

JUL 08 2018

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TYLER T. HEAGY - PETITIONER

VS.

COMMONWEALTH OF PENNSYLVANIA - RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

Tyler T. Heagy (hereinafter "petitioner") petition for a writ of certiorari to review the judgment of the Superior Court of Pennsylvania, rendered in petitioners appeal, which judgment affirmed the Common Pleas Court of Lebanon County, Pennsylvania order dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S §§ 9541-9546.

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QUESTIONS PRESENTED

1. Was 42 Pa.C.S.A. §9543 (a)(1)(i) unconstitutional as applied to Petitioners case?
2. Were 42 Pa.C.S.A. §9545 (b) and (c) unconstitutional as applied to Petitioners case?
3. The Petitioner has a Constitutional Right to have the Assistance of Counsel and an absolute Right to Appeal. The Petitioners Constitutional Rights have been thwarted by the filing restrictions of the Pennsylvania Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §9541 et seq. unconstitutional as applied to Petitioners case?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE COURT
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits was the Superior Court of Pennsylvania appears at Appendix "E" to the petition and is unpublished.

The opinion of the Court of Common Pleas of Lebanon County, Pennsylvania appears at Appendix "D" to the petition and is unpublished.

The opinion of the Court of Common Pleas of Lebanon County, Pennsylvania appears at Appendix "C" to the petition and is unpublished.

The opinion of the Superior Court of Pennsylvania appears at Appendix "B" to the petition and is unpublished.

The opinion of the Court of Common Pleas of Lebanon County, Pennsylvania appears at Appendix "A" to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was October 11th, 2017. A copy of the decision appears at Appendix “E” to the petition.

A timely Petition for Allowance of Appeal was thereafter denied on the following date: April 10th, 2018, and a copy of the order denying the Petition for an Allowance of Appeal appears at Appendix “F” to the petition.

The petition for writ of certiorari has been filed within ninety (90) days of the order denying the Petition for an Allowance of Appeal.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

“No person shall...be deprived of life, liberty, or property, without due process of law...”

The Sixth Amendment to the United States Constitution provides in relevant parts:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial...to have the Assistance of Counsel for his defense.”

The Fourteenth Amendment, Section 1 to the United States Constitution provides:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article I, §11 of the Pennsylvania Constitution provides:

“All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law,

and right and justice administered without sale, denial, or delay.”

Article V, §9 of the Pennsylvania Constitution provides:

“There shall be a Right to Appeal in all cases to a court of record from a court not of record; There shall also be a Right of Appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be provided by law; There shall be such other Rights of Appeal as may be provided by law.”

42 Pa.C.S.A. §9543 provides in relevant parts:

“(a) General Rule. -- To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) currently serving a sentence of imprisonment, probation or parole for the crime.”

42 Pa.C.S.A. §9545 provides in relevant parts:

“(b) Time for filing petition --

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within the one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials

with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been held by that court to apply retroactively.

(3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of Pennsylvania, or at the expiration of time for seeking review.

(4) For purposes of this chapter, "government officials" shall not include defense counsel, whether appointed or retained.

(c) Stay of execution. --

(1) No court shall have the authority to issue a stay of execution in any case except as allowed under this subchapter.

(2) Except for first petitions filed under this subchapter by defendants whose sentences have been affirmed on direct appeal by the Supreme Court of Pennsylvania between January 1, 1994, and January 1, 1996, no stay may be issued unless a petition for

post-conviction relief which meets all the requirements of this subchapter has been filed and is pending and the petitioner makes a strong showing of likelihood of success on the merits.

(3) Suspended by Pennsylvania Supreme Court Order of Aug. 11, 1997, imd. effective.

STATEMENT OF CASE

On or about March 23rd, 2014 the petitioner was charged with the following: one (1) count Burglary - Overnight Accommodation, Person Present¹; two (2) counts Simple Assault²; one (1) count Recklessly Endangering Another Person³; one (1) count Criminal Mischief - Tampering with Property⁴; and two (2) counts Harassment - Subject Other to Physical Contact⁵.

On May 8th, 2014 at 1:30 pm the Lebanon County Clerk of Courts (hereinafter "Lebanon Clerk") had entered and filed the Information⁶ submitted by the District Attorney's Office of Lebanon County. This Information lists the following counts: one (1) count Burglary - Overnight Accommodation, Person Present; two (2) counts Simple Assault; one (1) count Recklessly Endangering Another Person; one (1) count Criminal Mischief - Tampering with Property; and two (2) counts Harassment - Subject Other to Physical Contact.

On July 6th, 2014 the petitioners counsel, Attorney Elizabeth Judd (hereinafter "trial counsel"), had sent the petitioner a letter⁷ stating that the District Attorney's Office of Lebanon County proposed to amend count one (1) from one (1) count Burglary - Overnight Accommodation, Person Present to one (1) count Criminal Trespass - Break

¹ 18 Pa.C.S.A. §3502(a)(1).

² 18 Pa.C.S.A. §2701(a)(1).

³ 18 Pa.C.S.A. §2705.

⁴ 18 Pa.C.S.A. §3304(a)(2).

⁵ 18 Pa.C.S.A. §2709(a)(1).

⁶ Appendix "G".

⁷ Appendix "H".

Into Structure⁸ and that the proposed plea is available until July 24th, 2014.

On October 6th, 2014 the petitioner along with trial counsel had selected a jury for trial that was set to commence on the morning of October 7th, 2014. On the morning of October 7th, 2014 the petitioner had entered into a Non-Negotiated Guilty Plea⁹. The Assistant District Attorney, Attorney Nichole Eisenhart (hereinafter "District Attorney"), had amended the Information in open court and the Amended Information¹⁰ had amended count one from one (1) count Burglary - Overnight Accommodation, Person Present to one (1) count Criminal Trespass - Break Into Structure. This plea deal was the same plea offer stated in the letter from trial counsel dated July 6th, 2014 that the petitioner had previously declined to accept. Subsequently, the petitioner was sentenced immediately after entering into the Non-Negotiated Guilty Plea on the same morning of October 7th, 2014 to an aggregate term of one-hundred and ninety-eight (198) days, to twenty-three (23) months' incarceration. During the court proceedings of October 7th, 2014 the official court reporter, Megan R. Orris, had taken the notes of testimony of the proceedings and transcribed them into the Guilty Plea and Sentencing Transcript of Proceedings¹¹. Also, On October 7th, 2014 the petitioner along with his trial counsel completed the written post-sentence colloquy¹² that was filed in open court by the Lebanon Clerk.

On October 20th, 2014 the Lebanon Clerk had entered and filed a communication¹³ filed by the petitioner at 2:35pm. This communication by the petitioner was dated October 17th, 2014 and stated

⁸ 18 Pa.C.S.A. §3503(a)(1)(ii).

⁹ Appendix "T".

¹⁰ Appendix "J".

¹¹ Appendix "V".

¹² Appendix "K".

¹³ Appendix "L".

that he was threatened into pleading guilty by threats of never seeing his children again by trial counsel if he did not plead guilty. Also, within this communication the petitioner stated that he hoped that the communication would start his appeal process. On October 23rd, 2014 the Lebanon Clerk had entered and filed the petitioners Motion Challenging the Validity of Guilty Plea¹⁴, pursuant to Pennsylvania Rule of Criminal Procedure - 576. On October 27th, 2014 the Lebanon Clerk had entered and filed the petitioners Motion for Nunc Pro Tunc¹⁵ and Motion for Ineffectual Counsel¹⁶, pursuant to Pennsylvania Rule of Criminal Procedure - 576. The petitioners Motion for Ineffectual Counsel Order¹⁷ went unsigned. On November 3rd, 2014 the petitioners trial counsel had sent him a letter¹⁸ stating that she could no longer assist him in his legal matters and advised petitioner to file a PCRA to allow him to litigate her ineffectiveness and ceased all active representation of petitioner.

On December 3rd, 2014 the Honorable President Judge John C. Tylwalk (hereinafter "Judge Tylwalk") issued an Order¹⁹ denying the petitioners Motion to Withdraw Guilty Plea & Vacate Sentence and an Order²⁰ denying the petitioners Motion for Nunc Pro Tunc. On December 5th, 2014 Judge Tylwalk issued a post-sentence scheduling Order²¹. Also, On December 5th, 2014 Judge Tylwalk issued an Order²² dismissing the petitioners PCRA Petition as premature. The

¹⁴ Appendix "X", page 11.

¹⁵ Appendix "X", page 11.

¹⁶ Appendix "X", page 11.

¹⁷ Appendix "X", page 11.

¹⁸ Appendix "M".

¹⁹ Appendix "X", page 11.

²⁰ Appendix "X", page 11.

²¹ Appendix "X", page 12.

²² Appendix "N".

dismissal of the petitioners PCRA Petition was without prejudice to be filed at a later date, once post-sentence motions have been decided. On January 16th, 2015 the Lebanon Clerk had entered and filed the petitioners Motion for Counsel²³, Motion for Ineffectual Counsel²⁴, Motion to Revoke Guilty Plea²⁵, Application for Oral Argument of Post-Conviction Relief Act Appeal²⁶, Petition for Allowance Nunc Pro Tunc²⁷, and Petition for Post-Conviction Collateral Relief²⁸. The petitioners Motion to Revoke Guilty Plea Order²⁹ went unsigned. On January 22nd, 2015 Judge Tylwalk issued an Order³⁰ granting the petitioner counsel and appointed Attorney Roberta Gantea (hereinafter “appellate counsel”) as petitioners newly appointed appellate counsel. Also, On January 22nd, 2015 Judge Tylwalk issued an Order³¹ denying petitioners Motion for Ineffectual Counsel, an Order³² denying petitioners Application for Oral Argument of PCRA, and an Order³³ denying the petitioners Petition for Allowance of Appeal Nunc Pro Tunc. Furthermore, Judge Tylwalk issued an Order³⁴ on January 22nd, 2015 dismissing the petitioners PCRA Petition as premature. The dismissal of the petitioners PCRA Petition was without prejudice to be filed at a later date, once post-sentence motions have been decided.

On February 12th, 2015 the petitioner’s appellate

²³ Appendix “X”, page 13.

²⁴ Appendix “X”, page 13.

²⁵ Appendix “X”, page 13.

²⁶ Appendix “X”, page 13.

²⁷ Appendix “X”, page 14.

²⁸ Appendix “X”, page 14.

²⁹ Appendix “X”, page 13.

³⁰ Appendix “X”, page 13.

³¹ Appendix “X”, page 13.

³² Appendix “X”, page 14.

³³ Appendix “X”, page 14.

³⁴ Appendix “O”.

counsel had filed a Motion for Extension of Time to File Brief³⁵ on behalf of the petitioner. On February 13th, 2015 Judge Tylwalk issued an Order³⁶ granting the petitioners Motion for Extension of Time to File Brief. On February 27th, 2015 the petitioner's appellate counsel had filed a Memorandum of Law Supporting Defendant's Post-Sentence Motion³⁷ on behalf on the petitioner. On March 5th, 2015 the District Attorney filed the Commonwealth's Brief in Opposition to Defendant's Post-Sentence Motion³⁸. On March 16th, 2015 Judge Tylwalk issued an Order and Opinion³⁹ denying the petitioners post-sentence motion. On April 14th, 2015 the petitioners appellate counsel had filed a Notice of Appeal⁴⁰ to the Superior Court of Pennsylvania (hereinafter "Superior Court") on behalf of the petitioner along with a Motion to Proceed *In Forma Pauperis*⁴¹. On April 15th Judge Tylwalk issued an Order⁴² granting the petitioners Motion to Proceed *In Forma Pauperis* and issued a Concise Statement Order⁴³. On May 5th, 2015 the petitioner's appellate counsel had filed a Concise Statement of Errors Complained on Appeal⁴⁴ on behalf of the petitioner.

On June 5th, 2015 Judge Tylwalk issued an Order⁴⁵ directing file to be sent to the Superior Court. On June 10th, 2015 the Lebanon Clerk had entered and filed the Acknowledgement of

³⁵ Appendix "X", page 14.

³⁶ Appendix "X", page 14.

³⁷ Appendix "X", page 14.

³⁸ Appendix "X", page 14.

³⁹ Appendix "A".

⁴⁰ Appendix "X", page 15.

⁴¹ Appendix "X", page 15.

⁴² Appendix "X", page 16.

⁴³ Appendix "X", page 16.

⁴⁴ Appendix "X", page 16.

⁴⁵ Appendix "X", page 16.

Record/Record Received⁴⁶ by the Superior Court. On July 16th, 2015 the petitioner's appellate counsel filed the Appellant's Brief⁴⁷ to the Superior Court on behalf of the petitioner. On August 24th, 2015 the District Attorney filed an Application for Extension of Time to File Appellee Brief⁴⁸ on behalf of the Commonwealth of Pennsylvania. On August 25th, 2015 the Superior Court issued an Order⁴⁹ granting the Application for Extension of Time to File Appellee Brief that was filed by the District Attorney on behalf of the Commonwealth of Pennsylvania. On September 16th, 2015 the District Attorney filed the Appellee's Brief⁵⁰ to the Superior Court on behalf of the Commonwealth of Pennsylvania.

On January 15th, 2016 the Superior Court issued an Opinion⁵¹ that deemed the petitioners appeal a "legal nullity" and quashed the petitioners appeal without prejudice to petitioner to seek post-conviction relief. Within the Superior Court Opinion the Court stated that their review of the record revealed that petitioners trial counsel represented petitioner at trial, trial counsel had not sought to withdraw her appearance, and was still representing appellant. Furthermore, the Superior Court stated in their Opinion that the imperative was on petitioner's trial counsel to file a timely post-sentence motion and because the petitioner was still represented by counsel his post-sentence motion was a legal nullity. The Superior Court further stated that petitioner had failed to preserve his right to appellate review by filing a timely post-sentence motion and/or a timely notice of appeal.

On February 26th, 2016 the Lebanon Clerk had entered and filed the Superior Court Opinion and

⁴⁶ Appendix "X", page 17.

⁴⁷ Appendix "Y", page 3.

⁴⁸ Appendix "Y", page 3.

⁴⁹ Appendix "Y", page 3.

⁵⁰ Appendix "Y", page 3.

⁵¹ Appendix "B".

Certificate of Remittal/Remand of Record⁵² that was filed by the Superior Court. On March 15th, 2016 the Lebanon Clerk entered and filed the petitioners Motion for Ineffectual Counsel⁵³, Motion Nunc Pro Tunc⁵⁴, Motion to Revoke Guilty Plea⁵⁵, and Motion Challenging Validity of Guilty Plea⁵⁶. On March 16th, 2016 the Lebanon Clerk entered and filed the petitioners Motion for Oral Argument of PCRA Appeal⁵⁷, Motion for Counsel⁵⁸, and Motion for Post-Conviction Collateral Relief⁵⁹. The petitioners Motion for Ineffectual Counsel Order⁶⁰, Motion for Nunc Pro Tunc Order⁶¹, Motion to Revoke Guilty Plea Order⁶², Motion Challenging Validity of Guilty Plea Order⁶³, and Motion for Oral Argument of PCRA Appeal Order⁶⁴ went unsigned.

On March 17th, 2016 Judge Tylwalk issued an Order⁶⁵ granting the petitioner counsel and appointed Attorney Melissa R. Montgomery (hereinafter "PCRA counsel") as petitioner's post-conviction relief counsel. Also, On March 17th, 2016 Judge Tylwalk issued an Order⁶⁶ granting the petitioners Motion to Proceed *In Forma Pauperis*. On April 18th, 2016 the District Attorney filed the

⁵² Appendix "X", page 20.

⁵³ Appendix "X", page 21.

⁵⁴ Appendix "X", page 21.

⁵⁵ Appendix "X", page 22.

⁵⁶ Appendix "X", page 22.

⁵⁷ Appendix "X", page 22.

⁵⁸ Appendix "X", page 23.

⁵⁹ Appendix "X", page 23.

⁶⁰ Appendix "X", page 21.

⁶¹ Appendix "X", page 21.

⁶² Appendix "X", page 22.

⁶³ Appendix "X", page 22.

⁶⁴ Appendix "X", page 23.

⁶⁵ Appendix "X", page 23.

⁶⁶ Appendix "X", page 24.

Commonwealth's Response to PCRA⁶⁷. On May 9th, 2016 PCRA counsel filed an amended Petition for Post-Conviction Collateral Relief⁶⁸ on behalf of the petitioner. On May 18th, 2016 Judge Tylwalk issued an Order⁶⁹ scheduling a hearing⁷⁰ on the petitioners Petition for Post-Conviction Collateral Relief. On August 15th, 2016 a hearing was held before Judge Tylwalk on the petitioners Petition for Post-Conviction Collateral Relief. On September 6th, 2016 the Court stenographer, Debra Valentin, filed the Transcript of Proceeding⁷¹ for the PCRA hearing held on August 15th, 2016. On August 30th, 2016 the District Attorney had sent an ex parte communication⁷² to Judge Tylwalk expressing the eligibility of the petitioner for Post-Conviction Relief, pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i). The District Attorney's ex parte communication was entered and filed by the Lebanon Clerk as a case correspondence⁷³. On September 28th, 2016 Judge Tylwalk sent a letter⁷⁴ to the petitioner in regard to the District Attorney's case correspondence. Within this letter Judge Tylwalk stated that he has taken no action on the basis of the case correspondence and assumes that the District Attorney and PCRA counsel would be addressing the issue the District Attorney has raised in their briefs. On February 7th, 2017 Judge Tylwalk had issued an Order and Opinion⁷⁵ denying petitioners PCRA Petition solely on the issue raised by the District Attorney in the case correspondence without ever ruling on the merits of petitioners Constitutional claims. Judge

⁶⁷ Appendix "X", page 26.

⁶⁸ Appendix "X", page 26.

⁶⁹ Appendix "P".

⁷⁰ Appendix "X", page 29.

⁷¹ Appendix "W".

⁷² Appendix "Q".

⁷³ Appendix "X", page 29.

⁷⁴ Appendix "R".

⁷⁵ Appendix "C".

Tylwalk denied the petitioners PCRA petition by deeming the petitioner to be ineligible for relief pursuant to 42 Pa.C.S.A. §9543(a)(1)(i).

On February 7th, 2017 PCRA counsel filed the Notice of Appeal to the Superior Court from the Order and Opinion issued by Judge Tylwalk denying the petitioners PCRA Petition solely on eligibility of relief pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i) and never ruling on the merits of the petitioners Constitutional claims. On or About March 8th, 2017 PCRA counsel filed the Concise Statement of Errors Complained of on Appeal to the Superior Court on behalf of the petitioner. On April 7th, 2017 Judge Tylwalk issued an Order⁷⁶ directing Lebanon Clerk to file his Order and Opinion and entire file to the Superior Court. On June 15th, 2017 PCRA counsel filed the Brief of the Appellant⁷⁷ on behalf of the petitioner. On or about July 20th, 2017 the District Attorney filed the Brief of Commonwealth⁷⁸ on behalf of the Commonwealth of Pennsylvania. On October 11th, 2017 the Superior Court issued an Opinion⁷⁹ affirming the February 8th, 2017 Order and Opinion issued by Judge Tylwalk dismissing petitioner's petition filed pursuant to the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§9541-9546 without ruling on the merits of petitioners Constitutional claims. The Superior Court of Pennsylvania stated in their Opinion that the Superior Court previously determined that petitioner's direct appeal was not timely filed and in November 2014 his judgment of sentence became final thirty (30) days after he was sentenced. Furthermore, the Superior Court stated that petitioners March 2016 PCRA was untimely filed, pursuant to 42 Pa.C.S.A. §9545 (b) and (c). The January 15th, 2016 Opinion by the Superior Court righteously granted the petitioner the opportunity to

⁷⁶ Appendix "D".

⁷⁷ Appendix "S".

⁷⁸ Appendix "T".

⁷⁹ Appendix "E".

seek post-conviction relief without prejudice and that Opinion was filed about one (1) year and two (2) months after the Superior Courts determination in their Opinion of October 11th, 2017 that petitioner's sentence became final in November 2014. The Superior Court Opinion of October 11th, 2017 is in contradiction to the Superior Court Opinion dated January 15th, 2016 that quashed petitioner's direct appeal "without prejudice to Appellant to seek post-conviction relief".

On or about November 9th, 2017 PCRA counsel filed a Petition for Allowance of Appeal⁸⁰ to the Supreme Court of Pennsylvania on behalf of the petitioner. On April 10th, 2018 the Supreme Court of Pennsylvania issued an Order⁸¹ denying the petitioners Petition for Allowance of Appeal.

We are now before this most Honorable Court.

⁸⁰ Appendix "U".

⁸¹ Appendix "F".

REASONS FOR GRANTING THE PETITION

In order to understand the extraordinary circumstances and Constitutional Right violations that pertain to the petitioner's case you must first look at the totality of circumstances throughout the entirety of the petitioner's case.

On or about March 23rd, 2014 the petitioner was charged with the following: one (1) count Burglary - Overnight Accommodation, Person Present; two (2) counts Simple Assault; one (1) count Recklessly Endangering Another Person; one (1) count Criminal Mischief - Tampering with Property; and two (2) counts Harassment - Subject Other to Physical Contact. On July 6th, 2014 the petitioner's trial counsel sent him a letter stating that the District Attorney's Office of Lebanon County proposed to amend count one (1) count Burglary - Overnight Accommodation, Person Present to one (1) count Criminal Trespass - Break Into Structure and that the proposed plea offer was only available until July 24th, 2014. The petitioner declined to accept this proposed plea offer and continue to proceed to trial. On October 6th, 2014 the petitioner along with his counsel had selected a jury for trial that was set to commence on the morning of October 7th, 2014. On the morning of October 7th, 2014 the petitioner had entered into a Non-Negotiated Guilty Plea¹. This Non-Negotiated Guilty Plea was identical to the

¹Appendix "T".

proposed plea offer stated in the trial counsels letter² dated July 6th, 2014 that the petitioner previously declined to accept. The petitioner was sentenced immediately after entering into the Non-Negotiated Guilty Plea and completed a written post-sentence colloquy along with trial counsel. This post-sentence colloquy³ states in relevant part:

“8. You have the right to assistance of counsel in the preparation of a post-sentence motion or appeal. If you are indigent, you have the right to proceed without payment of costs and with counsel appointed to represent you without charge. If you are now represented by the Public Defender’s Office and continue to qualify for their services that office will continue to represent you without cost.”³

On October 20th, 2014 the Lebanon Clerk entered and filed a case correspondence filed by the petitioner, that Judge Tylwalk deemed a timely filed post-sentence motion, stated in relevant parts:

“My name is Tyler T. Heagy...I had plead guilty and was sentenced on October 7th, 2014...I would like to revoke my guilty plea to not guilty...I only have a certain number of days to appeal my plea. I do not know how to go about my appeal...I don’t know if this will count as a start to the appeal process but I hope it does.

I am appealing or revoking my guilty plea. I was

² Appendix “H”.

³ Appendix “K”, page 2.

ready to go to trial for months...I had picked my jury Monday, October 6th, 2014...I had a brief meeting with my PD, Liz Judd...I told her I wanted to go on with trial...She then began to tell me I'll never see my children again if I don't take the Criminal Trespass as my plea...This all happened so fast with her hammering this into me and not having a reasonable time to think through everything clearly. I have mail stating I lived at the address...Which is said to be the address I Burglarized or Criminal Trespassed on.”⁴

On October 23rd, 2014 the Lebanon Clerk entered and filed the petitioners Motion Challenging the Validity of Guilty Plea⁵, pursuant to Pennsylvania Rule of Criminal Procedure 576. The petitioner received a letter⁶ dated November 3rd, 2014 from trial counsel that stated:

“I have received copies of both of your recent filings. Given your baseless allegations, I can no longer assist you in your legal matter. I would suggest that your best approach would be to file a Post-Conviction Relief Petition (PCRA). This will allow you to litigate my ineffectiveness. For your convenience, I have enclosed a blank copy. Thank you for your attention to this matter and I wish you the best.”

By trial counsel admitting she received both of the petitioners recent filings she was well aware that

⁴ Appendix “L”, page 1.

⁵ Appendix “X”, page 11.

⁶ Appendix “M”.

petitioner's wishes were to appeal his conviction. Instead, trial counsel ceased all active representation of petitioner and abandoned the petitioner during the thirty (30) day appeal period.

The petitioner attempted to file a Petition for Post-Conviction Relief as trial counsel had advised and Judge Tylwalk issued an Order⁷ on December 5th, 2014 that stated:

"AND NOW, this 5th day of December, 2014, upon careful consideration of Defendant's Petition for Post-Conviction Relief, it appears to the Court, this Petition is premature. Accordingly, the Petition is dismissed without prejudice to be filed at a later date, once Post-Sentence Motions have been decided."

Trial counsel was still not actively representing the petitioner in his case after the denial of his Petition for Post-Conviction Relief on December 5th, 2014. On January 16th, 2015 the Petitioner attempted to file another Petition for Post-Conviction Relief along with a Motion for Counsel and a Petition for Allowance of Appeal Nunc Pro Tunc. On January 22nd, 2015 Judge Tylwalk issued an Order⁸ denying the petitioners Petition for Allowance of Appeal Nunc Pro Tunc. Judge Tylwalk also issued an Order⁹ on January 22nd, 2015 that stated:

"AND NOW, this 22nd day of January, 2015, upon

⁷ Appendix "N".

⁸ Appendix "X", page 14.

⁹ Appendix "O".

careful consideration of Defendant's Petition for Post-Conviction Relief, it appears to the Court, this Petition is premature. Accordingly, the Petition is dismissed without prejudice to be filed at a later date, once Post-Sentence Motions have been decided."

Also, on January 22nd, 2015 Judge Tylwalk issued an Order¹⁰ granting the petitioner counsel and appointing him new appellate counsel. The petitioners newly appointed appellate counsel file a Memorandum of Law Supporting Defendants Post-Sentence Motion¹¹ on behalf of the petitioner. On March 16th, 2015 Judge Tylwalk issued an Order and Opinion¹² denying the petitioners post-sentence motion. Within this Opinion Judge Tylwalk deemed the petitioners communication¹³ dated October 20th, 2014 a timely filed post-sentence motion pursuant to the prisoner mailbox rule and stated in relevant part:

"Although, the record does not contain any documentation of the date when he delivered his Post-Sentence Motion to LCCF officials for filing, we believe that the short time frame between the date indicated on the letter and the actual filing on October 20th, 2014 supports his assertion that it was given to LCCF officials by the October 17th, 2014 deadline. Thus, we will deem Defendant's Post-Sentence Motion timely."¹⁴

¹⁰ Appendix "X", page 13.

¹¹ Appendix "X", page 14.

¹² Appendix "A".

¹³ Appendix "L".

¹⁴ Appendix "A", page 5.

The petitioner's appellate counsel filed a Notice of Appeal and a Concise Statement of Errors Complained on Appeal on behalf of the petitioner. On January 15th, 2016 the Superior Court never ruled on the merits of the petitioners claims and issued an Opinion¹⁵ that states in relevant parts:

"Appellant asserts, and the trial court agreed, that his post-sentence motion was timely filed pursuant to the prisoner mailbox rule. See Response to Motion to Show Cause, 5/26/15; Trial Court Opinion, 3/16/15 at 4-5. We disagree."¹⁶

"Our review of the record reveals that Elizabeth Judd, Esquire, represented Appellant at trial. At the time Appellant filed his *pro se* post-sentence motion, counsel had not sought to withdraw her appearance, and was thus still representing Appellant."¹⁷

"Thus, the imperative was on Appellant's counsel to file a timely post-sentence motion, and because Appellant was still represented by counsel at the time he filed his *pro se* post-sentence motion, that *pro se* filing constituted a legal nullity."¹⁸

"Based on the foregoing, Appellant has failed to preserve his right to appellate review by filing a timely post-sentence motion and/or appeal. We therefore quash the appeal. Our quashal is without

¹⁵ Appendix "B".

¹⁶ Appendix "B", page 3.

¹⁷ Appendix "B", page 4.

¹⁸ Appendix "B", page 4.

prejudice to Appellant to seek post-conviction relief.”¹⁹

The Superior Court stated that the petitioner failed to preserve his right to appellate review by not filing a timely post-sentence motion and/or appeal. The Superior Court also stated that the imperative was on the petitioner’s trial counsel to file a timely post-sentence motion. In trial counsels letter²⁰ dated November 3rd, 2014 she stated that she had received petitioner’s communication²¹ which made her aware that petitioner wished to appeal his conviction. Trial counsel ceased all active representation of petitioner and effectively abandoned him during the thirty (30) day appeal period. Furthermore, trial counsel failed to follow Pennsylvania Rule of Criminal Procedure 122 that states in relevant parts:

“(B) When counsel is appointed,

(2) The appointed counsel shall be effective until final judgment, including any proceedings upon direct appeal.”

The Superior Court also stated that their review of record reveals that trial counsel had not sought to withdraw her appearance and was still representing petitioner. Furthermore, trial counsel failed to follow

¹⁹ Appendix “B”, page 5.

²⁰ Appendix “M”.

²¹ Appendix “L”.

Pennsylvania Rule of Criminal Procedure 120 that states in relevant parts:

“(B) Withdrawal of Appearance.

(1) Counsel for the defendant may not withdraw his or her appearance except by leave of Court.

(2) A motion to withdraw shall be:

(a) Filed with the Clerk of Courts, and a copy concurrently served to the attorney for the commonwealth and the defendant; or

(b) Made orally on the record in open court in the presence of the defendant.”

When the petitioner filed post-sentence motion and/or appeal he was prejudiced by his trial counsel's clear ineffectiveness for her improper conduct for failing to file a timely post-sentence motion and/or appeal, ceasing all active representation of petitioner and failed to withdraw her appearance. Where there is an unjustified failure to file a requested direct appeal, the conduct of counsel falls beneath the range of competence demanded of attorneys in criminal cases, denies the accused the assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution and Pennsylvania Constitution, Article 1, §9, as well as the right to direct appeal under Pennsylvania Constitution, Article V, §9. *Commonwealth v. Liebel*, 573 Pa. 375 (2002). The petitioners counsel was aware that the petitioner wanted to appeal his conviction and did not act as an advocate to preserve his guaranteed right to appellate review.

To determine whether a defendant has been denied effective assistance of counsel, the

Pennsylvania Supreme Court adopted the test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). See *Commonwealth v. Pierce*, 527 A.2d 973, at 976-977 (1987): Defendant must show that counsel's performance was deficient (ineffective), and that the deficient (ineffective) performance prejudiced the defendant.

"Prejudice...has been defined to mean that Appellant must establish that but for the arguably ineffective act or omission there is a reasonable probability that the result would have been different."

Commonwealth v. Crawley, 544 Pa. 408, 414, 663 A.2d 676, 679 (1995). See also *Commonwealth v. Jermyn*, 533 Pa. 194, 198, 620 A.2d 1128, 1130 (1993) (in order to establish prejudice, appellant must demonstrate that counsel's improper course of conduct "had an adverse effect upon the outcome of the proceedings.").

Trial counsel's actions amount to the petitioner not having his guaranteed Constitutional Right to Assistance of counsel and left the petitioner uncounseled during the thirty (30) day appeal period. The improper course of conduct of trial counsel denied the petitioner his Right to have the Assistance of Counsel that is protected by the Sixth Amendment to the United States Constitution that provides in relevant parts:

"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense."

Trial counsel's improper course of conduct also denied the petitioner his Absolute Right to Appeal that is protected by Article V, §9 of the Pennsylvania Constitution that provides:

“There shall be a Right to Appeal in all cases to a Court of record from a Court not of record; There shall also be a Right of Appeal from a Court of record or from an administrative agency to a Court of record or to an appellate court, the selection of such Court to be provided by law; There shall be such other Rights of Appeal as may be provided by law.”

The unethical and improper course of conduct of trial counsel by ceasing all active representation and effectively abandoning the petitioner without seeking to withdraw her appearance had an adverse effect on the petitioner’s case and was the direct cause of the petitioner’s post-sentence motion and/or appeal being quashed as being deemed a “legal nullity”. If not for trial counsels unethical and improper course of conduct that prejudiced the petitioner, his post-sentence motion and/or appeal would not have been deemed a “legal nullity”. If the petitioner’s post-sentence motion and/or appeal had not been deemed a legal nullity, the petitioner would not be in the situation he is currently in to vindicate his Constitutional claims and the outcome would have been adversely different.

On March 15th, 2016 the Petitioner filed a Motion Nunc Pro Tunc in an attempt to have his appellate Rights reinstated but the Order²² went unsigned. On March 16th, 2016 the petitioner filed a Motion for Counsel and a Motion for Post-Conviction Collateral Relief. On May 18th, 2016 Judge Tylwalk issued an Order²³ scheduling a PCRA hearing on petitioners Petition for Post-Conviction Collateral Relief. On

²² Appendix “X”, page 21.

²³ Appendix “P”.

August 15th, 2016 a hearing was held on petitioners Petition for Post-Conviction Collateral Relief. At the PCRA hearing, trial counsel admitted to sending the petitioner a letter²⁴ dated November 3rd, 2014 and that it was within the thirty (30) day appeal period. Trial counsel also admitted to not asking the Courts permission to withdraw her appearance. At the PCRA hearing trial counsel testified to the following:

“Q: You would agree with me that he was sentenced on October 7th, 2014. So his 30 days would have been up around November 7th of 2014 for the appeal?

A: I will trust your calculation. I know it is 30 days.

Q: Sometime around that time period.

A: Yes.

Q: You would agree with me though on Exhibit No. 1 -- did you have the opportunity to see Exhibit No. 1?

A. I did see it, Yes.

Q: You wrote him a letter on November 3rd, 2014, prior to that appeal period ending, stating that you were no longer assisting him in his legal matters; is that correct?

A: I did, yes.

Q: Now, at no point in time prior to this November 3rd letter did you ask the Court to withdraw your appearance; is that correct?

A: No, I didn't.

²⁴ Appendix “M”.

Q: In that letter you stated that you received copies of both of his recent filings. Do you know what was filed?

A: I'm not sure which filing that was addressing and, of course, my letter doesn't state that.

Q: You would agree with me as of November 3rd you were, for kind of a lack of better words, wiping your hands and sending Mr. Heagy on his way?

A: I think that I would categorize the letter as saying if you have an ineffectiveness claim you should file a PCRA Petition, which is what the letter says.

Q: But again, you don't know what you were talking about when you said you received copies of both of your recent filings. That could have been his post sentence motions; is that correct?

A: I guess it could have, but I would imagine then I would have potentially filed something based on my letter saying you should file a PCRA petition, which is when you are claiming counsel is ineffective.

Q: Would you agree with me that Mr. Heagy filed post sentence motions on October 20th, 2014?

A: I do not have a Copy of them or the docket. If that is what the docket says, I'll trust it."²⁵

Trial counsels testimony given at the PCRA hearing proves, in her own words, that her improper course of conduct was unethical and a direct infringement upon the petitioners Sixth Amendment Rights to the United States Constitution. Trial counsels testimony also proves that she ceased all representation of the petitioner and effectively

²⁵ Appendix "W", page 64-66.

abandoned him during the thirty (30) day appeal period and in fact did not ask the Court to withdraw her appearance. Furthermore, trial counsels testimony proves that her unethical and improper course of conduct was the proximate cause that prejudiced the petitioner by causing his post-sentence motion and/or appeal to be deemed a “legal nullity”. The fault for not filing a timely post-sentence motion and or appeal falls on trial counsel. The trial counsel’s improper course of conduct failed to preserve the petitioners right to post-sentence motion and/or appeal by not timely filing the petitioner’s post-sentence motion and/or appeal and the petitioner should not be faulted for trial counsel’s clear ineffectiveness.

The District Attorney had sent a communication²⁶ to Judge Tylwalk expressing petitioners eligibility for Post-Conviction Relief pursuant to 42 Pa.C.S.A §9543 (a)(1)(i). On February 7th, 2017 Judge Tylwalk issued an Order and Opinion denying the petitioners PCRA Petition solely on the eligibility of the petitioner for Post-Conviction Relief, pursuant to 42 Pa.C.S.A §9543 (a)(1)(i) and Judge Tylwalk’s Opinion²⁷ states in relevant parts:

“In order to be eligible for PCRA relief, petitioner must be currently serving a sentence of imprisonment, probation, or parole for the crime of which he has been convicted at the time relief is granted. 42 Pa.C.S.A §9543 (a)(1)(i).”²⁸

“Here, Defendant is not currently incarcerated or

²⁶ Appendix “Q”

²⁷ Appendix “C”

²⁸ Appendix “C”, page 3.

on probation or parole for the crimes involved in this action due to the expiration of his maximum sentence shortly after his PCRA Hearing. Therefore, he has no entitlement to any relief provided by the PCRA and we will deny his Petition on that Basis.”²⁹

PCRA counsel filed a Notice of Appeal to the Superior Court on February 7th, 2017. On April 7th, 2017 Judge Tylwalk issued an Order and Opinion directing the Lebanon Clerk to file the entire file to the Superior Court. Within Judge Tylwalks Opinion³⁰ states in relevant parts:

“Due to the fact that Defendant’s maximum sentence expired during the pendency of his PCRA proceeding, we were constrained to deny his Petition without addressing these various contentions.”³¹

The petitioners PCRA Petition was denied solely on eligibility for post-conviction relief, pursuant to 42 Pa.C.S.A §9543 (a)(1)(i) and the merits of his claims were never ruled upon.

On June 15th, 2017 PCRA counsel filed the Brief of the Appellant on behalf of the petitioner. On October 11th, 2017 the Superior Court issued an Opinion affirming the February 7th, 2017 Order and Opinion issued by Judge Tylwalk. Within the Superior Court Opinion³² it states in relevant parts:

“Appellant’s direct appeal was quashed by this

²⁹ Appendix “C”, page 3.

³⁰ Appendix “D”.

³¹ Appendix “D”, page 1.

³² Appendix “B”.

Court due to his failure to file “a timely post-sentence motion and/or a timely notice of appeal.”³³

“42 Pa.C.S. §9545(b) and (c).

[I]n circumstances in which no timely direct appeal is filed relative to a judgment of sentence, and direct review is therefore unavailable, the one-year period allowed for the filing of a post-conviction petition commences upon the actual expiration of the time period allowed for seeking direct review, as specified in the PCRA.”³⁴

“because this Court previously determined that Appellant’s direct appeal was not timely filed, his judgment of sentence became final thirty days after he was sentenced, in November 2014. Therefore, he had until November of 2015 to file a timely PCRA petition. Thus, his March 2016 PCRA petition was untimely filed.”³⁵

“Accordingly, because the PCRA court determined that Appellant is no longer serving a sentence...we conclude that despite any jurisdictional issues that may be present, Appellant is still ineligible for relief. Thus, in light of the foregoing, we affirm the order of the PCRA court denying Appellant’s petition.”³⁶

The Superior Court previously determined that petitioner’s direct appeal was not timely filed and in November 2014 his judgment of sentence became final thirty (30) days after he was sentenced. The

³³ Appendix “E”, page 1.

³⁴ Appendix “E”, page 2-3.

³⁵ Appendix “E”, page 3.

³⁶ Appendix “E”, page 5.

Superior Court also stated that petitioners March 2016 PCRA was untimely filed pursuant to 42 Pa.C.S. §9545(b) and (c). In the January 15th, 2016 Opinion was issued about two (2) months after the one year time limitation for filing a PCRA. The Superior Court Opinion of October 11th, 2017 is in clear contradiction to their Opinion of January 15th, 2016 that quashed the petitioners appeal “without prejudice to Appellant to seek post-conviction relief” (emphasis added).

The Supreme Court of Pennsylvania has contemplated that, under some circumstances, the filing restrictions of the Pennsylvania Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §9541 et seq., may be unconstitutional as applied to a particular defendant, where such application of the PCRA results in a violation of that defendant’s constitutional rights. *Commonwealth v. Bennett*, 2004 PA Super 25, 842 A.2d 953, 2004 Pa.Super. LEXIS 70 (Pa. Super. Ct. 2004). The Pennsylvania Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §9541 et seq., provides the exclusive vehicle for obtaining collateral relief on claims which are cognizable under the PCRA, including claims for nunc pro tunc reinstatement of appellate rights. *Commonwealth v. Bennett*, 2004 PA Super 25, 842 A.2d 953, 2004 Pa. Super. LEXIS 70 (Pa. Super. Ct. 2004).

The Fifth Amendment to the United States Constitution provides in relevant parts:

No person shall...be deprived of life, liberty, or property, without due process of law...”

Similarly, Article I, §11 of the Pennsylvania Constitution provides:

“All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.”

The Fourteenth Amendment, Section 1 to the United States Constitution provides:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall and State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”

The 42 Pa.C.S. §9543 (a)(1)(i) is unconstitutional as applied to the petitioners case by depriving the petitioner of his Right to fair due process of law and preventing him from obtaining any vindication of his meritorious Constitutional claims. The petitioner has proven that trial counsels unethical and improper course of conduct is the direct cause of his post-sentence motions and/or appeal being deemed a “legal nullity”. The Pennsylvania Post-Conviction Relief Act (PCRA) provided the exclusive vehicle for obtaining collateral relief on claims which are cognizable under the PCRA, including claims for nunc pro tunc reinstatement of appellate rights. The Superior Court quashed the petitioners appeal “without prejudice” (emphasis added) to petitioner to seek post-conviction relief. The petitioner was granted a PCRA hearing and a hearing was held on August 15th, 2016. Judge Tylwalk denied petitioners

Petition for Post-Conviction Relief, pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i) without ruling on the merits of the petitioners Constitutional claims. The petitioner then appealed the denial of his Petitioner for Post-Conviction Relief to the Superior Court. The Superior Court affirmed Judge Tylwalks denial of the petitioners Petition for Post-Conviction Relief, pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i) without ruling on the merits of the petitioners Constitutional claims. The petitioner then filed a Petition for Allowance of Appeal to the Superior Courts affirmation of Judge Tylwalks denial of the petitioners Petition for Post-Conviction Relief, pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i) to the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania denied the petitioners Petition for Allowance of Appeal.

The petitioner has shown diligence in all of his attempts to have the merits of his Constitutional claims vindicated and the record reflects his diligence throughout the entirety of his case. The petitioner was denied his Constitutional Right to fair due process of law when at no time did any Court rule on the merits of his Constitutional Claims. Under the extraordinary circumstances of the petitioner's case the petitioner is being prejudiced by both the eligibility for Post-Conviction Relief, pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i) and the filing restrictions of the Pennsylvania Post-Sentence Relief Act (PCRA), 42 Pa.C.S.A. §9541 et seq. The petitioners Constitutional Right to have the Assistance of Counsel and absolute Right to Appeal have been thwarted by the eligibility for relief, pursuant to 42 Pa.C.S.A. §9543 (a)(1)(i) and the filing

restrictions of the Pennsylvania Post-Sentence Relief Act (PCRA), 42 Pa.C.S.A. §9541 et seq.

These manifest injustices in the petitioner's case become one of Constitutional magnitude. The Supreme Court alone possesses jurisdiction derived immediately from Constitution, and of which legislative power cannot deprive it. *Stevenson v. Fain* (1904) 195 U.S. 165, 49 L. Ed. 142, 25 S. Ct. 6. The jurisdiction of Supreme Court extends to right protected by Constitution, treaties or laws of United States, from whatever source these rights may spring. *New Orleans v. De Armas* (1835) 34 U.S. 224, 9 Pet 224, 9 L. Ed. 109. The Supreme Court had jurisdiction for final interpretation of Constitution in all states. *Dodge v. Woolsey* (1855) 59 U.S. 331, 18 How 331, 15 L. Ed. 401, 4 AFTR 4528.

The manifest injustices in the petitioner's case are unconstitutional and a statute cannot and should not be allowed to deprive anyone of any of their Constitutional Rights. The petitioner's case is an extraordinary circumstance and he is being denied Constitutional Rights to no fault of his own. In the interest of fairness and justice for all, this most Honorable Court must intervene in the petitioner's case and stop the injustices that are statutorily depriving citizens of their Constitutional Rights. Exercise of jurisdiction by Supreme Court to protect Constitutional Rights cannot be declined when it is plain that fair result of decision is to dent rights. *Rogers v. Alabama* (1904) 192 U.S. 226, 48 L. Ed. 417, 24 S. Ct. 257.

When anyone looks at the totality of circumstances throughout the entirety of the petitioners case and understands the extraordinary circumstances surrounding the petitioners case, they

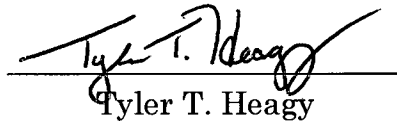
can clearly and plainly establish that the petitioners Constitutional Rights have been violated and to no fault of his own. This most Honorable Court has the final jurisdiction in the petitioner's case and can cure any unconstitutional provisions of 42 Pa.C.S.A. §9541 et seq. that denies applicants any remedy for infringements upon their Constitutional Rights or case in general.

If this most Honorable Court chooses not to grant the petitioners Petition for Writ of Certiorari, this most Honorable Court will be allowing a state to enact and enforce state laws or statutes that allow Constitutional Rights violations against defendants to stand without fair due process of law and without remedy for any infringements upon their Constitutional Rights.

CONCLUSION

The petitioner's case is one of extraordinary circumstances and presents a national importance protecting citizens Constitutional Rights. The petitioner's case shocks one's conscience when a citizen's Constitutional Rights have been infringed upon and a remedy to cure that infringement is denied solely on statutory provision. Based upon the within cited case law, references to the official transcript, and the argument presented herein, Petitioner respectfully requests that this most Honorable Court grant Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,



Tyler T. Heagy

July 8th, 2018