

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Mario L. Griffin — PETITIONER  
(Your Name)

vs.

Michael Clark, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U UNITED STATES COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mario L. Griffin  
(Your Name)

10745, Route 18  
(Address)

Albion, Pa. 16475  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

1. Does the sentence imposed constitute an illegal sentence under federal law and represent a manifest injustice calling in question the integrity of the judicial process?
2. Did the Court abuse its discretion when it took the jury's guilty verdict for Simple Assault with Bodily Injury caused, and use it to enhance Petitioner's sentence for Attempted Murder?
3. Does a sentence in violation of Apprendi v. New Jersey, Supra. constitute reversible error?
4. Does State Prisoner serving a sentence in violation of Apprendi constitute cruel & unusual punishment if procedurally barred from seeking relief from that punishment, when a jury never found serious bodily injury, and the trial court enhanced sentence from 20 to 40 years based on serious bodily injury element never found by trial jury?
5. Does it constitute a Miscarriage of Justice when all previous reviewing Courts; - including Habeas Petition; - did not correct the illegal sentence, especially since the case at review were purportedly reviewed Plenary and De Novo?
6. Was Petitioner denied effective assistance of counsel in failing to properly challenge the Trial Courts abuse of discretion by imposing an illegal sentence?

## LIST OF PARTIES

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

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:

Michael Clark; SCI-Albion Superintendent  
10745, Route 18  
Albion, Pennsylvania

A. Sheldon Kovach; Esq.  
Office of the District Attorney  
201 West Front Street  
Media, Pennsylvania

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

*Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 435 (2000)

*Commonwealth v. Stevenson*, 2004 Pa. Super. 195, 850 A.2d 1268, 1271 (Pa. Super. 2004)

### STATUTES AND RULES

18 Pa. C.S. § 104 (3)

18 Pa. C.S. § 1102 (c)

### OTHER

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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 A to the petition and is

[?] reported at E.D. Pa. Civ. No. 2-17-cv-05131; 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 B to the petition and is

[?] reported at Civ. No. 17-5131; 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 D to the petition and is

[?] reported at No. 344 MAL 2017; or,  
[?] has been designated for publication but is not yet reported; or,  
[?] is unpublished.

The opinion of the Delaware County Common Pleas court appears at Appendix C to the petition and is

[?] reported at CP-23-CR4527-2004; or,  
[?] has been designated for publication but is not yet reported; or,  
[?] is unpublished.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### CONSTITUTIONAL PROVISIONS

#### FIFTH AMENDMENT U.S. CONSTITUTION:

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 time of War or public danger nor shall any person be subject for the same offense to be put in jeopardy of life or limb; nor shall be compelled in any criminal case to be 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.

#### SIXTH AMENDMENT U.S. CONSTITUTION:

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 defense.

#### EIGHTH AMENDMENT U.S. CONSTITUTION:

excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### FOURTEENTH AMENDMENT U.S. CONSTITUTION:

Section 1- all persons born or naturalized in the U.S., and subject to the jurisdiction thereof, are citizens of the U.S. and of the State wherein they reside. No State shall make or enforce any law which 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 any person within its jurisdiction the equal protection of the laws.

### STATUTORY PROVISIONS:

18 Pa. C.S. § ~~XXX~~ 104 (3)- To safe guard offenders against excessive, disproportionate or arbitrary punishment.

18 Pa. C. S. § ~~XXX~~ 1102 (c)- ... a person who has been convicted of ATTEMPT... where serious bodily injury results, may be sentenced to a term of imprisonment which shall be fixed by the Court at not more than 40 years. Where serious

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### **STATUTORY PROVISIONS CONTINUED:**

bodily injury does not ~~know~~ result, the person may be sentenced to a term of imprisonment which shall be fixed by the Court at not more than 20 years.

## STATEMENT OF THE CASE

On July 25, 2005, after being found guilty of Attempted Murder, Aggravated Assault, and Simple Assault (bodily injury caused) Petitioner was sentenced to 15 to 40 years for the Attempted Murder and Aggravated Assault; and 1 to 2 years for the Simple Assault (bodily injury caused). On Direct Appeal, my Public Defender filed an Anders' Brief Where he raised a single issue - Insufficient Evidence. Appeal was denied.

On my initial PCRA, this Petitioner raised "The Imposition of a Sentence Greater than the Lawful Maximum", along with other claims- all claims were ignored by PCRA counsel- PCRA counsel filed a Finley Letter, and PCRA was denied.

In April of 2016, this Petitioner filed his 2nd PCRA after learning of *Montgomery v. Louisiana*,- PCRA denied by all lower Courts, citing Time Bar.

In November of 2017, this Petitioner filed his 2nd Habeas Corpus Petition in the United States District Court of Pennsylvania which was denied.

## REASONS FOR GRANTING THE PETITION

18 Pa.C.S. § 1102 (c) states - ... a person who has been convicted of Attempt ... where Serious Bodily Injury results may be sentenced to a term of imprisonment which shall be fixed by the Court at not more than 40 years. Where Serious Bodily Injury does not result, the person may be sentenced to a term of imprisonment which shall be fixed by the Court at not more than 20 years.

This Petitioner was given a 40 year sentence for Attempted Murder with out Serious Bodily Injury ever being found, let alone posed to the jury. Clearly violating Apprendi, Supra.

Commonwealth v. Stevenson, 2004 Pa. Super. 195, 850 A.2d 1268 1271 (Pa. Super. 2004), if no statutory authorization exists for a particular sentence, that is illegal and subject to correction. An illegal sentence must be vacated.

A Miscarriage of Justice has clearly occurred in this instant matter, and instead and instead of correcting the clear erroneous error of the Trial Court, all reviewing Courts are hiding behind Legislative constraints such Time Bar exception that this Petitioner is entitled to, under Actual Innocence. Apprendi, Supra., (2000).

To leave this extra 20 years to stand, constitutes Cruel and Unusual punishment (State and Federal). To force this Petitioner to continue serving an illegal sentence, is to deprive this Petitioner of Life, Liberty, and Property with out Due Process under the V, VI, XIV Amendments of the United States Constitution, in derogation of the prohibition against Cruel and Unusual punishment under the VIII Amendment, of the United States Constitution.

It is a clear fact that Petitioners previous Counsel- James Wright, Patrick Connors, Richard J. Blasetti, and Scott D. Galloway- failed in their representation, and was ineffective. This Petitioner should no longer be forced to suffer due to their ineffectiveness.

18 Pa. C.S. §104 (3)- To safeguard offenders against excessive disproportionate, or arbitrary punishment.

This Honorable Court; reviewing body, now has the opportunity to uphold this Statute and correct this Miscarriage of Justice which all lower Courts have allowed to stand.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mario L. Griffin

Date: August 25, 2018