No. 17-3490

IN THE

SUPREME COURT OF THE UNITED STATES

BENJAMIN BESTEDER JR, pro se — PETITIONER
(Your Name)

vs.

DAVE MARQUISE, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 6th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin Besteder Jr. A695-364
(Your Name)

(RICI) 1001 Olivesburg Road P.O Box 8107
(Address)

Mansfield, Ohio 44901-8107
(City, State, Zip Code)

(419)-526-2100
(Phone Number)

Question(s) Presented

Benjamin Besteder, here in, Besteder, now files a motion of appeal to the SUPREME COURT OF THE UNITED STATES on the grounds. 1. The Petitioner Constitutional Rights to Confrontation were violated when the trial Court permitted hearsay testimony by a witness and his Right to Effective assistance of Counsel was violated when Counsel failed to object to this line of questioning.

2. Petitioner's Counsel at both the trial and appellate process were ineffective within the meaning of the U.S. Constitution.

3. The Trial Court failed to consider the offense of Discharge of a firearm upon or over a public road or highway as an allied offense of Similar import to his Felonious Assault Convictions, A violation of the Double Jeopardy Clause of the U.S. Constitution and Ohio R.C. 2941.25 Further More, when this issue was filed with The Sixth District Court of Appeals, The Court did not address the error as required.

4. The Sentence Mr. Besteder received for his Convictions, were excessive and amounted to cruel and Unusual punishment Under the Eight Amendment to the U.S. Constitution.

Petitioner Besteder is in direct conflict of Seeking relief from through all State and through United States Court, the petitioner is respectively Submitting the following errors here in the UNITED STATE SUPREME COURT For fair justice and relief.

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 judgement is the subject of this petition is as follows:

DAVE Marquise, (Respondent and Warden)
John Coleman, (Respondent and Warden)
DAVID F. COOPER, (Assistant Prosecuting Attorney)
JULIA R. BATES, (Lucas County Prosecuting Attorney)
LINDSAY D. NAVARRE, (Assistant Prosecuting Attorney, For appellee.)
Joseph M. Hood, (Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.)

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Trial Transcript. Volume. 1 p.16, 17, 20, 198 and Trial Transcript. Volume 2 p.264, Tr.Vol.1 pp
Sentencing Transcript Volume. 2. page 20.
AFFIDAVIT OF VERITY (3) Letters OF Ineffective assistance of Counsel.

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 Bestedes V. Coleman, 2018 U.S. App. EXIS 3739 (6th Cir.); 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 A to the petition and is

[✓] reported at Bestedes V. Coleman, 2017 U.S. Dist. LEXIS 12452; 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 A to the petition and is

[✓] reported at State V. Bestedes, 2014-Ohio-3760; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Ohio Supreme Court court appears at Appendix A to the petition and is

[✓] reported at State V. Bestedes, 141 Ohio St. 3d 1490; 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 Febuary 15, 2018.

[ ] 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: May 21, 2018, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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 March 11, 2018. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

Constitutional And Statutory Provisions Involved

1. Violation Of the Double Jeopardy Clause of the U.S. Constion and Ohio R.C. 2941.25
2. Violation of the Eight Amendment Of the U.S. Constitution
3. Violation of Right of Effective Assistance Of Counsel of the U.S. Constitution
4. Violation of Hearsay and The Confrontation Clause of the Sixth Amendment
5. Violation of Right to due process of the Fourteenth Adenendment
6. Violation of Court Procedural Rule in engaging in the Allied Offense Analysis When the same Conduct, or Single act, results in multiple Convictions
7. Violation of Fifth Amendment and Fourteenth Amendment, Preventing multiple punishments for the same offense
8. Violation of the Block burger Test

STATEMENT OF THE CASE

On May 25th, 2013, a drive-by shooting occured near a Softball field, adjacent to Robinson Junior High School, in Toledo. Shortly after the shooting, the Appellant, Benjamin Besteder was arrested for the offense.

On June 3, 2013, an indictment was handed down charging Appellant, Benjamin Besteder with the following: Discharge of a firearm upon or over a public road or Highway, in violation of R.C. 2923.162 (A)(3) with a firearm Specification; (Tr. Vol. 1, page 16) three counts of felonious assault; one count under paragraph (A)(1) of R.C. 2903.11 and two counts under paragraph (A)(2), each with firearm Specifications (Tr. Vol 1, Page 2).

On June 6, 2013, an arraignment was held. Counsel was appointed to represent Appellant. Bond was set and pre-trial and Trial was scheduled.

On October 7, 2013, the jury trial was held and continued through October 9, 2013. After closing arguements the jury found Mr. Besteder guilty of one count of Discharging of firearm on or near prohibited premises, in violation of R.C. § 2923.162 (A)(3) and (C)(3), and three counts of Felonious Assault. Each of these four counts had a firearm Specification attached.

Mr. Besteder was Sentenced October 29, 2013 to eight years for each of the 4 counts, to be Served Consecutively to each other for a total of 32 years, and five years for the firearm Specifications which were ordered merged for Sentencing purposes, for a total Sentence of 37 years.

The petitioner filed a timely notice of appeal to the Sixth District Court of Appeal raising one assignment of error. The Court affirmed the conviction. The Ohio Supreme Court denied jurisdiction. The petitioner filed a timely Application

Reasons For Granting the Petition

A. The big question is, Why is petitioner's Besteder grands on appeal are procedurally defaulted, because of the unfairness and wrongdoing of the Trial and Appellant attorney unreasonable and injustifiable actions, that have burden the petitioner?

The Petitioner has presented all of his grands to the Sixth District Court of Appeals and The Ohio Supreme Court through his Application to reopen his direct appeal as well as the direct appeal itself. The State went on to acknowledge that the petitioner claim of ineffective assistance of appellate counsel was preserved for review by this court. The petitioner will show that he has been prejudiced by his counsel's failure to bring forth the viable issues and that he was prejudiced by counsel failure. The only way that the petitioner may prevail in his attempt to show prejudice is by arguing the merits of the claim which he has brought through his application to reopen his direct appeal. The State and Federal Courts argued that the petitioner did not show cause or prejudice in his petition for review, the petitioner cannot argue on procedural default until the Attorney General has raised the default themselves.

B. Procedural Posture

On review of an application for reopening a appellant's direct appeal filed by a convicted Criminal petitioner, the appellate Court must determine whether the applicant was deprived of the effective assistance of Counsel on appeal, and shall grant the requested relief when a genuine issue is presented. App. R. 26 (B); State V. Murnahan (1992), 63 Ohio St. 3d 60, 66.

C. Claim

The United States Supreme Court determined

that nominal representation on an appeal as of right like nominal representation at trial does not suffice to render the proceeding Constitutionally adequate. Evitts V. Lucey (1985), 469 U.S. 387, 396. Proper appellate review must be had to ensure that a Criminal Conviction has been obtained through a reliable process. Id. at 399-400. App. R. 26 (B) provides a remedy to defendants who have been deprived of the effective assistance of appellate Counsel, a Criminal defendant must prove that Counsels performance was deficient and Counsel deficient performance prejudiced the defendant Strickland V. Washington (1984), 466 U.S. 668, 687. In his direct appeal, a appellate Counsel failed to raise "Winning Issues", and did not raise any errors "based on the record", as the petitioner was concerned of his appeal attorney, the appellate Counsel ignored the petitioner, neglected the petitioner, Petitioner's appellate counsel didn't give Mr. Bestedor his transcripts when ordered!!!, The petitioner had to contact the clerk of courts of Lucas County to receive transcripts to properly fight on his appeal with "legitimate errors based on the record." Moreover, there is a reasonable probability and because there is a reasonable probability that but for those errors, the outcome of his appeal would have been different the appellant in the Case Sub judice was prejudiced and is entitled to be heard on the issues not raised, which are presented here in. Strickland, 466 U.S. At 687. Petitioner's procedural default may be excused upon a showing of "cause" for the procedural default and actual prejudice form the alleged error. Maupin, 785 F. 2d at 138-39. Demonstrating Cause requires showing that an objective factor external to the defenses impeded Counsel efforts to comply with the

State procedural rule. Franklin V. Anderson, 434 F.3d 412, 417 (6th Cir. 2006) quoting Murray V. Carrier, 477 U.S. 478 (1986). Ineffective assistance of Counsel can be cause for a proclure of procedural default. Murray, 477 U.S. At 488. However, the exhaustion doctrine "generally requires that a claim of ineffective assistance be presented to the state courts as an independent claim before it may be used to established cause for a procedural default. Id. At 489. Meanwhile, "dlmonstrating prejudice requires showing that the trial was infected with Constitutional error. However, it is not necessary to resolve the issue of prejudice if a petitioner has not shown cause, Smith V. Murray, 477 U.S. 527, 533 106 S. Ct 2661, 91 L. Ed. 2D 434, Constitutionally ineffective assistance of appellate Counsel may serve as cause and prejudice for claims defaulted due to that ineffectiveness. Edwards V. Carpenter 529 U.S. 446, 451 (2000). The burden is on the petitioner, however, to demonstrate that appellate Counsel was indeed, Constitutionally ineffective. Id. Petitioner would assert that appellate Counsel was ineffective for failing to raise the claims brought forth by the petitioner and his application for reopening his direct appeal.

A. Ground One: The Petitioner Constitutional rights to Confrontation were violated when the trial Court permitted hearsay testimony by a witness and his Right to effective assistance of Counsel was violated when Counsel failed to object to this line of questioning.

In Richter V. Hickman, 578 F.3d 944, (9th Cir. 2009) in a en banc opinion, held that Richter's trial Counsel provided

him Constitutionally ineffective assistance, because he failed to Consult or call forensic experts to explain a pool of blood found at the Crime Scene. And this case was immediately reversed and remanded for Such wrong doings of ineffectiveness of Counsel. In Chambers V. Miss., 410 U.S. 284, trial Court's failure to allow defendant to Cross-examine a key witness and the exclusion of evidence by [redacted] application of the State hearsay rule, and this case was reversed and remanded, also in Chambers V. Miss., 410 U.S. 284 the violation of Hearsay, Violated him to have a trial in accord with the Fourteenth Amendment right to due process, See Daubert V. Merrell Dow Pharms., Inc., 509 U.S. 579 (Reversed and Remanded), the requirement that an expert's testimony pertain to Scientific knowledge estab-lishes a Standard of evidentiary reliability, Also See, Davis V. Washington, 547 U.S. 813 of Violation of the Sixth Amendment Confrontation Clause, and See Crawford V. Washington, 541 U.S. 36, and See, Harrington V. Richter, 562 U.S. 86 (reversed and remanded) on Violation of the Sixth Amendment "Failure of expert witness". The Confrontation Clause of the Sixth Amendment bars admission of testimonial statements of a witness who does not appear at trial unless he is unavail-able to testify, and the defendant has had prior opportunity for Cross-examination. Only testimonial Statements cause a declarant to be "witness" within the meaning of the "Confrontation Clause". It is the testimonial character of the Statement that Seperates it from hearsay, or other hearsay, while Subject to traditional limitations upon hearsay evidence, is not Subject to the Confrontation Clause.

B. Procedural Posture

The trial Court permitted the Witness, Ernest Reed, to testify to hearsay, and as an expert witness, when he presented evidence as to the Severity of his injuries and the medical risk

of removing the bullet a violation of the petitioners right to confrontation under the Sixth Amendment. This is a Crawford issue due to the petitioner not being able to confront the doctor who reached this conclusion.

C. Claim

The Petitioner contends that hearsay statements by the victim were introduced at trial and used as substantive evidence of the Severity of his wounds, which was subsequently used in Sentencing. The victim stated after being inappropriately prompted by the prosecution that removing the bullet would risk paralysis or cause infection. This violated Bestede's Sixth Amendment right to confront the doctor who made these alleged statements. It further substantially impaired his right to fair trial when his trial attorney failed to object to this line of questioning. The Severity of the victims injuries other than the pain he suffered as a result of them can only be verified by questioning the medical doctor who examined Mr. Reed and filed a report as to his injuries and the alleged risk to remove the bullet, not the defendant himself. Neither the State nor the petitioner Cursel called any medical professionals to testify to these facts and conclusions. Finally, this line of questioning does not fall under any of the Hearsay exceptions under the law. For the appellate Cursel to fail at raising this Constitutional issue is paramount to the most Severe injustice and could have resulted in a new trial so the doctor could be questioned. Also in mitigating the injury could have mitigated the Sentence Mr. Bestede received. The testimony of Mr. Reed was clearly of great weight in the trial of Mr. Bestede, as Mr. Reed was the Sole victim in the Crime.

A. Ground two: Petitioner Counsel At both the trial and Appellate Process were ineffective within the meaning of the U.S. Constitution.

B. Procedural Posture

On review of an application for reopening a appellants direct appeal filed by a convicted criminal defendant, the appellate court must determine whether the applicant was deprived of the effective assistance of counsel on appeal, and shall grant the requested relief when a genuine issue is presented. App. R. 26(B); State V. Murnahan (1992), 63 Ohio St. 3d 60, 66.

C. Claim

The United States Supreme Court determined that nominal representation on an appeal as of right like nominal representation at trial does not suffice to render the proceeding Constitutionally adequate Evitts V. Lucey (1985) 469 U.S. 387, 396. Proper appellate review must be had to ensure that a criminal conviction has been obtained through a reliable process. Id at 399-400. App. R. 26(B) provides a remedy to defendants who have been deprived of the effective assistance of appellate counsel, a criminal defendant must prove that Counsels performance was deficient and Counsel deficient performance prejudiced the defendant Strickland V. Washington (1984), 466 U.S. 668, 687. In his direct appeal, appellate counsel [redacted] failed to raising winning issues. But for appellate Counsel unreasonable and unjustifiable errors, the appeal would have resulted in a different outcome. Moreover, there was no reasonable justification for counsel ineffective performance and because there is a reasonable probability that but for these errors,

the outcome of his appeal would have been different the appellant in the Subjudice was prejudiced and is entitled to be on the issues not raised, which are presented here in. Strickland, 466 U.S. At 687.

Also, the right to Counsel is the right to the effective assistance of Counsel. Government Violates the right to effective assistance when it interferes in certain ways with the ability of Counsel to make independent decisions about how to conduct the defense. Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render adequate legal assistance. See Murray V. Carrier, 477 U.S. 478 (Reversed and Remanded), that Counsel's failure to raise a particular claim on appeal was to be Scrutinized under the cause and prejudice standard when that failure was treated as a procedural default by the State Courts, and attorney error of ineffective assistance of Counsel did not constitute cause for procedural default on appeal because respondent failed to allege any external impediment that might prevent or might have prevented Counsel from raising his discovery claim in his petition for review. But in Mr. Bestedes's case and Situation is infested with Constitution Violations all through trial and appellant process, and petitioner Bestedes is here in asking for fair justice and fair relief of proveing Such ineffectiveness of Counsel.

A. Ground Three: The trial Court failed to Consider the offense of discharge of a firearm upon or over a public road or highway as an allied offense of Similar import to his felonious assault Convictions, A Violation of the double Jeopardy Clause of the U.S. Constitution

and Ohio R.C. 2941.25 Further More, When this issue was filed with the Sixth District Court of Appeals, the court did not address the error, as required.

B. Procedural Posture

Mr. Besteder was convicted of one count of Discharging of firearm on or near prohibited premises, and three counts of felonious Assault. These offenses were ordered to be served Consecutively to one another when the court should have reviewed them for analysis of whether or not they were allied offenses of similar import, pursuant to R.C. 2941.25. In State V. Melton, 2013-Ohio-257 at [*P54] the court concluded that it is possible to commit felonious assault by means of a deadly weapon and discharge of a firearm on or near prohibited premises with the same animus. This is first prong of the Johnson inquiry and the Trial court failed to consider this at Mr. Besteder's Sentencing, When it should have. (State V. Johnson, 128 Ohio St. 153, 2010 Ohio 6314, 942 N.E. 2d 1061).

The second prong of the Johnson inquiry: Whether the offenses were committed by the same conduct, if considered, would have resulted in the same conclusion. The evidence here demonstrates that Mr. Besteder fired several shots at or toward a crowd of people, over a public road, and as a result of that action, committed both crimes with the same conduct.

A court must engage in the allied offense analysis when the same conduct, or single act, results in multiple convictions. See State V. Cooper, 104 Ohio St. 3d 293; 2004-Ohio-6553; 819 N.E. 2d 657.

Also, the State relied on the same conduct to support all the offenses charged against Mr. Bestedor and based on that he was found guilty of the three offenses of Felonious Assault and Discharge of Firearm on or near prohibited premises. As such, they were allied offenses of similar import and should have merged pursuant to R.C. 2941.25. See State V. Logan (1979), 60 Ohio St. 2d 126, 128, 14 O.O. 3d 373, 397 N.E. 2d 1345. Had Mr. Bestedor's attorney raised this error on appeal the outcome would have been different because he would have been convicted and sentenced to only three of the four offenses and faced a maximum of 29 years, as opposed to 37 years, had the convictions been properly merged.

C. Claim

The defendant was charge with two felonious assaults under R.C. 2903.11 (A)(2) as result of one bullet fired that struck an ice cream truck in which two persons occupied and were at risk of suffering an injury as result of that bullet. Tr. Vol. 1, page 198 However, assuming arguendo that the bullet penetrated the ice cream truck it did not. It is likely that only one of those persons could have suffered injury from that one bullet. Therefore, this case is different than a case where multiple shots are fired into a vehicle with two people inside and thus these two Felonious assaults should have merged with one another. In both of these issues, where a facial question of allied offenses of similar import presents itself, a trial court judge had a jury to inquire and determine under R.C. 2941.25 whether those

offenses should merge. A trial Court commits plain error in failing to inquire and determine whether such offenses are allied offenses of Similar import. Also, the Double Jeopardy Clauses of the United States and Ohio Constitutions, under the Fifth and Fourteenth amendments, which prevent multiple punishments for the same offense. See e.g., State V. Moss (1982), 69 Ohio St. 2d 515, 23 O.E.3d 447 at 518. Appellant Contends that this Conviction Should have been considered for merger because they Violated this aspect of protect against double jeopardy & Mr. Bestedor, See Cody V. Jeffreys 2013 U.S. Dist. LEXIS 3326. However, Since this could have been raised on appeal but wasn't, the appellate counsel was ineffective and this Court should grant defendants application to hear this assignment of error. Also, The Double Jeopard Clause and Procedural Due process, "In both the multiple punishment and multiple prosecution Contexts, the Court has Concluded that where the two offenses/multiple offenses for which the defendant is punished or tried cannot Survive the Same-elements, the double jeopardy bar applies. The Same-elements test, Sometimes referred to as the "Blockburger" test, inquires whether each offense contains an element not contained in the other. If not, they are the Same offense and double jeopardy bars additional punishment and Successive prosecution. Double Jeopardy of the Federal Constitution's Fifth Amendment, which provides that no person may be twice put in jeopardy for the Same offense, See Harris V. Oklahoma 433 U.S. 682, and See Waller V. Florida, 397 U.S. 387.

A. Ground Four: The Sentence Mr. Bestedor received for

his convictions were excessive and amounted to Cruel and Unusual Punishment under the Eight Amendment to the U.S. Constitution.

B. Procedural Posture

There are substantial grounds to mitigate the offender's conduct, although the grands are not enough to constitute a defense. First, this is Mr. Bestedes's first offense as an adult. Although he has never been incarcerated or convicted of a felony offense, he was on probation prior to being arrested for this offense. The Appellant has no drug or alcohol dependency or history of use. Although the offense was committed under circumstances that are not likely to recer. The court made a statement on the record that "....each of the three additional felonies of the second degree, each being felonious assault, the facts surrounding those are the "worst form of the offense", to meet the criteria required by R.C. 2929.12 to justify sentencing the defendant to maximum and consecutive sentences. The offenses must actually be the worst form, comparatively speaking, and the court used no such comparison. To further clarify this point, Defendent would bring attention to his conviction for Discharge of firearm on or near prohibited premises under R.C. 2923.162 (A)(3). The degree of this felony as defined in paragraph (C)(3) of this statute and states in pertinent part. ..... if the violation caused physical harm to any person, a violation of division (A)(3) of this Section is a felony of the second degree." If we compare this to paragraph (C)(4) which states that "[i]f the

Violation caused Serious physical harm to any person, a violation of division (A)(3) of this section is a felony of the first degree." (emphasis added) These definitions contradict the Court's statement that this is the Worst form of the offense. Without trying to demean the Seriousness of the offense and the victim's pain, it should be noted that if it were the most Serious form of the offense then Mr. Besteder would have been charged accordingly. However, he was charged with a Second degree felony rather than a first degree felony because the level of harm to the victim was not as Serious as some gunshot wounds are and therefore the Court's Statement was overreaching. Finally, Mr. Reed (the only injured victim in this case), two motor vehicles were hit. How is this the "Worst form of the offense"? Isn't a "Worst form" more indicative of an event where all three victims were shot and all three suffered Serious or critical injuries. The appellate court should conduct a de novo of this issue and reserve the Worst form of criminal Sentences for the Worst form of offenses. If this issue had been raised on appeal, along with the other Sentencing issue raised, it is more likely that the Court would have remanded to the trial Court for a less Severe Sentence.

C. Claim

Petitioner, Mr. Besteder argues that 37 years imprisonment, which is unique in its Severity and irrevocability, is an excessive penalty for a felonious (3 times) and (1 count) of Discharge of a firearm, of a conviction / accused criminal in who didn't take human life. The Eighth Amendment

, U.S. Const., guarantees individuals the right not to be subjected to excessive sanctions and flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offense and the offender. See, People V. Blackwell, 3 Cal. App. 5th 166. Cruel and unusual Punishment "Eighth Amendment" The Fundamental Rights Cruel and unusual punishment, prohibits only barbaric punishments, but also sentences that are disproportionate to the crime committed. See Coker V. Ga., 433 U.S. 584 (Reversed and Remanded), Eighth Amendment, bars not only those punishments that are "barbaric", but also those that are "excessive" in relation to the crime committed. A punishment is "excessive" and unconstitutional if it (1) makes no measureable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. Brennan J., Concurring, Stated that the Eighth Amendments, prohibition against cruel and unusual punishment was not limited to tortuous punishments or to punishments which are considered cruel and unusual at the time the" Eighth [redacted] Amendment", was adopted, that a punishment was cruel and unusual if it did not comport with human dignity for a State arbitrarily to subject a person to an unusually severe punishment which society indicated that it did not regard as acceptable, and which could not be shown to serve any penal purpose more effectively than a significantly

less drastic punishment, because excessive/excessive Sentences for less Severe crimes are Cruel and unusual punishment. See, Furman V. Ga.) 408 U.S. 238. The Eighth Amendment's ban on Cruel and unusual Punishments prohibits Sentences that are disproportionate to the Crime committed, and the Constitutional Principle of proportionally has been recognized explicitly in the United States Supreme Court for almost a century. Three factors may be relevant to a determination of whether a Sentence is so disproportionate that it Violates the Eighth Amendment (i) the gravity of the offense and the harshness of the penalty; (ii) the Sentences imposed on other criminals in the same jurisdiction, And (iii) the Sentences imposed for commission of the same Crime in other jurisdiction. Eigth Amendment does not require strict proportionality between crime and Sentence. Rather, it forbids only extremely disproportionate Sentences that are grossly disproportionate and excessive to the crime. Mr. Bestrder here in the Honorable Court of the SUPREME COURT OF THE UNITED STATES, respectfully and politely ask that this Honorable Court, Correct Such corrupt injustice, and to grant this petition for fair justice, and relief.

to reopen his direct appeal due to the ineffective assistant of appellate Counsel. The Sixth District Court of Appeals denied the application. The Ohio Supreme Court decline to accept jurisdiction. Petitioner filed for Writ of Habeas Corpus and has been denied. Petitioner has filed a Traverse and has been denied. Petitioner has filed a Reconsideration and has been denied. Petitioner brought his grounds to the United States Court of Appeals FOR The Sixth Circuit and has been denied. The Petitioner brought foward his Rehearing of en banc and has been denied. Now the Petitioner bring forth his issues here in the Supreme Court OF THE UNITED STATES, WASHINGTON, D.C. 20543, For relief and further review.

Conclusion

On the injustice, corruption and Violation of Constitutional rights of the petitioner, For correctness, justice and a fair conviction for the petitioner, the petition for a writ of certiorari should be granted.

Respectfully Submitted,
Benjamin Bestelen Jr.

Date: May 2, 2018