SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

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THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. MIGUEL DE LOS SANTOS,

Petitioner,

-against-

JAMIE LAMANNA, SUPERINTENDENT,
SHAWANGUNK CORRECTIONAL FACILITY;

Respondent(s).

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PETITION FOR A WRIT OF HABEAS CORPUS

Index No.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

MIGUEL DE LOS SANTOS respectively shows:

First: I am the above-named petitioner and I am familiar with the facts and circumstances of the case.

Second: Petitioner is incarcerated and restrained of his liberty at the Shawangunk Correctional Facility, located in the County of Ulster, by Jamie LaManna, Superintendent of Shawangunk Correctional Facility.

Third: The confinement of Miguel De Los Santos stands by virtue of a commitment order. (Exhibit A).

Fourth: That a court or judge of the United States does not have exclusive jurisdiction to order the release of Miguel De Los Santos.

Fifth: That the cause or pretense of the imprisonment and restraint according to the best knowledge and belief of your petitioner, is certain commitment of the Supreme Court of the State of New York, County of New York, committing Miguel De Los Santos for preliminary examination pursuant to a warrant of arrest under accusatory instrument number 3444-2002, purporting to charge petitioner with

the commission of murder in the second degree (P.L. § 125.25(3)[count two of the indictment]; based the underlying theory of Kidnaping in the first degree (P.L. § 135.25(1)[count three of the indictment]; and two counts of Unlawful Imprisonment (P.L. § 135.10)[counts four and five of the indictment]; (Exhibit B).

Sixth: That the imprisonment and restraint of the relator is illegal, in that the aforesaid accusatory instrument number 3444-2002 (a copy of which is annexed as Exhibit B [Indictment]) fails to allege facts to show the commission of any crime or fails supply reasonable ground for belief that relator committed any crime and hence is insufficient as a matter of law to confer jurisdiction upon any Justice or Judge of the Supreme Court to issue a warrant of arrest and hold relator for examination, prosecutor's assessment of probable cause does not alone meet the constitutional requirements of C.P.L. §70.10. The relator was arrested and extradited without a warrant of arrest in violation of U.S.A. Constitutional Amendment 4th., and relator is entitled to immediate release. See ***People ex rel Goldberg v. Calkins,*** 11 Misc.2d 968.

Seventh: In a letter, petitioner requested from the court, the felony complaint, the warrant of arrest and the proceedings of the Judge who ordered the warrant of arrest, to which relator has a constitutional right to know, how the case commenced. (Exhibit C)[Petitioner's Letter to the court].

Eight: In response to petitioner's request, the Court stated that they don't have any proceeding on a warrant of arrest, no felony complaint on record and that any warrant and/or information on a warrant can only be obtained from the District Attorney's Office. (See Exhibit D)[Correspondence from

Court].

Ninth: Petitioner's request from the District Attorney's Office, the warrant of arrest; warrant of extradition and the felony complaint, which, the warrant of arrest was granted and warrant of extradition and felony complaint was denied, those record don't exist in court. (See Exhibit E). Upon the response to petitioner request, petitioner received a fake warrant of arrest (See Exhibit F) [Warrant of Arrest], no signed, but, with Justice Judge name, named Flora Duffy, upon Petitioner's investigation, trying to find out who was Flora Duffy, petitioner found out that Flora Duffy was employed as an associate court clerk in 2002 (See Exhibit G)[Correspondence from Chief Administrative Judge], who usurped the position as a justice judge, and without being neutral, without reviewing if probable cause exist upon evidence (C.P.L. § 70.10), without any proceeding in Court. Flora Duffy's issuance of a warrant of arrest out of jurisdiction of the court, no record exist in the court record that the warrant of arrest was issued against petitioner. The prosecutor was not telling the truth, since they stated that Flora Duffy was a Justice/Judge of the Supreme Court. (See Exhibit H)[Correspondence of District Attorney].

Tenth: Petitioner's statutory constitutional rights were violated, thus, rendering the judgment entered on December 10, 2014, null and void, since petitioner was tried and sentenced without an indictment, unauthorized grand jury action, the presentation would remain sealed. See C.P.L. § 210.10. The Court stated that there is no criminal court papers and that the indictment was never sealed. (See Exhibit I)[Correspondence of the Court]. There are only two separate paths for prosecution of accused

criminal defendants. First criminal action commenced by filing an accusatory instrument with a criminal court C.P.L. § 100.50, then the issuance of an arrest warrant. Second, for defendants who is not previously been held by a local criminal court for action of the Grand Jury and the filing of the indictment constituted the commencement of the criminal action, the Superior Court must order the indictment to be filed as a sealed, C.P.L. § 210.10(3), then the issuance of an arrest an arrest warrant. If the court stated that the indictment no. 3444-2002, was not sealed and no criminal court papers (See Exhibit I), then a criminal action against petitioner never commenced, that's why not warrant of arrest was never ordered by a Justice/Judge against the petitioner, and, therefore, petitioner was tried and convicted without an indictment in violation of Due Process, Fourthteenth Constitutional Amendment and New York State Constitutional Article 1 and 6. The indictment No.3344-2002, did not contain the grand jury foreperson signature in violation of C.P.L. § 200.50(8)(See Exhibit B), when the indictment did not contain the signature of the grand jury foreperson and therefore is not a true bill. There is only information made by the prosecutor, petitioner was not indicted. The offense in the indictment does not constitute a crime since is it impossible for the grand jury to vote to indict without first reviewing if probable cause exist and that the prosecutor established a prima facie case (***People v. Mayo***, 36 N.Y.2d 1002) and that the evidence is legally sufficient. See C.P.L. §70.10; ***People v. Deegan***, 69 N.Y.2d 976. C.P.L. §190.65(1), only authorizes an indictment when (a) the evidence before it is legally sufficient to establish that such person committed such offense, and (b) competent and admissible evidence before it provides reasonable cause to believe that such person committed

such offense because petitioner was not indicted, because no crime was committed by petitioner. After petitioner was arrested on May 30, 2013, the People failed to bring petitioner to court in 24 hours, in violation of C.P.L. § 120.90, right to prompt arraignment. Petitioner was detained in Jail without being arraigned, because the court didn't have a felony complaint or an indictment. Petitioner was arraigned for the first time, four days later on June 3, 2013, and on that date, the People could not produce an indictment. (See Exhibit J). The People wasn't telling the truth, when they stated that they already has a voluntary disclosure form and the indictment when in reality the proof showed that the voluntary disclosure form was made after petitioner's arrest. (See Exhibit K). Further, the People wasn't telling the truth when in the voluntary disclosure form, the People stated that petitioner was arrested at the 30th precinct when in reality petitioner was arrested in North Carolina and was extradited illegally without a warrant of arrest and without a warrant of extradition signed by a judge and extradition signed by New York Governor, Honorable Andrew Cuomo. (See Exhibit L). Petitioner was again arraigned on June 10, 2013, because the People couldn't produce any indictment on the first arraignment on June 3, 2013 (See Exhibit J). The People went to a codefendant's record and removed the indictment which had Petitioner's name blacked out (Exhibit B). The court appointed a defense lawyer who was ineffective from the beginning to the end. The Court and defense counsel failed to protect petitioner's constitutional rights and the court and defense counsel failed to review the validity of the People's indictment, which required the court to look to the statutory definitions of the offense and not the particular facts underlying those convictions when indictment No. 3444-2002,

Exhibit B and the Voluntary Disclosure Form (Exhibit K) did not state a crime. The court failed to administer justice impartially and the State of New York deprived petitioner of liberty without due process of law under the United States Constitution Amendment 6th and 14th.

Eleventh: The Court essentially created a legal fictitious case against petitioner. This case commenced prior to the Court obtaining subject matter jurisdiction and personal jurisdiction. The People could not validly declare readiness on June 13, 2002, prior to petitioner's arrest on May 30, 2013. Petitioner could not have been brought to trial prior to petitioner's arrest, the process by which the court acquires jurisdiction over petitioner. See ***People v. Mitchell,*** 235 A.D.2d 834. In the ***Mitchell*** case, he pleaded guilty on a felony charge before arraignment. The Appellate Division held that the felony charge was invalid because ***Mitchell*** was not arraigned and the proceeding upon accusatory instrument are governed by C.P.L. § 180.10, which does not authorize wavier of arraignment. Absent arraignment, the court never acquired requisite control of the defendant's person, with respect to the accusatory instrument and was therefore precluded from setting course of further proceedings in action, C.P.L. § 1.20(9). The same issue transpired in petitioner's case. On June 13, 2002, petitioner wasn't arrested and the court never acquired the requiste control over petitioner with respect to the accusatory instrument and was therefore precluded from setting the course of action for further proceedings into action (C.P.L. § 1.20(9)) but if the indictment No. 3444-2002 were sealed, as well is invalid against petitioner in ***People v. Figueroa***, 178 A.D.2d 1008, indictment remained sealed pending the arrest of the codefendant who had yet to be located. The Appellate Division, held

that the People failed to indict ***Figueroa*** separately on another count number indictment, and leave the sealed indictment for the codefendant, Figueroa claimed his right to speedy trial (C.P.L. §30.30). The court unsealed the indictment at the People's request and indicted codefendant separately and another count indictment number, because when the court unsealed the indictment against ***Figueroa***, that indictment became invalid against co-defendant who had yet to be located. If indictment No. 3444-2002, against petitioner were sealed, the court unsealed the indictment on June 13, 2002, and the indictment became public in the proceedings against the other defendants, petitioner had yet to be located and therefore that indictment became invalid against petitioner. Either way the People alleged petitioner's case commenced on June 13, 2002, upon indictment No. 3444-2002, is invalid against petitioner, since petitioner was arrested on May 30, 2013, 11 years after the indictment was allegedly filed and petitioner was never indicted after petitioner's arrest because no crime was committed that's why petitioner's name was blacked-out in indictment number 3444-2002, on the proceeding on publicly indictment against the other defendants.

Twelveth: If the court considered indictment number 3444-2003, filed on June 13, 2002, to be sufficient, then petitioner's constitutional rights were violated, to wit:

(1) Petitioner's right to counsel attached on June 13, 2002, when the accusatory instrument was filed.
(2) All proceedings concerning complaint (C.P.L. § 180.10)
(3) Constitutional right to testify before the grand jury. (C.P.L. §190.50(8)).
(4) Petitioner constitutional right to speedy trial (C.P.L. § 30.30)

The violation of these constitutional rights entitles petitioner to immediate release. See *People ex rel. Goldberg v. Calkin*, 11 Misc.2d 968.

Thirteenth: That no previous application for this writ of habeas relief sought herein has been made by relator or by anyone on his behalf. Regarding the previous application, Petitioner claimed that the indictment was defective because the offense did not constitute a crime. However, Petitioner's justification for the new application pertains to a different issue that requires immediate release, since Petitioner was arrested illegally without a warrant of arrest, thus, constituting a violation of his 4th Amendment Constitutional rights.

Fourteenth: Petitioner was also prosecuted without an indictment. Even though the trial was illegal and unconstitutional, petitioner's innocence at trial was established. The judge discharged her duty when the judge and prosecutor usurped the position of the Grand Jury, when the court instructed the jury on the prosecutors theory, a theory that was never placed in the indictment. The judge stated in this case that it is the prosecutions theory that Manuel Gonzalez was kidnaped in order to compel Wilson Gonzalez to pay money for drugs that were allegedly purchased from Mr. De Los Santos. (See Exhibit M: T.T. 431). The prosecutor's theory was out of context. The prosecution's key witness Wilson Gonzalez testified that he didn't have a phone and he was never threatened by petitioner and that he was never involved in the drug business. (See Exhibit M: T.T. 236-237 & 239). The jury acquitted petitioner for the drug sales (count Seven of the indictment) and conspiracy to sell (count Eight of the indictment [Exhibit M, T.T: 462, 463]). The jury found petitioner guilty because the judge

discharged her duty when the jury sent a note to inquire about the instructions of murder in the second degree and kidnaping in the first degree (counts two and three of the indictment). (Exhibit M, T.T: 449).

Fifthteenth: The judge changed the instructions instead of reinstructing as she did in pages 431-433 (Exhibit M) charge regarding kidnaping in the first degree, subdivision 1 (count three of the indictment). The judge instructed a charge that petitioner was never charged with. She instructed kidnaping in the second degree even though petitioner was never charged with it. Kidnaping in the second degree only requires 5 elements, that's why she omitted the element that would have proved petitioner innocence but the jury deliberated without hearing the fifth element of the kidnaping charge in the first degree, subdivision 1 and that's why the jury was confused as to how to decide the valve issue of the case. (See Exhibit M: T.T. 432). The court did that even though the prosecutor stated that what the court was doing was not right. The prosecutor stated: One legal point on your charge. The Court stated: Of course. The Prosecutor stated: The first count is kidnaping in the first degree. The second count is for felony murder for kidnaping (See Exhibit M: T.T: 408) . Then the prosecutor stated that count 2, the felony murder kidnaping would not require. The Court stated: I know. (See Exhibit M: T.T. 409). The judge knew that kidnaping in the second degree is a simple kidnaping without harm and kidnaping in the second degree never was an underline crime of felony murder. A person can not die without harm and the aggravating factors making the offense of first degree kidnaping and that the underlining crime of felony murder has to be in another count of the indictment

and the only kidnaping charge was the first degree was count three of the indictment and that's why the prosecutor stated "legal point." (See Exhibit M, T.T: 408 & 409). The Court reduced the elements to 5 when the statute requires 6 different and distinct elements. Therefore, the court reduced the chance and opportunity that the jury would find petitioner innocent. The court repeated the error in count 5 (unlawful imprisonment), when the court reduced the elements into two when the statute requires 5 different and distinct elements. On counts four and five, charging unlawful imprisonment, those counts does not constitute a crime and because no evidence was presented, the court omitted the instruction on what it means to be exposed to a risk of serous physical injury. (See Exhibit M, T.T: 433-436). Therefore, the jury was confused as to how to decide the valve issue of the case. Later the judge pronounced her illegal sentence, even though, petitioner tell her that the trial was illegal and unconstitutional because defense counsel Mr. Norman Williams did not bring the truth to light, ie., that Judge and jury would making a proper decision based on the true and jury got a decision without knowing the truth and without knowing what really happened. (See Exhibit N). The judge sentenced petitioner even though the evidence show that petitioner is not a violent person and never was seeing in possession of a knife or gun, the evidence constantly shows that they went there to made a phone call and that the murder was an accident committed by another person, who pleaded guilty. (See, Exhibit M, T.T: 140, 146, 147, 166, 167). The Judge suppressed the identification hearing called (Wade Hearing)(See Exhibit M, page 25). The People proceeded with an independent source hearing and that hearing requires that the witness knows the accuser prior to its commission of the incident and

the third party familiarity with and relationship of the witness and defendant may testify to establish the confirmation of the relationship of the witness and defendant. The prosecutor provided the only witness at the hearing, Ms. Angelly Ortiz to provide false testimony, creating dishonest and untruthful evidence. Ms. Angelly Ortiz was lying under oath. She stated that Wilson Gonzalez introduced Petitioner to her and that she recognized petitioner from the year before when she came for her vacation and that she only met petitioner one time and was in June of 1998. (See Exhibit M, Independent Source Hearing, pages 53, 54, 57, 70). The Court appointed defense counsel who was ineffective from the beginning to the end. Defense counsel was supposed to disclose the facts. Defense counsel has a duty to bring the truth to the light and if he did then the judge would have made a decision based on the truth, but defense counsel remained quite and did not cross-examine the only witness during the independent source identification hearing. (See Exhibit M, Independent Source Hearing, page 61). At that time petitioner should have been exonerated. Defense counsel failed to present and submit evidence to prove that Ms. Angelly Ortiz was lying under oath. Defense counsel failed to cross-examine, Ms. Angelly Ortiz. She stated that she did not see petitioner on October 6, 1999 and that she did not recall the image of Pedro. (See Exhibit M, Independent Source Hearing, page 55). Defense counsel failed to demand Wilson Gonzalez to the stand to confirmation. Wilson Gonzalez would have testified as he did at trial, that he never introduced petitioner to Angelly Ortiz. (See Exhibit M, T.T: 238).

Furthermore, to prove that defense counsel did not represent his interests, he failed to present

as defense evidence, a statement made detective Tom Eddie during the interrogation of Wilson Gonzalez. (See Exhibit O). Wilson Gonzalez stated that he met petitioner through Wendy Wilson's cousin. (See Exhibit M, T.T: 223). Petitioner wife was Luz and Luz was in Columbia when Wilson met petitioner (Exhibit T.T: 177). That shows that petitioner me Wilson Gonzalez in 1999 when Luz was Columbia in 1998. Petitioner did not know Wilson Gonzalez. How could petitioner be introduced to Ms. Angelly Ortiz when she came for vacation on June 1998 when petitioner did not know Wilson on 1998. The People constantly produced witnesses to lie under oath. The evidence shows that defense counsel was working against him and in favor of the assistant district attorney. Defense counsel violated the authority to conduct petitioner's case with all the knowledge and skills. Petitioner proceeded to trial with 9 charges without any evidence for those charges. He blatantly misrepresented petitioner and did not do his due diligence to represent petitioner to the best of his ability. His failure to represent petitioner competently and zealously in strict compliance with his legal duty as mandate by the constitution (***People v. Baldi***, 54 N.Y. 2d 137 (1981) or ***Strickland v. Washington***, 466 U.S. 668 (1984)). The 6th Amendment of the United States Constitution mandates for the prosecutor to reveal the nature of the case. No surprises and full disclosure, but defense counsel left petitioner defenseless. Wilson Gonzalez came from Europe four times to testify (Exhibit M, T.T: 237). His testimony was favorable to petitioner but the prosecutor hide and petitioner never received any of those testimony and DD 5's that was favorable to petitioner, Numbers 2, 3, 4, 6, 7, 8, as ***Brady*** and ***Rosario*** materials, as ruled and cited above, a witnesses prior statement written or

recorded must be turned over to the defense for use on cross-examination.

Finally, petitioner's constitutional right to trial by jury prohibits a judge from directing a verdict for the prosecution. The judge has a duty to administer justice impartially. But here, the judge was constantly showing the jury that she was aligned with the prosecutor, which unfairly prejudiced petitioner and denied petitioner a fair trial when the trial judge herself, read back a key prosecution's witness trial testimony. (See Exhibit M, T.T: 455). The court and defense counsel failed to exercise careful surveillance to ensure that petitioner was not deprived of all his constitutional rights by an overzealous prosecutor attempting to protect his case in leaving petitioner in ignorance of the substance of the accusations, must be firmly rebuffed, this especially is so when the indictment itself provides no crime. The judge pronounced her illegal sentence, ignoring the jury's decision which acquitted petitioner of drug possession, drug sell and drug conspiracy, then the judge based her illegal sentence on the drug charges. There can be no further prosecution because petitioner did not committed any crime. If petitioner did not committed any crime there is no element of any offense. See C.P.L. § 70.10 and therefore petitioner is entitled to immediate release.

WHEREFORE, Your Petitioner prays that a Writ of Habeas Corpus be issued directed to Superintendent of Shawangunk Correctional Facility, Jamie LaManna commanding him to produce the petitioner before Honorable Donald A. Williams, Jr., Justice of the Supreme Court of the State of New York, at his chambers in the Ulster County Courthouse, located at 285 Wall Street, Kingston, New York 12401-0906, for hearing and determination concerning the illegal confinement of Miguel De Los

Santos and why Miguel De Los Santos should not be given his liberty and why he should not have such other and further relief as to the Court may seem just and proper.

Dated:
Wallkill, New York 12589

Respectfully Submitted,
Miguel de los Santos
Miguel De Los Santos
Petitioner pro se
Shawangunk Correctional Facility
Post Office Box 700
Wallkill, New York 12589

To: Jammie LaManna, Superintendent Shawangunk Correctional Facility
250 Quick Road
Wallkill, New York 12589

Beatrice Havranek, County Attorney
County Office Building
244 Fair Street
P.O.Box 1800
Kingston, New York 12402-1800

VERIFICATION

State of New York)
County of Ulster)ss.:

Miguel De Los Santos, being duly sworn, deposes and says that your deponent is the petitioner in the above-captioned proceeding; that he has read the Petition and knows the contents thereof, that the same is true to his own knowledge, except as to matters stated upon information and belief, and as for those matters stated upon information and belief, he believes them to be true.

Respectfully Submitted,

Miguel de los Santos

Miguel De Los Santos
Petitioner pro se
Shawangunk Correctional Facility
Post Office Box 700
Wallkill, New York 12589

Sworn to before me this

19th day of March, 2018.

Notary Public

of New York
#01PE6216[illegible]
Commission Expires on [illegible] 21.