

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

\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

ANTHONY JAMES BRIGHTWELL, JR.  
\_\_\_\_\_  
(Your Name) — PETITIONER

vs.

SUPERINTENDENT FAYETTE, SCI, et al.  
\_\_\_\_\_  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANTHONY JAMES BRIGHTWELL, JR.

\_\_\_\_\_  
(Your Name)

BM-2927. SCI Fayette. 48 Overlook Drive

\_\_\_\_\_  
(Address)

LaBelle, PA 15450

\_\_\_\_\_  
(City, State, Zip Code)

Incarcerated. No phone available.

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

Petitioner's Constitutional Rights were violated when he guilty plea was not knowingly and intelligently made when the details of the guilty plea were changes and Petitioner did not fully understand what he was pleading guilty to or what he was initialing on the guilty plea form.

In addition, Petitioner received ineffective assistance of counsel for the above, and due to Petitioner receiving a lengthier sentence than that which was agreed upon by the State.

## LIST OF PARTIES

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

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

Superintendent of SCI Fayette.

The District Attorney of the County of Chester, PA.

The Attorney General of the State of Pennsylvania.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>FEDERAL</u>	
<u>Bousley v. United States</u> , 523 U.S. 614 (1998)	6
<u>Boykin v. Alabama</u> , 395 U.S. 238 (1969)	8
<u>Brady v. United States</u> , 397 U.S. 742 (1970)	
<u>Mable v. Coleman</u> , 2014 U.S. Dist. LEXIS 56358 (2014)	6
<u>Marshall v. Lonbenger</u> , 459 U.S. 422 (1983)	6
<u>Parke v. Raley</u> , 506 U.S. 20 (1992)	8
<u>Strickland v. Wasnington</u> , 466 U.S. 669 (1984)	8
<u>STATE</u>	
<u>Commonwealth of PA v. Brightwell</u> , 2679 EDA 2015	6
<u>Commonwealth v. Finley</u> , 550 A.2d 213 (Pa. Super. 1988)	4
<u>Commonwealth v. Turner</u> , 544 A.2d 927 (Pa. 1988)	4
<u>STATUTES AND RULES</u>	
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28 U.S.C. §2254	4
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18 Pa.C.S.A. §2502(c)	4
18 Pa.C.S.A. §3701(A)(1)(i)	4
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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 \_\_\_\_\_; 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 \_\_\_\_\_; 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 \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 8/3/18.

☒ No petition for rehearing was timely filed in my case.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ 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

### AMENDMENT V

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

### AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.



## STATEMENT OF THE CASE

On 3/31/14, Petitioner pled guilty to one count of third-degree murder (18 Pa.C.S.A. §2502(c), one count of Robbery (Inflict Serious Bodily Injury (18 Pa.C.S.A. §3701 (A)(1)(i))), and one count of Criminal Conspiracy to Commit Robbery (18 Pa.C.S.A. §903; 18 Pa.C.S.A. §3701(A)(1)(i)).

On 3/31/14, Petitioner was sentenced to an aggregate term of thirty (30) years and not more than sixty (60) years.

No direct appeals were filed. However, on 5/2/15 Petitioner filed a petition for post conviction collateral relief (PCRA). Robert P. Brendza, Esq. (PCRA Counsel) was appointed to represent Petitioner. Nearly a year later, PCRA counsel filed a "no-merit" letter pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988).

The PCRA Court denied the PCRA, petitioner appealed to the Superior and Supreme Court's of Pennsylvania, and filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 in the United States District Court for the Eastern District of Pennsylvania. The Magistrate Judge issued a Report and Recommendation stating that the habeas corpus petition should be denied since it lacked merit. Petitioner filed Objections to the R & R, the United States District Court adopted the R & R.

Petitioner filed an Application for Certificate of Appealability in the United States Court of Appeals for the Third Circuit. On 8/3/18, the United States Court of Appeals for the Third Circuit denied the request for a certificate of appealability, stating; "Essentially for the reasons given by the

District Court, in adopting the Magistrate Judge's recommendation.

## REASONS FOR GRANTING THE PETITION

Petitioner presented evidence that he was incompetent to plead guilty. Due Process requires that a defendant's plea be voluntary and intelligent. Bousley v. United States, 523 U.S. 614, 618 (1998). See also Brady v. United States, 397 U.S. 742, 748 (1970). The plea cannot be induced by threats or misrepresentations and the voluntariness of a plea presents a question of law. Marshall v. Lonberger, 459 U.S. 422, 431-32 (1983). A plea is knowing and intelligent if it is done "with sufficient awareness of the relevant circumstances and likely consequences" and where there is nothing to indicate that the defendant is incompetent or otherwise not in control of his mental faculties, is aware of the nature of the charges, and is advised by competent counsel. Brady, supra, 397 U.S. at 748, 756. (emphases added)(above cited from Mable v. Coleman, 2014 U.S. Dist. LEXIS 56358, dated; 4/23/14).

Petitioner presented evidence that he was incompetent to plead guilty. In support, the Superior Court held that Petitioner informed Attorney Brendza that "he suffered from attention deficit disorder, and had other learning disabilities, that would render . . . the guilty plea, involuntary. Commonwealth v. Brightwell, No. 2679 EDA 2015 at 11. (7/26/16 Super Ct. Mem. Op.).

In addition, the plea/sentencing Court was aware of Petitioner suffering from attention deficit disorder (N.T., 3/31/14, Plea/Sent. Hearing, at 21.).

Also, Petitioner informed the Magistrate Judge that he was 25 years old at the time of these proceedings, that he informed

PCRA counsel, that he told his plea/sentencing counsel that he had mental problems, and gave PCRA counsel contact information to a person who would provide records of Petitioner's mental problems. (Petitioner's Reply at 8).

Even the Plea/Sentencing Court questions the severity and (indirectly) the sanity of the new plea petitioner was entering into when the Court stated; ". . . the sentence is even more than 30 to 60 years. Its 30 to 60 years when you say an aggregate, that means he has to do 20 to 40, get paroled, then do 7 to 14, get paroled on that, and then do 3 to 6 . . it's not a 30 to 60 strait sentence . . . (N.T., Plea/Sentence at 11-12).

In Petitioner's 6/29/15 Response to Notice to Dismiss PCRA he specifically argued PCRA counsel's ineffectiveness for failing to raise plea/sentence counsel's ineffectiveness regarding Petitioner's historic mental history, or simply request for a doctor examine him to see if his mental problems presented a barrier for him to even waive his Constitutional right to a trial, or to plead guilty, like PCRA counsel, the magistrate judge and the district court made no mention of, or his mental health problems and in how it affected his ability to fully understand, and make a voluntary and intelligent plea of guilt to a illegal sentence that even exceeds the 30 to 60 year sentence he incompetently agreed to, due to counsels ineffectiveness.

Petitioner's incompetence to enter into a knowingly and intelligent plea, and even the sentencing court's shock at the

change in the sentence, was never addressed, or even mentioned, by the Magistrate Judge, or the District Court.

The reasoning by the Magistrate Judge and Respondent's that petitioner was avoiding a life sentence is clearly a statement, that is not based on facts, since based on the circumstances of the crime, (Petitioner shot up through a roof of a car, not intended to hit anyone, and not hitting anyone) petitioner would have never received a verdict that called for a life sentence if convicted by a judge or jury, making petitioner's guilty plea a result of ignorance, incomprehension, coercion, improper inducement and basically a threat that did not exist. The record demonstrates that this guilty plea was not both knowing and voluntarily resulting in this guilty plea being unconstitutional. Boykin v. Alabama, 395 U.S. 238, 242-43 (1969); and Parke v. Raley, 506 U.S. 20, 28 (1992), Strickland v. Washington, 466 U.S. 668 (1984).

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony James Brightwell, Jr.

Anthony James Brightwell, Jr.

Petitioner, Pro se, GM-2927, 48 Overlook Drive, Labelle, PA

Date: 10/26/18

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