

Record No.

IN THE
SUPREME COURT OF THE UNITED STATES

David Edward Cavalieri,

Petitioner,

IN re:

Vs.

Commonwealth of Virginia,

Respondent.

On Petition for a Writ of Certiorari to
The Loudoun County Circuit Court

Petition For Writ of Certiorari
pursuant to Rule 20

David Edward Cavalieri #1424382

Sussex II State Prison

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Waverly, Virginia 23891

Questions Presented

#1. On an Ineffective Assistance of Counsel Claim, wherein multiple grounds are alleged and well plead, does the State Habeas court have a US Constitutional obligation to adjudicate the claim: based upon a Cumulative Review of all asserted errors and omissions, and thereby the Aggregate Prejudice caused by said grounds, to fairly decide if the defendants Sixth Amendment guarantee of a fair and adversarial trial was violated? Specifically, Do Strickland v. Washington, 466 US 668 (1984); Evitts v. Lucey, 469 US 387 (1985); Satterwhite v. Texas, 486 US 249, (1988); and their progeny dictate in their Holdings and Opinion briefs, either expressed or implied in the language of the Court's decisions, that a lower court MUST conduct a Cumulative Review/Aggregate Prejudice analysis of an Ineffective Assistance of Counsel claim wherein the Petitioner has asserted multiple errors and omissions (and specifically briefed a Cumulative Review claim) to correctly and Constitutionally adjudicate the grounds of the claim?

#2. Does a State Court of Appeals have the intrinsic authority to abnegate a defendants 5th, 6th, and 14th amendment rights on his First Right of Appeal, due to the defendant having a state-appointed public defender, and thereby summarily refuse to file a prose addendum

and/or amendment to his Direct Appeal? Specifically >
In accord with a defendants First Right of Appeal: Is
a defendants US Constitutional 5th amendment and
14 amendment due process rights violated whereby a
state Court of Appeals refuses to accept/file/adjudicate
a Defendants timely-filed and procedurally-proficient
prose amendment and addendum to his (attorney-
submitted) Petition For Appeal?

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1. CL 73225 in the Circuit Court of Loudoun County filed April 5, 2012. Motion To Recuse GRANTED July 31, 2012. Habeas Petition GRANTED in part/dismissed in part ORDER of February 1, 2013. { Brady claim; Napue claim; IAC Cumulative Review claim } see Appendix H.
2. CL 95313 in the Circuit Court of Loudoun County filed July 23, 2015. Motion To Recuse GRANTED October 16, 2015. see Appendix M
3. CL 95313 §8.01-654 Writ of Habeas Corpus Petition. Final ORDER of March 1, 2016 Denied. { Claim II; Claim IX; and Claim X } Claim II "passed on" without adjudication. See Appendix A.
4. IN The Supreme Court of Virginia, February 1, 2018, Upon a Petition For Rehearing (of Claim II, IX, and X) "the prayer of the said petition is denied." Record No 160885, CL No. 95313 Passing on the Questions Presented herein. see Appendix B.
5. ORDER and Opinion of December 11, 2009, Denying Defendants Motion To Suppress. See Appendix C
6. Record No. 160885, Circuit No. CL95313 : Denying Motion To file an over-sized Petition For Appeal; Attorney General letter of Sept. 28, 2016, "passing on" filing a Brief in Opposition to the corrected Petition For Appeal; Virginia Supreme Court "refuses the petition for appeal" finding "no reversible error", October 26, 2017. see Appendix J

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7. Virginia Court of Appeals, Record No. 0751-13-4, CR 20989 on August 2, 2013; Motion to file a prose petition for appeal amending the previously filed one of his attorney on July 29, 2013. The motion is denied. See Appendix F
8. Virginia Court of Appeals: Upon petitioners Motion To Stay and Abey Judgment of Direct Appeal; the court will take no action; letter of September 12, 2013. See Appendix F
9. Record No. 140310, Court of Appeals No. 0751-13-4 the Supreme Court of Virginia... refuses the petition for appeal; July 18, 2014. See Appendix F
10. CL 16-4979 in the Circuit Court of the City of Virginia Beach; Cannon v. Dir. Dept. of Virginia Corrections; in Claim III(f) "the cumulative effect of counsel's deficiencies..." "The Court finds that Virginia law does not recognize such a claim." Final ORDER, § 8.01-654 Habeas, p. 20
See Appendix L
11. Assignments of Error, Virginia S. Ct. Petition For Appeal; Claim I thereof and Claim IV thereof, identifying the materially relevant claims of Question 2 and Question 1, respectively. See Exhibit 1

IN THE SUPREME COURT OF THE UNITED STATES

In re: David Edward Cavalieri,

Petitioner,

vs.

Commonwealth of Virginia,

Respondent.

On Petition for a Writ of Certiorari to
The Loudoun County Circuit Court

The Final ORDER of the Loudoun County Circuit Court is dated March 1, 2016. The opinion of the court appears at Appendix A to this petition.

A timely filed Petition For Rehearing en banc was denied February 1, 2018. The opinion of the Virginia Supreme Court appears at Appendix B to this petition.

Jurisdiction

The jurisdiction of this Court is invoked under 28 USC § 1257(a), and 28 USC § 2254(a); 28 USC § 1651(a)

Statement pursuant to Rule 20(4)(a)

In regard to the provisions of § 2242 and § 2254(b), Petitioner states the "reasons for not making application to the District Court" of the Fourth Circuit of "which district the Petitioner is held," is as follows :

1. In Cavalieri's State Petition For Writ of Habeas Corpus under Va. Code §8.01-654, the courts Final Order of March 1, 2016, stated - in pertinent part - "a claim of aggregate prejudice fails because such claims are not cognizable in Virginia. See Lenz v. Warden, 267 Va 318, 339; 593 SE 2d 292, 305 (2004)." And dismissed the claim.
2. In Cavalieri's subsequent state habeas Petition For Appeal [filed May 27, 2016; Refused October 26, 2017] the Virginia Supreme Court stated: "...the court is of the opinion there is no reversible error in the judgment..."
3. Cavalieri's subsequently filed a nine-page Petition For Rehearing (en banc). The courts Order of February 1, 2018 stated: "...the prayer of said petition is denied." [Record No. 160885; Circuit Court No. 95313]
4. Cavalieri's state habeas claim, under ineffective assistance of counsel, included a Cumulative Review/Aggregate Prejudice claim with Twenty-Three (23) specific grounds.
5. Cavalieri's Petition For Appeal, arguing the circuit courts denial and dismissal of petitioners Cumulative review claim was contrary to Strickland v. Washington, 466 US 668 (1984), included an Exhibit §page 34(A)§ listing Cumulative Review cases from Every Other Federal Circuit Court in the United States. Ergo, Cavalieri clearly pointed out that the courts conclusion of law was in-fact at odds with every other federal court in the United States, AND every other state Supreme Court.

6. In Cavalieri's Petition For Rehearing, Cavalieri again asserted that the state courts dismissal of his Cumulative Review claim was: A) Contrary to Strickland and its progeny; B) Contrary to the decisions and jurisprudence of EVERY Federal Circuit and US Court of Appeals, sans the Fourth Circuit, in the United States; C) Contrary to the jurisprudence of every state supreme court in those Federal circuits; D) erroneously reliant on the Fourth Circuits decision in: Fisher v. Angelone, 163 F.3d 835, 852 (4th Cir. 1998) "... it would be odd to conclude that those same actions, considered collectively, deprived Fisher of a fair trial.) and Mueller v. Angelone, 181 F.3d 557, 586 n.22 (4th Cir. 1999) applying Fisher and concluding that the "cumulative effect" argument was "squarely foreclosed" by that decision.) *1 {see Appendix L hereof}

Wherefore, it appears the Virginia courts are aware their conclusions of law are contrary not only to Strickland but every other state supreme court and federal circuit court in the United States; they simply don't care.

Additionally, every other state Court of Appeals routinely ~~and~~, as a matter of law, accepts and files and adjudicates a prisoners prose amendment and/or

*1 Of note is the fact that the Circuit Court of Virginia Beach, in the matter of Cannon v. Director, VADOC, CL16-4979, denied Cannon's Cumulative Review TAC claim based on Lenz v. Warden, and also quoted Fisher and Muller. The Va. S. Ct. refused Cannons Pet. For Appeal. Record No. 170821

addendum to an otherwise filed by an attorney Direct Appeal. Virginia, however, chooses to violate a defendants Fifth, Sixth, and Fourteenth Amendment guarantees by Refusing To File a Defendants prose addendum.

Therefore, Question 1 hereof falls squarely within the purview of this Court pursuant to Rule 10(a) and (b). Question # 2 falls squarely under a violation of both Due Process and Equal Protection of the Fourteenth amendment, and the Sixth Amendment's guarantee of an "adversarial process", and thus pertains to Rule 10(c).

Jurisdiction

- (i) § 8.01-654 State Habeas Corpus Petition; CL 95313
Denied March 1, 2016
- (ii) Petition For Rehearing (en banc) Record No. 160885
Denied February 1, 2018
- (iii) Statutory Provisions: Rule 20(2) 28 USC § 2254(a), § 2254(b); Rule 10(a), (b), (c).

Constitutional Provisions, Statutes

- > 28 USCA Sixth Amendment
- > 28 USCA Fourteenth Amendment
- > Strickland v. Washington, 466 US 668 (1984); Evitts v. Lucey, 469 US 387 (1985); Lockhart v. Fretwell, 506 US 364 (1993)
- > § 2254(d)(1) "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly

established federal law, as determined by the Supreme Court of the United States

> Porter v. McCollum, 558 US 30, 39 (2009) "the state courts rejection of the claim of ineffective assistance of counsel was 'contrary to, or involved an unreasonable application of' Strickland, or it rested 'on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.' "

Statement of the Case

The Commonwealth of Virginia, and in-fact the federal Fourth Circuit, refuses to recognize as cognizable well plead Claims of Cumulative Review/Aggregate Prejudice based on grounds of ineffective assistance of counsel. In Contrast, every other Federal Circuit (and their state supreme courts respectively) in the United States adjudicates such claims on their merit. In Fact, most other courts conduct a cumulative review for aggregate prejudice as if expressly promulgated by Strickland, without the petitioner needing to expressly include a claim for Cumulative Review.

Cavalieri first raised an Ineffective Assistance of Counsel Cumulative Review claim in his "original" state §8.01-654 Habeas Corpus petition; [filed March/April of 2012; CL 73225] Granted on grounds not related hereto.* The instant petition relies upon Cavalieri's Habeas petition as filed on or about July 16, 2015 [CL 95313]*, specifically [Appendix H]* and [Appendix M]*

Claim X, Habeas Petition pp. 65-71 and Appendix E. Cavalieri proffered twenty-three specific claims of ineffective assistance of counsel - trial counsel specifically.

Cavalieri's individual IAC claims consisted of two distinct groups: grounds involving how Cavalieri's 4th amendment claim was not effectively presented and thereby he was cumulatively prejudiced (*Kimmelman v. Morrison*, 477 US 365 (1986)); and trial related acts and omissions whereby "but for" the errors, the defendant had a "reasonable probability" of a different outcome.

The Circuit Court of Loudoun County as Habeas court entered its Final ORDER on March 1, 2016. Claim X is addressed on pages 9 & 10, and the court finds, *inter alia*, that "portions of this claim are barred by the rule in *Slayton*, 215 Va at 29-20, 205 SE 2d at 682" ... "To the extent the petitioner presents this as a claim of 'aggregate prejudice', the claim fails because such claims are not cognizable in Virginia. See *Lenz v. Warden*, 267 Va. 318, 339; 593 SE 2d 292, 305 (2004). Claim X is dismissed."

It is important to note that Cavalieri's state habeas contains, as mentioned, 23 distinct grounds of ineffective assistance of counsel, preceeding the Cumulative Review Claim, on pages 51 through 65. In addition, Cavalieri proffered approximately 400 pages of evidence to corroborate his assertions of his IAC pleadings in Appendixes D, E, and F, and Exhibits 1-33. However,

the Attorney General's Motion To Dismiss is replete with the allegations "the petitioners failure to proffer" and "petitioner offers no evidence". Subsequently, the Final ORDER makes the same egregiously false statements.

In Addition, prior to the Final ORDER and filed timely after Cavalieri received the Motion To Dismiss - on or about October 10, 2015 - Petitioner filed a Response To The Motion To Dismiss. In Cavalieri's Response, inter alia, was a Martinez Motion for grounds (1), (4), (5), (6) of Claim IX. Martinez v. Ryan, 132 S. Ct. 1309 (2012), Trevino v. Thaler, 133 S. Ct. 1911 (2013). The court's ORDER makes no mention of the Martinez argument Cavalieri proffered. [Final ORDER, pp. 10-12]

Cavalieri timely filed his Petition For Appeal under Va Code §8.01-654 to the Virginia Supreme Court on May 27, 2016. In his Assignments of Error, Claim 7 asserted that "The Habeas Court erred in denying Claim X, a cumulative effect of trial errors claim..." Cavalieri's Claim 7 was expansive and included pages 37 through 51. This Petition For Appeal ~~for~~ was procedurally denied as "oversized", and Cavalieri subsequently filed a Petition For Appeal (Amended) on or about September 14, 2016. [Record No. 160885] {~~Appendix M~~}

Cavalieri's Amended Petition For Appeal included as * Assignments of Error Claim IV: The circuit court erred in denying Petitioners Habeas Claim X as its finding is * [Exhibit 1 hereof]

Contrary to clearly established federal law under Strickland, and it erroneously bars "portions" under Slayton and Lenz v. Warden. Included in Cavalieri's Petition For Appeal, Claim IV, was page "34(A)" which identified at least one cumulative review ineffective assistance of counsel claim in each Federal Circuit US Ct. of Appeals: the 1st, 2nd, 3rd, 5th, 6th, 7th, 9th, 10th, and D.C. Circuit. (the same exhibit is provided herein) Cavalieri again argued that Strickland in particular, and thereafter Evitts and Lockhart, dictates a cumulative review/aggregate prejudice analysis of a petitioners IAC grounds; that petitioner's 6th and 14th amendment rights were being violated by the courts refusal to adjudicate his claim.

The VA S.Ct. refused Cavalieri's Petition on October 26, 2017. Cavalieri filed a Petition For Rehearing(en banc) on November 8, 2017. Included in that Nine-page petition was two full pages of cumulative review cases, over the past two decades, and numerous citations to Strickland whereas cumulative review is either expressed or implied. Petitioner also included the fact that a refusal to adjudicate his claim made the merits of the Claim ripe for the US Supreme Court under Rule 10(a) and (b).

The Petition For Rehearing en banc was denied February 1, 2018 without comment.

IN regard to Question #2: This claim, as asserted in Cavalieri's state habeas petition, was misstated and

thoroughly misrepresented by the Attorney General in her Motion To Dismiss. The argument against the claim is moot as it is NOT Cavalieri's Claim. Yet, THREE petitions and TWO-YEARS later, Cavalieri's ACTUAL claim has never been adjudicated. Thus, while apposite to Cavalieri's habeas claim, it is extremely important the Court use its discretionary power to advance the Defendants ability - if ^{he is} educated and inclined - to proactively prosecute his own Direct Appeal through and by prose addendums. The Court can do this by deciding it is a Due Process Fourteenth Amendment violation to reject a prose amendment and/or addendum to a Petition For Appeal on Direct Appeal.

Cavalieri's Claim II [on his §8.01-654 VA. Habeas Corpus Petition] stated: "Cavalieri's US Constitution 14th Amendment rights of Due Process and Equal Protection were violated by the Court of Appeals when it denied the defendant his right to submit an amended Petition For Appeal prose." Petitioner further stated: "Summary: The Court of Appeals violated defendants rights of due process, equal protection, and 5th amendment rights of submitting a complete defense ... See Appendix D, hereby fully incorporated." *2 The argument is on pages 20 thru 24.

The Attorney General states, in her Motion To Dismiss CL 95313, dated October 7, 2015, ~~among others~~: "In Claim

*2 Appendix D is Cavalieri's 46-page prose amendment and addendum he attempted to file with the Ct. of Appeals, plus a Motion For Reconsideration, and Notice of Appeal to the VA. S. Ct.

II, petitioner alleges the Court of Appeals violated his Fourth Amendment rights..." [p.14 at 27 & 28] "Claim II ... raise nonjurisdictional grounds of trial court error ... that could have been brought on direct appeal. As such ... not cognizable on habeas review under the rule in Slayton v. Parrigan, 215 Va.27, 29-20; 205 SE 2d. 680, 682 (1974)" [id; p.15]

In Cavalieri's Response to the Motion To Dismiss (as previously mentioned) he alerted the court that the AG's argument regarding Claim II was a misstatement of Cavalieri's actual claim and supporting grounds, and thereby the argument was invalid as to the ACTUAL claim. Subsequently, the courts Final ORDER of March 1, 2016, is verbatim the Attorney Generals wanton diatribe. It appears the court simply wanted to wrangle a denial.

Cavalieri's Petition For Appeal to the Virginia Supreme Court [Civil No. 160885; pp.11-14] restated the claim (- as Claim I) and alerted the court that the circuit court had misstated and misrepresented the claim, and thereafter accepted an argument wholly mute on Cavalieri's actual claim: "As a result, the Commonwealths argument and ORDER is void as a matter of law on Claim II. Morris v. Smyth, 202 Va.832; 120 SE 2d 465 (1961)."

The Virginia Supreme Court found "no reversible error" in the judgement complained of.

Thereafter, as previously stated, Cavalieri filed a

Petition For Rehearing (en banc) and AGAIN alerted the Court that: A) "my original and actual due process claim had not been adjudicated"; B) the claim regarded a substantial deprivation of a due process guarantee and thus Really should be heard on the merits of the claim; C) by "passing" on the claim, the federal court would owe the state court no deference. As previously mentioned, the Petition For Rehearing was denied February 1, 2018.

Facts Material to Consideration

IN the instant case, a Cumulative Review of the specified Grounds of ineffective assistance is a necessity to fairly adjudicate Cavalieri's asserted Sixth Amendment violation. Petitioner's criminal proceedings from the very start were a dichotomy. The Motion To Suppress, based on a Non-consensual search of the defendants home TWO (2) Hours after a protective sweep, was Fact intensive and the courts "findings of facts" dispositive in the courts ruling there WAS expressed and implied consent. {which Cavalieri asserts and argues is inexplicably contrary to the record facts, evidence, and law} The trial thereafter had a singular available defense strategy against the prosecutions wholly circumstantial theory of the case. [Appendix C]

The Motion To Suppress was centered around Cavalieri dialing 9-1-1 and asking the Emergency Services operator for an ambulance due to self-inflicted stabbing wounds; whereupon the call was transferred to the Sheriffs

Dispatch Officer, who put the call out for a "possible shooting/stabbing... possible GSW". Which resulted in four officers barging into Cavalieri's condo, giving him all sorts of orders, asking about other people living with him, supposedly asking "Can we look around" after Cavalieri said No one else is here; Cavalieri allegedly said "Sure, go ahead". Six paramedics then showed up, strapped Cavalieri to a gurney, and took him to the emergency room for stitches and a psych. hold. Two hours After Cavalieri had left the condo, while he was at the Hospital, a deputy ~~searched~~^{searched} through a bedroom, lifted up a comforter and sheets, and discovered a body. The court ruled Cavalieri had given both expressed and implied consent. [Tr. December 11, 2009]

The Defendants ineffective assistance of counsel claim was effectively split into two arguments: acts/errors and omissions during the Motion To Suppress (pre-trial), and defense counsel at trial; in the instant case, a successful Motion To Suppress would have relegated the Commonwealth to accepting a Manslaughter plea. Pre-trial counsel was constitutionally ineffective in her preparation and representation at the Motion To Suppress, because of the evidence available and her non-use of it. To wit:

A) The police created, of their own doing, exigent circumstances to barge into the defendants condo; ~~B) A "No-Knock, No-Announce" entry was performed;~~ C) Two officers entered with weapons drawn and immediately began giving orders;

two more officers entered immediately thereafter; and then six paramedics to attend to Cavalieri's self-inflicted abdominal stab wounds (2), and neck stab wounds (each side). Based on the circumstances, Cavalieri was "in custody" as a matter of law; D) Cavalieri dialed 9-1-1, which is the National Emergency Services number, NOT an automatic call to Police; E) Cavalieri dialed 9-1-1 and asked the 9-1-1 operator to send an ambulance as he needed to go to the Hospital. [None of this was established]

Ergo, each of these FACTS, and the circumstances that surround those facts, are derivative of materially relevant US Supreme Court Fourth Amendment jurisprudence. Thus, had pre-trial defense counsel "set-up" the Motion To Suppress properly and competently, using each of these facts and circumstances to establish the case-law and the subsequent Police violations, the court would have had NO ~~from~~ other option but to grant the Motion To Suppress. *

* Cavalieri has included Appendix E hereof, which is the Petitioners "Exhibit G" Ineffective Assistance of Counsel Grounds *

THE Point being > While the state habeas court found each of Cavalieri's Grounds lacking against the Strickland standard *³, when analyzed of the cumulative effect, their aggregate prejudice deprived Cavalieri of a "full and fair litigation" of his fourth amendment claim whereby the facts of the claim ~~was~~ were not presented.

* see Appendix C

So Cavalieri's sixth amendment claim, akin to Kimmelman v. Morrison, 477 US 365 (1986), proffers specific pre-trial acts and omissions and a plethora of corroborative evidence; it MUST BE analyzed cumulatively per Strickland, and Lockhart, and the Sixth Amendment.

Petitioner's futherance of his sixth amendment ineffective assistance of counsel claim consists of trial errors and omissions whereby "but for" counsels errors, there was a "reasonable probability" of a different outcome. Cavalieri's argument, his circumstances and proffered grounds, is delineate of Heat of Passion Upon Sudden Provocation while intoxicated. There was ONLY ONE Trial tactic-reducing Murder in the First Degree to Manslaughter - and ONLY ONE viable strategy based on Cavalieri's confession and respective circumstances.

Trial Counsel had, per her own statement to the court in a Motion For A Continuance, [Tr. 11/24/2010] Nine witnesses to testify in Cavalieri's defense. Included in those nine was a Psychiatrist who would have testified the defendant: was suffering from long-standing depression, was actively suicidal; and that the murder happened while Cavalieri was in a drunken rage, and suffered hallucinations thereafter.

*3 The courts acceptance of the AG's arguments was perfunctory; most of ^{the} findings and conclusions are erroneous considering the evidence proffered, and lawfully inapposite to the circumstances of the grounds of the claim presented. [see Appendix I hereof]

The Psychiatrist would have testified, per his written summary, that in his expert opinion the murder was nothing more than a domestic homicide. He was NOT called.

Thus, in a First Degree Murder trial where the prosecution has the responsibility of production and persuasion of the elements of intent, malice, and premeditation, Cavalieri's counsel called ONE witness! The witness corroborated that the defendant did, in fact, buy beer everyday, and had ^{purchased} SAKI as she recalled. Counsel refused to put Cavalieri on the stand to testify in his own defense. The prosecution presented its theories and its statements unabated and without objection. Ergo, the Defense stated an Affirmative Defense, and then did not proffer ANY evidence in which to substantiate the jury finding in favor of manslaughter or 2nd-degree murder. That is NOT competent attorney representation.

As an example of how the lower courts finding of facts and conclusions of law are erroneous and contrary to Strickland: ① Cavalieri's confession, all six(6) hours of it, contains no evidenciary foundation of intent, nor of malice, nor of premeditation. The defendant talks about being "black-out drunk", drinking for months on end every day, being "in a rage", being so mad he was "hopping up and down" ... ② Even to the extent when asked how he choked the victim (after Cavalieri unequivocally stated he had no memory of the murder itself) he demonstrated

a choke-hold which the Medical Examiner later testified at trial could NOT have been used. (3) The ME further testified the victim died of manual strangulation, and that there was NO evidence of a second strangulation.

(4) The prosecutions theory was that the victim died of a "second strangulation" upon reviving from the first; that Cavalieri was "pacing back and forth behind her" thus inferring premeditation; and because Cavalieri drank all the time, he was "use to it" and therefore "not as drunk as someone who doesn't drink all the time would be".

(5) Whereby, Cavalieri's numerous trial IAC Grounds ~~where~~^{were} of the explicit FACT a competent advocate had an abundance of evidence she could have and should have used to discredit, mitigate, and specifically impeach some of the prosecutions misrepresentations of evidence. The defendants attorney introduced NONE of it. (6) Thus, Cavalieri's poignant Ground that Heat of Passion upon Sudden Provocation while intoxicated was THE singular defense, and thus pursuant to Strickland should have been investigated vigorously, and exhaustively.. (7)

Resulted in the argument from the Assistant Attorney *4 General and subsequently the court that: "the development of the best theory of defense is counsels prerogative ..."

[ORDER, p.19-20]; "the scope of cross-examination is a matter of trial tactics..." [p.23] and the entirety of the second paragraph [on p.27, ORDER] "And, fourth,..." (8) Which is

to State: none of the courts dismissals of Cavalieri's individual grounds - 16 of them - [ORDER, pp. 14-27] are supported by analogous case law, or a materially relevant argument actually disproving the allegation.* Specifically whereas the petition argues eight (8) specific, identified omissions by trial counsel that, cumulatively, resulted in a verdict unworthy of public confidence, and is thus constitutionally infirm.

Lastly, considering the facts material to the courts dismissal without adjudication of Petitioners Cumulative Review, is this erroneous dismissal:

Cavalieri's state habeas petition, Claim IX grounds (9) (10) and (14); Final ORDER p. 22 & 23 > The ORDER states, in pertinent part, "Petitioner has not, however, proffered affidavits from these witnesses containing the testimony they would have given..." "This failure to proffer is fatal to his claim." However, the petitioner DID proffer what their testimony would have been, how it would ~~affected~~ have affected the jury, why the testimony was relevant, AND proffered the Police Statements wherein the witnesses HAD MADE those exact statements! Thus, the AG didn't really weigh the materiality of the Police Statements, nor portray the full story of what WAS in the habeas petition.

*4 It is of note that the courts ORDER repeatedly refers its decisions are based on "petitioners statements to law enforcement" and yet Never identifies ANY of these statements.

* see Appendix I

IN regard to Question #2, Facts material to consideration of the question, Petitioner offers and asserts the following:

Cavalieri was sentenced in June, 2010, and alerted the court of his intention to appeal at the sentencing hearing. He motioned the court to appoint Ms. Corinne MaGee, Attorney At Law; a private attorney on the "courts list." Ms. MaGee's representation was a travesty, and upon Cavalieri's initial habeas being granted in part in February of 2013, a belated Direct Appeal was awarded. The importance of this part of the proceedings is that Cavalieri had a copy of MaGee's Petition For Appeal, and specifically relevant, her "Statement of Facts" she prefaced defendants appeal on.

Cavalieri, taking almost a full year to write his initial habeas petition, realized a petitioner can not ask a court to come to a corollary conclusion of law of a specific case if the material facts and evidenciary foundation are not similar. Thus, MaGee's "Statement of Facts", inter alia, declaring "Cavalieri dialed 9.1.1 to summon Police", and then arguing Thompson v. Louisiana, 469 US 17 (1984) or Wong Sun v. United States, 371 US 471 (1963) is incongruous, inapposite, and contrives an inane argument. Also, its a false statement.

Cavalieri motioned the court in February of ~~2010~~²⁰¹³ to appoint Alex Levay as his appellate lawyer; Renee Bernard of Alex Levay and Associates was appointed in March of 2013. Cavalieri then began a very detailed written communication with Ms. Bernard regarding the six claims he wanted briefed on his Direct

Appeal. [Petitioners Habeas Petition, Appendix C : 80 pages of correspondence] The correspondence detailed the fact that there were substantial issues of material facts that needed to be resolved in order for ~~the~~ appeal to be fairly adjudicated; including the 9-1-1 call for an ambulance, the police creating exigent circumstances, the "in custody as a matter of law" issue. [~~included herewith as Appendix G.~~]

Additionally, Cavalieri provided a detailed outline for his other claims he wanted on his Appeal, including a Brady claim and a Napue violations claim; complete with specific transcript pages AND case law to support every claim. For TEN weeks Berard never uttered a discontent or negative word. Importantly, Cavalieri had called attention in his initial communication with Berard, that Ms. MaGee's "Statement of Facts" was replete with erroneous statements, and was prejudicial to Cavalieri's appeal; he stated it was "Garbage".

Whereupon, Berard had a teleconference with the Defendant approximately a week before submitting the Direct Appeal. She informed Cavalieri she would only be briefing the 4th Amendment claim; only submitting the 4th amendment claim regardless of Cavalieri's directives. Cavalieri's final missive to Berard, concerning his direct appeal, was that "had he known" earlier she was going to refuse, he would have replaced her. To add insult to injury, Berard used MaGee's Statement of Facts

verbatim, and even added a derogatory fact at the end which had absolutely NO material relevance to the claim.*

Wherefore, we come upon the Petitioner who knows that the argument being made by Berard, and the Direct Appeal being submitted to the Court of Appeals, is NOT a sustainable argument, nor a brief that will further his appellate process. Cavalieri knows that the Virginia Habeas court will move to procedurally bar his Brady and Napue claims; they are due process claims that can, and should, be raised on Direct Appeal. Cavalieri knows the case law being used to argue his 4th Amendment claim versus the procedural posture established by Berard's Statement of Facts is incongruous; one is irrespective of the other.

Lastly, Cavalieri knows having his claims adjudicated under a Chapman Analysis/Abuse of Discretion offers him a far greater opportunity of success than any claim on Habeas review/collateral review. Thus, the appellant briefs his five additional claims as an Addendum, proffers an Amendment to supercede Berard's Statement of Facts, includes a Motion For Leave, Motion To Amend and Motion To Proceed Pro Se and files ALL of it timely.*5

The Virginia Court of Appeals sent Cavalieri, 8-days after his Pro-Se filing, an Order denying his pro se filing; Eight Days!. Cavalieri immediately filed a Motion

*5 Included as Appendix F hereof

* Appendix D

with the Court of Appeals to "Stay and Abey the Judgment" of his Direct Appeal whilst he appealed the denial of his pro-se addendum to the Virginia Supreme Court. The Ct. of Appeals not only refused to honor or file ~~the~~ the Motion to Stay and Abey, but didn't even respond to the petitioners; they sent a letter to counsel Becard regarding their refusal to do anything with the Motion. [Appendix F]

The Virginia Court of Appeals, both directly and in affect, violated Cavalieri's 14th Amendment due process rights by curtailing his First Right of Appeal without cause or case-law; and his 5th Amendment due process rights of presenting a complete defense. And, and not in the least, violated its own Rules of Court as VA.S. Ct. Rule 5A:8(d) provides for the remedy of correcting erroneous or misrepresented "statements of fact" on a petition, especially whereas they are material and/or dispositive of the issue presented.

Lastly, to point out the obvious: The Statement of Facts, gleaned from the transcripts of the trial and available evidence, presented to the states Court of Appeals is the Defendants LAST CHANCE to Present his case; the material, dispositive exculpatory facts and decisive circumstances establish what case-law adjudicates the claims. Thus, if a defendants state-appointed attorney is unwilling to "get it right", and thereafter the court is unwilling to allow the ACTUAL Defendant to set the record correct, how exactly is

the Defendant suppose to get a Constitutionally adequate, Fair, justice-minded Direct Appeal... and collateral proceedings? The Answer is: the Defendant can't. *
* in the instant case, Berard did change the statement of facts in her Petition For Appeal to the VA. S. Ct., but of course it ~~is~~ ^{was} too late at that point. Additionally, Berard was in possession of evidence (in the form of Police Statements) that impeached many of the facts given in the Commonwealths Statement of Facts, and she did NOTHING to correct the outright misrepresentations of facts and false statements. Cavalieri did NOT have the evidence until Berard sent it to him sometime in July of 2014. *

Apropos of the above, Cavalieri submitted THAT impeachment evidence and outright misrepresentations of material facts with his Brady and Napue claims on his habeas petition in the state court. The court ruled both claims non-cognizable as they needed to be brought on Direct Appeal. Thus, the state won yet again, lying and cheating the whole way, in a gruesome Catch-22.

The Point being: The Constitution is for the Defendants. Cavalieri did NOT abnegate his rights when he asked for "assistance". In the instant case, he literally ASKED FOR assistance, not a takeover. The Court needs to speak for the defendants and tell the courts, unambiguously, that the appeal is the Defendants appeal, NOT the attorney assisting him. Cavalieri should get a belated Appeal.

* Appendix K

Argument

re: Question #1

> The Supremacy Clause of the United States Supreme Court is being violated. The Loudoun County Circuit Court (the 20th Judicial district of Virginia), the Virginia Supreme Court, and the Fourth Circuit US Court of Appeals state Cumulative Review of an ineffective assistance of counsel claim is not recognized under Virginia law, and "not cognizable" on habeas corpus/collateral review.

> The United States Courts of Appeal for the 1st, 2nd, 3rd, 5th, 6th, 7th, 9th, 10th and D.C. Circuit have taken and adjudicated cumulative effect ineffective assistance of counsel claims for the past two decades. [Exhibit 51 hereof]

> These US Court of Appeals, and their respective lower courts, have proceeded to determine whether individually non-prejudicial errors, when combined cumulatively, prejudiced the defense, operated to deny the defendant a fair trial, or otherwise accumulate to establish prejudice under Strickland v. Washington, 466 US 668 (1984).

> See Lenz v. Warden of Sussex I State Prison, 593 S.E.2d 292 (2004) applying Mueller v. Angelone, 181 F.3d 557, 586 n.22 (4th Cir. 1999) applying Fisher v. Angelone, 163 F.3d 835, 852 (4th Cir. 1998) (Having just determined that none of counsels actions could be considered constitutional error ... it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial.) VERSUS: Moore v. Johnson,

194 F. 3d 586 (5th Cir. 1999) (finding that "the aggregate effect of counsels deficient performance resulted in" prejudice to the defendant. And see Albrecht v. Horn, 2006 US App. Lexis 28854 (3rd Cir. 2006) ("We recognize that errors that individually do not warrant habeas relief may do so when combined.") {Exhibit 51 has 16 cumulative cases}

> Also see As Examples of Cumulative Review:

Esparza v. Sheldon, 765 F.3d 619, (C.A. 6, 2014); US v. Moran, 778 F.3d 970 (C.A. 11, 2015); Hooks v. Workman, 689 F.3d 1187 (C.A. 10, 2012); Young v. Stephens, 795 F.3d 484 (C.A. 5, 2015); Saranchak v. Sec. PA. Doc., WL 5315581 (C.A. 3, 2015); Detrich v. Ryan, 740 F.3d 1237 (US Ct. App 9th Cir. 2013) (moved to Remand under Martinez v. Ryan, 132 S.Ct. 1309 (2012) with cumulative review of 4 claims of IAC) US v. Toles, 297 F.3d 959, 972 (10th Cir. 2002)

> The Sixth Amendment of the U.S. Constitution expressly considers a cumulative review as it dictates a fair TRIAL. A trial is a cumulative, in essence plural, proceeding.

> Strickland v. Washington encompasses both Express and Implied dictates of cumulative review of errors for aggregate prejudice. To wit:

- "The benchmark for judging any claim of ineffectiveness ... that the trial cannot be relied upon as having produced a just result." 466 US at 686 "the trial" is the entire process; Strickland dictates All of the specified errors be

weighed aggregately to verify a "just result."

- "Defendant must show that counsel's performance was deficient. This requires an evidentiary showing that counsel made errors so serious that counsel was not functioning..."

466 US at 687 Again, the dictate here is in the plurality. "errors" and "functioning" require, it is implied, that the court analyze the aggregate prejudice of all the grounds of the claim.

- "The petitioner must show that counsel's representation fell below an objective standard of reasonableness." 466 US at 688. "representation" is expressly cumulative. Also, an "objective standard of reasonableness" is implicitly of an overview of ALL of an attorney's choices during the entirety of the trial proceedings. It requires a cumulative review to have an "objective standard".

- "The relevant inquiry is not what defense counsel could have done, but rather whether the choices made by defense counsel were reasonable." This is expressly cumulative. To judge the "reasonableness of choices", the court HAS TO analyze ~~ALL OF~~ the IAC grounds specified by the defendant, assess and understand the circumstances of the trial and ~~defensive~~^{proceeding} offense, and then fairly judge the impact of the aggregate prejudice ~~of~~^{from} the errors and omissions.

- "... but for counsel's unprofessional errors, 'the result of the proceeding would have been different.'" 466 US at

694. Again, this describes that the "test for Prejudice" is a cumulative review, aggregate prejudice resulting in the defendants entire trial being Constitutionally invalid per the Sixth amendment. > see Premo v. Moore, 131 S.Ct. 733 (2011)

> Therefore, although Strickland dictates that a single error CAN result in a 6th amendment violation, and dictates that each specific ground proffered by a defendant on an ineffective assistance of counsel claim be analyzed by "Prong 1 & 2", the Strickland Standard encompasses a cumulative review. Strickland dictates, both expressly and implicitly, that a Cumulative Review/Aggregate Prejudice analysis must BE DONE to comport with the 6th Amendment.

Additionally, the Court has already affirmed this exact edict by and through the language of your opinions and your Holdings in :

> United States v. Bagley, 473 US 667 (1985). Although Bagley concerns the "standard of materiality" in a Brady claim (Brady v. Maryland, 373 US 83 (1963)), the opinion expresses that "~~mate~~ evidence is material" only if it "undermines confidence in the outcome of the trial." 473 US at 678, discussing United States v. Agurs, 427 US 97, 112 (1976). Thus, one-piece of evidence, OR several pieces cumulatively, that affected the due process guaranteed to the defendant. The Court stated: "We find the Strickland formulation of the

Agurs test for materiality sufficiently flexible to cover the...
"result of the proceeding would have been different". " 473

US at 682. The Holding and language of Bagley is unambiguously one of cumulative review and aggregate prejudice.

> Kyles v. Whitley, 514 US 419 (1995) : "... Fourth, the states disclosure obligation turns on the cumulative effect of all suppressed evidence favorable... not on... item by item."

473 US at 675 and n.7 ; 514 US at 432-441.

> Cone v. Bell, 556 US 449, 476 (2009) "... the lower courts erred in failing to assess the cumulative effect ..."

> Yates v. Evatt, 500 US 391 (1991) discussing Sandstrom v. Montana, 442 US 510 (1979) and Francis v. Franklin, 471 US 307 (1985); finding that, inter alia, the challenged jury instruction is weighed versus the cumulative effect of the evidence and other jury instructions, to be decided whether it is harmless error or unconstitutional.

> In Holland v. Jackson, 542 US 649 (2004) at 652 :

" Under § 2254(d)(1), a state courts decision involves an "unreasonable application" of clearly established federal law if it - "identifies the correct governing legal principal from the Supreme Courts decisions but unreasonably applies that principle to the facts of the prisoners case."

Therefore, Petitioner prays the Court to Hold that Strickland v. Washington, the "Strickland Standard", is

in-fact Expressly a Cumulative Review/Aggregate Prejudice dictate; whereas a prisoners due process rights pursuant to the 14th Amendment are violated when a reviewing court adjudicating a claim of ineffective assistance of counsel does not analyze the cumulative effect and aggregate prejudice of the grounds of the claim to determine if cumulatively the trial proceedings were constitutionally infirm, and the result of the trial unworthy of public confidence.

Petitioner moves the Court to adjudicate his ineffective assistance of counsel claims as included hereto, or remand back to the court of first instance with instructions to conduct a Cumulative Review.

IN re: Question 2

IN regard to a state Court of Appeals, and in the instant case Virginia specifically, the Petitioner can find no state procedural rule of law, nor case-law, that prohibits prose Amendments and/or addendums to attorney submitted Direct Appeals. The petitioner can find no state nor federal law that gives a state Court of Appeals the inherent authority to dismiss prose Addendums or Amendments, if filed timely, once that court has jurisdiction over the appeal. Jurisdiction is naturally obtained upon the attorney filing the Direct Appeal/Petition For Appeal that the Defendant wants to amend.

Petitioner would first assert that this "Question", and its attributable inferences, is not materially relevant nor analogous to the Courts Holdings in Jones v. Barnes, 463 US 745 (1983); nor ~~in~~ Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000); nor Townes v. Commonwealth, 234 Va. 307, 362 S.E. 2d 650 (1987).

The crux of the issue presented is that: once a State-appointed appellate lawyer has filed a defendants Petition For Appeal on his/her First Right of Appeal, thereby establishing jurisdiction of the criminal matter with the Court of Appeals, is it a violation of the defendants due process rights (-under the 5th and 14th amendments -) and right of Equal Protection under the law ~~if~~ for the Court of Appeals to summarily refuse or deny a prose amendment and/or addendum? Are a Defendants Bill of Rights abnegated because he needed the "assistance of counsel" in prosecuting his appeal of right?

The Answers should be YES and NO, respectively.

Particularly germane to the Question, AND TO petitioners specific scheme, is that petitioner alerted the Court of Appeals the Statement Of Facts was an erroneous representation of material facts and therefore his amendment was to supercede "his attorneys". Are not the courts of the United States charged with being the curators of justice? Would they not WANT TO propagate the inclusion of both exculpatory and inculpatory factual, material evidence?

What the courts have stated and opined :

> The "fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner."

- "Due Process is not technical conception with fixed content unrelated to time, place, and circumstances; rather, it is flexible and calls for such procedural protections as particular situation demands." USCA Const. Amend. 5 §14

> Particularly apropos: The "Degree of potential deprivation that may be created by particular decision is factor to be considered by assessing validity of administrative decision making process from Due Process standpoint."

The aforesaid ~~sta~~ in: Mathews v. George H., 424 US 319 (1976); Armstrong v. Manzo, 380 US 545, 552 (1965)

> "Due Process is flexible and calls for such procedural protections as the particular situation demands." see Morrissey v. Brewer, 408 US 471, 481 (1972)

Thus, in the instant case, as a matter of due process, the defendant is entitled to file an amendment and/or addendum to HIS appeal. The Commonwealth decided to allow Direct Appeals. Once that decision was implemented, a defendant has the right, either by the 5th amendment or the 14th amendment or both, to amend HIS petition whereby he can fully prosecute his appeal of his conviction. Case in point > Evitts v. Lucey, 469 US 387 (1985), which the Court purposefully elaborated upon assistance of counsel on a defendants first right of appeal. The Court did not,

however, abolish nor even curtail a defendant's rights to have a complete defense on his direct appeal. As a matter of fact, Evitts specifically pens: "constitutional requirement of... can only be attained where counsel acts in the role of an active advocate." 469 US at 404; quote from Anders v. California, 386 US 738, 744 (1967)

Evitts, like cases before it [Griffin v. Illinois, 351 US 12 (1956); Douglas v. California, 372 US 353 (1963); Burns v. Ohio, 360 US 252 (1959); Smith v. Bennett, 365 US 708 (1961)] have come about due to the state trying, in one way or another, to foreclose an indigent's ability to "get justice" and prosecute his appeal. The same is true in the instant case.

Additionally, In Morris v. Slappy, 461 US 1, 11-12, (1983) the Court stated: "Petitioner must show that the trial court's decision embodied an 'unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay.'" That particular case was concerning a denial of a motion for continuance claim.

However, the reasoning behind the Court's statement appears to be of weighing a due process determination, perhaps derivative of an Abuse of Discretion scenario? Regardless, the statement is analogous to Cavalieri's claim of irreverence by the Court of Appeals.

In the instant case, the Court of Appeals had no reason, nor case law, nor procedural rule to summarily

deny Cavalieri's prose Amendment/Addendum; especially in the face of knowing the Due Process claims - defendants Brady claim and Napue violations claim - would thereafter be deemed non-cognizable under the rule in Slayton (Slayton v. Parrigan, 215 Va. 27, 29-30, 205 SE 2d 680, 682 (1974)) yet, the Court of Appeals' decision, considering the circumstances, embodied an ~~unreasonable~~ ^{unreasonable} and arbitrary insistence upon expeditiousness in the face of a justifiable - and procedurally proficient - Motion To Amend.

Additionally, what the 2013 Court of Appeals did with Cavalieri's prose brief is wholly contradictory to its decision in Riner v. Commonwealth, 40 Va. App. 440, 579 SE 2d 671 (Va. App. 2003) where it stated, regarding ~~a~~ ^{an} ~~prose~~ amendment > "nothing in the Rules of Court prevents us from exercising our inherent authority to allow the petitioner to present additional issues for our consideration when we have already acquired jurisdiction and have not yet acted on the original petition." [579 SE 2d 678] "... cf. > Shoultz v. Shoultz, 27 Va. App. 264, 271, 498 SE 2d 437, 440 (1998) (recognizing inherent authority of court, in divorce case, to reopen record to take additional evidence). Petitioner can find no federal cases, nor other state cases, where a state may deny due process of a defendant's Direct Appeal by denying him a prose amendment. *6

*6 what is particularly egregious in the instant case, and

Lastly, the Court needs to use its supervisory power in adjudicating this Question because the Commonwealth of Virginia, and indeed probably every state court, wants to foreclose every avenue an indigent defendant has in prosecuting his appeals by the conclusory and summarily stated "he/she had counsel". When counsel won't listen, won't brief three claims because she only has time for one, doesn't read through the evidence she actually has, the court forecloses prose motions and/or amendments with a cursory "you have counsel". The courts gave ~~my~~ ~~the~~ this defendant's attorney, his trial attorney was at the time Loudoun County's Chief Public Defender, deference in all of the grounds against her in petitioner's state habeas petition. The "deference" that Strickland holds the attorney should

thereby why it is necessary for the Court to act on this Question, is that Cavalieri's prose addendum contained the allegations, within his Napue claim and Brady claim, that the THREE witnesses - (police officers in fact) - the Commonwealth's ENTIRE Motion To Suppress case rested on were in fact perjuring themselves AND the Commonwealth knew it. There was No Consent, and Deputy Hill moved the bedsheets FIRST, and then he saw a bag - not the other way around. Unbeknownst to Cavalieri at the time, his appellate attorney HAD THE POLICE STATEMENTS corroborating his allegations, PROVING the Commonwealth knew. As previously mentioned, Ms. Berard did nothing.

automatically get. Yet, Petitioner's trial attorney, was arrested shortly after his trial for stealing cans of Red Bull energy drink from a convenience store she frequented. The store clerk ~~did~~ did not call the Police the "first time" he caught her, but felt he had to "the second time." But her decisions are awarded deference.

The Court must be aware that EVERY SINGLE WEEK an official of some kind: a police officer, a police Detective, a Sheriff, a politician, a judge, an attorney... is in the news papers for lying, cheating, and/or stealing. The two Detectives in Chicago, in 2016, who were found to have lied about evidence in the conviction of two black men some 20 years ago; the innocent men spent 20 years in prison because of "deference" to ~~their~~ ^{Police} testimony. And almost every week for 2 years now that story ~~has~~ been repeated!

The truth, particularly in Cavalieri's case, is that had he had a "paid lawyer", he would not be in prison. IN relevance to Question #2, Cavalieri would have demanded of his "paid attorney" that he submit ALL OF the claims Cavalieri deemed meritorious, but especially the Napue claim and the Brady claim. So purely derivative of the Equal Protection Clause of the 14th Amendment, Cavalieri's Direct Appeal - his ability to have a comprehensive Direct Appeal - falls constitutionally short. See the consensus of Griffin v. Illinois, *supra*; Burns v. Ohio, *supra*; Smith v. Bennett, *supra*; Evitts v. Lucey, *supra*; versus the Virginia Court of

Appeals decision relevant to petitioners prose amendment.

IN furtherance of the States protracted injury to Cavalieri, in a purely Due Process Clause of the 14th Amendment deprivation, is the reliance on Jones v. Barnes, 463 US 745 (1983). Jones v. Barnes does not opine on the prejudice that is inherent on a claim that could have been adjudicated on Direct Appeal under a Chapman analysis, but instead ~~is~~ must be argued on collateral appeal under the Kotteakos Standard. {see Brecht v. Abrahamson, 507 US 619 (1993) discussing the Standard of Review on collateral appeal being "substantial and injurious effect or influence" and not "harmless error". 507 US at 627 } Additionally, the petitioner must wait YEARS to brief the claims he wanted included on his direct appeal as grounds for his ineffective assistance of counsel/appellate counsel claim, AND argue how the direct appeal^{claim} had more merit than the claims submitted by counsel.

IN summary, because of Jones, a defendants meritorious Brady claim/Napue claim, etc... (1) can be rejected by his appointed counsel and NOT included on his Direct Appeal even if the defendant demands it be included; (2) can be rejected by the court whereupon the defendant presents the claim prose; (3) wherefore the claim is not adjudicated under/by a Chapman analysis; (4) the defendant must then wait 8-20 months(?) in which to file his state habeas petition to include the Due Process claims; (5)

wherein his Brady claim and his Napue claim are non-cognizable in Virginia on collateral review per the rule in Slayton, supra ; ⑥ wherefore the petitioner must then argue his Brady/Napue claims within an appellate counsel IAC claim, which is further subjected to a Strickland review - so the Defendant must argue the actual claim, PLUS why his counsel was ineffective for not presenting the claim, PLUS how it was prejudicial, PLUS how the claim has "just as much if not more" merit than the claims presented on the direct appeal {4 arguments}.

* to segue, it was of course grossly indicitive of the due process violation EVERY time the AG and/or the Court stated that the "petitioner could have raised the issue on direct appeal but did not do so..."

Again, how is Constitutional Due Process served whereas a Defendant has to - HAS TO - endure 1 thru 6 above to have a claim maybe heard by a judge ?

Wherefore, Petitioner moves the Court pursuant to Rule 10(c) to grant petitioners habeas petition pursuant to his due process rights being violated, and Remand his case for a belated and Constitutionally valid Direct Appeal.

Alternatively, Grant petitioners habeas on his Sixth Amendment violations and vacate his verdict and sentence, pursuant to Question 1 and Rule 10(a) & (b).