:
Because of the ineffective assistance of my appellate counsel who did not raise this important issue in my case.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules?
 Yes No

(2) If your answer to Question (d)(1) is "Yes," state:
Type of motion or petition: Motion for Relief from Judgment (Mich. Ct. R. 6.500 et seq)
Name and location of the court where the motion or petition was filed: Cheboygan County Circuit Court
Docket or case number (if you know): 14-4961
Date of the court's decision: February 8, 2918
Result (attach a copy of the court's opinion or order, if available): Motion Denied

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?
 Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

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Name and location of the court where the appeal was filed:	
Court of Appeals of Michigan	
Docket or case number (if you know):	342615
Date of the court's decision:	August 22, 2018
Result (attach a copy of the court's opinion or order, if available):	Application Denied
(7)	If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:
(e)	Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Twenty-Eight:
13. Please answer these additional questions about the petition you are filing:	
(a)	Have all the grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:
(b)	Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:
14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you are challenging in this petition?	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:
	United States District Court, Eastern District of Michigan, Detroit MI 48226, 2:19-cv-11107, Petition for Writ of Habeas Corpus. This petition was filed by mistake and after a motion by the Petitioner, the court dismissed the case without prejudice.
15. Do you have any petition or appeal <u>now pending</u> (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:
16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:	
(a)	At preliminary hearing: David J. Gilbert (P56956), 306 E. Broadway St., Ste. 1, Mt. Pleasant, MI 48858
(b)	At arraignment and plea: David J. Gilbert (P56956), 306 E. Broadway St., Ste. 1, Mt. Pleasant, MI 48858
(c)	At trial: David J. Gilbert (P56956), 306 E. Broadway St., Ste. 1, Mt. Pleasant, MI 48858
(d)	At sentencing: David J. Gilbert (P56956), 306 E. Broadway St., Ste. 1, Mt. Pleasant, MI 48858
(e)	On appeal: Laurel Kelly Young, P.O. Box 8797, Grand Rapids, MI 49518
(f)	In any post-conviction proceeding: In pro per
(g)	On appeal from any ruling against you in a post-conviction proceeding: In pro per
17. Do you have any future sentence to serve after you complete the sentence for the judgment you are challenging?	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MIED (Rev 1/31/05) Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus

(a)	If so, give the name and location of the court that imposed the other sentence you will serve in the future:		
(b)	Give the date the other sentence was imposed:		
(c)	Give the length of the other sentence:		
(d)	Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?		
	Yes	<input checked="" type="checkbox"/> X	No

THEREFORE, Petitioner asks that the Court grant the following relief: grant his petition for a writ of habeas corpus or any other relief to which petitioner may be entitled.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on the 17 day of July, 2019.

Executed (signed) on July 16, 2019.


 Dustin L. MacLeod, Petitioner July 16, 2019

If the person signing is not Petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Dustin L. MacLeod,

Petitioner,

v.

Case Number: _____

Melinda K. Braman

Respondent.

Dustin L. MacLeod #956261
In Pro Per
Parnall Correctional Facility
1790 E. Parnall Rd.
Jackson, MI 49201

Dana M. Nessel - Attorney General
Attorney for Respondent
G. Mennen Williams Building, 7th Floor
525 West Ottawa
P. O. Box 30212
Lansing, Michigan 48909

**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

NOTICE

This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

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STATEMENT OF QUESTIONS PRESENTED

- I. DID THE TRIAL COURT REVERSIBLY ERR WHEN IT DENIED PETITIONER’S MOTION TO DISMISS WHICH WAS BASED ON THE STATE OF MICHIGAN’S LACK OF JURISDICTION TO PROSECUTE PETITIONER, A MEMBER OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS WHO WAS GATHERING AS ALLOWED BY THE 2007 INLAND CONSENT DECREE AND WHICH ALSO RESERVED FEDERAL OR TRIBAL JURISDICTION FOR CONSENT DECREE DISPUTES OCCURRING IN THE DEFINED PORTIONS OF THE TERRITORY CEDED TO THE UNITED STATES IN THE 1836 TREATY OF THE UNITED STATES WITH THE OTTAWA AND CHIPPEWA NATIONS OF INDIANS?

Petitioner answers “YES”

State Court answers “NO”

- II. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT A MISTRIAL WHEN THE PROSECUTION FAILED TO PRODUCE ENDORSED WITNESSES AND DENIED PETITIONER HIS SIXTH AMENDMENT RIGHT OF CONFRONTATION?

Petitioner answers “YES”

State Court answers “NO”

- III. DID THE TRIAL COURT REVERSIBLY ERR WHEN IT GRANTED THE PROSECUTION’S MOTION IN LIMINE TO FORBID THE DEFENSE TO MENTION PETITIONER’S NATIVE AMERICAN HERITAGE AND DENIED HIM HIS DUE PROCESS RIGHT TO PRESENT A DEFENSE?

Petitioner answers “YES”

State Court answers “NO”

- IV. WAS PETITIONER DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (U.S. CONST. AM. VI; MICH. CONST. 1963, ART. 1, § 20) WHERE TRIAL COUNSEL (1) FAILED TO PROCEDURALLY OBTAIN INTERLOCUTORY APPEAL RELIEF, (2) FAILED TO PROCEDURALLY OBTAIN RELIEF IN FEDERAL COURT, (3) FAILED TO CHALLENGE THE INITIAL STOP OF PETITIONER, (4) FAILED PROCEDURALLY TO BRING A SECTION 8 DEFENSE PRETRIAL, (5) FAILED TO BRING A SECTION 4 DEFENSE DURING TRIAL, (6) FAILED TO CHALLENGE THE INCLUSION OF THE

CLONES IN THE TOTAL NUMBER OF “PLANTS” SEIZED, (7) FAILED TO CHALLENGE THE SEARCH WARRANT THAT WAS BASED ON ABSENT CONFIDENTIAL INFORMANTS AND ILLOGICAL ELECTRICAL BILLS, (8) FAILED TO MOVE TO DISMISS MEGAN MACLEOD’S “FELONY” ARREST WARRANT, (9) FAILED TO OBJECT TO 404B EVIDENCE OR REQUEST A LIMITING INSTRUCTION, AND (10) FAILED TO SUBPOENA SHAWN SPOHN, JAMIE LEE RICHARDS, AND DETECTIVE VARONI?

Petitioner answers “YES”

State Court answers “NO”

V. DID THE TRIAL COURT REVERSIBLY ERR AND ABUSE ITS DISCRETION BY REFUSING TO RECOGNIZE THE TREATY AND CONSTITUTIONAL RIGHTS OF THE PETITIONER, A MEMBER OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS, WHO WAS EXERCISING HIS “USUAL PRIVILEGES OF OCCUPANCY” RIGHTS AS RECOGNIZED BY THE 1836 TREATY OF WASHINGTON WHEN ARRESTED?

Petitioner answers “YES”

State Court answers “NO”

VI. DID THE TRIAL COURT REVERSIBLY ERR WHEN IT ABUSED ITS DISCRETION BY REFUSING TO RECOGNIZE ITS JURISDICTIONAL LIMITS AS ESTABLISHED BY STATUTE AND PRECEDENT?

Petitioner answers “YES”

State Court answers “NO”

VII. DID THE TRIAL COURT REVERSIBLY ERR WHEN IT ADJUDICATED THIS CASE WITH A WANTON DISREGARD FOR THE PETITIONER’S CONSTITUTIONAL AND TREATY-PROTECTED RIGHTS, INCLUDING THE INDIAN CIVIL RIGHTS ACT. THE INDIAN CIVIL RIGHTS ACT OF 1968 (ICRA), 25 U.S.C. §§ 1301-1304?

Petitioner answers “YES”

State Court answers “NO”

VIII. DID PETITIONER DUSTIN MACLEOD’S CONVICTION, JUDGMENT, AND SENTENCE FOR FELONY FIREARM, FELON IN POSSESSION OF A FIREARM AND DELIVERY-MANUFACTURING MARIJUANA/ POSSESSION WITH INTENT TO DELIVER UNDER BOTH MICH. COMP.

LAWS 333.7401(2)(D)(III) AND MICH. COMP. LAWS 333.7401(2)(D)(II) ARE VOID AB INITIO WHERE THE TRIAL COURT LACKED RES AND PERSONAM JURISDICTION, IN VIOLATION OF THE US CONSTITUTION, ARTICLE VI, CLAUSE 2, SUPREMACY CLAUSE BECAUSE MACLEOD'S NATIVE AMERICAN SOVEREIGN RIGHTS CREATE AN IMMUNITY TO PROSECUTION UNDER THE 1836 TREATY OF WASHINGTON, THE 2007 CONSENT DECREE (WHERE §§ 1.3, 5(A)-(D), 6.2, 20.1, 24.3 WERE BREACHED), FEDERAL LAW 25 U.S.C. § 5123(G)(H) [CONSTRUED IN PARI MATERIA] AND THE LEGAL PRINCIPLE OF THE US SUPREME COURT IN *UNITED STATES V. SHOSHONE TRIBE*, 304 U.S. 111, 58 S. CT. 794 (1938) ET AL (REGARDING CONSTRUCTION OF INDIAN TREATIES) WHERE THE SAME PROVISIONS (INCLUDING CROPS OF ALL VARIETIES, ESPECIALLY FOR MEDICINAL PURPOSES) WHILE IN INDIAN COUNTY, AS DEFINED BY AND REFERRED TO IN 18 U.S.C. §§ 1151-1153(A)(B), 62(A)-(C) WHEN THOSE NATIVE AMERICAN SOVEREIGNTY RIGHTS WERE INFRINGED [AT THE INSTIGATION OF THE DEPARTMENT OF NATURAL RESOURCES (DNR)] BY THE STATE OF MICHIGAN?

Petitioner answers "YES"

State Court answers "NO"

IX. WAS THE TRIAL COURT WITHOUT AUTHORITY AND JURISDICTION TO SENTENCE PETITIONER AS A 4TH DEGREE HABITUAL OFFENDER, IN VIOLATION OF THE U.S. CONSTITUTION XIV AMENDMENT AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *OYLER V. BOLES*, 368 U.S. 448, 82 S. CT. 501 (1962) WHEN THE PROSECUTION FAILED TO PROPERTY FILE THE 4TH DEGREE HABITUAL OFFENDER NOTICE WITH THE MICH. CT. R. 6.112(F); MICH. COMP. LAWS 769.13 21 DAYS STRICT TIME LIMITATIONS PERIOD?

Petitioner answers "YES"

State Court answers "NO"

X. IS PETITIONER'S CONVICTIONS FOR DELIVERY-MANUFACTURE OF 5-45 KILOGRAMS OF MARIJUANA POSSESSION WITH INTENT TO DELIVER 20 MARIJUANA PLANTS OR MORE, BUT LESS THAN 200 PLANTS, CONTRARY TO MICH. COMP. LAWS 333.7401(2)(D)(II) AND DELIVERY-MANUFACTURE MARIJUANA POSSESSION WITH INTENT TO DELIVER MARIJUANA, CONTRARY TO MICH. COMP. LAWS 333.7401(2)(D)(III) A VIOLATION OF THE U.S. CONSTITUTION V AMENDMENT AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *BLOCKBURGER V. UNITED STATES*, 284 U.S. 299, 52 S. CT. 180 (1932) [BASED ON THE FELONY INFORMATION'S LANGUAGE] FOR

THE SAME OFFENSE BECAUSE MICH. COMP. LAWS 333.7401(2)(D)(III) IS A MICH. COMP. LAWS 768.32 NECESSARILY LESSER INCLUDED OFFENSE OF THE GREATER OFFENSE MICH. COMP. LAWS 333.7401(2)(D)(II)?

Petitioner answers "YES"

State Court answers "NO"

- XI. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *BATSON V. KENTUCKY*, 476 U.S. 79, 106 S. CT. 1712 (1986) WHEN THE PROSECUTION DELIBERATELY USED A PEREMPTORY CHALLENGE TO REMOVE THE ONLY NATIVE AMERICAN JUROR (TIMOTHY LINCE) BECAUSE HE MIGHT HAVE EMPATHIZED WITH PETITIONER (A NATIVE AMERICAN) WHEN THAT PEREMPTORY CHALLENGE WAS BASED ON THE RACE OF JUROR LINCE (A NATIVE AMERICAN) DESPITE THE SPURIOUS PROSECUTORIAL FAÇADE TO THE CONTRARY?

Petitioner answers "YES"

State Court answers "NO"

- XII. WAS PETITIONER DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *DUREN V. MISSOURI*, 439 U.S. 357, 99 S. CT. 664 (1979) WHEN DUE TO THE CHEBOYGAN COUNTY IRREGULAR JURY EMPANELMENT PROCEDURE, THE DISTINCTIVE NATIVE AMERICAN, HISPANIC AMERICAN AND AFRO-AMERICAN GROUPS OF CHEBOYGAN COUNTY COMMUNITY ARE SYSTEMATICALLY EXCLUDED FROM THE JURY SELECTION PROCESS AND ARE NOT FAIRLY REPRESENTED IN THE VENIRE, RESULTING IN AN UNDER REPRESENTATION OF THE NATIVE AMERICAN, THE HISPANIC AMERICAN AND AFRO-AMERICAN DURING THE JURY SELECTION PROCESS?

Petitioner answers "YES"

State Court answers "NO"

- XIII. WAS PETITIONER DENIED DUE PROCESS OF LAW IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 DUE TO EGREGIOUS AND REPREHENSIBLE LAW

ENFORCEMENT MISCONDUCT IN THE FORM OF COLLUSIVE PERJURY OR FALSE TESTIMONY TO THE DEGREE THAT PETITIONER'S CONVICTION, JUDGMENT, AND SENTENCE SHOULD BE REVERSED AND THE CASE DISMISSED WITH PREJUDICE?

Petitioner answers "YES"

State Court answers "NO"

XIV. WAS PETITIONER DENIED DUE PROCESS OF LAW IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *SMITH V. MASSACHUSETTS*, 543 U.S. 462, 125 S. CT. 1129 (2005); *BUNKLEY V. FLORIDA*, 538 U.S. 838, 123 S. CT. 2020 (2003) BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN HIS CONVICTION FOR FELONY FIREARM?

Petitioner answers "YES"

State Court answers "NO"

XV. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN THE *JACKSON V. VIRGINIA*, 443 U.S. 307, 99 S. CT. 2781 (1979) LINE OF CASES WHEN HIS CONVICTION FOR HARBORING A FUGITIVE WHO HAD A FELONY WARRANT PURSUANT TO MICH. COMP. LAWS 750.199 WAS BASED ON INSUFFICIENT EVIDENCE TO PROVE MEGAN MACLEOD WASN'T EXEMPT FROM A FELONY WARRANT DUE TO THE APPLICABILITY OF THE MICH. COMP. LAWS 801.251, 750.195(3) AND U.S. SUPREME COURT'S DOCTRINE OF IN PARI MATERIA WAS TOTALLY IGNORED BY THE STATE OF MICHIGAN?

Petitioner answers "YES"

State Court answers "NO"

XVI. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *STRICKLAND V. WASHINGTON*, 466 U.S. 668, 104 S. CT. 2052 (1984) AND *CRONIC V. UNITED STATES*, 466 U.S. 648, 104 S. CT. 2039 (1984) DUE TO MULTIPLE INCOMPETENT ACTS (WHETHER BY OMISSION OR COMMISSION) BY TRIAL COUNSEL GILBERT

ALPHABETIZED A-U THAT WERE PREJUDICIAL TO THE DEFENSE OF PETITIONER?

Petitioner answers "YES"

State Court answers "NO"

XVII. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963 ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN *BERGER V. U.S.*, 295 U.S. 78, 55 S. CT. 629 (1935) DUE TO CUMULATIVE PROSECUTORIAL MISCONDUCT ALPHABETIZED A-E?

Petitioner answers "YES"

State Court answers "NO"

XVIII. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *CRAWFORD V. WASHINGTON*, 541 U.S. 36, 124 S. CT. 1354 (2004) WHEN PETITIONER WAS PREVENTED FROM CROSS-EXAMINING AND IMPEACHING JASON VARONI WHEN PATRICK HOLT WAS ALLOWED TO TESTIFY IN VARONI'S PLACE AND INTERPRET VARONI'S INTERVIEW REPORT WITH MACLEOD?

Petitioner answers "YES"

State Court answers "NO"

XIX. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *OLDEN V. KENTUCKY*, 488 U.S. 227, 109 S. CT. 480 (1988); *DAVIS V. ALASKA*, 418 U.S. 308, 94 S. CT. 1105 (1974) WHEN MACLEOD WAS NOT ALLOWED TO IMPEACH ALLEGED CONFIDENTIAL INFORMANT SHAWN SPOHN WITH HIS MOTIVE, INTEREST AND BIAS TO ENTRAP AND DUPE PETITIONER INTO DEVIATING FROM MMMA PARAMETERS, BY ACTING UNDER THE PRETEXT OF BEING A NATIVE AMERICAN (SIMILAR TO PETITIONER) IN NEED OF MEDICAL MARIJUANA TO EASE DEBILITATING ILLNESS AND WITH HIS CRIMINAL HISTORY, WHERE HE WAS MADE UNAVAILABLE FOR TRIAL BY POLICE AND PROSECUTION UNDER THE RULE IN *REYNOLD V. UNITED STATES*?

Petitioner answers "YES"

State Court answers "NO"

XX. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *CRAWFORD V. WASHINGTON*, 541 U.S. 36, 124 S. CT. 1354 (2004) WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING KAREN BROOKS TO TESTIFY TO A LAB REPORT PREPARED BY AN UNNAMED MSP LAB ANALYST (ACCORDING TO THE FELONY INFORMATION) WHEN THE LAB REPORT WAS SUPPRESSED BY THE PROSECUTION, IN VIOLATION OF *BRADY V. MARYLAND*, 373 U.S. 83, 83 S. CT. 1197 (1963) AND MICH. CT. R. 6.201(A)(B) TO THE SURPRISE OF THE DEFENSE WHEN THE DEFENSE WAS PREVENTED FROM PRE-TRIAL INTERVIEW, INVESTIGATING THE UNKNOWN OR UNNAMED MSP LAB ANALYST AND FROM IMPEACHING THE STATE WITNESS WITH THE LAB REPORT'S CONTENTS?

Petitioner answers "YES"

State Court answers "NO"

XXI. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *MICHELSON V. UNITED STATES*, 335 U.S. 469, 69 S. CT. 213 (1949) WHEN PX 1, PX 5, PX 6 (HEARSAY) WERE ADMITTED INTO EVIDENCE FOR THEIR PREJUDICIAL IMPACT OR PROVING THAT MACLEOD HAD PREVIOUSLY COMMITTED THE SAME CRIMES (BUT NOT CHARGED WITH) FOR WHICH HE WAS ON TRIAL FOR, THEREBY TAINING JUROR MINDS WITH BAD MAN CHARACTER AND OTHER UNCHARGED SIMILAR ACT CRIMES EVIDENCE?

Petitioner answers "YES"

State Court answers "NO"

XXII. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *HERING V. NEW YORK*, 422 U.S. 853, 95 S. CT. 2550 (1975) WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY PRECLUDING TRIAL COUNSEL FROM ARGUING SPOHN'S NATIVE AMERICAN RUSE TO CONVINCING PETITIONER TO VIOLATE MMMA PROVISIONS BY

PRESENTING TO MACLEOD A MMMA REGISTERED, QUALIFIED PATIENT CARD?

Petitioner answers "YES"

State Court answers "NO"

XXIII. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 WHEN THE TRIAL COURT ALLOWED THE PROSECUTION AND POLICE OFFICERS TO FIRST INFLUENCE THE JUROR MINDS WITH THEIR PREJUDICIAL INTERPRETATIONS OF WHAT THE ERRONEOUSLY ADMITTED PX 1, PX 5, PX 6 AND PX 31 (HEARSAY EVIDENCE) SAID AND MEANT, THEREBY INVADING THE PROVINCE OF THE JURY INSTEAD OF ALLOWING THE TAPE DISCS TO PLAY OUT IN OPEN COURT ON THE RECORD TO ALLOW THE JURY TO MAKE THEIR OWN INDEPENDENT DETERMINATION OF WHAT THE TAPE DISCS SAID AND MEANT?

Petitioner answers "YES"

State Court answers "NO"

XXIV. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *CHAMBERS V. MISSISSIPPI*, 410 U.S. 284, 93 S. CT. 1038 (1973) WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE PETITIONER A LATE ENDORSEMENT OF DEFENSE WITNESSES JASON VARONI, SHAWN SPOHN AND JAMIE RICHARDS BECAUSE A MERE CJI2D 5:12 INSTRUCTION WAS INADEQUATE TO PROTECT PETITIONER'S RIGHT TO CALL AND EXAMINE WITNESSES FAVORABLE TO THE DEFENSE?

Petitioner answers "YES"

State Court answers "NO"

XXV. WAS PETITIONER DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN *CUPP V. NAUGHTEN*, 414 U.S. 141, 94 S. CT. 396 (1974) WHEN THE TRIAL COURT IMPROPERLY INSTRUCTED THE JURY IN REGARDS TO THE ELEMENTS OF FELONY FIREARM IN THE PRELIMINARY AND FINAL JURY INSTRUCTIONS?

Petitioner answers "YES"

State Court answers "NO"

XXVI. WAS PETITIONER'S CONVICTION AND SENTENCE FOR DELIVERY-MANUFACTURING MARIJUANA POSSESSION WITH INTENT TO DELIVER UNDER BOTH MICH. COMP. LAWS 333.7401(2)(D)(III) AND MICH. COMP. LAWS 333.7401(2)(D)(II) OBTAINED IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1, §§ 17, 20 AND THE U.S. SUPREME COURT'S CLEARLY ESTABLISHED LAW *U.S. V. RUSSELL*, 411 U.S. 423, 93 S. CT. 1637 (1973) WHEN THE CONVICTION AND SENTENCE WAS BASED ON POLICE AND LAW ENFORCEMENT ENTRAPMENT WHEN THE POLICE AGENT POSED AS A NATIVE AMERICAN TO INDUCE MACLEOD TO VIOLATE THE MICHIGAN MEDICAL MARIJUANA LAW PER MICH. COMP. LAWS 333.26421 ET. SEQ., RESULTING IN A VIOLATION OF THE HEALTH CODE LAW PURSUANT TO MICH. COMP. LAWS 333.7401(2)(D)(II)(III) OUT OF SYMPATHY AND EMPATHY FOR A FELLOW NATIVE AMERICAN WHEN WITHOUT SUCH NATIVE AMERICAN RUSE, PETITIONER WOULD NOT HAVE VIOLATED MICH. COMP. LAWS 333.7401(2)(D)(II)(III)?

Petitioner answers "YES"

State Court answers "NO"

XXVII. WAS PETITIONER DENIED THE U.S. CONSTITUTION XIV AMENDMENT DUE PROCESS AND EQUAL PROTECTION OF THE LAW CLAUSES DURING AN APPEAL OF RIGHT TO HAVE ACCURATE AND VERBATIM TRANSCRIPTS OF THE ENTIRE PROCEEDINGS WHEN THE COURT REPORTER FAILED TO COMPLY WITH THE LANGUAGE OF MICH. COMP. LAWS 8.108(B)(1)(A)-(D) CONSISTENT WITH 28 U.S.C. § 753(B)(1) WHEN THE COURT IN THE FORM OF THE ILLEGALLY ADMITTED HEARSAY EVIDENCE PX 1, PX 5, PX 6 AND PX 31 WHERE SUCH OMISSIONS INTERFERES WITH THE APPELLATE COURT'S ABILITY TO MAKE AN ACCURATE AND INDEPENDENT DETERMINATION OF WHAT THE TAPE DISC CONVERSATIONS BETWEEN MACLEOD AND CI SHAWN SPOHN AND MACLEOD AND OFFICER VARONI ACTUALLY SAID OR MEANT?

Petitioner answers "YES"

State Court answers "NO"

XXVIII. WAS PETITIONER DENIED THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DURING DIRECT APPEAL IN VIOLATION OF

THE U.S. CONSTITUTION XIV AMENDMENT AND THE LEGAL PRINCIPLES OF THE U.S. SUPREME COURT IN *ANDERS V. CALIFORNIA*, 386 U.S. 738; 87 S. CT. 1396 (1967) WHEN APPELLATE COUNSEL FAILED TO RAISE THE EXACT ARGUMENTS CONTAINED IN ARGUMENTS VIII-XXVIII BECAUSE THOSE ISSUES WERE SIGNIFICANT, MERITORIOUS AND OBVIOUS ISSUES TO RAISE DURING DIRECT APPEAL WHEN THERE IS A REASONABLE LIKELIHOOD THAT HAD ARGUMENTS I-XX BEEN RAISED ON DIRECT APPEAL, DEFENDANT MACLEOD'S CONVICTION, JUDGMENT, AND SENTENCE WOULD HAVE BEEN REVERSED?

Petitioner answers "YES"

State Court answers "NO"

Handwritten signature and date: *[Signature]* July 16, 2019

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Dustin Lee MacLeod, Petitioner, was convicted of Manufacture with Intent to Deliver Marijuana between 5 and 45 grams (Mich. Comp. Laws 333.74012dii), Felon in Possession of a Firearm (Mich. Comp. Laws 750.224f), Possession with intent to deliver Marijuana (Mich. Comp. Laws 333.74012D3), Harboring a Felon (Mich. Comp. Laws 750.199(3)), and Felony Firearm (750.227B-A) on February 20, 2015 after a jury trial conducted on February 3, 19, and 20, 2015 in Cheboygan County Circuit Court before the Honorable Scott L. Pavlich. Defendant was sentenced on April 2, 2015 to 3 to 25 years, 3 to 15 years, 3 to 15 years, and 3 to 15 years, respectively and consecutive to 2 years for the felony firearm conviction.

The Initial Stop of Petitioner

On October 13, 2014, Dustin MacLeod, a Tribal Fisherman/Healer/Hunger-Gatherer from the Sault Ste. Marie Tribe of Chippewa Indians (PSIR page 1) and the Petitioner in this case, left his home with two deer heads to take to the taxidermist. He turned off the highway, drove down a little used two-track road and noticed two unmarked SUV's following him. He stopped and they stopped. Then two individuals stepped out of the SUV. They approached each side of his truck. They stated they were Michigan State Police and Petitioner was ordered out of his truck and placed in handcuffs. (TT 2/19/15, p 118-120) Petitioner asked the officers if he was under arrest and the officers told him that "No, they were detaining him." The officers detained him until Mr. Varoni the investigating officer arrived. When he arrived, Petitioner was transferred to the truck of the investigating officer, and the handcuffs were switched out. (*Walker* Hearing, 1/29/15, p 32) The investigator recorded his interview with Petitioner. The investigator said, "Before we chat, it's like I said, because you're in handcuffs, be- -- because the undercover cop was there, made contact with you, I'm gonna read to you Miranda warnings." (*Walker* Hearing,

1/29/15, pgs 38-39). The investigating officer later said in the recorded interview, “In fact our intention was to contact you at the house today but you ended up going mobile. That’s why they ended up contacting you.” (Interview Audio, 34:00) The investigating officer also asked Petitioner, “Did the depts or the other detectives tell you what’s going on?” (Interview Audio, 33:00) Rather than responding by saying something to the effect of “Yeah, they arrested me because of some controlled buys,” Petitioner stated, “They just said that we would talk about it and see where it goes. That’s all they said.” (Interview Audio, 34:40) The investigating officer then states that “there has been a search warrant prepared for your place.” (Interview Audio 34:00)

The search warrant was executed at Petitioner’s home as he sat in the officer’s truck in the woods, and as a registered caregiver, a search was also conducted of the out building where he grew his “medicine¹.”

Walker Hearing/Motion to Dismiss/Motion in Limine

On January 29, 2014, a motion hearing was held and retained-counsel moved to dismiss the case due to the Circuit Court’s lack of jurisdiction. (See Issue I below) Trial counsel moved to suppress the audio interview of Petitioner due to the involuntariness of Petitioner’s statements. Those motions were denied.

At the same motion hearing, the prosecution brought a Motion in Limine to prevent Petitioner from referring to his Native American heritage. That motion was granted.

Interlocutory Appeal

On February 17, 2014, retained-counsel applied to the Court of Appeals of Michigan for interlocutory relief regarding the trial court’s denials.

¹ Dustin MacLeod never referred to his plants as anything other than “medicine.”

On May 13, 2015, the Court of Appeals of Michigan ordered in regard to the interlocutory appeal:

Michael J. Talbot, Chief Judge, acting under MCR 7.203(F)(1), ordered:

The application for leave to appeal is DISMISSED for failure to pursue the case in conformity with the rules. MCR 7.201(B)(3) and 7.216(A)(10). The Clerk of the Court provided notice regarding the nature of the defect in this filing, and the defect was not corrected in a timely manner by providing this Court with 3 additional copies of all filings. Dismissal is without prejudice to whatever other relief may be available consistent with the Court Rules.

Removal to Federal Court

On February 18, 2015, retained-counsel filed a “Notice of Removal” to remove the criminal prosecution to federal court.

On February 23, 2015, the United States District Court for the Eastern District of Michigan, Northern Division summarily remanded the case back to Cheboygan County Court for the following reasons:

A state-court defendant seeking to remove a criminal prosecution pending against him to federal court is bound the procedures set forth in 28 U.S.C. § 1455. Under that provision, the notice of removal must be filed no later than 30 days after the defendant is arraigned in state court “or at any time before trial, whichever is earlier.” 28 U.S.C. § 1455(b)(1), (b)(2). The district court must “make an order for summary remand” if it appears from the face of the notice that removal is not permitted. 28 U.S.C. § 1455(b)(4).

In this case, MacLeod’s notice of removal is defective. First, MacLeod has not made the requisite showing that his notice of removal is timely; MacLeod does not allege that the notice of removal occurred within thirty days after his arraignment. Accordingly, MacLeod’s notice of removal is defective and remand is appropriate on those grounds alone.

But even setting aside the procedural defect, MacLeod’s notice of removal does not cite any of the authorized, substantive grounds for removal of a criminal prosecution. Section 1455 only provides a procedure for removal of a criminal prosecution; it does not provide for a substantive right for removal. Only three provisions create a substantive right to removal – 28 U.S.C. §§ 1442, 1442a, and 1443 – none of which are applicable here. Indeed, MacLeod does not claim that these provisions apply to him. Instead, MacLeod purports to remove his criminal

prosecution via the civil removal statute, 28 U.S.C. § 1446: “A defendant or defendant desiring to remove any civil actions from a State Court...” (emphasis added) Therefore, MacLeod’s notice of removal is substantively defective as well as procedurally defective.

Trial began on February 3, 2015. During voir dire, retained-counsel referred to medical marijuana. The prosecution objected and orally moved for an order that the defense could not present a medical marijuana defense:

Retained-counsel responded by stating:

MR. GILBERT: Section 333 he gets affirmative defense as to that, and all I have to do is raise those issues prior to trial.

THE COURT: Well, I know, but we’re – we’ve started the trial process. The time frames for pretrial motions have been – come and gone. Are you – there’s not been any pretrial motions, have there?

MR. GILBERT: So I’m assuming the judge’s ruling on plaintiff’s motion too, that motion time has come – come and gone?
(TT, 2/3/15, p 81-82)

“Controlled Buys” #1 and #2

At trial, Detective Douglas Nedo testified first. He stated that he had supervised two “controlled buys” between two confidential informants, Shawn Spohn and Jamie Lee Richards, and Dustin MacLeod. He testified that the first “controlled buy” was on January 24, 2014 and the second was on February 4, 2014. The first time Detective Nedo met Shawn Spohn was at the predetermined meeting place. He indicated that Detective Jess Halleck was the first to previously meet Spohn and had made all the arrangements for the “controlled buy.” (TT, 2/19/15, p 85) However, Detective Halleck was not present for the first two “controlled buys.”

Detective Halleck testified on cross-examination that the confidential informant’s motivation for setting up Petitioner was to “lessen the blow” on charges for his girlfriend’s retail

fraud in Alpena. (TT, 2/19/15, p 169) The confidential informant's girlfriend was the second confidential informant.

Allegedly, on January 24, 2014, Spohn, the confidential informant recorded his purchase on medicine for his mental illness from Dustin MacLeod. (Audio recording, People's Exhibit 1) Oddly, the recording began when Spohn knocked on Petitioner's door and ended when he left the residence. There is not part of the recording identifying Detective Nedo on the audio. Spohn was allegedly given \$125 to buy ½ ounce of medicine. (TT, 2/19/15, p 81) The purchased medicine was never introduced into evidence nor was there any evidence of submission of the medicine to the State Crime Laboratory for analysis. No physical evidence was introduced at trial that the medicine purchased was a controlled substance.

Allegedly, on February 4, 2014, a second "controlled buy" took place. Once again, the recording of the transfer began when Spohn knocked on Petitioner's door and ended when he left the residence. Oddly, there is no part of the recording identifying Detective Nedo on the Audio. Spohn was allegedly given \$2540 to buy 1 ounce of medicine. (TT, 2/19/15, p 84) The purchased medicine was never introduced into evidence nor was there any evidence of submission of the medicine to the State Crime Laboratory for analysis. No physical evidence was introduced at trial that the medicine purchased was a controlled substance.

"Controlled Buys" #3 and #4

Detective Jess Halleck testified that he was assigned to Straits Area Narcotics Enforcement (SANE) and that he was not present for the first two "controlled buys." (TT, 2/19/15, p 127) His role in the third and fourth "controlled buy" was to facilitate the meeting and to provide surveillance. (TT, 2/19/15, p 130, 132) He could not recall the date of the third buy. (TT, 2/19/15, p 127) The fourth buy was allegedly on April 29, 2014, (TT 2/19/15, p 132)

He testified that he turned the recording device on and then placed the recording device on the confidential informant. Oddly, both recordings began when the confidential informant knocked on the Petitioner's door and ended when he left the residence. There is no part of the recording identifying Detective Halleck on the audio. (TT, 2/19/15, p 135) The record does not indicate the quantity of marijuana purchased nor was it admitted into evidence. The record does not indicate whether or not the medicine was submitted to the State Crime Laboratory for analysis. No physical evidence was introduced at trial that the medicine purchased was a controlled substance.

Fly Over

On May 6, 2014, Detective Halleck obtained a search warrant to fly over Petitioner's parents' outbuilding with "Forward Looking Infrared Radar" (FLIR). That structure was where Petitioner – a registered caregiver – grew his medicine. (TT, 2/19/15, p 137) On June 6, 2014, Detective Halleck also obtained a search warrant for the power records of Mary MacLeod, the owner of the outbuilding housing the grow facility. The results of the FLIR were that there was a lot of heat emanating from one half of the outbuilding where Petitioner – a registered caregiver – was growing his medicine. (TT, 2/19/15), p 139) Based on that information and electrical records that he had obtained, on October 14, 2014, Detective Halleck obtained a search warrant for Petitioner's home and his parent's outbuilding. (TT, 2/19/15, p 140)

Initial Stop Testimony

Officer Jarema of Huron Undercover Narcotics Team (HUNT) testified that on October 14, 2014, while the search warrant was about to be executed, he observed Petitioner driving away from his home. Officer Jarema and Officer Wood in two separate vehicles followed Petitioner and testified that he (Officer Jarema) "observed him [Petitioner] turn around in a field

and at that point myself and Detective Sergeant Wood made contact with him there and identified ourselves.” (TT, 2/19/15, p 105) He and Detective Wood ordered Petitioner to get out of his truck, which he did. (TT, 2/18/15, p 118) He testified that Detective Wood made contact with Petitioner while he made contact with the other individual in the truck. (TT, 2/19/15, p 119) He did not remember the name of the other occupant of the vehicle and his name was not included in his report. The record is unclear as to what happened to the other individual. Detective Jarema testified that Detective Wood arrested Petitioner. (TT 2/19/15, p 120) Detective Jarema testified that he requested consent to search Petitioner’s vehicle. He did not testify that Petitioner provided consent, but that Petitioner volunteered that he had some hunting rifles and a small amount of marijuana² in the car. At the *Walker* Hearing, Petitioner testified and was adamant that he never consented to the search of his truck. (Walker Hearing, 1/29/15, p 48) Detective Jarema testified that he only observed the guns in the truck and never touched them. (TT, 2/19/15, p 109) He also observed the marijuana which was in a lockbox in the cab of the truck buy using Petitioner’s key, but did not seize that either. (TT, 2/19/15, p 112) He added that Petitioner’s truck was driven back to Petitioner’s home by Detective Wood. (TT, 2/19/15, p 113) The record is unclear as to how Detective Wood retrieved his vehicle from the woods. On cross-examination, Detective Holt testified that he did not see who drove Petitioner’s vehicle with the guns and medicine back to the home. (TT 2/19/15, p 251)

Search and Seizure of the Grow Facility

While searching the outbuilding, the first item seized was a garbage can full of “shake.” Detective Halleck testified that “shake” is “marijuana leaves and stems and stuff like that that’s not really usable.” (TT, 2/19/15, p 147) He testified that he did not see any buds in the shake. (TT, 2/19/15, p 158) In the first grow room they seized six marijuana plants. Detective Halleck

² Curiously, Petitioner never referred to his plants as anything other than “medicine.” See e.g. TT, 2/19/15, p 124.

was unclear as to the number of plants that were seized in an additional grow room. He testified that in an “additional grow room with – we located again, several – or not several – four fairly large, again marijuana, between, you know, four and six, three and six, somewhere in there. (TT, 2/19/15, p 148) They seized 92 clones in a clone room. (TT 2/19/15, p 150) The police report indicated that the clones were two inches tall. However, there was no indication that a root system existed. In the fourth room, they seized 2 plants. Detective Halleck included clones in his count and testified that they seized a total of 122 plants. (TT, 2/19/15, p 151) He testified that they took 21 samples from the plants and forwarded them to the Michigan State Police Crime Lab for analysis. (TT, 2/19/15, p 152). On cross-examination, Detective Halleck admitted that there were signs on the outbuilding indicating that it was a legal grow operation. (TT, 2/19/15, p 168)

Karen Brooks testified next as a forensic scientist for the Grayling State Police Crime Laboratory. She testified that the 21 samples that she analyzed were marijuana. (TT, 2/19/15, p 211)

Search and Seizure of Petitioner’s Home

Detective Patrick Holt testified next that he was a member of SANE. He testified that he was told by HUNT that they would be conducting a search warrant of Petitioner’s home and grow facility on the next day. Detective Holt supervised the search of Petitioner’s home. (TT, 2/19/15, pgs 217-218) After knocking, announcing and entering, he heard yelling and crashing on the back side of the house. He believed it to be Megan MacLeod, Petitioner’s sister, who had been on medical leave from a misdemeanor jail sentence to give birth to her baby and did not return at the end of her medical furlough. (TT, 2/19/15, p 223) There was a warrant for her arrest for Mich. Comp. Laws 750.195, escape from misdemeanor jail sentence.

Patrick Holt testified regarding the exhibits. It is unclear from the record exactly how much useable marijuana was presented to the jury. Exhibit 13 was marijuana leave in paper bags (TT, 2/19/15, p 228) Trial counsel stipulated to the introduction of Exhibits 14 through 18, however the record does not indicate what those exhibits were. The court reporter listed them in the table of contents as #14 Marijuana leaf, #15 Marijuana leaf and paper bags, #16 Marijuana shake and #17 Metal, ziplock and plastic containers with Marijuana Seeds. Exhibit #19 was an item that was removed from the safe. (TT 2/19/15, p 270) Trial counsel stipulated to the introduction of Exhibits #19 through #23, although the record is absent as to what items were being introduced into evidence. Two “bags” were retrieved from the freezer. (TT 2/19/15, p 272) One was a bag of shake. (TT, 2/19/15, p 272) Exhibit #24 was 1,010 grams of Marijuana Shake. (TT 2/19/15, p233)

The people rested.

APPEAL BY RIGHT

Mr. MacLeod then appealed the trial court’s decision by right to the Court of Appeals of Michigan. See Exhibit A attached. Counsel raised four issues titled:

- I. THE TRIAL COURT REVERSIBLY ERRED WHEN IT DENIED DEFENDANT-APPELLANT'S MOTION TO DISMISS WHICH WAS BASED ON THE STATE OF MICHIGAN'S LACK OF JURISDICTION TO PROSECUTE DEFENDANT-APPELLANT, A MEMBER OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS WHO WAS GATHERING AS ALLOWED BY THE 2007 INLAND CONSENT DECREE AND WHICH ALSO RESERVED FEDERAL OR TRIBAL JURISDICTION FOR CONSENT DECREE DISPUTES OCCURRING IN THE DEFINED PORTIONS OF THE TERRITORY CEDED TO THE UNITED STATES IN THE 1836 TREATY OF THE UNITED STATES WITH THE OTTAWA AND CHIPPEWA NATIONS OF INDIANS.
- II. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT A MISTRIAL WHEN THE PROSECUTION FAILED TO PRODUCE ENDORSED WITNESSES AND DENIED DEFENDANT-APPELLANT HIS SIXTH AMENDMENT RIGHT OF CONFRONTATION.

III. THE TRIAL COURT REVERSIBLY ERRED WHEN IT GRANTED THE PROSECUTION'S MOTION IN LIMINE TO FORBID THE DEFENSE TO MENTION DEFENDANT-APPELLANT'S NATIVE AMERICAN HERITAGE AND DENIED HIM HIS DUE PROCESS RIGHT TO PRESENT A DEFENSE.

IV. DEFENDANT-APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (U.S. CONST. AM. VI; MICH. CONST. 1963, ART. 1, § 20) WHERE TRIAL COUNSEL (1) FAILED TO PROCEDURALLY OBTAIN INTERLOCUTORY APPEAL RELIEF, (2) FAILED TO PROCEDURALLY OBTAIN RELIEF IN FEDERAL COURT, (3) FAILED TO CHALLENGE THE INITIAL STOP OF DEFENDANT-APPELLANT, (4) FAILED PROCEDURALLY TO BRING A SECTION 8 DEFENSE PRETRIAL, (5) FAILED TO BRING A SECTION 4 DEFENSE DURING TRIAL, (6) FAILED TO CHALLENGE THE INCLUSION OF THE CLONES IN THE TOTAL NUMBER OF "PLANTS" SEIZED, (7) FAILED TO CHALLENGE THE SEARCH WARRANT THAT WAS BASED ON ABSENT CONFIDENTIAL INFORMANTS AND ILLOGICAL ELECTRICAL BILLS, (8) FAILED TO MOVE TO DISMISS MEGAN MACLEOD'S "FELONY" ARREST WARRANT, (9) FAILED TO OBJECT TO 404B EVIDENCE OR REQUEST A LIMITING INSTRUCTION, AND (10) FAILED TO SUBPOENA SHAWN SPOHN, JAMIE LEE RICHARDS, AND DETECTIVE VARONI.

Mr. MacLeod also filed a pro per brief on appeal in accordance with Administrative Order 2004-6 Minimum Standards for Indigent Criminal Appellate Defense, Standard 4. See Exhibit A attached. The issues raised were:

- I. THE TRIAL COURT REVERSIBLY ERRED AND ABUSED ITS DISCRETION BY REFUSING TO RECOGNIZE THE TREATY AND CONSTITUTIONAL RIGHTS OF THE DEFENDANT-APPELLANT, A MEMBER OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS, WHO WAS EXERCISING HIS "USUAL PRIVILEGES OF OCCUPANCY" RIGHTS AS RECOGNIZED BY THE 1836 TREATY OF WASHINGTON WHEN ARRESTED.
- II. THE TRIAL COURT REVERSIBLY ERRED WHEN IT ABUSED ITS DISCRETION BY REFUSING TO RECOGNIZE ITS JURISDICTIONAL LIMITS AS ESTABLISHED BY STATUTE AND PRECEDENT.
- III. THE TRIAL COURT REVERSIBLY ERRED WHEN IT ADJUDICATED THIS CASE WITH A WANTON DISREGARD FOR THE DEFENDANT-APPELLANT'S CONSTITUTIONAL AND TREATY-PROTECTED RIGHTS, INCLUDING THE INDIAN CIVIL RIGHTS ACT? THE INDIAN CIVIL RIGHTS ACT OF 1968 (ICRA), 25 U.S.C. §§ 1301-1304.

On July 14, 2016, the Court of Appeals of Michigan affirmed the trial court's decision.

Mr. MacLeod then applied for leave to appeal to the Supreme Court of Michigan. See Exhibit B attached. Mr. MacLeod intended to raise all seven (four + three) issues which had previously been raised in the Court of Appeals of Michigan, but because of ineffective assistance of his appellate counsel, he was not able to do so. On her own initiative and unknown to Mr. MacLeod, appellate counsel, Laurel Kelly Young, raised three of four issues raised by appellate counsel in the Court of Appeals of Michigan and *none* of the issues raised in the Standard 4 brief in the Court of Appeals of Michigan. The three issues raised in the Supreme Court of Michigan were:

- I. THE TRIAL COURT REVERSIBLY ERRED WHEN IT DENIED DEFENDANT-APPELLANT'S MOTION TO DISMISS WHICH WAS BASED ON THE STATE OF MICHIGAN'S LACK OF JURISDICTION TO PROSECUTE DEFENDANT-APPELLANT, A MEMBER OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS WHO WAS GATHERING AS ALLOWED BY THE 2007 INLAND CONSENT DECREE AND WHICH ALSO RESERVED FEDERAL OR TRIBAL JURISDICTION FOR CONSENT DECREE DISPUTES OCCURRING IN THE DEFINED PORTIONS OF THE TERRITORY CEDED TO THE UNITED STATES IN THE 1836 TREATY OF THE UNITED STATES WITH THE OTTAWA AND CHIPPEWA NATIONS OF INDIANS.
- II. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT A MISTRIAL WHEN THE PROSECUTION FAILED TO PRODUCE ENDORSED WITNESSES AND DENIED DEFENDANT-APPELLANT HIS SIXTH AMENDMENT RIGHT OF CONFRONTATION.
- III. DEFENDANT-APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (U.S. CONST. AM. VI; MICH. CONST. 1963, ART. 1, § 20) WHERE TRIAL COUNSEL (1) FAILED TO PROCEDURALLY OBTAIN INTERLOCUTORY APPEAL RELIEF, (2) FAILED TO PROCEDURALLY OBTAIN RELIEF IN FEDERAL COURT, (3) FAILED TO CHALLENGE THE INITIAL STOP OF DEFENDANT-APPELLANT, (4) FAILED PROCEDURALLY TO BRING A SECTION 8 DEFENSE PRETRIAL, (5) FAILED TO BRING A SECTION 4 DEFENSE DURING TRIAL, (6) FAILED TO CHALLENGE THE INCLUSION OF THE CLONES IN THE TOTAL

NUMBER OF "PLANTS" SEIZED, (7) FAILED TO CHALLENGE THE SEARCH WARRANT THAT WAS BASED ON ABSENT CONFIDENTIAL INFORMANTS AND ILLOGICAL ELECTRICAL BILLS, (8) FAILED TO MOVE TO DISMISS MEGAN MACLEOD'S "FELONY" ARREST WARRANT, (9) FAILED TO OBJECT TO 404B EVIDENCE OR REQUEST A LIMITING INSTRUCTION, AND (10) FAILED TO SUBPOENA SHAWN SPOHN, JAMIE LEE RICHARDS, AND DETECTIVE VARONI.

On March 7, 2017, the Supreme Court of Michigan denied the application for leave to appeal because they were not persuaded that the questions presented should be reviewed by the Court.

MOTION FOR RELIEF FROM JUDGMENT

On December 17, 2017, Mr. MacLeod filed a Motion for Relief from Judgment pursuant to Mich. Ct. R. 6.500 *et. seq.* in the Cheboygan County Circuit Court wherein he raised 21 issues related to his case. See Exhibit C attached. The issues were titled as follows:

- I. DEFENDANT DUSTIN MACLEOD'S CONVICTION, JUDGMENT, AND SENTENCE FOR FELONY FIREARM, FELON IN POSSESSION OF A FIREARM AND DELIVERY-MANUFACTURING MARIJUANA/ POSSESSION WITH INTENT TO DELIVER UNDER BOTH MICH. COMP. LAWS 333.7401(2)(D)(III) AND MICH. COMP. LAWS 333.7401(2)(D)(II) ARE VOID AB INITIO WHERE THE TRIAL COURT LACKED RES AND PERSONAM JURISDICTION, IN VIOLATION OF THE US CONSTITUTION, ARTICLE VI, CLAUSE 2, SUPREMACY CLAUSE BECAUSE MACLEOD'S NATIVE AMERICAN SOVEREIGN RIGHTS CREATED AN IMMUNITY TO PROSECUTION UNDER THE 1836 TREATY OF WASHINGTON, THE 2007 CONSENT DECREE (WHERE §§ 1.3, 5(A)-(D), 6.2, 20.1, 24.3 WERE BREACHED), FEDERAL LAW 25 U.S.C. § 5123(G)(H) [CONSTRUED IN PARI MATERIA] AND THE LEGAL PRINCIPLE OF THE US SUPREME COURT IN UNITED STATES V. SHOSHONE TRIBE, 304 U.S. 111, 58 S. CT. 794 (1938) ET AL (REGARDING CONSTRUCTION OF INDIAN TREATIES) WHERE THE SAME PROVISIONS (INCLUDING CROPS OF ALL VARIETIES, ESPECIALLY FOR MEDICINAL PURPOSES) WHILE IN INDIAN COUNTY, AS DEFINED BY AND REFERRED TO IN 18 U.S.C. §§ 1151-1153(A)(B), 62(A)-(C) WHEN THOSE NATIVE AMERICAN SOVEREIGNTY RIGHTS WERE INFRINGED [AT THE INSTIGATION OF THE DEPARTMENT OF NATURAL RESOURCES (DNR)] BY THE STATE OF MICHIGAN.

- II. THE TRIAL COURT WAS WITHOUT AUTHORITY AND JURISDICTION TO SENTENCE DEFENDANT MACLEOD AS A 4TH DEGREE HABITUAL OFFENDER, IN VIOLATION OF THE U.S. CONSTITUTION XIV AMENDMENT AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN OYLER V. BOLES, 368 U.S. 448, 82 S. CT. 501 (1962) WHEN THE PROSECUTION FAILED TO PROPERTY FILE THE 4TH DEGREE HABITUAL OFFENDER NOTICE WITH THE MICH. CT. R. 6.112(F); MICH. COMP. LAWS 769.13 21 DAYS STRICT TIME LIMITATIONS PERIOD.
- III. DEFENDANT MACLEOD'S CONVICTIONS FOR DELIVERY-MANUFACTURE OF 5-45 KILOGRAMS OF MARIJUANA POSSESSION WITH INTENT TO DELIVER 20 MARIJUANA PLANTS OR MORE, BUT LESS THAN 200 PLANTS, CONTRARY TO MICH. COMP. LAWS 333.7401(2)(D)(II) AND DELIVERY-MANUFACTURE MARIJUANA POSSESSION WITH INTENT TO DELIVER MARIJUANA, CONTRARY TO MICH. COMP. LAWS 333.7401(2)(D)(III) IS A VIOLATION OF THE U.S. CONSTITUTION V AMENDMENT AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN BLOCKBURGER V. UNITED STATES, 284 U.S. 299, 52 S. CT. 180 (1932) [BASED ON THE FELONY INFORMATION'S LANGUAGE] FOR THE SAME OFFENSE BECAUSE MICH. COMP. LAWS 333.7401(2)(D)(III) IS A MICH. COMP. LAWS 768.32 NECESSARILY LESSER INCLUDED OFFENSE OF THE GREATER OFFENSE MICH. COMP. LAWS 333.7401(2)(D)(II).
- IV. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN BATSON V. KENTUCKY, 476 U.S. 79, 106 S. CT. 1712 (1986) WHEN THE PROSECUTION DELIBERATELY USED A PEREMPTORY CHALLENGE TO REMOVE THE ONLY NATIVE AMERICAN JUROR (TIMOTHY LINCE) BECAUSE HE MIGHT HAVE EMPATHIZED WITH DEFENDANT MACLEOD (A NATIVE AMERICAN) WHEN THAT PEREMPTORY CHALLENGE WAS BASED ON THE RACE OF JUROR LINCE (A NATIVE AMERICAN) DESPITE THE SPURIOUS PROSECUTORIAL FAÇADE TO THE CONTRARY.
- V. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN DUREN V. MISSOURI, 439 U.S. 357, 99 S. CT. 664 (1979) WHEN DUE TO THE CHEBOYGAN COUNTY IRREGULAR JURY EMPANELMENT PROCEDURE, THE DISTINCTIVE NATIVE AMERICAN, HISPANIC AMERICAN AND AFRO-AMERICAN GROUPS OF CHEBOYGAN COUNTY COMMUNITY ARE SYSTEMATICALLY

EXCLUDED FROM THE JURY SELECTION PROCESS AND ARE NOT FAIRLY REPRESENTED IN THE VENIRE, RESULTING IN AN UNDER REPRESENTATION OF THE NATIVE AMERICAN, THE HISPANIC AMERICAN AND AFRO-AMERICAN DURING THE JURY SELECTION PROCESS.

- VI. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 DUE TO EGREGIOUS AND REPREHENSIBLE LAW ENFORCEMENT MISCONDUCT IN THE FORM OF COLLUSIVE PERJURY OR FALSE TESTIMONY TO THE DEGREE THAT MACLEOD'S CONVICTION, JUDGMENT, AND SENTENCE SHOULD BE REVERSED AND THE CASE DISMISSED WITH PREJUDICE.
- VII. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN SMITH V. MASSACHUSETTS, 543 U.S. 462, 125 S. CT. 1129 (2005); BUNKLEY V. FLORIDA, 538 U.S. 838, 123 S. CT. 2020 (2003) BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN HIS CONVICTION FOR FELONY FIREARM.
- VIII. MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN THE JACKSON V. VIRGINIA, 443 U.S. 307, 99 S. CT. 2781 (1979) LINE OF CASES WHEN HIS CONVICTION FOR HARBORING A FUGITIVE WHO HAD A FELONY WARRANT PURSUANT TO MICH. COMP. LAWS 750.199 WAS BASED ON INSUFFICIENT EVIDENCE TO PROVE MEGAN MACLEOD WASN'T EXEMPT FROM A FELONY WARRANT DUE TO THE APPLICABILITY OF THE MICH. COMP. LAWS 801.251, 750.195(3) AND U.S. SUPREME COURT'S DOCTRINE OF IN PARI MATERIA WAS TOTALLY IGNORED BY THE STATE OF MICHIGAN.
- IX. MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052 (1984) AND CRONIC V. UNITED STATES, 466 U.S. 648, 104 S. CT. 2039 (1984) DUE TO MULTIPLE INCOMPETENT ACTS (WHETHER BY OMISSION OR COMMISSION) BY TRIAL COUNSEL GILBERT ALPHABETIZED A-W THAT WERE PREJUDICIAL TO THE DEFENSE OF MACLEOD.

- X. MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963 ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE OF THE U.S. SUPREME COURT IN BERGER V. U.S., 295 U.S. 78, 55 S. CT. 629 (1935) DUE TO CUMULATIVE PROSECUTORIAL MISCONDUCT ALPHABETIZED A-G.
- XI. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN CRAWFORD V. WASHINGTON, 541 U.S. 36, 124 S. CT. 1354 (2004) WHEN MACLEOD WAS PREVENTED FROM CROSS-EXAMINING AND IMPEACHING JASON VARONI WHEN PATRICK HOLT WAS ALLOWED TO TESTIFY IN VARONI'S PLACE AND INTERPRET VARONI'S INTERVIEW REPORT WITH MACLEOD.
- XII. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN OLDEN V. KENTUCKY, 488 U.S. 227, 109 S. CT. 480 (1988); DAVIS V. ALASKA, 418 U.S. 308, 94 S. CT. 1105 (1974) WHEN MACLEOD WAS NOT ALLOWED TO IMPEACH ALLEGED CONFIDENTIAL INFORMANT SHAWN SPOHN WITH HIS MOTIVE, INTEREST AND BIAS TO ENTRAP AND DUPE MACLEOD INTO DEVIATING FROM MMMA PARAMETERS, BY ACTING UNDER THE PRETEXT OF BEING A NATIVE AMERICAN (SIMILAR TO MACLEOD) IN NEED OF MEDICAL MARIJUANA TO EASE DEBILITATING ILLNESS AND WITH HIS CRIMINAL HISTORY, WHERE HE WAS MADE UNAVAILABLE FOR TRIAL BY POLICE AND PROSECUTION UNDER THE RULE IN REYNOLD V. UNITED STATES.
- XIII. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN CRAWFORD V. WASHINGTON, 541 U.S. 36, 124 S. CT. 1354 (2004) WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING KAREN BROOKS TO TESTIFY TO A LAB REPORT PREPARED BY AN UNNAMED MSP LAB ANALYST (ACCORDING TO THE FELONY INFORMATION) WHEN THE LAB REPORT WAS SUPPRESSED BY THE PROSECUTION, IN VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83, 83 S. CT. 1197 (1963) AND MICH. CT. R. 6.201(A)(B) TO THE SURPRISE OF THE DEFENSE WHEN THE DEFENSE WAS PREVENTED FROM PRE-TRIAL INTERVIEW, INVESTIGATING THE UNKNOWN OR UNNAMED MSP LAB

ANALYST AND FROM IMPEACHING THE STATE WITNESS WITH THE LAB REPORT'S CONTENTS.

- XIV. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN MICHELSON V. UNITED STATES, 335 U.S. 469, 69 S. CT. 213 (1949) WHEN PX 1, PX 5, PX 6 (HEARSAY) WERE ADMITTED INTO EVIDENCE FOR THEIR PREJUDICIAL IMPACT OR PROVING THAT MACLEOD HAD PREVIOUSLY COMMITTED THE SAME CRIMES (BUT NOT CHARGED WITH) FOR WHICH HE WAS ON TRIAL FOR, THEREBY TAINING JUROR MINDS WITH BAD MAN CHARACTER AND OTHER UNCHARGED SIMILAR ACT CRIMES EVIDENCE.
- XV. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN HERING V. NEW YORK, 422 U.S. 853, 95 S. CT. 2550 (1975) WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY PRECLUDING TRIAL COUNSEL FROM ARGUING SPOHN'S NATIVE AMERICAN RUSE TO CONVINCING MACLEOD TO VIOLATE MMA PROVISIONS BY PRESENTING TO MACLEOD A MMA REGISTERED, QUALIFIED PATIENT CARD.
- XVI. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 WHEN THE TRIAL COURT ALLOWED THE PROSECUTION AND POLICE OFFICERS TO FIRST INFLUENCE THE JUROR MINDS WITH THEIR PREJUDICIAL INTERPRETATIONS OF WHAT THE ERRONEOUSLY ADMITTED PX 1, PX 5, PX 6 AND PX 31 (HEARSAY EVIDENCE) SAID AND MEANT, THEREBY INVADING THE PROVINCE OF THE JURY INSTEAD OF ALLOWING THE TAPE DISCS TO PLAY OUT IN OPEN COURT ON THE RECORD TO ALLOW THE JURY TO MAKE THEIR OWN INDEPENDENT DETERMINATION OF WHAT THE TAPE DISCS SAID AND MEANT.
- XVII. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN CHAMBERS V. MISSISSIPPI, 410 U.S. 284, 93 S. CT. 1038 (1973) WHEN THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE DEFENDANT A LATE ENDORSEMENT OF DEFENSE WITNESSES JASON VARONI, SHAWN SPOHN AND JAMIE RICHARDS BECAUSE A MERE CJ2D 5:12

INSTRUCTION WAS INADEQUATE TO PROTECT MACLEOD'S RIGHT TO CALL AND EXAMINE WITNESSES FAVORABLE TO THE DEFENSE.

XVIII. DEFENDANT MACLEOD WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1 § 20 AND THE LEGAL PRINCIPLE IN THE U.S. SUPREME COURT IN CUPP V. NAUGHTEN, 414 U.S. 141, 94 S. CT. 396 (1974) WHEN THE TRIAL COURT IMPROPERLY INSTRUCTED THE JURY IN REGARDS TO THE ELEMENTS OF FELONY FIREARM IN THE PRELIMINARY AND FINAL JURY INSTRUCTIONS.

XIX. DEFENDANT MACLEOD'S CONVICTION AND SENTENCE FOR DELIVERY-MANUFACTURING MARIJUANA POSSESSION WITH INTENT TO DELIVER UNDER BOTH MICH. COMP. LAWS 333.7401(2)(D)(III) AND MICH. COMP. LAWS 333.7401(2)(D)(II) OBTAINED IN VIOLATION OF THE U.S. CONSTITUTION VI, XIV AMENDMENTS; MICH. CONST. 1963, ARTICLE 1, §§ 17, 20 AND THE U.S. SUPREME COURT'S CLEARLY ESTABLISHED LAW U.S. V. RUSSELL, 411 U.S. 423, 93 S. CT. 1637 (1973) WHEN THE CONVICTION AND SENTENCE WAS BASED ON POLICE AND LAW ENFORCEMENT ENTRAPMENT WHEN THE POLICE AGENT POSED AS A NATIVE AMERICAN TO INDUCE MACLEOD TO VIOLATE THE MICHIGAN MEDICAL MARIJUANA LAW PER MICH. COMP. LAWS 333.26421 ET. SEQ., RESULTING IN A VIOLATION OF THE HEALTH CODE LAW PURSUANT TO MICH. COMP. LAWS 333.7401(2)(D)(II)(III) OUT OF SYMPATHY AND EMPATHY FOR A FELLOW NATIVE AMERICAN WHEN WITHOUT SUCH NATIVE AMERICAN RUSE, MACLEOD WOULD NOT HAVE VIOLATED MICH. COMP. LAWS 333.7401(2)(D)(II)(III).

XX. DEFENDANT MACLEOD WAS DENIED THE U.S. CONSTITUTION XIV AMENDMENT DUE PROCESS AND EQUAL PROTECTION OF THE LAW CLAUSES DURING AN APPEAL OF RIGHT TO HAVE ACCURATE AND VERBATIM TRANSCRIPTS OF THE ENTIRE PROCEEDINGS WHEN THE COURT REPORTER FAILED TO COMPLY WITH THE LANGUAGE OF MICH. COMP. LAWS 8.108(B)(1)(A)-(D) CONSISTENT WITH 28 U.S.C. § 753(B)(1) WHEN THE COURT IN THE FORM OF THE ILLEGALLY ADMITTED HEARSAY EVIDENCE PX 1, PX 5, PX 6 AND PX 31 WHERE SUCH OMISSIONS INTERFERES WITH THE APPELLATE COURT'S ABILITY TO MAKE AN ACCURATE AND INDEPENDENT DETERMINATION OF WHAT THE TAPE DISC CONVERSATIONS BETWEEN MACLEOD AND CI SHAWN SPOHN AND MACLEOD AND OFFICER VARONI ACTUALLY SAID OR MEANT.

XXI. DEFENDANT MACLEOD WAS DENIED THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DURING DIRECT APPEAL IN VIOLATION OF THE U.S. CONSTITUTION XIV AMENDMENT AND THE LEGAL PRINCIPLES OF THE U.S. SUPREME COURT IN *ANDERS V. CALIFORNIA*, 386 U.S. 738; 87 S. CT. 1396 (1967) WHEN APPELLATE COUNSEL FAILED TO RAISE THE EXACT ARGUMENTS CONTAINED IN ARGUMENTS I-XX BECAUSE THOSE ISSUES WERE SIGNIFICANT, MERITORIOUS AND OBVIOUS ISSUES TO RAISE DURING DIRECT APPEAL WHEN THERE IS A REASONABLE LIKELIHOOD THAT HAD ARGUMENTS I-XX BEEN RAISED ON DIRECT APPEAL, DEFENDANT MACLEOD'S CONVICTION, JUDGMENT, AND SENTENCE WOULD HAVE BEEN REVERSED.

On August 13, 2015, the Cheboygan County Circuit Court issued an Opinion and Order denying Mr. MacLeod's Motion for Relief from Judgment stating that the motion "is without merit" and that the "motion is nothing more than a rehash of the issues the defendant previously raised on his appeal to the Michigan Court of Appeals." See Exhibit C attached.

Mr. MacLeod then appealed by leave the order of the Cheboygan County Circuit Court to the Michigan Court of Appeals. See Exhibit D attached.

On August 22, 2018, the Court of Appeals of Michigan denied the application for leave to appeal because Petitioner "failed to establish that the trial court erred in denying the motion for relief from judgment." See Exhibit D attached.

Mr. MacLeod then applied for leave to appeal to the Supreme Court of Michigan. See Exhibit E attached. He raised the same issue as in the Court of Appeals.

On April 30, 2019, the Supreme Court of Michigan denied the application because the defendant has failed to meet the burden of establishing entitlement to relief under Mich. Ct. R. 6.508(D). See Exhibit E attached.

On April 10, 2019, Petitioner filed a Petition for Writ of Habeas Corpus in the U.S. District Court, Eastern District of Michigan under case number 2:19-cv-11107. Because

Petitioner was mistaken as to the proper exhaustion procedures prior to the filing of this petition, he filed this petition without first exhausting his state remedies pursuant to 28 U.S.C. § 2254(b)(1)(A). After Petitioner discovered this error, on May 15, 2019 he filed a motion to dismiss the case without prejudice. On June 4, 2019, the Honorable Paul D. Borman, United States District Judge, issued an order dismissing the case without prejudice to his filing another case where his issues were properly exhausted in accordance with 28 U.S.C. § 2254(b)(1)(A).

Mr. MacLeod is currently imprisoned at the Parnall Correctional Facility, 1790 E. Parnall Rd., Jackson, MI 492301, in Jackson County and he now petitions this court for a writ of habeas corpus.