LEGAL FACTS THAT CLEARLY PROVE THE FOUR JUDGES HOLD ME ILLEGALLY DETAINED, SINCE Oct. 2003

On January 12, 2005 the U.S. Supreme Court Directive of Booker ("DOB"), 543 U.S. at 268, favored my contested calculation facts arguments of pages 11-12 of my brief; The DOB, in quote reads as follows:

"We MUST APPLY today's HOLDINGS-BOTH the SIXTH AMENDMENT HOLDING and our REMEDIAL INTERPRETATION of the Sentencing Act to all cases on direct review. See GRIFFITH v. Kentucky, 479 U.S. 314 at 328 (1987)("(A) new rule for the conduct of criminal prosecution is to be applied retroactively to all cases on direct review or NOT YET FINAL."

The DOB's favored directive essentially directed that the mandatory legal tenets of 18 U.S.C. sections 3553(b)(1), 3585(b) and 3624(a) of the former rule of the SAHB, 543 U.S. at 226-234, MUST BE APPLIED, by at least one of the four lower court judges King, Duncan, Wilkins or Smith to my contested calculation facts of pages 11-12 of my brief; which had these four judges not corruptly defied the mandate but honored and applied it, then I was entitled to be immediately released by them at either my 1st appellate direct review of Apr. 2005 or 1st resentencing hearing of Nov. 2005. Further the Supreme Court's DOB directed that under the legal tenets of GRIFFITH v. Kentucky, 479 U.S. at 328 and 321 n.6, and its procedural principle's CAVEAT of "NOT YET FINAL", the advisory legal tenets of the new rule of the RHB, 543 U.S. at 245-246, MUST BE 'SOLEY AND ONLY' APPLIED to the supervised portion of my sentence, because under the DOB's required first applied application of the mandatory legal tenets of the former rule of the SAHB to my 21 months custodial portion of sentence proved to be fully served by Oct. 2003, but my supervised release's 0-36 months would prove to be "NOT YET FINAL" or that is to say "NOT YET FULLY SERVED OR MADE MOOT', by me, prior to the announcement date of the new rule of the RHB, on Jan. 12, 2005.

The four judges schemed & did illegally circumvent the DOB and its CAVEAT of Griffith's "NOT YET FINAL" rule to apply the advisory legal tenets of the RHB to the custodial portion of my sentence by their earlier shown acts of having set my brief in the tiny coffin of FOOTNOTE SIX and then lowering it into the tiny grave site of FOOTNOTE NINE, in order to grossly raise my entitled statutory maximum of sentence from 15-21 MONTHS RANGE to THIER SOPHISTRY of a subtly deceptive 262-405 range in order to be able to expose the custodial portion of my sentence to the prejudicial effects of the new rule of the RHB; and by ruse justify the RHB's application to any would be snooping or curious American public, press or legal minds.

However the Sixth Circuit Court of Appeal's ruling in the federal case of O'Georgia, 569 f.3d 281 at 286 and 289 (6th cir./App. ct./2009), establishes that the four judges have covered up their illegal detention of me, since Oct. 2003 and that the four judges handling of the DOB's caveat of Griffith's rule was illegal because the RHB should have only been applied to the supervised release portion of my sentence and not to the fully served custodial portion of my sentence; The Sixth Circuit Appellate Court, in the Case of Defendant O'Georgia, makes the following honorable, sagacious and legal judgment:

* "Judge Rosen sentenced him to 21 months of imprisonment and one year of supervised release...The conviction and sentence were affirmed on appeal...but the Supreme Court later remanded the case for resentencing in light of Booker, 543 U.S. 220 at 245-246,(holding that the guidelines are now advisory). Although by that time Arhebamen had long completed his 21 months of imprisonment. Judge Rosen reimposed the same sentence plus one year of supervised release in November 2005. ". Id. at 286 " Rather the procedural error stems form the District Court's failure to recognize Arhebamen's completion of his sentence rendered that portion moot at the resentencing stage. The error is apparent in the sentencing Court's incorrect statement that it "could in fact sentence (Arhebamen) to a higher sentence than the last time because the guidelines are not mandatory. " The context surrounding that statement clearly shows that the quoted remark refers to the custodial portion of the sentence...In light of the procedural error, we remand the case to the district court for the consideration of whether the now advisory period of supervised release is appropriate in the case." Id. at 289 " *

Both the three appellate judges King, Duncan and Wilkins and district Judge Smith knew that the DOB directed them to apply the SAHB to my case; and in a manner consistent with Griffith, apply the RHB to my case. The fact that they all four knew of their obligation to apply both holdings in a manner consistent with Griffith is evidenced by their own 2 quotes from their own opinions:

1. In Ruhbayan, 406 f.3d at 302 (Apr. 2005), the three appellate judges King, Duncan and Wilkins professed MANDATE FOR RESENTENCING DECREED:
"We are thus obligated to vacate Ruhbayan's sentences and remand for resentencing consistent with Booker and its progeny . SEE 125 S.CT. at 768-769". Id. at 302

2. In Ruhbayan, 427 f. supp. 2d 640 at 649 and 651 (Nov. 2005), the resentencing judge Smith professed that the SUPREME

COURT AND FOURTH CIRCUIT COURT OF APPEALS RESENTENCING MANDATES REQUIRED:
(A) " The Supreme Court directed BOTH its Sixth Amendment Holding and its REMEDIAL INTERPRETATION of the SRA apply to all cases on direct review. see id at 769." Id. at 649;
(B) " The Fourth Circuit mandated that Defendant be resentenced consistent with Booker and its progeny. see Ruhbayan, 406 f.3d at 302". Id. at 651.

However, in Ruhbayan 427 f. supp. 2d at 650, the record clearly shows, in a manner grossly inconsistent with the DOB, judge Smith schemed to not apply the Mandatory legal tenets of the SAHB to pages 11-12 of my brief's challenges, but solely and only the remedial holding, based on judge Smith's following twisted sophistry of switching the DOB's correct cite of Booker, 125 S.Ct. at 768-769 or 543 U.S. at 268 to the DOB's inaccurate cite of Booker, 125 S.CT. at 750:

"Since imposition of a sentence based on judicial fact finding violates the SIXTH AMENDMENT only when the Guidelines are TREATED AS MANDATORY, Booker 125 S.CT. at 750, SO LONG AS THE COURT TREATS THE GUIDELINES AS ADVISORY (I.E. THE REMEDIAL HOLDING OF BOOKER) IN RESENTENCING, THE COURT WILL NOT VIOLATE BOOKER (i.e.. THE DOB) by applying a guideline section, including section 3B1.1(a), based on a fact found by a judge..." Id. at 650

Subsequently, in Ruhbayan, 527 f.3d 107 at 115 (May 2007), appellate judges King, Duncan and Wilkins schemed to affirm judge Smith's resentencing judgment's multiple coverups and violations of the DOB and to impede my brief's pages 11-12 being exhumed to have the SAHB applied to it, instead they and my court appointed attorney, made some backroom deal and fabricated story at the hearing of oral arguments, to cover up their High crime of my illegal detention. They fabricated a false story line that the court appointed attorney they assigned to me, who was named: J. Barry McCracken, had CONCEDED that according to the case of DAVENPORT, 445 F.3D 366 (4TH CIR. 2006) the new rule of the RHB's effects could be applied retroactively to prejudice my already fully served, UNDER THE FORMER RULE OF THE SAHB EFFECTS and so made moot, by Oct. 2003, custodial portion of sentence. The record of their fabricated story, in quote reads as follows:

"In his second contention in this appeal, Ruhbayan MAINTAINS that the sentencing court's application of the REMEDIAL provisions of United States v. Booker, 543 U.S. 220 (2005)...is precluded by the Ex Post Facto Clause of the Fifth Amendment. MORE SPECIFICALLY, HE ASSERTS THAT THE MAXIMUM PRISON TERM TO WHICH HE WAS EXPOSED, AS DETERMINED BY THE JURY, WAS 21 MONTHS. At Oral Argument, however, Ruhbayan, CONCEDED that this claim is foreclosed by our recent decision in United States v. Davenport, 445 f.3d 366 (4th cir. 2006)." Id. at 115.

The fact of truth and law is that once I had fully served the statutory maximum of 21 months' custodial portion of sentence, by Oct. 2003, under the mandatory legal tenets of the SAHB, then the custodial portion of my sentence became moot and and thereafter neither the 4 judges or Attorney McCracken had any further subject matter jurisdiction, over the merits of the custodial portion of my sentence, but they had merits potentially over the supervised release portion of my sentence. So, On August 20, 2004, my brief's pages 11-12's 5th & 6th Amend. constitutional contested calculation facts were merely raised to make the 4 judges aware that the custodial portion of my sentence had, by Oct. 2003, become fully served & moot; & that their subject matter jurisdiction over that portion terminated, in Oct. 2003; and that district judge Smith's, Feb. 4, 2004, imposed sentence of LIFE, WITHOUT PAROLE, was wholly absent any valid authority from Congress. Seeing that the custodial portion of my sentence was moot, these 4 judges were to have recognized at my 1st appeal of Apr. 2005 or 1st resentencing of Nov. 2005 that they had no authority to do anything concerning the merits of my custodial portion except require district court judge Smith to REVERSE the void judgment of LIFE, WITHOUT PAROLE with a correct judgment of timed served and my immediate release. Further the earlier above, stated Sixth Circuit Court of Appeals case of O'Georgia, 569 f.3d at 286 & 289, makes clear that simply because the guidelines were advisory, and not mandatory at my 1st appellate direct review & resentencing did not dismiss the perfected moot status & entitlements the custodial portion of my sentence had earned under the mandatory guideline legal tenets of the SAHB. Moreover for the foresaid reasons Griffith, 479 U.s. at 321 n.6 and 328, and its procedural caveat of "NOT YET FINAL" barred the RHB from application to the custodial portion of my sentence. In light of all the above facts of record, The bottom line is that neither the 4 judges or their assigned attorney, Mr. McCracken, had ZERO AUTHORITY to CONCEDE, as is verified by the U.S. Supreme Court, in the following case of Bender, 475 U.S. 534:

" (E)very federal court has a special obligation to ' satisfy itself not only of its own jurisdiction, but also that of the lower court's under review, EVEN THOUGH THE PARTIES ARE PREPARED TO CONCEDE it...' And if the record discloses the lower court was without jurisdiction this court will notice the defect, ALTHOUGH THE PARTIES MAKE NO CONTENTION CONCERNING IT. (When the lower federal court) lack(s) jurisdiction we have jurisdiction on appeal, NOT OF THE MERITS but merely for the PURPOSE OF CORRECTING THE ERROR OF THE COURT...". Id. Bender, 475 U.S. 534

In April 2005, at my first section 2255 habeas petition, judge Smith, in hopes to make iron solid the coverup of the 4 judges, denied me an evidentiary hearing to determine whether or not the appellate judges King, Duncan and Wilkins, hid and switched or altered my brief's pages 11-12; Further judge Smith procedurally denied my section 2255 habeas petition based on judge

Smith's coverup, disinformation, sophistry and lie that: the DOB, 543 U.S. at 268, and its required first applied application of the mandatory legal tenets of the SAHB, 543 U.S. at 226-234 (i.e. Blakely v. Washington, 542 U.S. 296 (2004), had been fully applied to my brief's pages 11-12's 5th & 6th Amend. contested calculation facts &, on the merits, my claims were ruled to be in my disfavor by either the 1st Apr. 2005 or 2nd May 2007 appellate court judges King, Duncan & Wilkins. Clearly, the records, above, show that the appellate judges King, Duncan & Wilkins at their 1st appellate direct review of Apr. 2004, hid my brief's pages 11-12, in the tiny coffin of FOOTNOTE SIX of Ruhbayan, 406 f.3d at 298 and the lowered it into the tiny grave site of FOOTNOTE NINE of Ruhbayan, 406 f.3d at 301; and in May 2007, in Ruhbayan, 527 f.3d at 115, the appellate judges refused to address or exhume from the grave of FOOTNOTE NINE, my '21 months sentence claim', instead they covered it up with their illegal application to it of the RHB, 543 U.S. at 245-246. Judge Smith's, Apr. 2011, coverup story & lie, in quote reads as follows:

1) " The court has reviewed the motion, files and record of the case and finds that petitioner is entitled to not relief. The court does not hold an evidentiary hearing. "

2) " Petitioner claims that his sentence was imposed in violation of the Constitution and the tenets of Blakely v. Washington, 542 US 296 (2004)... The court has reviewed petitioner's voluminous filings and finds that all of petitioner's arguments have been raised in one of his direct appeals in case No. 2;02-cr-29. Accordingly the matter is dismissed.