NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

ROGER LEON BARLOW
Petitioner

V.

MARK GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL.
Respondent

PETITION FOR WRIT OF CERTIORARI

Appeal from the Order of the United States Court of Appeals for the Third Circuit, at docket number 18-1965 dated August 6, 2018 affirming the decision of the United States District Court of the Eastern District of Pennsylvania at Docket Number 2:17-cv-05611 dated March 29, 2018.

Roger Leon Barlow, # JT6727
Pro Se, Petitioner
State Correctional Institution at Rockview
1 Rockview Place
Bellefonte, PA 16823-0820

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The Pro Se Petitioner in the above captioned matter is Mr. Roger Leon Barlow, (Mr. Barlow), who resides at the State Correctional Institution at Rockview, 1 Rockview Place, Bellefonte, PA 16823. Respondent in the above captioned matter is the Commonwealth of Pennsylvania represented by Nicholas J. Casenta, Jr., Esq., District Attorney whose office is located within the Chester County Justice Center, West Chester, PA 19380-0989. Mark Garman is represented by Theron Richard Perez, Esq., Chief Counsel of the Department of Corrections, whose office is located at 1920 Technology Parkway, Mechanicsburg, PA 17050.

REFERENCE TO THE OPINIONS DELIVERED IN THE COURTS BELOW

The Order of the United States Court of Appeals for the Third Circuit is reproduced in its entirety at Appendix A. The Order of the United States District Court of the Eastern District of Pennsylvania is reproduced at Appendix B.

CONCISE STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court applies to Mr. Barlow's instant appeal based on the Constitutional jurisdiction granted to the United States Supreme Court by the founding fathers in **Article III § 2** of the United States Constitution which states in relevant part:

> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; - to all cases affecting Ambassadors, other public Ministers and Consuls; - to all cases of admiralty and maritime jurisdiction; - to controversies to which the United States shall be a party; - to controversies between two or more states; - between a State and citizens of another State; - between citizens of different states; - between citizens of the same state claiming lands under the grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

In the case sub judice, this Honorable Court retains appellate jurisdiction upon the collateral review challenge to the constitutionality and legality of Mr. Barlow's sentence imposed upon him in the Chester County Court of Common Pleas, Chester County, Pennsylvania at Docket Number CP-15-CR-0001166-2009.

QUESTIONS PRESENTED FOR REVIEW

Ground I. Did the Pennsylvania Courts err in denying the instant Post Conviction Relief Act Petition for failing to recognize that the P.C.R.A. statute, **42 Pa.C.S.A. § 9541, et seq.**, grants express authority to the Court to correct a sentence for persons "serving" illegal sentences?

(Proposed Answer in the Positive)

II. Did the Pennsylvania Courts err in denying the instant Post Conviction Relief Act Petition due to failing to apply the "void ab initio" doctrine to the statute found at **42 Pa.C.S.A. § 9720** deemed patently unconstitutional on its face and void to the instant case thereby requiring re-sentencing of Mr. Barlow?

(Proposed Answer in the Positive)

CONCISE STATEMENT OF THE CASE

This is a Petition for Writ of Certiorari by Roger Leon Barlow, (Mr. Barlow), from the denial of the United States Court of Appeals of the Third Circuit, at Docket Number 18-1965.

The Judge whose order is to be reviewed is the Honorable Cheryl Ann Krause of the United States Court of Appeals for the Third Circuit. The pertinent procedural history giving rise to the instant Petition for Writ of Certiorari can be summarized as follows:

On March 30, 2009, Mr. Barlow was charged by the Chester County Court of Common Pleas, Chester County Pennsylvania at Docket Number CP-15-CR-0001166-2009. with fifty-three (53) counts consisting of the following:

Counts one through twenty-seven (1-27), Arson, and Related offenses, 18 Pa.C.S.A. § 3301; Counts twenty-eight through thirty-six (28-36), Causing or Risking a catastrophe, 18 Pa.C.S.A. § 3302; Counts thirty-seven through forty one (37-41), Aggravated Assault, 18 Pa.C.S.A. § 2702; and Counts forty-two through fifty-three (42-53), Recklessly Endangering Antoher, 18 Pa.C.S.A. § 2705.

On September 17, 2010, Mr. Barlow pled guilty in front of the Honorable Thomas G. Gavin to eight (8) counts of Arson, Danger of Death or Bodily injury, 18 Pa.C.S.A. § 3301 and one (1) count of Criminal Mischief, 18 Pa.C.S.A. § 3304, the seventy-six (76) other counts were withdrawn pursuant to the plea agreement. Mr. Barlow was sentenced to an aggregate sentence of twelve and one half (12 ½) to twenty-five (25) years in a state correctional institution with an additional

consecutive sentence of ten (10) years probation. Mr. Barlow did not file a Direct Appeal.

On July 21, 2015, Mr. Barlow filed a P.C.R.A. Petition. On July 24, 2015, Mr. Barlow received a letter from the Honorable Thomas G. Gavin dated July 22, 2015. On August 11, 2015, after receiving this improper ex parte communication from the Honorable Thomas G. Gavin, Mr. Barlow filed an Objection to Judicial Inefficiency pursuant to the **Pa.R.Crim.P. Rule 907**.

On September 14, 2015, the Honorable Thomas G. Gavin issued an Order permitting Mr. Barlow to proceed In Forma Pauperis and appointed Robert P. Brendza, Esq. to represent Mr. Barlow. On October 22, 2015, Mr. Brendza filed a "No Merit" Letter pursuant to **Commonwealth v. Turner, 544 A.2d 927 (1988)**; **Commonwealth v. Finley, 550 A.2d 213 (1988)**; and **Commonwealth v. Friend, 896 A.2d 607 (2006)**.

On November 5, 2015, The Honorable Thomas G. Gavin issues a Notice of Intention to Dismiss Mr. Barlow's P.C.R.A. Petition. On December 1, 2015, Mr. Barlow filed an Objection to the Intention to Dismiss. On December 17, 2015, the Honorable Thomas G. Gavin issued an Order dismissing Mr. Barlow's P.C.R.A. Petition.

On January 14, 2016, Mr. Barlow filed a Notice of Appeal to the Superior Court of Pennsylvania. Said appeal is docketed at 328 EDA 2016. On November 15, 2016, the Superior Court of Pennsylvania affirmed the decision of the Court of Common Pleas, Chester County.

Mr. Barlow filed a timely Petition for Allowance of Appeal, (Allocatur), with the Pennsylvania Supreme Court at Docket Number 910 MAL 2016. On May 23, 2017, the Supreme Court of Pennsylvania denied said Allocatur.

On December 14, 2017, Mr. Barlow filed the instant timely Petition for Writ of Habeas Corpus relief assigned to the Honorable Gene E.K. Pratter, and referred to United States Magistrate Judge Marilyn Heffley.

On January 30, 2018, United States Magistrate Judge Marilyn Heffley filed a Report and Recommendation to the Honorable Gene E.K. Pratter requesting denial of Mr. Barlow's Petition for Writ of Habeas Corpus.

On March 29, 2018, an Order was entered by the Honorable Gene E.K. Pratter adopting the Report and Recommendation of United States Magistrate Judge Marilyn Heffley and denying Mr. Barlow's Petition for Writ of Habeas Corpus.

On April 23, 2018, Mr. Barlow filed a timely Notice of Appeal to the United States District Court of the Eastern District of Pennsylvania at Docket Number 2:17-cv-05611.

On May 2, 2018, Mr. Barlow was requested to file a Certificate of Appealability to the United States Court of Appeals for the Third Circuit at Docket Number 18-1965. Said request was timely fulfilled.

On August 6, 2018, the United States Court of Appeals for the Third Circuit denied Mr. Barlow's request for Certificate of Appealability giving rise to this instant matter.

REASONS RELIED UPON FOR WRIT OF CERTIORARI

Ground I. Did the Pennsylvania Courts err in denying the instant Post Conviction Relief Act Petition for failing to recognize that the P.C.R.A. statute, 42 Pa.C.S.A. § 9541, et seq., grants express authority to the Court to correct a sentence for persons "serving" illegal sentences?

The statute under which Mr. Barlow is sentenced, 42 Pa.C.S.A. § 9720 was deemed unconstitutional, therefore illegal originally this Honorable Court's decision in Commonwealth v. Newman, 99 A.3d 86 (2014). This principle was later reinforced by the Supreme Court of Pennsylvania in decisions such as Commonwealth v. Hopkins, 117 A.3d 247 (2015) along with Commonwealth v. Wolfe, 140 A.3d 651 which categorically invalidated the entire statutory scheme of Pennsylvania's mandatory minimums based upon the "new constitutional rule" of law found within Alleyne v. United States, 133 S.Ct. 2151 (2013). (See Argument II.) Ergo, there is no question that Mr. Barlow is "serving" an unconstitutional, therefore illegal sentence.

Mr. Barlow contends that under the logic supra, current retroactivity case law within Pennsylvania jurisprudence that is based upon Teague v. Lane, 489 U.S. 288 (1989), is illogical due to the decision of the United States Supreme Court found within Danforth v. Minnesota, 552 U.S. 264 (2008).

Danforth allows for the state courts to utilize their authority to correct errors of law based upon a "new constitutional rule" without using the Teague rubric. When a Federal Court decision creating a "new rule" of Constitutional law does not apply to the Teague procedural/substantive dichotomy, a State Court is free to embrace its own retroactivity jurisprudence since Teague does not demand

retroactivity of "new rules." As the United States Supreme Court held in Danforth that:

> "[T]he *Teague* rule of non-retroactivity was fashioned to achieve the goals of federal habeas while minimizing federal intrusion into state criminal proceedings. It was intended to limit the authority of federal courts to overturn state convictions—*not to limit a state court's authority to grant relief for violations of new rules of constitutional law when reviewing its own State's convictions.*"
>
> (Danforth at 552 U.S. 280-81) (emphasis added)

Therefore, under Pennsylvania Law, the General Assembly created the Post Conviction Relief Act, (P.C.R.A.), to be utilized to correct illegal sentences as a legislative adoption of Danforth's logic apart from the common law application of the Teague rubric. Although, it has been the tenacious use of the Teague rubric by the Supreme Court of Pennsylvania that has caused this current debacle. It is common practice of law that statutory provisions are to be interpreted by the Courts. However, the application of the Teague rubric outside of this application when a different principle is codified in the law defies reason.

While it is true that Commonwealth v. Washington, 142 A.3d 810 (Pa. 2016) rejected the notion that the "new constitutional rule" in Alleyne falls within the two exceptions of non-retroactivity in Teague, it violates the separation of powers doctrine found within both Article 1 § 1 of the United States Constitution and Article 2 § 1 of the Pennsylvania Constitution. It is well established that Congress and/or the Pennsylvania General Assembly is the only branch of government that has the powers to construct, modify, and enact legislation. In the

instant situation, the Supreme Court of Pennsylvania has effectively "legislated" the proper usage of the P.C.R.A.

The Supreme Court of Pennsylvania in essence, circumvented the very legislative intent of the P.C.R.A. to allow the application of the non-retroactive rules found in Teague. While the Supreme Court of Pennsylvania retains power to set common law rules through stare decisis, the Court does not retain the authority to overwrite statutory provisions.

In Pennsylvania, The General Assembly enacted the Post Conviction Relief Act, which, unambiguously provides a vehicle for those "serving" illegal sentences to obtain collateral relief as stated by 42 Pa. C.S.A. § 9542:

> "**This subchapter provides for an action by which** persons convicted of crimes they did not commit and **persons *serving* illegal sentences may obtain collateral relief.** The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis." (emphasis added)

As shown supra, 42 Pa.C.S.A. § 9542 does not distinguish between sentences that were illegal at the time of sentencing and those that were rendered illegal after the time of sentencing.

It is has been a consistent fallacy of the courts to utilize the finality of a judgment as a method to circumvent constitutional violations. This practice first began with Commonwealth v. Peterkin, 722 A.2d 638 (1998); along with Commonwealth v. Fahy, 737 A.2d 214 (1999). In both Peterkin, and Fahy,

the Court determined that timeliness of a Post Conviction Relief Act Petition determined the Court's jurisdiction.

Justice Baer in Commonwealth v. Brown, 943 A.2d 264 (2008) concurs with the flawed jurisdictional prowess of the Courts by stating "[The Court] has felt compelled to tolerate constitutional violation upon constitutional violation, sacrificing fundamental rights at the altar of finality." (Brown at 943 A.2d 272).

In this context, this flawed logic fails to provide an avenue for those who are "serving" an illegal sentence as the General Assembly requires. Instead, finality allows for the manufacturing of two distinct classes of individuals. Those whose judgments have not yet become final who receive relief on constitutional violations and those whose judgments are final who do not. This then creates a conundrum, as it openly violates the equal protection clauses of both Article I § 26 of the Pennsylvania Constitution and the 14th Amendment of the United States Constitution. As defined in Evitts v. Lucey, 469 U.S. 387 (1985), Equal Protection emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable.

Therefore, there is more than a reasonable argument to establish that Mr. Barlow fits within the class of individuals whose judgment is final, yet indistinguishable from those offenders whose sentences are illegal under an unconstitutional sentencing statute. Consequently, this disparity between offenders, those who are warranted relief under the PCRA under an unconstitutional violation, and those who are restricted raises an issue of

fundamental fairness under the Equal Protection clause of both the State and Federal Constitutions.

This conundrum has also been recognized recently by this Court in Commonwealth v. Cunningham, 622 Pa. 566; 81 A.3d 15, (2013), in Justice Castille concurring opinion where he addressed that "There is at least a colorable argument that there are now two classes of [those] sentenced [to an unconstitutional sentence], for whom the distinguishing factors has nothing to do with their crimes or their circumstances those with final sentences who can never be assessed...and those going forward who must be so assessed."

The language utilized by the General Assembly of "serving" has neither prospective, retrospective nor a finality implication. This principle has been the standing statutory law in Pennsylvania for over thirty (30) years, (P.C.R.A. codified at 42 Pa.C.S.A. § 9541, et seq.; P.L. 417, No. 122 § 2, May 13, 1982, imd. effective). Thereby, the logic set forth in **Danforth** is proper, due to the fact that the stare decisis application of **Teague** doesn't prevent the Court from utilizing the General Assembly's principles in providing relief.

Determining the legislative intent of a statute is found within 1 Pa.C.S.A. § 1922 which states:

> "In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:
>
> (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable
> (2) That the General Assembly intends the entire statute to be effective and certain.

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth
(4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes and the same subject matter intends the same construction to be placed upon such language.
(5) That the General Assembly intends to favor the public interests as against any private interest."

As the legislative intent of 42 Pa.C.S.A. § 9542 is clear and non-ambiguous, it stands to reason, that it was the intention of the General Assembly to allow for any person serving an illegal sentence to have that sentence corrected.

This sound logic of utilizing **Danforth** in this manner is found within Commonwealth v. Ciccone, 2016 PA Super 283 (Dec. 13, 2016) in the Dissenting Opinion of Judge Bender who artfully opined:

"Thus, **Teague** dictates whether a decision *must* be applied retroactively as a federal constitutional matter. It does not purport to be the last word on whether other remedies exist under Pennsylvania law for the correction of illegal sentences. Indeed, as **Danforth** suggests, when **Teague** does not demand retroactive application of new constitutional rules, the states are still free to provide a remedy above and beyond what is required under **Teague**. I believe that such relief is afforded by the PCRA statute, but only for timely PCRA petitions. A Pennsylvania state court's authority to grant relief on collateral review is dictated by the PCRA statute. *See* 42 Pa.C.S.A. § 9542 ("The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect ...."). Moreover, the PCRA statute expressly states that it "provides for an action by which persons convicted of crimes they did not commit *and persons serving illegal sentences* may obtain collateral relief." *Id.* (emphasis added). Notably, Section 9542 does not delineate between sentences which were illegal when issued and sentences which became illegal at a later time. Indeed, the use of the term "serving" suggests that no such distinction was intended."

(Ciccone Slip Op at 4, 5)(emphasis added)

Ergo, Mr. Barlow should be afforded the opportunity to pursue relief under the P.C.R.A. to correct his patently unconstitutional, and therefore illegal, sentence regardless of finality based solely upon the General Assembly's intent without the application of **Washington** or application of the **Teague** rubric.

II. Did the Pennsylvania Courts err in denying the instant Post Conviction Relief Act Petition due to failing to apply the "void ab initio" doctrine to the statute found at 42 Pa.C.S.A. § 9720 deemed patently unconstitutional on its face and void to the instant case thereby requiring re-sentencing of Mr. Barlow?

In the case sub judice, Mr. Barlow was sentenced under the Mandatory Minimum statute of 42 Pa.C.S.A. § 9720 to a term an aggregate term of incarceration of twelve and one half (12 ½) to twenty-five (25) years incarceration. This sentence supra, is unconstitutional and therefore illegal based upon the holding by the Supreme Court of Pennsylvania that the statute found at 42 Pa.C.S.A. § 9720 has been deemed void in its entirety and therefore, lacking statutory authorization. The Commonwealth of Pennsylvania retains no legal authority to detain Mr. Barlow based on a sentence that is not constitutionally valid.

In supporting this logic, the Superior Court's en banc decision in Commonwealth v. Newman, 99 A.3d 86 (2014) was the first to assess the severability of the statutory construction of 42 Pa.C.S.A. § 9720 by applying the severability directive at 1 Pa.C.S.A. § 1925 to Subsection (a), "mandatory sentence" provision, and Subsection (c), "proof at sentencing" provision and determined:

> "Subsections (a) and (c) of Section 9718.1 are essentially and inseparably connected. Following Alleyne, Subsection (a) must be regarded as the elements of the aggravated crime of possessing a firearm while trafficking drugs. If Subsection (a) is the predicate arm of Section 9718.1, then Subsection (c) is the "enforcement" arm. Without Subsection (c), there is no mechanism in place to determine whether the predicate of Subsection (a) has been met."
>
> (Newman at 99 A.3d 101)

The Newman Court then contemplated the Commonwealth's suggestion of remanding for a sentencing jury, but found that the Commonwealth's suggestion violated the Legislative Power Doctrine of both Article I § 1 of the United States Constitution and Article III § 1 of the Pennsylvania Constitution holding:

> "We find that it is manifestly the province of the General Assembly to determine what new procedures must be created in order to impose mandatory minimum sentences in Pennsylvania following Alleyne. We cannot do so.
>
> (Newman at 99 A.3d 102)

With the rationale supra, the Newman Court deemed that 42 Pa.C.S.A. § 9720 was rendered unconstitutional in its entirety in light of the United States Supreme Court decision in Alleyne.

In the aftermath of Newman, the Superior Court of Pennsylvania systematically struck down statute after statute as unconstitutional under the logic supra.

The Supreme Court of Pennsylvania then reluctantly agreed with the Superior Court's decision in Newman in their decision in Commonwealth v. Hopkins, 117 A.3d 247 (2015) where the Court found six (6) aspects of 18 Pa.C.S.A. § 6317 to be infirm in light of Alleyne when the Court opined:

> "In sum, as detailed above, we find that numerous provisions of Section 6317 are unconstitutional in light of the United States Supreme Court's decision in Alleyne. After Alleyne these aspects of the statute – [1] that the provisions are declared not to be elements of the offense, [2] that notice is not required prior to conviction, [3] that

> **fact-finding is conducted at sentencing, [4] that the sentencing court performs fact-finding**, [5] that the applicable standard is preponderance of the evidence, and **[6]** that the Commonwealth has the right to appeal where the imposed sentence was found to be in violation of the statute – are now infirm. However, the other provisions – specifying the proximity of the drug transaction to a school, and requiring the age of the offender to be over 18 – do not offend the Supreme Court's mandate in Alleyne. Thus we turn to consider whether the statute can survive without those invalid provisions, with principle focus on the legislature's intent... By operation of Alleyne, Section 6317 has been stripped of all the features that allow it to function as a sentencing statute. Critically, the legislature's expression in Section 6317 that the Mandatory Minimum sentencing triggers are not to be elements of a crime are clear expressions that the General Assembly did not intend to promulgate in Section 6317 a new aggravated offense. To effectuate the remaining provisions of Section 6317 would require a wholesale re-conceptualization of the statute. In short, it cannot be stressed enough that the legislature intended that 6317 be a sentencing provision and not a substantive offense. It is for this foundational reason that the Commonwealth's proposed substantive/procedural conceptualization of the statute is inapt."
>
> (Hopkins at 117 A.3d at 258, 259, 260)(emphasis added)

Mr. Barlow contends that the standards and principles shown supra illustrated within Alleyne, and its Pennsylvania progeny, Newman invalidate the statutory construction of not only 42 Pa.C.S.A. § 9720, but all of Pennsylvania's Mandatory Minimum statutes that employ the "proof at sentencing" provision.

Mr. Barlow contends that due to the statutory construction of 42 Pa.C.S.A. § 9720 being struck as unconstitutional on its face, non-severable, and void in Newman supra, it stands to reason that the sentencing construct that Mr. Barlow was sentenced to was "void ab initio."

History established that the "void ab initio" doctrine has its roots in Due Process concerns found within the United States Supreme Court's decision in Marbury v. Madison, 1 Cranch 137 (1803) which set the stage for jurisdiction and correction of a legal wrong when the Court opined:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection... 'In all other cases, it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded...It behooves us, then, to inquire whether there be in its composition any ingredient which shall exempt it from legal investigations, or exclude the injured party from legal redress....Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void."
>
> (Marbury at 1 Cranch 163, 164, 177)(emphasis added).

This ideology was further expounded in the United States Supreme Court decision in Norton v. Shelby County, 118 U.S. 425 (1886). The Norton Court held that:

> "[A]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."
>
> (Norton at 118 U.S. 442).

In Glen-Gery Corp v. Zoning Hearing Bd, 907 A.2d 1033 (Pa. 2006), Pennsylvania adopted the logic of Marbury and Norton giving a concise historical background of this complicated issue when the Court held:

> "**Under this theory, a statute held unconstitutional is considered void in its entirety and inoperative as if it had no existence from the time of its enactment.** The origin of this doctrine may lie in the early case of Marbury in which Chief Justice Marshall wrote that 'a law repugnant to the constitution is void.' Oliver P. Field, the most noted scholar on this issue, has suggested that the void ab initio theory is premised on the historical American concern over excessive authority asserted by a tyrannical executive or legislative branch in violation of the rights of individuals protected by the Constitution. Field explains that whereas the Constitution prohibits the legislature and executive from overstepping their limits, the courts came to regard themselves as the ultimate guardians of individual rights. Any act that invaded these rights was to be judged unconstitutional and treated as though it never existed...**an unconstitutional statute is an utter nullity, and it is void from the date of its enactment, making it incapable of creating any rights.**"

(Glen-Gery Corp at 907 A.2d 1038)(internal citations omitted).

It is well established that when a statutory provision is avowed to be violative of a Constitutional provision, it is unequivocally declared unconstitutional by stare decisis. A statute declared unconstitutional by stare decisis is null and void. Such a statutory provision shall be voided from its enactment. In the instant context, Alleyne and its Pennsylvania progeny, (Newman, Hopkins, et al.), fundamentally obliterated the concept of Mandatory Minimum sentences in Pennsylvania. Therefore, this eliminated the possibility of an individual being sentenced to a mandatory range when such a legal principle never existed.

Recently, the "void ab initio" doctrine was applied to the Mandatory Minimum statutes by the Superior Court of Pennsylvania in their en banc decision in Commonwealth v. Ciccone, 2016 Pa. Super. 149 (Pa. Super. July 12, 2016), when the Court opined:

"Here appellant's sentence was the result of the application of an unconstitutional statute...**It is axiomatic that '[i]f no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction.' Furthermore, 'an unconstitutional statute is ineffective for an purpose...[i]t is as if it were never enacted.'** Moreover, our Supreme Court has stated that '[t]rial courts never relinquish their jurisdiction to correct an illegal sentence.' **There is no doubt that the mandatory minimum sentence in question, [42 Pa.C.S.A. § 9720], was unconstitutional when it was applied to Appellant.** Alleyne did not serve to amend the United States Constitution. Alleyne merely recognized what had been previously unrecognized, or which had been previously overlooked or misapprehended: that the Sixth Amendment of the United States Constitution provides a defendant with the right to have any facts that increase the mandatory minimum sentence to which he or she is exposed to be determined by a jury beyond a reasonable doubt. **Thus, [Section 9720], through its proof at sentencing provision, routinely caused Pennsylvania Courts to violate defendant's Sixth Amendment rights until its unconstitutionality was finally recognized.** Nevertheless, whether illegal when issued, or rendered illegal as a result of intervening authorities, it should be undisputed that Appellant is currently "serving" an illegal sentence...**The statute under which Appellant was sentenced has been held unconstitutional in its entirety; thus, Appellant is currently serving an illegal sentence"**

(Ciccone, Slip Op at 8)(citations omitted)(emphasis added).

This applies in the instant matter due to the fact that Mr. Barlow' sentence is based upon a construct of statutory Mandatory Minimum sentences that under the current line of Alleyne stare decisis are effectively void and no longer exist. As his sentence is based on a non-existent sentencing construct, the Commonwealth of Pennsylvania lacks statutory authorization to sentence Mr. Barlow. Under this premise, Mr. Barlow' is currently "serving" a sentence that does not exist. Validity

of a sentence is based solely on the statute granting judicial authority to render judgment, without such statutory authorization, a sentence is categorically invalid.

Ergo, Mr. Barlow adamantly maintains the "void ab initio' doctrine, supra requires that 42 Pa.C.S.A. § 9720 is rendered "forever void," (Glen-Gery Corp at 907 A.2d 1038, supra), from its inception and "cannot be a legal cause of imprisonment." (Ex Parte Siebold, 100 U.S. 371 (1880).

CONCLUSION

Mr. Barlow adamantly maintains that the P.C.R.A. Court erred by failing to recognize that the P.C.R.A., **42 Pa.C.S.A. § 9541, et seq.**, statutorily grants express authority to the Court to correct a sentence for persons "serving" illegal sentences regardless of finality utilizing **Danforth**, stretching beyond the scope of the non-retroactivity principles found within **Teague**.

Mr. Barlow contends that the P.C.R.A. Court erred by failing to apply the "void ab initio" doctrine to the statute found at **42 Pa.C.S.A. § 9720**. When said statute was deemed patently unconstitutional on its face and void by several decisions of the Supreme Court of Pennsylvania, thereby requiring re-sentencing of Mr. Barlow.

WHEREFORE, for the reasons, supra, Mr. Roger Leon Barlow Jr., Pro Se, Appellant in the above captioned case, prays this Honorable Court vacate his illegal sentence, and remand to the P.C.R.A. Court for re-sentencing consistent with the sentencing guidelines, pre-sentence investigation, and any other mitigating factors or any other applicable relief it deems appropriate.

Respectfully Submitted,

Date: OCT 16th, 2018

Roger Barlow
(signature)

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