18-7210 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GORDON PRAILOW — PETITIONER
(Your Name)

vs.

STATE OF MARYLAND — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF SPECIAL APPEALS OF MARYLAND
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GORDON PRAILOW
(Your Name)
c/o JCI - #214156
P.O. BOX 534
(Address)

Jessup, Maryland 20794-0534
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether state collateral review courts must retroactively apply the watershed/bedrock procedural rule of automatic reversal to jury findings that are nullified due to a constitutionally deficient reasonable doubt instruciton!

2. Whether a sentence is illegal when it was imposed after a defendant received no jury verdict of guilty-beyond-a-reasonable-doubt within the meaning of the Sixth Amendment!

3. Whether a sentence is illegal when it was imposed after a jury conviction of a crime which was never charged in an indictment as mandated by the Sixth Amendment!

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Governor Larry Hogan
State House
State Circle
Annapolis, Maryland 21401

Brian Frosh, A.G.
Office of the Attorney General
of Maryland
Criminal Appeals Division
200 Saint Paul Place
Baltimore, Maryland 21202

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Court of Special Appeals of Maryland court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 8/31/2018. A copy of that decision appears at Appendix C.

[✓] A timely petition for rehearing was thereafter denied on the following date: 10/26/2018, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE VI.; UNITED STATES' CONSTITUTION:

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmantion, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

[Amendment V]:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice out in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Amendment VI]:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been

previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[Amdnement XIV], Section 1 :

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

Constitution of Maryland

DECLARATION OF RIGHTS:

Article 2:

The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.

Article 21:

That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him;

to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Article 24:

That no man ought to be taken or imprisoned or disseized of his freehould, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Rule 4-345(a), Maryland Rules of Procedures:

Illegal Sentence. The court may correct an illegal sentence at any time.

STATEMENT OF THE CASE

In July 1990, Petitioner, Gordon Maurice Prailow (herein after "Prailow") (who was then 19-years-old), was arrested -- in conjunction with the arrest of his co-defendants (17-year-old Marcus William "Tunstall" [1/], and 24-year-old George Anthony "Thorne"[2/])-- for the botched robbery / murders of Micheal LaBrent "Martin", Derrick Sean "Williams", and Stuart Alexander "Smith". In August of 1990, Prailow was charged with a 21 count indictment. As to the murder counts, the indictment stated:

> The Grand Jurors of the State of Maryland, for the body of Prince George's County, on their oath do present that MARCUS WILLIAM TUNSTALL, GORDON MAURICE PRAILOW, and GEORGE ANTHONY THORNE late of Prince George's County, aforesaid, on or about the 20th day of July, nineteen hundred and ninety, at Prince George's County aforesaid, feloniously, willfully and of their deliberately premeditated malice aforethought, did kill and murder Michael LaBrent Martin, in violation of the common law of Maryland, and against the peace, government and dignity of the State. (Murder)

The same language was used, in separate counts, to charge Prailow with the murder of the other victimes, Williams and Smith. See Appendix A (Prailow v. State, Court of Special

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[1/] Tunstall had recently filed a petition for writ of certiorari in this Court. Tunstall and Prailow were tried in separate jury trials, with the same presiding trial judge (i.e., Judge William D. Missouri of the Circuit Court for Prince George's County, Maryland).

[2/] Thorne was tried by a separate jury in November 1990; Thorne was sentenced on December 17, 1990, to an aggregate sentence of life plus 20-years, all suspended but 50 years. Thorne testified against Tunstall in June 1991, in exchange for an undisclosed deal with the prosecution. As a result, =

Appeals of Maryland ("COSAM"), No.569, September Term 2017, Slip op. at 5)

During trial, the trial judge instructed the jury as the prosecution's burden of proof, with the following words, in pertinent part:

> The State has the burden of proving the Defendant's guilt beyond a reasonable doubt. The Defendant is not required to prove his innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.
>
> Proof beyond a reasonable doubt is a concept that I will go into further; but I will tell you now that a reasonable doubt is a doubt founded upon reason. It is not a fanciful doubt, a whimsical doubt or a capricious doubt. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief in an important matter in your own business or personal affairs. However, if you are not satisfied of the Defendant's guilt to that extent, then reasonable doubt exists and you must find the Defendant not guilty.
>
> The phrase reasonable doubt presents an abstraction. In an attempt to give it some concreteness I use examples. Let's suppose that there is something in your own business or personal affairs such as should I adopt a child, should I have elective surgery, or should I purchase real estate. You gather all of the information that is available to you in trying to make the determination as to whether to proceed. Be mindful that it may not be all of the information that you desire, but it is all of the information that you have at your disposal in order for you to make your decision.
>
> After looking at that information and thinking about it you make the determination that there is no doubt which is based upon reason which would preclude you from going ahead and adopting a child, having elective surgery, or purchasing the real estate. You have satisfied yourself beyond a reasonable doubt that you should go ahead and proceed.

= Thorne was resentenced on December 21, 1995, to life suspended all but five years and 149 days "time served". The trial judge stated that there were no deals given to Thorne. However, the trial judge acknowledged that the prosecution recommended the new sentence because Thorne testified favorably for the government against Tunstall. See App. M.

On the other hand, if after looking at all of the information available to you you discover that there is a doubt based upon reason which would prohibit you from going forward. Be mindful now there are some doubts that are associated with any venture. In this case you have to find that there is a reasonable doubt. If you have that type of reasonable doubt the Defendant deserves the benefit of that doubt and you must find him not guilty.

On the other hand, if you are satisfied that the State has proven beyond a reasonable doubt that the Defendant was involved in these murders and the robberies then you should go ahead on and consider whether the State has proven each and every element of the offenses charged beyond a reasonable doubt.

Now, attorneys often will say, well, the Judge told you about three examples. The one about purchasing real estate really shouldn't apply. Admittedly it is not the strongest one because obviously if you pruchase real estate youj can always sell it later on. But let's take a look at the first two examples, the adopting of a child and the having elective surgery.

For those of you who are parents you understand that once a child is born to you that child is yours forever. Children don't necessarily leave homed at 18. In fact, sometimes they don't leave home at 38. So you will have children for a long time. This is a life-long commitment.

With respect to elective surgery, folks. Once a surgeon has placed a scalpel to your skin and cut you you cannot turn back the hands of time to the point where you were never cut. So if you find in this case that based upon what you have heard in this courtroom that you would be able to go ahead on and have that elective surgery, or adopt that child, then you can say that there is no doubt that is based upon reason which should prohibit my going forward and considering the other elements of the crimes

See App. J (Case No CT90-15248, 2/21/1991 at 28:20-31:17).

After deliberations, the jury announced its verdict as: **"NOT GUILTY"** of the first degree premeditated murders of Martin, Williams and Smith. **"GUILTY"** of the second degree murders of Martin, Williams and Smith. **"GUILTY"** of the first

degree felony murders of Williams and Smith. "GUILTY" of robbery with a deadly weapon against Williams and Smith. "GUILTY" of the use of a handgun in commission of a felony against Martin, Williams and Smith. And "GUILTY" of the robbery of Williams and Smith.

The court granted Prailow's motion for judgment of acquittal as to the felony murder of Martin. The prosecution nolle prosequi the charges of robbery and robbery with a deadly weapon against Martin; all of the use of a handgun charges as to Martin and all of the use of a handgun in commission of a crime of violence as to all victims (Martin, Williams and Smith). See App. D (Docekt Entries of Prailow's trial proceedings No. CT90-1524B). On 28 March 1991, the court sentenced Prailow to an aggregate sentence of two natural life terms plus 45 years. App. D.

Prailow noted a timely direct appeal to the Court of Special Appeals ("CSAM"). On 27 January 1992, the CSAM affirmed the judgments of the trial court. On 12 June 1992, the Court of Appeals of Maryland ("COAM") denied certiorari review. On 3 April 1997, Prailow filed for post conviction relief. In that petition, Prailow raised, inter alia, that the trial court's reasonable doubt jury instruction was constitutionally deficient. And, that both trial and appellate counsel were ineffective for failing to challenge the constitutionally deficient reasonable doubt instruction

during trial and on direct appeal.

On 9 November 1998, a post conviction hearing was conducted before Judge C. Philip Nichols in the Circuit Court for Prince George's County, Maryland ("CCPGC"). During that proceeding --after argument and evidence-- the court denied post conviction relief. As to the reasonable doubt jury instruction, Judge Nichols said:

> The third area of inquiry it says jury instruction, Judge Missouri as he instructed the jury took the pattern jury instruction and added some to it, so some of it was folksy, somewhat founded on common sense, at a time when judges in our circuit and elsewhere in Maryland did that.
>
> Some three years later, I think it was in the Joyner case, the appellate court took issue with that practice and, to my knowledge, everyone on the bench today generally confines them to the pattern jury instructions so as not to chance an error.
>
> And in this case the petitioner says it was error for his attorney not to object. In fact, his attorney quoted some of that jury instruction to the jury. He also says it was error for his appellate defense counsel not to raise it.
>
> As I view it, I don't believe that the petitioner would be entitled to relief on this ground based upon what I have said, the fact that it was some three years later. Petitioner, of course, took issue with the practice, and having looked at the instruction, I don't find it as misleading as he does, and I think it sets that standard of proof of beyond a reasonable doubt as the one that is required in our State and not some lesser standard.
>
> Accordingly, we are going to deny the relief, the post conviction relief that the petitioner asked us to grant today. * * *

App. G (CT90-1524B, T.11/9/1998 at 3:12-4:14).

Prailow filed a timely application for leave to appeal to the CSAM. On 12 May 2000, the intermediate appellate court

remanded Prailow's case back to the post conviction court for compliance with the rules requiring the post conviction court to file a statement of reasons for its decision. Stating:

> We cannot determine from this statement of reasons why the hearing judge concluded that there was any merit in (1) any of applicant's "ineffective assistance" contentions, (2) applicant's "State's perjury" contention, or (3) applicant's "improper instruction" contention. Thus, the circuit court't statement of reasons does not comply with Maryland Rule 4-407(a). As we are unable to review this application on its merits, we are contrained to remand this case for the preparation of a statement of reasons that complies with the mandate of Maryland Rule 4-407(a). Pfoff v. State, 85 Md.App. 296 (1991).

App. H (Prailow v. State of Maryland, CSAM No.287, Sept. Term, 1998, unreported per curiam opinion (Slip op. at 1-2)). On 20 Seotember 2000, the post conviction court issued its statement of reasons, repeating what it said on November 9, 1998. App. I (CT90-1524B, Statement Of Reasons and Order of Court, at 6-7).

Prailow filed another timely application for leave to appeal the post conviction courts statement of reasons. Such was never docketed by the courts. On 14 June 2011, Prailow filed a motion to reopen post conviction proceedings,[3/] again, challenging the constitutionally defecient reasonable doubt instruction. On 24 August 2011, the court summarily denied Prailow's motion without a hearing. On 15 September 2011, Prailow filed a timely application for leave to appeal the

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[3/] Prailow asserts that he does not recall ever filing for a reopen in 2011. Prailow never received a decision from the courts regarding such. Prailow has attempted to obtain copies of the reopen motion and leave to appeal decision. Prailow believes that someone may have filed such on his behalf, unbeknownst to him.

summary denial of the motion to reopen post conviction relief.

On 25 April 2013, the CSAM summarily denied Prailow's application for leave to appeal the denial of the reopen motion without making a ruling on the merits of Prailow's claims. On 29 October 2013, the CSAM denied Prailow's motion for reconsideration.

On 21 December 2015, Prailow filed a motion to correct illegal sentence and motion to exercise revisory power. In that motion, Prailow raised --inter alia-- that Prailow's sentence is illegal because the court lowss jurisdiction due its failure to complete the court because of the constitutionally deficient reasonable doubt instruction. And, that the sentence --as to the felony murder convictions-- is illegal because Prailow was never charged with felony murder.

On 2 May 2017, the court denied Prailow's illegal sentence motion. As to the lack of jurisdiction issue and not being charged with felony murder, the court said:

> First, Defendant asserts that the trial court lacked jurisdiction to convict and sentence him due to a defective jury instruction. This Court finds that such assertion was raised on his Petition for Post Conviction Relief, which a hearing was held, and the petition was denied on November 9, 1998. After the Court of Special Appeals remanded the case back to the post conviction court for its statement of reason, the post conviction court entered its Statement of Reasons and Order of Court on September 19, 2000. In its Statement of Reasons, the post conviction court found that the jury instruction was not misleading, and that it was proper at the time of trial. Because this issue was finally litigated before the post conviction court, Defendant is barred from raising the same issue in the present proceeding. Even if this Court considers on the merits, this Court finds that the jury instruction was proper as the jury instruction

was permissible at the time of trial.

> Second, Defendant asserts that he was never indicted on felony murder charges, and thus the felony murder convictions and sentences should be vacated. This Court finds that this assertion has no merit as Defendant was indicted on charges of common law murder, which includes charges of felony murder.

App. B (CT90-1524B, Memorandum and Order of Court, 5/2/2017 at 3).

Prailow noted a timely direct appeal, which the CSAM affirmed the judgment of the lower court. The CSAM did not address the merits of the claim of the lack of jurisdiction. Instead, the CSAM noted:

> We disagree with Prailow that the alleged faulty jury instruction on reasonable doubt deprived the trial court of jurisdiction, thus rendering the jury's verdict invalid. Any challenge to the jury instruction should have been made by objection at trial and then raised upon direct appeal. Moreover, as the circuit court noted, Prailow raised this contention in a petition for post-conviction relief, and the post-conviction court determined that the reasonable doubt instruction was not improper. Prailow again raised this issue in a motion to re-open a closed post-conviction proceeding and, again, the court denied relief. This Court denied Prailow's application for leave to appeal that ruling. Prailow v. State, No. 2954, September Term, 2011 (filed April 25, 2013). Finally, the circuit court - for the third time - considered Prailow's claim on the reasonable doubt instruction when it considered the motion to correct an illegal sentence and, again, found that the instruction given was proper.

App. A (Prailow v. State of Maryland, CSAM No.568, September Term, 2017, unreported per curiam opinion, filed: May 8, 2018 (Slip op. at 5 n.2)). As to Prailow's second claim, the CSAM reasoned that since the COAM had previously ruled that

"[t]here is no requirement...that a charging document must inform the accused of the specific theory on which the State will rely", the conviction of felony murder is proper even though Prailow "was not explicitly charged with that specific Offense " App. A (Slip op. at 5-6)

Prailow noted a timely motion for reconsideration which was denied on June 6, 2018. App. E The COAM denied certiorari on August 31, 2018. App. C (Petition Docket No. 185, September Term, 2018). And, on 26 October 2018, the COAM denied Prailow's timely filed motion for reconsideration. App. D.

This timely filed writ of certiorari follows

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because this case presents this Honorable Court with the: (1) the opportunity to finally answer whether or not state collateral review courts are required to retroactively apply watershed/bedrock procedural rules of automatic reversal whenever there is no jury finding based upon a reasonable doubt as mandated by the Sixth Amendment and Fourteenth Amendment.

(2) This case presents this Honorable Court with the opportunity to determine whether or not a sentence is illegal when given in a case where a jury's verdict is nullified due to a constitutionally deficient reasonable doubt instruction. And,

(3) This case presents this Court with the opportunity to decide whether a sentence is illegal when it is imposed upon a crime for which an accused was never charged, in violation of the Notice Clause and the Grand Jury/Indictment Clause.

Certiorari is warranted in order to (i) protect defendants's liberty interests; (ii) protect defendants from the stigma of being illegally convicted and sentenced; and (iii) encourage community confidence in the fundamental values of the criminal justice system. "We The People" deserve the grant of certiorari review here.

I. STATE COLLATERAL REVIEW COURTS MUST RETROACTIVELY APPLY THE WATERSHED/BEDROCK PROCEDURAL RULE OF AUTOMATIC REVERSAL TO JURY FINDINGS THAT ARE NULLIFIED DUE TO A CONSTITUTIONALLY DEFICIENT REASONABLE DOUBT INSTRUCTION.

Recently, in Montgomery v. Louisiana, 136 S.Ct. 718 (2016), this Honorable Court held "that when a new **substantive rule** of constitutional law contends the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." Id. at 729 (bold emphasis added)(referencing Teague v. Lane, 489 U.S. 288 (1989)). This Court held that "[t]hat constitutional command is, like all federal law, binding on state courts." id. This Honorable Court limited its Montgomery holding to Teague's first exception for substantive rules. This Court did not address "the constitutional status of Teague's constitutional status of Teague's exception for watershed rules of procedure". Montgomery, 136 S.Ct. at 729.

Prailow asserts that Teague's second exception for watershed procedural rules must also be given retroactive effect in all state collateral review courts. Watershed procedural rules, just like new substantive rules of constitutional law, control the outcome of a case. See, e.g., Montgomery, 136 S.Ct. at 729. The Constitution should also require state collateral courts to give retroactive effect to watershed/bedrock procedural rules. See, id

In Adams v. Aiken, 41 F.3d 175 (4th Cir. 1994), the Fourth Circuit held that this Court's holding in Sullivan v.

Louisiana, 508 U.S. 275 (1993), satisfied Teague's second exception because a constitutionally deficient reasonable doubt instruction "is a breach of the right to a trial by jury, resulting in a lack of accuracy and the denial of a bedrock procedural element essential to fairness " Adams, 41 F.3d at 178-79 (citations omitted).

Several other circuits have held this Court's Sullivan holding to be retroacitve under Teague's second exception. See Gaines v. Kelly, 202 F.3d 598, 603-06 (2nd Cir. 2000)(and cases therein cited); Nevius v. Sumner, 105 F.3d 453, 462 (9th Cir. 1996); and Nutter v. White, 39 F.3d 1154, 1158 (11th Cir. 1994)(holding that Sullivan are to be applied retroactively and noting that the "interest in finality, however, must give way where, as in this case, the nature of the constitutional error is such that we have no confidence in outcomes produced by the procedure at issue.").

In applying retroactive application to substantive rules this Honorable Court reiterated that "[i]n support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief," the Court in Ex parte Siebola, 100 U.S. 371 (1880), "explained that '[a]n unconstitutional law is void, and is as no law.'" Montgomery, 136 S.Ct. at 731 (citing and quoting Siebola, 100 U.S. at 376). Prailow asserts that retroactive application should be given to this Court's Sullivan holding since its a watershed fundamental

procedural rule which "requires automatic reversal" whenever it is violated. See Sullivan, 508 U.S. at 281-82.

This Court should hold that Sullivan's constitutional fundamental procedural rule is retoractively applicable to state collateral review procedures the same way this Court held substantive rules are retroactive when this Court said in Montgomery, supra:

> If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same in its own postconviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court **"has a duty to grant the relief that federal law requires."** Yates, 484 U.S., at 218, 108 S.Ct. 534, 98 L.Ed.2d 546. Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

Montgomery, 136 S.Ct. at 731-32 (quotation marks supplied, bold emphasis added). The holding that a constitutional misdescription of "beyond-a-reasonable-doubt" requires automatic reversal because there is no valid verdict of guilty as required by the Sixth Amendment should be applied retroactively in state collateral review courts.

A. Maryland Collateral Review Courts Must Review The Reasonable Doubt Instruction De Novo Since Maryland Is A State Which Allows The Challenge Of A Sentence At

Anytime When That Sentenence Is Illegal.

Maryland Rule 4-345(a) provides: "The court may correct an illegal sentence at any time." In Johnson v. State, 427 Md. 356, 47 A.3d 1002 (2012), the COAM held that a defendant may attack a sentence as being illegal "[w]here the trial court imposes a sentence or other sanction upon a crimial defendant, and where **no sentence or sanction should have been imposed**". Id. 427 Md. at 368, 47 A.3d at 1009 (citation omitted, bold emphasis supplied).

The Maryland Court also reiterated that to constitute an illegal sentence under Rule 4-345(a), "the illegality must inhere in the sentence itself, rather than stem from trial court error **during the sentencing proceeding**." Johnson, 427 Md. at 367, 47 A.3d at 1009 (citations omitted, bold emphasis added). A consitutionally deficient reasonable doubt instruction occurs well before a sentencing proceeding. It invalidates the conviction which precludes a court from imposing a sentence.

The Johnson Court cited Jones v. State, 384 Md. 669, 866 A.2d 151 (2005), in which the Maryland Court held that, when a jury's verdict of guilty on a count was not orally announced in open court, and the jury was not polled and harkened to the verdict on that count, no sentence should have been imposed on that count, and the sentence on that count was illegal within

the meaning of Rule 4-345(a). See Johnson, 427 Md. at 369, 47 A.3d at 1010.

Pertinent to Prailow's argument, the Maryland Johnson court held that "[w]hen the illegality of a sentence stems from the illegality of the conviction, itself, Rule 4-345(a) dictates that both the conviction and the sentence be vacated." Id. 427 Md. at 378, 47 A.3d at 1015.

Prailow asserts that since "[a] constitionally deficient reasonble-doubt instruction will always result in the absence of 'beyond a reasonable doubt' jury findings", Sullivan, 508 U.S. at 285 (Rehnquist, C.J., concurring), Maryland's collateral courts must consider the complained of reasonable doubt instruction de novo since it is a state which opens its collateral proceedings to challenge a claim controlled by federal law. See, e.g., Montgomery, 136 S.Ct. at 731-32 (citing Yates v. Aiken, 484 U.S. 211, 218 (1988)).

B. The Supremacy Clause Mandates State Collateral Review Courts Retroactively Apply This Court's Sullivan Holding In Its Own State Court Proceedings.

In his dissent, Justice Thomas said that this Court's Montgomery holding "says that state postconviction...courts are constitutionally required to supply a remedy because a sentence or **conviction predicated upon an unconstitutional law is a legal nullity.**" Id. 136 S.Ct. at 745 (Thomas, J.,

dissenting).

"[W]hen state courts have chosen to entertain a federal claim" "the Supremacy Clause...command[s] a state court to apply federal law " Id., 136 S.Ct. at 749 (Thomas, J., dissenting).

Maryland is a state which has assigned itself to **obey** the U.S. Constitution through the Supremacy Clause. See Abrams v. Lamone, 398 Md. 146, 219 n.2, 919 A.2d 1223, 1268 n.2 (2007)(Eldridge, J , concurring)("It should be noted that Article 2 of the Maryland Declaration of Rights mandates that federal law "shall be the Supreme Law of the State....' Consequently, 'federal law' is 'Maryland law' ")(citing Ponte v. Investors' Alert, 382 Md. 689, 698-701, 857 A.2d 1, 6-8 (2004), and cases there cited).

By the time Prailow went to his first postconviction proceeding, in 1998, this Court's Sullivan holding had been in existence for five (5) years. This Court's holding in In re Winship, 397 U.S. 358 (1970), had been in existence for twenty-eight (28) years prior. Maryland courts knew in 1991 that the U.S. Constitution had required a correct reasonable doubt instruction for twenty-one (21) years prior.

Twenty-one (21) years prior to Prailow's 1991 trial, Maryland knew that Winship established three protections. (i) Prailow's liberty interest; (ii) the protection from the stigma of conviction. And, (iii) it encourages community

confidence in criminal law by giving "concrete substance to the presumption of innocence." Winship, 397 U.S. at 363.

This Court's Sullivan holding up the stakes by noting that the "denial of the right to a jury verdict of guilty beyond a reasonable doubt is a denial of a fundamental procedural right and 'unquestionably qualifies as "structural error."'" See Adams, supra, 41 F.3d at 177-78 (citing Sullivan, 508 U.S. at 281-82 (quoting Arizona v. Fulminante, 499 U.S. 279, 309 (1991)).

Several Circuits have applied Sullivan retroactively to cases on collateral review. supra. Maryland has refused to acknowledge this Court's Sullivan holding to have retroactive effect. Notwithstanding, the Supremacy Clause requires all state collateral review courts --especially Maryland-- to retroactively apply this Court's Sullivan holding.

II. A SENTENCE IS ILLEGAL WHEN IT WAS IMPOSED AFTER A DEFENDANT RECEIVED NO JURY VERDICT OF GUILTY-BEYOND-A-REASONABLE-DOUBT WITHIN THE MEANING OF THE SIXTH AMENDMENT.

Federal courts have held that: "[T]he type of 'illegal' sentence which a defendant can successfully challenge despite an appeal waiver involves fundamental issues". See United States v. Dela Cruz, 570 Fed.Appx. 355, 357 (4th Cir.

2014)(quoting United States v. Copeland, 707 F.3d 522, 530 (4th Cir.), cert. denied, 134 S.Ct. 126, 187 L.Ed.2d 89 (2013)(internal quotation marks and alterations omitted)).

In United States v. Surratt, 797 F.3d 240 (4th Cir. 2015), the Fourth Circuit stated that "courts have recognized 'unlawful' or 'illegal' sentences in a narrow subset of cases." Id. at 255. The court pointed out that this Court has long held that "'[a]n imprisonment under a judgment' becomes 'unlawful' if 'that judgment be an absolute nullity.' Ex parte Watkins, 28 U.S. (3 Pet.) 193, 203, 7 L.Ed. 650 (1830)." Surratt, 797 F.3d at 255.

A constitutionally deficient reasonable doubt instruction "deprive defendants of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence...and **no criminal punishment may be regarded as fundamentally fair.**" Neder v. United States, 527 U.S. 1, 8-9 (1999)(bold emphasis added)(quoting Rose v. Clark, 478 U.S. 570, 577-78 (1986)).

In the instant case, the sentence is illegal because there was "no jury verdict of guilty-beyond-a-reasonable doubt" within the meaning of the Sixth Amendment. Sullivan, 508 U.S. at 280. Taken as a whole, the reasaonable doubt instruction --given in the 1991 trial-- misdescribed the concept of reasonable doubt. The 1991 trial court lowered the State's burden of proof to a preponderance standard by equating

reasonable doubt with the same decision-making process utilized when jurors adopt a child, have elective surgery, or purchase real estate. App. J (Case No. CT90-1524B, T.2/21/1991 at 29:12-30:4). The trial court further deminished the reasonable doubt concept by further explaining how each juror would decide to purchase real estate, adopt a child, and have elective surgery. See App. J. (Case No. CT90-1524B, T.2/21/1991 at 30:5-31:17).

Several circuits have condemned the "willingness to act" language. See Monk v. Zelez, 901 F.2d 885, 889-92 (10th Cir. 1990); United State v. Leaphart, 513 F.2d 747, 750 (10th Cir. 1975); United States v. Baptiste, 608 F.2d 666, 668 (5th Cir. 1979), cert. denied, 450 U.S. 1000 (1981); United States v. Robinson, 546 F.2d 309, 313 (9th Cir. 1976), cert. denied, 430 U.S. 918 (1977).

The D.C. Circuit noted that "there is a substantial difference between a juror's verdict of guilty beyond a reasonble doubt and a person making a judgment in a matter of personal importance to him." Scurry v. United States, 347 F.2d 468, 470 (D.C. Cir. 1965), cert. denied, 389 U.S. 883 (1967).

In 1992, the Committee on Model Jury Instructions for the Ninth Circuit deleted from its instructions on reasonable doubt reference to "important decisions" in the lives of jurors. That committee stated that it rejected the analogy of the important decisions in a juror's life with reasonabale

doubt

> because the most important decisions in life -- choosing a spouse, buying a house, borrowing money, and the like -- may involve a heavy element of uncertainty and risk-taking and are wholly unlike the decisions jurors ought to make in criminal cases. 9th Cir. Crim. Jury Inst. 3.03 comment (1992).

See Wills v. State, 329 Md. 370, 390, 620 A.2d 295, 304-05 (1993)(McAuliffe, J., concurring)(quoting the Committee on Model Jury Instructions for the Ninth Circuit, 3.03 comments (1992)).

Several other circuits have also criticized attempts to define reasonable doubt. See, United States v. Moss, 756 F.2d 329, 333 (4th Cir. 1985); United States v. Indorato, 628 F.2d 711, 720-721 (1st Cir. 1980); United States v. Byrd, 352 F.2d 570, 575 (2nd Cir. 1965); see also Taylor v. Kentucky, 436 U.S. 478, 488 (1978), noted in Cage v. Louisiana, 498 U.S. 39, 41 (1990).

This Court needs to give guidance on whether "reasonable doubt" should or even can be explained to juries. See United States v. Reives, 15 F.3d 42, 44 (4th Cir. 1994)(after Sullivan the Supreme Court "has offered little guidance on the more general question of whether the term 'reasonable doubt' should or even can be explained to juries. It is an issue that has engendered a fair amount of controversy, but little in the way of hard and fast rules for the trial courts.").

In Victor v. Nebraska, 511 U.S. 1, 5 (1994), this

Honorable Court stated that: "In only one case have we held that a definition of reasonable doubt violated the Due Process Clause." (citing Cage). Prailow asserts that the instruction given at his 1991 trial is another type of instructional definition which this Court should hold to be violative of the Due Process Clause. This is because the trial court's definition of reasonble doubt was so lengthy that it ran the risk of defining the concept in a manner that is not on point, but milsed and/or confused the jury. See United States v. Desimone, 119 F.3d 217, 226-27 (2d Cir. 1997)(collecting cases), reh'g denied, 140 F.3d 457 (2d Cir.), and cert. denied sub nom.

The reasonable douht instruction given by the court in 1991 was so incomprehensible or potentially prejudicial that a vacatur of the conviction and sentence is required. See Moss, 756 F 2d at 333 (4th Cir); see also Reives, 15 F.3d at 46 (4th Cir) This is because the cumulative effect of the lengthy definition was to obfuscate one of the essentials of due process and fair treatment. See Gaines, 202 F.3d at 608 (2d Cir.)(quoting Dunn v. Perrin, 570 F.2d 21, 25 (1st Cir. 1978)).

A. The Lower Court Acknowledged The Given Reasonable Doubt Definition Was Violative Of The Due Process Clause Yet Refused To Correct It Because Many Judges Were Unconstitutionally Defining Reasonable Doubt In 1991.

Because many judges were unconstitutionally defining reasonable doubt to jurors in Maryland in 1991, the collateral review court refused to uphold the Constitution's requirement of a correct definition of the reasonable doubt concept, which the collateral review court did not have the power or authority to disregard

In Victor, supra, this Court said that reviewing court **must** determine "whether there is a reasonable likelihood that the jury understood the instructions to allow conviction based on proof insufficient to meet the [constitutional] standard." Id. 511 U S at 6.

In the instant case, when the postconviction court denied relief in 1998, it did so by stating that --although the reasonable doubt instruction was deficient-- it did not view it as misleading because the defective instruction was given "at a time when judges in" Maryland were giving constitutionally defective reasonabale doubt instructions. App. G (Case No. CT90-15248, T.11/9/1998 at 3:12-17). However, the postconviction court acknowledged that three (3) years after Prailow's trial, the appellate courts condemned the exact same-type of instruction as being unconstitutional. App. G. (T.11/9/1998 at 3:18-22)(referencing Joyner-Pitts v. State, 101 Md.App. 429, 447, 647 A.2d 116, 125 (1994)).

Prailow asserts that the Joyner-Pitts Court found that examples of adopting a child, buying real estate, and other

human endeavors, when equated with reasonable doubt, is confusing to a jury. Joyner-Pitts, 101 Md.App. at 445, 647 A.2d at 124. Prailow asserts that if a jury would be confused in 1994 by an instruction defining reasonable doubt with the same decision utilized to adopt a child, buy a house or get married. A jury would be misled and confused in 1991, by an instruction which equated reasonable doubt with the same decision process as buying real estate, adopting a child or having elective surgery.

When this Court announced its Sullivan decision in 1993, Prailow's conviction became a nullity because he was convicted due to the misdecription of the reasonable doubt concept, which is no law. Prailow "received 'no jury verdict of guilty-beyond-a-reasonable-doubt'." United States v. White, 405 F.3d 208, 222 n.9 (4th Cir. 2005)(quoting Sullivan, 508 U.S. at 280).

The Maryland postconviction court did not have the power nor authority to enforce an unconsitutional void law. See Montgomery, 136 S.Ct. at 731 (citations omitted). Just because some other judges were unconstitutionally misdescribing reasonable doubt did not give the collateral review courts the power to constitutionally insist that Prailow remain in prison under a sentence upon "no jury verdict of guilty-beyond-a-reasonable-doubt" "within the meaning of the Sixth Amendment". Sullivan, 508 U.S. at 280.

B. The Allegation Of The Unconstitutional Reasonable Doubt Instruction Was Not Procedurally Barred In State Collateral Review Courts.

Prailow asserts that his challenge of the unconstitutional reasonable doubt instruction was not procedurally barred in state collateral review courts becaus (1) no appellate court had ever ruled on the merits of Prailow's claims and (2) a void judgment may never be res judicata in any other court.

i. No appellate court has ever ruled on the merits of Prailow's challenge of the unconstitutional reasonabale doubt instruction.

In State v. Hernandez, 344 Md. 721, 723, 690 A.2d 526, 527 (1997), the COAM explained that an allegation of error may not be collaterally challenged in Maryland state courts if it was "finally litigated." Final litigation has been defined as "when an appellate court of the State has rendered a decision on the merits thereof." Id. at 728, 690 A.2d at 530.

In Prailow's case, no state appellate court has ever ruled on the merits of the challenged unconstitutional instruction. After the postconviction court denied postconviciton relief in 1998, Prailow filed an application for leave to appeal. The CSAM remanded the case back for procedrual reasons. App. H (Slip op. at 1-2). After the remand and procedural correction, the CSAM never issued an order on the merits. After Prailow's 2011 reopen motion was denied by the

postconviction court, without a hearing, the CSAM summarily denied leave to appeal without issuing a ruling on the merits thereof.

When the state collateral review court denied Prailow's motion to correct illegal sentence it deemed the issue barred from its review because the "issue was finally litigated before the post conviction court." App. B (CT90-15248, 5/2/2017 at 3). The law in Maryland deems an issue finally litigated **only** if ruled on the **merits** by either the COAM or the CSAM. Hernandez, 344 Md. at 728, 690 A.2d at 530. That rule does not apply to the rulings of lower court judges on the same lower court level. See Scott v. State, 379 Md. 170, 182-85, 840 A.2d 715, 722-24 (2004).

Even when the CSAM affirmed the state collateral review court's denial of Prailow's illegal sentence motion, the CSAM did not rule on the merits of the challenged reasonable doubt instruction. App. A (No.568, Sept. Term, 2017 (Slip op. at 4, 5 n.2)(5/8/2018)).

Prailow's claim was not finally litigated in any state appellate court.

ii. Void judgements may never be enforced by state courts regardless of a previous misperception of the law.

"[A]ny criminal conviction rendered pursuant to an

unconstitutional definition of reasonable doubt is necessarily unfair." Gaines, supra, 202 F.3d at 605 (2d Cir.)(citing Teague, 489 U.S. at 315).

Since the Sixth Amendment requires a jury verdict of guilty beyond a reasonable doubt, the permittance of a conviction based upon something other than beyond a reasonable doubt "is illegal and void and cannot be a legal cause of imprisonment." See Seibold, supra, 100 U.S. at 376-77.

No state court is permitted to disregard the U.S. Constitution simply because state appellate courts previously permitted the misdescription of the reasonable doubt concept.

There was no Sixth Amendment jury verdict of guilty. The judgment is void. State courts may not enforce the "no jury verdict of guilty beyond-a-reasonable-doubt".

III. A SENTENCE IS ILLEGAL WHEN IT WAS IMPOSED AFTER A JURY CONVICTION OF A CRIME WHICH WAS NEVER CHARGED IN AN INDICTMENT AS MANDATED BY THE SIXTH AMENDMENT.

The Sixth Amendment provides, in pertinent part, that "[i]n all criminal prosecutions, the accused shall enjoy...to be informed of the nature and cause of the accusation." U.S. Const. amend VI.[4/]

Prailow asserts that he was not put on notice to defend

[4/] Maryland adopted the same provision in its own constitution: "[i]n all criminal prosecutions every man hath a right to be informed of the accusation against him..." Md. Decl. of Rights art 21.

against felony murder. Rather, Prailow was only put on notice to defend against premeditated murder and its lesser included offense of second degree specific intent murder.

In Maryland, murder is divided into degrees. Campbell v. State, 293 Md. 438, 441, 444 A.2d 1034 (1982). Although first degree murder is proven by a finding that the killing was **willful, deliberate** and **premeditated or** that it was in perpetration of a robbery. See Stansbury v. State, 218 Md. 255, 260, 146 A.2d 17, 20 (1958). Maryland courts have explained that the "[t]heories of premeditated first degree murder and felony murder are exclusive charges and are not related." See Malik v. State, 152 Md.App. 305, 330, 831 A.2d 1101, 115 (2004)(citing McDowell v. State, 31 Md.App. 652, 657, 358 A.2d 624 (1976)).

When Maryland indicted Prailow of first degree murder, it only charged Prailow with premeditated murder and second degree specific intent murder. This is because the statement --in the indictment-- that Prailow "**feloniously, wilfully** and of their **deliberately premeditated** malice aforethought, **did kill and murder....**" is a statement only to first degree premeditated murder and second degree specific intent murder.

Maryland courts have long delineated that "[w]here the law divides murder into grades, a [felonious] homicide is presumed to be murder in the second degree...." Chisley v. State, 202 Md. 87, 105, 95 A.2d 577 (1953)(emphasis supplied and added);

Robinson v. State, 249 Md. 200, 238 A.2d 875, cert. denied, 393 U.S. 928 (1968). The charge that Prailow "**feloniously**" and "wilfully" killed and murdered is a charge of second degree murder. The statement of "deliberately premeditated" malice is a charge of first degree premeditated murder. See Willey v. State, 328 Md. 126, 131 n.2, 131-32, 613 A.2d 956, 958 n.2 (1992)(defining premeditated first degree murder and second degree specific intent murder through the Maryland Pattern Jury Instructions).

There is nothing in the charges of murder which remotely showed that Maryland was prosecuting Prailow for first degree felony murder. Maryland cannot say that felony murder is included in the short form charge of premeditated murder because Maryland has always held that it is against the constitutional, fundamental rule of fairness to permit two or more **distinct** offenses to be joined in the same count. Albrecht v. State, 105 Md.App. 45, 72, 658 A.2d 1122, 1135 (1995)(quoting State v. Hunt, 49 Md.App. 355, 358, 432 A.2d 479 (1981)(in turn quoting State v. Warren, 77 Md. 121, 122, 12 A. 500 (1893))).

As the Maryland courts have pointed out, the notion "that in Maryland felony murder and premeditated murder are identical offenses with identical elements, is incorrect." Stovall v. State, 144 Md.App. 711, 726, 800 A.2d 31, 40 (2002)(quoting Huffington v. State, 302 Md. 184, 188, 468 A.2d

200 (1985)). Other states require premeditated murder and felony murder be charged in separate counts in an indictment. See, e.g., In re Personal Restraint of Lord, 868 P.2d 835, 843 (Wash. 1994)("[A]ggravated first degree murder and first degree felony murder are...two different offenses. Thus for the jury to be instructed on both offenses, the State must include both charges in the information."); and Rayburn v. State, 63 S.W. 356 (Ark. 1901)("an indictment which charges only [premeditated murder] will not be sufficient to accuse the defendant of murder committed in the perpetration of, or in the attempt to perpetrate, one of the felonies named in the statute...").

Maryland cannot enforce its decisional rule that there "is no requirement...that a charging document must inform the accused of the specific theory on which the State will rely." Ross v. State, 308 Md. 337, 344, 519 A.2d 735, 738 (1987). Because this Honorable Court has held that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him. Stirone v. United States, 361 U.S. 212, 217-19 (1960)(amendment of indictment by court villated Fifth Amendment Grand Jury Clause).

Maryland courts have long upheld the Grand Jury Clause by providing a rule which permits the charging of multiple offenses in a single indictment **if they are charged in separate counts.** This is because of the constitutional

prohibition of a split verdict. See Albrecht, 105 Md.App. at 70-72, 658 A.2d at 1134-35 (citations omitted); reiterated in Cooksey v. State, 359 Md. 1, 7-10, 752 A.2d 606, 609-11 (2000)(citations omitted).

However, with Prailow's case, Maryland chooses to disregard the constitutional mandate of the Grand Jury Clause, the Notice Clause, and the Equal Protection Clause.

In Johnson, supra, 427 Md. 356, 47 A.3d 1002, the COAM vacated the convicton and sentence for assault with intent to murder because Johnson was never indicted for that charge. Id. at 360, 380, 47 A.3d at 1005, 1016. Johnson was charged with four crimes: (1) attempte murder, (2) common law assault, (3) unlawfully wearing, carrying, or transporting of a handgun, and (4) unlawfully use of a handgun in the commission of a felony or crime of violence. Id. at 362, 47 A.3d at 1006. At the close of trial, Johnson's verdict sheet included assault with intent to murder. And, the trial court also instructed the jury about the crimes on the verdict sheet, included assault with intent to murder. id. at 363, 47 A.3d at 1006

The jury acquitted Johnson of attempted murderr, but found him guilty of (1) assault with intent to murder, (2) common law assault, (3) unlawful use of a handgun in the commission of a felony or crime of violence, and (4) unlawfully wearing a handgun. Johnson did not object to the jury instruction nor the guilty verdict for assault with intent to murder. Id. at

at 363, 47 A.3d at 1006-1007. Johnson was sentenced to 30-years imprisonment for assault with intent to murder, merging common law assault into that conviction. And, a consecutive 20-years imprisonment for use of a handgun, merging unlawfully wearing a handgun. Johnson, 427 Md. at 363, 47 A.3d at 1006-1007.

Sixteen years later, Johnson filed a motion to correct an illegal sentence, arguing the illegality of the sentence for assault with intent to murder because the indictment never charged that crime. id at 363, 47 A.3d at 1007. Ultimately, the COAM agreed with Johnson and vacated the 30-year sentence. Id. at 372-380, 47 A.3d at 1012-1016.

Like Johnson, Prailow was indicted with premeditated murder, but never indicted with felony murder. Like Johnson, Prailow's verdict sheet included the unindicted charge of felony murder and the court instructed the jury on felony murder, inter alia. Like Johnson, Prailow was acquitted of premeditated murder; but, Prailow was convicted of felony murder, second degree murder, robbery, armed robbery, and use of a handgun. And, like Johnson, the court sentenced Prailow for the unindicted felony murder conviction, and the use of a handgun conviction. The court merged the other convictions.

Like Johnson, Prailow failed to object to the unindicted felony murder charge and the jury instruction on such. Like Johnson, Prailow filed a motion to correct illegal sentence arguing the illegality of the sentence for felony murder

because the indictment never charged that crime. The trial court denied that motion and the intermediate appellate court affirmed the collateral review court's denial of the illegal sentence motion, (App. B and App. A), just like in Johnson. Johnson, 427 Md. at 363-64, 47 A.3d at 1007 (citing Johnson v. State, 199 Md.App. 331, 344, 351, 22 A.3d 909, 917, 920-221 (2011)).

However, unlike Johnson, the COAM did not grant Prailow's petition for writ of certiorari. Prailow asserts that pursuant to the Fifth Amendment's Grand Jury Clause, Stirone, supra, 361 U.S. at 217-19 (variance impermissible when it destroys "the defendant's substantial right to be tried only on charges presented in an indictment returned by a grand jury"), the Sixth Amendment's Notice Clause and the Fourteenth Amendment's Due Process and Equal Protection Clause(s), Maryland should have vacated the conviction and sentences for the unindicted crime of felony murder.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gordon Prailow

Gordon Prailow

Date: December 19, 2018