No,

IN THE

Supreme Court of the United States

KWAME ASAFO-ADJEI

Petitioner

V.

STATE OF MARYLAND

Respondent

On Petition For Writ Of Certiorari

To The Court Of Appeals Of Maryland

PETITION FOR WRIT OF CERTIORARI

KWAME ASAFO-ADJEI

6025 OLD HARFORD RD.

BALTIMORE MD, 21214

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QUESTIONS PRESENTED

Maryland Rule 4-342(d) Presentence disclosures by the State's Attorney. Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

Provisions of section (d) are mandatory and are not waived by mere failure to object at the time of trial. Dunn v. State 65 Md. App. 637, 501 A.2d. 881 (1985).

Since the word "shall" makes it mandatory that the State disclose any evidence it expects to present, and not merely identification of those whom it might call to testify, the giving at a hearing of only a few minutes notice of the intent to call a witness required remand for sentencing. The rule's purpose here could not be carried out absent the required notice to the defense. **Green v. State 127 Md App.758, 736 A.2d 450 (1999).**

Per Judge McWilliams in Ison v. Phoenix Assurance Company of New York, 259 Md. 564, 570 (1970).

Maryland Rules "are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and followed."

Black Law Dictionary defines Mandatory:

Of, relating to, or constituting a command; required; preemptory.

A provision in a statute is said to be mandatory when disobedience to it, or want of exact compliance with it will make the act done under the statute absolutely void.

Void: Of no legal effect, null.

Void ab initio: Null from the beginning as from the first moment when a contract is entered into or act is done. A contract is void ab initio if it seriously offends law or public policy.

Question 1. Is the failure of the Maryland Court of Appeals to enforce the Maryland Rule 4-342(d) a denial of a citizen's equal protection right under the Fourteenth Amendment of the U.S. Constitution?

A void sentence does not exist in law, and no space or time will sustain it. Therefore the Maryland Special Court of Appeals and the Maryland Court of Appeals are enjoined by law to vacate such void sentence.

Upon filing this appeal at the Circuit Court for Anne Arundel County, Judge Laura S. Kiessling, issued an Order To Show Cause why the The Notice of appeal should not be stricken for late filing as prescribed by Maryland Rule 8-204. Upon Filing the affidavit in response to the Order, pursuant to Maryland Rule 8-203(b), the Honorable Judge ordered the leave to appeal be Granted.
The Court Of Special Appeals denied the Appeal solely on the ground that it was late in filing as prescribed by Maryland Rule 8-204 without regard to Rule 8-203(b) as required by the Rules and considered by Judge Laura S. Kiessling.
The Maryland Court Of Appeals denied a review "as there has been no showing that review by certiorari is desirable and in the public interest".
Maryland Rule 8-204(b). An application for leave to appeal to the Court of Special Appeals shall be filed in duplicate with the clerk of the lower court. The application shall be filed within 30 days after entry of the judgment or order from which the appeal is sought.
Rule 8-203(b) Notice. Before the lower court strikes a notice of appeal or application for leave to appeal on its own initiative, the clerk of the court shall serve on all parties pursuant to Rule 1-321 a notice that an order striking the notice of appeal or application for leave will be entered unless a response is filed within 15 days after service showing good cause why the notice or application should not be stricken.
Rule 1-204(a) Generally. When these rules or an order of court require or allow an act to be done at or within a specified time, the court, on motion of any party and cause shown, may (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect.
But for the erroneous information given to the petitioner by the Circuit Court to the effect that "only the attorney on file could file an appeal on the case", thus precluding the petitioner from acting on his own, the appeal would have been filed within time.

Question 2. Is failure of the Maryland Court of Special Appeals and also the Maryland Court of Appeals to consider Maryland Rule 8-203(b) and Rule 1-204(a)(3) in the circumstances of this case a deprivation of life, liberty, or property without due process of law as required by the Fifth and Fourteenth Amendments of the U.S. Constitution?

Question 3. Should Plea obtained by the prosecution through coercion, intimidation and threats be accepted in the public interest? Should Plea bargain be an instrument of abuse by the government? How many countless innocent citizens are languishing in prisons through the abuse of governmental plea bargain?

Question 4. What is the effect of an ineffective counsel?

Question 5. What happens when on the facts available it is impossible for the government to establish an element of intent to defraud?

Should the government be allowed to circumvent and escape its constitutional duty of proof by a claimed sham plea bargain deal?
Is an extraction of such a plea a deprivation of life, liberty or property of a citizen under the Fifth and Fourteenth Amendments due process clauses?

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3. Ison v. Phoenix Assurance Co. of New York 259 Md. 564 (1970)
4. Hill v. Lockhart 474 U.S. 59
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10. U.S. v. Morrison 449 U.S. 361
11. Cuyler v. Sullivan 446 U.S. 343
12. Ander's v. California 386 U.S. 736
13. Williams v. Twomay 510 F.2nd 634 (CA7)
14. Davis v. Alaska 415 U.S. 308
15. Smith v. Illinois 390 U.S. 129
16. Alaska v. Alabama 287 U.S. 45
17. Cumberland & Ohio Co. of Texas In. v. First National Bank 936 F.2nd 846
18. Tallmadge v. Robinson 109 N.E. 2nd 496 (Ohio 1952).

STATUTES AND RULES:

Maryland Rule 4-342(d).

Maryland Rules 8-204(b); 8-203(b); 1-204(a)(3); 1-321

Equal Protection Clause of the Fourteenth Amendment of the U.S.Constitution.

Fifth and Fourteenth Amendments of the U.S. Constitution.

6th Amendment U.S. Constitution.

Restatement (2nd) of Contract (1981) ss. 174,175,176.

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 _____ 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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] 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,
[X] is unpublished.

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[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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 Dec. 14, 2018
A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: OCTOBER 4, 2018, 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).

SYNOPSIS:

The petitioner was charged with Misdemeanor Conspiracy to commit Medicaid Fraud for aiding his Doctor friend write medical prescriptions and given to his patients without physical consultation. The Doctor was sick and undergone surgery and confined to his house and therefore could not be at his office which was mined by his office staff. The petitioner helped him by copying the content of old prescriptions on file of patients for his review and signature. The petitioner collected the files from the office and sent to the house for the Doctor to work on it. All this was done at the request of the Doctor. The Doctor issued the prescriptions solely to ensure that the patients had medication to prevent them from hitting the streets for illegal drugs like cocaine and heroin.
For failing to meet with the patients for consultation before dispensing with the prescriptions he was charged with Medicaid fraud. My knowledge in this matter is limited to November 2016 to April 2017 when I extended aid to a very sick classmate with no expectation of any financial reward.

Upon a questionable plea deal, one of the subject matter of this appeal, the petitioner was sentenced on the 6th of June 2018, for 30 days imprisonment and 5 years probation and reported to and remained in the Anne Arundel County Jail between the 8th of June until the 27th June 2018.

On the 2nd July 2018, the petitioner called the Office of the Clerk, Circuit Court for Anne Arundel County with the intention of filing an appeal. The officer who took the call claimed that it is only my Attorney on record who can file an appeal on my behalf. I could not do so on my own.
Since my release from jail, I made every effort to talk to or meet with my attorney without success. On the 16th July 2018, in my best interest I filed the appeal.

Maryland Rule 4-342(d) Presentence disclosures by the State's Attorney. Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

Provisions of section (d) are mandatory and are not waived by mere failure to object at the time of trial. Dunn v. State 65 Md. App. 637, 501 A.2d. 881 (1985).

Since the word "shall" makes it mandatory that the State disclose any evidence it expects to present, and not merely identification of those whom it might call to testify, the giving at a hearing of only a few minutes notice of the intent to call a witness required remand for sentencing. The rule's purpose here could not be

carried out absent the required notice to the defense. **Green v. State 127 Md App.758, 736 A.2d 450 (1999).**
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Black Law Dictionary defines Mandatory:
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A provision in a statute is said to be mandatory when disobedience to it, or want of exact compliance with it will make the act done under the statute absolutely void.
Void: Of no legal effect, null.
Void ab initio: Null from the beginning as from the first moment when a contract is entered into or act is done. A contract is void ab initio if it seriously offends law or public policy.

Question 5. What is the legal status or effect of a sentence in clear violation of Md. Rule 4-342(d) ?
If it is void; Could the Maryland Court of Special Appeals retain it even when an appeal against it was late filed?
A void sentence does not exist in law, and no space or time will sustain it. Therefore the Maryland Special Court of Appeals and the Maryland Court of Appeals are enjoined by law to vacate such void sentence.

SENTENCING

On June 6 2018 I appeared before the court for sentencing on the charge of one count of conspiracy to defraud Medicare. Unfortunately, at this stage the prosecutor out of nowhere informed the court that for one time in 2017 I was prescribed and used "Tylonol 3" and therefore I was a drug addict. The honorable Judge was so much incensed by this information that he strongly chastised the defendant in open court and sentenced the defendant to 30 days in jail and 5 years probation casting the defendant to drug addict program and treatment and $3245 fine. The defendant has never in his life drank alcohol, smoked or abused drugs. The State was bound by law to give notice of this Tylonol 3 information to the defense sufficiently in advance before the hearing as required by Rule 4-342(d). The court was in clear violation of Rule 4-342(d) by using this information to sentence the defendant. Failure to abide by the mandatory Rule 4-342(d) voids the sentence and as such the sentence should be revoked and vacated.

The defendant was not before the court on any charge of drug abuse but the sentencing is one directed at a drug addict.

This act of the State's Attorney is a clear violation of Maryland Rule 4-342(d). Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information the State expect to present to the court for consideration in sentencing. **In Green v State of Maryland 127 Md. App. 758 (1998) the court has this to say about Rule 4-342(d):**

The word shall in the rule means that it was mandatory that the State disclose "any evidence it expected to present" not merely identification of those whom it might call to testify. The rule's purpose here could not be carried out absent the required notice to defense counsel.

Per **Judge McWilliams** in **Ison v Phoenix Assurance Company of New York, 259 Md. 564, 570** (1970) Maryland Rules "are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and (that they) are to be read and followed."

Held: By reason of the noncompliance with the rule this sentence must be vacated.

It is contended that the sentence herein is void and of no effect and no time and space can save it and lateness in appealing against it has no consequence.

> **The Maryland courts are saying that any sentence or judgment in violation of Rule 4-342(d) is void and should be vacated; and are not waived by mere failure to object at the time of trial. According to the court, nothing can save a void sentence and the 30 day late filing of an appeal against such void sentence has no consequence.**
>
> **Failure of the Maryland Court Of Appeals to act to vacate the void sentence is a violation of the defendant's Fifth and Fourteenth Amendments rights, a deprivation of life, liberty and property of the petitioner.**

Pursuant to Maryland Rule-204 and Rule 8-203(b) Anne Arundel Circuit County court Judge Laura S. Kiessling issued an Order to Show Cause why the Appeal should not be dismissed for late filing beyond the 30 days. Upon response to this the petitioner filed an affidavit which was duly considered and resulted in Judge Laura S. Kiessling granting the right of Appeal.
The Court of Special Appeals denied the appeal solely on the ground of late filing beyond the 30 days prescribed by Maryland Rule 8-204 and failed to take cognizance of Maryland Rule 8-203(b) and the ruling of Judge Laura S. Kiessling.

Maryland Court of Appeals further denied a review on ground that it is not in the public interest.

The petitioner is seeking a review of the Supreme Court claiming that but for the erroneous directives given by the Clerk of the Anne Arundel Circuit Court to the

effect that the petitioner could not file the appeal on his own and needed it to be done only by the Attorney on record, the appeal could have been filed on time. Principles of fundamental fairness requires the Special Court of Appeals and Maryland Court of Appeals to accept a review based on the affidavit of the petitioner in response to Judge S. Kiessling's Order to Show Cause.
The Fifth and Fourteenth Amendments prohibit governmental actions which would deprive "any person of life, liberty or property without due process of law.
The due process clauses also have a procedural aspect in that they guarantee that each person shall be accorded a certain 'process" if they are deprived of life, liberty, or property.
The honorable Circuit Court Judge Wachs grievously erred in law in his sentence of the petitioner. The failure of the Maryland Court of Appeals/Court of Special Appeals to grant a review is a deprivation of life,,liberty, and property of the petitioner.
The sentence of the Circuit Court judge is void being contrary to Maryland Rule 4-342(d) as applied in Green v State of Maryland 127 Md. App. 758.
To uphold the sentence is to deprive the petitioner of life, liberty, and property. When life, liberty, or property is at stake, the petitioner has a right to a fair procedure to a redress. In this instance the appeal process grants an aggrieved citizen the right to seek redress from a judgement or conviction deemed unjustified, void and unfair.

GROUNDS AND ARGUMENTS OF APPEAL

The charge is to the effect that the alleged conspirators had a common purpose or aim, that was to fraudulently take or receive money from the Medicare. Each individual stands to gain financially from the conspiracy.

- In the circumstances of this case, only the Westside Medical Group, a corporate entity had the capacity to bill and receive payment from the Medicare. It is only the Westside Medical Group that can and did receive payments or financial benefit from the Medicare. If we are going to lift the vail of incorporation, the persons who have ownership interest in the Westside Medical Group may receive any benefit. The defendant has no ownership interest in Westside Medical Group and was not an employee of the Group. The defendant was not in the position to bill Medicare much more to defraud Medicare. The defendant had no apparent ability to bring about the conceived result. Defendant had no Intent to defraud. In the short period when defendant appeared on the scene, the evidence on record only establish his intent to help a sick friend and had no intention to seek any financial gain, or reward, or defraud any person or entity. The defendant was not an employee of Dr. Shaw-Taylor. We are only friends with relation running back from high school since 1961.

- The charge could not stand because the defendant was not an employee of the company and received no financial or pecuniary benefit from any one.
- The legal and factual impossibility precluded conviction on the charge.
- Defendant has no medical knowledge and accept no responsibility for any prescription given to any patient. All prescriptions were the work and sole ownership of the Doctor.
- Other than copying the content of a file, the defendant never consulted or met with any patient of the clinic.

2. The Plea Bargain was tainted with illegality and lack of effective Counsel.

The law stipulates that Plea Bargain shall be voluntary. That both parties should negotiate at arms length. The agreement shall be free from coercion, threat or intimidation. Wherever there is any form of coercion, threat or intimidation result in voiding the said agreement. The defendant contends that the Plea Bargain herein was obtained by coercion, threats and intimidation. Due process of law requires that parties are afforded **reasonable time and space to make informed decisions. This never happened in this case.**

Attorneys are expected to review and discuss any given proposal to aid the client to reach an informed decision.

I was arrested on Wednesday 9th August 2017. I consulted and retained Mr. Howard Miliman as my defense attorney. Mr. Miliman decided that we should meet and review and discuss matters whenever he was furnished with the necessary discovery information by the prosecutor. I kept calling on him concerning the status of the case and his response always was not to worry since matters are under control. On Wednesday 22 November 2017, I had a call from Mr. Miliman who informed me that he had received information from the prosecutor and invited me to meet with him on Monday 27 November 2017 for the necessary review and discussion and we may need a labtop. Thursday 23 2017 was the Thanksgiving and it was because of the holidays that he decided on Monday the 27 2017.

On 27 November 2017, I went to Mr. Miliman's office at about 3pm in anticipation of the scheduled review and discussion. Unfortunately something dramatic and unexpected happened.

Mr Milliman suddenly put before me a written Plea Bargain and at that instance a voice came on his telephone which stated YOU SHOULD ACCEPT AND SIGN THIS NOW OR ELSE I AM CHARGING YOU WITH 17 COUNTS OF FELONY. I was totally amazed and confused with this unexpected confrontation. I protested and claimed that I am an attorney and I cannot afford to lose my Bar License for having committed no offense. The voice on the phone repeated "YOU ACCEPT IT NOW OR NEVER". Then Mr. Milliman came and claimed "THIS IS ONLY A MISDEMEANOR JUST LIKE ANY TRAFFIC OFFENSE AND WILL NOT AFFECT YOUR BAR". He continued to say that the 1st Count of the 2 charges should be taken off leaving only Count 2.

This drama took place in a split of seconds without any chance of my reading the content of the document placed in front of me.

Mr Milliman then asked the prosecutor for a rewrite of a single charge to be sent. Mr. Milliman then discharged me from his office saying he had other urgent matters to attend to and would call me to go back when the new document was received.

On Wednesdays 29 November 2017, Mr. Milliman invited me to his office and placed before me a signature page of a document and asked me to sign which I did and he also signed same.

After signing Mr. Milliman informed me to report to the Anne Arundel County Circuit Court, Annapolis on Friday 1st December 2017. On this day when the court was in session Mr.Milliman passed papers to me asking for my signature.

This plea deal is fragrant abuse of the legal process and a clear violation of the defendant's constitutional right to due process. The prosecutor's open threats, coercion and intimidation is an abuse of power and voids the agreement herein. The law frowns on acts of threats, coercion and intimidation because it is not acceptable in law.

In the circumstances herein reported, the defendant was denied any time and space to read and digest whatever information thrusted at him to be able to make the necessary **informed decision** required by law.

The Prosecutor had ample time to have served the defendant the proposed agreement and allowed sufficient space and time to have made an informed decision. The prosecutor abused his position by his/her blatant and open threats made to the defendant. Her actions are clear violation of the law.

It is humbly submitted that this is a clear violation of the law and process by the prosecution and the said plea agreement should be voided, vacated and thrown out.

On December 1, 2017, after my appearance in the court for my plea, Mr. Milliman caused me to make a formal report to the DC Bar (Exhibit A attached). In January 2018 I received a response from the DC Bar Disciplanary Board dated January 17 2018. I was apprehensive of the content and went to Mr. Milliman, gave him a copy and demanded that I recant MY PLEA of 12/01/18 and go to trial. Mr. Milliman assured me that there would not be a need to rescind the plea. That he was going to confer with the prosecutor and the court for a PROBATION BEFORE SENTENCE and that would assure the safety of my Bar license. He took time and talked to the DC Bar on my behalf concerning the Guilty Plea.

It is contended that there is no valid contract herein where the defendant is forced by threats and coercion to accept an offer whose contents are unknown to him. A valid contract demands that the two parties get to know the contents and conditions of the bargain they are entering into. No one can claim to have a valid contract where the offeror forces the offeree to make an

acceptance without knowledge of what he was entering into. **An acceptance is valid only if the offeree knows of the offer at the time of his alleged acceptance.**

Either party can void the bargain if the other engaged in misrepresentation or its functional equivalent. The defendant is permitted to rescind his plea where it is shown that (1) **his lawyer was constitutionally ineffective, (2) but for the lawyer's errors he would not have pled guilty and would have insisted on going to trial. Hill v Lockhart 474 U.S. 59.**

In Hill v Lockhart Renquist J. stated: "In Strickland v Washington 466 US 668 (1984) we adopted a two-part standard for evaluating claims of ineffective assistance of Counsel. There citing **McMann v Richardson 397 US 759** , we reiterated that "when a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness. 466US at 687.

We also held however, that, but for counsel's unprofessional errors, the result of the proceeding would have been different. 694"

Although our decision in **Strickland v Washington** deal with a claim of ineffective assistance of counsel in a capital sentencing proceeding, and was premised in part on the similarity between such a proceeding and the usual criminal trial, the same two-part standard seems to us applicable to ineffective assistance claims arising out of the plea process. Certainly our justification for imposing the "prejudice" requirement in Strickland v Washington are also relevant in the context of guilty plea.

It is contended that the attorney herein failed woefully to meet the standard set forth required of a competent attorney. It is the standard practice for lawyers to review and discuss the content of any evidence proffered by the prosecution together with the content and proposed deals, offer cogent legal advice on such matter and aid his client to arrive at an informed decision. It is difficult for any reasonable person to understand the actions of the defense counsel in this matter.

What was the essence of the interjection of the prosecutor with the threats on the phone? Does the defense counsel need the help of the prosecutor to convince the defendant to accept the plea?

THE 6TH AMENDMENENT RIGHT TO COUNSEL

In **U.S. v CRONIC** 466 U.S. 648 (1984) the U.S. Supreme Court espouses the essence of the need of "effective counsel required by the 6th Amendment. Justice Stevens stressed as follows:

An accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases" are necessities, not luxuries." Their presence is essential because they are the means through which the rights of the person on trial are secured. Without counsel, the right to a trial itself would be "of little avail," as this court has

recognized repeatedly. Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any rights he may have.

The special value of the right to the assistance of counsel explains why "it has long been recognized that the right to counsel is the right to the **EFFECTIVE ASSISTANCE OF COUNSEL. McMann v Richardson 397 U.S. 759, 771**

The text of the 6th Amd. itself suggests as much. The amendment requires not the provision of counsel to the accused, but "Assistance," which is to be "for his defense," Thus the core purpose of the counsel guarantee was to assure "Assistance" at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor. U.S. v Ash 413 U.S. 300, 309.

If no actual "Assistance "for" the accused's "defense" is provided, then the constitutional guarantee has been violated."

To hold otherwise "could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitutional requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. **Avery v Alabama 308 U.S. 444,446**

"Truth," Lord Eldon, said is best discovered by powerful statements on both sides of the question." This dictum describes the unique strength of our system of criminal justice. The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." **Herring v New York 422 U.S. 853, 862. It** is that "very premise" that underlies and gives meaning to the 6thn Amendment. It is meant to assure fairness in the adversary criminal process." **U.S. v Morrison 449 U.S. 361,364.**

Unless the accused receives the effective assistance of counsel, "a serious risk of injustice infects the trial itself. Cuyler v Sullivan 446 U.S. at 343.

Thus the adversarial process protected by the 6th Amendment requires that the accused have "counsel acting in the role of an advocate." **Ander's v California 386 U.S. 738, 743.**

The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted – even if defense counsel may have made demonstrable errors, the kind of testing envisioned by the 6th Amendment has occurred. But if the process loses its character of a confrontation between adversaries, the constitutional guarantee is violated. As **Judge Wyzanski** has written: "**While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skill, neither is it a sacrifice of unarmed prisoners to gladiators." U.S.ex rel . Williams v Twomay 510F.2nd 634,640 (CA7}.**

Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of the 6th Amendment right that makes the adversary process itself presumptively unreliable. No specific showing of prejudice was required in **Davis v Alaska 415 U.S. 308**, because the petitioner had been "denied the right of effective cross examination" which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it. (Citing Smith v Illinois, 390 U.S. 129.131)

Circumstances of that magnitude may be present on some occasions when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. **Alaska v Alabama 287 U.S. 45,53 was such case.**

As respondent appears to recognize, the only bona fide jury issue open to competent defense counsel on these facts was whether respondent acted with intent to defraud. When there is no reason to dispute the underlying historical facts, the period of 25 days to consider the question whether those facts justify an inference of criminal intent is not so short that it even arguably justifies a presumption that no lawyer could provide the respondent with the effective assistance required by the Constitution.

In the case at bar, the bona fide issue open to competent defense counsel on the facts was whether respondent acted with intent to defraud. It is contended that any competent defense counsel could firmly dispute that the underlying facts of the charge do not justify an inference of criminal intent.

Respopndent can therefore make out a claim of ineffective assistance of counsel.

A review of the Disciplinary Actions Taken by the District of Columbia Court of Appeals:

In re Douglas, June 7, 2018. The D.C. Court of Appeals disbarred Douglas nunc pro tunc to August 7, 2018. Douglas pled guilty to conspiracy to commit wire fraud, a crime of moral turpitude per se, for which disbarment is mandatory under D.C. Code s 11-2503(a)(2001).

My D.C. Bar license is in jeopardy, a direct result of a deceptive and ineffective counsel.

RESTATEMENT OF CONTRACTS-SECOND

S 175. When Duress by Threat makes a Contract Voidable.

(1) If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.

S 176. When a Threat Is Improper.

(1) A threat is improper if

(b) What is threatened is a criminal prosecution

(d) the threat is a breach of the duty of good faith and fair dealing under a contract with the recipient.

(2) A threat is improper if the resulting exchange is not on fair terms, and

(c) what is threatened is otherwise a use of power for illegitimate ends.

DURESS: Improper Threats.

Contractual duties are based on the consent of the parties. Thus if the manifestation of assent of one of the parties was not freely given, one of the necessary components of a contract is absent. Not surprisingly, agreements obtained through duress are not enforceable. Restatement (2nd) of Contract s 174 (1981).

A contract is voidable due to duress when one of the parties induces the other to express his consent with an improper threat. Restatement (2nd) of Contract s. 175 (1981).

The law recognizes several types of duress. Physical duress – the proverbial "gun to the head"- renders victim's expression of assent ineffective and thus makes the contract void. Restatement (2nd) Contract s. 174 (1981). US v Bond 588 A. 2nd. 734, 734-40 (Md. 1991)

Extortion and other threats, that fall short of physical duress, may so intimidate a person that he or she has no reasonable alternative other than to consent.

In these situations, there is no **physical** compulsion and the contract is not rendered void. Instead, it is voidable at the election of the victim of the improper threat. **Cumberland & Ohio Co. of Texas Inc. v First National Bank 936 F. 2nd 846 (6th Cir. 1991)**

Originally, the defense of duress was available only in connection with threats of bodily harm or criminal prosecution. In **Tallmadge v Robinson 109 N.E. 2nd 496, 499 (Ohio 1952**) the court explained that the historical standard depended on the "effect upon the mind of a man of ordinary firmness and courage.

Other courts use a subjective standard which inquires whether the threat was serious enough to deprive the party of the free will necessary to enter a contract. This text focuses not so much on the effect that the threat would have had on a reasonable person, but instead the effect that it had on the victim's state of mind.

Modern courts take a relaxed approach, which depends on whether one party made an improper threat that left the other party with "no reasonable alternative" other than to consent to the proposed agreement. (Restatement (2nd) of Contract s. 175(1) 1981).

Other formulations of the rule permit relief where "the victim had no choice but to agree to the other party's terms or face serious financial hardship if the threat were to be carried out"

Therefore the plea should be vacated.

KWAME ASAFO-ADJEI