IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, MISSOURI

STATE OF MISSOURI ex rel. CORNEALIOUS MICHAEL ANDERSON, III,	)	
Petitioner,	)	TO BE FILED IN: Mississippi County Circuit Court
vs.	)	
IAN WALLACE, Warden, Southeast Correctional Center,	)	Underlying Criminal Case: St. Louis County Circuit Court Case # CR0199-002532F
Respondent.	)	(Sentenced May 19, 2000)

PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner, CORNEALIOUS MICHAEL ANDERSON, III, by and through undersigned counsel, and hereby petitions this Court for a writ of habeas corpus pursuant to the United States Constitution, the Missouri State Constitution, and Missouri Supreme Court Rule 91. For the reasons that follow, Petitioner respectfully prays that this Court grant the petition, issue a writ of habeas corpus, and grant such other and further relief as this Court may deem just, proper and equitable. The following documents are attached as exhibits hereto and made a part of this application:

Exhibit A – Original Information in Case # CR1-99-2532-FX

Exhibit B – Judgment of Conviction, Sentence and Allocution in Case # CR1-99-2532-FX

Exhibit C – Fax by Alan G. Kimbrell, Esq. dated June 6, 2000

Exhibit D – Appeal Bond dated June 8, 2000

Exhibit E – Notice of Debt Offset from Missouri Department of Revenue dated February 26, 2003

Exhibit F – St. Louis County Property Tax Bill dated 2003

Exhibit G – Family Court Judgment filed June 5, 2007

Exhibit H – Registration documents with Missouri Secretary of State for Anderson Construction Company, Truly Beautiful Event Planning, and Anderson Construction & Investment LLC

Exhibit I – Request for hearing and child support records dated June 8, 2009

Exhibit J – Fax Request to Clerk of the Court dated August 12, 2013

Exhibit K – Docket Sheet for Case # CR1-99-2532-FX as of October 29, 2013

Exhibit L – Docket Sheet for Case # 02-CV-129038 and motion for post-conviction relief

Exhibit M – letters of recommendation in support of the instant petition

PRELIMINARY STATEMENT

1. Petitioner is imprisoned pursuant to a judgment of conviction and sentence entered in this Court on May 19, 2000 on Case # CR0199-002532F, and is presently in the custody of the Missouri Department of Corrections at Southeast Correctional Center, Inmate ID # 1039699, located at 300 East Pedro Simmons Drive, Charleston, County of Mississippi, State of Missouri 63834,

2. Respondent is the Warden of the Southeast Correctional Facility, and upon information and belief, will be represented by Chris Koster, Missouri Attorney General, Old Post Office Building, 815 Olive Street, Suite 200, St. Louis, Missouri 63101, (o) 314-340-6816, (f) 314-340-7957.

3. No prior application for the specific relief requested herein has been made to any higher court.

STATEMENT OF FACTS[1] AND PROCEDURAL HISTORY

The Underlying Prosecution and Trial

4. On August 15, 1999, Dennis Leon Kerns, an assistant manager of a fast food restaurant, attempted to make a cash deposit in a night drop-box when he was approached by two males wearing ski masks, at least of one of whom brandished what appeared to be a firearm, and demanded money. Kerns gave the men the bag containing the restaurant's cash, and the two men ran away to a car and drove off. Kerns was able to see the license plate of the car and briefly view the men's faces as they drove away without their masks. An eyewitness to the robbery saw the make and model of the car, and that the two perpetrators were black males, but saw little else. The license plate was traced back to the Petitioner, as was the car identified by the witnesses as the one in which the robbers fled.

5. Petitioner was ultimately arrested, interviewed by police, and gave a statement admitting knowledge of the robbery and presence at the scene, but stated that his cousin had committed the robbery with a BB gun without his prior knowledge. **(Exhibit A)**. After his arrest, the St. Charles Circuit Court initially set bail at $50,000.00, which was subsequently reduced to $1000.00 on December 22, 1999, and the Petitioner was released on bond. Trial commenced on March 13, 2000 in Case # CR1-99-2532-FX before a jury. After the prosecution's case, Petitioner testified in his defense that on the night in question he had no prior warning that his cousin would commit a robbery, and generally denied being an active participant in the robbery.

6. The jury found Petitioner guilty of Robbery in the First Degree and Armed Criminal Action, and assessed punishment at 10 years on the robbery count, and 3 years on the other

[1] The facts set forth herein are gleaned from the record on appeal and the facts as set forth in the appellate briefs and decisions

count on March 13, 2000. **(Exhibit B).** Upon entry of the verdict, this Court ordered Petitioner's bond increased to $25,000.00, and scheduled sentencing for May 19, 2000. At sentencing, this Court ordered Petitioner to serve 10 years imprisonment on Count #1 consecutively to 3 years imprisonment on Count #2. He was committed to the custody of the Sheriff for immediate execution of the sentence. **(Exhibit B).**

7. Thereafter, represented by new counsel, Petitioner filed a Notice of Appeal on May 30, 2000, and then moved this Court for a supersedeas bond. The State did not oppose bond pending appeal. **(Exhibit C).** This Court granted Petitioner bond pending appeal in the amount of $25,000.00, secured by real property, and entered an order to that effect on June 8, 2000. **(Exhibit D).**

8. The appeal bond has never been ordered revoked, and Petitioner has never received official notification that he had to surrender to law enforcement to begin serving the sentence imposed.

Direct Appeal to the Missouri Court of Appeals

9. Petitioner prosecuted his direct appeal to the Missouri Court of Appeals, Eastern District in case # ED77996. The Court of Appeals affirmed the conviction in a written opinion dated August 14, 2001, published at State v. Anderson, 2001WL909026, and filed in the St. Charles County Circuit Court the same day and furnished to counsel of record.

Direct Appeal to the Missouri Supreme Court

10. Petitioner then successfully sought further review in the Missouri Supreme Court, and prosecuted his direct appeal to that Court in case # SC84035. On May 28, 2002, the Court affirmed his conviction in a written opinion, reported at State v. Anderson, 76 S.W.3d 275

(2002), which was filed in the St. Charles County Circuit Court on June 17, 2002 and furnished to counsel of record.

The Motion for Post-Conviction Relief

11. On September 11, 2002, Petitioner filed a pro se motion for post-conviction relief in the St. Charles County Circuit Court, Case # 02-CV-129038. **(Exhibit L)**. In that application, Petitioner alleged in the first paragraph on the first page that he was not in custody. He signed the petition at the end, including in his signature block his address of 840 Holland Avenue, St. Louis, Missouri. Petitioner was later assigned counsel who was in turn replaced by retained counsel, Michael A. Gross, Esq.

12. On April 24, 2003, a preliminary hearing on the motion was held. After further submissions by counsel, the court denied an evidentiary hearing on some claims, but held a final hearing on the motion on August 19, 2004.

13. The motion was denied in a written decision and order, entered on August 31, 2004. Thereafter, counsel for Petitioner filed a notice of appeal from that order on October 8, 2004. However, the Missouri Court of Appeals dismissed the appeal on March 23, 2005 for failure to perfect an appeal, Case # ED85265.

Subsequent Court Proceedings

14. The docket sheet reflects two miscellaneous entries on Case # CR0199-002532F. The first entry is dated April 21, 2004, designated "Judge/Clerk – Note: PLAN # 1262." The second entry, dated July 12, 2004 is entitled "Satisfaction of Judgment Filed." **(Exhibit K).** A request for the paper records of those docket entries was made, however the clerk of the court has advised that no such paper records exist. **(Exhibit J).**

Petitioner's Actions During the Pendency of his Appeals until the Present

15. During the pendency of his appeals, Petitioner continued to live in St. Louis, Missouri. At no point in time did he ever receive notification from law enforcement, the courts, or his own counsel that he was required to surrender. He did not change his name, assume an alias, or absent himself from this jurisdiction. He maintained a driver's license with the Department of Revenue, updating his license to reflect a change of address to a new residence in St. Louis.

16. Petitioner and his ex-wife gave birth to his eldest child on November 10, 2002 in Missouri. Petitioner's name was entered as the father on the birth certificate. Petitioner continued to reside in St. Louis County, owned real property situated there, and paid property taxes to St. Louis County, as evidenced by a property tax bill he received in 2003, addressed to "Cornealious Anderson, 840 Holland Avenue, St. Louis, Missouri," which was paid in full. **(Exhibit F).** Petitioner also maintained employment, and paid personal state and Federal income taxes from for the past 10 years, as evidenced by a notice of personal income tax offset from the Missouri Department of Revenue Division of Taxation and Collection, dated February 26, 2003, and addressed to "Cornealious M. Anderson, 840 Holland, St. Louis, MO 63119." **(Exhibit E).**

17. On June 5, 2007, Vanessa Anderson, Petitioner's ex-wife, filed for divorce in the Family Court of St. Louis County under Case # 06FC-09259. **(Exhibit G).** Petitioner's name, listed as "Cornealious Michael Anderson III" was entered into the caption of the case, as was his true and correct Social Security number. The settlement documents filed with the court indicate several pieces of real property owned by the couple, including 207 Lithia Avenue, St. Louis, Missouri, and 6504 Coventry Drive, Florissant, Missouri, as well as several bank

accounts, credit accounts, and automobiles. As part of the settlement, Petitioner listed his current employer for child support payments for the couple's minor daughter, to be collected by the St. Louis County Family Support Division. On June 15, 2009, Petitioner filed a request for a hearing to correct an erroneous calculation of child support arrearages. **(Exhibit I).**

18. Petitioner married his current wife on September 26, 2007 at the courthouse in Clayton, Missouri. The couple gave birth to their son on November 5, 2006, and gave birth to a daughter on April 13, 2011. Both children were born in Missouri, and Petitioner's name was entered on both birth certificates as the father.

19. On January 29, 2009, Petitioner filed a corporate registration for his construction company, Anderson Construction Company, with the Missouri Secretary of State. He listed his full name on the application, and his home address of 207 Lithia Avenue, St. Louis, Missouri as his own address and the corporate address for service. **(Exhibit H).**

20. On March 8, 2009, Petitioner filed a corporate registration for a second business, Truly Beautiful Event Planning, with the Missouri Secretary of State. As before, he listed his full name on the application, and his home address of 207 Lithia Avenue, St. Louis, Missouri as his own address and the corporate address for service. **(Exhibit H).**

21. On February 28, 2013, Petitioner incorporated a second business, Anderson Construction and Investment, LLC, and filed registration of the same with the Missouri Secretary of State. Again, he listed his true name, and his home address of 207 Lithia Avenue, St. Louis, Missouri as his own address and the corporate address for service. **(Exhibit H).**

22. Petitioner has paid all State and Federal income taxes from 2003 through the present, both personal and corporate. He has maintained a driver's license with the Missouri Department of Revenue.

Petitioner's Arrest and Current Incarceration

23. In the early morning hours of July 25, 2013, Petitioner was at his home with his children when law enforcement agents stormed the residence, took Petitioner's infant from a crib, and took Petitioner into custody, eventually transporting him to the Fulton Reception and Diagnostic Center, a facility of the Missouri Department of Corrections. Petitioner was transferred to his current facility on or about November 25, 2013.

24. At the time of this writing, it is unknown if this Court issued a warrant for the Petitioner's arrest, and if so, when. There is no indication on the docket sheet that a warrant was issued for his arrest. Exactly what authority, if any, permitted law enforcement to breach Petitioner's home and take him into custody is unclear.

ARGUMENT

POINT I – BECAUSE RESPONDENTS HAVE FAILED TO EXECUTE UPON THE JUDGMENT OF CONVICTION AND SENTENCE FOR THIRTEEN YEARS, THERE IS NO JURISDICTION TO INCARCERATE PETITIONER, AND HE IS BEING HELD IN VIOLATION OF DUE PROCESS OF LAW

25. The Fifth Amendment and Fourteenth Amendments of the United States Constitution and Article I, § 10 of the Missouri Constitution protect an individual against the loss of life, liberty or property without Due Process of Law. For the reasons set forth herein, Petitioner is being deprived his liberty without Due Process, and this Court should issue a writ of habeas corpus as a result.

A. There Exists No Jurisdiction to Execute the Judgment of Conviction and Sentence

26. Where a government fails to execute on the judgment of conviction within a reasonable time after entry, execution of sentence is prohibited under the Fifth and Fourteenth Amendment's guarantees of Due Process of Law, as the court loses jurisdiction to enforce the

judgment, known as the "waiver of jurisdiction" theory. Piper v. Estelle, 485 F.2d 245 (5th Cir. 1973); Shields v. Beto, 370 F.2d 1003 (5th Cir. 1967); Mobley v. Duggar, 823 F.2d 1495 (11th Cir. 1987). "The waiver of jurisdiction theory is premised on the constitutional protection against arbitrary and capricious official action." United States v. Barfield, 396 F.3d 1144 (11th Cir. 2005). As one court has noted,

> This "waiver" theory encourages responsibility and accountability on the part of the government, deters the arbitrary exercise of power, and secures the prompt punishment and rehabilitation of those convicted of crimes. The theory is "based on the philosophy that a defendant should be allowed to do his time, live down his past, and reestablish himself." Delayed execution of a sentence interrupts the defendant's reintegration into the community and thus frustrates effective rehabilitation.

United States v. Mercedes, 1997WL458750 (S.D.N.Y. 1997) (Sweet, J.), citing Shelton v. United States, 578 F.2d 1241, 1244-1245 (8th Cir. 1978).

27. A delay in the execution of a sentence violates Due Process where (1) the delay is not attributable to the defendant himself; (2) the action of the authorities constitute more than simple, excusable neglect; and (3) the situation brought about by the defendant's release and his incarceration must be "unequivocally inconsistent with 'fundamental principles of liberty and justice' to require a legal sentence to be served in the aftermath of such action or inaction." Barfield at 1149, quoting Mobley v. Duggar, 823 F.2d 1495, 1496-1497 (11th Cir. 1987); see also United States v. Martinez, 837 F.2d 861, 865 (9th Cir. 1988).

28. Federal Courts have held that fundamental principles of Due Process prohibit enforcement of a criminal judgment and sentence in various circumstances. In Shields v. Beto, 370 F.2d 1003 (5th Cir. 1967), the defendant served 1 year of a 40-year sentence in Texas state prison imposed in 1933 before he was extradited to Louisiana to face other charges there. He remained in the custody of Louisiana until 1944 before his release on the Louisiana charges.

Because Texas had not lodged a detainer against him, he was released on parole and remained free until 1960 before being arrested in Tennessee on federal charges and remaining in federal custody until 1962, when Texas finally sought his extradition and execution of the remainder of the 40-year sentence. In reversing the denial of and granting a writ of habeas corpus, the Fifth Circuit held that the State of Texas had waived jurisdiction to execute on the sentence due to its inaction over such an extended period of time.

29. In Johnson v. Williford, 682 F.2d 868 (9th Cir. 1982), the petitioner was convicted of a Federal marijuana trafficking offense that included a mandatory minimum sentence of 10 years' imprisonment without the possibility of parole. Neither the sentencing commitment order nor internal prison records noted the parole ineligibility provision of the judgment of conviction. After serving part of the sentence, the petitioner was granted parole after several appearances before the parole board, which did not uncover its error until 15 months after petitioner was released. In the intervening 15 months, the petitioner resided within the district, honored the terms of his parole, operated his own business, and resided with his wife and minor children. After the error was uncovered, petitioner was incarcerated and petitioned for habeas relief. In affirming the granting of the writ of habeas corpus, the Ninth Circuit held that the Government was equitably estopped from enforcing the judgment, as Due Process prohibited enforcement:

> "fundamental principles of liberty and justice" would be violated if a person were required to serve the remainder of a prison sentence after he had been released prematurely from custody through no fault of his own.

Id. at 873, quoting United States v. Merritt, 578 F.Supp. 804, 805-806 (D.D.C. 1979).

30. In Green v. Christianson, 732 F.2d 1397 (9th Cir. 1984), the petitioner was sentenced in Federal court before being sentenced in a California state court, and was transferred

from Federal to state custody to serve both sentences concurrently. Before his scheduled release on the state sentence, the state prison authorities notified the United States Marshall and inquired whether the Marshall wanted to lodge a detainer against Green. The Marshall affirmatively declined to lodge a detainer, and Green was released on state parole. Two and one-half years later, the Federal authorities discovered Green was at liberty, and he was arrested and taken back into Federal custody. Green petitioned for a writ of habeas corpus, and was granted relief insofar as he was given credit for the 2 ½ years while he was at liberty. The Ninth Circuit held that because Green was unconditionally released, however erroneously, he had no notice that his time in the community would not be credited toward his sentence, and therefore fairness dictated that he was entitled to receive credit for each day he was at liberty towards his prison time.

31. Missouri courts have likewise held that Due Process guarantees prohibit enforcement of a judgment after an extended period of time where there exists no good cause for delay.

32. In Ex Parte Bugg, 163 Mo.App. 44, 145 S.W. 831 (Mo. Ct. App. 1912), the defendant was convicted in two cases involving illegal sale of liquor, and after having served a short time in prison under the first sentence, the court suspended that sentence because of defendant's failing health, and he was released from custody. Nothing was done at the time about the sentence imposed in the second case. Approximately 3 years later he was arrested and imprisoned on the sentence imposed in the second case. The court ordered his release, although recognizing the general rule that absent a statutory provision a jail sentence can be satisfied only by compliance with its terms, and held that delay in imprisonment occasioned by the sentencing court itself could bar enforcement of a criminal judgment. There, the Court of

Appeals held:

> The question then arises whether there should be any limit to the time within which a judgment may be enforced under such circumstances. If there is to be no limitation, then a case might arise in which, years after the judgment had been pronounced, and possibly after a man had reared a family and attained to a position of high standing in the community, he and his family might be humiliated and disgraced by the bringing to light of an old judgment long since forgotten, and which, in all good conscience, ought never again to see the light of day.
>
> ...
>
> We do not think that mere delay in the infliction of the punishment assessed is a sufficient reason for relieving the convicted party from the consequences of a judgment against him, unless the delay has been so great that society could derive no good from its enforcement; **but when such delay has occurred without the fault of defendant, although with his consent, we should have no hesitancy in refusing to enforce the judgment**. The criminal laws of this state are not based upon any idea of retaliation against the offender for the wrong he has done, but punishments are inflicted solely for the protection of society, and **when the execution has, without the fault of defendant, been so long delayed that society can no longer have any interest in its enforcement, there would seem to be no good reason why its enforcement should be insisted upon.**

Id. at 832-833 (emphasis added).

33. Other states have followed the rule enunciated in Ex Parte Bugg. Illinois, Michigan, Florida, and Wisconsin have all reported cases that are similar to the case at bar. All of those states have repeatedly held that where the State unreasonably delays execution of a jail sentence, habeas relief is proper under traditional Due Process notions of fair play and justice.

34. In People v. Levandoski, 237 Mich.App. 612, 603 N.W.2d 831 (Mich. Ct. App. 1999), the defendant was convicted in 1991 of drunk driving and sentenced to 90 days jail, but directed not to begin serving his sentence until further notice because of jail overcrowding. Hearing nothing for a year, he inquired whether he could begin serving his sentence during a period of unemployment, but was told he could not. In 1996, after the defendant had married,

joined the National Guard, and was gainfully employed, he received a letter directing him to begin serving his sentence. After unsuccessfully petitioning for habeas relief, the Michigan Court of Appeals reversed, finding that in the totality of circumstances, his Due Process rights were violated. The court cited three factors in its decision: (1) the delay in execution of the sentence was due to willful conduct on the part of the state, (2) the defendant bore no blame for the delay, and (3) the defendant had demonstrated that he was a productive member of society and had demonstrated that he had not committed any crimes in the intervening 5-year period.

35. In State of Florida ex rel. Shotkin v. Buchanan, 149 So.2d 574 (Fla. 3d. DCA 1963) the petitioner was adjudged guilty of contempt and ordered to serve 60 days' imprisonment in 1958. For reasons unknown, the State failed to execute upon the judgment, and the petitioner, who remained in the same county until his arrest in 1963 on the contempt judgment. The State had no satisfactory explanation for the delay in execution. In granting habeas relief, the Florida Third District Court of Appeals, relying heavily upon Ex Parte Bugg, held that:

> ...when the delay has been so great that society could derive no good from its enforcement and when such delay has occurred without the fault of the convict, even though with his consent, there should be no hesitancy in enforcing the judgment.
> ...
> Applying these principles to the peculiar facts in the case at bar, we cannot conceive how society at this late date, after the lapse of more than five years, would have a bon fide interest in the enforcement of this judgment against the petitioner, a 71-year old man. Certainly it could not be upon the basis of retaliation for punishment is not inflicted for the purpose of retaliation, but solely for the protection of the public. It would be manifestly unjust, if not a denial of due process, to permit the incarceration of this petitioner after so long a time.

Id. at 575-576.

36. In People ex rel. Boenert v. Barrett, 202 Ill. 287, 290-291, 67 N.E. 23, 25 (Ill. 1903), the Illinois Supreme Court held:

> There can be no doubt that a court has the right, in a criminal cause, to delay pronouncing judgment for a reasonable time, for the purpose of hearing and determining motions for a new trial or in arrest of judgment, or to give the defendant time to perfect an appeal or writ of error, or for other proper causes; but to suspend indefinitely the pronouncing of the sentence after conviction, or to suspend indefinitely the execution of the judgment after sentence pronounced, is not within the power of the court. To allow such a power would place the criminal at the caprice of the judge. **If the judge can delay the sentence one year, he could delay it for fifteen years, or any length of time.**

37. A few years later, the Illinois Supreme Court upheld this principle of law in People ex rel. Powers v. Shattuck, 274 Ill. 491, 113 N.E. 921 (Ill. 1916). In that case, the petitioner was ordered jailed upon a contempt conviction in 1909, but no steps were taken to enforce the judgment until 1916. In granting a writ of habeas corpus, the Illinois Supreme Court held the court had lost jurisdiction to enforce the judgment after a 6-year delay that rested upon sound public policy considerations:

> If there were a delay in all criminal cases of 6 years in carrying out the judgment without any reason for such delay, as in the case at bar, the result would be a state of affairs that could be better imagined than described. If the court could delay for 6 years in carrying out the judgment, it could delay for a much longer term and until the circumstances of the defendant had changed, it would be unfair to the defendant and unfair to the people, who are entitled to have justice administered promptly, to leave such matters to the caprice of the judge who had entered the judgment or to his successor in office. Id. at 495.

38. Likewise, the Wisconsin Supreme Court has also sanctioned habeas relief where there was no satisfactory explanation for delay in execution of a judgment of conviction:

> Here the execution of a sentence already pronounced is indefinitely suspended, and it may be the pleasure of the court never to direct execution, so that the suspension has the practical effect of a pardon, or of arrest of judgment indeterminate or final, without the authority of law; and it has been likened to the incorporation into our criminal jurisprudence of the "Ticket of Leave System," without any of its safeguards, leaving the convicted criminal subject to the mere option or caprice of the judge, who may direct the enforcement of the sentence after any lapse of time, however great, or withhold it, to the great detriment, it may be, of the interests of the public,--a power plainly liable to great abuse.

In Re Webb, 89 Wis. 354, 62 N.W. 177 (Wi. 1895).

39. An application of the 3 factors to the facts of this case leads to the conclusion that the State has waived jurisdiction to execute upon the sentence imposed in Case # CR0199-002532F.

1. Petitioner Bears No Responsibility for the 13-Year Delay in Execution of Sentence

40. At the outset, it cannot be stressed enough that Petitioner was not, and never has been a fugitive in CR1-99-2532-FX. There is clear legal authority that an individual who voluntarily flees the jurisdiction of the courts waives his right to challenge his conviction and incarceration. Here, that is clearly not the case.

41. In the 13-year time period between his conviction after trial and his incarceration in 2013, Petitioner remained within the jurisdiction of this Court. He registered automobiles with the State of Missouri, maintained a driver's license issued by the State of Missouri, was issued traffic citations in the State of Missouri, was married, divorced, remarried, and gave birth to 3 children in the State of Missouri. He worked in the State of Missouri, registered three businesses with the Department of State, and paid state income and local property taxes. At all times, Petitioner remained highly visible. Under these circumstances, it cannot be said that he bears any responsibility for the delay in execution of sentence.

2. The State's Actions Constitute More than Simple Neglect

42. Here, the State's conduct amounts to more than simple neglect. The State actively ignored Petitioner for 13 years. The State actively ignored execution of the sentence for 13 years.

43. Here, the State actually knew that Petitioner was at liberty since being admitted to bail in June 8, 2000. The State consented to Petitioner's release on supersedeas bond. After the conclusion of 2 direct appeals, the State could have and should have requested Petitioner surrender himself. After Petitioner's motion for post-conviction relief was denied, the State again should have sought execution of the sentence. As the prevailing party twice during direct appeals, and as the prevailing party at least once at the post-conviction stage of the underlying criminal case, the State could have and should have sought to execute upon the judgment and sentence.

44. Instead of seeking to execute upon the sentence, the State first consented to bond pending appeal in 2000, passed upon the opportunity to incarcerate Petitioner in 2002 after his unsuccessful appeal to the Missouri Court of Appeals, passed upon the opportunity to incarcerate Petitioner after his unsuccessful appeal to the Missouri Supreme Court, then apparently filed a "satisfaction of judgment" in this Court in 2004. After Petitioner filed a motion for post-conviction relief at the conclusion of his direct appeals, the State again passed upon the opportunity to execute upon the judgment and sentence during the pendency of that proceeding. After his unsuccessful petition, the State again failed to execute upon the sentence, then ignored Petitioner for an additional 9 years. In the 13-year period between his release upon supersedeas bond, the State did absolutely nothing to assert its power over Petitioner.

45. A simple routine check of the State's motor vehicle records would have revealed activity such as renewal of a driver's license, registration of motor vehicles, and a change of address from one residence within St. Louis to another – activity inconsistent with an individual who was in state prison. A simple comparison of computer records of inmates in custody to an actual count of the body of the prisoner would have revealed that Petitioner was not in custody. After all the clues left behind by Petitioner, who acted in a manner wholly inconsistent with that of a person who was hiding from law enforcement, the State knew or had reason to know that Petitioner was at liberty.

3. Execution of the Sentence at this Stage Would Be Grossly Unjust

46. Execution of the sentence in 2013 would be grossly unjust for a number of reasons. Petitioner relied upon the State's inaction and apparent intention not to execute the sentence to his detriment, substantially changing his position in life such that he can never be restored to the same position had he commenced serving his sentence in 2000.

47. After his post-conviction litigation concluded, Petitioner was told by his former attorney to await notification as to whether, when and where he would be required to surrender. This was the last that Petitioner heard of the matter until his arrest on July 25, 2013.

48. Relying upon the State's apparent intention to forget about the matter, Petitioner then went on to build a life as a productive citizen, giving birth to three children, remarrying, founding his own, successful business, providing a home for his wife and children, and supporting them as the primary breadwinner. For 13 years, Petitioner lived this type of life, unaware that someday he would be snatched from his home, his wife, minor children, thrown into prison 13 years later, and told that he would now have to serve 13 years in prison, his entire life upended instantaneously.

49. Had Petitioner known that the State would, 13 years later, storm his house and throw him into prison, leaving his children fatherless, his wife destitute, and their lives in utter turmoil, he would not have remarried, given birth to children, opened a business, and led the type of life he has lived over the past 13 years because this would have been extremely unfair to his dependents. However, because Petitioner relied upon the State's apparent abandonment of the matter, he did create a family to his credit, and now to his and their detriment.

50. Instead of incarcerating Petitioner, compelling him to serve his sentence so that he could in 2013 start his life again, the State caused Petitioner to unwittingly start his life in 2000 only to snatch it away 13 years later, effectively subjecting him to a 26-year prison sentence, rather than the 13-sentence imposed by his jury and this Court in 2000.

B. The State is Estopped from Executing the Sentence

51. The government may be estopped from executing a sentence where the following criteria exist:

> (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) that party must rely upon the former's conduct to his injury.

Barfield at 1150, quoting United States v. Martinez, 837 F.2d 861, 865 (9th Cir. 1988).

52. Petitioner has established that the State knew, or at least had reason to know, that Petitioner was at liberty since June 8, 2000, and that the State acted in a manner entirely inconsistent with assertion of the power to execute upon the sentence for 13 years.

53. For the last 13 years, Petitioner was ignorant of the facts surrounding the State's intention (and apparent lack thereof) of executing the sentence. During the 13 years he was at liberty, at no time did Petitioner ever receive any notification from the State that it intended to

execute upon the judgment of conviction and sentence. In the absence of any such notification, and taking into account the manner in which Petitioner was taken into custody, it is clear that Petitioner was ignorant of the State's intentions.

54. As demonstrated above, Petitioner relied upon the State's conduct and inaction to his injury. He cannot go back in time now with a wife and three children, a business, a home, and all of the other accomplishments he has achieved in this time.

C. The Common Law Doctrine of Laches Precludes Execution of the Sentence

55. The common law principle of laches prevents a party from taking legal action to enforce a right to claim where (1) there has been a delay in asserting a right or claim, (2) the delay was inexcusable, and (3) the delay has caused the opposing party undue prejudice. AmBrit, Inc. v. Kraft, Inc., 812 F.2d 1531, 1545 (11th Cir. 1986). The Missouri Supreme Court has recognized this common law doctrine:

> [L]aches is not like limitation a mere matter of time, but is principally a question of the inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition or relations of the property or the parties....Laches in legal significance, is not mere delay, but delay that works a disadvantage to another. So long as parties are in the same condition, it matters little whether one presses a right promptly or slowly, within limits allowed by law; **but when, knowing his rights, he takes no steps to enforce them until the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state, if the right be then enforced, delay becomes inequitable and operates as an estoppel against the assertion of the right**.

Schaeffer v. Moore, 262 S.W.2d 854, 860-861 (Mo. 1953) (internal citations omitted) (emphasis added), see also Higgins v. McElwee, 680 S.W.2d 335 (Mo. Ct. App. 1984).

56. As stated above, the State of Missouri delayed execution of the power to execute upon the judgment of conviction and sentence complained of herein for 13 years. Assuming

arguendo that Petitioner bears any responsibility for the delay by seeking bond pending appeal, the State bears responsibility for at least 11 years of delay – from May 28, 2002, the conclusion of his direct appeals, to the present. For the reasons set forth above, this inexcusable delay caused Petitioner severe, undue prejudice. For the reasons set forth in this petition, this Court should find that laches prohibits execution of the sentence.

POINT II - THE FEDERAL AND STATE CONSTITUTIONAL PROHIBITIONS ON CRUEL AND UNUSUAL PUNISHMENT PRECLUDES ENFORCEMENT OF THE JUDGMENT THIRTEEN YEARS AFTER ENTRY

57. The Eighth Amendment of the United States Constitution prohibits the imposition of cruel and unusual punishments. Article I, § 21 of the Missouri Constitution contains identical language to the United States Constitution, likewise prohibiting cruel and unusual punishments under State law. The Eighth Amendment is incorporated and made applicable as against the State of Missouri by virtue of the Fourteenth Amendment. Roper v. Simmons, 543 U.S. 551, 556 (2005).

58. "The provision of the Constitution against cruel and unusual punishment is not direct so much against the amount or duration of the punishment as against its character." State v. Spano, 320 Mo. 280, 288 (1928). Embedded within the Eighth Amendment and Article I, § 25 of the Missouri Constitution is the "precept that punishment for crime should be graduated and proportioned to [the] offense." Weems v. United States, 217 U.S. 349, 367 (1910), see also Solem v. Helm, 463 U.S. 277, 284 (1983).

59. "The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment..." Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 464 (1947). To determine what is "cruel and unusual," courts must consider "the evolving

standards of decency that mark the progress of a maturing society." State v. Andrews, 329 S.W.3d 369, 380 (2010) (Wolf, J., dissenting), quoting Trop v. Dulles, 356 U.S. 86, 101 (1958). The standard of "cruel and unusual" is necessarily an evolving standard because it embodies a judgment of the norms and morals of society, which is always changing. See Roper v. Simmons,[2] 543 U.S. 551 (2005)(holding death sentence for crime committed while a juvenile is cruel and unusual); Kennedy v. Louisiana, 554 U.S. 407 (2008)(holding that the death penalty for a non-homicide crime violates the Eighth Amendment); Graham v. Florida, 560 U.S. 48 (2010) (holding that life sentence without parole for a juvenile for a non-homicide offense is cruel and unusual). Moreover, such punishment must not "involve the unnecessary or wanton infliction of pain." Rhodes v. Chapman, 452 U.S. 337, 346 (1981), citing Gregg v. Georgia, 428 U.S. 153, 173 (1976). By the same token "a sentence lacking any legitimate penological justification is by its nature disproportionate to the offense" and cruel and unusual. Graham at 71.

60. In a speech given at the 2003 American Bar Association Annual Meeting, Supreme Court Justice Anthony Kennedy delivered the keynote address, challenging the legal profession and the ABA to begin a new public discussion about American sentencing and corrections policies and practices. In discussing the problems plaguing our present criminal justice system, he stated *"Our resources are misspent, our punishments too severe, our sentences too long."*

70. Justice Kennedy also stated candidly that ***"every day in prison is much longer than most any day you have ever spent."*** In response to Justice Kennedy's comments, the Justice Kennedy Commission was formed in 2004, which set forth the following recommendations in their report to the United States House of Representatives:

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[2] Roper v. Simmons originated in Missouri, and upheld the Missouri Supreme Court's decision in State ex rel. Simmons v. Roper, 112 S.W.3d 397 (2003).

- Lengthy periods of incarceration should be reserved for offenders who pose the greatest danger to the community and who commit the most serious offenses

- Alternatives to incarceration should be provided when offenders pose a minimal risk to the community and appear likely to benefit from rehabilitation efforts

71. Although public safety is a major public policy concern, the public also believes in rehabilitation. In a recent nationwide survey conducted by the National Center for State Courts, almost 80% of 1,502 people surveyed believed that under the right conditions, many offenders can turn their lives around and become productive, law-abiding citizens; 88% believe that rehabilitation and treatment programs should often be used as alternatives to prison; 77% said that they prefer their tax dollars be spent on programs to help offenders find jobs or obtain treatment rather than on building more prisons. Those surveyed also favored a balanced approach to public safety, "one that is tough, especially on the most violent, dangerous or threatening offenders, but one that also encourages less serious offenders to turn their lives around."

72. Here, there is no legitimate penological justification to incarcerate Petitioner 13 years after his sentence was supposed to commence. The punishment and rehabilitation of a criminal is the primary purpose of sentencing. Petitioner has led a law-abiding life as a productive citizen. He has done for himself what the criminal justice system routinely fails to do – rehabilitate people who have made mistakes and reduce recidivism. To now incarcerate Petitioner would constitute the kind of cruel and unusual punishment prohibited by the Constitution.

73. The United States Supreme Court has held that

> [a] sentencing judge, however, is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. **Highly relevant - if not essential - to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics**. Williams v. New York, 337 U.S. 241, 247 (1949) (emphasis added)

74. Petitioner was left alone by the State of Missouri for 13 years and led to believe that the State had given up on execution of the judgment. To require this man to now begin serving a sentence in 2013 that should have been completed in 2013 is in essence to double his sentence. However, it was particularly cruel and unusual to allow him to believe that the State had given him reprieve to one day, out of the blue, knock down his door and take his entire life away 13 years after the fact. This is particularly so after a review of the Petitioner's life and characteristics he has developed over the past 13 years, as detailed throughout this petition.

75. To call this situation unusual is an understatement. The very nature of doubling a man's sentence because of the State's failure to act and gross negligence, to give this man hope because of the State's utter and complete failure to act, defines cruelty. As a result, this Court should grant this petition.

POINT III – IN THE INTEREST OF JUSTICE, THIS COURT SHOULD GRANT THE INSTANT PETITION FOR A WRIT OF HABEAS CORPUS ORDERING PETITIONER'S IMMEDIATE RELEASE, ISSUE A WRIT PROHIBITING ENFORCEMENT OF THE JUDGMENT COMPLAINED OF HEREIN, AND DISMISS THE UNDERLYING CRIMINAL CASE

76. Dismissal of a criminal prosecution in the furtherance of justice depends solely upon the justice that would be served by such a disposition, and does not depend upon the legal or factual merits of the charge or even the guilt or innocence of the accused. People v. Clayton, 41 A.D.2d 204, 208 (N.Y. App. Div. 2d Dep't 1973). In Clayton, the court reasoned that a

succession of New York statutes enacted on this issue merely codified "the ancient right of the Attorney General to discontinue a prosecution," 41 A.D.2d at 206. This notion of nolle prosequi now rested solely in the hands of the presiding judge, and did not require the consent of the prosecutor. People v. Quill, 11 Misc.2d (N.Y. Co. Ct. 1958).

77. Nolle prosequi is part of the common core underlying American jurisprudence in general, and is not limited to New York alone. See, e.g., People v. Norris, 214 Ill. 2d 92, 104 (Ill. 2005); In re Darren M., 358 Md. 104, 112 (Md. 2000); Harris v. Com., 258 Va. 576, 585 (Va. 1999). These cases establish that factors to be considered in its application include:

(a) the seriousness and circumstances of the offense;
(b) the extent of harm caused by the offense;
(c) the evidence of guilt whether admissible or inadmissible at trial;
(d) the history, character and condition of the defendant;
(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
(g) the impact of a dismissal on the safety or welfare of the community;
(h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

78. Building a modern interpretation of nolle prosequi in cases like Clayton, New York has established a test similar to the factors listed above to determine whether it is in the interest of justice to dismiss a case. See New York Criminal Procedure Law § 170.40(1)(a) to (j).

79. While it is recognized that the offenses for which Petitioner was convicted are indeed serious, the application of the remainder of the factors enunciated above militates in favor of Petitioner. First, the victim in this case was not physically harmed during the robbery. There is a lingering question of whether Petitioner was actually involved in the robbery, or

merely present as he maintained at trial. It is worth noting that there was a dissenting opinion by a Justice of the Missouri Supreme Court, who would have granted Petitioner a new trial.

80. The history, character, and condition of the Petitioner is recited above, as is his current position in society. In the past 13 years, Petitioner has led a law-abiding life as a productive and normal member of society. He has matured by virtue of age, life experience, and wisdom. He has transitioned from wayward youth to responsible adult, father, husband, property owner, taxpayer, business owner, trusted friend and beloved family member. Because of the life he has lived in the past 13 years, there is no need to protect the public from Petitioner. (**Exhibit M**). If he were a threat to society, there would not have been a 13-year delay in execution of the sentence. The State would have sought his incarceration, or he would have been arrested for the commission of a new offense.

89. With the passage of time fades negative memory. Counsel is informed that the victim of the robbery has been contacted by the media, and after being informed of the type of life Petitioner has led for the past 13 years, the victim no longer believes that Petitioner should be imprisoned. Taking this into account, there would be no loss in confidence from the public in the criminal justice system in granting Petitioner relief. Rather, the opposite is true: to allow the State to abandon its pursuit of a conviction and sentence for 13 years, then to wake up one day suddenly and remove a man like Petitioner from society and declare he must be so removed for the next 13 years would erode confidence in the criminal justice system. Doing so would accomplish none of the penalogical goals of sentencing, and would constitute nothing more than mean-spirited, wanton infliction of pain.

90. For the reasons set forth herein, this Court should grant this petition in the interest of justice.

CONCLUSION AND RELIEF REQUESTED

91. As Judge Posner has noted, "[t]he government is not permitted to play cat and mouse with the prisoner, delaying indefinitely the expiation of his debt to society and his reintegration into the free community. Punishment on the installment plan is forbidden." Dunne v. Keohane, 14 F.3d 335, 336 (7th Cir. 1994).

92. In this case, the State of Missouri consciously avoided execution of the sentence. After prevailing in the Missouri Court of Appeals, the State could have, and should have, sought an order directing Petitioner's surrender. After prevailing in the Missouri Supreme Court, the State again could have and should have sought execution of the judgment. After Petitioner filed a motion for post-conviction relief after unsuccessfully appealing twice, the State again should have sought to incarcerate Petitioner. This is particularly so where the State consented to bond pending appeal, and therefore had actual knowledge that he was at liberty, especially given the contents of the pro se petition that broadcast the fact that Petitioner was not in custody and gave an address where he could be found.

93. For 13 years, Petitioner was apparently listed as a State prisoner in a computer system, somehow escaping the attention of corrections officials who conducted a count of prisoners each day, somehow escaping the attention of corrections officials who are charged with assigning a prisoner to a corrections counselor who is supposed to monitor the progress of each prisoner, somehow escaping the internal audit procedures of the Department of Corrections who failed to match a paper or computer list of prisoners with the actual bodies in the prison. Petitioner also somehow escaped the attention of State officials by repeatedly registering automobiles with the State, maintaining a driver's license with the Missouri Department of Revenue, paying state and Federal income taxes, getting married, getting

divorced and litigating his divorce in court, having children and registering them in public schools, registering three different businesses with the Department of State, paying property taxes, and even receiving a traffic ticket. Every step of the way Petitioner remained in plain sight for 13 years. For 13 years, the State of Missouri ignored the judgment of conviction and his presence, actively abandoning pursuit of the matter of State of Missouri v. Cornealious Michael Anderson, III.

94. Petitioner, however, remained ignorant of the State's intentions for 13 years. He maintained contact with his attorneys throughout the appellate process. He maintained in the jurisdiction of the court. For 13 years, he heard nothing. Relying upon the obvious and apparent abandonment by the State, he gave birth to three children, remarried, maintained employment, opened and operated businesses, owned and maintained real property, and except for minor traffic offenses, lived a completely, law-abiding life as a husband and father. To now deprive Petitioner's wife and three children of their father, and deprive society of a hard-working, tax-paying citizen would be grossly unjust.

95. For the reasons set forth herein, Petitioner respectfully prays that this Court:

(A) Immediately grant Petitioner bail pending final determination of this petition;

(B) Issue a writ of habeas corpus, ordering the immediate release of Petitioner from the custody of the Department of Corrections, and precluding the State from future execution of the judgment of conviction and sentence in Case # CR0199-002532F; or in the alternative

(C) Issue a writ of habeas corpus, directing the Department of Corrections and the State of Missouri to credit Petitioner towards his sentence from June 8, 2000 until the date of final determination of the petition; and

(D) Grant Petitioner such other and further relief as this Court may deem just, proper and equitable.

Dated: December 30, 2013

Respectfully Submitted,

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VERIFICATION AND ATTESTATION

I, CORNEALIOUS MICHAEL ANDERSON, III, the Petitioner in this case, state that I have read the within Petition, and know the contents thereof, that the information contained in the Petition is true and correct to the best of my knowledge; that I speak and understand English.

CORNEALIOUS MICHAEL ANDERSON, III

Subscribed and sworn to before me this

13th day of December, 2013

Notary Public

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

TIMOTHY B. HOLSTEN
My Commission Expires
December 27, 2013
Dunklin County
Commission #09815616