NO. 15A937
(USCA3 No. 17-3259)

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES S. RENCHENSKI – PETITIONER

V.

SUPERINTENDEDNT, S.C.I. COAL TOWNSHIP – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT OF APPEALS

FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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- QUESTIONS PRESENTED -

I. HAS THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DECISION THAT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT, ALL OTHER COURTS OF APPEALS, FEDEERAL LAWS, DECISIONS OF THE STATES' COURT OF LAST RESORT AND THE UNITED STATES CONSTITUTION RELATING TO THE ADEQUACY QUESTION OF A GIVEN STATE RULE/STATUTE THAT COULD LAWFULLY BAR FEDERAL HABEAS CORPUS REVIEW?

II. HAS THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DECISION THAT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT, ALL OTHER COURTS OF APPEALS, FEDERAL LAWS, DECISIONS OF THE STATES' COURT OF LAST RESORT AND THE UNITED STATES CONSTITUTION RELATING TO AN ALLEGED PROCEDURAL DEFAULT THAT COULD LAWFULLY BAR FEDERAL HABEAS CORPUS REVIEW?

III. HAS THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DEISION THAT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT, ALL OTHER COURTS OF APPEALS AND FEDERAL LAWS RELATING TO THE APPLICABILITY OF A FED.R.CIV.P. 60(b)(6) MOTION IN THE CASE SUB JUDICE?

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- PETITION FOR WRIT OF CERTIORARI -

Charles S. Renchenski, petitioner pro se, respectfully petitions for Writ of Certiorari to review the judgment of the Court of Appeals for the Third Circuit.

- OPINIONS BELOW -

The Panel opinion of the Court of Appeals is not reported (Denial at Appendix "A"). Petition for Panel/En Banc Rehearing. Petition for Panel/Rehearing (Denial at Appendix "B"). The Opinion of the District Court of Pennsylvania is unreported. (Denial at Appendix "C").

- JURISDICTION -

The judgment of the Court of Appeals for the Third Circuit was entered on January 23, 2018. The Order denying Panel/En Banc Rehearing was entered on March 26, 2018. The Jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

- CONTITUTION AND STATUTORY PROVISIONS INVOLVED -

The United States Constitution, Fifth and Fourteenth Amendments right to due process of law.

The United States Constitution, Sixth Amendment right to effective trial and direct appeal counsel.

- FEDERAL STATUTES -

Title 28 U.S.C. §2254(e)(1)

- STATE STATUTES -

Title 42 Pa.C.S. §9543(b)

- STATEMENT OF THE CASE -

1. On August 22, 1982, Mr. Renchenski was arrested and charged with Criminal Homicide.
2. On July 12, 1984, a jury convicted Mr. Renchenski on the charge of First Degree Murder.
3. On January 30, 1985, Mr. Renchenski was sentenced to LIFE imprisonment.
4. Post-sentence Motions and a Direct Appeal were filed and on March 3, 1986, the Superior Court affirmed the conviction and sentence.
5. Appeal to the Pennsylvania Supreme Court was denied review without an opinion and on May 5, 1988, Mr. Renchenski filed a timely petition pursuant to the Post-Conviction Relief Act, (PCRA).

6. On May 12, 1988, the PCRA court denied the petition and on May 12, 1989, the Pennsylvania Superior Court vacated the dismissal and remanded the case for appointment of counsel to file an amended PCRA petition.
7. A full Three (3) years later, in March of 1992, PCRA counsel, John Ryan, was appointed to file an amended PCRA petition.
8. On July 12, 1993, PCRA counsel filed for withdrawal and was unlawfully granted leave on July 12, 1993.
9. Mr. Renchenski's PCRA remained idle in the docket until January of 2003 when he filed his self-styled "Extension to PCRA'.
10. Resultant from Mr. Renchenski's "Extension" filing there were a multitude of motions and appeals filed by both Mr. Renchenski and the district attorney relating to whether or not Mr. Renchenski's PCRA was still pending and what the "Extension" actually was, i.e. a serial PCRA petition or a valid amendment to a still pending PCRA petition. The court concluded that the "Extension" was a valid amendment to a still pending PCRA petition.
11. In August of 2010, due to the highly irregular state court proceedings, Mr. Renchenski filed his federal Habeas Corpus petition and a concurrent Motion for Stay and Abeyance of that petition pending resolution of his state court proceedings.
12. The district court docketed Mr. Renchenski's habeas petition and granted the Stay and Abeyance motion.
13. Several state court motion/appeals were filed and on October 25, 2010, the Pennsylvania Supreme Court granted review, but not on Mr. Renchenski's constitutional claims. The court posed Two (2) questions of its own that it wanted the party's to brief, i.e. (1) Whether the Pennsylvania Superior Court erred in concluding that 42 Pa.C.S.§9543(b) applies to delay in litigating a pending PCRA petition, and (2) What obligation, if any, does a petitioner have to seek expeditious litigation of his PCRA petition.

14. On September 28, 2012, the Pennsylvania Supreme Court issued a precedent setting opinion that §9543(b) could be applied to dismiss an amended PCRA petition after a timely filed original petition.
15. After denial of state review of Mr. Renchenski's constitutional claims the federal courts began processing Mr. Renchenski' federal habeas corpus petition and on March 25, 2015, Magistrate Judge Pesto (M.J. Pesto) issued a Report and Recommendation (RR) to dismiss the petition due to an alleged procedural default caused by Mr. Renchenski.
16. On April 15, 2015, Mr. Renchenski timely filed Objections to the RR.
17. On April 30, 2015, District Judge Gibson (D.J. Gibson) dismissed Mr. Renchenski's petition without conducting a de novo review of the objected to portions of the RR and without resolving all of Mr. Renchenski's claims. A Certificate of Appealability (COA) was not granted.
18. On May 11, 2015, Mr. Renchenski timely filed his appeal/Petition for COA.
19. On December 4, 2015, the Third Circuit Court of Appeals denied a COA without a reasoned opinion.
20. On December 18, 2015, Mr. Renchenski file a petition for Panel/En Banc Rehearing that was denied on January 8, 2016.
21. On March 19, 2016, an appeal to the United States Supreme Court was filed and on October 17, 2016, the appeal ws denied.
22. On February 8, 2017, Mr. Renchenski filed a Fed.R.Civ.P. 60(b)(6) Motion.
23. On June 7, 2017, M.J. Pesto issued a RR to dismiss the petition.
24. On June 21, 2017, Mr. Renchenski filed timely Objections to the RR.
25. On September 29, 2017, D.J. Gibson dismissed the 60(b)(6) motion without a de novo review or reasoned opinion. A COA was denied.
26. On October 26, 2017, Mr. Renchenski appealed to the Third Circuit Court of Appeals and on January 23, 2018, a COA was denied without a reasoned opinion.
27. On February 4, 2018, Mr. Renchenski filed a petition for Panel/En Banc Rehearing, which was denied on March 26, 2018, without a reasoned opinion.

- REASONS FOR GRANTING THE WRIT -

The Third Circuit Court of Appeals has entered important federal questions in a way that directly conflicts with relevant decisions of the United States Supreme Court and decisions of all other Courts of Appeals.

The Third Circuit Court of Appeals has entered decisions, which are in conflict with the United States Supreme Court and all other Courts of Appeals.

The Third Circuit Court of Appeals has entered decisions, which are in conflict with federal law(s).

The Third Circuit Court of Appeals has entered decisions, which are in direct conflict with factual determinations of the States' court of last resort relating to critical determinations relative to state laws.

The Third Circuit Court of Appeals has entered decisions that resulted in the Writ of Habeas Corpus being unlawfully suspended in violation of the United States Constitution, art. 1, §9, cl.2.

- ARGUMENTS -

This section must be prefaced with the following statements: The United States Supreme Court has declared that "our adversary system of justice is premised on the proposition that partisan advocacy on both sides of a case will best promote the ultimate objective[s] of justice" Herring v. New York 422 U.S. 853, 862 (1975). Mr. Renchenski has been denied justice in that he has never been permitted to challenge trial counsels stewardship, in any venue, even though he has timely filed every petition. Mr. Renchenski's case is complex and encompasses in excess of Thirty-Five (35) years. Mr. Renchenski has been denied due process of law when the PCRA court committed no less than Fourteen (14) procedural errors resulting in his PCRA remaining dormant. Mr. Renchenski was thereafter punished for the delay the state caused.

In addition, in violation of federal law and the United States Constitution, art.1 section 9, cl. 2, there has been an unlawful suspension of the Writ of habeas corpus. Mr. Renchenski has not had even one reasoned opinion for denial of federal habeas corpus review from any appellate judge. No de novo review was performed resulting in Mr. Renchenski being limited to the presentation of this appeal.

I. HAS THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DECISION THAT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT, ALL OTHER COURTS OF APPEALS, FEDERAL LAWS, DECISIONS OF THE STATES' COURT OF LAST RESORT AND THE UNITED STATES CONSTITUTION RELATING TO THE ADEQUACY REQUIREMENT OF A GIVEN STATE RULE/LAW THAT COULD BAR FEDERAL HABEAS CORPUS REVIEW?

This section should have been a simple question for the federal courts to adjudicate, however, every federal judge in Mr. Renchenski's original habeas petition, the instant Rule 60(b)(6) motion and all appellate judges have ignored the question even though Mr. Renchenski has repeatedly raised it.

A) - Federal law is undeniably clear that "In our judicial system, the Supreme Court's understanding is controlling". SCA Hygiene Prods. Aktiebolag v. First Quality Baby Products 197 L.Ed2d 292, f.n. 5, 580 U.S. ___, 137 S.Ct. ___, 2017 U.S.LEXIS 2023. The court has also stated, "We have become accustomed to using the Due Process Clause to invalidate laws on the ground of vagueness. The doctrine we have developed is quite sweeping; 'A statute can be impermissibly vague... if it fails to give people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits', or 'if it authorizes or even encourages arbitrary and discriminatory enforcement'." Johnson v. United States 192 L.Ed2d 269, 588, 135 S.Ct. 2551, 2015 U.S.LEXIS 4251.

In the case sub judice, the Pennsylvania Supreme Court panel of learned judges announced that "Hence, as Section 9543(b) is subject to at least two logical yet differing constructions, we find that provision is ambiguous" (Underlining added). Com. v. Renchenski 616 Pa. 608, 621, 52 A.3d 251, 258 (Pa 2012). The Pennsylvania Supreme Court dismissed Mr. Renchenski's PCRA and denied state review of his constitutional claims, based upon Title 42 §9543(b), a statute it declared to be ***ambiguous***, i.e. vague.

Furthermore, in violation of both state and federal law the decision was not based upon the law of lenity. See e.g. U.S. v. Gunderson 511 U.S. 39, 54 (1994)(Accordingly, a court faced with an ambiguous statute in a criminal matter must "apply the law of lenity and resolve the ambiguity in the defendant's favor"); Com. v. Guilian 141 A.3d 1262, 1264 (Pa. 2016)("The panel recognized penal statutes are to be strictly construed under the law of lenity, with ambiguities resolved in favor of the defendant"). Nothing was ever resolved in Mr. Renchenski's

favor. Even though Mr. Renchenski has raised all his claims in the federal courts, they have not been addressed, compelling Mr. Renchenski to present his claims again, in an abbreviated form.

2. Before a timely federal habeas corpus petition can be denied review, after the state courts have denied state review of federal claims, the federal court must determine whether the states' rule/statute used to deny state review was adequate, i.e. "firmly established and regularly followed". See e.g. Wright v. Georgia 373 U.S. 284, 288-89 (1963)("The adequacy of a given state procedural rule to bar federal court reaching on the merits of a petitioner's claim is a federal question".

A) - Legal questions are required to be reviewed de novo, see e.g. Perry v. Blum 629 F.3d 1 (C.A. 1 [MA] 2010); U.S. v. Kassar 660 F.3d 108 (C.A. 2 [NY] 2014); U.S. v. Manning 564 Fed.Appx. 723 (C.A. 4 [VA] 2014); Garrido v. Jones 854 F.3d 721 (C.A. 6 [TN] 2016). The Third Circuit Court of Appeals has not performed the required de novo review of this legal question.

i) - As a matter of court records, no court, state or federal, has determined that §9543(b) is "***procedural***" in nature or effect. The Pennsylvania Supreme Court announced in *Renchenski* that:

- Renchenski 616 Pa. at 622, 52 A.3d at 259 -

> The deliberate placement of Section 9543(b) within the "eligibility for relief" portion of the PCRA, See 42 Pa.C.S. §9543, rather that the "jurisdiction and proceedings" portion, See 42 Pa.C.S.§ 9545, indicated the Legislatures intent to connect prejudicial delay to the full scope of a petitioner's burden to "plead and prove" his claims, rather than to the initial determination of timeliness.

Mr. Renchenski, in "pleading and proving" his claims can present rock solid arguments or frivolous arguments, to "plead and prove" his claims, however his ability to "plead and prove claims is not a *procedural* issue. The United States Constitution has announced that "... only

firmly established state procedural rules impose a bar to adjudication of federal constitutional claims...". O'Dell v. Thompson 502 U.S. 995, 998 (1991) (Underlining added). Even if §9543(b) could be deemed procedural, it must still must be adequate, which, as will be shown, it simply is not.

3. The adequacy question encompasses distinct facets that must be addressed in seriatim, i.e., the rule/statute must be "firmly established and regularly followed"; it must provide "notice" of its requirements; and, it must not be vague/confusing/ambiguous.

4. District Judge Gibson and the appellate courts have not addressed the adequacy question that Mr. Renchenski presented in his habeas appeals nor in the instant Rule 60(b)(6) motion and, therefore, he cannot reference their rationale for denying habeas review. As such, Mr. Renchenski can only reference M.J. Pesto's (RR's). M.J. Pesto's only references relating to the adequacy requirement are as follows:

- (March 25, 2015, RR, Pgs. 11-12) -

> For procedural default to bar federal habeas review of a claim presented to the state courts, the last state court to consider the claim must actually have declared that it will not consider the claim because of an independent and adequate procedural bar to the petitioner's claims... Adequate means that the state court procedural bar is one that is well-established and regularly (but not necessarily universally) applied with sufficient clarity that the petitioner was on notice of what conduct was required.

- (March 25, 2015, RR, Pg. 28) -

> Unless Renchenski can show that the Pennsylvania Supreme Court's reliance on Section 9543(b) is not an independent and adequate basis for its decision he cannot avoid procedural default. Renchenski does not do so.

- (March 25, 2015, RR, Pg. 29) -

> Section 9543(b) acts as an independent and adequate state ground for the dismissal of Renchenski's collateral attacks on his conviction.

5. It's obvious that M.J. Pesto understood the adequacy requirements, however, he decided to ignore them when applying them to the case sub judice. Mr. Renchenski raised objections to M.J. Pesto's RR in both his original habeas petition and the instant Rule 60(b)(6) motion. (See, April 24, 2015, Objections RR, Pgs. 39-47; June 21, 2017, Objections RR, Pgs.19-29). Because Mr. Renchenski properly objected to portions of the RR it was incumbent that D.J. Gibson perform a de novo review of those objected to portions. See e.g. Thomas v. Arn 474 U.S. 140, 141-42 (1985)("Any party that disagrees with the Magistrate's recommendation may serve and file written objections to the Magistrate's report and thus obtain de novo review by the district judge"). See also 28 U.S.C. §636(b)(1) and (c). In the process of de novo review the district judge "should address each objection separately." Holloway v. Vaughn 1995 U.S.Dist.LEXIS 13855, 1995 WL 564345 at *1 (E.D. Pa. 1995); Sullivan v. Cuyler 723 F.2d 1077, 1085 (3rd. Cir. 1983 (Same).

Because D.J. Gibson did not perform a de novo review, a reversal and remand was required by the appellate court. See e.g. Hudson v. Gammon 46 F.3d 785, 786 (8th. Cir. 1995) – Cert. de. 518 U.S. 1025 (1996)("District courts failure to conduct de novo review of the objected to portions of the magistrate judge's report and recommendation required reversal and remand"). Without a de novo review that resolves all the claims there can be no lawful "final order" which may be appealed. See e.g. Cooper & Lybrand v. Livesay 437 U.S. 463, 467 (1978)("Regardless of the label given a court decision, if it appears from the record that the district court has not adjudicated all the issues in a case, then there is no final order. ***The same applies in habeas cases***")(Emphasis added).

Lawfully, the Third Circuit Court of Appeals didn't have jurisdiction to entertain Mr. Renchenski's initial habeas petition and/or his instant Rule 60(b)(6) motion. (Note: Mr. Renchenski can prove that D.J. Gibson didn't have time to conduct a de novo review. He didn't have Mr. Renchenski's objections for one full day and there were Thirty-Five years of litigation that needed reviewed. This issue wasn't properly addressed by M.J. Pesto in his dismissal of the instant motion).

A) - The United States Supreme Court has declared, and federal law is clear that, "state practice must be firmly established and regularly followed in order to prevent subsequent review by this court". Ford v. Georgia 498 U.S. 411, 423-24 (1991); Hudyih v. Smith 684 Fed.Appx. 99, 100 (C.A. 10 [CO] 2017)(Same); Woodfolk v. Maynard 857 F.3d 531, 543 (C.A. 4 [MD] 2017)(Same); Jones v. Warden 683 Fed.Appx. 799, 800 (C.A. 11 [GA] 2017)(Same); Onunwor v. Moore 655 Fed. Appx. 369 (C.A. 6 [OH] 2016); Clemmons v. Pfister 845 F.3d 816, 821 (C.A. 7 [IL] 2017(Same).

Prior to Mr. Renchenski's case, the "firmly established" rule/law relating to §9543(b) was that it **only** applied to the filing of an initial PCRA petition. See Com. v. Jones, below. The fact that *Jones* was the only prior case that referenced §9543(b) is voiced by the Pennsylvania Supreme Court in Mr. Renchenski's own case, saying:

- (Renchenski 616 Pa. at 621, 52 A.3d at 258) -

> This matter presents an issue of statutory interpretation, the goal of which is to ascertain the intent of the Legislature. See 1 Pa.C.S. §1921(a). We begin with the plain language of the provision, See e.g. Fedoreck 596 Pa. at 484, 946 A.2d at 98, and Appellant presents a colorable argument that a plain reading of Section 9543(b) indicates that "delay in filing the petition" must refer to the initial filing of the original PCRA petition. Indeed, in the one case in which we have addressed the relevant portion of section 9543(b), the court found such an argument waived, but noted that:
>
> > [B]y its very term, Section 9543(b) requires that: (1) a claim of prejudice ***must arise*** from a petitioner's ***undue delay in commencing*** post-conviction litigation; (2) the claim must be raised in a motion to dismiss; and (3) the lower court must conduct an evidentiary hearing on the defense. (Emphasis added) Com. v. Jones 590 Pa 202, 240 A.2d 268, 290-91 (Pa. 2006).

The Pennsylvania Supreme Court defined "commencing" a PCRA as the filing of an "original process". See Com. v. Flanagan 578 Pa. 587, 854 A.2d 489 (Pa. 2004), saying that it rejected the Commonwealth's contention that *Flanagan's* amendment was time-barred "as it did not constitute an original process, but rather, represent a valid amendment to an already-filed timely petition. *Flanagan* 578 Pa. at 600, and that "the pending PCRA proceeding will

most likely comprise the petitioner's sole opportunity to pursue collateral relief in state court" id. *Flanagan's* case sat idle for Ten (10) years, the same as Mr. Renchenski's, however, *Flanagan* received a hearing whereas the Pennsylvania Supreme Court rendered a new application of §9543(b) in Mr. Renchenski's case.

The Pennsylvania Supreme Court in *Renchenski* determined that its prior holding in *Jones* "does not account for the nuances of the statutory language", Renchenski 616 Pa. at 620, 52 A.3d at 258. The Pennsylvania Supreme Court concluded that it had to resolve the problem of *Jones/Flanagan* when an amended PCRA petition was filed years after the original process and concluded that "Hence, as Section 9543(b) is subject to at least two logical yet differing constructions, we find that provision ambiguous". Renchenski 616 Pa. at 621, 52 A.3d at 258. (Underlining added)(Note: The ambiguous nature of §9543(b) is addressed separately, infra).

Because the *Jones* court didn't account for the ***nuances*** of §9543(b), and it was deemed "ambiguous", the Pennsylvania Supreme Court was compelled to announce its interpretation and full scope and applicability of §9543(b). The court stated that "Allowance of appeal in this matter was granted to address the applicability of Section 9543(b) of the Post-Conviction Relief Act ("PCRA"), See 42 Pa. C.S. §9543(b), to delays in filing amended post-conviction petitions...". (Underlining added). Renchenski 616 Pa. at 609, 52 A.3d at 252. The court was required to promulgate a new holding that expanded its prior holdings in *Flanagan* and *Jones*. Because the Pennsylvania Supreme Court declared that §9543(b) was ambiguous, and the Pennsylvania Legislature has not altered the language of §9543(b), it must be deemed void and without effect. See e.g. Gonzalez v. Carhart 550 U.S. 124, 149 (2006)(The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient clarity that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement); Golb v. A.G. of N.Y. 2017 U.S.App.LEXIS 16746 (C.A. 2 [NY] 2017)(Same); U.S. v. Perry 659 Fed.Appx. 146, 155 (C.A. 4 [VA] 2016)(Same), etc.

As proof that the Pennsylvania Supreme Court promulgated a new application of §9543(b) the two cases of Com. v. Swartzfager, infra, at II – 1, and Com. v. Weatherill 24 A.3d 435 (Pa. Super 2011). *Wetherill* arose in a different county than Mr. Renchenski's. The *Weatherill* PCRA court applied the existing law as announced in *Jones* and *Flanagan* and denied the district attorney's motion to dismiss due to an alleged delay caused by Mr. Weatherill. The district attorney in *Weatherill* appealed to the Pennsylvania Superior Court, which recently affirmed the dismissal of Mr. Renchenski's PCRA based upon prejudicial delay pursuant to §9543(b). The Superior Court stated the following: "While the PCRA Court initially denied the Commonwealth's motion to dismiss, the Commonwealth asked it to reconsider that decision in light of the promulgation on Commonwealth v. Renchenski 2010 Pa. Super 9, 988 A.2d 699 (Pa. Super 2010)." *Weatherill* 24 A.3d at 438. Black's Law Dictionary, Deluxe 10th. Ed. defines promulgate as "to put (a law or decree) into force or effect; to declare of announce publicly." The *Weatherill* court went on to conclude that "In this case, we conclude that "Renchenski" controls." *Weatherill* 24 A.3d at 439. For *Renchenski* to **control** and its decision was **promulgated** clearly demonstrates that it was the first time that §9543(b) was being applied to dismiss an amended PCRA after a timely filed original process PCRA.

Because Mr. Renchenski's case is the first time §9543(b) was being applied to dismiss an amended PCRA, after a timely filed original process, it was impossible for it to have been ***"firmly established and regularly followed"***. See e.g. Kindler v. Horn 642 F.3d 398, 405 (3rd. Cir. 2011) – Cert. den. 132 S.Ct. 1089 (2012)("The rule of procedure applied to Kindler's case... was a new rule that was not firmly established at the time of his escape, accordingly, that bar is unforeseeable on habeas review"); Thomas v. Davis 192 F.3d 445, 450-453 (4th. Cir. 1999)("... Rule sought to be used for the first time cannot have been consistently or regularly applied in the past"); White v. Bowersox 206 F.3d 766, 781 (8th. Cir. 2000)("No bar to federal review... because neither White nor his attorneys could reasonably have anticipated any such rule in advance of its first application in White's own case"). The United States Supreme Court has been clear that "the court will disregard state procedures not firmly established and regularly followed." Lee v. Kemna 534 U.S. 362, 389 (2002). As such, because Mr. Renchenski

was denied state review based upon a new application of §9543(b), Mr. Renchenski should not have been denied federal habeas review.

B) – A vague/ambiguous/ rule/statute cannot be the basis to deny federal habeas review. This encompasses the "notice" requirement of a statute/rule. The United States Supreme Court has repeatedly addressed the issue that "A criminal statute must clearly define the conduct it proscribes. If it does not 'give a person of ordinary intelligence fair notice' of its scope, United States v. Batchler 422 U.S. 114, 123, 99 S.Ct. 2198, 60 L.Ed2d 755 (1999), it denies due process." Bond v. U.S. 189 L.Ed2d 1, 22, 2014 U.S.LEXIS 3988 (2014). The court also stated that "This court has consistently held that the constitution requires a state to provide notice to its citizens of what conduct will subject them to criminal penalties and what those penalties are." Gilmore v. Taylor 508 U.S. 333, 358 (1993). In §9543(b) there is absolutely no reference to an amended PCRA petition or what penalties may exist for a late filing. As such, it could not, and does not, provide "notice of its scope. The relevant statute reads as follows:

- 42 Pa. C.S. §9543(b) -

> EXCEPTION – Even if the petitioner has met the requirements of Subsection (a), the petition shall be dismissed if it appears at any time that, because of the delay in filing the petition, the Commonwealth has been prejudiced in its ability to respond to the petition or in its ability to retry petitioner. A petition can be dismissed due to delay in filing by petitioner only after a hearing upon a motion to dismiss.

The above statute merely states that "the petition" shall be dismissed without mention of an amended petition after a timely filed original process. The only historical reference to §9543(b) by the Pennsylvania Supreme Court is the case of *Jones* and *Flanagan* supra, stating that "by its very terms" it applied to a PCRA petition that "commences post-conviction litigation" and *Flanagan's* announcement that a PCRA petition is commenced by the filing of an "original process".

To further demonstrate the vague language of §9543(b), the district attorney in Mr. Renchenski's case was arguing that §9543(b) should be applied to a delay in filing an amended

PCRA, while at virtually the same time another district attorney, from a different county, was arguing the opposite. The court, in referencing the district attorney's position stated "According to the Commonwealth, since no specific time frame is contained within the applicable Rules of Criminal Procedure or in the PCRA statute relative to the filing of an amended petition..." Com. v. Burkett 5 A.3d 1260, 1277 (Pa Super 2010). Here the district attorney is plainly stating that there is no specific time frame listed... anywhere. Because there is no specific time frame listed, anywhere, or how §9543(b) applied, Mr. Renchenski should not have been penalized for not being able to divine some invisible application of §9543(b).

As further proof of the vague/confusing language of §9543(b), look at the states' Superior and Supreme Court's opinions. When affirming the dismissal of Mr. Renchenski's PCRA the Superior Court opined that:

- Superior Court Opinion, Page 5 -

"While the express terms of this Section refers to a 'delay in filing', we conclude that under the unusual circumstances present in this case, the provision ***should be subordinated*** to the dominant purpose of this section..." (Emphasis added)

The three judge panel, who were all well versed in the law, had to guess how §9543(b) "should be applied" given the "unusual circumstances present". The Pennsylvania Supreme Court didn't mince its words, it flatly stated the following:

- Renchenski 616 Pa. at 221, 53 A.3d at 258 -

"Hence, as Section 9543(b) is subject to at least two logical yet differing construction, we find that the provision is ambiguous"

Because §9543(b) was ambiguous the Pennsylvania Supreme Court was compelled to resolve the confusion, which is why it announced that:

- Renchenski 616 Pa. at 609, 53 A.3d at 252 -

"Allowance of Appeal in this matter was granted to address the applicability of Section 9543(b), to delays in filing amended Post-Conviction petitions..."

Here, the Pennsylvania Supreme Court is plainly stating that it is now going to address, for the first time, the application of §9543(b) to amended PCRA petitions. It cannot be stated any clearer than that to prove that it was first time §9543(b) was being applied in Mr. Renchenski's case and could not have been "firmly established and regularly followed."

The United States Supreme Court has stated that "If there is confusion and uncertainty regarding a state rule, such as when the state procedural rule ws not clearly defined before the default, the default is inadequate to bar federal review" Ford v. Georgia 498 U.S. 411, 424 (1991). It's undeniably clear that §9543(b) was not "clearly defined" prior to Mr. Renchenski's own case. It was impossible for the pro se Mr. Renchenski to understand how §9543(b) could be applied "based upon its placement within the PCRA statute." Renchenski 616 Pa. at 622, 52 A.3d at 259.

The United States Supreme Court summed it up in Parker v. Levey 417 U.S. 733, 774-75 (1974), saying, "As many decisions of this court make clear, vague statutes suffer from at least two fatal constitutional defects. First, by failing to provide fair notice of precisely what acts are forbidden a vague statute 'violates the first essential of due process of law'... No one may be required at peril of life, liberty or property to speculate as to what the statute commands or forbids." Mr. Renchenski was being informed of the statutes commands only after he was being sanctioned based upon its new and expanded application in his own case. As such the state also violated the "rule of lenity."

C) – Both state and federal laws dictate that ambiguous statutes are to be interpreted in favor of the defendant. See e.g. *Gunderson*, supra, *Guilian*, supra. The Pennsylvania Supreme Court declared §9543(b) ambiguous and then ruled against Mr. Renchenski instead of in his favor. Mr. Renchenski, pursuant to *Flanagan*, was entitled to PCRA review because his PCRA "comprised his one and only post-conviction review." On federal habeas corpus, no federal judge addressed this question even though they were required to because Mr. Renchenski repeatedly raised it in his appeals. See e.g. Keeney v. Tamayo-Reyes 501 U.S. 1, 18 (1992),

saying, "It does not seem to us sufficient to allow a judge of the United states to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void." Mr. Renchenski has clearly demonstrated that his trial lawyers had worked hand in hand with the prosecutor to ensure that Mr. Renchenski was convicted of first degree murder. No federal judge has addressed the underlying claims relating to Mr. Renchenski's trial counsel's effectiveness.

II. HAS THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DECISION THAT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT, ALL OTHER COURTS OF APPEALS, FEDERL LAWS, DECISIONS OF THE STATES COURT OF LAST RESORT AND THE UNITED STATES CONSTITUTION RELATING TO AN ALLEGED PROCEDURAL DEFAULT THAT COULD LAWFULLY BAR FEDERAL HABEAS CORPUS REVIEW?

1. The United States Supreme Court has stated that "For procedural default to bar federal review of a claim presented to the state courts, the last state court to consider the claim must actually have declared that it will not consider the claim because of an independent and adequate procedural bar to petitioner's claims." Coleman v. Thompson 501 U.S. 722, 735-36 (1991). Furthermore, the United States Supreme Court stated that "A habeas claim was not procedurally defaulted where the state court did not expressly rely on the procedural bar as a ground for rejecting the claim." Harris v. Reed 489 U.S. 255, 266 (1989).

In the case sub judice, the "last state court to consider the claim" did not state that its judgment rested on a procedural bar. In fact, it expressly stated that its decision **did not** rest upon a procedural requirement of the PCRA statute, which is governed by §9545, not §9543(b). The Pennsylvania Supreme Court in referencing the lower courts rationale for dismissing

Mr. Renchenski's PCRA stated:

- Renchenski 616 Pa. at 618, 52 A.3d at 257 -

> Rather, in the Commonwealth's view, the intent of the General Assembly to incorporate both original and amended PCRA petitions within the scope of Section 9543 (b) can be inferred from the placement of the section within Section 9543, which involves the substance of what "the petitioner must plead and prove", 42 Pa. C.S. 9543(a), as opposed to Section 9545, which governs procedural matters concerning the initial filing and content of the petition. See 42 Pa. C.S. § 9545. (underlining added)

The Pennsylvania Supreme Court agreed with the lower courts rationale, saying:

- Renchenski 616 at 622, 52 A.3d at 259 -

> We are also persuaded by the Commonwealth's argument that the deliberate placement of Section 9543(b) within the "eligibility for relief" portion, See 42 Pa. C.S. §9543, rather than the "jurisdiction and pleadings" portion, See 42 Pa. C.S. 9545, indicates the Legislatures intent to connect prejudicial delay to the full scope of a petitioner's burden to "plead and prove" his claims, rather than to the initial determination of timeliness.

The above makes it clear that the Pennsylvania Supreme Court did not dismiss Mr. Renchenski's PCRA due to any ***procedural*** defaults. As further proof, in 2003 Mr. Renchenski filed a self-styled "Extension to PCRA" to the PCRA court, which initially dismissed it as an untimely serial petition. Mr. Renchenski appealed that determination and, ultimately, the Pennsylvania Supreme Court vacated the lower court's dismissal and remanded the case back to the lower court "to dispose of Appellant's original petition." On remand, the Pennsylvania Superior Court, referencing the Pennsylvania Supreme Court's opinion, stated:

- Superior Court opinion, 8-8-2006 (Appendix "E") -

> As noted supra, the PCRA Court concluded that Appellant's self-written extension was tantamount to an untimely serial petition and that no exceptions to the PCRA time-bar applied. For the following reasons, we disagree and remand the matter for a merits determination on Appellant's pending petition: Instantly, the PCRA Court failed to resolve Appellant's original petition; Thus, the court erred in treating the June 2, 2003, "extension" as an untimely filed serial petition. See Commonwealth v. Flanagan 578 Pa.

> 587, 854 A.2d 489, 499 (2004)... Hence, pursuant to Flanagan, the PCRA court erred in treating the extension as a serial petition that was subject to the PCRA time-bar... We vacate the PCRA Court's dismissing of that petition and remand the matter for the court to dispose of Appellants original petition.

The Pennsylvania Supreme Court clearly held the PCRA court responsible for the delay because the PCRA court "failed to resolve Appellant's original petition". As a matter of federal law, "The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires that the federal habeas court extend deference to the factual findings of the state courts..." – Statement of Justice Sotomayor in Mujica v. U.S. 565 U.S. 1138 (2017). See also 28 U.S.C. §2254(e)(1). M.J. Pesto ignored the factual findings of the Pennsylvania Supreme Court when it held the PCRA court responsible for the delay. Contrary to the facts, M.J. Pesto held Mr. Renchenski responsible, saying:

\- (March 25, 2015, RR, Pg. 28) -

> "The question of procedural default therefore boils down to whether the state courts were unreasonably wrong in holding Renchenski responsible for the delay in filing the pro se Extension in 2003 or Newman's amended PCRA petition in 2007".

Initially, M.J. Pesto ignored the fact that the Pennsylvania Supreme Court held the PCRA court responsible for the delay because it "failed to resolve Appellant's original petition". Furthermore, when M.J. Pesto said that the state court has held Mr. Renchenski "responsible for the delay" he made Three (3) factual errors regarding state law determinations. First – AS just quoted, in 2005 the Pennsylvania Supreme Court clearly blamed the PCRA court for the delay. The delay at issue for M.J. Pesto was the delay from PCRA counsel's withdrawal in 1993 until Mr. Renchenski's 2003 filing. That time span is clearly addressed by the Pennsylvania Supreme Court in 2005 when it blamed the PCRA court for the delay. (Note: Attorney Newman's filing was in response to the Pennsylvania Supreme Court's remand order to "dispose of Appellant's original petition". Therefore, it's confusing as to why M.J. Pesto included that time span in his "delay" analysis).

Second – By M.J. Pesto couching his rationale in terms of a "delay in filing" Mr. Renchenski's "Extension" petition he is clearly relying upon a ***timing issue***, which the Pennsylvania Supreme Court repeatedly held played no role in determining ***when*** an amended PCRA may be filed. See e.g. Com. v. Flanagan 578 Pa. 587, 604-05, 854 A.2d 489, 499 (Pa. 2004), saying "Since original petition never was withdrawn or dismissed, amended petition for post-conviction relief was not subject to PCRA's one-year time limitation, even though amendment was filed ten years after original petition"). See also Renchenski 616 Pa. at 611, 52 A.3d at 525 (Same).

After Mr. Renchenski's case, and as an example of how the Pennsylvania courts still address the issue of when an amended PCRA is filed years later, consider the case of Swartzfager:

- Com. v. Swartzfager 59 A.3d 616, 620 (Pa. Super 2012) -

> "Appellant's case remained dormant until he filed a pro se PCRA petition on December, 29, 201. In light of the procedural irregularities in this case, and mindful of our Supreme Court's decision in Flanagan, we conclude Appellant's 2011, pro se petition should be construed as an amendment to his still open and timely filed 2001 PCRA petition. Nevertheless, the delay in filing the Amended PCRA petition might have prejudiced the Commonwealth's ability to respond. See Renchenski, supra,; Markowitz, supra. Consequently, we hold the best resolution of this case is to vacate and remand for further proceedings."

The court did not say anything regarding any alleged procedural error committed by Swartsfager because his PCRA remained dormant for ten years because there was no procedural errors. Likewise, in Mr. Renchenski's case, there was no procedural errors either, and like *Swatzfager*, the court remanded the case for further disposition. It is uncontested that Mr. Renchenski's original PCRA was timely filed; therefore, there is no procedural errors attributable to him.

Third – The Pennsylvania Supreme Court granted Mr. Renchenski's appeal to address Two (2) questions, which it posed to be briefed. This appeal was not granted regarding any of Mr. Renchenski's constitutional claims for relief relating to trial counsel's ineffectiveness, only to

issues relating to the applicability of §9543(b) to amended PCRA petitions after a timely filed original process. The second question the court posed was relating to a PCRA applicant's duty to move his own case to finality. The court ultimately concluded that:

- Renchenski 616 Pa. at 632, 52 A.3d at 259 -

> "Given our conclusion that Section 9543(b) may be applied to amended petitions, we need not reach the second issue for which allocator was granted, namely, what burden a PCRA petitioner bears to move the ligation forward"." (Underlining added).

The Pennsylvania Supreme Court clearly stated that it did not reach the question of what responsibility, if any, Mr. Renchenski had to move the litigation forward. As such, M.J. Pesto committed error by unilaterally imposing a duty on Mr. Renchenski to move his case forward, a duty the state court did not impose. M.J. Pesto knew that the court did not determine that Mr. Renchenski had any duty to move his case forward when he asserted the following:

- (March 25, 2015, RR, Pg. 25) -

> "The Pennsylvania Supreme Court held that judge Ammerman had been correct in finding that Renchenski's delay in filing the extension in 2003 was prejudicial, and it was therefore unnecessary to decide whether a petitioner had any duty to advance the disposition of a timely petition."(Underlining added)

A) - The state court did not raise a procedural default issue in its denial of state review of Mr. Renchenski's claims. If the court had done so, then a federal hearing was required. See e.g. Wainwright v. Sykes 433 U.S. 72, 80 (1977)("Once a state raises a substantial procedural default issue, a hearing must be held on controlling and controverted factual issues surrounding the default and any excuses for it, as long as the state courts have never addressed the factual issue"). The state courts never addressed the adequacy question and no federal hearing occurred. Because the state never raised a procedural default in denying Mr. Renchenski state review it was error for M.J. Pesto to unilaterally invoke one for the state. See e.g. Cone v. Bell 556 U.S. 449, 468-69 (2009)("... we have no concomitant duty to apply state procedural bars where the state courts

themselves declined to do so"); See also, Day v. McDonough 547 U.S. 198, 210 (2006)("If, as this court has held, 'district judges have no obligation to act as counsel or paralegal to pro se litigants'...then, by the same token, they surely have no obligation to assist attorney's representing the state"); Trest v. Cain 522 522 U.S. 87, 90 (1997)("The court refused to adopt Louisiana's argument that federal habeas corpus courts should sua sponte raise a procedural default issue for the state).

2. For the sake of being comprehensively clear, "if" a procedural default occurred, the "cause and prejudice" ruling of the United States Supreme Court may excuse a default. See e.g. Coleman v. Thompson 501 U.S. 722, 750 (1991)("If a petitioner has defaulted his federal claim in state court he may still obtain federal review if he can demonstrate 'cause and prejudice'.").

A) – In the case sub judice, there exists multiple instances of "cause and prejudice" that would excuse any alleged default, which are fully argued in Mr. Renchenski's 60(b)(6) motion, his habeas petition and appeals, however, a couple germane one need relisted herein. The United States Supreme Court in Strickler v. Green 527 U.S. 263, HN (1999) stated, "In an action for federal habeas corpus relief, the existence of cause adequate to excuse a procedural default must ordinarily turn on whether a state prisoner can show that some objective factor... or that some interference by state officials made compliance with impractical..."). The state, and/or its' agents, committed no less than Fourteen (14) procedural errors that resulted in Mr. Renchenski's PCRA remaining dormant and his ability to follow any rules impractical. Consider the following:

i) – In order to withdraw, PCRA counsel must file a *Turner/Finley* "no-merit" letter. See e.g. Com. v. Karanicolas 836 A.2d 940, 947 (Pa. Super 2003)("Before attorney can be permitted to withdraw from representing petitioner under PCRA, Pennsylvania law requires counsel to file and obtain approval of 'no-merit' letter pursuant to Turner/Finley"). A "no-merit" letter must (1) detail the nature and extent of counsel's review, (2) list each issue the petitioner wishes to raise, and (3) explains why these issues lack merit") Com. v. Glover 738 A.2d 460, 464 (Pa. 1999).

Appendix "D" is PCRA counsel's withdrawal request, which clearly does not comply with the mandates of the Pennsylvania Supreme Court. Because PCRA counsel submitted an unlawful and defective withdrawal request the PCRA court was required to deny that request. See e.g. Com. v. Mosteller 633 A.2d 615, 617 (Pa. Super 1993)("Counsel's 'no-merit' letter pursuant to the PCRA Act seeking withdrawal as attorney for petitioner convicted of first degree murder was legally insufficient and should not have been accepted by the PCRA court, where counsel did not explain each issue the petitioner wanted the PCRA court to review, and did not explain why each issue so identified was meritless").

Because PCRA counsel did not file an amended PCRA and withdrew, the proceedings were rendered uncounseled. See e.g. Com. v. Kubis 808 A.2d 196, 202 (Pa. 2002)("When appointed counsel fails to amend an inarticulately drafted pro se]post-conviction] petition, or fails to otherwise participate meaningfully, this court will conclude that the proceedings were, for all practical purposes, uncounseled and in violation of the representation requirement"). As such, new counsel was required to be appointed, which is acknowledged by the federal courts. See e.g. Poland v. Lawler 2012 U.S.Dist.LEXIS 83904 (E.D. Pa. 2012)("The Superior court found that Poland's PCRA counsel had been improperly permitted to withdraw and remanded with instructions that new PCRA counsel should be appointed"). In the case sub judice, Mr. Renchenski's PCRA never made it to the Superior court due to a complete breakdown in the states' judicial process.

ii) – Before PCRA counsel can be permitted to withdraw as counsel the PCRA court must conduct its own independent review of the record, determine that there are no meritorious claims and issue an opinion and order that may be appealed. See e.g. Com. v. Merritt 827 A.2d 485, 487 (Pa. Super 2003)("In 'Turner', our Supreme Court endorsed an independent review of the PCRA court as an appropriate follow-up to counsel's 'no-merit' letter filed at that level. The

independent review is necessary to secure a withdrawal request by counsel requires proof that: (1) PCRA counsel, in the 'no-merit' letter, has detailed the extent of his review; (2) PCRA counsel, in a 'no-merit' letter, lists each issue the petitioner wished to have reviewed; (3) the PCRA counsel must explain, in the no-merit' letter, why petitioner's issues are meritless; (4) The PCRA Court must agree with counsel that the petition is meritless and conduct an independent review of the record...").

a) – The PCRA court did not perform an independent review nor issue an opinion. M.J. Pesto even acknowledged the courts' errors, saying "Judge Reilly granted Ryan leave to withdraw...", and that "Judge Reilly did not issue an order dismissing the petition, nor did he appoint new counsel" (March 25, 2015, RR, Pg. 18) M.J. Pesto routinely ignored the facts of the case when making his determinations.

iii) – After the PCRA courts' many failures, the courts' agent, the Prothonotary, committed repeated errors that resulted in Mr. Renchenski's PCRA remaining idle. Consider the following:

- Pa. R.App.P. 3115 -

> The Prothonotary shall list for general call at the first session held after September 1st of each year all matters which appear inactive for an unreasonable amount of time and shall give notice thereof to the parties as provided by Rule 901(c) of the Rules of Judicial Administration (Prompt Disposition of Matters: Termination of inactive cases). If no action is taken and no objection is docketed in the matter prior to commencement of the general call, the Prothonotary shall remove the matter from the list and enter an order as of course marking the matter "terminated under Pa.R.J.A. 901.(Underlining added)

Mr. Renchenski was never notified that his case was "inactive for an unreasonable amount of time", nor did the Prothonotary ever list the case "terminated". As such, the Prothonotary, year after year, failed in his/her duties and Mr. Renchenski's PCRA remained dormant due to those errors. Three (3) times the above Rule used the mandatory language of "shall". Mr. Renchenski had a liberty interest under the Fourteenth Amendment. See e.g. Hewitt v. Helms 459 U.S. 460, 471-72 (1983)("When the regulations contain mandatory language that contain certain

procedures 'shall' or 'must' be employed, in conjunction with 'specific substantive predicates' which limit official discretion creates a liberty interest. See also Carmell v. Texas 120 S.Ct. 1620, 1623 (2000)("There is plainly a fundamental fairness interest in having the government abide by the rules of law it establishes to govern the circumstances under which it can deprive a person of his or her life or liberty")(Note: This applies to the Rule of Lenity as well).

The state and/or its' agents committed no less than Fourteen procedural error that resulted in Mr. Renchenski's PCRA remaining dormant and, ultimately, denied him state review of his constitutional claims. Mr. Renchenski cannot be held responsible for the courts breakdowns in its judicial process. See e.g. Codispoti v. Howara 589 F.2d 135, 140 (3rd. Cir. 1978)("Petitioner's held not in charge of scheduling the motions for disposition by the Pennsylvania courts – Those are Judicial Managerial responsibilities"); Com. v. Dehoniesto 624 A.2d 156, 159 (Pa. 1993)("... Commonwealth bore the responsibility for portion of delay resulting from judicial mismanagement of the case..."); Story v. Kindt 26 F.3d 402, 406 (3rd. Cir. 1994)("We find it wholly untenable to penalize Story for his attorney's failures and the Court of Common Pleas inability to manage its own dockets"); Walton v. Folino 2005 U.S.Dist.LEXIS 25903 (E.D. Pa. 2005)("Where the state courts never addressed a claim in an inmate's post-conviction petition, and inmates appeal remained pending, procedural default did not bar the inmates petition because the futility arose from the states' inordinate delay and refusal to process and hear the inmates properly filed appeal").

III. HAS THE THIRD CIRCUIT COURT OF APPELS ENTERED A DECISION THAT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT, ALL OTHER COURTS OF APPEAL AND FEDERAL LAWS RELATING TO THE APPLICABILITY OF A FED.R.CIV.P. 60(b)(6) MOTION IN THE CASE SUB JUDICE?

1. Mr. Renchenski has not received a reasoned opinion from any appellate judge relating to the applicability of a Fed.R.Civ.P. 60(b)(6) motion in the case sub judice. The only fleeting reference to such a motion was given by M.J. Pesto who stated the following:

- (June 7, 2017, RR. Pgs. 3-4) -

> Gonzalez v. Crosby 545 U.S. 538 (2005) delineates the proper use of Rule 60(b) motions in habeas corpus practice under 28 U.S.C. §2254: A Rule 60 motion attacking the underlying state court conviction, whether by presenting a new claim, new evidence in support of a claim already litigated, or a purported change in the substantive law, is a successive petition subject to 28 U.S.C. §2244(b). 545 U.S. at 531. On the other hand, a Rule 60 motion attacking only some defect in the court's ruling that precluded a determination on the merits, for instance that the petitioner failed to exhaust a claim, procedurally defaulted a claim, or brought the claim out of time (In Gonzalez v. Crosby, the defect was that the lower court allegedly misapplied AEDPA's statute of limitations) is a permissible motion. 545 U.S. at 532-33.

M.J. Pesto properly identified the controlling law relating to the appropriate use of a Rule 60 motion, however, he then proceeds to repeatedly ignore its application and the facts of the case. Rather than addressing Mr. Renchenski's issues raised, M.J. Pesto goes on to assert that Mr. Renchenski was attempting to gain habeas review pursuant to *Martinez v. Ryan*, which was completely wrong, a twisting of the facts and in clear contradiction to what Mr. Renchenski raised in his Rule 60(b)(6) motion, i.e. Mr. Renchenski raised the adequacy requirement of a rule/statute to deny habeas review, the procedural default issue, federal laws as applied to the case and the fact that M.J. Pesto refused to pay deference to the state court decisions of law and fact.

In addition, the *Martinez* decision is a valid Rule 60(b)(6) motion concern. See e.g. Edwards v. Commonwealth 2013 U.S.Dist.LEXIS 35847 (E.D. Pa. 2013)("To the extent that petitioner is attempting to challenge the court's earlier denial as procedurally defaulted in light of the Supreme Court's recent decision in Martinez v. Ryan 132 S.Ct. 1309, 182 L.Ed2d 272 (2012), a motion pursuant to Federal Rules of Civil Procedure 60(b) is the appropriate vehicle for such a challenge. See Adams v. Thaler 697 F.3d 312, 319 (5th. Cir. 2012).") In Norris v. Brooks 794 F.3d 401, HN (C.A. 3 [PA] 2015) the court stated that "Martinez made very clear

that its exception to the general rule of Coleman applies to attorney error causing procedural default during initial-review collateral proceedings, not collateral appeals") *Martinez* applies in Mr. Renchenski's case because his "initial-review" PCRA counsel, attorney Ryan clearly caused the delay in litigating Mr. Renchenski's PCRA through his failures to lawfully withdraw pursuant to *Turner/Finley* and not informing Mr. Renchenski of his post-withdrawal rights as required by Pennsylvania law and the subsequent breakdown in the state judicial process resultant therefrom.

Relating to the Rule 60(b)(6) motion, M.J. Pesto makes no mention whatsoever in his RR regarding the fact that Mr. Renchenski repeatedly raised objections to his habeas petition being unilaterally and unlawfully deemed "procedurally defaulted", which was in direct contradiction to the facts of the case and the decisions of the last state court rendering a decision in the case. M.J. Pesto identified one of the controlling laws announced in *Gonzalez*; that an issue relating to whether a "petitioner procedurally defaulted a claim... is a permissible motion", but then proceeded to ignore the facts presented relating to any alleged procedural default, a default issue which the last state court rendering a decision did not raise to deny state review of Mr. Renchenski's constitutional claims. In addition to the procedural default issue there exists other appropriate uses for a Rule 60(b)(6) motion which M.J. Pesto also ignored. A couple of them will be addressed hereunder.

A)– To err on the side of caution, Mr. Renchenski would like to be clear in this presentation: a Rule 60(b)(6) motion is available if it does not raise claims for relief from a state criminal conviction, but rather, "attacks a defect in the federal habeas proceeding". See *Gonzalez* 545 U.S. at 531. The United States Supreme Court has held that a Rule 60(b)(6) motion gives court's authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice" Liljeberg v. Health Services Acquisition Corp. 486 U.S. 847, 864 (1988).

2. Mr. Renchenski has identified multiple "defects in the federal habeas proceeding" warranting Rule 60(b)(6) motion relief that would "accomplish justice". Mr.

Renchenski due to space limitations, must briefly list what he has previously fully briefed. A grant of a Rule 60(b)(6) motion is warranted if:

A) – A Rule 60(b)(6) motion is appropriate if the federal courts mistakenly entered a default judgment" See Gonzalez 545 U.S. at534, saying Rule 60 has an unquestionably valid role to play in habeas cases. The rule is often used to relieve parties from the effect of a default judgment mistakenly entered against them..." (Presented in Argument II, supra).

B) – A Rule 60(b)(6) motion is appropriate when "the original judgments were based on a set of facts which were incorrect". Moolenaar v. Gov. of Virgin Islands 822 F.2d 1342 (1987). In the case sub judice the "set of facts" which were incorrect include, but are not limited to: (1) the state statute/rule to bar federal habeas review was adequate; (2) that the last state court rendering a decision rested its decision to deny state review on a procedural default; (3) that Mr. Renchenski did not demonstrate sufficient cause to excuse any alleged procedural default if one occurred, and; (4) that Mr. Renchenski was attempting to use *Martinez v. Ryan* to overcome a state procedural default, and (5) that Mr. Renchenski "defaulted any claim he could have made by failing to present it properly in state court". (March 25, 2015, RR, Pg. 48). There are other issues that Mr. Renchenski simply cannot list herein but were fully briefed in his Rule 60(b)(6) motion.

i) – The adequacy question is presented at Argument I, supra;

ii)– The procedural default question is presented at Argument II, supra;

iii) – The "cause and prejudice" question has been fully briefed in Mr. Renchenski's Rule 60(b)(6) motion at Argument 6.

iv) – The application for *Martinez v.* Ryan has been addressed in Mr. Renchenski's October 6, 2017, application for Certificate of Appealability (COA) at "F" and in his Rule 60(b)(6) motion at Argument 6(b) and herein, supra.

v)– Mr. Renchenski did not "fail to present" his claims in state court. As demonstrated hereafter, the court committed no less that Fourteen (14) procedural error that resulted in his PCRA remaining dormant in the docket. As also discussed hereafter, the Pennsylvania Supreme Court held that "The PCRA court erred in failing to resolve the PCRA

petition" and when it was finally to be addressed, after remand from the Pennsylvania Supreme Court, the district attorney filed a motion to dismiss due to an alleged prejudice to the state in its ability to retry Mr. Renchenski pursuant to §9543(b). The Pennsylvania Supreme Court granted appeal and posed Two (2) question it wanted briefed, discussed infra. The result of that proceeding was that Mr. Renchenski was never afforded an opportunity to "properly present" his constitutional claims because he was denied a venue, not because of any default on his behalf. This is more fully addressed in Arguments I and II, supra.

vi) – A germane fact that bears mentioning is that, pursuant to the United States Supreme Court in Coleman v. Thompson 501 U.S. 722, (1991) a petitioner may excuse a state procedural default by demonstrating "cause and actual prejudice", discussed in arguments I and II, supra.

a) – Mr. Renchenski is not conceding any alleged procedural default on his behalf, however, to be comprehensive, he is compelled to present that he has also presented ample "probable cause" to excuse any alleged default(s). This is a presentation that M.J. Pesto and the appellate courts have failed to address as well.

C)– An appropriate use of a Rule 60(b)(6) motion is if there was "Some interference by state court officials" that made compliance with the state rule/statute impractical. See e.g. Strickler v. Green 527 U.S. 263, HN (1999) In the case sub judice, M.J. Pesto acknowledged that "Judge Reilly did not issue an order dismissing the petition, nor did he appoint new counsel" (March 25, 2015, RR, Pg. 18). These are only Two (2) procedural errors of the PCRA court out of no less than Fourteen (14) which resulted in Mr. Renchenski's PCRA remaining dormant in the docket. Had the PCRA court obeyed even one of its many requirements and statutes Mr. Renchenski's PCRA would not have remained idle and the resultant denial of PCRA review would not have occurred. Space doesn't permit Mr. Renchenski to address every "state interference" herein that made "compliance impractical", however, a couple need to be presented hereunder:

i) – PCRA counsel must be appointed to file an amended PCRA petition. Com. v. Tedford 781 A.2d 1167, 1170 (Pa. 2001)("Furthermore, the Rules of Criminal Procedure

expressly mandate that an appellant shall be entitled to legal counsel when filing a PCRA petition. See Pa.R.Crim.P. 1504")(Underlining added). If appointed counsel "fails to amend an inarticulately drafted pro se [Post-Conviction] petition, or fails to otherwise participate meaningfully, this court will conclude that the proceedings were, for all practical purposes, uncounseled and in violation of the representation requirement" Com. v. Kubis 808 A.2d 196, 202 (Pa. 2002). As such, new PCRA counsel was required to be appointed to file an amended petition. See Com. v. Morgan 515 A.2d 609, 610 (Pa. Super 1986)("Counsel must be appointed to assist in preparation of an amended petition")(Underlining added) This issue is fully briefed in Mr. Renchenski's Rule 60(b)(6) motion at pages 47-52.

M.J. Pesto has acknowledged that the PCRA judge did not appoint new PCRA counsel to file an amended PCRA petition, however, had new counsel been appointed as the rules of criminal procedure mandated, then Mr. Renchenski's PCRA would not have remained dormant. Pursuant to Hewitt v. Helms 459 U.S. 460 (1983) – "When the regulations contain mandatory language that contain certain procedures 'shall' or 'must' be employed, in conjunction with 'specific substantive predicates' which limit official discretion creates a liberty interest". 459 U.S. at 471-72. As such, Mr. Renchenski had a Fourteenth Amendment constitutional right to due process of law in having the courts abide by the rules it established. See also *Carmel v. Texas*, supra.

ii) – Pursuant to Pa.R.App.P. 3115, "the Prothonotary must list, each year, all cases which appear inactive for an unreasonable period of time and shall give notice thereof to the parties as provided by Rule 901(c) of the Rules of Judicial Administration...". "If no action is taken... the Prothonotary shall remove the matter from the list and enter an order as or course marking the matter 'terminated under Pa.R.J.A. 901'." Three (3) times the language uses mandatory language which limits official discretion and, therefore, a due process liberty interest was created, *Hewitt*, supra. If the court/state agent would have obeyed the rules Mr. Renchenski's case would not have remained dormant. This is fully briefed in Mr. Renchenski's Rule 60(b)(6) motion at pages 52-54.

There are at least Fourteen (14) procedural errors cause by the court that resulted in Mr. Renchenski's PCRA remaining dormant, which was acknowledged by the Pennsylvania Supreme Court when it announced in its 2005 opinion that "The PCRA court erred in failing to resolve Appellant's PCRA...". Because the state caused the delay Mr. Renchenski cannot be later blamed for the delay. See e.g. Story v. Kindt 26 F.3d 402, 406 (3rd. Cir. 1994)("We find it wholly untenable to punish Story for his attorney's failures and the Court of Common Pleas inability to manage its own dockets"); Com. v. Dehoniesto 624 A.2d 156, 159 (Pa. Super 1993)("... Commonwealth bore responsibility for portion of delay resulting from mismanagement of case").

D) – Another appropriate use of a Rule 60(b)(6) motion is when a district judge commits a misconduct. See e.g. Walker v. Spiller 2002 U.S.App.LEXIS 9067 (C.A. 3 [Pa] 2002)("Misconduct of the district judge... are appropriately addressed under Rule 60(b)(6)"). There are Two (2) points that need briefly addressed herein. First – D.J. Gibson's person instances of misconduct. Those include his failure to conduct a de novo review of the objected to portions of the RR pursuant to 28 U.S.C. § 636(b)(1)(C). It is ***impossible*** for D.J. Gibson to have had the time to conduct a de novo review before denying Mr. Renchenski habeas relief. This is fully addressed in Mr. Renchenski's May 10, 2015, petition for COA and his Rule 60(b)(6) motion.

As part of a de novo review the district judge should have addressed each of Mr. Renchenski's objections, which he failed to do. In fact, he failed to personally address even one objection. See e.g. Holloway v. Vaughn 1995 U.S.Dist.LEXIS 13855, 1995 WL 564345 at *1 (E.D. Pa. 1995)("Finally, the court should address each objection separately"). See also Fed.R.Civ.P. 72. Not only did D.J. Gibson fail to address any objection, M.J. Pesto failed to address most issues, e.g. the "adequacy" issue, the "notice requirement", etc. Because D.J. Gibson failed to address Mr. Renchenski's objections there was no lawful "final order" which Mr. Renchenski could appeal and the Third Circuit Court of Appeals lacked jurisdiction to deny Mr. Renchenski habeas review. See e.g. U.S. v. Schmutzler 2017 U.S.Dist.LEXIS 108498

(M.D [PA] 2017)("It appears that a Rule 60(b)(6) motion may be invoked if the defendant is asserting that the court failed to address one of the claims in his 2255 motion").See also Cooper & Lybrand v. Livesay 437 U.S. 463, 467 (1978)("Regardless of the label given a district court decision, if it appears from the record that the district court has not adjudicated all of the issues in a case, then there is no final order. The same applies in habeas cases").

Second – D.J. Gibson's imputed instances of misconduct resultant from his acceptance/cosigning of M.J. Pesto's misconducts. Mr. Renchenski will only list a couple of them here, however, there are many of them, which are fully briefed in Mr. Renchenski's Rule 60(b)(6) motion at Argument 2. Misconduct of a judge includes such things as telling blatant lies, twisting the truth, misstating facts, creating "facts" that never existed, ignoring federal laws and being an active advocate for the states' attorney.

The United States Supreme Court has stated that "due process requires a neutral and detached judge in the first instance". See e.g. Hamdi v. Rumsfeld 542 U.S. 507, 533 (2004). The Third Circuit Court of Appeals court has also stated that "a judge should no longer preside over a case when a reasonable person, with knowledge of the facts, would conclude that the judges' impartiality might reasonably be questioned". Grossberger v. Ruane 2013 Fed. Appx. 132, 134 (C.A. 3 [PA] 2014). In Mr. Renchenski's Rule 60(b)(6) motion, at Argument 2, Mr. Renchenski was compelled to present his arguments to the very same judge that committed all the deliberate violations in his habeas petition and, resultant therefrom, he was denied an unbiased Rule 60(b)(6) motion review. Due to space limitations Mr. Renchenski will only list a couple instances of misconduct herein below:

i) – M.J. Pesto asserted that "Renchenski ***mutilated*** Foley's corpse by cutting off her right breast, then hid her body in the brush by the side of the road". (Emphasis added)(March 15, 2015, RR. Pg.2). Those are two blatant lies that are in direct contradiction to the official court records. First – Dr. Rozin, who conducted the autopsy, testified as follows relating to the right breast, saying – "Q – There are some scratches in the area? A – Yes, like

superimposed scratches." (T.T. Pg. 292); "Q – Now, you also indicated that around the breast there were some abrasions or scratches, as you call them? Q – Yes, around the nipple... Q – And to me a scratch is just a disturbance of the outer layer of skin? A – Correct." (T.T. Pg. 295). Twice the prosecutor and Dr. Rozin used the word "scratch", that doesn't break all layers of the skin. That is a far different description than ***"cutting off"*** skin as stated by M.J. Pesto. M.J. Pesto was on a mission to paint Mr. Renchenski as a deranged murderer, which is contrary to the facts of the case. Such a twisting of the facts is a clear example of bias against Mr. Renchenski.

Second – The police performed an extensive examination of the crime scene and took many photographs of the area. Trooper Kalgren, who conducted the investigation, testified regarding the area where the body was found as "... back in this little trampled down area in the weeds...". (T.T. Pg. 21). There was no brush within 20 feet of the body. As a matter of court testimony, the person who discovered the body saw it as he was driving by in his car from the road which was about 135 feet away. Multiple photographs were taken depicting the crime scene, photographs M.J. Pesto had access to as well. He knew the body was not "hid in the brush". It was in a trampled down area in the weeds in plain sight of the road which was approximately 135 feet away.

ii) – M.J. Pesto asserted that Dr. Finken, who conducted a psychiatric/psychological evaluation of Mr. Renchenski, stated that Mr. Renchenski "tended to lie considerably." (March 25, 2015, RR. Pgs. 34-35).That assertion was a deliberate lie. The deposition of Dr. Finken reveals that he **never** accused Mr. Renchenski of lying at any time. Dr. Finken was giving a basic description of people with various personality disorders, e.g. Borderline Personality Disorder. On page 17 of his deposition he begins his description by saying that "***They*** tend to be...". On page 18, Dr. Finken states that "***They*** tend to disregard the truth and to lie considerably and also tend to be reckless, especially driving while intoxicated". (Emphasis added). Dr. Finken lists in excess of Thirty (30) potential character traits of people with the various disorders he was describing and concludes his analysis by stating that Mr.

Renchenski "tends to reveal some of which are included in all of these various personality disorders" (Underlining added)(Deposition Pg. 18). It's curious that M.J. Pesto left out the section about alcohol given that Mr. Renchenski was highly intoxicated at the time of the crime and raising that defense. Nevertheless, Dr. Finken never stated that Mr. Renchenski lied at any time. M.J. Pesto selected that one description out of the thirty-plus characteristics to bolster his bias dissertation against Mr. Renchenski.

iii) – M.J. Pesto stated that Dr. Finken summed up his evaluation of Mr. Renchenski by calling him "a real psychopath. Depo. at 29)." A reading of the deposition reveals two things. First, that at "29" where M.J. Pesto allegedly quotes from, Dr. Finken is actually saying things beneficial to Mr. Renchenski, e.g. "I think at that moment we're talking about problems is the - - if you get closer, in spite of all his personality problems is the - - the previous record has not been all that serious". That's a far cry than calling Mr. Renchenski "a real psychopath". Secondly, **nowhere** in Dr. Finken's deposition is the word "psychopath" even found! M.J. Pesto created that description out of his own mind. M.J. Pesto created many lies that simply cannot be listed in the present brief but are detailed in Mr. Renchenski's Rule 60(b)(6) motion.

E) – A Rule 60(b)(6) motion is available if the judge commits an abuse of discretion. See e.g. McDowelll v. Phila. Hous. Auth. 423 F.3d 233, 238 (3rd. Cir. 2005)("An abuse of discretion may occur as a result of an errant conclusion of law, an improper application of law to fact, or a clearly erroneous finding of fact"). In the case sub judice both M.J. Pesto and D.J. Gibson committed many abuses of discretion in the way they ignored United States Supreme Court decisions, federal laws, facts of the case, and conclusions of fact made by the Pennsylvania Supreme Court.

i) – Space doesn't allow Mr. Renchenski to list them all again, however, many exist, e.g. that an evidentiary hearing wasn't required; that a COA should not issue; finding it factual that §9543(b) was adequate to bar federal habeas review; finding that the state court of last resort held Mr. Renchenski responsible for the delay in litigating his PCRA; that the state court of last resort relied on a procedural default to deny state review; etc.

F) – As also listed at "D", a Rule 60(b)(6) motion is appropriate if the district judge failed to address all claims properly objected to relating to M.J. Pesto's RR. *Cooper & Lybrand*, supra.

- CONCLUSION -

There has not been a more clear-cut case of injustice as the one sub judice. Mr. Renchenski was denied state review of his constitutional claims because the state court committed multiple procedural errors which resulted in a complete breakdown in the states' judicial process. Thereafter, Mr. Renchenski was unlawfully denied habeas corpus review due to an extremely biased magistrate judge who became an active advocate for the state. Resultant therefrom there was an unlawful suspension of the Writ of habeas corpus in violation of the United States Constitution, art. 1, section 9, cl. 2.

WHEREFORE, Mr. Renchenski prays this Honorable Court to vacate the Third circuit Court of Appeals denial of habeas review and ORDER a hearing to address Mr. Renchenski's constitutional claims for relief relating to his trial counsel's ineffectiveness.