No. 18-7174

In The Supreme Court
Of The United States Of America

SHAWNDELL EVERSON,
Petitioner - Citizen Pro se

vs.

The People of the State of New York
Respondent

On Petition for a Writ of Certiorari to
New York State Court of Appeals
for the Second Judicial District.

PETITION FOR WRIT OF CERTIORARI

SHAWNDELL EVERSON - Din# 11B0700
Attica, C.F.
P.O. Box 149
Attica, NY 14011-0149
(585) 591-2000 Attica, C.F.

QUESTION PRESENTED

Shawndell Everson was 32 years old when he was sentenced to 143 years (the equivalent of a life sentence), for allegations of running a "loose-knit" organization that committed robberies, sold gun ,& drugs. Accusations he vigorously denied throughout the proceedings.

Central to the present writ is the premise of actual enforcement of literal constitutional provisions. How can citizen ever be assured of these basic entitlements definitively....When state courts continue to refuse to construed, & enforce them literally ?

Did the State of New York deny petitioner his civil rights, liberties, and due process of law, guaranteed by the Constitution of the United States, by Systematic deprivation of sixth amendment public trial right, counsel of choice right , and effective assistance; and; thereafter fail to articulate the reasoning for denying his appeal for relief, of the Constitutional errors, without reasoning of fact or Law to support the denial.

LIST OF PARTIES

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

> A "*pro se* complaint 'however inartfully pleaded' must be held to 'less stringent standards than formal pleadings drafted by lawyers' ".
> (*United States v. Morgan*, 346 U.S. 502, 505, n.3 [1954])

OPINIONS BELOW

The New York Court of Appeals denied Petitioner's leave to appeal application on May 8, 2018. People v. Everson, 31 N.Y.3d 1081 (Appendix A). Reconsideration denied on July 31, 2018. People v. Everson, 2018 WL 3811952 (Appendix B).

On February 2, 2018, the Supreme Court of the State of New York, Appellate Division, Fourth Department affirmed Petitioner's judgment of conviction. People v. Everson, 158 A.D.3d 1153 (Appendix C). Reargument was denied on April 30, 2018. People v. Everson, 160 A.D.3d 1506 (Appendix D).

JURISDICTION

The New York highest court of review entered its endorsement of Appellate Court's determination of May 8, 2018. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS IMPLICATED

Constitution of the United States, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial,

And the assistance of counsel for his defense.

Constitution of the United States , Amendment XIV:

Fair trial in fair tribunal is basic requirement of due process.

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INTRODUCTION AND STATEMENT

Three (3) of our most basic constitutional assurances is what is being implicated here. Fundamental guarantees that make up the structural core of our safeguard's, as citizens of this democracy. To allow distortion of their substance in of itself is an unconstitutional endorsement of this corruption. The following is an as brief ,& concise as possible relevant narration of surrounding circumstance that form the basis for instant claims of 6th,and 14th Amendment infringements.

PUBLIC TRIAL CONSIDERATIONS

This case seeks to not only obtain meaningful redress of constitutional infringements that deprived Mr. Everson of a fair trial, and thus his liberty. But more importantly to obtain this courts intervention for systematic distortion of sacred fundamental protections, as well as prevent future manipulation by New York Appellate Courts, of state preservation rule to avoid granting the required relief for constitutional violations.

Ever since this Court held in Presley v. Georgia, 130 S.Ct. 721 (2010), that "trial courts are required to consider alternatives to closure of the trial to the public even when they are not offered by the parties", there has been an ongoing debate over the application of that rule. While the intent, and, substance of this Court's holding as it relates to constitutional protection requirement is clear, and unambiguous. New York Appellate Courts are

continuing to distort the limitation on trial court power to infringe on these constitutional safeguards (U.S.C. A Const., Amend. 14).

The language is clear "courts are required to consider alternatives" While this court has adhered to the core holding of Presley, New York appellate courts has simultaneously circumvented meaningful and warranted review of fundamental impairments, through arbitrary application of the preservation doctrine. For example, each of the 3 contended ejections of various members of petitioners family undisputably occurred, and were protested with specificity, by both petitioner, and trial counsel. However, based on an unreasonable interpretation of "timely requirement" of state preservation rule, systemic pattern of ejections were never addressed by Appellate court.

The right to public trial is a basic provision of our constitution. There is no reason this constitutional protection should still be enduring this level of infringement in 2018; Let alone disregarded so callously when it occurs. All citizen's of this country of ours are guaranteed the protection of transparency, which is what provides the substance to the fundamental rule of public access to the judicial proceedings. The very reason this court specifically mandates that," trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials" (U.S.C.A. Const., Amend. 6).

In the instant case before you, trial court not only disregarded this obligation, it completely discredited, and invalidated the premise that fundamental public trial provision is founded on. There is uncontradicted proof established in this case that demonstrated trial courts had a common practice of excluding family members of defendants from attending jury voir dire (see, People v. McGrew, 103 AD3d 1170 [4th Dept. 2013], & People v. Torres, 97 AD3d 1125, 1126 [4th Dept. 2012], affd 20 NY3d 890). In Michael Mcgrew's case, trial court instructed his family to leave during jury selection to make room for potential jurors (id. at 137). This was in mid-2009, about a year and a half before Petitioner's trial. And, during Vincent Torres' case, trial court excluded the defendant's wife during voir dire because there "wasn't any room". Notably, Torres' trial occurred only a few months after Petitioner's case. Even Petitioner's trial counsel testified that in the 10 to 15 case before the trial court over 13 years, there has been a "standing rule" to not allow spectators to attend jury selection (id. at 13-14, 33). When people wanted to watch voir dire, trial court indicate they were not permitted to do so (id. at 33-34).

All of which was ignored by lower court, who instead found that trial counsel "incorrectly assumed that trial court had a 'standing rule' prohibiting spectators". Although, overwhelming evidence was established to the contrary.

Conceded proof, further establish that petitioners daughter mother was excluded from attending trial proceedings after completion of her testimony by

case detectives on orders of the prosecution, and without permission of the court, or notice to the defense (440-2 at 56). There was never a good faith based request made for the court to decide if exclusion was appropriate (People v. Hall, 84 AD3d 79, 86 [1st Dept. 2011]). Instead, prosecution used case detectives as his own courtroom security, and made the decision himself. There is also unrefutable proof that, 3 ejection's that occurred during these criminal proceedings were unwarranted, and adequately protested. Furthermore, trial court expressly and at length reaffirmed its position regarding it's ruling as it related to these expulsions . These facts are supported by the record and as such, were properly before New York appellate court for review. Yet, instead of confronting ,and defending against the violation of this basic constitutional right ; Appellate court's in the face of overwhelming record proof to the contrary, declined to address these violations under a wholly unreasonable misapplication of state preservation rule.

Moreover, modern New York legislature provided a phrase to ameliorate the previous strict interpretation requiring the particular ground advance on appeal to have been specifically pointed out to trial court. Creating a narrow alternative for specification , to wit : " If in response to a protest by a party, the court expressly decided the question raised on appeal."Each of the contended expulsion of petitioner family members was "Expressly" addressed ,and re-endorsed by trial court .

This court has time, and again reinforce the importance of constitution fundamental protections .The right to public trial is intended to safeguard accused's right to be dealt with fairly and not to be unjustly condemned .In no way did the manner in which the trial court systematically ejected petitioner's family members, instill trust in the judicial process. The paramount purpose of this right is protection of defendant as well as public interest. By allowing the public to attend the proceedings they are able to observe if the accused is fairly adjudicated ,and court is not just being employed as a bias instrument of persecution(Estes v. Texas, 381 U.S. 532,539,85 S.Ct. 1628, 214 L. Ed. 543).

Directly pertinent here is that facts ,and law of this case establish that from the outset of the criminal proceedings pre-disposed bias of the trial court against petitioner played a major role in the systematic deprivation of petitioner's sixth , and fourteenth amendment right to public trial (In re Oliver, 333 U.S. 257 , 68 S.Ct. 499, 92 L .Ed. 682 [1948]).Compounding the erroneous ejections was the manner in which they occurred. For example, the brutally hostile ejections of petitioners niece, and son's mother for, at most unintentional minor breeches of courtroom etiquette, were more than unjustified. Both of these expulsions occurred in open court. when both of Petitioner's female family members were summarily forced from trial proceeding, jury's and the remainder of the spectators alike were reduced to unwilling witnesses of trial courts's callous disregard of Due Process

obligations (Withrow v Larkin, 421 U.S. 35, 47 [1975]; Caperton v. A.T. Massey Coal CO., Inc., 556 U.S. 686 [2009]).

New York Courts are egregiously ignoring that this Court has firmly established provisions requiring that fundamental and constitutional nature of right to public trial does not permit making of an uncharted, ungrounded or unjustified exception (People v. Jones, 47 NY2d 409 [1979]).

This court has long since "Uniformly recognized the public trial guarantee as one created for the benefit of the accused"(Gannett Co. v. Depasquale, 443 U.S. 368,380, 99 S.Ct. 2898, 61 L .ed. 2d 608 [1979]). As well as proclaimed that "there could be no explanation for barring the accused from raising a constitutional right that is unmistakably for his or her benefit (Presley, 130 S.Ct. at 724). The presumption of openness that is commanded to criminal courts, in New York State is being disregarded, and manipulated by trial judges that could care less about fundamental protections that have nothing to do with guilt or innocence; and Appellate Court that use state procedural rules to avoid enforcing those protections.

It is for this callous disregard and undermining of the fundamental and constitutional nature of right to public trial that Petitioner is here seeking intervention by this Court.

On March 2, 2011, verdict was rendered and Petitioner was convicted of Burglary in the First degree (Penal Law §140.30[4]), two counts of Robbery in

the First degree (§160.15[4]), three counts of Criminal Possession of a Weapon in the Second degree (§265.03[3]), five counts of Criminal Possession of a Weapon in the third degree (§265.02[1]), four counts of Criminal Sale of a Firearm in the Third degree (§265311[2]), two counts of Criminal Sale of a Controlled Substance in the Fifth degree (§220.06[1])m and Conspiracy in the Fourth degree, for his alleged role in averred loose-knit criminal organization that commit crimes (App. at 5-10). The court imposed the maximum sentence on each count, for a total 143 years in prison (sentence T. Dated 3/2/11 at 28-32).

On the first day of trial/jury selection Petitioner informed trial counsel that he was expecting his mother and other family members to attend the proceedings, as well as requested that counsel insure that of this (440-2, at pp.22-23). Trial counsel told Petitioner that his family would not be allowed in the courtroom until after voir dire was completed (id. at 26; 440, at pp.12-13).

Presumably while this was occurring within the courtroom, Petitioner's mother, sister, and brother were denied access/entry for the jury selection proceedings, by court officer telling them they could not come in because there was not enough room (id. at 57-58, 62-63).

This crucial proof of Public trial deprivation was not credited by hearing court. Instead it found it to be "mostly untrue and the product of a concerted effort of deception" (440 Decision/Order, pg. 16). Which made no logical

sense, because it did credit trial counsel's account, which completely supported Petitioner's contention (id. at 4-16). Even the prosecution argued that trial counsel was credible (id. at 42). The court specifically found that Petitioner brought exclusion to trial counsel's attention, at the time of trial (id. at 22). These were irreconcilable, findings that lacked rational basis.

The only way to reconcile these findings-that trial counsel was truthful, while Petitioner and his family were not-is to assume that Petitioner was already planning a duplicitous scheme during the trial. Petitioner would have had to lie to trial counsel about his family being excluded, just hoping that trial attorney would recall this conversation during a 440 hearing years in the future, and support the perjured testimony of his family members. This was a complete irrational conclusion to draw from the evidence established. Further, Petitioner could not predict that there would be evidence of trial court regularly excluding family members from voir dire.

On the first day of trial during the morning session, trial court abrasively ordered that Petitioner's niece leave the proceeding during direct examination of a witness. Hostilely proclaiming "this is a trial, this is not a nursery" (TT at 352-353) as she left the courtroom (id.).

At the beginning of the afternoon of that same day, but prior to the jury being brought in, first trial counsel attempted to register protest of the unwarranted ejection, and then ejection was contended by Petitioner (id.).

Which was aggressively rebuked by trial court (440-2, at p.31).

Later in the proceedings that day after completion of informant-witness testimony, Petitioner's younger brother was kicked out of the proceedings without any additional inquiry by the court, based solely on presumably the assertion of informant-witness himself.

The next day, the court also kicked out Petitioner's son's mother, for supposedly sleeping during proceedings. When she attempted to inquire about the reason she was being ejected, trial court abrasively, and sarcastically remarked because this isn't a hotel" (TT at 788). After the jury was excused, trial counsel noted Petitioner's "continuing objection" to being denied his right to a public trial (TT at 821). Trial court hostility foreclosed further articulation of fundamental impairment of systematic ejections of Petitioner's family members, while at the same time re-asserting its rational for ejections of Petitioner's family members.

The Post-Conviction hearing record also established that Petitioner's daughter's mother was excluded from attending proceedings by the prosecution. This was the woman petitioner lived with at the time of his arrest , whom he was in a relationship(440 at 108-109; TT at 489). After completing her testimony , she tried to re-enter the courtroom to attend the remainder of the proceedings. She was prevented by case detective, who, threatened her with arrest if she went inside (id. at 111-112). The prosecution even admitted

that petitioners paramour was barred from re-entering on his order(440-2 at 56). This exclusion was not authorization by the court ,nor was notice provided to the defense. Nevertheless, depravation was deemed proper by hearing court(440 Decision/order).

DEPRIVATION OF ACTUAL & EFFECTIVE ASSISTANCE OF COUNSEL OF CHOICE

This court has made crystal clear the importance of the accused right to "effective advocacy" (Morris v. Slappy, 461 U.S. 1, 13 [1983]), and while the right to be represented by counsel of one's choice is qualified. This Court has ordered that, courts must not only recognize the Sixth Amendment presumption in favor of counsel of choice; But also that presumption may only be overcome by a demonstration of actual conflict, or by showing a serious potential for conflict. (Wheat v. United States, 486 U.S. 153, 159, 108 S.Ct. 1682 [1988]).

Almost 100 years ago this Court stated that "[i]t is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice" (Powell v. Alabama, 287 U.S. 45, 53 [1932]). Reiterating this principle on frequent occassions. See e.g., Chandler v. Fretag, 348 U.S. 3, 9 [1942]). Thus, Sixth Amendment counsel of choice right commands, not that a trial be fair, but that a particular guarantee of fairness be provided-to wit, that accused be defended by the counsel he believes to be best (United States v. Gonzalez-Lopez, 548 U.S. 668, 685-86 [1984]).

It goes without question that pre-trial phase of criminal proceedings is a critical period for an accused preparation of defense of his liberty interest. Additionally, there can be no dispute that essential to Sixth Amendment guarantee of "effective advocacy" aim is so a citizen compelled to defend his or her actual liberty... feel at least reasonablely comfortable with the advocacy that is being provided; This is "because" as this Court has previously stated "it is he who suffer's the consequence if the defense falls" (Faretta v. California, 422 U.S. 806, 819-820 [1975]).

It is well-settled that deprivation of choice of counsel occurs "whenever" the defendant's choice is wrongfully denied. And while trial court need not grant a continuance so that a defendant may be represented by counsel of his choosing , where such continuance would cause significant delay, (United States v. Brumer, 528 F.3d 157, 161 [2d Cir. 2008]). Substitution premised on unsupported or dubious speculation as to a conflict will not suffice, nor will arbitrary denial of reasonable adjournment to secure counsel of one's choosing (Wheat, 486 U.S. at 166, dissent by Justice Marshall, and Justice Brennan).

Presented instantly before this court is a prime example of the complete disregard for which New York State court's hold Sixth Amendment right to actual, and effective assistance of counsel of choice. The egregious lack of actual, & effective assistance that petitioner endured throughout his criminal proceedings, was a blatant insult of, and assault to the fundamental principles

of our constitution. The New York state review of these constitutional infringements in no rational sense took into consideration requirement that advocacy must comported with "meaningful representation" standard guaranteed by the State constitution (People v. Baldi, 54 NY2d 137, 147 [1981]; People v. Benevento, 91 NY2d 708 [1988]), let alone actual, and effective assistance guaranteed by the Federal Constitution (Gideon v. Wainwright, 372 U.S. 335 [1963], and Strickland v. Washington, 466 U.S. 668, 689 [1984]).

On June 30, 2010, Petitioner was arraigned on the indictment. The very First appearance before trial term court regarding this matter. Defense counsel, and trial court engaged in ex-parte determination for substitution of counsel. This discussion was held outside of petitioners presence, and without consideration of his informed input (Arraignment minutes at p.2). Petitioner registered no complaint with her representation, nor was he made aware of any concerns she may have had about providing her advocacy. Off record discussion was clearly about her representation of Petitioner, but actual factors that was considered in decision for removal of counsel, was never articulated by trial court. That is, aside from the snide remark that petitioner "seem to know more law than she does" (arraignment minute at 4) pertaining to counsel substitution, that really only conveyed the judicial bias trial court held against Petitioner ((Arraignment minutes at p.2).

The very next day, July 1, 2010, for assignment of new counsel. After the confusion, and unease subsided about the manner in which counsel was removed from the case. Petitioner no longer feeling he would receive a fair trial, with trial court interfering in his representation relationship. Compelled his family to secure private counsel. Intending to bring his intention of obtaining private counsel to the court's attention, but instead trial court, with the same expressed disdain as the day before, abrasively informed Petitioner of the assignment of new counsel, and that this would be his final assignment. Averring that Petitioner in someway played a part in the replacement of counsel determination (7/1/10 proceedings at p.1). Though, there was nothing in the record that supported this inference (which made sense, being this was only Petitioner's second appearance before the court at this point of the proceeding).

Petitioner attempted to request a reasonable adjournment to afford him the opportunity to secure private counsel, due to the fact he was blind sided by removal of original counsel whom he grown to trust. But was aggressively cut off by court in mid-sentence, and told appointed was his attorney (id.). After Petitioner objected to the hostile denial of reasonable adjournment, trial court threatened Petitioner with the prospect of proceeding through the remainder of the criminal proceeding (id.).Trial court continued to belittle Petitioner with unwarranted sarcastic, and snide remarks with new counsel standing right

there not saying a word, before proceedings end (id.).

While this was transpiring, Petitioner's mother, whom attended the proceedings witnessed the hostility and sarcasm trial court was exhibiting towards her son, and took the veiled threat of him being forced to proceed to trial without counsel if he refused to accept counsel appointed by court, to heart (affidavit of D. Mitchell). So much so that based on that threat she was discouraged from obtaining retained counsel for Petitioner's defense (Id.). This also caused her to discourage other of Petitioner's family members from attempting to retain private counsel for Petitioner, out of that fear that he would be forced to defend himself against the charges without counsel (Affidavit of S. Richards).

On July 13, 2010, court appearance Petitioner, among other issues, again address court's removal of his original counsel, and denial of reasonable adjournment, as well as the effect forced appointment of substitution counsel had on his ability to prepare a meaningful defense (7/13/10 proceedings at p. 2). These contentions were brushed aside by trial court, even when newly appointed counsel made oral application to be relieved due to the lack of trust, and breakdown in communication (largely based on the fact that new counsel never made arrangements to meet with Petitioner to discuss the case). This was denied by the court. (id.).

Through the remainder of July until the end of August 2010, when yet

again *ex parte* determination was made by trial court to replace Petitioner's counsel, court appointed attorney provided the bare minimum advocacy. Submitting boilerplate omnibus motion, and no effort to further develop any form of defense.

On September 1, 2010, Petitioner became aware of his removal as counsel, (1) when he was arraigned on a sealed-indictment. (2) At which point due to the fact that no counsel was present while he was being arraigned on additional indictment, he suspected something was a mist. It was only at his re-arraignment for third indictment that he learned that yet a second attorney was replaced without his knowledge by the court. A little over a month after being appointed as defense counsel, new counsel, contrary to Petitioner's expressed wishes, outside Petitioner's presence conceded to fatally, prejudicial consolidation of 3 indictments (10/26/10 proceedings at pp. 4-5).

All these facts are also firmly supported by the record. Yet, this egregious judicial interference with actual and effective assistance of counsel guarantee, that was initiated by denial of opportunity to obtain counsel of choice, reasonable adjournment was erroneously endorsed by the Appellate Court, who affirmed the conviction, and condoned by the State Court of Appeals who declined to intervene, and correct the determination.

CONSTITUTIONALLY INTOLERABLE JUDICIAL BIAS

The standard is clear. As this Court has firmly conveyed, "in deciding

whether probability of actual bias on part of judge is too high to be constitutionally tolerable, courts inquiry is objective one, that ask not whether judge is actually, subjectively biased, but whether average judge in judge's possession is likely to be neutral, or whether there is unconstitutional potential for bias" (Caperton, 556 U.S., at 881).

This Court has also established that "[a] fair trial in a fair tribunal is a basic requirement of due process" (In Re Murchicon, 349 U.S. 133, 136, 75 S.Ct. 623 [1955]). The proper constitutional inquiry was not "whether in fact [the justice] was influenced," but "whether sitting on [that] case...'would offer a possible temptation to the average... judge to... lead him not to hold the balance nice, clear, and true" (Aetna Life Ins. Co. V. Lavoie, 475 U.S. 813).

While due process has incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case (Tumey v. Ohio, 273 U.S. 510, 523). This Court has expounded on that principle, as an objective matter by mandating recusal when "the probability of actual bias is too high to be constitutionally tolerable (Withrow, 421 U.S. at 35, 47). Because those objective standards that are implementing the due process clause does not require proof of actual bias, there is no mandate of showing of actual bias. Determination focuses on whether "under realistic appraisal of psychological tendencies and human weakness " the interest poses such a risk of actual bias or pre-judgement that the practice

must be forbidden if the guarantee of due process is to be adequately implemented." (Withrow, 421 U.S. at 47).

In the case now before the court, genuine due process implication arose under federal law with respect to the hostile pre-disposed bias trial judge exhibited towards Petitioner throughout the criminal proceedings in this case. Due process infringements that New York Appellate Courts intentionally, or unintentionally, overlooked, or erroneously misapprehended. Based on an opinion that is not only unsupported by the facts and existing case law, but also on a complete failure to meaningfully review the entire record in context, as it relates to the contended due process, fair trial deprivation claim raised. The New York courts of review blatantly ignored the "objective proof" which revealed that trial judge expressed bias against Petitioner from the very first court appearance in this instant case. Repeatedly displaying his prejudgement of Petitioner, which was due largely to unrelated proceeding that resulted in prior conviction being modified, after trial judge initial denial of post-conviction motion was granted review by Appellate Court. As well as the information acquired from those proceedings, and subsequent unrelated proceedings.

The New York Appellate courts neglected to provide effective review of trial judge clear bias. Completely failing to carefully consider any of the pertinent bases, and accompanying exhibits proffered establishing the judicial bias; And how it effected the entire criminal proceedings in this case. Though

"what degree or kind of interest is sufficient to disqualify a judge from sitting cannot be defined with precision "(Lavoie, supra 475 U.S. at 822).Recusal based on the specific circumstance's presented by this case was required, and following trial courts's refusal to disqualify itself; Appellate court was obligated to reverse the conviction on Due process conflict of interest grounds at the trial stage.

Due to trial courts participation in an unrelated post- conviction proceeding , which resulted in appellate court granting review of its initial adverse determination forcing the trial court to begrudgingly grant petitioner a modification in that unrelated proceedings. There is, no rational interpretation of the record , law, and circumstances of this case that would lead to the conclusion that prior proceeding's did not have inauspicious influence on trial court. which created an unconstitutional "potential for bias" that fatally undermined petitioner's fundamental due process fair trial rights (Mayberry v. Pennsylvania, 400 U.S. 455, 466 [1971]).

Furthermore, this court has clearly established that "even when judge does not have any direct, personal, substantial, pecuniary interest in case, of kind requiring his or her disqualification at common law, there are circumstances in which probability of actual bias on part of judge is too high to be constitutionally tolerable"(Withrow, supra, 421 U.S., at 47). This is such a case.

Throughout petitioners criminal proceedings in this instant case, trial court made no attempt to conceal the pre-disposed bias it held against Petitioner. The following is just a few extreme examples of most blatant display's of impermissible bias that trial court exhibited against petitioner ,and those there to support him.

At the outset, it should be noted that prior unrelated proceeding referred to above involved a former judge (Kevin J. Mulroy). Who was removed from the bench, in part, for "engaging in racial epithets" in an unrelated case in which petitioner was a defendant (In Re Mulroy, 94 N.Y. 2d 652). Following the state commission on judicial conduct determination of removal, petitioner filed a collateral motion seeking vacatur of conviction on claims of judicial & prosecutorial misconduct.

Trial court now at issue, presided over those proceedings, and in the face of overwhelming proof to the contrary, denied said motion without conducting an evidentiary hearing on irrational ground that racially charged assessment of the case by former judge did not affect the outcome. Only after petitioner was granted appellate review of that adverse determination, did trial court at issue, begrudgingly agree to a modification.

In the instant case during the first appearance before the court, not only was determination to relieve original counsel made outside of Petitioner's presence, absent of his informed input, or position on the removal (Arraignment

6/30/10, at 2). What exacerbated this intrusion of basic Sixth Amendment safeguard, was the rational it was premised on, and the sarcastic manner it occurred (Arraignment 6/30/10, at 4).

Moreover, trial court in total disregard for valid concerns raised by Petitioner, as it relates to impairment of grand jury notice, for which hybrid-indictment Petitioner was being arraigned on; was also compounded by trial court unwarranted belittling of Petitioner (id. At 4-5).

During July 1, 2010 new attorney appearance, trial court after denying Petitioner's request for reasonable adjournment to secure counsel of his own choosing (new attorney, 7/1/10, at 2). Trial court in addition to responding to Petitioner's objection to this denial with a veiled threat of being forced to proceed forward without the assistance of counsel. Trial court's pre-disposed bias against Petitioner was further revealed by the sarcastic, and irrelevant innuendo regarding Petitioner's unrelated prior proceeding before the court (id. at 3).

On July 13, 2010, scheduled report appearance Petitioner was brought before the court. His sincere attempt to inquire about the constant hostility the court was expressing towards him, and its coercive involvement in co-defendant's decision to plead out, was met by trial court's malicious inference (in complete disregard of fundamental presumption of innocence) that Petitioner would "go to trial...than state prison" (Report, 7/13/10, at 3). It should

be noted that this was Petitioner's only third appearance before the court, regarding these matters at that point.

Throughout the remainder of this proceeding, trial court made no attempt to conceal the pre-disposed bias, and distaste it felt towards Petitioner. Repeatedly, responding to Petitioner's admitted frustrated protest of its, blatant display of bias against him, unjudicial interference with the case, and actual, as well as effective assistance of counsel; With berating, and intemperate remarks, and assertions (id. At 6-13). At one point in the proceeding, sarcastically stating Petitioner was "going to need a calculator" to figure out the time he was "looking at" (id. at 6). At another point replying to Petitioner's assertion that he was "done" with the back & forth with the court, with "that could be prophetic (id. at 9). This was a clear inference of trial court's pre-judged presumption of Petitioner's guilt.

But the most significant demonstration of trial court's pre-existing bias against Petitioner occurred when, after Petitioner was escorted from the courtroom, during an off-the-record pretexual bench conference supposedly regarding unrelated matter, but clearly, was centered on Petitioner's prior relationship with court, and circumstance of unrelated proceedings (id. at 12-13). After requesting Petitioner be brought back into the courtroom, in an attempt to aver it impartiality; trial court unsuccessfully attempted to get Petitioner to concede to inaccurate rendition of circumstances surrounding the

relief Petitioner obtained during prior unrelated proceeding (id. at 13);. Petitioner's attempt to correct this misrepresentation of the factual components of the unrelated collateral proceeding was abrasively cut short by trial court, who ordered that he been removed from the court when it became clear Petitioner would not endorse its attempt to convey impartiality (id.).

The fact that prior collateral proceeding was even a part of trial court's consideration in and of itself establish the high probability of unconstitutional bias the court harbored against Petitioner stemming from that unrelated C.P.L §440.10 post conviction proceeding.

Nevertheless, there is one last critical example of expressed pre-existing bias by trial court that tainted Petitioner's basic fair trial rights. During March 2, 2011, sentence appearance, trial court not only, arbitrarily denied prose C.P.L. § 330.30 motion to set aside the verdict, submitted by Petitioner, which alleged an important part, that juror and prosecutorial misconduct occurred during trial proceeding.

Juror misconduct allegation premised on racial altercation that occurred with a sitting juror and Petitioner's younger brother that occurred while they attended high school together. This claim was supported by an accompanying sworn affidavit by Petitioner's brother, who referenced specific juror by name, and whom also shared Petitioner's last name (Post-Verdict Motion Affidavit of J. Everson). What is significant about this claim is the fact that this very same

sibling of Petitioner was prevented from attending jury voir dire, where this unfavorable information would have been most beneficial to Petitioner (Affidavit of J. Everson).

Prosecutorial misconduct contention stemmed from sworn allegations by Petitioner's daughter's mother, who was a prosecution witness. That stated that in between testimony she was placed in a room with other prosecution witnesses who relayed what was being asked by defense counsel (Post-Verdict Motion Affidavit of M. Ricks). Significance of this allegation was the fact that prosecution's informant witness in-chief was alleged to have rehashed specific portions of questions & answers between him, and defense counsel.

Both of these claims was only vaguely contended by prosecution. And motion was callously denied by trial court, who in complete disregard of the sworn affidavits that was in support of them, refused to conduct an evidentiary hearing to fairly determine the validity of the claims (id. at 7).

Final abrasive display of pre-disposed bias by the court occurred when it allowed unproven, and uncharged murder and shooting incidents to factor into sentencing determination. Informing Petitioner that there was a murder every month, and a shooting every couple of weeks. And that the blood was on Petitioner's hands for making those weapons available (id.). This assertion was exceptional ly irrational being that not proof advance that weapons obtained from Petitioner was ever involved in murders or shootings. Which made these

considerations by trial court even more troubling.

New York State Courts neglected to recognize that in "lieu of exclusive reliance on that personal inquiry, or on Appellate review of the judges, determination respecting bias, the Due Process clause has been implemented by objective standards that do not require proof of actual bias" (see Tumey, 273 US at 532, Mayberry, supra, at 465-466).

REASON FOR GRANTING THE WRIT

1. During petitioner's criminal proceedings, on 5 separate occasions family member's there to support him were either, ejected, or exclude from attending. These various instants of deprivation of public trial safeguard that occurred were without justification, and carried out in such a hostile , and callous manner; That they operated to completely undermine the constitutional purpose, for which this basic protection serves.

Presley, and its progeny created clear and consistent constitutional guidelines that set forth criteria in which public trial protections were to be implemented. Yet, New York state courts continue to distort, and expand on those limitations that were put in place by this court.

Just over a year ago in, Weaver v.Massachusetts,137 S.Ct. 1899 (2017).This court reaffirmed it's Presley jurisprudence, directing that "violation of the right to a public trial can occur simply because the trial court omits to make the proper finding before closing the courtroom, even if those findings might have been fully supported by the evidence." Id. at 1910, quoting Presley, 558 U.S. at 215,130 S.Ct. 721. Making it abundantly clear that it is "incumbent upon" the trial court "to consider all reasonable alternative to closure" Id. a1909, quoting Presley, at 215-216,130 S.Ct. 721.

The court also expound on public trial as a structural error that if "there is an objection at trial and the issue is raised on direct appeal,....generally is

entitled to 'automatic reversal' regardless of the error's actual effect on the outcome."quoting Neder v. United States, 527 U.S. 1(1999). In the instant case before the court, there was a trial objection to the 3 expulsion of petitioners various family members, and contention with those ejection's were raised on direct appeal. But New York 4th department, appellate division, complete overlooking "specific" protest of these unwarranted ejections, in a total arbitrary reliance upon state preservation doctrine, declined to address, and grant the required relief for these fundamental error's.

No rational view of the record supports appellate court's lack of the preservation determination regarding the 3 ejections that occurred in petitioner case. All 3 of these ejections were hostilely & callously ordered in open court while testimony was being giving. And protest were made at the first available recess outside the jury's presence. As was trial court fully appeased of petitioners contention with the courts ejections of his various family members. Yet, while invoking a Supreme Court case, state court "unreasonably extended its legal principle to a new context where it should not apply." William v. Taylor, 529 U.S. 362,405.

The remaining 2 exclusions that occurred in petitioners case involved his mother, and two siblings being denied access to voir dire proceedings. And the mother of his daughter being prevented from attending trial after completion of her testimony. Facts of these exclusions were sufficiently fleshed out during

post -conviction evidentiary hearing.

Unlike Weaver, supra, the jury selection exclusion that occurred here, which also was not objected to at the time it occurred, was indeed supported by adequate showing of "the potential harm flowing from courtroom closure." that "came to pass in this case." Id. at 1913. This showing was made in the form of a sworn affidavit, and post-conviction testimony from petitioner's younger brother, who was denied admittance during voir dire, and asserted that he had a racially charged altercation with one of the sitting jurors when the attended highschool together, afew years prior to petitioners trial. Suggesting that said juror indeed lied during voir dire.

The exclusion of petitioners daughters mother involved not the trial court, but the prosecution unilaterally ordering that case detectives prevent her from re-entering the court after completion of her testimony. A determination that lacked authorized by the court ,or notice provided to the defense.

Both of these exclusion's were entitled to review, and reversal by appellate court. Because in each instant, while there is irrefutable proof that exclusions occurred; The conceded record also established that petitioner was never afforded a fair opportunity to register appropriate objection of these exclusions. There was no reliable proof offered that even logically suggest that these claims were intended to "function as a way to escape rules of waiver and forfeiture and rise issues not present at trial." Harrington v. Richter,562 U.S.

86,105.

2. Petitioner was denied his basic right to secure counsel of his choosing, and reasonable adjournment to exercise that right(Vasquez v. Hillary, 474 U.S. 254.263 [1986]).

At the time removal of petitioners original attorney was made, she had been his counsel for over 2 months. During that period she met with petitioner in preparation of his case, on more occasions than both subsequently forced appointed attorneys did combined. Petitioner never raised complaint with her advocacy, nor requested for her replacement.

The several important respects in which "Sixth Amendment right to choose one's own counsel is circumscribed" (Wheat v. U.S., 486 U.S. 153), was never at issue in this case. Here, where the substitution was made on petitioners very first appearance before the trial court, when petitioner was essentially blind-sided with arraignment on an enhanced hybrid-indictment. It can not be said that removal of attorney petitioner had grown to trust, and respect, on generic ground of "break down of communication" was not in fact an attempt to "manufacture" a conflict to prevent Petitioner from receiving the "effective" assistance of counsel for which he was entitled to, or an abuse of discretion by trial court.

As this Court has explicitly stated, when disqualification is "erroneous, no additional showing of prejudice was required to make the violation complete."

United States v. Gonzales-Lopez, 548 U.S. 140, 149. Because harm is "irrelevant to the basis underlying the right." Weaver, supra at 1908, quoting Gonzales-Lopez, supra at 146.

Nonetheless, while prejudice may not be a required competent to this violation. It's particular effect to Petitioner's ability to meaningfully defend his liberty interest, against the multiple, and complex allegations that he faced, was blatantly apparent. Repeated court orchestrated replacement of Petitioner's counsel during critical pre-trial phase, effectively crippled his ability to adequately prepare, investigate, and consider the formidable charges that were lodged against him. Allegations that consisted of 11 unrelated incidents, comprised in 3 separate indictments, which were joined together by a multiple conspiracy charge.

Furthermore, though each of the attorney's were on his case for no more than 3 months apiece. Petitioner was charged, tried, and convicted within 9 months. It is clear under the esteem, and unique circumstances of Petitioner's case, including the egregious, and arbitrary manner in which denial of reasonable opportunity to secure counsel of his choosing occurred; that this court's "independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and legal proceedings appear fair to all who observe them." Wheat, supra at 160, was utterly and completely ignored by state reviewing courts.

Therefore, it is extremely important, and necessary for this court to correct, and address this intentional, or unintentional misconception of the substance of this basic right.

3. There is arguably no right more essential to fair trial Due Process principles, than the guarantee of a fair, and impartial tribune. If trial juetice elects to discard his, or her oath to "avoid impropriety and the appearance of impropriety." ABA annotated model code of judicial conduct, canon 2 (2004). There is no chance of an accused party to receive fair adjudication, let alone ensure public confidence in the "presumption of honesty and integrity in those serving as adjudicators. Withrow v. Larkin, 421 U.S. 35, 47 (1975). Nor would it further this Court's intention of maintaining a fair, independent, and impartial judiciary.

That is why this Court has recognized that "judicial integrity is, in consequence, a state interest of the highest order." Republican Party of Minn. v. White, 536 U.S. 765, 793 (2002).

In the instant case before the court, based on prior relationships with Petitioner, as well as circumstances surrounding that prior proceeding; trial justice consistently displayed and conveyed the aversion it harbored against Petitioner throughout the criminal proceedings. Taking every opportunity to degrade Petitioner, and his family there to support him. As well as undermining his every effort to received fair adjudication. This included continued

interference with Petitioner's attorney-client relationship, coercively intertwining itself in Petitioner's co-defendant's plea consideration and cooperation against him (Petitioner's daughter's mother testified that she was threatened by the court to cooperate against him, or she would never see her children again. This allegation was never rebuked by the court). And hostilely, and callously trampling over Petitioner's public trial right. All of which "reasonably" brought its impartiality into question. The circumstance, relationship, and conduct of this case makes it one of the "rare" and "extreme" examples that cross constitutional limits, and require this Court's "intervention" and consideration under its formulated "objective standard". Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868 (2009). Especially when it is so clearly obvious that "Due Process was indeed violated." County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998).

These fatal violations were inaccurately, and inadequately misadjudicated by New York State reviewing courts. The essential principles governing these fundamental safeguards were never considered, or applied by state reviewing courts. This only encourages trial courts to continue to infringe on these basic rights, and give them the impression that such egregious deprivation is permissible.

This is largely due to their knowledge of the fact that state reviewing courts, based on an inherent reluctance to disturb a conviction on grounds that

lack guilt, or innocence consideration requirements, or generated unfavorable publicity; would manipulate state procedural rules to avoid granting required relief.

The unspoken, but well known fact that this court grants, and hears argument in only 1% of the cases filed in a term, coupled with the fact that incarcerated petitioners are rarely afforded representation when seeking redress from our country's highest court; Provides state courts with confidence that , for the most part, their determination's ,even if egregious,.. Will stand unchecked.

And while primary concern of this court is not to correct error's in lower courts decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved. Declining to provide meaningful review of proposed fundamental infringement on any premise invites abuse of these basic safeguards.

This Court is a convicted citizens last chance for redress of constitutional violations. If every "individual" citizen cannot be ensured that violations of these basic protections will be reviewed when they occur "individually", how then can every citizen really have the confidence in these fundamental guarantees individually? This is more so, from the court that is entrusted with formulating, interpreting, and establishing the guidelines for which these fundamental entitlement are founded on.

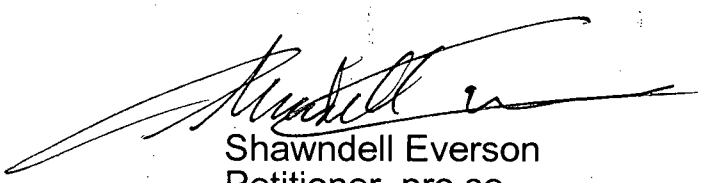
CONCLUSION

For all the above stated reasons, Petitioner humbly, and sincerely employs this Court to grant certiorari for the blatant disregard of these firmly established constitutional guarantees by New York state courts.

I declare under penalties of perjury (28 U.S. C. § 1746) that the following is true, accurate, and correct.

Dated: August 4, 2018
Attica, New York

Respectfully submitted,



Shawndell Everson
Petitioner, pro se
P.O. Box 149
Attica, New York 14011-0149