NO. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

JOSEPH WILLIAM ATWELL -- PETITIONER

vs.

SUPERINTENDENT GRATERFORD SCI, ET AL -- RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOSEPH WILLIAM ATWELL, #HM6746

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE STATE DEPRIVED PETITIONER OF HIS GUARANTEED RIGHT TO A FAIR TRIAL WHEN IT PERMITTED THE PROSECUTION INTO INTRODUCE TO THE TRIAL JURY A BUNCH OF GUNS, DRUGS, DRUG PARAPHERNALIA, AND A WHITE RESISTANCE/ANARCHIST MANUAL ("WRAM") FOUND AT PETITIONER'S HOME, IN LIGHT OF THE MATERIAL FACT THAT THESE EXTREMELY PREJUDICIAL ITEMS WERE UNRELATED TO THE CASE, HAD NO RELEVANCE TO THIS CASE AND WAS SIMPLY INTRODUCED FOR THE SPECIFIC PURPOSE OF STRIPPING PETITIONER OF HIS "ACTUAL INNOCENCE" INFLAMING THE JURY WHILE CASTING PETITIONER AS A BAD PERSON, WITH VIEWS THAT MANY OF THE JURORS MAY HAVE FOUND TO BE OFFENSIVE AND NOT SHARED BY THE MASSES; THEREFORE ENTITLING PETITIONER TO HABEAS RELIEF, THE GRANTING OF A NEW TRIAL AND/OR REMANDING THIS MATTER TO THE DISTRICT COURT FOR AN EVIDENTIARY HEARING IN ACCORDANCE WITH TOWNSEND, MARTINEZ, STRICKLAND, McMANN AND THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION?

II. WHETHER PETITIONER MET HIS BURDEN OF ESTABLISHING A PRIMA FACIE CASE THAT HE WAS DEPRIVED OF HIS GUARANTEED RIGHT TO "THE EFFECTIVE ASSISTANCE OF COUNSEL" WHEN COUNSEL FAILED TO ADVISE PETITIONER THAT HIS REJECTION OF THE 15-30 YEARS IMPRISONMENT PLEA OFFER COULD RESULT IN A MORE SEVERE PUNISHMENT, IF FOUND GUILTY, THUS, VIOLATING LAFLER, FRYE, MARTINEZ, STRICKLAND, McMANN AND THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION ENTITLING PETITIONER TO HABEAS RELIEF, THE GRANT OF A NEW TRIAL AND/OR REMAND FORAN EVIDENTIARY HEARING IN ACCORDANCE WITH TOWNSEND AND MARTINEZ, THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITIUTION AND FOR A FAIR AND FULL OPPORTUNITY TO DEVELOP A FACTUAL RECORD TO SUBSTANTIATE HIS CLAIMS?

SUGGESTED ANSWERS: YES.

LIST OF PARTIES

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

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JURISDICTION

The date on which the United States Court of Appeals decided my case was February 9, 2018.

A timely petition for rehearing in banc was denied by the United States Court of Appeals on the following date: and a copy of the order denying rehearing in banc appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

The date on which the highest state Court decided my case was August 12, 2015 (Pennsylvania Supreme Court denial of allocatur) and February 13, 2015 (Superior Court ruling on the merits). A copy of those decisions appear at Appendix C and D.

No petition for rehearing was filed thereafter; nor has an extension of time to file a petition for writ of certiorari been filed and/or granted.

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

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

The pro se Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the United States of Appeals appears at Appendix A (March 8, 2018), B (entered January 4, 2018 filed February 9, 2018) to the petition and is unpublished.

The opinion of the United States District appears at Appendix C (July 11, 2017), D (July 10, 2017) to the petition and is unpublished.

The opinions of the Pennsylvania Supreme Court appear at Appendix E (August 12, 2015), F (February 1, 2012) to the petition and is unpublished.

The opinions of the Pennsylvania Superior Court appear at Appendix G (February 13, 2015), H (September 13, 2011) to the petition and is unpublished.

The opinions of the trial Court appear at Appendix I (March 14, 2014), J (September 30, 2010 filed October 4, 2010).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions of the United States Constitution involved in this particular matter are the guaranteed right to the "effective assistance of counsel" (Amendment VI), the right to procedural and substantive due process and the equal protection of the law clauses of the fourteenth Amendment of the United States Constitution, the right to a fair trial as guaranteed by the due process clause, the right to the Great Writ, the Writ of Habeas Corpus, and the right not to have your life, liberty, property and happiness without being "duly convicted" by a jury of his peers.

STATEMENT OF THE CASE

Petitioner, Joseph William Atwell ("Atwell") and Jesus Rosario Torres ("Torres") were charged with first degree murder, conspiracy to commit murder in the first degree, murder in the second degree, murder in the third degree, kidnapping, and conspiracy to commit kidnapping in the shooting death of Norman "Carolina" Domenech ("Domenech"). Petitioner was also charged with possessing a firearm without a permit, persons not to possess firearms, and possession of instrumentality of a crime. The Commonwealth filed notices of its intention to try Atwell and Torres jointly and seek the death penalty in both cases.

A jury -beginning on April 29, 2010- convicted Atwell and Torres of Murder in the First Degree, Conspiracy to Commit Murder in the First Degree, Kidnapping, and Conspiracy to Commit Kidnapping. Petitioner was also convicted of possessing a firearm without a license, persons not to possess a firearm, and possession of an instrumentality of a crime at the Court of Common Pleas of Pike County, Criminal Division, No. CP-52-CR-0000284-2008.

The penalty phase of trial was conducted over a four day period that resulted in the trial Court imposing a sentence of life imprisonment on Atwell and Torres after the jury was deadlocked, unable to reach an unanimous decision and expressed to the trial Court that further deliberations would be unproductive. Petitioner ("Atwell") also received a total aggregated sentence of "not less than 41 years, nor more than 104 years imprisonment in a SCI" on the remaining charges.

A timely notice of appeal was filed July 22, 2010 and on September 13, 2011 the Pennsylvania Superior Court affirmed the judgment of sentence at Superior Court Docket No. 2078 EDA 2010 and the Pennsylvania Supreme Court denied allocatur at Supreme Court Docket No. 787 MAL 2011 (Pa. 2012) on February 1, 2012.

Petitioner filed a timely first PCRA petition in the trial Court on October 25, 2012. Jacob T. Thielen, Esquire was appointed to represent Petitioner and

filed a timely Amended PCRA petition in Petitioner's behalf. However, on March 14, 2014 the trial Court denied Petitioner's PCRA petitions. Superior Court affirmed the PCRA Court's dismissal on February 13, 2015 at Superior Court Docket No. 960 EDA 2014, and the Supreme Court denied allocatur at 182 MAL 2015 (Pa. 2015) on August 12, 2015.

Petitioner filed a timely first federal habeas corpus petition in the United States District Court for the Middle District of Pennsylvania at JOSEPH WILLIAM ATWELL-v-JAY LANE, ACTING SUPERINTENDENT; PA ATTORNEY GENERAL, C.A. No. 1:15-cv-1583 (M.D.Pa. 2015), Jones, III, John, E., U.S. District Judge, that was denied and dismissed July 10, 2017 without a certificate ofappealability.

Petitioner filed a timely notice of appeal with a "Pro Se Application for Certificate of Appealability" in the United States Court of Appeals for the Third Circuit that was docketed as JOSEPH WILLIAM ATWELL-v-SUPERINTENDENT SCI GRATERFORD, ET AL, NO. 17-2744 (3rd Cir. 2017).

On February 9, 2018 Petitioner's application for a certificate of appealability was denied by the United States Court of Appeals for the Third Circuit.

Petitioner filed a timely "Suggestion for Rehearing in Banc, Pursuant to F.R.A.P. 35 (b)" in the United States Court of Appeals for the Third Circuit.

Petitioner's Suggestion for Rehearing in Banc was denied

and Petitioner files this timely Petition for Writ of Certiorari with the United States Supreme Court on

REASONS FOR GRANTING WRIT

The trial Court permitted the Commonwealth to introduce and to use inflammatory and extremely prejudicial evidence in Petitioner's State trial, thus, depriving Petitioner of his right to a fair trial for the reasons set forth below.

First, the trial Court permitted the Commonwealth to introduce the highly prejudicial evidence of guns and drugs found at Petitioner's home in Northampton County. The guns and drugs found at Petitioner's Northampton home were irrelevant evidence in light of the material fact that the Commonwealth was permitted by the trial Court to introduce the guns and drugs because of the absence of the possible murder weapon from one of the two gun cases confiscated from Petitioner's home. The trial Court gave the following instruction sometime after the introduction of the irrelevant drugs, paraphernalia and guns:

> The Commonwealth has called witnesses and introduced evidence in this case related to certain drugs, paraphernalia and guns that were recovered from the Atwell residence[.] This evidence may have an inflammatory [e]ffect on you. However, I am directing that you must put aside any inflamed emotions or reactions to such evidence, because that evidence can be considered by you in this case only for limited purposes. I'm going to go through that briefly with you now. First, the [drug evidence] was admitted to demonstrate motive or opportunity to commit these crimes together with the basis of the relationship and interaction between the various witnesses that were called in this case, their condition at the time of the alleged incident and therefore, their ability to recall events. In addition, there was evidence of guns that was introduced. The evidence of guns was admitted to demonstrate access to guns, the absence of the .380 caliber pistol from the cutout of the gun case and the Commonwealth's allegation of an attempt to conceal gun evidence as an act in furtherance of the conspiracy. This evidence that I've just described is to be considered by you only for the purposes I've just stated. You must not infer guilt on the underlying charges of this case simply because this evidence was recovered from the home of [Atwell].

Id., N.T. Trial, 5/12/10, at 223-25 (*emphasis added).

Superior Court, on direct appeal, indicated that "this instruction, which the jury is presumed to have followed, [COMMONWEALTH-v-]SMITH, [995 A.2d 1143, 1163

(Pa. 2010)], was sufficient to cure any potential confusion which the earlier instruction may have caused. Id., COMMONWEALTH-v-ATWELL, Superior Court No. 2078 EDA 2010, pp. 8-9 (Pa.Super. Sept. 13, 2011)

Although, Superior Court indicated, "The trial Court clearly delineated the limited purposes for which the jury could consider the gun and drug evidence and specifically directed the panel not to use the evidence as proof of either Defendant's guilt on the underlying charges." Id., ATWELL, p. 8.

The Pennsylvania Supreme Court denied allocatur and passed on determining whether the introduction of irrelevant drugs, paraphernalia and guns into this case deprived Petitioner of his right to a fair trial and due process. (Pro Se Application for Certificate of Appealability, pp. 3-4).

Petitioner relying on this Honorable Court's rulings rendered in LISENBA-v-CALIFORNIA, 314 U.S. 219 (1941) and the District Court's ruling rendered in PETERKIN-v-HORN, 176 F.Supp.2d 342 (E.D.Pa. 2002) argued that the absence of a factual record on this claim and this highly prejudicial, inflammatory evidence required at least an evidentiary hearing under TOWNSEND-v-SAM, 372 U.S. 293, 319 (1963) ("the Court must determine whether an evidentiary hearing is required. [] Where the facts are in dispute, the Federal Court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a State Court, either at the time of the trial or in a collateral proceeding"), in light of the material fact that the introductory of irrelevant drugs, paraphernalia, and guns cannot be ignored by a jury, as if the introductory was never made. In fact, the more the trial Court indicated that the jury could not consider this irrelevant drugs, paraphernalia and drugs, the more it is that the jury considered that irrelevant evidence against the Petitioner. It does not make sense that the trial Court would permit the introductory of this irrelevant, highly prejudicial and inflammatory evidence in a jury trial, just to tell the jury that they could not considered the improperly admitted evidence.

The introductory of the irrelevant, highly prejudicial and inflammatory drugs, paraphernalia and guns weren't sufficient for the Commonwealth and trial Court in its successful attempt to deprive Petitioner of his right to a fair trial and due process. The trial Court, went one step further in accomplishing the objective of depriving Petitioner of a fair trial and due process, and permitted the Commonwealth to introduce the "White Resistance/Anarchist Manual ("WRAM")" into evidence presenting this highly prejudicial, irrelevant and inflammatory manuel -and some of its contents- to the same trial jury where irrelevant, prejudicial and inflammatory drugs, paraphernalia and guns had already been introduced. (The Commonwealth was permitted to introduce 11.2 grams of mushrooms, 24.8 grams of marijuana, .095 grams of methamphetamine, and paraphernalia (N.T. 5/5/10, pp. 106-113); all non-cocaine drug evidence introduced solely to inflame the passions and prejudices of jurors such that a fair trial would be and was denied) The WRAM lacked probative value was highly inflammatory and prejudicial in nature; even Attorney Anders acknowledged that WRAM was a document capable of inflaming the jury's passions and/or prejudices and described as "highly incendiary and prejudicial, likely to affect the jury's impressions of Petitioner.

Petitioner relied on the Third Circuit's ruling rendered in KELLER-v-LARKINS, 89 F.3d 593, 598 (3rd Cir. 2000) in his argument to the Third Circuit for a Certificate of Appealability, since KELLER was almost identical to Petitioner's case and the Commonwealth's persistent pattern of attack upon "the extensive prejudice from the admission of [the irrelevant, highly prejudicial and inflammatory drugs, paraphernalia, guns and WRAM] evidence;" however, the District Court and Third Circuit ruled to the contrary. The District Court found that KELLER consistently referred to his right to a fair trial in terms specific enough to consider [ ]his claim exhausted;" whereas, in this particular case, the District Court found that while the claims were presented to every level of the State Court, the claim was not fairly presented due to the material fact that no federal law, rule, nor

precedent was cited in Petitioner's counseled Appellant Briefs filed in the State Court and the reference to the denial of a fair trial and due process was not sufficient to consider Petitioner's claims fairly presented in the State Court while the Third Circuit never commented on its specific reasons for its denial of this claim.

The WRAM was introduced to portray Petitioner as a white supremacist/anarchist and/or as a domestic terrorist, so that it would inflame the passions and prejudices of jurors and out of emotion and possibly anger return a verdict not based upon evidence presented, but based upon Petitioner being considered as a white supremacist, anarchist and/or domestic terrorist and thus deprive Petitioner of his right to a fair trial.

Petitioner was accused of being involved with selling cocaine. Mushrooms, marijuana metamphetamine and paraphernalia were found in Petitioner's home and introduced in a trial that involved cocaine dealing, not mushroom, marijuana, methamphetamie and/or paraphernalia dealing, but the State Court, District Court and Third Circuit found the introduction of these drugs and paraphernalia -not related to the accusations- permissible, when the constitution (Notification Clause) clearly requires Petitioner to be informed of what conduct of his is being called into question and he is being asked to answer. This fundamental requirement of specific notification is so Petitioner can prepare a defense against the accusation. Notification in this matter indicated Petitioner was being accused of cocaine dealing, not mushroom, marijuana, methamphetamine and paraphernalia dealing and Petitioner's defense was prepared to defend against the specific accusation that he was involved in cocaine dealing, not any of the other drugs and paraphernalia dealing and entered into evidence at trial.

Petitioner was accused of being involved in the shooting death of Norman "Caroline" Domenech, but the problem for the Commonwealth was "there was no murder weapon found in Petitioner's home and/or possession!" However, a number of other guns

were found at Petitioner's home. The Commonwealth was permitted to argue that the missing gun from the two gun cases was the .380 caliber murder weapon/pistol. The problem with this argument is "there is no evidence that establishes that an actual gun was missing from the two gun cases." Petitioner could have simply not acquired a gun to occupy that place in the gun cases. There is no evidence that a .380 caliber pistol was ever missing from the gun case and/or that the alleged missing .380 caliber pistol was actual the murder weapon that caused the death of Norman "Carolina" Domenech. How can the Commonwealth argue to the jury that the alleged missing .380 caliber pistol -allegedly from the two gun cases- was the actual murder weapon, if that .380 caliber pistol is not in the possession of the Commonwealth and no ballistic test has been performed on the .380 caliber pistol to establish that specific .380 caliber pistol was the weapon that caused the death of Norman "Carolina" Domenech?

The State Court, District Court and Third Circuit found that in spite of these material facts that the introduction of guns that are not the murder weapon, and that have no relevance to this case and the shooting death of Norman "Carolina" Domenech was not highly prejudicial, inflammatory and did not deprive Petitioner of his right to a fair trial. The Court below is simply saying that a killing could take place and since the Commonwealth does not have the murder weapon, that the Commonwealth could go to a gun store or to the police evidence room, pick up a gun and introduce the gun that has no relevance to that offense into evidence in the accuses trial and it would not be highly prejudicial, inflammatory and would not deprive the accused of his/her right to a fair trial in that specific case.

The First Amendment of the United States Constitution permits free speech even if you do not agree with that free speech being expressed. The WRAM has absolutely no relevance to the shooting death of Norman "Carolina" Domenech and should have never been introduced into the trial involving the shooting death of Norman "Carolina" Domenech due to the material fact that its contents are extremely prejudicial,

inflammatory and could very well enrage jurors to where a verdict is returned based upon the juror's emotions, rather than on the evidence presented. The introduction of the WRAM would be permissible, if the Commonwealth's trial theory was Norman "Carolina" Domench was shot and killed because of the color of his skin, race, sex and religious beliefs. That was not the Commonwealth's trial theory in this case. The trial theory involved cocaine dealing, therefore, the introduction of the WRAM should have never been permitted.

The WRAM was found in Petitioner's home and even though many may not agree with Petitioner's reading material choice, the First Amendment permits Petitioner the right to read and possess that specific material. However, the trial Court permitted Trooper Pizzutti to read 42 pages of WRAM (N.T. 5/7/10, p. 43) in spite of the material fact that: 1) Petitioner is not the author of WRAM and the one responsible for its contents; 2) just because the WRAM was found present in Petitioner's home, there was no evidence presented establishing that Petitioner was actually the owner of the WRAM and not a case of the actual owner leaving the WRAM at Petitioner's home or lending the WRAM to Petitioner to read; and 3) there was no evidence presented that Petitioner actually read WRAM and performed some of the acts contained in the WRAM.

If we consider the totality of Petitioner's trial and the introduction of irrelevant drugs, guns, paraphernalia, WRAM and the Court's instruction that the jury should not consider the improper introduction of these materials it is extremely clear that Petitioner was deprived of his guaranteed right to a fair trial and the State Courts' failure to grant Petitioner a new trial, should have been corrected by the District Court and/or the Third Circuit, the Federal Courts below as a means of upholding the guarantee to a fair tiral.

Petitioner's LAFLER-v-COOPER, 566 U.S. , 132 S.Ct. 1376 (2012); and MISSOURI-v-FRYE, 566 U.S. , 132 S.Ct. 1399 (2012) claim should have been granted based upon Petitioner's deprival of his Sixth Amendment right to the effective assistance

counsel during crucial stages of the proceeding: the plea proceedings where counsel failed to advise Petitioner that by rejecting the Commonwealth's 15 to 30 years imprisonment offer he faced a more severe punishment.

Petitioner's Sixth Amendment claim was raised under this Honorable Court's rulings rendered in STRICKLAND-v-WASHINGTON, supra; LAFLER-v-COOPER, 132 S.Ct. 1376 (2012) and MISSOURI-v-FRYE, supra.

In this case sub judice, Petitioner was represented by Marshall Anders, Esquire and Robert Suarman, Esquire, with Juliet M. Yackel retained as a Capital Mitigation Specialist in light of the Commonwealth initially seeking the death penalty in this particular matter.

According to Anders, the Commonwealth made an offer to recommend a sentence of 15-30 years imprisonment in exchange for a guilty plea, just prior to the selection of the trial jury. It was a verbal offer that was not committed to writing by the Commonwealth, Anders and/or Saurman, Esquire (Id., PCRA Evidentiary Hearing Transcript at pp. 5-6, and 9-11 [hereafter "PCRA EHT"]). Neither Anders, nor Saurman discussed the advantages and disadvantages and/or merits of the offer with Petitioner. Neither counsel informed Petitioner that his wife had already accepted the plea a key factor in Petitioner's rejection of the offer. If Petitioner would have known that his wife accepted the offer, Petitioner would have accepted the 15-30 years imprisonment offer and avoided both the possibility of the death penalty and/or imposed sentence of life imprisoinment. Although, the decision to accept the offer was left to Petitioner to determine, counsel failed to offer any advice as to whether Petitioner should accept the offer and avoid trial altogether. In fact, Anders testified that his understanding was that Petitioner wanted a trial (PCRA EHT, p. 13).

When Saurman was questioned about the offer, Saurman recalled that there was one conversation with the assistant district attorney about a potential plea, but he could not recall the specific terms, but was certain that the plea offer was presented to Petitioner, although, the offer and specific terms of the plea offer were not committed to writing (PCRA EHT, pp. 28-29, 31 and 44). Saurman did in fact believe that Ms. Yackel was present at the plea discussion with Petitioner. When Saurman was asked what advice or opinion did he offer Petitioner about the plea offer, his response mirrored Anders and gave a description of his routine "mantra" that he usually gives relative to plea discussions in other cases. (Id., pp. 29, 44). Both attorneys agreed that a single offer was made prior to trial; the offer was communicated to Petitioner; the merits of the case were discussed relative to the offer; Petitioner proclaimed his "actual innocence" and rejected the plea. Neither

attorney advised or recommended that Petitioner accept and/or reject the plea offer (PCRA EHT, p. 11). It is reasonably inferred the offer was made at the start of or during jury selection ("I think Mr. Tonkin and I had a conversation about the offer maybe once either after jury selection or during selection" [Anders testified]) id., p. 10; and Saurman testified that the plea offer discussions were "before we went to trial or as part of getting ready for trial." (Id., pp. 46-47). Both Anders and Saurman testified that they described the strengths of the Commonwealth's evidence depended upon the testimony of Magaly Echevarria (Id., PCRA EHT, pp. 8, 29).

Petitioner testified that he wanted "to make sure that my wife is taken care of and of course make the best deal for myself." (Id., PCRA EHT, p. 175).

At the PCRA, State Level, District Court and Third Circuit Levels STRICKLAND required Petitioner to identify, and the Habeas Court to consider, Anders and Saurman's (counsels') acts and omissions in order to assess whether counsels' performance was deficient. STRICKLAND, at 466 U.S. 690.

In applying the STRICKLAND standard of review to this particular case, counsel simply indicated that conviction or acquittal rested upon "the one witness--Magalay Echevarria." However, there was physical evidence and an inculpatory admission involving: 1) a cache of firearms and related items, which were extremely prejudicial and strongly supportive of the Commonwealth's missing weapon trial theory; 2) a plethora of illicit drugs, which were also very prejudicial and supportive of motive although the plethora of illicit drugs admitted into evidence were not cocaine the alleged operation Petitioner was supposed to have been involved with Jesus Rosario Torres and Norman "Carolina" Domenech; 3) a White Resistance Manual, which inflamed the passions and prejudices of certain jurors and had absolutely no relation to the case and Commonwealth's trial theory (N.T. 5/5/10, p. 16); 4) an inculpatory admission that Petitioner sought a deal when arrested, which was not related to evidence and/or actual guilt [i.e., proving each and every element consisting of each charged offense, beyond a reasonable doubt]; 5) two CCI Blazer .380 bullets seized from Petitioner's home which were a match to spent cartridges found at the scene of the crime (N.T. 5/5/10, pp. 26, 176); and 6) Petitioner's wife turning State's evidence, potentially, according to Saurman (Id., p. 24), in addition to possibly more extremely prejudicial evidence that could have been presented.

The American Bar Association Standards-Defense Function are frequently cited by this Honorable Court for guidance. Generally, an attorney should provide a client with candid advice. (Stand. 2.1-Advisor). Relative to a plea offer, counsel should

absoutlely advise a client, such as the Petitioner as to the alternative choice, including a candid estimate of the probable outcome. (Stand. 4-5.1-Advice on the plea.) However, counsel should not overstate a Defendant's chance of acquittal (PITCHER-v-UNITED STATES, 371 F.Supp.2d 246 (E.D.N.Y. 2005)), and/or understate the likelihood of consequences (cf. JULIAN-v-BARTLEY, 495 F.3d 487 (7th Cir. 2007)).

In light of Petitioner's case being "no roll of the dice" (id., p. 29), counsels' misadvising the Petitioner as to the strength of the Commonwealth's case sub judice is not dissimilar to misadvising the Petitioner of a legal rule in LAFLER, supra. Anders admitted he did not make a recommendation (id., p. 11) albeit he would not have been averse from doing so (id., p. 23). Neither counsel candidly discussed with Petitioner, the consequences of rejecting the 15-30 years imprisonment offer, although this was a capital case where the death penalty was being sought; and even the non-homicide charges carried penalties in excess of 100 years imprisonment, if Petitioner was to be found guilty of any of these charges, as he was in this case sub judice.

Petitioner alleges that counsels' failure to provide accurate and candid advice relative to the strengths of the Commonwealth's case, the possible more severe consequences Petitioner would suffer if found guilty, after rejecting the 15-30 years imprisonment offer; and the failure to inform Petitioner as to the status of his wife accepting the plea offer -a determining factor in Petitioner's rejection of the plea, since he did not desire for his wife to face a trial alone, if he had accepted the 15-30 years plea offer- rendered deficient performance, which led to Petitioner's rejection of a good deal and a clear violation of STRICKLAND; McMANN-v-RICHARDSON, supra; LAFLER; FRYE; the Sixth Amendment's guarantee to "the effective assistance of counsel"; and the Fourteenth Amendment's guarantee to a fair trial through the Due Process, Counsel and Equal Protection of the Law Clauses of the United States Constitution.

These specific acts and omissions of counsel clearly prejudiced Petitioner and deprived him of his right to "the effective assistance of counsel;" due process; the equal protection of the law; and a fair trial, where even the Commonwealth testified, "Petitioner wanted 'to make sure that [his] wife is taken care of and of course make the best deal for [himself]" (id., p. 175).

Petitioner should have been afforded an evidentiary hearing and/or remand for an evidentiary hearing in the Court below, under TOWNSEND, supra; in light of the material fact that counsels' ineffectiveness even extended to the PCRA Hearing afforded in State Court, when counsel failed have a subpoena issued to ensure the presence Capital Mitigation Specialist, Juliet M. Yackel, who after being retained

in this death penalty case, witnessed these failures of counsel (Anders and Saurman) with respect to the 15-30 years imprisonment offer; the failure to advise Petitioner of the severe consequences he faced by rejecting this plea offer, if found guilty at trial, as he eventually was; and the failure to inform Petitioner about his wife already accepting the plea offer, which would have resulted in Petitioner accepting the 15-30 years imprisonment plea offer, avoiding the possibility of the death penalty and/or imposition of a mandatory life sentence as he now serves, as a result of counsels' failures. The entry of a plea would have have avoided a trial and the introduction of unrelated and extremely prejudicial items found at Petitioner's home (guns: 2 AK-47 assault rifles; 2 sawed-off shotguns, 1 .32 caliber pistol, 1 AR-15, 1 .22 caliber revolver, 1 .22 caliber pistol, 1 .9 millimeters drugs 11.2 grams of mushrooms, 24.8 grams of marijuana, 384 grams of cocaine, .095 grams of crystal methamphetamine; drug paraphernalia: and a "White Resistance/Anachist Manual ("WRAM")"), being unfairly used against Petitioner during trial and the penalty phase to have the jury convict and sentence Petitioner to death based upon emotions and these unrelated items which may paint Petitioner as a very bad or unlikeable person with views not shared by the masses, rather than on the actual physical evidence presented at trial and during the penalty phase involved in this case, that remains absent, nonexistent and insufficient to sustain Petitioner's first degree murder conviction and life sentence imposed in this case.

Instead of counsel having Ms. Yackel subponea, to ensure her physical and actual appearance at the State PCRA Hearing, rather than counsel requesting that Ms. Yackel be permitted to testify telephonically (Id., p. 65), which is not even permitted by State Rules governing the State proceedings, and/or governed by State Statute. Ms. Yackel's live testimony, her appearance, the observation of her demeanor as she testified and faced cross-examination would have affected the outcome of the State PCRA Hearing; and therefore, Petitioner was prejudiced by PCRA counsel's deficient performance (HINKEL-v-GILMORE, 2015 U.S.Dist.Lexis 124341 (W.D.Pa.))_. Based upon the failed actions and omissions of counsel (trial, penalty phase, direct appeal and PCRA), Petitioner has been deprived of his right to "the effective assistance of counsel" as guaranteed by the Sixth Amendment; McMANN-v-RICHARDSON, supra; STRICKLAND, supra; LAFLER, supra; FRYE, supra; and the Fourteenth Amendment of the United States Constitution and the Court below erred in not providing an evidentiary hearing as required by TOWNSEND, supra.

Based upon these above genuine issues of material fact and there being no factual record developed in the Federal Court below to determine these claims of extreme importance, the uniformity of MARTINEZ, supra; LAFLER, supra, and the federal stature

a writ of certiorari should be granted and/or this case should be remanded to the Court below in accordance with TOWNSEND, supra; MARTINEZ, supra; LAFLER, supra; and the Sixth and Fourteenth Amendments of the United States Constitution. And the Petitioner will ever pray.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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