

No. 18-8122

Supreme Court, U.S.
FILED

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IN THE SUPREME COURT OF THE
UNITED STATES

Ralph Hall, PRO-SE, PETITIONER

-AGAINST-

DARWIN LE CLAIRE (AND)
NORMAN BEZIO, RESPONDENTS

ON PETITION FOR A WRIT
OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS OF CONSTITUTIONAL DIMENSION

1. WHETHER DISTRICT COURT'S RELIANCE UPON SUPREME COURT HOLDINGS IN ESTELLE v. McGUIRE, 502 U.S. 62 (1991) WAS "MISAPPLIED" WHERE THE OPERATIVE PLEADINGS UNDER William v. Taylor, 529 U.S. 408-411 (2000) - HAVE BEEN UNREASONABLY PRECLUDED THE SUPREME COURT'S HOLDINGS FOR "LIBERAL CONSTRUCTION" (LOPEZ v. SMITH, 135 S. Ct. 1 (2014)), PARTICULARLY WHERE DISTRICT AND CIRCUIT COURTS "CORRECTLY IDENTIFIES THE GOVERNING LEGAL PRINCIPLE," BUT UNREASONABLY APPLIES IT TO THE "FACTS" OF A PARTICULAR CASE; SPECIFICALLY CONCERNING STATE COURT'S FAILURE TO "OBSERVE" PROCEDURAL RULE? (McQuinn v. PERKINS, 133 S. Ct. at 1931-32 (2013); MATHIS v. HODG, 937 F.2d 790, 794 (2 Cir. 1991))

2. WHETHER STATE COURT PROCESSING OF CPLR 5525(c) MOTION AS A CPLR 2221(e) MOTION, "PREJUDICED AND DEPRIVED," STATE DEFENDANT OF DIRECT OR MEANINGFUL APPEAL WHICH MAY BE "IMPUTED TO ERROR" OF STATE COURT? (SEE DAVILA v. DAVIS, 137 S. Ct. 2058 (2017); PEOPLE v. BROWN, 40 N.Y.2d 381 (1976); PEOPLE v. HARRISON, 85 N.Y.2d 794 at 796 (1995); RAMCHAIR v. CONWAY, 601 F.2d 66 (2 Cir.))

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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 ISSUES 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 _____

THE OPINION OF THE UNITED STATES
DISTRICT COURT APPEARS AT APPENDIX B
TO THE PETITION AND IS _____

JURISDICTION

FOR CASE FROM FEDERAL COURTS:

THE DATE IN WHICH THE UNITED STATES COURT OF APPEALS "FINALLY" DECIDED MY CASE WAS JULY 03, 2018.

THE JURISDICTION OF THIS CASE IS INVOKED UNDER 28 USC SECTION 1254(1); 28 USC SECTION 2254(2)

UNITED STATES CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FIRST, FIFTH, SIXTH, AND FOURTEENTH UNITED STATES CONSTITUTION'S AMENDMENTS;

PETITIONER MOVING IN PRO-SE AS A STATE PRISONER SEEKING THE UNITED STATES SUPREME COURT RELIEF, BELIEVES HE IS ENTITLED TO THOSE PROVISIONS ESTABLISHED BY: 28 USC SECTION 2254(b)(2)(d); 28 USC SECTION 2253(c)(1)(2)(e)(2).

STATEMENT OF THE CASE

DISTRICT COURT FAILED TO LIBERALLY CONSTRUCT THE CONSTITUTIONAL DUE PROCESS SIGNIFICANCE ATTACHED TO STATE STATUTORY CORRECTIVE PROCEDURE PURSUANT TO CIVIL PROCEDURE LAW AND RULES (CPLR) 5525(c) WHICH HAS "NO COUNTERPART," AND CANNOT BE SUBSTITUTED WHERE STATE COURT RELIED UPON A "JUDGMENT ROLL" PURSUANT TO CPLR 5017(b).

IN THIS CASE THE DISTRICT COURT FAILED TO REALIZE THAT A SUBSTANTIVE CONSTITUTIONAL VIOLATION EXIST WHERE DEFENDANT WAS DEPRIVED OF HIS FUNDAMENTAL RIGHT TO AMEND THE RECORD ON DIRECT APPEAL. A "LIBERAL CONSTRUCT" OF PRO-SE DEFENDANT'S OPERATIVE PLEADINGS CONCERNING 28 USC 2254(b) - INEFFECTIVE OR "FUTILE" STATE CORRECTIVE PROCESS, WOULD CLEARLY SHOW STATE COURT DEVIATED FROM PROCEDURAL RULES (CPLR 5525(c)) RESULTING IN THE DEPRIVATION OF DEFENDANT'S RIGHT TO "AMEND" THE RECORD FOR A COMPLETE RECORD NECESSARY FOR A MEANINGFUL DIRECT APPEAL. (SEE "ERROR IS IMPUTED TO THE STATE" IN DAVILA V. DAVIS, 137 S. Ct. 2058 (2017))

LIBERAL CONSTRUE OF THIS CASE WOULD BE
HARD PRESSED "NOT" TO CONCLUDE ALLEGATIONS
AGAINST DEFENSE AND APPELLATE COUNSEL'S
PERFORMANCE WERE "BELOW" THE STANDARDS
OF REASONABLE REPRESENTATION. THE AFFECTS
OF DEFICIENT ADVOCACY AT TRIAL AND
APPEAL LEVELS ARE SURELY DEBATABLE WHERE
RECORD ON DIRECT APPEAL IS "KNOWINGLY"
INCOMPLETE AND DEPRIVED OF TIMELY
AMENDMENT PURSUANT TO CPLR 5525(C)
MOTION TO AMEND SUCH RECORD ON DIRECT
APPEAL, (CPLR 5525(C) MOTION IS NOT CONTAINED IN RECORD)

HABEAS CORPUS RELIEF HAVE BEEN DENIED
BECAUSE DISTRICT COURT IN THIS CASE HAVE
VIEWED ESTELLE v. MCGUIRE, 112 S. CT. 475,
480 (1991) AS EXEMPTING STATE COURT FROM
VIOLATING THE FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION. DISTRICT COURT HAVE
ALSO "PRESUMED" THE STATE COURT'S FAILURE
TO OBSERVE, STATE COURT'S PROCEDURAL
RULES, MUST BE PRESUMED TO BE CORRECT,
WHICH IS CONTRARY TO SUPREME COURT HOLDINGS
IN WILLIAM v. TAYLOR, 529 U.S. 407-411 (2000);
MARSHALL v. LONBERGER, 459 U.S. 422 (1983) ~
(SEE CONE v. BELL, 556 U.S. 449 (2009) RE: STATE ABUSES)

REASONS FOR GRANTING THE FEDERAL HABEAS CORPUS PETITION FOR WRIT OF CERTIORARI

DISTRICT COURT "SUBSTITUTED" SUPREME COURT HOLDINGS FOR LIBERAL CONSTRUCTION EXAMPLED IN LOPEZ V. SMITH, 135 S. CT. 1 (2014) BY RELYING UPON ITS OWN CIRCUIT COURT'S MORE STRINGENT STANDARDS TO JUSTIFY ITS FAILURE TO VIEW PRO-SE DEFENDANT'S OPERATIVE PLEADINGS, ALLEGING, DIRECT APPEAL WAS PRECLUDED A MEANINGFUL APPELLATE REVIEW BECAUSE "EXTRINSIC" EVIDENCE WAS PREVENTED FROM BEING BROUGHT AS A RESULT OF STATE COURT'S FAILURE TO OBSERVE PROCEDURAL RULES, (28 USC 2254(b)) - (CPLR 5525(c))

DISTRICT COURT HAVE "UNREASONABLY" CONCLUDED THAT PRO-SE PETITIONER FAILED TO SHOW SUBSTANTIVE CONSTITUTIONAL VIOLATION, CITING SUPREME COURT HOLDINGS IN ESTELLE V. MCGUIRE, 112 S. CT. 475, 480 (1991) AND, MILLER-EL V. CUCKRELL, 537 U.S. 322, 327 (2003) - RATHER THAN THE MORE APPROPRIATE SUPREME COURT DECISION IN MCQUIGGINS V. PERKINS, 133 S. CT. 1924 AT 1931-32 (2013) - BECAUSE CPLR 5525(c) MOTION WAS WRONGLY

AND CONSTITUTIONALLY UNLAWFULLY PROCESSED UNDER THE SUPREME COURT'S FINDINGS IN CONE v. BELL, 556 U.S. 449 (2009) RE: STATE COURT'S "ABUSE OF ITS DISCRETIONARY PREROGATIVE". CLEARLY, WHEN THE STATE COURT PREJUDICIALLY MISPROCESSED AND DEVIATED FROM STATE PROCEDURAL RULES IN 2006, THE YEAR WHEN MOTION TO AMEND THE RECORDS WAS FILED, THE SUPREME COURT'S IN MCQUIGGINS v. PERKINS, 133 S. Ct. 1924 AT 1931-32 (2013) DISTINGUISHED STATE COURT'S FAILURE TO "OBSERVE" PROCEDURAL RULES AS A SUBSTANTIVE 14TH AMENDMENT CONSTITUTIONAL VIOLATION, AS COMPARED TO PREVIOUS HOLDINGS IN ESTELLE v. MCGUIRE, supra,

MOREOVER, STATE TRIAL COURT'S FAILURE TO PROVIDE "REQUESTED" STENOGRAPHIC OF ALLEGED, UNRECORDED PRE-SENTENCING MOTION PURSUANT TO SECTION 295 OF THE JUDICIARY LAW, ENTITLED PRO-SE DEFENDANT TO 14TH AMENDMENT RIGHT TO CPLR 5525(c) RELIEF, (PEOPLE v. HARRISON, 85 N.Y.2d AT 794)

STATE COURT DID "NOT" HAVE THE AUTHORITY TO DECIDE THE "ADEQUACY" OF A CONVERSION OF CPLR 5525(c) MOTION TO AMEND INTO A NON-APPLICABLE OR TIME-BARRED MOTION PURSUANT TO CPLR 2221(2). (CONE v. BELL, supra.)

ERROR IN THIS CASE CONTENDS THAT STATE COURT HAVE IMPLEMENT MALFEASANCE AS WELL WHAT WOULD AMOUNT TO OFFICIAL MISCONDUCT TO OBFUSCATE ITS DEPRIVATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND THE EQUAL APPLICATION OF SUCH RIGHT UNDER THE 14TH U.S. CONSTITUTIONAL AMENDMENT, THE RIGHT TO THE FUNDAMENTAL AMENDMENT OR SETTLEMENT OF RECORD ON DIRECT APPEAL HAVE NO COUNTERPART UNDER CPLR 5525 (c); THUS, THE STATE COURT'S PROCESSING OF CPLR 5525 (c) AS A CPLR 2221 (c) MOTION TO "RENEW" A PREVIOUSLY UNRECORDED MOTION CAN ONLY BE VIEWED AS A DELIBERATE "ploy" TO COVER-UP "ERROR IMPUTED TO THE STATE." (SEE DAVILA V. DAVIS, 137 S.Ct. 2058 (2017); Smoley v. MERRICK ESTATES, 20 A.D.2d 654 (1964); 348 NEW YORK STATE JURIS PRUDENCE, sec. 235; People v. MANGANO, 29 Hun.259, 1 N.Y.L.R. sec. 41 (1883); People v. MADUGNO, 191 Misc.395 (1948); People v. RIVERA, 108 A.D. 829 (2 DEPT. 1985)) - Appellate Counsel's REPRESENTATION SOUGHT TO "DISPARAGE" HIS CLIENT'S CLAIM CONCERNING STATE WRONGFUL PROCESSING OF CPLR 5525 (c) - BY DECEIVING THE Appellate Court INTO BELIEVING CPLR 2221 (c) WOULD SATISFY RIGHT TO AMEND RECORD. (COMPARE CPLR 5525 (c) AS DISTINGUISHED FROM CPLR 5017 (b).); (COMPARE ALSO "EXTRINSIC RECORD" AS DISTINGUISHED FROM "INTRINSIC RECORDS.")

Assigned Legal Aid, Appellate Counsel Allegedly served to prevent his client's "incomplete" records claim from being meaningfully considered by the Appellate Court by the submission of a letter correspondence to the Court stating that his client's petition for error coram nobis was baseless because the "Judgment Roll" have cured any error imagined by the failure to stenographically record CPL 330.30 motion. (See Application of Strickland in Washington, 466 U.S. 668) - Counsel's obvious misrepresentation of (PLR 5017(b)) "must" be construed as deficient performance under Supreme Court holding in Hinton v. Alabama, 134 S. Ct. 1081, 1089 (2014) citing Strickland - RE: "incompetent counsel". (See Downs v. Lape, 657 F.3d 97 at 114-115 (2 Cir, 2011) citing People v. Harrison, 85 N.Y. 2d 794 at 796 (1995) RE: "prejudicial representation". (See also, People v. Vasquez, 70 N.Y. 2d 1 (1987) RE: "disparagement"); (U.S. v. Cronin, 466 U.S. 648 (1984))

Under, Buck v. Davis, 137 S. Ct. 759 (2017) citing Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) Denial of Federal Relief by the District Court cannot be justified or reasonably explained.

SECTION 487 OF THE JUDICIARY LAW, FOR SAKE OF EXAMPLE OF COUNSEL DEVIANCE, OR ALLEGED "DECEPTION OF THE COURT," IN AMALFITANO V. ROSENBERG, 572 F.3d 91 (2 Cir. 2009) - MAY BE COMPARED TO APPELLATE COUNSEL, KERRY ELGARTEN IN THE INSTANT CASE, WHERE IT WAS CLAIMED THAT A "JUDGMENT ROLL" PURSUANT TO CPLR 5017(b) WOULD NEGATE THE NECESSITY FOR A "COMPLETE RECORD ON DIRECT APPEAL." APPELLATE COUNSEL'S REPRESENTATION IS ALLEGED TO HAVE, "FELL OUTSIDE BOUNDS OF 'COMPETENT' REPRESENTATION," (SEE BUCK V. DAVIS, SUPRA.), WHEN HE CONVINCED THE STATE APPELLATE COURT THAT HIS CLIENT'S UNRECORDED CPL 330.30 MOTION CLAIM WAS "WITHOUT" MERIT. (SEE ALSO, HINTON V. ALABAMA, 134 S. CT. 1081, 1089 (2014); CORNEL V. KIRKPATRICK, 665 F.3d 369 (2 Cir. 2011))

APPELLATE COUNSEL'S "MISREPRESENTATION OF FACTS," AMOUNTED TO FRAUDENTLY SERVING TO DECEIVE THE COURT INTO BELIEVING CPLR 5525(c) MOTION TO "AMEND THE RECORD ON DIRECT APPEAL" WAS UNNECESSARY BECAUSE, HIS CLIENT'S CLAIM THAT 330.30 MOTION WAS UNRECORDED WAS "NOT TRUE" WHERE IT IS FOUND IN THE "JUDGMENT ROLL".

WHEREFORE THE FACTS IN THIS CASE, "IF"
VIEWED UNDER THE SUPREME COURT'S
HOLDINGS IN WILLIAM V. TAYLOR, 529 US AT
407-08, 409-11 RE: "WRONGFUL APPLICATION OF
FACTS", TO INCLUDE, SUPREME COURT HOLDINGS
FOR "LIBERAL CONSTRUER," THE DISTRICT COURT
WOULD HAVE CONCLUDED A DIFFERENT
FINDING THAT THE APPELLATE COUNSEL FOR
DEFENDANT'S CORRESPONDENCE TO THE
APPELLATE COURT DATED "FEBRUARY 07, 2008"
CONSTITUTED "MISINFORMATION" UNDER
SECTION 487 OF THE JUDICIARY LAW - SHOWING
"FRAUDULENT AND INCOMPETENT" APPELLATE
PERFORMANCE. (SEE HINTON V. ALABAMA, 134
S. CT, 1081, 1089 (2014) CITING STRICKLAND;
CORNEL V. KIRKPATRICK, 665 F.3d 369 (2d Cir, 2011);
AMALFITANO V. ROSENBERG, 572 F.3d 91 (2d Cir 2009)

THE ABOVE ALLEGED, SUBSTANTIAL SHOWING OF 5TH,
6TH AND 14TH AMENDMENT CONSTITUTIONAL, "CLEAR"
VIOLATIONS CANNOT REASONABLY BE
"PRESUMED TO BE CONSTITUTIONALLY CORRECT,"
(SEE CARRINGER V. STEWART, 132 F.3d 463 (2d Cir,
1997) CITING MARSHALL V. LONGBERGER, 459 U.S.
422 (1983) - (SEE ALSO, "GATEWAY TO AN
ACTUAL INNOCENCE" CLAIM UNDER McQUIGGINS,
SUPRA.)

Conclusion:

District Court Failed To Liberally construe pro-se defendant's "operative" pleadings under the Supreme Court's holdings, rather than the more stringent precedents relied upon from the Circuit Court, which in this case have contributed to District Court's "unreasonable" erred application of the facts resulting in obscuring State Court's official misconduct that amounts to depriving defendant of his right to complete record on direct appeal pursuant to application of CPLR 5525 (c) motion to amend the record. State Court's failure to observe such fundamental right would constitute a substantive 14th Amendment violation where, Trial and Motion Court erred by foreclosing defendant's CPLR 5525 (c) motion to "amend the record" on direct appeal to include the "unrecorded" 330.30 pre-sentencing motion dated October 7, 2005 - which would have cured the "incomplete record" claim under Downs v. Lape, 657 F.3d 97 at 114-115 (2d Cir. 2011) citing People v. Harrison, 85 N.Y.2d 794, 796 (1995); McQuiggins, supra.

DISTRICT COURT'S TREATMENT OF PRO-SE CONVICT'S FEDERAL HABEAS CORPUS PETITION WAS NOT "LIBERALLY CONSTRUED" UNDER SUPREME COURT'S HOLDINGS IN LOPEZ V. SMITH, 135 S. CT. 1 (2014), HUGHES V. ROWE, 449 U.S. 5, 9 (1980), OR HAINES V. KERNER, 404 U.S. 519 (1972). INSTEAD, THE PETITION WAS SUBORNED BY THE DISTRICT COURT'S OVERT AND ALLEGED DELIBERATE APPLICATION OF SUBSTITUTED SUPREME COURT HOLDINGS FOR LIBERAL CONSTRUE, WITH CIRCUIT COURT'S PRECEDENT FOR LIBERAL CONSTRUE IN VIOLATION OF LOPEZ V. SMITH, SUPRA. DISTRICT COURT'S TREATMENT SERVED TO COMPROMISE DUE PROCESS EXPECTATIONS HELD IN SWEET V. BENNETT, 353 F.3d 135, 142 n.7 (2 CIR.) RE: "UNRECORDED" PRE-SENTENCING MOTION PURSUANT TO CPL 330.30'S TIMELY CHALLENGE TO JURY VERDICT OF GUILT... (SEE "DUE PROCESS")

DISTRICT COURT FAILED TO CONSIDER THE FACTS CONCERNING APPLICATION OF ERICKSON V. PARDUS, 551 U.S. 89 (2007) WHERE RULE 60(b)(6) MOTION SHOWED STATE COURT DEPRIVED DEFENDENT OF CPLR 5525(c) APPLICATION TO AMEND RECORD BY "ABUSE" OF DISCRETION. (SEE CONE V. BELL, SUPRA.)

DISTRICT COURT HAVE COMMITTED AN EGYREGIOUS ERR BY OVER-LOOKING THE ASSIGNED APPELLATE COUNSEL'S FAILURE TO REALIZE HIS POSSESSION OF THE TRIAL RECORDS "JUDGMENT ROLL" PURSUANT TO CPLR 5017(b) WOULD "NOT" TAKE THE PLACE OF A STENOGRAPHIC RECORD, PURSUANT TO SECTION 295 OF THE JUDICIARY LAW - FOR PURPOSES OF DIRECT APPEAL BECAUSE CPL 330.30 MOTION, WHICH WAS UNRECORDED, WOULD BE "PRECLUDED" FOR APPELLATE REVIEW IF BROUGHT UNDER CPLR 5017(b) RATHER THAN UNDER CPLR 5525(c). CPLR 5525(c) HAVE "NO COUNTERPART." (SEE MCKINNEY'S LAW); (SEE ALSO, MATHIS v. HOOD, 937 F.2d 790, 794 (2d Cir. 1991))

THUS, THE STATE COURT'S KNOWINGLY AND WRONGFULLY PROCESSED DEFENDANT MOTION PURSUANT TO CPLR 5525(c) BY TREATING MOTION TO AMEND THE RECORD AS A "TIME-BARRED" MOTION TO RENEW THE UNRECORDED CPL 330.30 MOTION, ALLEGEDLY PURSUANT TO CPLR 2221(e). (SEE ROBINSON v. GRAHAM, 671 F. Supp. 2d 338 (NDNY 2009); PEOPLE v. BROWN, 40 N.Y.2d 381 (1976))

DISTRICT COURT'S DECISION TO REVIEW "ONLY" COVER LETTER AND OBJECTIONS TO REPORT AND RECOMMENDATION CONSTITUTES FAILURE TO OBSERVE SUPREME COURT'S HOLDINGS FOR "LIBERAL CONSTRUE" BECAUSE SUBSTANTIAL SHOWING OF CONSTITUTIONAL VIOLATIONS WAS OMITTED FROM DISTRICT COURT'S CONSIDERATION AS ISSUES OF DEBATABLE REASONING UNDER MILLER-EL V. COCKRELL, 537 U.S. 322, 327 (2003), PARTICULARLY WHERE STATE COURT'S "WRONGFUL PROCESS," COMES UNDER CONE V. BELL, SUPRA AND "LIBERAL CONSTRUE," UNDER HAINES V. KERNER, SUPRA, (COMPARE, PEOPLE V. BROWN, SUPRA.)

DISTRICT COURT HAVE DECLINED TO "LIBERALLY CONSTRUE" PRO-SE PLEADINGS IN COMPLIANCE WITH SUPREME COURT RULINGS WHERE, IF PROPERLY REVIEWED SUCH PLEADINGS WOULD SHOW STATE COURT "FAILED" TO OBSERVE STATE COURT'S PROCEDURAL RULES UNDER SUPREME COURT HOLDINGS IN MCQUIGGINS V. PERKINS, 133 S. Ct. at 1931-1932 AND, STATE COURT HOLDINGS IN MATTER OF STATE V. KING, 36 N.Y.2d 59 (1975); 348 NEW YORK JURIS PRUDENCE, SEC. 235, 3452, 3536, 3546, 3530

PRO-SE PETITIONER REQUESTED THE SECOND CIRCUIT REVIEWING COURT'S EXAMINATION AT THE COA STAGE TO ASK "ONLY" IF THE DISTRICT COURT'S DECISION WAS DEBATABLE; RATHER THAN, WHETHER A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT HAVE BEEN MADE. (SEE BUCK V. DAVIS, 137 S. CT. 759 (2017) CITING MILLER-EL V. COCKRELL, 537 U.S. 322, 327 (2003))

MOREOVER, WHAT IS DEBATABLE IS WHETHER OR NOT THE STATE COURT ALSO "ABUSED" ITS DISCRETION WHEN IT WRONGLY PROCESSED CPLR 5525(C) MOTION AS A CPLR 2221(e) IN VIOLATION OF CONE V. BELL, 556 U.S. 449 (2009) - BY UNREASONABLY PROCESSING MOTION TO AMEND THE RECORD AS A MOTION TO RENEW A MOTION. (SEE WILLIAM V. TAYLOR, 529 U.S. AT 407-08, 409-411 RE: "UNREASONABLE APPLICATION MAY APPLY TO WRONGLY APPLICATION OF FACTS") IN THIS CASE IT WOULD BE, "UNREASONABLE" TO PRESUME THE STATE COURT'S REPRESENTATION OF CPL 330.3D AND CPLR 5525(C) MOTIONS WOULD ENTITLE THE STATE COURT TO A "PRESUMPTION OF CORRECTNESS," (SEE MARSHALL V. LUNBERGER, 459 U.S. 422 (1983))

STATE COURTS, AS WELL THE DISTRICT COURT IN THIS CASE HAVE DEMONSTRATED EXAMPLES OF "UNREASONABLE APPLICATIONS OF FACTS" BY THE DECISION FILED AND ENTERED ON JANUARY 29, 2018 REGARDING THE TIMELY RULE 60(b)(6) MOTION THAT'S BEEN PENDING SINCE OCTOBER 30, 2015. (SEE APPENDIX "A", AND APPENDIX "B"); (COMPARE ALSO, Williams v. Taylor, 529 U.S. 407-411)

ACCORDINGLY, THE DISTRICT COURT'S JANUARY 29, 2018 DECISION WHICH FOUND THAT,

"...PETITIONER HAS FAILED TO ALLEGE ANY FACTS DEMONSTRATING THAT EXTRAORDINARY CIRCUMSTANCES EXIST..." (page 10-11) - SUCH DISTRICT COURT FINDINGS;

MUST BE VIEWED IN THE CONTEXT OF ITS PRIOR CONFLICTING ORDER ENTERED OCTOBER 22, 2015 WHERE AT PAGE 21 - "EXTRAORDINARY CIRCUMSTANCES" WERE IDENTIFIED BY THE DISTRICT COURT'S CLAIM THAT;

"...THE COURT CANNOT FIND A VIOLATION OF THE EQUAL PROTECTION

"OR PRIVILEGES AND IMMUNITIES
CLAUSES AS THEY RELATE TO
CPLR 5525 IN THIS CASE."
(DISTRICT COURT'S DETERMINATION
ENTERED OCT. 22, 2015, p. 21)

SUCH DECISION, ACCORDINGLY, SHOULD
CONSTITUTE OR BE VIEWED AS A VALID,
"SUBSTANTIVE," EXTRAORDINARY CIRCUMSTANCE
BECAUSE THE DISTRICT COURT IMPLIES IT
WAS NOT AWARE OF SUPREME COURT
HOLDINGS IN MCQUIGGINS V. PERKINS, 133
8, Ct. at 1931-1932 (2013) RE: STATE COURT'S
FAILURE TO "OBSERVE" PROCEDURAL RULES,
(CPLR 5525(c)), CONSTITUTE OR AMOUNTS
TO A "FOURTEENTH AMENDMENT VIOLATION".
(SEE 'IMPROPER' DECISIONS AND 'IRREGULAR'
ORDERS ATTACHED IN APPENDIX "A" AND
"B"); (SEE ALSO, PEOPLE V. BROWN, 40 N.Y.2d 381 (1976));
(MATHIS V. HOOD, 937 F.2d 790, 794 (2 Cir. 1991)).
DENIAL OF RULE 60(b)(6) MOTION AND
RECONSIDERATION FOR COA APPLICATION
HAVE BEEN DENIED WITHOUT SUPREME
COURT'S "LIBERAL CONSTRUCTIVE" ENTITLEMENTS
AND THE OMISSION OF STATE COURT'S
"ABUSE" OF ITS DISCRETIONARY PREROGATIVES

UNDER SUPREME COURT HOLDINGS IN CONE v. BELL, 556 U.S. 449 (2009). THIS CONTINUES TO BE IGNORED BY CIRCUIT COURT AS WARRANTING FEDERAL JUDICIAL NOTICE BECAUSE STATE COURT WAS NOT AUTHORIZED TO DETERMINE WHETHER PROCESS OF CPLR 5525(c) MOTION AS AN "UNSOLICITED AND TIME-BARRED" CPLR 2221(e) MOTION WOULD, AMOUNT TO AN "ADEQUATE" APPLICATION OF DUE PROCESS AND EQUAL PROTECTION OR PRIVILEGES AND IMMUNITIES UNDER THE FOURTEENTH AMENDMENT, (SEE MATHIS, SUPRA.) AT 937 F.2d 790, 794 (SECOND CIRCUIT 1991)... CIRCUIT COURT HAVE "OVER-LOOKED" STATE COURT'S DEVIATION FROM PROCEDURAL RULES CONCERNING CPLR 5525(c) WHERE DISTRICT COURT'S RELIANCE UPON ESTELLE v. MCGUIRE, 112 S. Ct. 475, 480 (1991) APPEARS TO BE "MISPLACED" IN THIS INSTANCE, PARTICULARLY WHERE MCQUIGGINS v. PERKINS, 133 S. Ct. AT 1931-1932 (2013) IS DISTINGUISHABLE AS A FOURTEENTH AMENDMENT CONSTITUTIONAL VIOLATION. STATE COURT'S FAILURE TO OBSERVE PROCEDURAL RULES WARRANTS THE REQUIRED

Application of State Statutory Corrective Procedure at CPLR 5525(c) - WHICH HAVE "NO" COUNTERPART. THUS, THE DISTRICT COURT'S RELIANCE UPON ESTELLE v. McGUIRE, supra, SERVED AS A DISTRICT COURT "AFFRONT" TO PRO-SE PETITIONER'S RELIANCE UPON SUPREME COURT HOLDINGS FOR "LIBERAL CONSTRU." (SEE DISTRICT COURT'S FAILURE TO DISTINGUISH SECTION 295 OF THE JUDICIARY LAW FROM CPLR 5525(c) MOTION TO AMEND THE RECORD ON DIRECT APPEAL, (SEE People v. Brown, supra.)

THE STATE COURT'S FAILURE TO STATUTORIALLY "OBSERVE" REQUEST FOR STENOGRAPHIC TRANSCRIPTS OF CPL 330.30 MOTION ON OCTOBER 7, 2005 - GAVE "CAUSE" FOR THE MOTION TO AMEND THE RECORD ON APPEAL SO THAT THE "UNRECORDED" CPL 330.30 MOTION WOULD BE AFFORDED REVIEW AND NOT FOUND TO BE AN "UNAVAILING" ISSUE. (DIRECT APPEAL IN THIS CASE FOUND PRO-SE CLAIMS CONCERNING THE ABOVE TO BE, "UNAVAILING."); (SEE DAVILA v. DAVIS, 1378 Ct. 2058 (2017) RE "ERR IMPUTED TO STATE")

Circuit Court Reasoning in this matter have served to support its District Court's opinions, particularly where Rule 60(b)(6) motion's content and liberal construe have "not" been viewed in the context of MATHIS v. HOOD, 937 F.2d 790, 794 (2 Cir. 1991) RE: Appeal as a right created by state statute) Rather, Federal Courts have reasoned that state courts have a "presumption of correctness," without considering the holdings in MARSHALL v. LOWBERGER, where state courts may "not" be entitled to such presumptions, (459 U.S. 422); CARRINGER v. STEWART, 132 F.3d 463) The District Court's erroneous reliance upon ESTELLE v. MCGUIRE, supra, in this case is an exact example of "misapplication" of Supreme Court law, the affect of such state and federal discretionary interpretation of pro-se pleadings have deviated from the "exclusive" right of a state convict to appeal his state conviction "exclusively" by statute, which includes, CPLR 5525(c). (see MATTER OF STATE v. KING, 36 N.Y.2d 59 (1975)); (compare, DAVILA v. DAVIS, 137 S.Ct. 2058 (2017) RE "error is imputed to state") 21.

Finally, in 2009, approximately three (3) years "AFTER" THIS PETITIONER FILED HIS MOTION PURSUANT TO CPLR 5525(c) TO AMEND THE RECORD TO INCLUDE THE "UNRECORDED" CPL 330.30(1)(2)(3) MOTION TO BE HEARD ON DIRECT APPEAL ALONG WITH PROCEEDING AT TRIAL - THE SUPREME COURT MADE ITS CONTROLLING RULING IN CONE v. BELL, 556 U.S. 449 - STATING:

"STATE COURT DECISION ON PROCEDURAL GROUNDS AND ADEQUACY OF SUCH INDEPENDANT STATE GROUNDS: THE ADEQUACY OF STATE "PROCEDURAL BARS" TO THE ASSERTION OF FEDERAL QUESTIONS IN STATE CASES ON FEDERAL HABEAS REVIEW IS NOT WITHIN A STATE'S PREROGATIVE, FINALLY TO DECIDE, RATHER ADEQUACY IS ITSELF A FEDERAL QUESTION..." (EMPHASIS ADDED) CONE, SUPRA.

IN THE INSTANT CASE, STATE COURT HAVE DENIED CPLR SECTION 5525(c) MOTION TO AMEND THE RECORD, TO INCLUDE THE ALLEGED UNRECORDED CPL 330.30(1)(2)(3) MOTION

WHICH IF PROCESSED PRIOR TO SENTENCING IN COMPLIANCE WITH SECTION 295 OF THE JUDICIARY LAW, WOULD HAVE RESULTED IN A DIFFERENT OUT-COME. THE TRIAL AND MOTION COURT'S FAILURE TO "OBSERVE" SECTION 295 OF THE JUDICIARY LAW, COMPELLED PRO-SE PETITIONER TO APPLY FORMATION TO AMEND/SETTLE RECORD ON DIRECT APPEAL... OTHERWISE, THE DIRECT APPEAL WOULD BE PROCEDURALLY BARRED FROM BRINGING THE CPL 330.30 MOTION UP FOR REVIEW ALONG WITH PROCEEDINGS OF TRIAL. (SEE CPLR 5525(c) - MCKINNEY'S); (CPL 330.30 WAS UNLAWFULLY VIEWED AS A CPL 440.10) - ALL PARTIES KNOW, OR SHOULD KNOW THAT PETITIONER HAVE BEEN DEPRIVED OF CPLR 5525(c) MOTION RELIEF, PARTICULARLY WHERE LOWER COURT DECLINED TO ORDER EX PARTE SUBPOENA DUCES TECUM TO PRODUCE THE CPLR 5525(c) MOTION IT HAVE CLEARLY, WRONGFULLY PROCESSED AS A CPLR 2221 (e) MOTION.

ADDITIONALLY, IT SHOULD BE "NOTED" THAT THE TIMELY CPL 330.30 MOTION WAS WRONGFULLY TREATED AS A CPL 440.10 "CONTRARY" TO CPL 330.30 PROCEDURE. (SEE CPL 330.30 IN MCKINNEY'S LAW) - DISTRICT COURT, HOWEVER, CLAIM IT SEES "NO" CONSTITUTIONAL VIOLATION BECAUSE PETITIONER HAVE FAILED TO ALLEGE "ADDITIONAL VIOLATIONS..."

WHEREFORE THE DISTRICT COURT'S POSITION IS ONE THAT REQUIRES PRO-SE PLEADINGS TO PROVIDE "MORE" THAN WHAT THE SUPREME COURT HAVE ANNOUNCED IN ITS RULING IN LOPEZ v. SMITH, 135 S. Ct. 1 (2014), PARTICULARLY WHERE THE DISTRICT COURT CLAIMED IT COULD "NOT" VIOLE THE STATE COURT'S FAILURE TO OBSERVE STATE PROCEDURAL RULES WHERE IT CONCERNED CPLR 5525(c), AS A SUBSTANTIAL 14TH AMENDMENT CONSTITUTIONAL VIOLATION.

THIS PETITION FOR WRIT OF CERTIORARI RELIEF CONTENDS IT HAVE DISTINGUISHED WHAT APPEARS TO BE A DISTRICT COURT FAILURE TO COMPLY WITH SUPREME COURT RULINGS IN THAT IT HAVE UNREASONABLY APPLIED THE STANDARD FOR "LIBERAL CONSTRUED." (SEE WILLIAMS v. TAYLOR, 529 U.S. AT 407-408)

STATE AND DISTRICT COURT'S CREDIBILITY HAVE CONFLICTED WITH SUPREME COURT'S RULINGS BY PREJUDICIALLY MISREPRESENTING, OR OBSCURING AN OBVIOUS FRAUDULENT PROCESS WHICH IN THIS CASE HAVE DEPRIVED DEFENDENT OF CPL 330.30 AND CPLR 5525(c) RIGHTS UNDER HOLDINGS IN, YISIV. NUNNEMAKER, 501 U.S. 797, 804 n.3 (1991),

OR, MERZBACKER v. SHEARIN, 732 F. Supp. 2d 527 (2010), THE CLAIMS HEREIN THIS PRO-SE PLEADING AMOUNT TO A CONSTITUTIONAL QUESTION CONCERNING STATE TRIAL AND MOTION COURT'S "CREDIBILITY JUDGMENT," WHERE THE ALLEGED FRAUDULENT PROCESSING OF CPL 330.30 AND CPL R 5525(c) MOTIONS IS "STARK AND CLEARLY ERRONEOUS", AND NOT ENTITLED TO A PRESUMPTION OF CORRECTNESS.

THE CLAIMED ERR IN PROCESSING WHICH UNDERLINES DEPRIVATION OF RIGHT TO APPEAL AMOUNTS TO, "ERROR AFFECTING THE ORGANIZATION OF THE COURT," OR THE MODE OF PROCEEDINGS PRESCRIBED BY LAW ON TWO (2) INDIVIDUAL ISSUES WHERE (1) "CPL 330.30 (1)(2)(3) "PRE-SENTENCING" MOTION TO TIMELY CHALLENGE JURY VERDICT OF GUILT WAS SUBSTITUTED BY THE COURT TO A POST-CONVICTION MOTION PURSUANT TO CPL 440.10 - WHICH IS FACTUALLY NOT DISPUTED AS A CONFLICTING MOTION THAT IS "NOT" INTERCHANGEABLE WITH THE CPL 330.30 MOTION RELIEF SOUGHT.

THE ABOVE IS A "MODE OF PROCEEDING ERROR."

WHERE THE "PRE-SENTENCING" MOTION WAS SUBORNED TO STATE COURT'S OFFICIAL, ALLEGED, MISCONDUCT. IT IS CONTENDED THAT (2) THE "POST-CONVICTION" MOTION TO AMEND THE RECORD TO INCLUDE, THE "UNRECORDED" 330.30 PRE-SENTENCING MOTION WAS ALSO AFFECTED BY STATE COURT'S OFFICIAL MISCONDUCT ONCE SUCH CPLR 5525(K) MOTION WAS, WITHOUT FACTUAL DISPUTE, "WRONGLY PROCESSED" AS A "TIME-BARRED" MOTION TO RENEW, PURSUANT TO CPLR 2221(2).

TRIAL AND MOTION COURT'S ABUSE OF ITS DISCRETIONARY PREROGATIVES AMOUNT TO ERRORS EFFECTING THE ORGANIZATION OF THE COURT. (SEE "MODE OF PROCEEDING PRESCRIBED BY LAW")

WHEREFORE THE "MODE OF PROCEEDING" DOCTRINE (STATE), OR THE "PRESUMPTION OF REGULARITY" (FEDERAL) - CONCERNS THE APPROPRIATE AND EFFECTIVE PROCESS NECESSARY UNDER THE 5TH AND 14TH AMENDS. CONSTITUTIONAL VIOLATIONS OF THE FIFTH AND FOURTEENTH AMENDMENTS, BY LAW WOULD ALLEGEDLY WARRANT FEDERAL INTERVENTION.

THE RECORD FOR THIS STATE AND FEDERAL ACTION WOULD REFLECT THAT PRO-SE CLAIMS WERE "NOT" BROUGHT BY ASSIGNED APPELLATE COUNSEL AND THAT SUBSTANTIAL 6TH AMENDMENT CONSTITUTIONAL VIOLATIONS HAVE BEEN ALLEGEDLY DEMONSTRATED IN ADDITION TO 5TH AND 14TH AMENDMENT INFRINGEMENTS BASED ON CPLR 5525(C) MOTION'S EXCLUSIVE PROCESS ACCORDING TO MCKINNEY'S LAW WHICH STATES THAT CPLR 5525(C) HAVE "NO" COUNTERPART (AND CANNOT BE SUBSTITUTED WITH CPLR 5017(b) OR CPLR 2221(2)); (SEE N.Y.S. JURIS PRUDENCE, SECTION 235-AE; MOTION TO AMEND CANNOT BE DENIED); (SEE RAMCHAIR, 601 F.3d 66 (2010))

WITH RESPECT TO SUPREME COURT HOLDINGS IN DAYILA V. DAVIS, MENTIONED AT PAGE 4 IN THIS PAPER, THE ASSIGNED APPELLATE COUNSEL FROM LEGAL AID, KERRY ELGARTEN BY HIS DISPARAGEMENT AND DOCUMENTED SUBMISSION TO THE STATE APPELLATE COURT OF A "JUDGMENT Roll" TO CONTRADICT HIS CLIENT'S CLAIM ALLEGING IN COMPLETE RECORDS ON DIRECT APPEAL, IT SHOULD BE NOTED THAT SUCH ACTION AND SUBMISSION TO THE APPELLATE COURT UNDER PEOPLE V. VASQUEZ, 70 NY2d 1 (1987) CLEARLY SHOWS, DEMONSTRATES, OR

REPRESENTS VALIDATION OF PRO-SE'S CLAIM FOR "INEFFECTIVE ASSISTANCE" WHICH WAS DULY EXHAUSTED VIA STATE MOTION FOR ERROR CORAM NOBIS - BECAUSE IT SHOWS, COUNSEL'S KNOWLEDGE OF "INCOMPLETE" RECORD ON DIRECT APPEAL - UNDER STATE COURT OF APPEALS HOLDINGS IN PEOPLE V. VASQUEZ, 70 NY2d 1 (1987), THE DISTRICT COURT'S HOLDINGS, AND SUBSEQUENT CIRCUIT COURT'S FINDINGS IN RAMCHAIR, SUPRA. MAY COMPARE THIS CASE'S "OMISSION" OF WRONGFULL PROCEEDS OF CPL 330.30 AND CPLR 5525 (c) MOTIONS TO RAMCHAIR'S:

"... APPELLATE COUNSEL OMITTED SIGNIFICANT AND OBVIOUS ISSUES WHILE PURSUING ISSUES THAT WERE CLEARLY AND SIGNIFICANTLY WEAKER..." (RAMCHAIR, 601 F.3d 66)

CONTRARY TO APPELLATE COUNSEL'S "DISPARAGEMENT" OF HIS CLIENT'S "INEFFECT ASSISTANCE" CLAIM, THE "JUDGMENT ROLL" IS AN OFFICIAL STATEMENT OF WHAT THE BASIC FILE OF THE CASE SHOULD CONTAIN..." (CPLR 5017(b)) - CPLR 5525 (c) IS "NOT" INTERCHANGEABLE WITH CPLR 5017(b).

RESPECTFULLY, STATE COURT'S FAILURE TO OBSERVE
PROCEDURAL RULES WITH REGARD TO CPLR 5525
IS ALLEGEDLY, AN ON-GOING OCCURENCE OF WHICH
STATE COURTS CONTINUE TO PRACTICE IN VIOLATION OF
FEDERAL DUE PROCESS AS EXAMPLED IN ERNEST LL v.
ROSEMARY LL, 50 AD2d 706 (3 DEPT. 1975):

"... SINCE AN APPELLATE COURT DOES NOT
ORDINARILY CONSIDER MATTERS OUTSIDE THE
RECORD, TRIAL JUDGE AND THE PARTIES MUST BE
CAREFUL TO INSURE THAT THE TRANSCRIPTS
REFLECT ALL MATTERS WHICH THEY MIGHT WISH
TO URGE ON APPEAL AND IS NOT DEFICIENT OR
INCOMPLETE IN ANY WAY..."

(SEE ALSO, PEOPLE v. FOSTER, 165 AD2d 956 (1990)
RE: "SETTLEMENT OF TRANSCRIPTS"; LOUSART v. HAMMOCK,
745 F.2d 776 RE: "FAILING TO EXPLICITLY RAISE CLAIM
ON RECORD..."; BURRELL v. SWARTZ, 558 F. Supp. 91
(1983) RE: "PROCEDURE FOLLOWED IN SETTLING
TRANSCRIPTS WAS FAIR..."; (MC QUIGGIN v. PERKINS,
569 U.S. 383, 133 S. Ct. 1928 AT 1931-1932 (2013) RE:
"FAILURE TO OBSERVE PROCEDURAL RULES"; (COMPARE
"THRESHOLD OF REVERSIBLE ERROR," AT PEOPLE v.
DOLCE, 196 AD2d 49 (4 DEPT. 1994); PEOPLE v. ANGORA,
13 AD2d 72 (1 DEPT. 1981)).

WHEREFORE THE INSTANT PETITION FOR A WRIT OF CERTIORARI MAY ALLEGEDLY WARRANT "EXAMINATION AT THE CERTIFICATE OF APPEALABILITY (COA) STAGE OF A HABEAS PROCEEDING TO A THRESHOLD INQUIRY INTO THE UNDERLYING MERITS OF THE CLAIM, AND ASK ONLY IF THE DISTRICT COURT'S DECISION WAS DEBATABLE. 28 USCA SECTION 2253 (C)(1), CITING MILLER-EL V. COCKRELL, 537 U.S. AT 327, 348..." (SEE BUCK V. DAVIS, 137 S. CT. 759 (2017) CERTIORARI GRANTED)

"...THAT A PRISONER HAS FAILED TO MAKE THE ULTIMATE SHOWING AT CERTIFICATE OF APPEALABILITY STAGE; THAT HIS CLAIM IS MERITORIOUS DOES NOT LOGICALLY MEAN HE FAILED TO MAKE A PRELIMINARY SHOWING THAT HIS CLAIM WAS DEBATABLE, AS REQUIRED FOR A COA, THUS WHEN A REVIEWING COURT INVERTS THE STATUTORY ORDER OF OPERATIONS AND FIRST DECIDES THE MERITS OF AN APPEAL, THEN JUSTIFIES ITS DENIAL OF A COA BASED ON ITS ADJUDICATION OF THE ACTUAL MERITS, IT HAS PLACED TOO HEAVY A BURDEN ON THE PRISONER AT THE COA STAGE. 28 USCA SECTION 2253 (C)(2)" - (BUCK V. DAVIS, 137 S. CT. 759 (2017))

WHEREFORE THE CIRCUMSTANCES OF THIS CASE ARE NOT UNLIKE FINDINGS IN BUCK v. DAVIS, 137 S. Ct. 759 (2017) CITING MILLER-EL v. COCKRELL, 537 U.S. at 327, 348 (2003) - RE: "THRESHOLD INQUIRY," EXCEPT IN BUCK, SUPRA, PETITIONER FOR UNITED STATES SUPREME COURT RELIEF VIA CERTIORARI DID "NOT" HAVE TO CONTENT WITH THE CIRCUIT AND DISTRICT COURT "FAILURE" TO OBSERVE STATE COURT UNDERLYING CONSTITUTIONAL VIOLATIONS CONCERNING "PROCEDURAL RULES" CITED IN MCQUIGGINS v. PERKINS, 133 S. Ct. 1928 AT 1931-1932 (2013), PARTICULARLY WHERE THE STATE COURT HAVE OBVIOUSLY DEPRIVED STATE CONVICTED DEFENDANT OF HIS FUNDAMENTAL RIGHT TO "AMEND/SETTLE" THE RECORD ON DIRECT APPEAL PURSUANT TO CPLR 5525(c). MOREOVER, UNDER UNITED STATES SUPREME COURT HOLDINGS IN DAVILA v. DAVIS, 137 S. Ct. 2058 (2017) - THE CONSTITUTIONAL, 14TH AMENDMENT VIOLATION ERROR IS "IMPUTED TO THE STATE," BECAUSE THE PUBLIC RECORDS IN THIS CASE HAVE BEEN LOST OR MISSING PRO-SE MOTION DATED VIA CERTIFIED MAIL ON JUNE 01, 2006. IT SHOULD BE NOTED THAT, ABSENT THE PRODUCTION OF MOTION TO AMEND THE RECORD, THE TRIAL AND MOTION COURT'S CONFIRMED, WRONGFUL OR UNLAWFUL PROCESSING OF THE

CPLR 5525(c) MOTION AS AN UNSOLICITED AND
"TIME-BARRIED" CPLR 2221(c) MOTION WOULD
CONSTITUTE WHAT AMOUNTS TO AN INSUFFICIENT
STATE COURT CORRECTIVE PROCEDURE WHICH
WOULD "NOT" BE SUBJECTED TO CONDITIONS
HOLDING IN ESTELLE v. McGUIRE, 112 S. Ct. 475,
488 (1991) - THAT ALLEGEDLY HAVE "UNREASONABLY"
APPLIED IN THIS CASE... (PETITIONER HAVE BEEN
LIABLE FOR RESPONDENT'S ERRED PROCESSING...)
THE "OPERATIVE PLEADINGS" HERE, IF LIBERALLY
CONSTRUCTED, CONCERNS STATE DEFENDANT'S RIGHT
TO APPEAL HIS CONVICTION "EXCLUSIVELY" IN
COMPLIANCE WITH MATTER OF STATE v. KING,
36 N.Y.2d 59 (1975) AND MATHIS v. HOOD, 937
F.2d 790, 794 (2 Cir. 1991), (SEE ALSO, PEOPLE v.
HARRISON, 85 N.Y.2d 794, 796 (1995) RE: MANIFEST PREJUDICE)
CIRCUIT AND DISTRICT COURTS HAVE MISTAKENLY
VIEWED THIS CASE UNDER THE HOLDINGS IN
ESTELLE v. McGUIRE, supra, RATHER THAN VIEW
IT AS AN EXAMPLE WHERE APPELLATE ATTORNEY'S
DEFICIENCY UNDER HOLDINGS IN HINTON v.
ALABAMA, 134 S. Ct. 1081, 1089 (2014) - CLEARLY
SHOWS THAT COUNSEL REPRESENTATION WAS
ONE OF "DECEPTION AND DISPARAGEMENT."
(SEE SECTION 487 OF THE JUDICIARY LAW; SECTION
295 OF THE JUDICIARY LAW; CPLR 5525(c) WHICH
HAVE "NO" COUNTERPART)

WHEREFORE, IN VIEW OF THIS COURT'S FEBRUARY 04, 2019 CORRESPONDENCE DIRECTING THIS PETITIONER TO REDUCE THE ORIGINAL CERTIORARI PAGES TO A 40 PAGE MAXIMUM. IT SHOULD BE NOTED THAT THE STATE APPELLATE COURT IS NOW IN THE PROCESS OF "RECONSIDERING" ITS PREVIOUS DENIAL OF PETITION FOR ERROR CORAM NOBIS RELIEF. (People v. Ralph Hall, IND. NO. 3080-2004, MOTION NO. M-4847) - SUCH RECONSIDERATION HANGS BY THE REINS UPON THE SUBSTANTIAL PROOF THAT THE LOWER STATE, TRIAL AND MOTION COURT MAY HAVE BEEN INVOLVED IN "MALFEASANCE" WHERE PUBLIC RECORD ON APPEAL, AS THE RESULT OF MOTION FOR "SUBPOENA DUCES TECUM" - HAVE DISCLOSED "PREJUDICIAL IMPAIRMENT," BECAUSE RECORD IS "NOT" FREE OF SUBSTANTIVE ERROR. (ON NOV. 01, 2018, THE OFFICE OF N.Y.C. DISTRICT ATTORNEY CONCEDED THAT THE PEOPLE CANNOT PRODUCE THE MOTION IT HAD BASED ITS DENIAL OF THE UNDERLYING CPLR 5525 (c) MOTION ON, UNDER THE HOLDINGS IN People v. Harrison, 85 N.Y.2d 794, 796 (1995)) IN OTHER WORDS, THE STATE'S POSITION AT THE DISTRICT AND CIRCUIT COURT'S LEVEL IN THIS CASE WAS ACTUALLY "UNSUPPORTED" BY FACTS. THUS, IT IS NOW SHOWN, UNDOUBTABLY, THAT THE PEOPLE'S PREVIOUS ARGUMENT THAT APPELLATE COUNSEL'S REPRESENTATION ON DIRECT APPEAL WAS "NOT" INEFFECTIVE CONSTITUTED A RESPONDENT POSITION THAT COULD "NOT" BE SUBSTANTIATED BY EITHER FACT OR LAW. MOREOVER, HAD APPELLATE COUNSEL "NOT" DISPARAGED HIS CLIENT'S UNRECORDED RECORD CLAIM, THE RESULT OF THIS CASE WOULD HAVE BEEN DIFFERENT. (SEE HINTON v. ALABAMA, 134 S. Ct. 1081, 1089 (2014).)

THIS CASE HAVE ACTUALLY ATTACKED THE INTEGRITY OF THE DISTRICT AND CIRCUIT COURTS FOR FAILING TO JUDICIALLY NOTICE THE "MISREPRESENTATION" OF ESTABLISHED FACTS AND LAW - CONCERNING ALLEGED FRAUDULENT APPELLATE REPRESENTATION ON FIRST TIME DIRECT APPEAL. (COMPARE William v. Taylor, 529 U.S. 408-411 (2000) - WHERE IN THIS CASE, PRO-SE PETITIONER HAVE BEEN HELD TO MORE STRINGENT STANDARDS THAN THOSE ANNOUNCED IN Lopez v. Smith, 135 S. Ct. 1 (2014) RE: "LIBERAL CONSTRUCT")

CIRCUIT AND DISTRICT COURT "FAILED" TO JUDICIALLY NOTICE THAT THE ALLEGED, INCOMPLETE RECORD FOR DIRECT APPEAL, "PRECLUDES STATE APPELLATE COURT FROM RENDERING FINAL JUDGMENT IN APPELLANT'S FAVOR." (SEE Smoley v. Merrick et al., 20 A.D.2d 654 (1968); BERKOWITZ, supra, 21 N.Y.S.2d 206 (1940); King v. King, 218 N.Y.S.2d 230, 233

AS IN BUCK v. DAVIS, 137 S. Ct. 759 (2017), DEFECTIVE APPELLATE ATTORNEY REPRESENTATION ON DIRECT APPEAL SERVED ONLY TO DISPARAGE HIS CLIENT'S UNRECORDED PRE-SENTENCING MOTION CLAIM AND DECEIVE THE APPELLATE COURT ABOUT MOTION TO AMEND/SETTLE RECORD ON APPEAL. (SEE Strickland, 466 U.S. at 690 (1984))

CIRCUIT AND DISTRICT COURT IN THIS CASE HAVE FAILED TO LIBERALLY CONSTRUCT PRO-SE PETITIONER'S CLAIMS, EVEN IN THE FACE OF STATE RESPONDENT'S "INABILITY" TO PRODUCE THE UNDERLYING CPLR 5525(c) MOTION DATED JUNE 01, 2006, WHICH WAS UNLAWFULLY PROCESSED AS A CPLR 2221(e). INSTEAD, THE DISTRICT COURT DETERMINED THAT PETITIONER WAS REQUIRED TO SUBSTANTIVELY ALLEGE ADDITIONAL "CONSTITUTIONAL VIOLATIONS OF DUE PROCESS RIGHTS THAT WOULD MEASURE UP TO THE "EXTRAORDINARY CIRCUMSTANCES" PROVISION IN Rule 60(b)(6) SUCH REQUIREMENT WERE ADDRESSED BY PETITIONER'S MOTION TO RECONSIDER IN THE CIRCUIT COURT'S EN BANC REHEARING, BUT THE APPLICATION SOUGHT VIA HOLDINGS IN BUCK V. DAVIS, 137 S. Ct. 759 (2017) - WERE REJECTED AND OVER-RULED, DESPITE THE SUPREME COURT'S CLARIFICATIONS REGARDING GRANTINGS OF A CERTIFICATE OF APPEALABILITY, (COA). IT SHOULD ALSO BE NOTED THAT THE CIRCUIT COURT'S DENIAL ENTERED JULY 03, 2018 AND MANDATED JULY 10, 2018 WAS NOT FORWARDED TO PETITIONER FOR HIS APPLICATION FOR WRIT OF HABEAS CORPUS UNTIL SEPTEMBER 26, 2018, WHEN IT WAS RECEIVED, WITH A OCTOBER 03, 2018 "DUE DATE." THE DISTRICT AND CIRCUIT COURT'S INTEGRITY REST UPON ITS HANDLING OF THIS CASE.

A PETITION FOR WRIT OF CERTIORARI IS SURELY WARRANTED, IF FOR NO OTHER REASON THAN TO EXERCISE THE SUPREME COURT'S POWERS WHERE THEY ARE NOT OFTEN GIVEN THE OPPORTUNITY TO ADDRESS THE CIRCUIT COURT'S TENDENCY TO "REFINE OR SHARPENED" THE GENERAL PRINCIPLE OF SUPREME COURT HOLDINGS. IN THIS CASE, THE ALLEGED, "UNREASONABLE" APPLICATIONS OF SUPREME COURT LAW HAVE BEEN DEMONSTRATED AS WRONGFULLY APPLIED CONCERNING "PROCEDURAL RULES" UNDER MCQUIGGINS V. PERKINS, 133 S. CT, AT 1931-1932 (2013) AND, CONE V. BELL, 556 U.S. 449 (2009) AS DISTINGUISHED FROM "PROCEDURAL RULES" IN ESTELLE V. MCGUIRE, 112 S. CT. 475, 480 (1991) ... NEVERTHELESS, PRO-SE STATE PETITIONER DOES NOT HAVE MUCH TO DEPEND ON OUTSIDE OF SUPREME COURT ORDERS UNDER ERICKSON V. PARBUS, 551 U.S. 89 (2007), HAINES V. KERNER, 404 U.S. 519 (1972), OR MOST RECENTLY AT LOPEZ V. SMITH, 135 S. CT. 1 (2014) RE: "LIBERAL CONSTRUER".

WITH THE ABOVE BEING SAID, THIS PRO-SE PETITIONER ASK ONLY THAT HIS PLEADINGS NOT BE VIEWED AS FRIVOLOUS.

WHEREFORE PETITIONER'S PRO-SE PETITION FOR FEDERAL HABEAS CORPUS RELIEF WAS DEPRIVED OF SUPREME COURT'S ENTITLEMENT TO "LIBERAL CONSTRUE" UNDER HUGHES V. ROWE, 449 U.S. 5, 9 (1980), WHERE DISTRICT COURT DETERMINED "NOT TO" CONSIDER THE ABOVE FACTUAL, SUBSTANTIAL SHOWING OF CONSTITUTIONAL VIOLATIONS IN SATISFACTION OF SHOWING APPOINTED APPELLATE COUNSEL WAS "INEFFECTIVE" UNDER THE STANDARDS OF HINTON V. ALABAMA, 134 S. CT. 1081, 1089 (2014) CITING STRICKLAND, RE: APPELLATE COUNSEL'S PERFORMANCE DISPARAGED HIS CLIENT'S REVERSIBLE "INCOMPLETE RECORD" CLAIM BY ADVISING THE APPELLATE COURT WITH PREJUDICIAL AND INACCURATE INFORMATION THAT HIS CLIENT'S UNRECORDED MOTION CLAIM WAS MERITLESS, BECAUSE A "JUDGMENT ROLL" CONTAINED IN THE RECORD ON DIRECT APPEAL PURSUANT TO CPLR 5017(b) WOULD SERVE AS A "COUNTERPART" TO MOTION TO AMEND THE RECORD PURSUANT TO CPLR 5525(c). A LIBERAL CONSTRUE VIA SUPREME COURT HOLDINGS WOULD SHOW SUCH INFORMATION TO BE "UNPRECEDENTED" ERR, CAUSING UNRECORDED MOTION CLAIM TO BE PRECLUDED

AND/OR PROCEDURALLY BARRED BECAUSE SUCH MOTION WAS DEVOID OF THE "EXTRINSIC" RECORD. (COMPARE CPLR 5525(c) AS DISTINGUISHED FROM CPLR 5017(b)) APPELLATE ATTORNEY'S ALLEGED DEFICIENT PERFORMANCE HAVE HELPED THE STATE RESPONDENT'S AVOID SCRUTINY WHERE THE "PUBLIC RECORD" IS ALSO ABSENT PETITIONER'S JULY 06, 2006 DENIAL OF THE MISPROCESSED CPLR 5525(c) MOTION FILED JUNE 01, 2006. (SEE HARRISON, SUPRA, AS IT IS SUPPORTED BY DAVILA V. DAVIS, SUPRA, RE: "ERROR IS IMPUTED TO THE STATE")

CERTIORARI SHOULD BE GRANTED AND AMICUS CURIAE INTERVENTION SHOULD BE INVITED, AT THIS COURT'S DISCRETION, OR, IN THE INTEREST OF JUSTICE.

Respectfully submitted,

DATED, Aug. 30, 2018

RE-SUBMITTED, FEB. 2019

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